



Employee Accommodations Workshop

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DAILY

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At Business Management Daily, we strive to provide employers with practical, actionable information. We do this from the management point of view. We do not represent any particular political view.

Part 1: What Laws Require Accommodations

Laws Requiring Accommodations

- The Americans with Disabilities Act
- The Pregnancy Discrimination Act
- The Pregnant Workers Fairness Act
- The PUMP Act
- The Family and Medical Leave Act
- Title VII of the Civil Rights Act Religious Discrimination Clause

The Americans with Disabilities Act

The Americans with Disabilities Act is primary federal law that protects disabled Americans from workplace discrimination and requires most employers to provide reasonable accommodations that allow those disabled workers to succeed in their jobs.

- The ADA was passed in 1990 and amended in 2008 to cover more disabilities.
- It is enforced by the EEOC.
- It covers employers with 15 or more workers.

The Americans with Disabilities Act

Your ADA Obligations: Understanding the limits of your obligation to accommodate disabled workers

- Employers can't discriminate based on status as a disabled individual.
- Disabled individuals are entitled to equal treatment.
- Disabled individuals are entitled to reasonable accommodations that allow them to perform the essential functions of their jobs.

The Americans with Disabilities Act

Your ADA Obligations: Understanding the limits of your obligation to accommodate disabled workers

- Disabled individuals are entitled to be treated as if they're not disabled and can't be forced to reveal a disability if they choose not to.
- In that case, it's illegal to pry about even an obvious disability because that is 'regarding as' disabled. In other words, a disabled individual who is confident he can do the job without any help must be allowed to do so without his employer stigmatizing even apparent disabilities with offers of help.

The Americans with Disabilities Act

Bottom line:

- Let the employee determine whether he or she needs an accommodation and wants to initiate discussions about possible accommodations.
- If the employee doesn't bring it up, don't either.

The Pregnancy Discrimination Act

The **Pregnancy Discrimination Act of 1978** (PDA) makes it illegal for employers to discriminate against women because of pregnancy, child-birth, abortion, or medical conditions related to pregnancy or childbirth. It amends the Civil Rights Act of 1964 to include pregnancy as a protected classification.

It covers employers with 15 or more workers.

The Pregnancy Discrimination Act

The PDA bars discrimination based on:

- Current Pregnancy.
- Past Pregnancy.
- Potential or Intended Pregnancy.
- Medical Conditions Related to Pregnancy or Childbirth.

The Pregnancy Discrimination Act

Because Title VII prohibits discrimination based on pregnancy, employers:

- Must not make inquiries into whether an applicant or employee intends to become pregnant, is pregnant or has been pregnant.
- Must not demote, refuse to hire, fire or otherwise punish a worker who has announced the intent to become pregnant, is pregnant or gave birth.

The Pregnancy Discrimination Act

Because Title VII prohibits discrimination based on pregnancy, employers:

- Cannot take adverse employment actions against an employee based on her decision not to have an abortion or to have an abortion or use birth control.
- For example, it would be unlawful for a manager to pressure an employee to have an abortion, or not to have an abortion, in order to retain her job, get better assignments, or stay on a path for advancement.

The Pregnancy Discrimination Act

Because Title VII prohibits discrimination based on pregnancy, employers:

Because only women lactate, a practice that singles out lactation or breastfeeding for less favorable treatment affects only women and therefore is facially sex-based. For example, it would violate Title VII for an employer to freely permit employees to use break time for personal reasons except to express breast milk.

The Pregnancy Discrimination Act

The PDA does not specifically call for making reasonable accommodations for pregnancy – nor does the ADA in most cases because of the temporary, time limited aspect of pregnancy. But there are limited circumstances that do require accommodations as clarified by the U.S. Supreme Court.

The Pregnancy Discrimination Act

Supreme Court held in 2015 in *Young v. UPS* that a pregnant employee can successfully claim pregnancy discrimination under the Pregnancy Discrimination Act if all of the following are true:

- She belongs to a protected class – pregnancy counts.
- She sought a reasonable accommodation from her employer on the basis of pregnancy.
- The employer failed to make those reasonable requested accommodations.
- The employer accommodated others “similar in their ability or inability to work.”

The Pregnancy Discrimination Act

Peggy worked for UPS as a pickup and delivery driver.

- During pregnancy, doctor restricted her from lifting more than 20 pounds during her first 20 weeks of pregnancy and 10 pounds for the remainder.
- UPS informed Peggy that she could not work because the company required drivers in her position to be able to lift parcels weighing up to 70 pounds.
- UPS placed Peggy on leave without pay and subsequently lost her employee medical coverage.

The Pregnancy Discrimination Act

UPS accommodated:

- Drivers who were injured on the job.
- Drivers who lost their Department of Transportation certifications.
- Drivers who suffered from a disability under the Americans with Disabilities Act.

The Pregnancy Discrimination Act

Peggy sued under the Pregnancy Discrimination Act, alleging she wasn't disabled as understood under the ADA but rather was discriminated against because of her pregnancy. The Supreme Court held that the standard test under the PDA for whether a pregnancy woman denied an accommodation was whether doing so would create a significant burden on pregnant workers.

- A significant burden exists if the employer accommodates a large percentage of non-pregnant workers while failing to accommodate a large percentage of pregnant workers.
- By not accommodating Peggy and other pregnant workers but accommodating most non-pregnant employees with lifting limitations, pregnant women with lifting restrictions were significantly burdened.

The Pregnancy Discrimination Act

Bottom line: Pregnant workers faced big hurdles to gain accommodations for many problems unique to pregnancy because those conditions weren't necessarily accommodated in other contexts – like:

- Morning (and other time of day) sickness and vomiting.
- Need for breaks for water or to ease leg swelling.
- Frequent urination.
- Fatigue.

That's all changed.

Two recent landmark federal laws have made managing pregnant and postpartum employees increasingly difficult and opened the possibility of new types of discrimination, harassment and failure to reasonably accommodate lawsuits.

The Pregnancy Discrimination Act

The Pregnant Workers' Fairness Act (PWFA) extends reasonable accommodations to pregnancy and aftermath. Not technically an amendment to the ADA, it nevertheless specifies that the ADA accommodation process must be used.

- The EEOC is charged with enforcing the PWFA and to create regulations, including examples of appropriate reasonable accommodations.
- Effective date was June 27, 2023.

The Pregnant Workers Fairness Act

What the law says:

- **Covers only reasonable accommodations.** Employers already are prohibited from discriminating based on pregnancy.
- **References limitations rather than disabilities.** That means it covers a far broader range of medical, physical or other conditions.
- You can read the [entire law](#) here.

The PUMP Act

The Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act) accords a nursing parent unlimited unpaid pumping breaks and amends the Fair Labor Standards Act (FLSA) to expand an Affordable Care Act pumping breaks law for hourly workers.

- The Department of Labor is charged with enforcing the PUMP Act.
- The effective date for breaks was December 29, 2022 – the day of signing.
- Additional provisions allowing lawsuits went into effect on April 28, 2023.

The Family and Medical Leave Act

The Family and Medical Leave Act provides unpaid leave for a number of covered reasons, including personal illness, family illness and coverage for exigencies and illness/injuries associated with military service

- Covers employers with 50 or more workers.
- Covers workers with one year service and who worked at least 1250 hours.
- Provides up to 12 weeks or 26 weeks of unpaid leave depending on the reason.
- Is administered by the Department of Labor.

The Family and Medical Leave Act

A provision in the FMLA allows employees to take unpaid leave for their own or a family member's serious health condition – among other reasons – on an intermittent basis.

- Intermittent leave can be seen as a form of accommodations in that employees can take intermittent leave as needed depending on when a serious health condition flares up, when medical appointments related to a serious health condition are needed, when a condition needs additional treatments that make it impossible to perform a job's essential functions.
- The time off is therefore an accommodation, allowing the employee to deviate from ordinary attendance and productivity rules.

Title VII's Religious Discrimination Provision

Title VII includes a religious discrimination provision. This provision prohibits discrimination on the basis of religion.

- Employers with 15 or more workers are covered.
- Employers can't discriminate based on a worker's religious beliefs or practices.
- Employees are entitled to reasonable accommodations based on their religious needs like time off for worship services and being excused from dress code provisions that violate their sincerely held religious beliefs or practices.

Part 2: Disability-Related Accommodations

Disability-Related Accommodations

Your disability-related obligations:

Understanding the limits of your obligation to a reasonably accommodate disability and illness related physical and mental limitations.

Understand what conditions are covered and how they can be accommodated.



The ADA and Accommodations

Your ADA Obligations: Understanding the limits of your obligation to accommodate disabled workers.

Think of reasonable accommodations as modifications that allow disabled individuals to experience equal treatment *despite* their disabilities – modifications that in essence allow full participation in the workplace as if the disabilities were not present.

The ADA and Accommodations

Your ADA Obligations: Understanding the limits of your obligation to accommodate disabled workers.

What constitutes a "reasonable" accommodation depends on the disabled worker's needs and her employer's resources. A small business with just 15 employees (ADA minimum) won't have to adopt the same accommodations a much larger, better resourced organization may have to provide.

The ADA and Accommodations

Your ADA Obligations: Understanding the limits of your obligation to accommodate disabled workers.

Employers have to engage with the disabled individual in an “interactive process” to arrive at reasonable accommodation. Tracking that process should include documenting each interaction.

Handling an Accommodation Request

Follow these steps whenever an employee requests a disability-related accommodation:

Verify the disability. Exactly what condition(s) has the employee claimed to be disabling. You can get basic verification from the employee's doctor or therapist.



The ADA and Accommodations

Your ADA Obligations: Understanding the limits of your obligation to accommodate disabled workers.

- If no accommodation is reached, it's crucial to show your efforts.
- If the disabled employee cuts off discussions, rejects your proposed accommodation or otherwise won't cooperate, you've met your obligation. Be prepared to prove that.

The ADA and Accommodations

Your ADA Obligations: Understanding the limits of your obligation to accommodate disabled workers.

Fortunately, case law indicates that employers don't have to accept the accommodation that a particular employee requests – but can choose the reasonable accommodation that suits the employer best. The choice is yours!

WARNING: Under the PWFA you cannot choose unpaid time off as the reasonable accommodation – that law entitled the employee to a reasonable accommodation that allows her to continue receiving a paycheck.

The ADA and Accommodations

The Interactive Process:

Employee requests a reasonable accommodation by contacting supervisors or HR.

NOTE: You should have a handbook policy that offers reasonable accommodations and invites workers to contact the HR office to start the interactive process.

Example policy follows.

The ADA and Accommodations

The Interactive Process:

- Document every step of the process. **It is crucial that you retain records showing who broke off discussions if no accommodation is arrived at. Unless the breakdown is on the worker's part, you may be vulnerable to a failure to engage in the interactive accommodations process.**
- Remember that the accommodation must be **REASONABLE**. This is a fluid requirement, depending on your organization's size, resources, the cost of the accommodation and the likelihood the accommodation will allow the employee to perform the essential functions of her job.

Handling an Accommodation Request

Follow these steps whenever an employee requests a disability-related accommodation:

- Begin immediately to discuss possible reasonable accommodations.
- **IMPORTANT:** *This must be a back-and-forth interactive effort.* Always ask what accommodation the employee would like but research your own. **Remember that it is the employer that gets to pick the accommodation, not the worker.**

Handling an Accommodation Request

Follow these steps whenever an employee requests a disability-related accommodation:

- **Decide whether the verified disability substantially impairs a major life function.** These include walking, breathing, communicating, caring for oneself, working, seeing, hearing and other basic bodily functions.
- You are allowed to ask questions – a diagnosis is not enough. You are entitled to know how the condition actually impacts this individual – not generally but specifically.

Handling an Accommodation Request

Follow these steps whenever an employee requests a disability-related accommodation:

- Remember that the accommodation must be **REASONABLE**. This is a fluid requirement, depending on your organization's size, resources, the cost of the accommodation and the likelihood the accommodation will allow the employee to perform the essential functions of her job.

The ADA and Accommodations

The Interactive Process:

Have up-to-date and accurate job descriptions that:

- Describe every aspect of the position, including which functions are essential and which are not.
- Remember that these will be the basis for your approval or denial of reasonable accommodations.
- Remember that the job description must reflect the actual job as it is being performed by the incumbent.
- New position? It's best to rely on standard position descriptions and THEN follow up in a few months after the job has been performed to confirm the description reflects the job actually performed.

Job Descriptions and Accommodations

Job descriptions aren't technically required under the ADA but without one you're losing an important advantage when trying to determine whether to provide a reasonable accommodation. Why?

- Reasonable accommodations are required for essential functions – not non-essential ones.
- If you don't list both in the job description – or worse – don't have a job description – the disabled individual's assessment of what is essential and what is not can derail the process, triggering a lawsuit over something that you have the opportunity to define with a job description.

Job Descriptions and Accommodations

Have up-to-date and accurate job descriptions that:

- Describe every aspect of the position, including which functions are essential and which are not.
- Remember that these will be the basis for your approval or denial of reasonable accommodations.
- Limit the non-essential elements of the job – because these are going to be tasks and responsibilities a disabled person will not have to perform, with or without an accommodation.

Job Descriptions and Accommodations

Have up-to-date and accurate job descriptions that:

- Remember that the job description must reflect the actual job as it is being performed by the incumbent. The job as performed must match the description. It's a good idea to review the job and its description at least at annual evaluation time and to have the employee sign off on the description's accuracy at that time. That reduces chances of a challenge to the description later.
- New position? It's best to rely on standard position descriptions and THEN follow up in a few months after the job has been performed to confirm the description reflects the job actually performed.

Job Descriptions and Accommodations

You can find sample job descriptions here:

- Department of Labor Bureau of Labor Statistics:

<https://www.bls.gov/ocs/ocsjobde.htm>

Note: As of 8//11 the above link was offline – hopefully temporarily

- DOL Directory of Occupations:

<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/SCADirectVers5.pdf>

- DOL's Job Description

Writer: <https://www.careeronestop.org/BusinessCenter/Toolkit/GettingStarted.aspx>

The ADA and Accommodations

The Interactive Process:

- Explain that in certain circumstances, you may need to request additional medical or religious information or documentation to establish whether the individual's medical or religious.
- Encourage applicants and employees to respond to these requests promptly.

The ADA and Accommodations

The Interactive Process:

- Require managers to keep any medical information received as part of an accommodation request or during the accommodation process confidential and in a separate medical file.
- Consider requiring that decisions to either deny accommodation requests or to provide accommodations other than the requested accommodation(s) be explained to the applicant or employee. This may help prevent misunderstandings and complaints.

The ADA and Accommodations

After you reach an accommodation agreement:

- **Implement it ASAP.** Delaying an accommodation that can help the disabled employee perform his job and then firing the worker for not meeting performance goals is a BAD situation.
- Check with the employee to make sure the accommodation is working as intended.

The ADA and Accommodations

After you reach an accommodation agreement:

- If not, reconsider. DO the same if the employee's condition changes for the BETTER or WORSE. (For example, you can withdraw an accommodation if no longer needed and modify or change one if the employee's disability requires it.)
- Remember that the employee can still be disciplined for poor performance.

Handbook Policy

Specify that your business provides reasonable accommodations (changes to the way things are normally done at work) to applicants and employees who need them for medical and religious reasons.

- Include examples of reasonable accommodations for both disability and religious practices and beliefs. You can access many examples at the EEOC's web site.
- Identify and provide contact information for the individual(s) responsible for handling reasonable accommodation requests.

Handbook Policy

Require managers to respond promptly and effectively to reasonable accommodation requests. Managers should be instructed to always refer accommodation requests to the HR office.

- Consider requiring that applicants and employees be updated on the status of their accommodation requests, especially if identification and/or provision of the accommodation takes longer than expected.
- Consider proposing temporary accommodation(s) if the agreed-upon accommodation cannot be provided immediately.

Handbook Policy

Explain how employees can report discrimination related to reasonable accommodations (such as improper denial of a reasonable accommodation request)

- Describe the consequences of violating the reasonable accommodation policy.
- Explain that the company won't tolerate retaliation for requesting accommodations.

Handbook Policy

Provide a follow-up mechanism that:

- Invites workers to report any problems with their accommodations and to request modifications if needed.
- Requires supervisors and managers to report back to HR regularly about the accommodations and how they are working.

Defining ADA Disability

How many Americans are disabled? Depending on how disability is defined, the number of Americans who are disabled varies.

- According to the [CDC](#), the number of Americans who are disabled as of 2022 at about 26% of American adults – or about 1 in 4. This is the latest figure.
- There has been a substantial increase in disability since the pandemic hit in 2020.

Defining ADA Disability

What disabilities do Americans have? The most common forms of disability and the corresponding percentage among Americans:

Mobility: Serious difficulty walking or climbing stairs - **13.7%**

Cognition: Serious difficulty concentrating, remembering or making decisions - **10.8%**

Independent Living: Difficulty doing errands alone - **6.8%**

Hearing: Deafness or serious difficulty hearing - **5.9%**

Vision: Blindness or serious difficult seeing - **4.6%**

Self-care: Difficulty dressing or bathing - **3.7%**

Defining ADA Disability

Disabilities and communities. Disabilities are particularly common in these groups:

- Older Americans: 2 in 5 adults 65 and older have at least one disability.
- Women: 1 in 4 women have at least one disability.
- Native Americans: 2 in 5 Native American/Alaskan Natives have at least one disability.

Defining ADA Disability

Most common disabilities in the United States. Physical impairments are the most common disorders – including:

- Arthritis.
- Diabetes.
- Heart Disease.
- Respiratory Disorders.
- Obesity.

Defining ADA Disability

Most common disabilities in the United States. Mental impairments are also very common disorders – ten million Americans are living with a serious mental health challenge. These include:

- Anxiety Disorders.
- Major Depression.
- Bipolar Disorder.
- Dementia.
- Eating Disorders.
- Addictions.

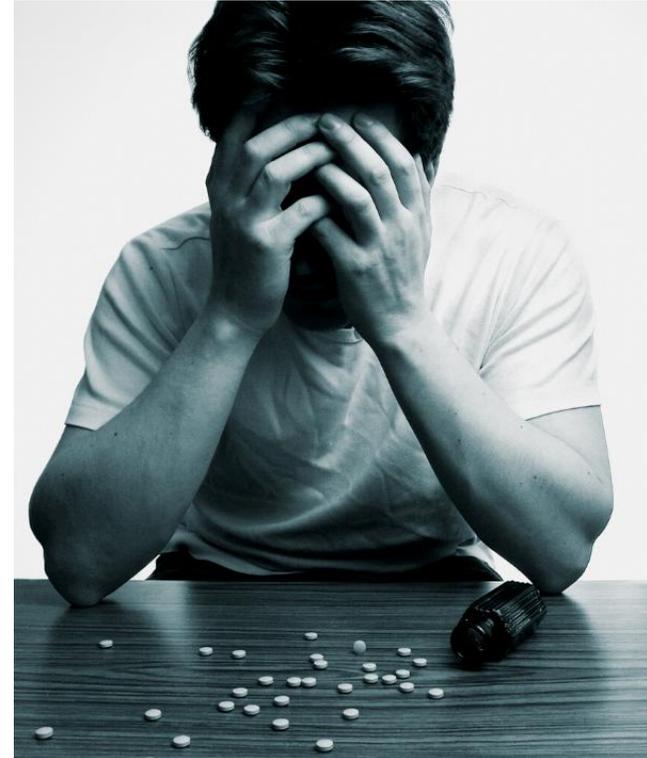
Q&A Break



Other Common Disabilities Requiring Accommodation

The Americans with Disabilities Act (ADA) protects workers with a wide range of mental and physical problems including:

- Depression, anxiety, panic disorder, PTSD, substance abuse, and addiction.
- Cancer.
- Heart disease.
- Diabetes.
- Digestive disorders and many, many more.



Reasonable Accommodation Examples

Depression most common ADA disability (diagnosis almost guarantees coverage as a disability).

Signs at work even before diagnosis include:

- Indications the employee is sleeping more or less – like late arrival.
- Change in outlook on life – from cheerful to solemn, for example.
- Seeming unable to concentrate – decline in output.
- New or increased emotional behavior – becoming argumentative or quick to anger.

Reasonable Accommodation Examples

Substance abuse (illegal or prescribed drugs and alcohol) are generally considered covered ADA disabilities.

- Recovering drug addictions are covered ADA disabilities.
- Current illegal drug usage isn't protected.
- Active or recovering alcohol addictions are covered disabilities.
- When designing policies, employers can prohibit on-the-job usage of illegal drugs and alcohol.
- Treatment is covered, though.

Telework as a Reasonable Accommodation

Telework may be a viable option for many with mental health disabilities as well as other physical disabilities that make coming into an office or physical location difficult.

- Under the ADA, if you have a telework program for similar positions to the one the disabled worker holds, you must consider allowing him or her to telework too.
- The EEOC has extensive guidance on telework as an accommodation.



Telework as a Reasonable Accommodation

In early 2026, the EEOC issued new guidance on telework

- It essentially updated prior guidance for the era of return to work and focused on the federal government but applies equally to other employers.

Telework as a Reasonable Accommodation

In early 2026, the EEOC issued new guidance on telework

What is telework? Telework is defined as work performed at a location other than the employer-controlled worksite. It is often performed at an employee's home. Telework is broken into three categories – full-time, recurring or routine and situational.

Telework as a Reasonable Accommodation

In early 2026, the EEOC issued new guidance on telework

Recurring or routine telework. This kind of telework is scheduled in advance, but not full-time. It occurs on a regular basis. A hybrid schedule includes recurring or routine telework.

Telework as a Reasonable Accommodation

In early 2026, the EEOC issued new guidance on telework

Situational telework. This type of telework is temporary. For example, an employer could allow a disabled employee to telework during a flareup of a chronic condition like Multiple Sclerosis. Situational telework can also be used for religious accommodations.

Telework as a Reasonable Accommodation

In early 2026, the EEOC issued new guidance on telework

Reasonable accommodations. The guidance focuses on two types of accommodations – those that allow the employee to perform the essential functions of their jobs and those that let a disabled worker enjoy equal benefits and privileges enjoyed by other employees. For example, excluding disabled workers from a telework program would violate the ADA. But employers are not required to accommodate a simple preference for telework.

Telework as a Reasonable Accommodation

In early 2026, the EEOC issued new guidance on telework

Changing accommodations. The EEOC makes it clear that employers may change a previously granted reasonable accommodation of telework *if* it can offer another reasonable accommodation that allows the employee to perform the job. When there are multiple options, the employer is allowed to choose which to offer. The guidance warns against a blanket approach to rescinding existing telework accommodations – essentially nixing all disabled workers from telework unless they reapply. Instead, employers should assess if a change should be made while the employee continues to telework.

Telework as a Reasonable Accommodation

In early 2026, the EEOC issued new guidance on telework

Medical inquiries. Employers may also inquire of the employee's health care provider whether accommodations other than telework are feasible. For example, the employer may ask if an assistive device (wheelchair, specialized auto controls) would enable in-person work. If so, the employee may have to obtain that equipment. But the employer may not demand the employee undergo surgery or use certain medications to return to the office.

EEOC Telework Accommodation Guidance

Does the ADA require employers to have telework programs?

- No. The ADA does not require an employer to offer a telework program to all employees. However, if an employer does offer telework, it must allow employees with disabilities an equal opportunity to participate in such a program.
- The ADA requires an employer to waive certain eligibility requirements or otherwise modify their telework program for someone with a disability who needs to work at home.
- An employer may generally require that employees work at least one year before teleworking. A new disabled employee who needs to work at home because of a disability may require waiving the one-year rule.

EEOC Telework Accommodation Guidance

May permitting an employee to work at home be a reasonable accommodation, even if the employer has no telework program?

- Yes. Changing the location where work is performed may fall under the ADA's reasonable accommodation requirement of modifying workplace policies, even if the employer does not allow other employees to telework.
- However, an employer is not obligated to adopt an employee's preferred or requested accommodation and may instead offer alternate accommodations as long as they would be effective.

EEOC Telework Accommodation Guidance

How frequently may someone with a disability work at home as a reasonable accommodation?

- An employee may work at home only to the extent that his/her disability necessitates it. For some people, that may mean one day a week, two half-days, or every day for a particular period of time.
- In other instances, the nature of a disability may make it difficult to predict precisely when it will be necessary for an employee to work at home. For example, sometimes the effects of a disability become particularly severe on a periodic but irregular basis. When these flare-ups occur, they sometimes prevent an individual from getting to the workplace. In these instances, an employee might need to work at home on an "as needed" basis, if this can be done without undue hardship.

EEOC Telework Accommodation Guidance

May an employer make accommodations that enable an employee to work full-time in the workplace rather than granting a request to work at home?

Yes, the employer may select any effective accommodation, even if it is not the one preferred by the employee.

EEOC Telework Accommodation Guidance

- For example, an employee with a disability who needs to use paratransit asks to work at home because the paratransit schedule does not permit the employee to arrive before 10:00 a.m., two hours after the normal starting time.
- An employer may allow the employee to begin his or her eight-hour shift at 10:00 a.m., rather than granting the request to work at home, if this would work with the paratransit schedule.



WARNING: Office Work May Be Accommodation

- A recently filed lawsuit alleges that a disabled employee requested an accommodation of working in the office and the employer told her she could only telework. She has ADHD and her home has too many distractions. No decision yet.
- Remember that segregating the disabled is disability discrimination so forcing a disabled worker to work from home may be a separate violation.



Defining ADA Disability

Let's consider some examples.

Sarah is undergoing treatment for cancer. During treatment she is immune-compromised. Becoming ill with COVID-19, influenza or another viral or bacterial infection may kill her. She's substantially impaired in a major life activity - interacting with others.

Defining ADA Disability

Let's consider some examples.

John has M.S. When his medication regimen is effective, he functions normally. Sometimes his condition “flares” and he becomes mobility impaired. He also then suffers from fatigue and insomnia. He is always disabled but is only entitled to reasonable accommodations when he's experiencing flares. Those may include telework and time off.

Defining ADA Disability

Let's consider some examples.

Clarice has diabetes and lost a leg to amputation. She has multiple disabilities - each entitles her to a reasonable accommodation. Her new mobility challenge means she may be entitled to a more accessible office. Her continued diabetes means she may be entitled to additional breaks.

Defining ADA Disability

Let's consider some examples.

John suffers from a painful neurological condition. He became addicted to prescribed opioids and has undergone treatment. He is now on a maintenance drug to control his addiction. He may be entitled to time off for medical and psychological treatment.

Accommodations for Common Disabilities - Dementia

According to the Centers for Disease Control and Prevention (CDC), of American adults aged 65 or older, more than 5 million have a form of dementia with Alzheimer's being the most common. But that condition can also hit adults earlier, during peak working years when they are in their 40s and 50s, when it is known as early-onset Alzheimer's.

Accommodations for Common Disabilities - Dementia

Generally, there are three stages:

- The first lasts about 2 years and may occur before the individual has a diagnosis. At work, symptoms may include Forgetting appointment or meetings and difficulty when communicating with co-workers or customers.
- The second state lasts about 2 to 4 years and is characterized by increased anxiety and distrust of others and difficulty getting ready for and arriving at work as scheduled.
- In the final stages, the individual will need full-time care and can no longer work.

Accommodations for Common Disabilities - Dementia

Employees with a dementia diagnosis may still be in the workforce and may not want to leave until absolutely necessary. That's particularly true for those suffering from early-onset Alzheimer's who may be reliant on both their income from work and the health care coverage that comes with employment.

Accommodations for Common Disabilities - Dementia

Possible reasonable accommodations for various forms of dementia under the ADA include:

- **Schedule adjustments.** The employee may need a more flexible schedule to allow for late arrivals, 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 both day-to-day and long term. Writing down directions and assignments may help with focus.
- **Dealing with memory loss.** Employees may need regular reminders and recorded instructions or the assistance of a support person who can help the employee remember important information.

Accommodations for Common Disabilities - Dementia

Continued:

- **Restructuring the job.** As the condition progresses, it may be time to restructure the job to remove some functions that require more executive function capacity and simplify tasks.
- **Revising accommodations regularly.** Because dementia is progressive, employers should regularly revisit reasonable accommodations to see if changes may be necessary or if the time has come to conclude the employee cannot perform the essential functions of their job anymore.

Accommodations for Common Disabilities - Dementia

Dementia resources:

[The Job Accommodations](#) network has information available about dementia in general and potential accommodation in particular.

[The Alzheimer's Association](#) provides information for families and others, including employers, about research and care.

Accommodations for Common Disabilities - Anxiety

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

Accommodations for Common Disabilities - Anxiety

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.

Accommodations for Common Disabilities - Anxiety

Accommodations for panic attacks. Workers who are prone to panic attacks may know what triggers them. If so, consider ways to reduce these triggers. In one recent case, a worker suffering from anxiety told his manager that being the center of attention was a trigger. The manager then threw him a surprise lunch-time birthday party despite knowing that was a trigger. Predictably, the worker had a panic attack and left the building. He later sued and won after he was fired for walking off the job. Other ways of coping with panic attacks include permission to keep a support animal at work, having access to a private place that the worker can use during an attack and allowing a modified schedule so that late arrivals can be accommodated.

Accommodations for Common Disabilities - Anxiety

Accommodations for concentration issues. 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.

Accommodations for sleep interruption. When sleep interruption is an issue, leading to daytime sleepiness, possible accommodations include being able to take breaks during the day and permission to arrive later on days when the employee needs additional sleep in the morning.

Accommodations for Common Disabilities - Anxiety

Resources for Anxiety:

[The Job Accommodations Network](#)

For information on anxiety and more accommodation ideas

[The Anxiety and Depression Association of America \(ADAA\)](#)

provides resources and support.

Accommodations for Common Disabilities - Neurodiversity

Neurodiversity refers to the idea that people experience and interact with the world in many ways and that brain function and behavior has a wide range beyond what most view as the norm. It began as a social justice movement, calling for acceptance of differences. Today, neurodiversity is often used as an umbrella term for conditions like autism, dyslexia and attention-deficit/hyperactivity disorder (ADHD).

Accommodations for Common Disabilities - Neurodiversity

Estimates put the population of neurodivergent individuals in the U.S. at between 15-20%. Changes are, most organizations have at least one employee who fits under the umbrella who may be entitled to workplace help. While each condition labelled as neurodivergent differs, all share a number of common management strategies that can prove useful in the workplace.

Accommodations for Common Disabilities - Neurodiversity

Accommodations for neurodiversity. Here are some common life functions and possible reasonable accommodations:

- **Communication.** Neurodivergent employees with learning disabilities may have difficulty communicating with supervisors, customers or co-workers. 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.

Accommodations for Common Disabilities - Neurodiversity

Accommodations for neurodiversity. Here are some common life functions and possible reasonable accommodations:

Concentration. Employees with ADHD may have trouble concentrating or be so focused on specific tasks that they're hyper-focused. Possible accommodations include a workplace with few distractions rather than working in an open-concept office. Consider a private office or permission to wear noise-cancelling headphones. For the hyper-focused, offering more frequent breaks can be helpful in avoiding eye and muscle strain. 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.

Accommodations for Common Disabilities - Neurodiversity

Hyper-sensitivity to noise, light or smells. For those who suffer from hypersensitivity to common environmental 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 telework.

Speaking. For those whose neurodivergent condition manifests in anxiety when speaking or doing live presentations, consider allowing the employee to record their presentation for later playback. Permit follow-up questions to be submitted in writing and answered after the presentation.

Accommodations for Common Disabilities - Neurodiversity

[The Job Accommodations Network](#)

For information on neurodiversity and more accommodations.

[EARN \(Employer Assistance and Resource Network on Disability Inclusion\)](#)

EARN provides resources on recruiting and managing neurodivergent individuals. The website includes information on what types of jobs that neurodivergent applicants excel at.

Accommodations for Common Disabilities – Hearing Impairments

According to the CDC, about 37.5 million American adults report some trouble hearing, including deafness, being hard of hearing or having sensitivity to noise. They may be born with the limitation, acquired it through childhood infection, damaged hearing through workplace noise exposure or developed it as part of ageing. However acquired, hearing loss may impact major life activities beyond hearing like going to school and working. Hearing loss and related limitations may qualify many as disabled under the Americans with Disabilities Act (ADA) and require reasonable accommodations.

Accommodations for Common Disabilities – Hearing Impairments

Accommodation for hearing impairments. Hearing impaired applicants who ask for reasonable accommodations in the hiring process are entitled to them. These can include the presence of an American Sign Language (ASL) interpreter during the interview, either in person or via a remote connection. After hire, the same employee may be able to communicate directly with co-workers, but may need an ASL interpreted for large meetings or training sessions.

Accommodations for Common Disabilities – Hearing Impairments

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

- 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.
- Appropriate emergency notification systems such as strobe lighting on fire alarms or vibrating pagers.
- Streaming of sound directly from a device to hearing aids or cochlear implants.

Accommodations for Common Disabilities – Hearing Impairments

- Utilizing accessibility features of mainstream technology such as turning on captioning features on virtual meeting platforms like Zoom and Teams.
- A voice carry-over telephone, captioned telephone, text telephone, or TTY system.
- Equipment used for hearing protection to block noise or to protect hearing function, including equipment that can be used with hearing aids.
- Assistive software or applications for automated captioning, voice recognition, videoconferencing or sound detection.

Accommodations for Common Disabilities – Hearing Impairments

Resources:

- **Job Accommodations Network.** JAN has much information about accommodating hearing impairments at its [website](#).
- **Hearing Disabilities in the Workplace and the ADA.** The EEOC's latest [guidance](#) on accommodating hearing disabilities.

Accommodations for Common Disabilities – Visual Impairments

According to a 2022 survey, the CDC found that about 18.4% of all U.S. adults are blind or have a lot of difficulty seeing, even when wearing prescription glasses. They are visually impaired. The causes are varied, with some suffering from eye diseases like macular degeneration, cataracts, glaucoma or diabetic retinopathy. Others may have vision in just one eye, have suffered an eye injury or been blind from birth. Visual impairments and related limitations may qualify many as disabled under the Americans with Disabilities Act (ADA) and require reasonable accommodations.

Accommodations for Common Disabilities – Visual Impairments

Newish accommodation rules for visual impairments. In August, 2023, the EEOC, the federal agency that enforces the ADA, issued updated guidance on accommodating visual disabilities in the workplace. These updates include suggestions for technology that can assist a visually impaired employee in performing the essential functions of their job.

Accommodations for Common Disabilities – Visual Impairments

Accommodation for visual impairments. Visually impaired applicants who ask for 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 and guide the visually impaired applicant. Once hired, you will need to allow the service animal to assist the employee as needed and provide other accommodations.

Accommodations for Common Disabilities – Visual Impairments

Common reasonable accommodations include the use of assistive technology and environmental modifications like:

- Screen readers or software applications that can convert written text on a computer screen into spoken words or a braille display;
- Optical character recognition (OCR) technology that can create documents in screen-readable electronic form from printed ones, including an optical scanner (desktop, handheld, or wearable), and OCR software;
- Website modifications for accessibility;
- Written materials in large print, braille or other accessible formats;
- Low-vision optical devices like magnifiers;

Accommodations for Common Disabilities – Visual Impairments

Common reasonable accommodations include the use of assistive technology and environmental modifications like:

- Smartphones and tablets with built-in accessibility features like text-to-speech;
- Braille keyboards and computer screen magnification tools;
- Modified work schedules to facilitate public transportation;
- Telework opportunities; and
- Modification to training and other employment benefits programs that allow the employee to attend and benefit.

Accommodations for Common Disabilities – Visual Impairments

Resources

- **Job Accommodations Network.** JAN has much information about accommodating visual impairments at its website, including information on the use of service animals, adaptive devices and other aides.
- **Visual Disabilities in the Workplace and the ADA.** The EEOC's latest [guidance on accommodating visual impairments.](#)

Pregnancy Accommodations

Here's how reasonable accommodations work under the PWFA:

Undue hardship. Employers who can show that making a reasonable accommodation for a pregnancy-related limitation creates an undue hardship for that employer won't have to provide the accommodation.

Definition of undue hardship. There's no definition yet of *undue hardship*. That likely will be remedied by regulation. However, the EEOC FAQ says it considers "undue hardship" a **significant difficulty or expense** for the employer.

Pregnancy Accommodations

Here's how reasonable accommodations work under the PWFA:

Covered employers. "Covered employers" include private and public sector employers with at least 15 employees, Congress, Federal agencies, employment agencies, and labor organizations.

NOTE: This is a far lower threshold of employees that under the FMLA the other major federal law that would provide time off for serious pregnancy complications. That employee count is 50 or more. As a practical matter, that means smaller employers will have to start providing time off that they wouldn't have to provide under the FMLA for pregnancy related issues.

Pregnancy Accommodations

Here's what you cannot do if you are a covered employer:

Require an employee to accept an accommodation without a discussion about the accommodation between the worker and the employer.

Employers should make sure that all supervisors understand they cannot simply offer up an accommodation on a take-it-or-leave-it basis. There needs to be documented give-and-take discussions aimed at reaching a reasonable accommodation acceptable to all parties.

Pregnancy Accommodations

Here's what you cannot do if you are a covered employer:

Deny a job or other employment opportunities to a qualified employee or applicant based on the person's need for a reasonable accommodation.

Under this provision, employers can't automatically assign a pregnant worker needing reasonable accommodations to a light-duty position during pregnancy if other opportunities open up for promotions.

Pregnancy Accommodations

Here's what you cannot do if you are a covered employer:

Require an employee to take leave if another reasonable accommodation can be provided that would let the employee keep working.

Taking the easy way out – by sending the employee home on unpaid or paid leave – isn't an option if that employee wants to keep working. The same goes for light duty temporary positions in lieu of the employee's regular job when another accommodation is available.

Pregnancy Accommodations

The EEOC lists common pregnancy accommodations, including:

- Ability to sit or drink water.
- Receive closer parking.
- Have flexible hours.
- Receive appropriately sized uniforms and safety apparel.

Pregnancy Accommodations

Take leave or time off to recover from childbirth.

- This is probably the most interesting accommodation on the EEOC's list in that it may serve as the basis for a request for a reasonable accommodation of maternity leave.
- Employers should consider amending their leave policies to include this as a reasonable accommodation for pregnancy.
- This would apply to employers with far fewer workers than coverage under the FMLA – 15 or more as opposed to 50 or more workers.

Pregnancy Interactive Process

Here's what you can do to streamline the PWFA accommodations process:

- Incorporate the PWFA into your ADA reasonable accommodations process.
- Skip the step that determines whether the employee has a disability under the ADA – replace this with a statement that says you will accommodate pregnancy and post-partum limitations as opposed to disabilities (there may be overlap).

Pregnancy Interactive Process

Here's what you can do to streamline the PWFA accommodations process:

- During the interactive accommodation discussions, clarify limitations and offer up accommodations.
- You can use the Job Accommodations Network for guidance and ideas. Though geared for the ADA, there's lots of useful ideas for most common pregnancy related limitations.

Pregnancy Accommodations

EEOC regulations expect employers to:

- Accommodate pregnancy-related conditions that are common quickly and with no or minimal paperwork.
- You need to empower first-line supervisors to make on-the-spot accommodations for common problems.

Pregnancy Accommodations

EEOC regulations expect supervisor approval:

- Supervisors should, for example, immediately approve late arrivals due to morning sickness and NOT count that late arrival against a no-fault or other punishment for tardiness.
- Supervisors must also approve bathroom breaks, sitting rather than standing, schedule changes for pre-natal appointments and other pregnancy-related needs that are easily provided.

Pregnancy Accommodations

EEOC litigation is in full swing in 2026:

- EEOC has warned that they don't want to see pregnant workers leaving the workforce just because employers find their reasonable accommodation needs to be inconvenient.
- One case involves mandatory overtime requirements.
- Another involves a request for part-time work and breaks.

Pregnancy Accommodations

EEOC litigation is in full swing in 2026:

Time of for pre-natal medical appointments: Family Fresh Harvesting, a farm labor contractor providing temporary agricultural workers at nurseries and farms in Michigan and Georgia, faced EEOC charges that it fired a pregnant agricultural worker authorized to work in the United States after she requested unpaid time off for prenatal medical appointments. The company instead fired her and put her on a bus back to Mexico despite her legal presence on an H-2A visa.

Pro tip: Employer supervisors to make schedule adjustments for pregnancy-related doctor appointments.

Pregnancy Accommodations

EEOC litigation is in full swing in 2026:

Time to grieve stillbirth: The EEOC sued Lago Mar, a Florida resort, after learning an employee who gave birth to a stillborn child in her fifth month of pregnancy was fired. She had requested leave to recover physically and to grieve her baby's death. The case settled October 11, after the agency filed more PWFA lawsuits. Lago Mar will pay the grieving parent \$100,000 in damages and revise its policies. (EEOC v. Lago Mar Properties, No. 24-CV-61812, SD FL 2024)

Pro tip: Miscarriage and its emotional fallout are conditions related to pregnancy. Employers need to provide recovery leave under the PWFA as well as under the ADA and the FMLA if leave is available.

Pregnancy Accommodations

EEOC litigation is in full swing in 2026:

Presumptions based on stereotypes about pregnancy: A Popeye's Chicken & Biscuits franchise in Florida fired an employee after she announced her pregnancy. Restaurant management believed pregnant workers are unable to perform their job duties and therefore didn't want her on staff. The EEOC successfully pushed for a settlement after filing other PWFA lawsuits and Popeye's agreed to settle. The employee will be paid and the company will educate supervisors and managers on their PWFA obligations.

Pro tip: The PWFA was passed to allow pregnant workers to retain their jobs and paychecks during pregnancy and beyond. Assuming a pregnant employee will be unable to perform the essential functions of her job is discrimination.

Pregnancy Accommodations

EEOC litigation is in full swing in 2026:

Unlawful medical inquiry: The EEOC sued Wabash National when the commercial trucking equipment maker refused to accommodate a pregnant employee's request not to work while assembling parts on her stomach. Instead of granting the accommodation, the company requested medical records to justify the request. It then placed her on unpaid leave. The lawsuit is pending. (EEOC v. Wabash National, No. 5:24-CV-00148, WD KY 2024)

Pro tip: For common sense pregnancy accommodations, you can't require medical justification. And you cannot require the worker to take unpaid leave in lieu of making a reasonable accommodation.

Pregnancy Accommodations

EEOC will likely update regulations in 2026:

- Changes anticipated include deletion of coverage for abortion, fertility treatments, menopause, menstruation
- Stay tuned.....

PUMP Act Accommodations

PUMP Act basics:

Amends the Affordable Care Act/Fair Labor Standards Act to include milk expression breaks as a right under the FLSA.

Initially passed in 2010 with the ACA and extended to cover far more employees in December 2022.

Applies to nearly all employees covered by the FLSA as of December 29, 2022.

Employers with fewer than 50 employees are not subject to the FLSA break time and space requirements if compliance with the provision would impose an undue hardship.

PUMP Act Accommodations

PUMP Act basics:

Provides most employees who are nursing with reasonable time and private space, other than a bathroom, to express breast milk.

Unlimited breaks to pump milk as often as the need arises, completely relieved of work duties while doing so.

For **one year after the child's birth**, covered employees may take reasonable break time “**each time such employee has need to express the milk.**” An employer may not deny a covered employee a needed break to pump.

PUMP Act Accommodations

PUMP Act basics:

One-size-fits all approach won't work.

The frequency, duration, and timing of breaks under the PUMP Act will vary from individual to individual and even from day to day.

Breaks are for remote workers and employees who work off-site too.



PUMP Act Accommodations

Practical problems:

- The location of the required private space and the specific pumping set-up can affect the time needed by the employee to express breast milk.
- The more convenient and efficient the pumping station, the shorter the break needed.
- For example, using a self-contained module may significantly cut break time.

PUMP Act Accommodations

Space required:

- A place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.”
- A space must contain a place for the nursing employee to sit, and a flat surface, other than the floor, on which to place the pump.
- Employees must be able to safely store milk while at work, such as in an insulated food container, personal cooler, or refrigerator.

PUMP Act Accommodations

Space required:

- The DOL recommends that the space provide access to electricity. This is to accommodate more efficient electric pump setups rather than battery-operated pumps or pumps the new parent must manually operate.
- Employers provide a location close to a sink to make it easier for employees to wash their hands and clean pump parts.

PUMP Act Accommodations

Monitoring:

- Workers who telework must also be free from observation by any employer-provided or required video system, including computer camera, security camera, or web conferencing platform.
- Employers need to make sure the same is true for any space set aside for milk expression breaks – i.e. no cameras.

PUMP Act Accommodations

PUMP Act basics:

Under the FLSA, when an employee is using break time at work to express breast milk, they either:

- Must be completely relieved from duty or be paid for the break time.
- When employers provide paid breaks, an employee who uses such break time to pump breast milk must be compensated in the same way that other employees are compensated for break time.

PUMP Act Accommodations

Examples:

Madison works on a farm. Madison's employer provides all employees with two paid 15-minute rest breaks each day.

Madison chooses to use both of the paid 15-minute breaks to pump breast milk for her 6-month-old infant. If Madison needs additional breaks to pump, the additional break time does not have to be compensated as long as Madison does not perform any work during the breaks.

PUMP Act Accommodations

Penalties:

- An employer who violates an employee's right to reasonable break time and space to pump breast milk will be liable for appropriate legal or equitable remedies under the FLSA.
- Employees denied a break must notify their employer and give that employer 10 days to comply before filing suit.

PUMP Act Accommodations

What employers should do:

- **Amend workplace rules.** Make sure that your handbook covers milk expression breaks and explains how to request those breaks.
- **Create pumping stations.** Options include securing a locked, private office for use or contracting with one of several pod manufacturers who can help you provide break space.
- **Payroll.** Make sure the payroll department understands when it must pay for breaks.

Q&A Break



Part 3: FMLA Accommodations

FMLA Intermittent Leave Accommodations

Intermittent FMLA leave is available:

- For the employee's own medical condition.
- To care for a spouse, child or parent for a single qualifying reason.
- To deal with military deployments and injuries.

FMLA Intermittent Leave Accommodations

Intermittent FMLA leave is not a right for some forms of FMLA leave:

- Workers cannot demand intermittent leave for the birth, adoption or foster care placement of a child. For example, a new mother cannot demand a half-time schedule after giving birth – she must take the bonding leave in a solid block of time. Thus, if her regular schedule is 40 hours per week, she may take 12 40-hour weeks off – not 24 20-hour weeks.
- Employers may **voluntarily** allow intermittent leave for birth, adoption or foster care placement.

FMLA Intermittent Leave Accommodations

Carmen is pregnant with her first child. She works a full-time schedule, 40 hours per week. Her due date is June 1. Carmen schedules routine maternity visits after work whenever possible to save up FMLA leave for bonding until her 8th month, when she was required to make weekly OB visits during working hours. Each visit took up 2 hours.

- Her after hour visits are not counted against FMLA leave.
- Her 8 weekly working hours OB visits (16 hours or 2 days total) are intermittent FMLA leave and count against her 12 weeks or 60 days, leaving her with 58 days.

FMLA Intermittent Leave Accommodations

A note on counting intermittent leave time in hours:

- When an employee takes hours off rather than weeks, you must convert weeks into hours
- If the employee works a 40-hour week, she's entitled to take intermittent leave in hours and those hours add up to 480 (40 times 12)
- If she ordinarily works 25 hours, it's a total of 300 hours
- If she works six days per week or 48 hours, she's entitled to 576 hours
- If she works five days per week but ten hours per day, she's entitled to 600 hours

FMLA Intermittent Leave Accommodations

Carmen gives birth June 1, returns home June 2 with a newborn and her doctor says she cannot physically return to work until her 6-week post-partum checkup.

- Carmen uses a block of FMLA leave for those 6 weeks (6 times 5 or 30 workdays) – leaving her with 28 workdays left.

WARNING: For those not eligible for FMLA leave, this time may be covered as a reasonable accommodation under the PWFA! That includes those who work for smaller employers and those who don't have any FMLA leave because they haven't met the requirements for eligibility, or they have used it all up!

FMLA Intermittent Leave Accommodations

Carmen needs the money, so she goes back to work. When the baby turns 6 months, she comes into a small inheritance and wants to bond better with her baby.

- She requests part-time work for the next six months.
- Her employer can reject her request for intermittent bonding FMLA leave even though she has 28 workdays (5.6 weeks) of leave left. She is eligible for a block of leave of 5.6 weeks, with guaranteed right of reinstatement.

FMLA Intermittent Leave Accommodations

Carmen then requests 3 full weeks (15 workdays) of bonding leave. Her employer thinks it's too late to request bonding leave, arguing she lost the right when she returned to work after the initial six weeks.

- Her employer **must grant the request** because bonding leave is available anytime during the first year of the new, adopted or fostered child's life with the employee.
- Carmen takes the 3 full weeks of block FMLA leave and has 13 workdays (28-15 workdays) left.

FMLA Intermittent Leave Accommodations

Carmen develops a rare disease and must travel out of town for a series of tests over the next few months. She requests intermittent leave of one day off per week for the next 4 weeks.

- Her employer must grant the request – but can request a certification from her health care provider showing her new condition is a serious health condition that requires intermittent leave.
- She uses another 4 days of FMLA leave, leaving 9 more days in the FMLA year.

FMLA Intermittent Leave Accommodations

Carmen's husband received call-up orders for deployment for his National Guard Unit. Carmen requests intermittent leave to arrange for daycare for her child that her husband had previously provided. She wants to visit several day care centers to pick the best one and needs 4 days to do so.

- This is intermittent leave under the FMLA for military deployment exigencies. She can take up to seven of her 9 remaining days of FMLA.
- Her employer can request a copy of her husband's military orders to verify the leave request. Her employer grants the request, leaving her with 5 workdays of leave.

FMLA Intermittent Leave Accommodations

Self-care. Employees who suffer from a serious health condition may take up to 12 weeks of unpaid FMLA leave. This is the so-called self-care provision.

- One of the most frequently taken forms of FMLA leave.
- Requires a serious health condition that makes the employee unable to perform the essential functions of the job.
- The inability to perform the essential functions of the job is unique to self-care leave.

FMLA Intermittent Leave Accommodations

Care for a spouse or immediate family member. Employees may take FMLA leave to care for a spouse, parent, child, or other immediate family member suffering from a serious health condition.

- An employee **must be needed** to provide care for the spouse, son, daughter, or parent because of the family member's serious health condition in order for the employee to take FMLA leave.
- An employee may be needed when the family member is unable to care for his or her own medical, safety or other needs, because of the serious health condition or needs help in being transported to the doctor; or to provide psychological comfort and reassurance to the family member with a serious health condition.

FMLA Intermittent Leave Accommodations

In order to grant intermittent leave, employers need to know that the employee or relative suffers from a serious health condition. These are newish forms (June 2020) and provide much more information than previously. Each allows the provider to select type of leave (block or intermittent)

Certification of Healthcare Provider for a Serious Health Condition

Employee's serious health condition, form WH-380-E – use when a leave request is due to the medical condition of the employee.

Family member's serious health condition, form WH-380-F – use when a leave request is due to the medical condition of the employee's family member.

FMLA Intermittent Leave Accommodations

Some chronic conditions that make employees eligible for intermittent leave last indefinitely.

- In that case the employer may request a recertification once per year.
- This is true even if the employee has not taken any intermittent leave in that one-year period.

FMLA Intermittent Leave Accommodations

The regulations also allow an employer to request recertification in less than 30 days if:

- The employee requests an extension of leave.
- The circumstances described in the previous certification have changed significantly.
- If the employer receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification.

FMLA Intermittent Leave Accommodations

FMLA leave for a specific serious health condition is taken two ways – either in a solid block of time or on an intermittent basis.

- Joe has a heart attack and is admitted to a hospital. The heart attack and treatment qualifies for self-care FMLA leave as a serious health condition. Joe's time in the hospital means he is taking a block of FMLA leave.
- Joe's doctor orders cardiac rehabilitation as part of his treatment and recovery. Rehab occurs three days per week 8 a.m. to 9 a.m. for 12 weeks. Joe's work begins at 8:30 every morning. His rehab time is intermittent FMLA leave.

FMLA Intermittent Leave Accommodations

FMLA leave for a specific serious health condition is taken two ways – either in a solid block of time or on an intermittent basis.

- Jane's elderly mother, June, undergoes cancer treatment while hospitalized. June is released from the hospital after a week and has to undergo chemo once a week for six weeks. She cannot drive and has asked Jane to take her to the appointments.
- Jane requested one week of FMLA leave to sit with her mother, deal with doctors and provide moral support. This is a block of FMLA for her mother's serious health condition.

FMLA Intermittent Leave Accommodations

FMLA leave for a specific serious health condition is taken two ways – either in a solid block of time or on an intermittent basis.

- Jane requests a half day off per week to take June to chemo. This is a form of intermittent leave. Fortunately, it is predictable. Her employer can schedule around her weekly absence.

FMLA Intermittent Leave Accommodations

Josiah is a recovering substance abuser, having become addicted to a prescription drug. As part of his continued therapy, he attends group counseling sessions, meetings with his medical provider and a medication prescription clinic. He has also relapsed twice, when he was hospitalized after overdoses. Josiah:

- Suffers from a serious health condition making him eligible for self-care FMLA leave.
- Can take a block of FMLA leave when hospitalized with overdoses.
- Can take intermittent FMLA leave for counseling, doctors appointments and medication administration.

FMLA Intermittent Leave Accommodations

Josephine suffers from migraine headaches. Her doctor has prescribed medication and rest in a dark, quiet room when the migraines strike. He estimates that she will have a migraine between one and two times per week and that each episode will last 4 hours. Josephine:

- Has a serious health condition qualifying for FMLA self-care.
- Does not require a block of FMLA leave but does need intermittent leave on an unpredictable schedule (she doesn't know when migraine will hit) but the number of episodes per week *is* predictable (1-2 per week).

FMLA Intermittent Leave Accommodations

Intermittent leave for chronic health conditions that flare up from time to time is difficult to manage because of its unpredictability. But employees authorized for intermittent leave cannot simply not show up. Employers may request advance notice as they do for other sudden absences including:

- Requiring calling in before the start of a scheduled shift.
- As soon as possible if calling beforehand is impossible.

FMLA Intermittent Leave Accommodations

New guidance from DOL answers a common question: Can an employee who has a chronic serious health condition that limits work to 8 hours per day use intermittent leave every day and avoid longer workdays indefinitely?

The answer is "Yes" per the opinion letter

<https://www.dol.gov/agencies/whd/opinion-letters/search?FMLA>

FMLA Intermittent Leave Accommodations

An eligible employee with a serious health condition that necessitates limited hours may use FMLA leave to work a reduced number of hours per day (or week) for an indefinite period of time as long as the employee does not exhaust their FMLA leave entitlement.

“In this case, if an employee would normally be required to work more than eight hours a day but is unable to do so because of an FMLA-qualifying reason, the employee may use FMLA leave for the remainder of each shift, and the hours which the employee would have otherwise been required to work are counted against the employee’s FMLA leave entitlement.”

FMLA Intermittent Leave Accommodations

The employer asking for the Opinion Letter said that his employees work a schedule that includes regular mandatory overtime. The employer also noted that it deducts these worker's approved FMLA leave from a bank of 480 hours per eligibility year.

DOL said this is wrong! It noted that the FMLA provides up to 12 **work weeks** of unpaid leave per eligibility year. Those workweeks, if converted to an hourly number, would be more than 480 hours.

For example, an employee who ordinarily works 50 hours per week would be entitled to 600 hours of FMLA leave in a 12-month period.

Part 4:

Religious Accommodations

Religious Accommodations

Title VII requires employers to reasonably accommodate religious beliefs and practices. This includes:

- Allowing workers to wear religious garb like headscarves, turbans and yarmulkes.
- Allowing facial hair like beards and long hairstyles for men like dreadlocks and braids when required or recommended by a religion.
- Allowing women to wear long hair and long skirts when required or recommended by a religion.
- Allowing time off for religious practices or if required by a religious belief.

Religious Accommodations

Case examples:

- Prisons must allow facial hair and long hair.
- Muslim woman must be permitted a headscarf even if dress code requires a particular “look” for salespersons.
- Prayer breaks must be allowed if not resulting in an undue burden on the employer.
- Sabbath absences must be allowed if not resulting in an undue burden on the employer.

Religious Accommodations

What is religion?

- Under Title VII of the Civil Rights Act of 1964, employers cannot treat an applicant or employee unfavorably because of their religion or religious practices.
- Nor can employers allow harassment based on religion.
- In addition, employers must reasonably accommodate religious practices such as the need to attend religious services or groom and dress in accordance with their religion.

Religious Accommodations

What is religion?

Religion is defined expansively.

- Traditional, organized religions like Buddhism, Christianity, Hinduism, Islam and Judaism are covered.
- So are other sincerely held religious, ethical or moral belief systems, including Agnosticism, Atheism, and Druid, Wicca and Native American beliefs.

Religious Accommodations

What is religion?

Religion is defined expansively.

- Employers may inquire about beliefs underlying a request for reasonable accommodations, but should be cautious about questioning its sincerity.

Religious Accommodations

The reasonable accommodation process for religious requests should be similar to the one you use for other accommodations – that is:

- Allow the employee to make the request rather than approaching the employee.
- Begin an interactive process by discussing the matter.
- Consider various options if more than one exists.
- Pick the one that best suits your organization.
- Implement it or if none is possible because it creates an undue burden, inform the employee.

Religious Accommodations

WARNING – there is a brand-new Supreme Court decision on accommodating religion!



Religious Accommodations

A unanimous Supreme Court has ruled 9–0 that employers are obligated to accommodate religious practices and belief unless doing so creates an undue hardship. ([*Groff v. DeJoy*](#))

In doing so, it redefined undue hardship to mean that the accommodation would result in “**substantial increased cost in relations to the conduct of an employer’s particular business.**”

Religious Accommodations

The decision upends 47 years of religious accommodation law.

The prior definition of undue hardship only required that employers show the accommodation would result in more than a *de minimis* cost – a very light burden that led many employers to deny their workers' requests for reasonable accommodation of their religious beliefs and practices.

Religious Accommodations

The case:

The Supreme Court wrestled with how far the U.S. Postal Service had to go to allow a postal employee skip every Sunday shift when co-workers did not want to work Sundays voluntarily.

After 20 missed Sundays, Groff's supervisor told him his accommodation request would be denied going forward.

- Groff quit and sued, alleging failure to show that giving him every Sunday off created an undue burden.

Religious Accommodations

The case:

The court said the Post Office had to show that giving Groff every Sunday off substantial increased cost in relations to the conduct of an employer's particular business. Then it provided examples of hardships that generally *would not* create that burden, including:

- Temporary costs.
- Voluntary or occasional shift swapping or administrative costs.
- Co-worker resentment.
- Animosity towards religion or the idea of accommodation.

Religious Accommodations

The bottom line:

That leaves employers having to show that there are substantial costs that come with granting an accommodation.

Religious Accommodations

How to accommodate:

Review current religious accommodation policies.

- That policy should now direct supervisors to direct all requests to the HR office for review.
- The policy should state that supervisors can't grant or deny the request without HR approval.

Religious Accommodations

How to accommodate:

Craft an internal policy that focuses on engaging with the employee, identifies possible accommodations and assesses each for cost impact. Business and cost considerations can include:

- What operations cannot run – like stores being open, manufacturing line cannot operate – and the associated cost.
- The impact on customer expectations. patient outcomes or regulatory safety compliance.
- Cost impact of co-worker overtime, increased error rates or retention.

Religious Accommodations

How to accommodate:

Make a decision.

If you aren't confident that you can show undue hardship with solid, objective proof of substantial increased cost given the size and nature of your business, offer one of the identified accommodations.

Religious Accommodations

How to accommodate:

Update handbook.

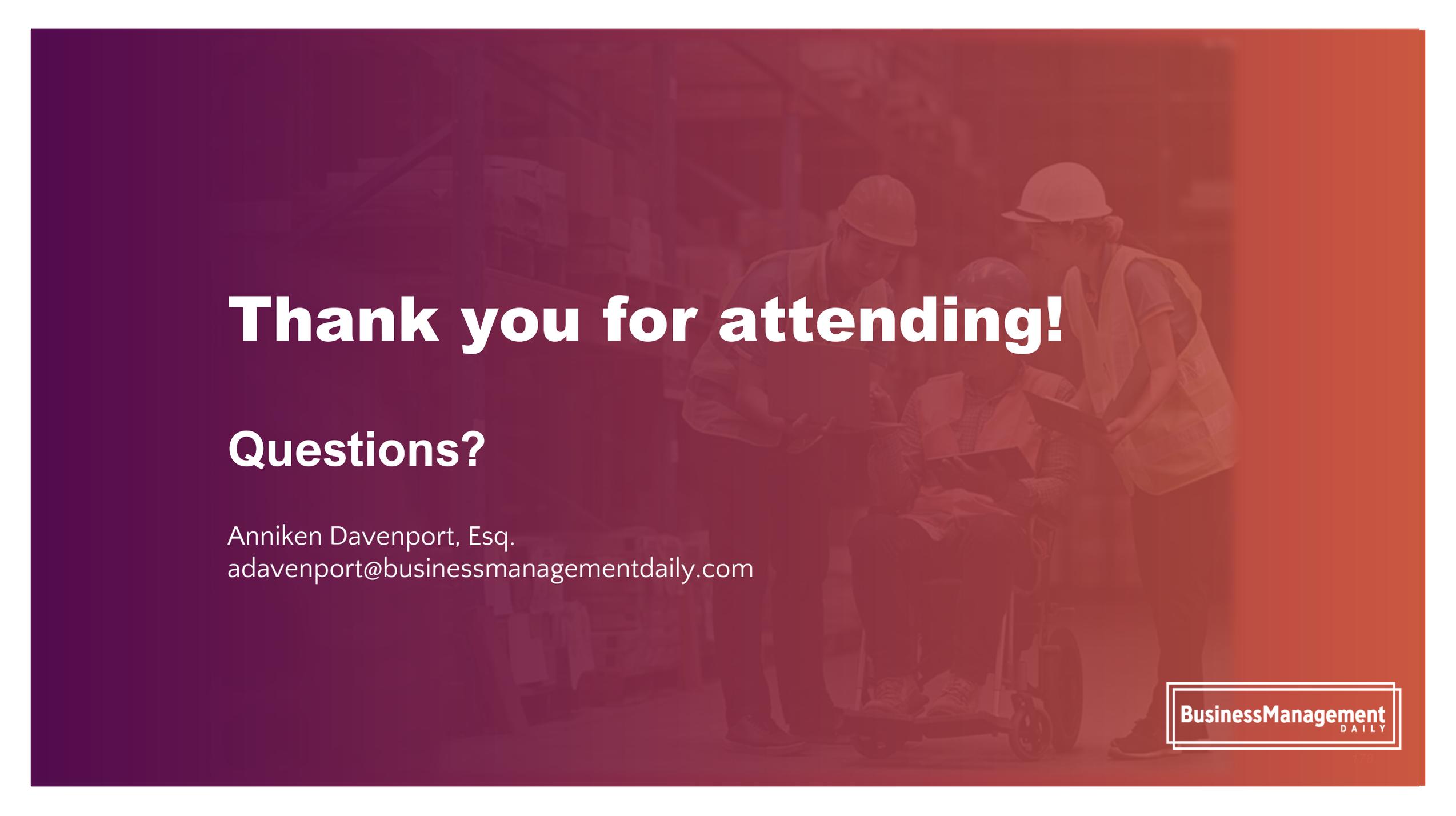
Your handbook should now tell employees to address religious accommodation requests to the HR office and explain that HR will initiate an interactive accommodations process aimed at granting an accommodation if possible.

Religious Accommodations

How to accommodate:

Update training.

Every manager, supervisor and HR staffer should receive updated training on accommodating religious needs.



Thank you for attending!

Questions?

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Thank you for participating in the Employee Accommodations Workshop!

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