

JAN

Job Accommodation Network

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Accommodation and Compliance Series

Providing Temporary or Trial Accommodation Solutions

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A service of the U.S. Department of Labor's Office of Disability Employment Policy

Preface

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JAN'S ACCOMMODATION AND COMPLIANCE SERIES

Introduction

JAN's Accommodation and Compliance Series is designed to help employers determine effective accommodations and comply with Title I of the Americans with Disabilities Act (ADA). Each publication in the series addresses a specific medical condition or topic and provides information about the condition or topic, ADA information, accommodation ideas, and resources for additional information.

The Accommodation and Compliance Series is a starting point in the accommodation process and may not address every situation. Accommodations should be made on a case by case basis, considering each employee's individual limitations and accommodation needs. Employers are encouraged to contact JAN to discuss specific situations in more detail.

Information about Providing Temporary or Trial Accommodations

The Americans with Disabilities Act (ADA) does not establish a requirement for the duration of time accommodations must be provided, but the duty to provide accommodations is an on-going one ([EEOC, 2002](#)). Many accommodations are implemented long-term, while some accommodations last for only a temporary period. Every situation is unique and requires case-by-case analysis of the individual's limitations, restrictions, specific accommodation needs, and the impact accommodation will have on job performance and business operations.

While we tend to think of accommodation as a long-term commitment, employers are not precluded from implementing trial or short-term solutions as part of the accommodation process. Implementing temporary or trial accommodations can benefit both the employee and the employer. For example, implementing a temporary change offers the opportunity to evaluate an accommodation for effectiveness before making the decision to implement the change long-term. From a practical standpoint, employers should consider providing temporary accommodations, even in situations that may go beyond the requirements of the ADA, because doing so demonstrates good faith. Situations that can warrant provision of a temporary or trial accommodation may include, *but are not limited to*:

- when time is needed to research a permanent accommodation solution, to acquire equipment, arrange a service, or identify an alternative vacancy;
- when it is necessary to test an accommodation to determine if it is effective;

- when the medical impairment is temporary but sufficiently severe enough to entitle the employee to accommodation;
- when it is necessary to avoid temporary adverse conditions in the work environment; or
- when an accommodation can currently be provided, but may eventually pose an undue hardship if provided long-term.

Temporary Accommodations While Researching a Permanent Solution

At the beginning stage of the interactive process, it may be necessary to research accommodation solutions, including products or services that may be needed to enable the individual with a disability to perform essential job functions. Sometimes the accommodation cannot be implemented immediately because equipment must be purchased, a service must be arranged, or a vacant position is not yet available. In situations such as these, a temporary solution may need to be implemented at first. For example, if an employee cannot perform an essential function of a job and requests an accommodation that requires some research, the employer could consider *temporarily* removing the essential function until a permanent accommodation can be made. If an employer chooses to do this, the employer should make clear to the employee that the interim accommodation is temporary and for what duration the accommodation will be allowed. Under the ADA, essential functions do not have to be removed permanently as an accommodation. However, this type of job restructuring may be feasible for a short duration of time, until an alternative effective solution can be implemented.

Temporary Accommodations to Test Effectiveness

There can be some hesitation to implement an accommodation that has never been implemented before. The uncertainty of not knowing if a change will affect business operations, or enable performance of job duties, or if the accommodation will be burdensome to provide, can affect the decision of whether to accommodate an employee. Sometimes employers are uncomfortable implementing accommodations because they do not want to be locked into a situation that may not work. One way to ease this apprehension is to implement a trial period to test the effectiveness of an accommodation. It is possible to test and discontinue accommodations if not effective or they become an undue hardship. When testing accommodations, it is suggested that a written agreement be drafted that makes clear that the accommodation is being allowed temporarily, notes how long the test period will last, describes how the accommodation (and in-turn, job performance) will be monitored, and indicates what will happen if the accommodation is not effective or creates undue hardship.

There is no standard process for monitoring accommodations for effectiveness. Sometimes employers are unaware of the types of questions or concerns that may need

to be addressed. It can be useful to follow a checklist or use a form to guide and document the process. JAN has developed a **sample** form to be used as a guide when monitoring accommodations. This form may be customized to gather information relevant to each unique situation. Please note that this sample form is to be used as a guide only and is not legal advice. If legal advice is needed, contact a legal service.

[Download sample form \(.doc\)](#)

Temporary Impairments and Temporary Accommodations

The ADA does not generally cover what would be considered *minor*, temporary conditions (such as a cold, the flu, a minor broken bone, etc.). However, the duration of an impairment does not alone determine disability. Per the ADA Amendments Act (ADAAA) of 2008, a temporary condition can be an actual disability if the condition is “sufficiently severe.” The effects of an impairment lasting or expected to last fewer than six months can be substantially limiting within the meaning of the ADAAA ([EEOC, 2011](#)). Thus, employees with temporary impairments can be eligible to receive accommodation in some cases; the key is whether the impairment is sufficiently severe. For more information, see JAN’s [Accommodation and Compliance Series: The ADA Amendments Act of 2008](#).

In the case of a temporary impairment, clearly the accommodation will be temporary as well. For example, there are many situations where a light duty assignment may need to be considered due to temporary, but significant limitations in lifting. One of the most common examples of this is when an employee has a lifting restriction related to an impairment associated with pregnancy. Assuming temporary light duty is an option, it may be possible to temporarily restructure job duties or offer a light duty assignment to an employee who is pregnant and limited in her ability to lift. After recovering from child birth, the employee hopefully will be able to return to normal duties. In this type of situation, a temporary accommodation allows an employee to continue working while managing limitations. It also enables the employer to retain a qualified employee and avoid the expense of hiring a new employee.

Temporary Accommodations to Avoid Adverse Conditions in the Work Environment

Temporary accommodations may be necessary when an individual with a disability is affected by adverse conditions in the work environment. These include situations such as construction and remodeling, equipment repairs (e.g., inoperable elevator), heavy-duty cleaning (e.g., duct work, carpets, floor waxing), or parking lot resurfacing. A short-term, temporary accommodation may be needed due to these kinds of barriers in the work environment. For example, if an employee who uses a wheelchair works on the third floor of a building and cannot access the elevator because it is in need of repair, it may be necessary to provide alternative work arrangements until the elevator is

operational. This might include temporarily moving the employee's workstation to the first floor or allowing work from home or an alternate location.

Temporary Accommodations That Cannot Be Long-Term Solutions

A temporary accommodation may be a solution in some situations when an accommodation can be provided now, but the employer is aware that the accommodation could eventually become an undue hardship. Here the accommodation cannot be guaranteed to be provided long-term, but is currently feasible. For example, a part-time or flexible schedule may be reasonable now, but as staffing and business needs change, these types of accommodations can become an undue hardship based on their impact on operations. An employer may provide an accommodation now knowing that it cannot be a long-term solution due to the likelihood of undue hardship. An individual receiving an accommodation is not necessarily entitled to receive it forever. However, it is important to document and communicate to the employee that the accommodation is intended as a short-term solution and that alternative effective solutions may need to be explored if/when undue hardship results.

Documenting Temporary or Trial Accommodations

Under the ADA, employers are not required to document their effort to provide reasonable accommodation, but documentation is recommended and can be a vital way to demonstrate engagement in the interactive process. Temporary or trial accommodation solutions should be documented in the same manner as any accommodation. If a reasonable accommodation approval form is used to document the terms of an accommodation, this type of form can include information about temporary accommodations. For example, the form might include the following types of questions:

- Is the accommodation being provided on a temporary or trial basis? If yes, why?
- When will the temporary or trial period begin and end?
- Who will monitor the temporary or trial accommodation?
- What action will be taken at the end of the temporary or trial period?

JAN offers a **sample [temporary/trial accommodation approval form](#)**.

If an approval letter is more the employer's style than a form, below is *sample* language to consider including in the body of a letter:

This letter serves to inform you that your request for [list accommodation(s)], requested on [date], has been approved on a temporary basis and will be in effect until [date]. We are providing this accommodation on a temporary basis [for XYZ reason(s)]. At the completion of the temporary/trial time period, the accommodation will be reviewed to determine [if it is still needed/if it is

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effective/can continue to be provided without posing an undue hardship/alternative or additional accommodations are necessary.]

Overall, temporary or trial accommodations can be beneficial for employers and employees alike. Implementing temporary accommodations allows for time to properly research an effective accommodation, offers an opportunity to test an accommodation before implementing it on a long-term basis, and can keep workers productive rather than out on a leave of absence. For more information about providing reasonable accommodations and engaging in the interactive process under the ADA, please visit AskJAN.org or contact JAN to speak with a consultant.

References

Equal Employment Opportunity Commission. (2002). *Enforcement guidance on reasonable accommodation and undue hardship under the Americans with Disabilities Act*. Retrieved March 4, 2016, from <http://www.eeoc.gov/policy/docs/accommodation.html>

Equal Employment Opportunity Commission. (2011). *Regulations to Implement the Equal Employment Provisions of the Americans With Disabilities Act, as Amended*. Retrieved March 4, 2016, from <https://www.federalregister.gov/articles/2011/03/25/2011-6056/regulations-to-implement-the-equal-employment-provisions-of-the-americans-with-disabilities-act-as>

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