

Accommodations in Times of Uncertainty: Disability Accommodations for Students and Employees



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Agenda



- Speaker Introductions
- Background on Accommodations Law
- Discussion of Accommodations with Hypotheticals
- Strategies and Practice Considerations
- Questions and Answers



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Students – Legal Requirements



Federal laws...

- require institutions to *reasonably accommodate*
- known *disabilities*/physical or mental limitations of students
- who are *otherwise qualified* to meet academic standards

...unless doing so would be an *undue hardship* on the program or activity.



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Students – Reasonable Accommodations



- Determining whether an accommodation is reasonable entails a fact-specific inquiry considering, among other things:
 - effectiveness of the accommodation; and
 - cost to the institution.
- Accommodation is not reasonable if it would:
 - require a fundamental change to the curriculum; or
 - entail an undue financial or administrative burden.



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Students – Examples of Accommodations



Common examples include:

- early enrollment options (to allow time to effect accommodations);
- rescheduling classes to a more accessible location;
- substitution of courses required for completion of degree requirements;
- preferential seating;
- permitting service animals in the classroom;
- providing outlines or summaries of class lectures; and
- extended time for testing.



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Employees – Legal Requirements



Federal laws...

- prohibit institutions from discriminating against *qualified individuals* because of their *disabilities*; and
- require institutions to provide qualified individuals with *reasonable accommodations*

...unless doing so would be an *undue hardship*.



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Employees – Reasonable Accommodations



- Institution must:
 - identify the precise limitations resulting from the disability; and
 - reasonable accommodations that could overcome those limitations.
- Institution is not necessarily required to provide the employee's preferred accommodation.



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Employees – Examples of Accommodations



Common examples include:

- job restructuring;
- part-time or modified work schedules;
- reassignment to a vacant position;
- acquisition or modifications of equipment or devices;
- appropriate adjustment or modifications of examinations, training materials, or policies;
- provision of qualified readers or interpreters;
- unpaid leave; and
- remote work.



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Addressing Accommodation Requests in a Quickly Evolving Landscape



Even in this new normal, the basic accommodation framework applies for both employees and students:

- Document the disability
- Engage in an “interactive process”
 - Identify the precise limitations of the disability; and
 - Identify potential reasonable accommodations that could overcome limitations and provide equal opportunity for the participation of qualified handicapped students.



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COVID – It’s been a long haul already



- Long COVID can be a disability under the ADA and Section 504 if it substantially limits one or more major life activities...

“Businesses or state or local governments will sometimes need to make changes to the way they operate to accommodate a person’s long COVID-related limitations.”

- *Guidance on Long COVID as a Disability Under the ADA, Section 504 and Section 1557 - US Department of Health and Human Services, US Department of Justice, July 26, 2021*

- The COVID diagnosis alone does not qualify as a disability if the symptoms do not substantially limit one or more major life activities.



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“Post-Acute COVID-19 Syndrome” (Long COVID) – Special Considerations



Students may not recognize symptoms as related to Long COVID and may delay seeking assistance from disability services.

- Institutions are not obligated to provide retroactive accommodations.
- Needs for accommodation may be much broader than academic adjustments.



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New Normal – New Limitations



COVID health and safety measures have resulted in new requests for accommodations for previously undisclosed disabilities:

- Face mask requirements have impacted individuals with PTSD and others with hearing impairments
- Vaccination requirements have impacted individuals with contraindications for the vaccine
- Additional screen time for remote instruction has impacted individuals with ADHD



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Employee Hypothetical



- Institution imposes face mask requirement in work setting where workers cannot maintain six foot social distancing.
- Employee requests exemption from face mask requirement due to PTSD and life-threatening heart palpitations if he is required to cover his face for the duration of his twelve hour shift.
- How would you handle?



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The Interactive Process – Practice Pointers



- No blanket policies related to accommodations; case-by-case assessment is required.
- Accommodations address the employee's disabilities and are not required to protect the health of others (e.g., employee's family members).
- Student accommodations should ensure equal access to programs but do not guarantee student success.



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Addressing Accommodation Requests in a Quickly Evolving Landscape



- Reasonable accommodations must be provided unless providing such an accommodation would create an undue hardship or if the modification would fundamentally alter the educational program.
- Institutions are not obligated to provide the specific accommodation requested by an employee or a student.



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Student Hypothetical



- Student with underlying health condition presents medical documentation which recommends that anyone on campus who will be within six feet of the student be masked.
- Student is a full-time, residential student who lives in an on-campus Greek house and is an active participant in intramural basketball.
- How would you handle?



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Remote Work as a Reasonable Accommodation



- Pre-pandemic the suitability of remote work as an accommodation was not established.
- Post-pandemic it will be harder to establish that the essential functions of a position require an employee's physical presence on site if the employee recently demonstrated the ability to successfully perform their job remotely over an extended period.



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Remote Work – Practice Points



- Establish a clear policy regarding remote work/instruction and apply it consistently.
- Identify jobs that require on location work as an essential function in institution job descriptions



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Employee Hypothetical



- Institution which values high student/faculty interactions has returned to relatively normal operations and informed faculty that all classes will be taught on residential campus. Faculty with disabilities who cannot come to campus may apply for leaves of absence.
- Faculty assert academic freedom and the independent authority to determine the method of delivery of instruction.
- Faculty inform Provost that faculty with underlying health conditions will not be taking leaves of absence but, instead, will be recording their lectures on their laptops at home and projecting those recordings at class time as a substitute for in-person instruction.



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Student Accommodations in a Pandemic



Federal regulations recognize the obligation of recipients of federal funds to modify academic requirements as are necessary to ensure that requirements do not discriminate based on disability unless the recipient can demonstrate that an academic requirement is essential to the instruction being pursued by the student or directly related to any licensing requirement.



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Remote Instruction



- On certain campuses instruction in a residential setting may be considered an essential function of the academic program and allowing remote instruction would be considered a fundamental alteration of the academic program.
 - This position may admittedly be recognized as a blanket limitation and not consistent with the obligation for case-by-case assessment.
- Other institutions have already adjusted to on-line instruction.



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Remote Instruction – Practice Points



Approving remote instruction as a reasonable accommodation may require additional considerations due to altered practices:

- Increased screen time may be challenging for students with attention issues
- How will issues of confidentiality be addressed?



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Strategies and Practice Considerations - Navigating Implementation



- Highly emotional stakes
- Handling disappointed individuals
- Legal and political hurdles
- Union expectations



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QUESTIONS?



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