

FAQ:

Americans with Disabilities Act (ADA) Accommodations



A school district is telling employees that the only available accommodation is a leave of absence. Is that lawful?

Probably not. It is possible that a leave of absence could be the only reasonable accommodation in some circumstances for some employees, but it is highly doubtful that it is the only possible accommodation for all employees who may have a disability. In order to maintain that a leave of absence is the only possible accommodation, the employer would have to show more than just a preference for this accommodation; it would need to show that the other possible accommodations either do not adequately address the employee's needs or pose an undue burden. Accordingly, a leave of absence would not be the only available reasonable accommodation, especially in the case of school employees who need an accommodation due to the disability-related risks of coronavirus complications.

A range of possible accommodations, some posing very minimal financial costs or operational disruption, might be available. Depending on the employee, these could include: modified work sites, routines, or assignments; additional PPE; and/or remote work.

How can we push back against a district that is saying a leave of absence is the only available accommodation?

An employee or his/her association can, depending on the facts of the case, threaten legal action. As explained above, it is likely that an employer insisting that a leave of absence is the only available reasonable accommodation is violating the law. An employer must engage in an interactive process (conversation/meeting) with an employee seeking accommodations. For an employer to stake a predetermined outcome, i.e. leave, in the interactive process, the employer is likely unlawfully acting in bad faith. Rather, the employer is obligated to explore an employee's needs and possible accommodations

with an open mind and problem-solving attitude. It is likewise unlawful for an employer to refuse to engage in the interactive process entirely, and instead, categorically insist on a single, one-size-fits-all accommodation in lieu of examining the needs of individual employees.

Moreover, it is imperative that an employee and/or the local association demand that the employer confirm and explain its position in writing. Sometimes such a demand alone suffices to make an employer reconsider an unlawful decision. Check with your local association about possible legal claims under the ADA as well as any claims under other laws that may apply.

Because the administrative and legal systems often move slowly, MSEA has encouraged local associations to bargain over workplace safety and accommodation issues. In the case of a district's refusal to engage in bargaining, work with your local association on organizing opportunities among employees and the community to call on the school district to work to identify ways to ensure that dedicated educators can safely remain on the job, instead of pushing them out on leave. The consequences of carrying out such an ill-advised policy by the district would negatively impact instruction of students.

Is it unlawful for an employer to engage in the interactive process in bad faith?

Yes. The law requires employers to participate in the interactive process in good faith—making a sincere effort to explore and identify ways to accommodate an employee's disability. Under the federal ADA, an employer can be held legally liable if their bad faith prevented the employee from receiving an otherwise available reasonable accommodation. Under Maryland law, it is unlawful for an employer to fail or refuse to make a reasonable accommodation for the known disability of an otherwise qualified employee.

May an employee reject workable accommodations and return to the interactive process in order to obtain the specific accommodation s/he is looking for?

No. Under the ADA, an employee is entitled to a reasonable accommodation, not necessarily his/her preferred accommodation. If the employee has rejected accommodations identified through the interactive process that are, in fact, workable, the employer may decline to further engage in the interactive process.

How much medical documentation is necessary or appropriate for an ADA accommodation?

There is no hard and fast rule here. The extent of the medical documentation that must be provided, and the degree to which an employer may demand additional documentation, depends on the circumstances. The touchstone here is informing the employer of the existence and extent of the disability and the need for a workplace accommodation.

Where the employee's disability and need for an accommodation is already known or obvious, no additional medical documentation is necessary. When this is not the case, an employee need only provide (and an employer may only demand) documentation that verifies the existence of a disability, the employee's disability-related limitations, and the need for a workplace accommodation.

Medical documentation does not need to be provided by a medical doctor. Rather, the law requires only that it be provided by an appropriate health care provider or rehabilitation specialist. The documentation should suffice under the law so long as it identifies: the nature, severity, and duration of the impairment; the activity or activities the impairment limits and the extent of the limitations; and explain why a workplace accommodation is needed. If these requirements are met, an employer should not demand additional information, and certainly repeated employer demands for new or different medical documentation are improper.

What if the employer takes the position that its general coronavirus mitigation steps are the reasonable accommodation? How might the employer be redirected to provide individual accommodations?

General coronavirus mitigation steps—like any workplace safety measures—are vital and local associations should demand both implementation of

these measures and a seat at the table as measures are being formulated. That said, general workplace mitigation efforts are not necessarily a substitute for workplace accommodations for individual employees whose disability places them at higher risk of coronavirus complications.

Where an employer's general health and safety protocols do not adequately address an employee's concerns (and those concerns are substantiated by a health care provider or rehabilitation specialist), the employee may request, and the employer must engage in, the interactive process to identify reasonable accommodations. How an employee or local association might respond to an employer that takes the position that its general mitigation efforts suffice depends on when and how the employer articulates its position. If the employer refuses to engage in the interactive process on the grounds that the employee has already been accommodated, it should be reminded that the law mandates this process to identify individual accommodations and that a flat refusal is unlawful. If the employer engages in the interactive process but insists that no accommodation is necessary, the employee (or their representative) should explain how and why general mitigation measures are inadequate and why additional accommodations are required—and that the employer's position constitutes unlawful bad faith. In this instance, a member should contact the local association to pursue possible next steps, including filing an administrative charge alleging disability discrimination.

Once an accommodation is identified through the interactive process, can the parties later modify that accommodation?

Yes. The duty to engage in the interactive process and to accommodate a disabled employee is an ongoing one. This means that as circumstances change, parties can and should reengage in the interactive process. For example, a disabled employee whose needs were once, but are no longer, adequately addressed by an existing accommodation—because, for example, her disability has become more acute or she suffers a new and different disabling condition—can seek a modified or additional workplace accommodation. An employer, however, may not unilaterally remove agreed upon accommodations without engaging in the interactive process with the employee.