

Reasonable Accommodations for Individuals with Psychiatric Disabilities



Who is Protected by the ADA

An individual-

- with a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- with a record of such an impairment; or
- who is regarded as having such an impairment, *AND*
- who, with or without *reasonable accommodation*, can perform the essential functions of the employment position.

Covered Employers

- ADA: 15 or more employees
- State Law: ORS 659A.106: 6 or more employees
- Public Employees

Prohibited Discrimination

- Recruitment, advertising, and job application procedures
- Hiring, upgrading, promotion, award of partnership, demotion, transfer, layoff, termination, right of return from layoff, and rehiring
- Rates of pay or any other form of compensation and changes in compensation

Prohibited Discrimination

- Job assignments and classifications
- Leaves of absence, sick leave, or any other leave, fringe benefits available by virtue of employment
- Selection and financial support for training

Job Application Process

- No medical examination before offer of employment
- No inquiry into existence or nature of disability
- May inquire into ability of applicant to perform job-related functions
- May require post-offer medical exam if required of all entering employees and the information is kept confidential. Need not be job-related nor consistent with business necessity

At Work

- No medical exams or inquiries regarding existence or nature of disability unless shown to be job-related and consistent with business necessity.
- May conduct voluntary medical exams and histories which are part of an employee health program.
- May inquire into the ability of an employee to perform job-related functions.

Reasonable Accommodation

- Modifications or adjustments
 - To a job application process
 - To the work environment
 - To the manner or circumstances under which the position is customarily performed
 - That enable the employee to enjoy equal benefits and privileges

Reasonable Accommodation

- Making facilities used by employees readily accessible and useable
- Job restructuring
 - Part-time or modified work schedules
 - Reassignment to vacant position
 - Acquisition or modification of equipment
 - Modification of exams, training materials or policies
 - Provision of qualified readers or interpreters
 - Telecommuting

How to Start the Process

- Employer need only accommodate *known* physical or mental limitations.
- Unless obvious, Employer must be informed of disability and limitations.
- Request for accommodation need not be technical; may be in “plain English.”
- Request may be made by the person, a family member, friend, health professional, or other representative.

How to Start the Process

- Request may be made at any time.
- Employer may ask for documentation of disability and limitations.
- Employer can request medical exam if documentation is not adequate.
- RA is always prospective

“Interactive Process”

- To determine appropriate reasonable accommodation
 - *May be necessary* for business to
 - Initiate an informal, interactive process
 - To identify the *precise* limitation resulting from the disability and
 - Potential reasonable accommodations that *could* overcome those limitations

Examples of Accommodations

- **Flexible Workplace** - Telecommuting and/or working from home.
- **Scheduling** - Part-time work hours, job sharing, adjustments in the start or end of work hours, compensation time and/or "make up" of missed time.
- **Leave** - Sick leave for reasons related to mental health, flexible use of vacation time, additional unpaid or administrative leave for treatment or recovery, leaves of absence and/or use of occasional leave (a few hours at a time) for therapy and other related appointments.
- **Breaks** - Breaks according to individual needs rather than a fixed schedule, more frequent breaks and/or greater flexibility in scheduling breaks, provision of backup coverage during breaks, and telephone breaks during work hours to call professionals and others needed for support.
- **Other Policies** - Beverages and/or food permitted at workstations, if necessary, to mitigate the side effects of medications, on-site job coaches.

Examples of Accommodations

Modifications

- Reduction and/or removal of distractions in the work area.
- Addition of room dividers, partitions or other soundproofing or visual barriers between workspaces to reduce noise or visual distractions.
- Private offices or private space enclosures.
- Office/work space location away from noisy machinery.
- Reduction of workplace noise that can be adjusted (such as telephone volume).
- Increased natural lighting or full spectrum lighting.
- Music (with headset) to block out distractions.

Examples of Accommodations

Equipment/Technology

- Tape recorders for recording/reviewing meetings and training sessions.
- "White noise" or environmental sound machines.
- Handheld electronic organizers, software calendars and organizer programs.
- Remote job coaching, laptop computers, personal digital assistants and office computer access via remote locations.
- Software that minimizes computerized distractions such as pop-up screens.

Examples of Accommodations

Job Duties

- Modification or removal of non-essential job duties or restructuring of the job to include only the essential job functions.
- Division of large assignments into smaller tasks and goals.
- Additional assistance and/or time for orientation activities, training and learning job tasks and new responsibilities.
- Additional training or modified training materials.

Examples of Accommodations

Management/Supervision

- Implementation of flexible and supportive supervision style; positive reinforcement and feedback; adjustments in level of supervision or structure, such as more frequent meetings to help prioritize tasks; and open communication with supervisors regarding performance and work expectations.
- Additional forms of communication and/or written and visual tools, including communication of assignments and instructions in the employee's preferred learning style (written, verbal, e-mail, demonstration); creation and implementation of written tools such as daily "to-do" lists, step-by-step checklists, written (in addition to verbal) instructions and typed minutes of meetings.

Examples of Accommodations

- Regularly scheduled meetings (weekly or monthly) with employees to discuss workplace issues and productivity, including annual discussions as part of performance appraisals to assess abilities and discuss promotional opportunities.
- Development of strategies to deal with problems before they arise.
- Written work agreements that include any agreed upon accommodations, long-term and short-term goals, expectations of responsibilities and consequences of not meeting performance standards.
- Education of all employees about their right to accommodations.
- Relevant training for all employees, including co-workers and supervisory staff.

Exception: Undue Hardship

- Action requiring significant difficulty or expense.
Consider:
 - Nature and cost of accommodation
 - Overall financial resources of office
 - Overall financial resources of the entire firm
 - Type of operation including workforce and structure geographically, administratively or fiscally

Exception: Direct Threat

- Individual shall not pose a direct threat to the health or safety of the individual or others in the workplace.
- A significant risk of substantial harm to the health or safety that cannot be eliminated or reduced by reasonable accommodation.
- Determined by the individual's present ability to safely perform the essential functions of the job.

Exception: Direct Threat

- Assessment to be based upon reasonable medical judgment relying upon current medical knowledge and/or best objective knowledge.
- Factors include:
 - The duration of the risk
 - The nature and severity of potential harm
 - The likelihood that harm will occur
 - The imminence of the potential harm

Resources

- EEOC Enforcement Guidance on the Americans with Disabilities Act and Psychiatric Disabilities
<http://www.eeoc.gov/policy/docs/psych.html>
- The Center for Psychiatric Rehabilitation's Reasonable Accommodations for People with Psychiatric Disabilities:
<http://cpr.bu.edu/resources/reasonable-accommodations>
- US Department of Labor:
<http://www.dol.gov/odep/pubs/fact/psychiatric.htm>
- Northwest ADA Center: <http://www.nwadacenter.org/>

Thanks

Bob Joondeph

Executive Director

Disability Rights Oregon

610 SW Broadway, Suite 200

Portland, OR 97205

Voice: 503-243-2081 or 1-800-452-1694

Fax: 1-503-243-1738

www.droregon.org