

## Accommodations for Disabilities

Results achieved in prior matters are not meant to be a guarantee of success as the facts and legal circumstances vary from matter to matter.

Under the New Jersey Law Against Discrimination (LAD), employers of any size must provide reasonable accommodations for employees with physical or mental disabilities—unless doing so would cause an undue hardship for the business. The employee must be able to perform all of their essential functions with or without a reasonable accommodation.

This obligation applies across the employment lifecycle—hiring, promotion, compensation and other terms of employment.

When an employee with a disability requests an accommodation from the employer, the employer must engage in a process called the interactive process, which is required under both the federal Americans with Disabilities Act (ADA) and the New Jersey Law Against Discrimination (NJLAD).

So, what is an interactive process? The interactive process is a series of back-and-forth communications between the employer and employee to try to figure out how the employee can perform his or her job successfully when a disability is making it hard to do so.

How does an employer know when the interactive process begins? Generally, the employee has a duty to tell the employer that he or she is having problems performing his or her work duties as a result of a disability. At times, a disability may be so obvious that the employer can see that the employee is having problems performing his or her work duties, and in that case, the employer may commence communications toward an accommodation. Other times, the interactive process may begin when the employee requests an accommodation.

Are there any magic words that the employee needs to use to signal the employer that he or she needs an accommodation? There are none. In fact, the employee does not need to use the word accommodation or mention the ADA or NJLAD. The employee must simply make the employer aware that he or she is having problems because of his or her disability. For example, an employee having problems concentrating because of a severe anxiety condition might tell her employer that she is having these issues. An employee with a hearing problem may tell his employer that he is no longer able to easily distinguish words during telephone calls. Once an employer is made aware of the disability-related problem, it is the employer's duty to reach out to the employee to initiate a discussion about a feasible solution.

At the outset, the employer may ask the employee for more information about the job-performance difficulties, either by further direct discussion with the employee or by requiring more information from the employee's doctor. Although an employer is not entitled to know the employee's medical diagnosis or other protected medical information about the employee's disability, the employer is entitled to information about any symptoms of the disability that are making it hard for the employee to function at work. In addition, the employer has the right to ask the employee to have his or her doctor review the employee's job description to help inform the employer as to which functions of the job the employee has difficulty performing because of the disability. It is also acceptable for the employer, with the permission of the employee, to speak directly to the doctor about the difficulties the employee is having with the job.

Once the employer has enough information about the problem, both employer and employee should try to determine a reasonable accommodation for the employee. There is no “script” regarding the interactive process at this stage. An employee may have ideas for an accommodation that he or she initially proposes to the employer, and the employer may accept those ideas or propose different ideas. Some examples of accommodations that might help the employee with a severe anxiety condition include: more frequent breaks or lessening of last minute requests by a supervisor to complete projects. Accommodations for an employee with a hearing problem may include a headset device to make hearing easier over the telephone, or a request for a supervisor to look directly at the employee when speaking to him or her, making it easier to understand what the supervisor says. In situations where it is difficult to come up with accommodation ideas, a good resource is the Job Accommodation Network (JAN). This organization comes up with inventive ideas to help accommodate employees, particularly when the employer and employee have reached their limit of creativity.

Finally, it is important to remember that neither the employee nor the employer can unilaterally require a certain accommodation. Employers should be aware that if the accommodation request constitutes an undue hardship on the employer, the employer is not legally bound to grant the request. However, an undue hardship, according to the law, is not just an inconvenience to the employer, but a true hardship on the company, and scrutiny here is on a case by case basis, taking into account the characteristics of the company to make a determination. So, for example, a large company with many employees and assets may be required to provide greater accommodations to a disabled employee than a very small company with few employees and assets. In the end, the overarching goal is to allow all your workers equal employment opportunities while reaching the necessary business goals.

Reasonable accommodations are adjustments that enable employees to perform essential job functions without imposing excessive disruption or cost. Common examples include:

- Job restructuring: modifying tasks or reallocating non-essential duties
- Schedule adjustments: part-time, flextime, telework or leave
- Physical modifications: ramps, ergonomic chairs, accessible restrooms
- Assistive tools: screen readers, keyboards, interpreters
- Reassignment: placing the employee in a vacant, equivalent position

No formal process needed: Employees can make requests in plain English—even verbally.

- Identify disability & need: It’s helpful to indicate that the change is needed because of a medical condition.
- Medical documentation: May be requested only if disability or need isn’t obvious; must be reasonable, not excessive.

Once aware of a request, the employer must engage in a prompt, good-faith dialogue with the employee to determine appropriate accommodations.

Employers and employees should:

1. Discuss limitations and job tasks
2. Explore multiple accommodation options
3. Evaluate feasibility and effectiveness
4. Document discussions and decisions

Delays, unilateral decisions and failure to engage in the interactive process may constitute legal violations .

An employer may lawfully deny an accommodation if it will impose significant difficulty or expense, based on factors like company size, resources and nature of operations.

Under NJLAD, employers may need to extend an employee’s medical leave beyond typical leave entitlements (like FMLA), or if protected leave is not available, if necessary and feasible—unless it causes undue hardship.

When a position cannot be held open, an employer should offer a comparable vacant position, when available.

If you've requested a workplace accommodation and your employer has ignored or denied your needs, you may have legal options. The employment attorneys at Wilentz, Goldman & Spitzer P.A. can help you navigate the interactive process and ensure your rights under the ADA and NJLAD are protected. **Reach out today for a confidential consultation.**

**To speak with an attorney about your legal options, please call: 732-352-9858.**