



**Job Accommodation Network**

Practical Solutions • Workplace Success

## **Accommodation and Compliance Series**

### **Accommodation and Compliance Series: Performance**

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**Funded by a contract with the Office of Disability  
Employment Policy, U.S. Department of Labor**

## JAN'S Accommodation and Compliance Series

### Introduction

Establishing and uniformly applying performance and production standards allows employers to consistently evaluate all employees and readily identify and respond when standards are not being met. Performance issues can occur for many reasons, but can sometimes develop due to disability-related limitations. According to the [Equal Employment Opportunity Commission \(EEOC\)](#), under the ADA, employees with disabilities may be held to the same [performance/production standards](#) as employees without disabilities in the same job. Employers are not required to disregard, change, or eliminate performance standards as reasonable accommodation.

It's not always apparent that disability-related limitations are affecting production or are a factor in poor performance. Performance evaluations sometimes lead to disability disclosure when employees recognize a disability-related connection and choose to share information about their limitations, and/or request reasonable accommodation, in response to a poor performance review. In managing employee performance and productivity, it can be useful for an employer to clearly state the performance or production expectations (e.g., attendance policy to meet, number of cases to close, products to sell, etc.), share what has been observed, explain the consequences of not meeting the required standard, and ask what/if anything can be done to support the employee in meeting the requirements.

Generally, the obligation to request accommodation falls on the individual with the disability; employers aren't expected to guess that accommodation is needed. However, asking [How can I help?](#) is a useful strategy for resolving performance issues when it's not clear if disability is a factor in meeting performance or production requirements. This strategy can also be useful when there is an apparent impact on an employee's ability to perform essential job duties because of a known impairment, but accommodation has not already been requested. Asking How can I help? creates a safe space for disability disclosure and opens the door to discuss reasonable accommodation and engage in the [interactive process](#) under the ADA. Reasonable accommodation is meant to enable employees with disabilities to meet uniformly applied standards for performance and productivity, not to excuse employees from meeting the standards.

The following tips may be useful for addressing workplace issues related to performance and productivity:

- Establish performance standards and/or production requirements and apply them uniformly and consistently to all employees, including employees with disabilities.
- Monitor performance and productivity and document issues early and always.

- Inform employees about observed performance and productivity issues as soon as possible. Explain the consequences of not meeting required standards and establish clear expectations and a timeframe for improvement.
- Recognize when disability disclosure or a request for reasonable accommodation in response to a poor performance evaluation is a trigger to engage in the interactive process.
- Offer support by asking, How can I help? And, inform all employees about the ADA and how to request accommodation. For example, mention something like, “If you believe there is anything we can do to support you in meeting the required standards, please let [XYZ person] know.”
- Explore and implement reasonable accommodations to improve performance and/or productivity, monitor for effectiveness, and re-evaluate performance with accommodations in place.

Detailed information about applying performance and conduct standards to employees with disabilities can be found in the following [Equal Employment Opportunity Commission \(EEOC\) enforcement guidance documents](#):

- [Applying Performance and Conduct Standards to Employees with Disabilities](#)
- [Reasonable Accommodation and Undue Hardship Under the ADA](#)

The following information addresses some of the more common questions that arise related to applying performance and production standards to individuals with disabilities. For more information on this topic, or any other ADA or accommodation issue, please [contact JAN](#).

## Questions About Productivity

**May the same quantitative and qualitative requirements for performance of essential functions be applied to an employee with a disability as are applied to employees without disabilities?**

Yes. There is no obligation under the ADA for employers to lower or disregard production standards because an employee with a disability cannot meet standards due to a disability-related reason. Uniformly applied quantitative or qualitative production standards can be applied to all employees in the same job category – even employees with disabilities.

Of course, reasonable accommodation may be required to enable an employee with a disability to meet a specific production standard. Thus, when an employer is aware that an employee is not meeting production standards, and either knows or has good reason

to believe this is due to a disability-related reason, then the employer may engage in the interactive process under the ADA to identify reasonable accommodations to enable the employee to meet the required standards. This is when asking, How can I help?, can be a useful strategy for engaging in that process.

For information about whether or when to address the possible need for accommodation when an employee with a known disability is not meeting production standards, see [Reasonable Accommodation and Undue Hardship under the ADA](#), questions 40-41.

**Can an employee with a disability be required to perform a job in the same exact manner as an employee without a disability, if the production standard can be achieved in an alternative way?**

Not if the essential functions of the job can be performed in a different way, including with reasonable accommodation. Sometimes it's expected that duties only be performed in a specific way, but reasonable accommodation often includes job restructuring, which can mean changing the way duties are ordinarily performed. This does not include removing essential job functions, but can include removing marginal job functions. An employer is not required to allow an employee with a disability to use an alternate method of performing job duties if that method will impose an undue hardship.

**Is an employer required to lower production standards for an individual with a disability as a form of reasonable accommodation under the ADA?**

No. An employee with a disability can be held to the same production standards as other employees in the same job, but reasonable accommodation may be required to enable the employee to meet the production standard. For example, it may be necessary to consider removing marginal job tasks to free-up time to enable an employee who is having difficulty completing documentation due to a disability-related reason to close the required number of cases in a timely manner.

## **Questions About Performance**

**Is an employer required to rescind a low performance rating/poor performance evaluation when an employee with a disability discloses that a disability is causing a performance problem?**

No. Disability disclosure does not erase past poor performance. The poor performance rating or evaluation reflects the employee's performance and is not required to be changed because the employee believes there is a disability-related connection.

When an employee states that disability is a factor in poor performance, this is the time to make performance expectations clear, to explain observations of the employee's past performance, and to ask what can be done to enable the employee to meet the

performance requirement. This is when it's important to engage in the interactive accommodation process under the ADA.

**Should a performance improvement plan (PIP) be placed on-hold during the interactive accommodation process?**

It may be necessary to postpone the start of a PIP when an employee discloses a disability/requests accommodation in response to a poor performance evaluation. Because the interactive process is triggered in this situation, it will take some time to determine if accommodations are warranted and reasonable. Effective accommodations may enable the employee to meet performance standards. Once accommodations are implemented the PIP can commence.

There is no specific period of time to hold-off on applying a PIP. The timing will most likely depend on the implementation of accommodations. It's important to engage in the interactive process as soon as possible and to avoid delays in implementing effective accommodations.

**When an employee with a disability discloses that a disability is causing a performance problem, can the employer request disability-related information to engage in the interactive process?**

As long as the request is job-related and consistent with business necessity. As part of the interactive process under the ADA, when the disability or need for accommodation is not known or obvious, an employer is permitted to request reasonable disability-related information to substantiate that an employee requesting accommodation has a disability and needs accommodation.

Medical documentation is not required under the ADA, but an employer has the right to request disability-related information in order to establish coverage and provide accommodation. As an alternative to requesting documentation, an employer may simply discuss with the person the nature of the disability and functional limitations. This process should be about learning if the employee has an impairment, what limitations are affecting ability to perform job functions and/or meet performance standards, and why accommodation is needed.

JAN offers sample medical inquiry forms that can be used as a guide in requesting disability-related information for ADA purposes. See [Sample Medical Inquiry in Response to an Accommodation Request](#) and [Sample Medical Inquiry Form in Response to a Request for Leave as an Accommodation](#).

**Can information about an employee's disability or request for accommodation be documented in a performance evaluation?**

All disability-related information acquired by an employer must be kept confidential and separate from personnel records. This includes information shared in response to a poor performance evaluation. If an employee shares disability-related information or

requests accommodation in response to a performance issue this information must be kept in a confidential medical record, available only under limited [conditions specified in the ADA](#).

If the employer's actions in addressing a performance issue are connected to the interactive process in some way, such as delaying the implementation of a PIP, there may be some reason to communicate this, via the performance evaluation, to those who are on a need-to-know basis (e.g., Human Resources). It may be useful to devise an anonymous coding system that does not reveal specific disability-related information, but informs authorized individuals that additional information can be found in a confidential medical record. For example, a color or number code could be used to flag the documentation (e.g., code #1990 indicates that pertinent information can be found in the employee's medical record). Supervisors and managers ordinarily should not have access to medical records. Access to these records must be restricted.

**May an employer withdraw an accommodation because an employee is given an unsatisfactory performance rating? For example, rescinding a telework arrangement or a modified schedule due to poor performance.**

According to the EEOC, a reasonable accommodation may not be withdrawn as punishment for poor performance. An unsatisfactory rating does not necessarily mean the accommodation is not working, but it will be useful to learn more about the cause of the performance issue and whether an additional accommodation is needed, or whether the original accommodation should be withdrawn and another substituted because the accommodation is not effective.

EEOC offers further guidance on managing performance issues under the ADA. See [Applying Performance and Conduct Standards to Employees with Disabilities](#). For more information on this topic, or any other ADA or accommodation issue, [contact JAN](#).

## **Conduct**

For more information on conduct issues, see [JAN's A to Z by Topic: Conduct](#).

## **Situations and Solutions:**

The following situations and solutions are real-life examples of accommodations that were made by JAN customers. Because accommodations are made on a case-by-case basis, these examples may not be effective for every workplace but give you an idea about the types of accommodations that are possible.

### **A social worker was having difficulty concentrating and prioritizing due to Attention Deficit/Hyperactivity Disorder (AD/HD).**

These limitations affected her ability to complete paperwork in a timely manner, which led to a poor performance review. She requested that the employer reduce her caseload as an accommodation. While not required as accommodation, the employer was willing to reduce the employee's caseload for two weeks to enable her to catch-up with paperwork. After the two-week period, the ordinary production standards were re-instated and the employee was accommodated with a designated hour each day for uninterrupted time to work on paperwork. During this time, she was not required to accept phone calls, respond to emails, or meet with colleagues or clients. The employee's supervisor also assisted with prioritization by classifying cases by level of priority and creating checklists to assist her with completing paperwork.

### **A data entry clerk with low vision was having difficulty meeting production standards.**

The data entry work required her to access multiple applications on her monitor. It was difficult to keep track of each application and to read smaller fonts, which slowed her daily progress. She was provided screen magnification software and a second, larger sized monitor as an accommodation. This enabled her to enlarge text and application icons for ease of access, and to simultaneously view two applications at once, which increased her productivity.

### **A customer service representative working in a call center was taking frequent restroom breaks.**

He was away from his workstation for more breaks than were normally permitted and this was affecting his call completion number. When counseled for low completion rate, he explained that he was taking medication that required him to use the restroom about every hour. The employer would not change the call completion standard, but in an effort to help him improve performance, the employee's workstation was moved closer to the restroom, and he was permitted to restructure his two planned fifteen-minute breaks to be used as six five-minute intervals during his shift. This allowed him to use the restroom as-needed, without taking additional breaks.

### **A retail sales manager was frequently late to work due to flare-ups of a gastrointestinal disorder**

She was late several times and incurred points that resulted in a written warning, in accordance with the employer's attendance policy. During flare-ups, she often had to stop to use the restroom during her commute to work. She was the only manager who could open the store each day and being tardy affected business operations. As an

accommodation, the employer was willing to modify the attendance policy to excuse occurrences during a flare-up. However, the manager had to be reliably present to open the store. She was reassigned to an afternoon-shift manager position.

**An employee with a small advertising firm started missing deadlines on a regular basis.**

During a semi-annual performance review, the employee was placed on a performance improvement plan. The employer was unaware of any disability-related reasons for not meeting the performance requirements but asked if anything could be done to help the employee improve performance. The employee shared that he was experiencing limitations associated with anxiety and depression, making it difficult for him to stay on-task. He was working with his healthcare provider to change medications, which affected his ability to sleep and function effectively through the day. The employer was willing to allow the employee a flexible schedule and the opportunity to work at home, on occasion, to enable him to work at nontraditional office times, when he was most alert. He set-up electronic alerts using a project management app to remind him of important deadlines, and his supervisor checked-in with him periodically regarding his progress.



This document was developed by the Job Accommodation Network (JAN), funded by a grant from the U.S. Department of Labor, Office of Disability Employment Policy (#OD-38028-22-75-4-54). The opinions expressed herein do not necessarily reflect the position or policy of the U.S. Department of Labor. Nor does mention of tradenames, commercial products, or organizations imply endorsement by the U.S. Department of Labor.