

ADA and Accommodations

Disability Related Accommodations in the Workplace

What to expect
in the next 45
minutes.



Run through the applicable
law and relevant definitions



Discuss the role of a UTA
supervisor in the
accommodation process



Cover real life scenarios
and questions

The Legal Stuff

- ❖ Title I of the ADA prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application, hiring, firing, advancement, compensation, assignments, leave, benefits, training and all other terms and conditions and privileges of employment.
- ❖ Texas has an equivalent law – Texas Labor Code, Chapter 21. Employment Discrimination, aka Texas Commission on Human Rights Act.
- ❖ UTA can be sued in both State and Federal court for disability discrimination. Must file complaint with TWC/EEOC first.
 - ✓ Treating a qualified individual with a disability (applicant or employee) less favorably because s/he has a disability, a history of disability or because s/he is believed to have a disability in any aspect of employment.
 - ✓ Failure to provide reasonable workplace accommodation to an applicant or employee with a disability
 - ✓ Hostile work environment – harassment based on disability

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The Law Summed Up with Relevant Definitions



UTA is prohibited from discriminating against qualified individuals with disabilities by failing to provide reasonable workplace accommodations to an applicant or employee with a disability.



Qualified Individuals

- ❖ Employers do have the right to require employees meet performance requirements of the essential functions of the job.
- ❖ A qualified individual is a person who has the skills, experience, education **and other job-related requirements** necessary for the position and is able to do the job with or without a reasonable accommodation.
- ❖ If an individual is able to do the job with a reasonable accommodation, the individual is a qualified individual with a disability.
- ❖ Job functions are considered either essential or marginal. Essential functions are those functions that altering would alter the very nature of the position; only essential job functions are relevant to whether an individual is qualified under the ADA.
- ❖ **Note – job descriptions are important in supporting the essential functions of a job.**



Qualified Individuals

- **Examples of Job-related requirements:**
 - Possessing specific training
 - Possessing specific licenses or certificates
 - Possessing certain physical or mental abilities (e.g., meeting vision, hearing, or lifting requirements; showing an ability to run or climb; exercising good judgment)
 - Meeting health or safety requirements
 - Demonstrating certain attributes such as the ability to work with other people or to work under pressure.





Reasonable Workplace Accommodations



- ❖ An accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities.
 - ❖ Job Applicant - enables a qualified applicant with a disability to be considered for the job.
 - ❖ Employee - enables a qualified individual with a disability to perform the job's essential functions and enjoy benefits and privileges of employment equal to those of similarly situated employees without disabilities.

Reasonable Workplace Accommodation Examples



Modification of work schedules, working remotely



Stand up desks or other adjustments to workstations or physical space to make it accessible



Privacy for administering medications



Quiet work environment to reduce distractions



Reserved parking space for mobility disabilities



Reassignment to equivalent vacant position



Ensuring software is accessible, providing screen readers, videophones

How many of you (as a UTA supervisor) have had a request for an accommodation from an employee you supervise?

What is Not Reasonable?

- ❖ When the accommodation imposes an “undue hardship” on the employer or creates a “direct threat” in the workplace.
 - ❖ Undue hardship is created by unduly cost; disruptive, extensive, or substantial alteration; or an alteration that changes the fundamental nature of the position.
 - ❖ Direct threat includes a threat to the health or safety of the individual in question or others.





Undue Hardship on Employer

- An advising department has one admin who handles travel, time, mail duties, written correspondence, answering the department's frequent phone load, and greeting the many students who come in for advising appointments. The department has four advisors and one director who are all very busy with their own job duties.
- The admin has unfortunately recently developed a social anxiety disorder that prevents her from functioning around other people and has asked to work from home. Would this create an undue hardship on the employer or is it a reasonable accommodation?
- Undue Hardship = This accommodation would alter the fundamental nature of the position. The department would be left without anyone to answer phones, greet students, run documents and do the other tasks that require a physical presence in the office.



Direct Threat in Workplace Case Scenario

- Facilities employees a heavy machinery operator who has recently been diagnosed with sleep apnea and has frequent and uncontrolled sleep spells throughout the day. There are no available positions for job reassignment.
- Does the employee pose a significant risk to the safety of himself or others?
- Can this risk be eliminated by a reasonable accommodation?

Definition of Disability

- ❖ Disability means:
 - ❖ A physical or mental impairment that substantially limits one or more major life activities of the individual;
 - ❖ A record of such impairment; or
 - ❖ Being regarded as having such impairment.

Disability Definition – Physical Impairment



Physical Impairment – A physical impairment is defined as any physiological disorder or condition, cosmetic disfigurement or anatomical loss **affecting one or more body systems**, such as neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary (the urinary system and reproductive organs), immune, circulatory, hemic (related to blood), lymphatic (part of the immune system), skin, endocrine (involving glands and hormones).



Disability Definition – Mental Impairment

Mental Impairment – A mental impairment includes a mental or psychological disorder, such as an intellectual disability (formerly called "mental retardation"), organic brain syndrome (reduced mental functions because of disease rather than psychological problems), emotional or mental illness and specific learning disabilities.



Disability Definition – Substantially Limits



- Substantially limits:
 - No specific definition, just guidance.
 - Must be construed broadly.
 - Need not prevent or significantly restrict the major life activity at issue.
 - As compared to general population.
 - Cannot consider mitigating measures (with the exception of eyeglasses).

Disability Definition – Major Life Activity

<p>Major Life Activity: Performed</p>	<p>Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, lifting, reaching, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others and working; and</p>
<p>Major Life Activity: Auto Bodily Functions</p>	<p>The operation of major bodily functions including functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal and reproductive functions and the operation of an individual organ within a body system.</p>

Recap - The Law Summed Up



UTA is prohibited from discriminating against qualified individuals with disabilities by failing to provide reasonable workplace accommodations to an applicant or employee with a disability.

The Role of the UTA Supervisor in the Accommodation Process

1

Create equal opportunity atmosphere so employees feel comfortable disclosing disabilities.

2

Recognize an employees disclosure of a disability and the need for an associated accommodation.

3

Refer employees requesting accommodations to their Office of Human Resources Business Partner.

4

Participate in the “interactive process” when called upon to do so by HR.



Equal Opportunity Atmosphere Why Do Employees Disclose?

*Emerging Employment Issues for People with Disabilities:
Disability Disclosure, Leave as a Reasonable
Accommodation, Use of Job Applicant Screeners* by Sarah
von Schrader, Valerie Malzer, William Erickson, Susanne
Bruyère.

<http://digitalcommons.ilr.cornell.edu/edicollect/1288>

[https://askjan.org/toolkit/index.cfm#tools-for-
manager:understanding](https://askjan.org/toolkit/index.cfm#tools-for-manager:understanding)

“Very Important” Factors, when Deciding to Disclose a Disability to an Employer

Factor	Percent Agreeing
Belief in New Opportunities	40.7%
Disability in Diversity Statement	48.9%
Knowing of Other Successes	49.9%
Active Disability Recruiting	50.5%
Disability Friendly Workplace	56.8%
Supportive Supervisor Relationship	63.5%
Need for Accommodation	68.2%



Equal Opportunity Atmosphere Why Don't Employees Disclose?

Emerging Employment Issues for People with Disabilities: Disability Disclosure, Leave as a Reasonable Accommodation, Use of Job Applicant Screeners by Sarah von Schrader, Valerie Malzer, William Erickson, Susanne Bruyère.
<http://digitalcommons.ilr.cornell.edu/edicollect/1288>; <https://askjan.org/toolkit/index.cfm#tools-for-manager:understanding>

"Very Important" Factors, when Deciding NOT to Disclose a Disability to an Employer

Factor	Percent Agreeing
Desire for Privacy	27.9%
No Impact on Job Ability	44.0%
Risk Being Viewed Differently	53.8%
Supervisor May Not Be Supportive	60.1%
Fear of Limited Opportunities	61.1%
Risk of Losing Health Care	61.5%
Employer May Focus on Disability	62.0%
Risk of Being Fired/Not Hired	73.0%

The Disclosure of Disability and Request for Accommodation

Who Carries the Burden?

1. General rule is that the burden is on the employee to request an accommodation.
2. Employer *may* inquire if employee needs an accommodation when the employee has an **obvious or known disability** and the employer has a **reasonable belief** the employee may need an accommodation because of the disability.



Who Carries the Burden?

Your employee regularly texts you in the morning that she is having debilitating migraines. She is frequently tardy or absent because of this.



Your employee has a known disability because she has made it known to you.




You have a reasonable belief she could use an accommodation because she is frequently late and violating attendance policies because of the migraines.

The Disclosure of Disability and Request for Accommodation

When Employer Carries the Burden.

Employer required to provide an accommodation without a request if it knows an employee has a disability, knows or should know the employee is experiencing workplace problems because of the disability, and the disability is preventing the employee from making the request for a reasonable accommodation.



When Employer Carries the Burden.

Your employee doesn't show up for work for an entire week with no contact! You call HR and start the termination process.

That next Monday, your employee's brother calls you to tell you he just got into town because his brother (your employee) was mentally committed the week before and will be inpatient for another week (two weeks total).

You call HR and tell them what you have found out. Can you still terminate your employee now?



Evaluating Job Performance

- An employee with a disability must meet the same production standards, whether quantitative or qualitative, as a non-disabled employee in the same job. Lowering or changing a production standard because an employee cannot meet it due to a disability is not considered a reasonable accommodation.
- A supervisor should evaluate the job performance of an employee with a disability the same way it evaluates any other employee's performance.
- Accurate performance reviews are crucial!
 - An accurate performance review may alert an employee that his disability is contributing to performance problems causing the employee to request a reasonable accommodation to address the problem and improve performance.
 - This will also help measure whether the performance problems are truly disability related and determine if other factors are at play. Provides documentation to support termination if necessary down the road.

Evaluating Job Performance

What if an employee tells you during his review that his performance has suffered because of a medical related issue?



You are now on notice that the employee may have a disability that is affecting his job.



What do you do?




Evaluating Job Performance

Can you still include his poor performance in his review even though he now says it's disability related? Yes.



Do you have a reasonable belief an accommodation may be necessary? Yes.



At this point, you would refer him to HR to see if there are any reasonable accommodations that can assist him in performing his job.



Conduct Violations



An employee with a disability can be disciplined for a conduct violation.

- A blind employee has little patience with her coworkers; she is rude, demeaning and has even had insubordination issues with you. She can be disciplined.
- An employee with an anxiety disorder frequently takes a “smoke break” outside your building. He was previously provided a quiet workspace as an accommodation for his anxiety disorder. UTA is a tobacco free campus. Smoking on campus is not a reasonable accommodation. He can be disciplined.

A note about Alcohol and Drug Abuse



Although there is case law that says alcoholism can be a disability, showing up at work under the influence of alcohol is a conduct violation for which employees may be disciplined.



Compare that to the employee who is frequently late because of alcoholism related health problems or the employee who has entered a rehab facility. These types of issues should be referred to HR for accommodation requests.



Current illegal drug use is never considered a disability requiring accommodation.

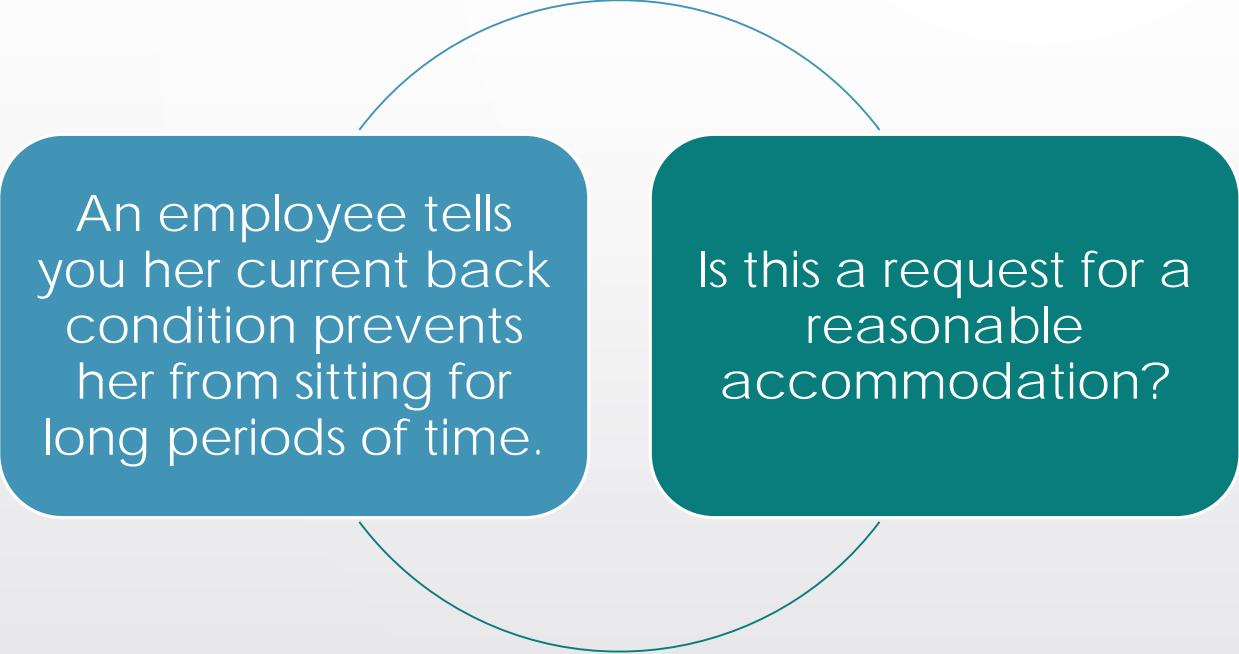


Identifying an Accommodation Request

Any time an employee indicates they have a problem related to a medical condition, and that problem is affecting their employment, the supervisor should consider whether the employee is making a request for a disability related workplace accommodation.

Err on the side of caution: If you are not sure whether an employee has requested an accommodation, you should ask the employee to clarify what is being requested and why.





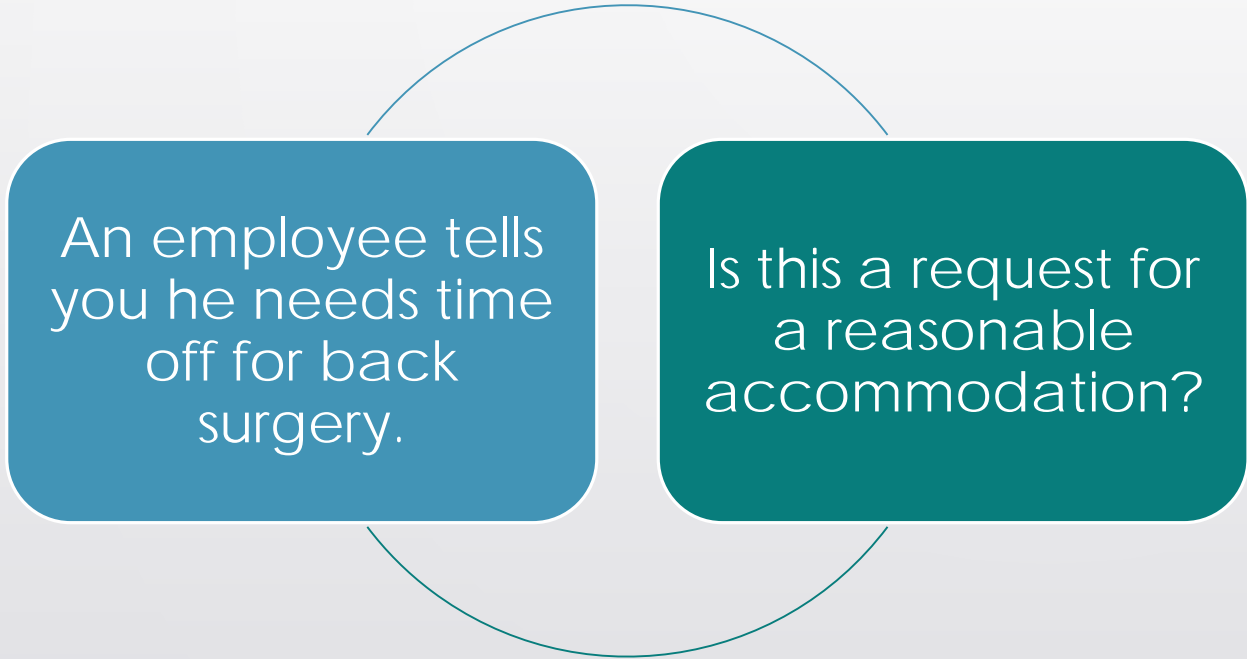
An employee tells you her current back condition prevents her from sitting for long periods of time.

Is this a request for a reasonable accommodation?

Scenario 1



Scenario 2



Scenario 3



Scenario 4

Referral to Human Resources

- ❖ As soon as you are aware of an employee's disability and need for an accommodation, refer the employee to their HR Business Partner.
<https://www.uta.edu/hr/about-us/business-partners.php>
- ❖ Time is of the essence here! A delay can be construed by the EEOC/TWC or the courts to be a failure of UTA to engage in the interactive process.
- ❖ You should document your conversation with the employee (referring them to HR) in writing. If the conversation is face to face, a follow-up email works nicely for this purpose.
- ❖ You should never ask for or accept medical records or supporting documentation of the employee's disability. This information is considered confidential and only shared on a need to know basis. Do not discuss with other employees.



The Interactive Process

- Once the employee contacts HR, they will be asked to fill out the appropriate request forms and provide medical documentation if necessary.
- HR will reach out to you to discuss options for reasonable accommodations.
- There may be more than one reasonable accommodation available, and although the employee has the right to request which accommodation they prefer, the employer can choose whichever it wants, as long as it is effective.



The Interactive Process



- The ADA Coordinator in HR will grant or deny any accommodation in writing to the employee.
- The HR business partner will work with you and the employee to implement any accommodation granted.
- Accommodations aren't always permanent and may be revisited to ensure effectiveness.



A note about Applicants

- Upon request, employers are required to provide reasonable accommodations to enable a disabled individual to be considered for a job opening. Refer applicants to ADA Coordinator in HR.
- Examples of application accommodations:
 - provide written materials in accessible formats like large print, braille or audio.
 - Provide sign language interpreters
 - Provide accessible locations for interviews
 - Provide extended time for testing
- Undue hardship and direct threat rules apply
- Applicant is not required to disclose the need for reasonable accommodations for a job during an interview. You cannot ask an applicant during an interview if they need a reasonable accommodation to perform a job unless you know they have a disability and that disability might pose a difficulty for the individual in performing a specific task.
- Can refuse to hire if applicant cannot perform all essential functions of the job, with or without an accommodation. Cannot refuse to hire based on minor duties.



Equal Opportunity in Employment

