

White Paper

# **ANSWERS TO 18 COMMON ADA ACCOMMODATION REQUESTS**

# Answers to 18 Common ADA Accommodation Requests

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Accommodations are an important part of any employer's job and not meeting legal requirements for a request may result in serious consequences. It's crucial to have a firm understanding of what's expected from HR and leadership when any accommodation request is filed.

In this special report, we've collected the best of our advice on *specific types of accommodations*. Whether you're a small business or a Fortune 500 company — Business Management Daily has the tips you need to stay ahead.

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# ADHD diagnoses skyrocket: Here's how to accommodate

We're experiencing an explosion of attention-deficit/hyperactivity disorder (ADHD), and the adult version may be far more prevalent than previously believed. A recent study found that 60% of children with an ADHD diagnosis who reached adulthood did not outgrow the condition. Given that the CDC estimates that 4.5 million children have ADHD, that's a lot of working-age adults who may be similarly disabled.

## An ADA-covered disability

The Americans with Disabilities Act (ADA) requires employers to reasonably accommodate disabled applicants and employees. To be disabled under the ADA—and therefore eligible for reasonable accommodations—individuals must have a physical or mental condition that substantially impacts major life activities such as walking, breathing, concentrating, memory, sleeping and getting along with others. Adult ADHD may qualify as an ADA disability in most cases.

The EEOC has frequently sued employers who allegedly discriminate against adults with ADHD. Often, the allegations involve a rescinded job offer after the applicant confesses to having adult ADHD or when an employee requests reasonable accommodations for ADHD symptoms. Here are a few cases:

- A job offer was rescinded after the applicant revealed his ADHD diagnosis and his drug test was positive for Adderall, a prescribed amphetamine for treating ADHD. (*EEOC v. International Paper*, ND TX 2022)
- A recently hired employee with adult ADHD revealed she took prescription medication for the condition, and her new supervisor told her to stop taking it. She didn't and was fired. The employer settled the case and paid her \$100,000. (*EEOC v. Hollingsworth Richards*, ED LA 2022)

## **Adult ADHD accommodations**

Employees with ADHD may have trouble listening to instructions, organizing and staying on task, finishing work, concentrating, listening to others without interrupting and prioritizing work.

- Reasonable accommodations for ADHD can include:
- Allowing frequent breaks
- Hiring a job coach to work with the employee
- Telework or offering a private office to facilitate distraction-free work
- Offering white noise or otherwise reducing distractions
- Providing interruption-free work time
- Providing additional time to complete projects
- Having the employee work with your employee assistance program
- Providing to-do lists and helping establish priorities
- Providing assistive technology to stay on task, such as calendars and timers.
- Employers should also modify their drug-testing programs to accommodate prescription medication, if possible.

### **Key takeaways**

Employers must make sure they engage in the interactive accommodations process. That means documenting each step, including resources consulted for finding accommodations, the employee's suggested accommodations and the follow-up once these are in place.

## **Alcoholism: Be prepared to accommodate it under both the ADA and the FMLA**

Responding to the latest federal Behavioral Risk Factor Surveillance System survey, more than half of U.S. adults reported drinking alcohol in the previous 30 days. Nearly 17% reported imbibing enough alcohol to qualify as binge drinkers (having

four to five drinks on a single occasion) and 6% reported heavy drinking (eight to 15 drinks per week).

One study placed the overall cost of alcohol abuse at more than \$249 billion per year. The Centers for Disease Control and Prevention says employers bear 72% of that cost because of lost productivity.

### **ADA- and FMLA-covered**

Alcoholism is an addictive disorder that may qualify for protection under the ADA and FMLA. Though estimates vary, about one in every 12 adults may meet the technical definition of alcoholism (now usually called alcohol use disorder). It's generally defined as a progressive and potentially fatal condition characterized by impaired control over drinking alcohol despite negative consequences, increased tolerance and distorted thinking.

The ADA requires employers to reasonably accommodate disabled employees. To be disabled—and therefore eligible for accommodations—individuals must have a physical or mental condition that substantially impacts a major life activity such as walking, breathing, concentrating, remembering, sleeping and getting along with others.

The FMLA lets employees with serious health conditions take time off for treatment. A serious health condition is one that requires hospitalization or continued medical treatment.

### **Accommodating alcoholism**

An alcohol-dependent worker may exhibit a number of behavioral and addictive behaviors at work.

According to the Mayo Clinic, these include being unable to limit alcohol consumption, spending a lot of time drinking or recovering from alcohol use, craving alcohol, missing work or other activities, using alcohol when doing so is

unsafe (such as driving drunk) and experiencing withdrawal symptoms when unable to consume alcohol. Treatment includes counseling, medication and in-patient treatment for addiction.

Employers do not have to tolerate employees being intoxicated at work. You should establish rules that prohibit coming to work under the influence and drinking on the job. You may discipline those who break the rules, up to and including termination.

According to EEOC guidance, employers may hold an employee suffering from alcohol dependence to the same standards other workers must meet, including following rules that punish tardiness, insubordination and on-the-job accidents.

### **Specific accommodations**

Nevertheless, the ADA and the FMLA may require employers to grant time off to workers with alcohol dependency so they can receive treatment. Other possible reasonable accommodations include:

- Allowing time off for medical appointments and counseling
- Adjusting schedules, goals and quotas to account for limitations associated with the disorder such as insomnia, withdrawal symptoms and anxiety
- Offering a last-chance agreement to a worker relapsing after a period of treatment in lieu of termination for arriving late or under the influence
- Honoring a recovering alcoholic's request to be excused from work related meetings or events where alcohol is served.

## **How to accommodate an emerging disability: Postural Orthostatic Tachycardia Syndrome**

Some disabilities are so obvious that employers know how to reasonably accommodate them. But what about rare or emerging disabilities? Finding

information about these potentially ADA-covered disorders is harder. And that makes it harder still to design reasonable accommodations. One such emerging disorder is Postural Orthostatic Tachycardia Syndrome, or POTS.

## **A COVID-19 connection**

Postural Orthostatic Tachycardia Syndrome is an autonomic nervous system disorder characterized by erratic irregular heart rate, dizziness and fainting (especially after standing up), headache and fatigue.

Some patients become so impaired they must use wheelchairs or risk fainting. POTS has received national media coverage recently. That makes it more likely that one of your employees will seek and receive a diagnosis and therefore request ADA accommodations or need time off under the FMLA for diagnosis and treatment.

POTS diagnoses have increased dramatically in the past few years and have been linked to COVID-19 infection. Between 2% to 14% of those testing positive for COVID-19 develop POTS. Up to 61% experience some of its symptoms. Given how many people have tested positive for COVID, that's a significant number of potential POTS sufferers.

POTS does not have a cure, but there are mitigating treatments. One disorder characteristic is low blood volume, which may be alleviated by drinking plenty of water and consuming more salt. Patients may also be prescribed beta blockers to slow their heart rates. They may be told to wear compression socks, which help keep blood flowing upon standing up. Still others receive physical therapy to learn how to exercise without fainting.

## **ADA and FMLA implications**

People who develop POTS symptoms severe enough to interfere with one or more major life activities are disabled under the ADA.

They probably have a serious health condition under the FMLA. Certainly, fainting, fatigue and headache may interfere with the ability to perform the essential functions of one's job, meeting the definition of a serious health condition under the FMLA. That makes the employee potentially eligible for FMLA leave both to seek and get treatment, as well as intermittently when the condition flares up.

## **Reasonable accommodations**

Reasonable accommodations may mitigate some of the effects, helping employees avoid flare-up absences.

What reasonable accommodations are required depends on how POTS affects individuals. Possibilities include allowing employees who suffer from frequent fainting to sit while working or use a wheelchair to get around the workplace without having to stand up.

Other possibilities include:

- Granting time off, even if no FMLA leave is available to seek and receive medical treatment
- Providing ergonomic office equipment to make working more comfortable and to ease getting up
- Offering frequent breaks to drink water or have a salty snack
- Altering schedules to deal with fatigue or headaches as an accommodation or as intermittent leave
- Granting permission to telecommute during flare-ups.

## **Online resources**

The Dysautonomia Information Network ([www.dinet.org](http://www.dinet.org)) provides information on POTS research and treatments. The Job Accommodations Network ([askjan.org](http://askjan.org)) has a list of possible POTS accommodations; search for POTS.

# Understand your obligation to accommodate disabilities arising from long COVID

The national COVID-19 pandemic emergency ended in April 2023, making it tempting to think the pandemic crisis is behind us. It's not. Millions of American workers may be disabled by post-COVID conditions commonly called long COVID.

The lingering effects of the pandemic mean fewer applicants available to fill open positions and more workers requesting ADA accommodations to help them do their jobs. As a chronic, long-term condition, long COVID is expected to trigger tens of thousands of requests for intermittent FMLA leave.

## What is long COVID?

The Centers for Disease Control and Prevention has identified a number of long COVID conditions. Here are some of the most common manifestations:

- People with long COVID can show a wide range of health problems lasting weeks, months or years.
- Affected individuals usually had severe COVID-19 cases, but may also have had less severe illness.
- People who weren't vaccinated at the time they became infected have a higher risk of long COVID.
- Symptoms can include fatigue (especially after engaging in physical or mental exertion), fever, cough, chest pain and heart palpitations, headache, difficulty thinking and concentrating, depression and anxiety, diarrhea and stomach, muscle and joint pain.
- Long-COVID symptoms may come and go, with remissions followed by flare-ups.
- Some individuals develop new medical conditions after coming down with COVID-19, including diabetes, heart conditions, blood clots and autoimmune disorders.

## Possible accommodations

Unfortunately, no single test can determine if someone's symptoms are effects of long COVID. There is no standard treatment for long COVID, although research is underway.

Even so, the EEOC has added long COVID to its list of disabilities that may qualify for ADA accommodations. The Department of Labor, which enforces the FMLA, recognizes that those who suffer from long COVID may have a serious health condition qualifying them for FMLA leave, including intermittent leave when symptoms flare up. And those whose COVID-19 illness triggered new medical conditions such as diabetes may be entitled to both ADA accommodations and FMLA leave independent of their status as long COVID sufferers.

Some possible accommodations:

- **Time off in the form of intermittent leave** under the FMLA or as a reasonable accommodation under the ADA. That may mean days or hours off for medical appointments, rest or treatment.
- **Telework either permanently or when symptoms flare up** may be a reasonable accommodation for workers who can manage their symptoms while working at home. It can be especially helpful for those who need frequent rest breaks. Telework may also help those having difficulty concentrating.
- **Modified schedules and time off** may help build stamina during flare-ups.

Online resource

The Job Accommodation Network has a list of possible long COVID accommodations. See [tinyurl.com/JAN-long-COVID-resources](https://tinyurl.com/JAN-long-COVID-resources).

# Follow this process for accommodating disabled employees' service animals at work

Many people with disabilities use service animals to navigate daily life. It should come as no surprise, then, that they often request permission to bring service animals to work as a reasonable accommodation. How far must an employer go to honor that request? Here's your guide to accommodating service animals at work.

## The ADA and service animals

The ADA requires employers to reasonably accommodate disabled employees so they can perform a job's essential functions. Common disability accommodations include easing workplace access, granting extra breaks and providing special equipment.

Some disabled people—such as those with vision impairments—may use a trained dog to navigate. Others use specially trained service animals that can predict epileptic seizures or drops in blood sugar. For employees with anxiety or post-traumatic-stress disorder, service animals may provide comfort and bolster confidence.

While the employment provisions of the ADA don't define "service animal," the public-access provisions of the law say a service animal is a dog that is individually trained to do work or perform tasks for people with disabilities. The law says nothing about service animals other than dogs.

## Accommodating service animals

If an employee uses a service animal, follow these accommodations steps:

- If your organization has a no-animals-at-work policy, consider waiving the ban for disabled workers.

- Determine why the disabled worker needs the service animal. You may ask for documentation of what service the canine provides, along with evidence the animal is trained. There are no uniform standards for training or certifying service animals. Consider each case on its own.
- Offer a trial period. Allowing the disabled worker to bring the animal for a test run will help you determine if its presence will cause problems or be an undue burden. Remember, employers do not have to grant disability accommodations that cause an undue burden.
- Warn other employees that a service animal will be present at work. Provide training to co-workers so they know how to interact with the animal. Be prepared to modify the arrangement if coworkers are allergic to animals or have phobias. Those cases may require balancing competing disability needs to come up with a universally acceptable reasonable accommodation. Possible solutions: Switching offices, altering schedules and providing air purifiers.

## **EEOC litigation**

Several EEOC lawsuits have contested whether allowing a service animal at work would be an undue hardship because the accommodation would be disruptive. For example, the EEOC recently sued a Hobby Lobby store after it hired a disabled worker with PTSD and then rescinded the offer when she asked to bring her service dog. The store said the dog might be a safety hazard to customers with allergies, co-workers might trip over the dog or it might break something.

The EEOC pointed out that customers may bring service dogs into the store, which would presumably cause the same problems cited by Hobby Lobby. The case is pending.

## **Online resource**

The Job Accommodation Network offers information on service animals at work. See [tinyurl.com/askJAN-service-animals](http://tinyurl.com/askJAN-service-animals).

# How to accommodate employees who suffer from migraines

Headaches are one of the most commonly experienced medical conditions. In fact, more than 80% of adults will experience tension headaches from time to time. They're easily treatable with over-the-counter medications.

But about 12% of Americans suffer from a far more debilitating and hard-to-treat condition: migraine headaches. Here's your guide to accommodating workers who suffer from migraines.

## What are migraines?

According to the Mayo Clinic, migraine headaches can be characterized as having four different stages:

1. The first is called the prodrome stage, characterized by a craving for certain foods, a need to urinate often and frequent yawning.
2. Next, patients may experience an aura characterized by seeing bright or flashing lights or zigzag lines before pain starts in earnest.
3. The migraine itself usually manifests as severe pain—often throbbing or pulsing—on one side of the head. It may start slowly and build. During the acute headache phase, sufferers may feel nauseous and vomit, and be sensitive to light, sound and smells.
4. Following the acute phase, patients may feel weak, tired and confused for about a day.

A migraine episode may last as little as four hours or up to three days if untreated. Several medications can reduce migraine pain or help prevent migraines from occurring. Some patients who have medical conditions such as heart disease or who have a high risk of strokes cannot take preventive drugs.

## Accommodating migraines

Both the FMLA and the ADA provide legal protections to employees who suffer from migraine headaches.

**Intermittent FMLA leave:** It is common for employees to request intermittent FMLA leave to deal with recurring migraines. If an employee experiences two or more migraines per year, the condition probably qualifies as a chronic one, eligible for intermittent leave. Under the law, employers can require employees to have a healthcare provider estimate how many absences may be expected, broken down to weekly or monthly estimates.

Employees who take intermittent FMLA leave for migraines still must follow your call-off and notice requirements. If you suspect an employee is abusing intermittent leave—for example, by calling off too frequently or repeatedly taking leave on certain days like Fridays, Mondays or around holidays—you may want to discuss the matter with your attorney, who can provide guidance on requesting recertification or investigating suspected leave abuse.

**ADA accommodations:** Under the ADA, granting time off may be a reasonable accommodation for migraine sufferers. To be covered by the ADA, the employee must have a physical or mental impairment that substantially limits a major life activity. Migraines meet that standard.

The Department of Labor’s Job Accommodations Network lists these measures as reasonable accommodations for migraine sufferers:

- Moving the employee from a high noise area to a quiet space to avoid triggering migraines
- Swapping out fluorescent lighting for lighting less likely to trigger migraines
- Allowing the employee to take time off during a migraine and to recover.

## Online resources

Learn more about accommodating employees who experience migraines at:

- The Job Accommodations Network: [askjan.org/disabilities/Migraines.cfm](http://askjan.org/disabilities/Migraines.cfm)
- American Migraine Foundation: [americanmigrainefoundation.org](http://americanmigrainefoundation.org).

## Help staff with hearing impairments succeed

According to the Centers for Disease Control and Prevention, about 37.5 million American adults report some trouble hearing, including deafness, being hard of hearing or having sensitivity to noise. They may have been born with a hearing limitation, acquired it from a childhood infection, had their hearing damaged by loud noises or developed hearing loss as they aged.

Hearing loss may affect major life activities such as working. People with hearing loss and related limitations may qualify as disabled under the ADA, entitling them to reasonable accommodations.

The ADA requires employers to reasonably accommodate disabled applicants and employees so they can perform the essential functions of their jobs. What's reasonable depends on the size of the employer, its assets and resources, and whether the requested accommodation is unduly expensive or disruptive. Fortunately, many possible accommodations of hearing-related disabilities aren't unduly expensive or difficult to implement.

### **What is a hearing impairment?**

To qualify as a disability under the ADA, a hearing impairment must substantially impair a major life function, which includes the ability to hear and work. Almost by definition, hearing impairments qualify as disabilities, even though the level of impairment may vary by individual and any mitigation measures, such as using hearing aids or having cochlear implants.

## **Accommodating hearing loss**

Hearing-impaired applicants who request reasonable accommodations in the hiring process are entitled to them. These can include the presence of an American Sign Language interpreter during a job interview, either in person or via a remote connection. After hiring, an employee may be able to communicate directly with co-workers by writing or email, but may need an ASL interpreter to participate in meetings or training sessions.

Other common reasonable accommodations include the use of assistive technology and environmental modifications such as:

- Access to a video relay service or video remote interpreting service using equipment such as a videophone, computer, laptop, tablet or smartphone.
- A hearing aid-compatible telephone headset, a telephone amplifier or adapters for using a phone with hearing aids or cochlear implants.
- Emergency notification systems such as vibrating pagers or strobe lighting on fire alarms.
- Streaming sound directly from a device to hearing aids or cochlear implants.
- Utilizing accessibility features of mainstream technology such as turning on captioning features on virtual meeting platforms like Zoom and Teams.
- Providing hearing-protection equipment to block noise or protect hearing, including equipment that can be used with hearing aids.
- Assistive software or applications for automated captioning, voice recognition, videoconferencing or sound detection.
- Communication access real-time translation (CART), which translates voice into text at real-time speeds.
- Work-area adjustments that limit noise and facilitate emergency exiting.

Employees may also be entitled to time off related to their hearing disability if no other leave is available.

## Online resources

Find more information at the Department of Labor’s Job Accommodations Network: [askjan.org/disabilities/HearingImpairment.cfm](https://askjan.org/disabilities/HearingImpairment.cfm). Read the EEOC’s latest guidance on accommodating hearing disabilities at [tinyurl.com/EEOC-hearing-ADA](https://tinyurl.com/EEOC-hearing-ADA).

# Accommodating employees with visual impairments

About 18.4% of all U.S. adults are visually impaired, according to the Centers for Disease Control and Prevention. That means they are blind or have a great deal of difficulty seeing even when wearing prescription glasses.

The causes vary. Some visually impaired people have eye diseases like macular degeneration, cataracts, glaucoma or diabetic retinopathy. Others may have vision in just one eye. Some may have injured their eyes or were born blind.

Visual impairments and related limitations may qualify as disabilities under the ADA and require reasonable accommodations.

Not everyone who has difficulty seeing is disabled. If eyeglasses largely correct mild impairments such as near-sightedness, the person is not disabled. However, someone who uses more extensive corrective devices such as low-vision lenses or magnifiers may be disabled. Note that their disability is assessed without the use of corrective devices, which function as accommodation tools.

## Updated EEOC guidance

In August 2023, the EEOC issued updated guidance on accommodating visual disabilities in the workplace.

The guidance explains that the ADA bars disability discrimination and requires employers to reasonably accommodate disabled applicants and employees so they can perform the essential functions of the job. What's reasonable depends on the size of the employer, its assets and resources, and whether the requested accommodation is unduly expensive or disruptive. Blindness and less limiting visual impairments often qualify as disabilities under the ADA if they substantially impair major life activities like seeing, working and caring for oneself.

## **Suggested accommodations**

Common accommodations for employees with visual impairments include the use of assistive technology and environmental modifications like:

- Software that converts computer text into audible words or braille
- Optical character recognition software that creates documents in screen-readable electronic form from printed documents
- Written materials in large print, braille or other accessible formats
- Low-vision optical devices such as magnifiers
- Smartphones and tablets with built-in accessibility features like text-to-speech
- Braille keyboards
- Modified work schedules to facilitate taking public transportation
- Telework opportunities
- Modifications to training so employees can participate.

Visually impaired employees may also be entitled to time off related to their disability when no other leave is available.

**Note:** Visually impaired applicants who request reasonable accommodations in the hiring process are entitled to them. If the applicant uses a service animal to navigate, the animal must be permitted to accompany the visually impaired applicant. If you hire the applicant, you will need to allow the service animal to assist the employee as needed and may need to provide other accommodations.

## Online resources

The Department of Labor's Job Accommodations Network ([askjan.org](http://askjan.org)) offers a wealth of information about accommodating visual impairments. In addition, the EEOC has new guidance on accommodating employees with visual impairments at [www.eeoc.gov/laws/guidance/visual-disabilities-workplace-and-americans-disabilities-act](http://www.eeoc.gov/laws/guidance/visual-disabilities-workplace-and-americans-disabilities-act).

## How to accommodate employees affected by sleep disorders, insomnia

According to a 2020 study by the Centers for Disease Control and Prevention, approximately 14.5% of adults have trouble falling asleep most days. The same study found that insomnia affects more adults in their prime working years than older adults. The consequences range from daytime sleepiness to a higher risk of developing high blood pressure, coronary heart disease, diabetes and cancer.

Other related sleep disorders can also affect your employees:

- **Sleep apnea**, a disorder in which individuals experience abnormal breathing patterns during sleep, including times when breathing temporarily stops. In rare cases, individuals may die in their sleep.
- **Restless leg syndrome**, which causes uncontrollable leg movements, interfering with sleep.
- **Narcolepsy**, which causes individuals to suddenly fall asleep during the day or otherwise experience extreme sleepiness. Some also develop tremors, muscle weakness and the inability to grasp objects.

Together with insomnia, these sleep disorders may qualify as both disabilities under the ADA (warranting reasonable accommodations) and serious health conditions under the FMLA (entitling employees to take blocks of leave or intermittent leave for treatment or rest).

The ADA provides the broadest protection for employees with sleep disorders. While the FMLA may provide time off for testing, treatment and recovery, the ADA may require more significant changes to the work environment, including scheduling changes and modified duties.

## **Possible accommodations**

While each disabled employee requiring accommodations must be assessed individually, there are some accommodations that will address the most common side effects of sleep disorders like daytime drowsiness and fatigue. These include:

**Telework.** For jobs that can be performed remotely, allowing telework either full time or as needed may be the most effective accommodation. Teleworking lessens the danger of driving while drowsy. Especially for those prone to suddenly falling asleep during the day, working from home on a flexible schedule can be a successful workaround.

**Flexible scheduling.** Because sleep disorders and medications used to fall and stay asleep may affect the ability to wake up on time, employers may be required to provide flexible scheduling and excuse late arrivals or call-offs that are clearly related to a sleep disorder.

**Shift changes.** Some workers with sleep disorders may do best working the same shift rather than being assigned to alternating shifts. For some, exclusively working the day shift may be a reasonable accommodation.

**Accommodating medications.** Medicines used to treat insomnia and narcolepsy may have serious side effects. For example, a common narcolepsy treatment involves prescribed stimulants, which can show up on drug tests and affect behavior. Employers should make accommodations allowing the employee to take prescribed medication and modify duties if warranted by safety concerns.

## Online resources

The Department of Labor's Job Accommodation Network has lots of information on how employers can accommodate employees with sleep disorders. See [askjan.org/disabilities/Sleep-Disorder.cfm](http://askjan.org/disabilities/Sleep-Disorder.cfm). The American Academy of Sleep Medicine provides research and information on treatment of sleep disorders. See [aasm.org](http://aasm.org).

## Accommodating Alzheimer's and other forms of dementia in the workplace

According to the Centers for Disease Control and Prevention, more than five million Americans 65 and older have some form of dementia, the most common of which is Alzheimer's disease. However, dementia can also affect younger people during their prime working years.

Symptoms such as forgetting newly learned information, trouble solving problems and losing track of the date or time may make it difficult to function in the workplace. The condition worsens over time. There are few treatments and no cure.

Generally, dementia progresses in three stages. The first often lasts about two years and may occur before the condition is diagnosed. Symptoms may include forgetting meetings and having difficulty communicating with co-workers or customers. The second stage, lasting about two to four years, is characterized by increased anxiety and distrust of others and difficulty preparing for work and arriving on time. In the final stage, people need full-time care and can no longer work.

## Dementia and the ADA

The ADA requires employers with 15 or more workers to provide reasonable accommodations for disabled workers. Disabled workers have physical or mental conditions that substantially impair major life activities. A worker diagnosed with early-onset Alzheimer's or another form of dementia probably qualifies as disabled, especially after the condition progresses beyond the early stage.

Employees diagnosed with dementia may resist leaving the workforce as long as possible. That's particularly true for those with early-onset Alzheimer's; they may rely on their work income and employer-provided health insurance.

If you have a worker who reveals a dementia diagnosis and requests reasonable accommodations, follow your usual ADA accommodations process. Determine if the employee is disabled and discuss possible accommodations using the ADA's interactive process.

### Accommodations for dementia

Accommodations for dementia under the ADA might include:

- **Schedule adjustments.** The employee may need a more flexible schedule, especially if they need to take public transportation or have someone drive them.
- **Assistance with planning.** A supervisor may have to help the employee stay on task. Writing down directions and assignments may help.
- **Dealing with memory loss.** Employees may need regular reminders and recorded instructions. Assistance from a support person can help.
- **Restructuring the job.** As dementia progresses, it may make sense to simplify tasks or remove functions that require high-level functioning.
- **Revising accommodations regularly.** Because dementia is progressive, periodically revisit accommodations to see if changes may be necessary—or

if it's time to conclude the employee can no longer perform the essential functions of the job.

## **FMLA leave and dementia**

Dementia is a serious health condition under the FMLA. Employees with dementia are eligible to take FMLA leave—either intermittently or in longer blocks—so they can receive treatment or if they need time off to deal with their condition. Employees caring for family members with dementia are also eligible for FMLA leave.

### **Online resource**

The Labor Department's Job Accommodation Network offers information about dementia and potential accommodations. See [askjan.org/disabilities/Alzheimer-s-Disease.cfm](http://askjan.org/disabilities/Alzheimer-s-Disease.cfm).

## **How to accommodate neurodiverse employees**

Neurodiversity refers to the idea that people experience and interact with the world in many ways and that brain function has a wide range beyond what most people might view as normal. Neurodiversity is an umbrella term often used to describe conditions like autism, dyslexia and attention-deficit/hyperactivity disorder.

Some studies estimate that 15% to 20% of people in the United States are neurodivergent.

Chances are, most organizations have at least one employee who fits under the neurodiverse umbrella who may be entitled to workplace help. While each

condition labeled as neurodivergent differs, all share a number of common management strategies that can prove useful in the workplace.

## **Neurodiversity & the ADA**

Under the ADA, individuals with a physical or mental condition that substantially impairs a major life function may be entitled to reasonable accommodation. Major life functions include the ability to communicate, concentrate, learn, read, think and speak—all of which, either alone or in combination, may prove challenging for neurodivergent employees.

Employers should assess on an individualized basis each employee who has identified as neurodivergent and has requested a reasonable accommodation. Start the interactive accommodations process by determining which major functions the employee or applicant needs help with. Then identify appropriate accommodations.

## **Accommodations for neurodiversity**

Here are some common life functions that may challenge neurodivergent employees and possible reasonable accommodations:

**Communication:** Neurodivergent employees with learning disabilities may have difficulty communicating with supervisors, customers or co-workers. Accommodation options include following up oral instructions with written notes or detailed instructions, providing examples or even assigning a job coach or assistant until the employee has mastered the skill.

Employees with communication issues may also benefit from frequent feedback and positive reinforcement.

**Concentration:** Employees with ADHD may have trouble concentrating or be so consumed with specific tasks that they're hyper-focused. Possible accommodations include offering a work environment with few distractions,

rather than a potentially chaotic open-concept office. Consider a private office or permission to wear noise-canceling headphones.

If curtailing distractions isn't possible, consider modifying the employee's schedule so they arrive earlier or stay later when fewer co-workers are present.

For hyper-focused employees, offering more frequent breaks can help avoid eye and muscle strain.

**Hypersensitivity to noise, light or smells:** For people who suffer from hypersensitivity to common conditions, consider ways to modify the environment. Ask co-workers to skip perfume and cologne, dim bright lights or provide a private office with individual environmental controls. Another possibility is allowing the employee to work remotely.

**Speaking:** For employees with neurodivergent conditions that manifest in anxiety when speaking or doing live presentations, consider letting the employee record their presentation for later playback. Allow follow-up questions to be submitted in writing and answered after the presentation.

### Online resources

Learn more about accommodating neurodiverse employees at:

- The Department of Labor's Job Accommodation Network ([askjan.org/disabilities/Neurodiversity.cfm](http://askjan.org/disabilities/Neurodiversity.cfm))
- Employer Assistance and Resource Network on Disability Inclusion ([askearn.org/page/neurodiversity-in-the-workplace](http://askearn.org/page/neurodiversity-in-the-workplace)).

## Obsessive-compulsive disorder and the ADA

Obsessive-compulsive disorder (OCD) is an anxiety disorder characterized by uncontrollable, reoccurring thoughts and behaviors, and it can interfere with the

ability to perform one's job. People with OCD may repeat behaviors over and over to control the anxiety obsessive thoughts provoke. For example, someone with OCD may have recurring thoughts about catching an infectious disease and practice frequent and excessive hand washing to ease the anxiety. At any given time, OCD affects about 1.2 percent of American adults. The cases skew female, with just 0.5% of persons with OCD being male.

Regarding its effect in the workplace, someone who has obsessive thoughts about having left the stove on after leaving for work may return home to double-check and then arrive late to the office. Someone obsessing about health may not want to be around other people for fear of infection. For these OCD sufferers, it did not help that during the COVID-19 pandemic, health officials encouraged social distancing, hand washing and mask-wearing. These recommendations seemingly confirmed health obsessions and the need for decontamination via frequent hand washing or gel sanitizers.

## **OCD and the ADA**

Under the Americans with Disabilities Act (ADA), individuals with a physical or mental condition that substantially impairs a major life function may be entitled to a reasonable accommodation. Major life functions include the ability to communicate, concentrate, learn, read, think, eat and digest. If OCD is severe enough, it can impair major life functions. Controlling obsessive thoughts so that one can concentrate on one's job tasks can be challenging. Repeatedly doubting one has completed a task can mean being unable to move on to the next task on one's to-do list.

When OCD impairs a major life function, the individual is entitled to reasonable accommodations to help them perform their jobs.

## Accommodating OCD

Employees with OCD may need help dealing with specific obsessions. For example, if OCD manifests itself as a constant need to double-check that a job has been completed, the employer may have the employee create and use a checklist. That checklist can then be used to quickly reassure the employee that they have completed each step of a project. That tells the employee that they can move on to the next task. Supervisors may also need to excuse late arrivals and create an alternate schedule.

Other possible accommodations include:

- **Telework.** For those with obsessive thoughts about health and exposure to illness in the workplace, one solution is to allow the employee to telework, especially during cold and flu season or when COVID-19 infections are up in the area.
- **Healthier environment.** Create a healthier environment for employees with OCD. Accommodations can include a private office, a good air-purifying system and a sick-leave policy that encourages those who are ill to stay home.
- **Time off for treatment.** Persons with OCD may benefit from mental health counseling. This can help get compulsive thoughts under control. Time off for these appointments even when no leave is available may be a reasonable accommodation.

### Online resources

The Job Accommodations Network offers information on OCD accommodations, including examples of successful, easy-to-implement and low- or no-cost accommodations

(<https://askjan.org/disabilities/Obsessive-Compulsive-Disorder-OCD.cfm>).

The International OCD Foundation provides information about OCD, research news and resources for families and employers (<https://iocdf.org/about-ocd/>).

Your employee assistance program likely offers referrals for counseling.

## **Accommodate employees with gender dysphoria**

Gender dysphoria is generally defined as “a marked incongruence between a person’s experienced or expressed gender and the one they were assigned at birth,” according to the Diagnostic and Statistical Manual for Mental Disorders.

Gender dysphoria is not the same as one’s gender identity. Most persons who believe their gender identity is different than the gender assigned to them at birth do not suffer from the psychological condition that is gender dysphoria.

It is a relatively rare disorder, affecting between five and 14 people per 100,000 who were assigned male at birth and just two to three per 100,000 assigned female at birth.

Although it affects relatively few people, it can have a profound impact on those who do have the condition. It can be accompanied by anxiety, depression, eating disorders and substance abuse.

### **Gender dysphoria and the ADA**

Under the ADA, individuals with a physical or mental condition that substantially impairs a major life function may be entitled to a reasonable accommodation. Major life functions include the ability to communicate, concentrate, learn, read, think, eat and digest.

People with gender dysphoria often find that accompanying disabilities such as depression or substance abuse substantially impair major life functions.

At least one federal court decision classified gender dysphoria as a covered ADA disability. In that case, an incarcerated transgender woman who was diagnosed with gender dysphoria filed an ADA lawsuit requesting access to treatment, including continued hormonal treatment to maintain her gender identity and prevent the anxiety and depression her condition triggered when not undergoing hormonal therapy.

Recently, the Department of Justice also concluded that gender dysphoria is an ADA-covered disability. It has intervened in several pending cases and filed its own lawsuit in Utah involving another incarcerated individual with the condition.

Employers would be wise to treat employees requesting accommodations involving gender dysphoria and its associated conditions just as they do other employees seeking ADA accommodations. Instead of dismissing the request immediately, begin the interactive accommodations process.

### **Accommodating gender dysphoria**

Because gender dysphoria is multi-faceted, employers should consider accommodations that deal with each aspect. For example, look for ways to reasonably accommodate anxiety and depression, eating disorders and various substance-abuse conditions.

Other accommodations include:

**Creating an inclusive workplace.** Because employees with gender dysphoria may fear ridicule and harassment, it's important for employers to develop policies that are inclusive. Prohibit harassment against transgender co-workers, including those with gender dysphoria. Train supervisors to spot harassment and put a stop to it.

**Provide unisex bathroom facilities where possible.** Individuals with gender dysphoria may prefer to use bathrooms that match the sex they identify with. That's not a problem when bathrooms are unisex.

**Grant time off for treatment.** Employees with gender dysphoria may receive both mental-health counseling and medical treatment such as hormone therapy. Time off for these appointments—even when no leave is available—may be a reasonable accommodation.

### Online resources

Find numerous examples of successful, easy-to-implement and inexpensive gender dysphoria accommodations on the Job Accommodation Network website ([https://askjan.org/articles/Gender-Dysphoria-and-the-ADA.cfm?csSearch=6767963\\_1](https://askjan.org/articles/Gender-Dysphoria-and-the-ADA.cfm?csSearch=6767963_1)).

Visit [genderdysphoriasupportnetwork.com](http://genderdysphoriasupportnetwork.com) to identify resources for employees with gender dysphoria.

## Accommodate employees with eating disorders

According to a study published by the Harvard School of Public Health, 9% of Americans will eventually have an eating disorder. Eating disorders lead to 54,000 emergency room visits per year and almost 24,000 inpatient hospitalizations.

Eating disorders are generally defined as a continual disturbance of eating or eating-related behavior that can cause significant physical and mental health problems. The Harvard study calculated that eating disorders cost \$48.6 billion in lost productivity each year due to missed work and compromised job performance.

## **Eating disorders and the ADA**

Under the ADA, individuals with a physical or mental condition that substantially impairs a major life function may be entitled to a reasonable accommodation. Major life functions include the ability to communicate, concentrate, learn, read, think, eat and digest. Eating disorders often affect employees across one or more of those major life functions.

There are three main forms of eating disorders, and each may qualify as a disability as defined by the ADA, entitling individuals to reasonable accommodations that allow them to perform the essential functions of their jobs.

You will have to assess each applicant or employee on an individualized basis. Start the interactive accommodations process by determining which major functions the person needs help with. Then identify appropriate accommodations. Here's a look at each form of eating disorder and what accommodations may work.

### **Anorexia nervosa**

Anorexia nervosa is a potentially life-threatening disorder characterized by self-restriction of food consumption leading to excessive weight loss. Individuals with anorexia may have body image problems, including fear of weight gain.

Anorexia peaks in early to mid-adolescence so is less likely to require workplace support. Teen workers with anorexia may need accommodations such as time off for counseling and inpatient care.

### **Bulimia nervosa**

A potentially life-threatening eating disorder, bulimia nervosa is characterized by a cycle of bingeing and purging large amounts of food. People with bulimia may self-induce vomiting, abuse laxatives and diuretic drugs, fast or engage in

obsessive or compulsive exercise. Bulimia is frequently associated with depression, itself an ADA disability.

Once the employee acknowledges having bulimia, accommodations may include time off for counseling.

## **Binge eating disorder**

This disorder is like bulimia but without purging after eating. It is also associated with depression. Individuals with this disorder often receive treatment that includes an eating plan that requires many small meals daily. Accommodations include additional breaks to eat or permission to carry and eat snacks at work.

## **Additional accommodations**

All three eating disorders are accompanied by fatigue and concentration problems. Accommodations can include more rest breaks, extra time to accomplish tasks, reassignment to positions that don't require much standing or walking and working from home. Strategies to aid concentration include providing detailed job checklists, private work space away from distractions or allowing use of noise-cancelling headphones.

## **Online resources**

The Job Accommodation Network offers employer guidance on easy and inexpensive ways to reasonably accommodate employees with eating disorders (<https://askjan.org/disabilities/Eating-Disorders.cfm>).

The National Eating Disorders Association also provides employer resources (<https://www.nationaleatingdisorders.org/>).

# How to accommodate employees who have Tourette Syndrome

Tourette Syndrome is a neurological disorder characterized by motor and vocal tics. It typically begins in childhood or the teen years. Characteristic tics include blinking, coughing, throat clearing and facial movements. It affects about 1% of children and teens and can sometimes cause them to involuntarily use socially inappropriate speech, including shouted obscenities. The syndrome sometimes persists into adulthood.

People with Tourette Syndrome have normal intelligence.

For adults with Tourette Syndrome, employment can be a challenge. Work requiring motor control can be a problem. While symptoms ebb and flow, tics tend to increase in frequency and intensity during times of stress, anxiety and fatigue.

## **Tourette Syndrome & the ADA**

Under the ADA, individuals with a physical or mental condition that substantially impairs a major life function may be entitled to reasonable accommodations. Major life functions include the ability to communicate, concentrate, learn, read, think and speak—all functions that alone or in combination may prove challenging for someone with Tourette Syndrome. In addition, many people with the syndrome have other disabilities, such as attention-deficit/hyperactivity disorder and insomnia.

Remember that applicants or employees with Tourette Syndrome aren't suffering from a mental condition; it is very much a physical disorder even in the small number who may shout out inappropriately.

If any of your employees has Tourette Syndrome, you will have to assess each on an individualized basis. Start the interactive accommodations process by determining which major functions the employee (or job applicant) needs help with. Then identify appropriate accommodations.

**Warning:** It may be tempting to place a worker with Tourette Syndrome in a back-of-the-house position out of fear that customers may react badly to the employee's tics. Such purposeful segregation may violate the ADA. Instead of worrying about public reaction to the tics, focus on how the person's skills and experience match job requirements.

## **Potential accommodations**

Here are some functions that may require accommodations:

**Communication.** People with Tourette Syndrome can generally speak clearly, but their speech may be interrupted by tics they can't control. This may make front-facing work challenging. Train co-workers to understand the employee's limitations and accept them. Supervisors may want to provide the employee with written instructions and invite written responses.

**Concentration.** If employees with Tourette Syndrome request help concentrating, try to accommodate their disability by reducing workplace distractions. Consider providing a private workspace or grant permission to wear noise-cancelling headphones. If the job lends itself to it, explore offering the option to work remotely.

**Stress reduction.** Since stress and anxiety may increase the number, frequency or severity of Tourette Syndrome tics, consider accommodations like providing extra time to complete tasks, extra breaks and the ability to bring an emotional-support animal to work.

## Online resources

The Job Accommodations Network has details on accommodating Tourette Syndrome at [askjan.org/disabilities/Tourette-Syndrome.cfm](http://askjan.org/disabilities/Tourette-Syndrome.cfm).

The Tourette Association of America ([tourette.org](http://tourette.org)) offers more information.

## Accommodating staff with anxiety disorders

The psychological condition known as anxiety disorder is characterized by feelings of worry or fear that are strong enough to interfere with one's daily activities. It comes in several varieties, including generalized anxiety disorder that has no specific focus and social anxiety disorder, which is triggered by social interactions.

Common symptoms include:

- Feeling restless or on edge
- Being irritable
- Having panic attacks or a sense of danger and doom
- Fatigue and feeling tired
- Having difficulty concentrating
- Insomnia and other sleep disorders.

Physical manifestations can include sweating, increased heart rate, hyperventilation, trembling and urgent gastrointestinal symptoms.

Anxiety disorders may constitute serious health conditions under the FMLA and disabilities under the ADA. The condition may be eligible for intermittent FMLA leave and reasonable accommodations under the ADA. For example, someone having a panic attack may be unable to perform essential job functions, making them eligible for FMLA leave and time off as an ADA accommodation.

## **Anxiety and the FMLA**

Anxiety treatment rarely requires a solid block of FMLA leave. Employees with anxiety disorder most often request intermittent leave, which is available for serious health conditions requiring periodic absences or schedule adjustments during flares-ups.

Before granting intermittent leave, have the employee's health-care provider complete a medical certification outlining how often the worker will require leave and how long the anxiety will put the worker out of action. (Find certification forms at [www.dol.gov/agencies/whd/fmla/forms](http://www.dol.gov/agencies/whd/fmla/forms).) For example, someone whose anxiety causes periodic panic attacks may need to be excused early approximately four times per month and may be able to return to the shift within an hour or the next day, depending on the severity of the panic attack.

## **ADA accommodations for anxiety**

All forms of anxiety can be severe enough to constitute ADA disabilities. For example, anxiety causing insomnia or inability to concentrate can certainly fit the criteria of a physical or mental disorder that substantially impairs a major life function like sleeping or concentrating.

If a worker has been diagnosed with anxiety and requests accommodation, handle it as you would any other disability. First, confirm that the employee has anxiety and that it does impair a major life function. Then consider possible reasonable accommodations. These can include accommodating:

- **Panic attacks.** Consider ways to reduce situations that trigger panic attacks, such as events that make the worker the center of attention. Other accommodations might include allowing a support animal at work, providing a private place where employees can calm themselves and allowing modified schedules to accommodate late arrivals.

- **Concentration problems.** Employees who have trouble concentrating may benefit from having a private office or being allowed to work from home as needed. Assistance with planning and organizing may help, too.
- **Sleep interruption.** Anxiety-related insomnia can cause daytime sleepiness. Possible accommodations include allowing extra breaks during the day and permitting late arrivals when an employee needs additional sleep in the morning.

### Online resources

Find more accommodation ideas at [tinyurl.com/AskJAN-anxiety](https://tinyurl.com/AskJAN-anxiety).

See [adaa.org](https://adaa.org) for general information from the Anxiety & Depression Association of America.

## After Groff ruling, how to accommodate religion at work

On June 29, 2023, a unanimous Supreme Court ruled 9-0 in *Groff v. DeJoy* that employers must accommodate employees' religious practices and beliefs unless doing so creates an undue hardship. It defined undue hardship to mean the accommodation would result in "substantial increased cost in relation to the conduct of an employer's particular business."

The decision upended 47 years of religious accommodation law. The prior definition of undue hardship only required employers to show the accommodation would result in more than a *de minimis* cost—a light burden that led many employers to deny workers' requests for reasonable religious accommodations.

Now, employers must revamp their religious accommodation process or risk litigation.

## What is religion?

Under Title VII of the Civil Rights Act, employers cannot treat an applicant or employee unfavorably because of their religion or religious practices. Employers must reasonably accommodate religious practices such as the need to attend religious services or groom themselves and dress in accordance with their religion.

“Religion” is defined expansively. Organized religions like Buddhism, Christianity, Hinduism, Islam and Judaism are covered, but so are other sincerely held religious, ethical or moral belief systems, including agnosticism and atheism, as well as Druid, Wicca and Native American beliefs.

## New accommodation rules

In *Groff*, the Supreme Court wrestled with how far the U.S. Postal Service had to go to let a postal employee skip working Sunday shifts when co-workers quit volunteering to fill in for him. After 20 missed Sundays, Groff’s supervisor told him his accommodation was being discontinued. Groff sued, alleging failure to show that giving him every Sunday off created an undue burden.

The Supreme Court said the post office had to show that giving Groff every Sunday off substantially increased the costs it incurred. It provided examples of hardships that generally *would not* create such a burden, including temporary costs, voluntary or occasional shift swapping or administrative costs.

That leaves employers having to prove that granting a religious accommodation would generate substantial costs.

## What employers must do now

**1. First, review your current religious accommodation policy and revise it if necessary.** Your policy should direct supervisors to forward all accommodation requests to HR for review. Don’t let supervisors grant or deny requests without HR’s approval.

Then craft an internal policy focused on engaging with the employee to identify possible accommodations, assessing each option for its cost impact. Those considerations can include:

- Operations that would not be viable if the accommodation were granted—such as stores being closed or manufacturing lines shut down—and the associated costs.
- The impact on customer expectations or regulatory safety compliance.
- Direct costs of things like overtime pay, and indirect costs such as higher error rates or greater turnover.

**2. Prepare to accommodate.** If you aren't confident you can demonstrate undue hardship by showing substantially higher costs given the size and nature of your business, offer one of the accommodations you identified.

**3. Update your handbook and provide training.** Your handbook should tell employees to go straight to HR with religious accommodation requests. Explain your commitment to an interactive accommodations process aimed at granting accommodations if possible. Train every manager, supervisor and HR staffer on accommodating religious needs.

## AIDS and HIV in the workplace

Under the Americans with Disabilities Act (ADA), individuals with a physical or mental condition that substantially impairs a major life function may be entitled to a reasonable accommodation. Major life functions include the ability to communicate, concentrate, learn, read, think, eat and digest. Having a chronic and potentially deadly viral syndrome may impact one or more of these life functions. Someone with HIV/AIDS may have challenges that require accommodations.

## **The history of HIV in the workplace**

In the early 1980s, a new viral syndrome emerged. The virus often triggered a skin cancer known as Kaposi's sarcoma, which usually affected older men and was not lethal. However, that wasn't the case for those infected with this new virus. Eventually, it was named the human immunodeficiency virus (HIV), and it can cause acquired immunodeficiency syndrome, or AIDS.

By then, the syndrome was affecting not just the gay population, but also intravenous drug users, patients who received blood transfusions and heterosexuals. It appeared to be spread by contact with blood and via sexual activity, as well as from infected mother to child. HIV essentially disables the immune system, allowing cancers like Kaposi's sarcoma to devastate the body. It often ended in death.

By 1987, the Food and Drug Administration approved the first treatment for AIDS. While not a cure, the antiviral AZT did allow some infected with the virus to return to school and work. However, employers often expressed fear that someone carrying the virus was a threat to others, including co-workers, customers and patients. With no legal protection from discrimination, carriers could be fired or not hired.

When Congress passed the Americans with Disabilities Act (ADA) in 1990, the law outlawed discrimination based on disabilities. But there was an exception for disabled individuals who were a risk to others. That changed in 1998 when the Supreme Court ruled that people with HIV or AIDS were disabled under the ADA and entitled to reasonable accommodations.

AIDS/HIV is now largely controlled by new antiviral drugs, which can result in the virus being undetected in the blood while taking the drugs. However, employees with either condition may still need reasonable accommodations.

## Possible accommodations

- Employees with AIDS/HIV may have mobility challenges that prevent working long hours or performing physically demanding job duties. Accommodations include ramps, extra rest periods and telework.
- Employees may also experience gastrointestinal difficulties. A workstation near a bathroom may help. Extra breaks and telework can also help manage drug side effects.
- Visual impairments are also common. Handle accommodations as you would for all such impairments.
- For anxiety, stress and depression associated with having the virus, provide accommodations as you would for those conditions, including time off for counseling.
- Weight loss is also a common symptom of the virus. Employees may need special ergonomic chairs with extra padding and arm supports.
- Employers may need to educate co-workers about the condition if the employee reveals they have the virus. Properly treated with appropriate medications, an employee with HIV/AIDS will not pose a threat.

## Online resources

For information on HIV/AIDS accommodations, including examples of successful, easy-to-implement, low- or no-cost accommodations, visit The Job Accommodations Network

(<https://askjan.org/disabilities/Human-Immunodeficiency-Virus-HIV.cfm>).