Larkin

# A Winning Game Plan for Complex & Long Term ADA Requests

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# Presenters



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# Agenda

1. Why provide reasonable accommodation

2. How to apply the KISS Principle to assess requests for reasonable accommodation

3. EEOC FAQs for Federal Sector about Telework Accommodations for Disabilities

4. Examples, examples, and more examples

- Activity of Daily Living
- Neurodiversity - Autism
- Leave longer than can be reasonably accommodated
- Mental health leave, returning to work with long term limitations
- Multiple leave extensions where leave appears indefinite...And more!

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# Reasons to provide reasonable accommodation

## EMPLOYER POSITIVES

- Legal compliance
- Talent retention & inclusion
- Improved productivity
- Positive workplace culture
- Enhanced reputation
- Possible tax incentives
- Avoid discrimination claims and mitigate should they occur

## EMPLOYEE POSITIVES

- Equal access to employment
- Increased job retention
- Enhanced job performance
- Improved well-being
- Opportunities for advancement
- Dignity and independence
- Improved sense of inclusion for everyone

# Society for Human Resource Management (SHRM)

IT COSTS...

## 33% to 200%

of an employee's annual salary to replace them

SHRM, Toolkit, "Improving Employee Retention and Reducing Turnover," August 17, 2026

## 70%

of HR professionals face challenges recruiting for full time positions

SHRM, "SHRM Unveils 2026 Talent Trends Report: Data-Driven Insights for the Future of Work" April 27, 2026

**The key reasons a focus on reducing turnover makes sense:**

- Turnover is costly
- Unwanted turnover affects the performance of an organization
- As the availability of skilled employees continues to decrease, it may become increasingly difficult to retain sought after employees

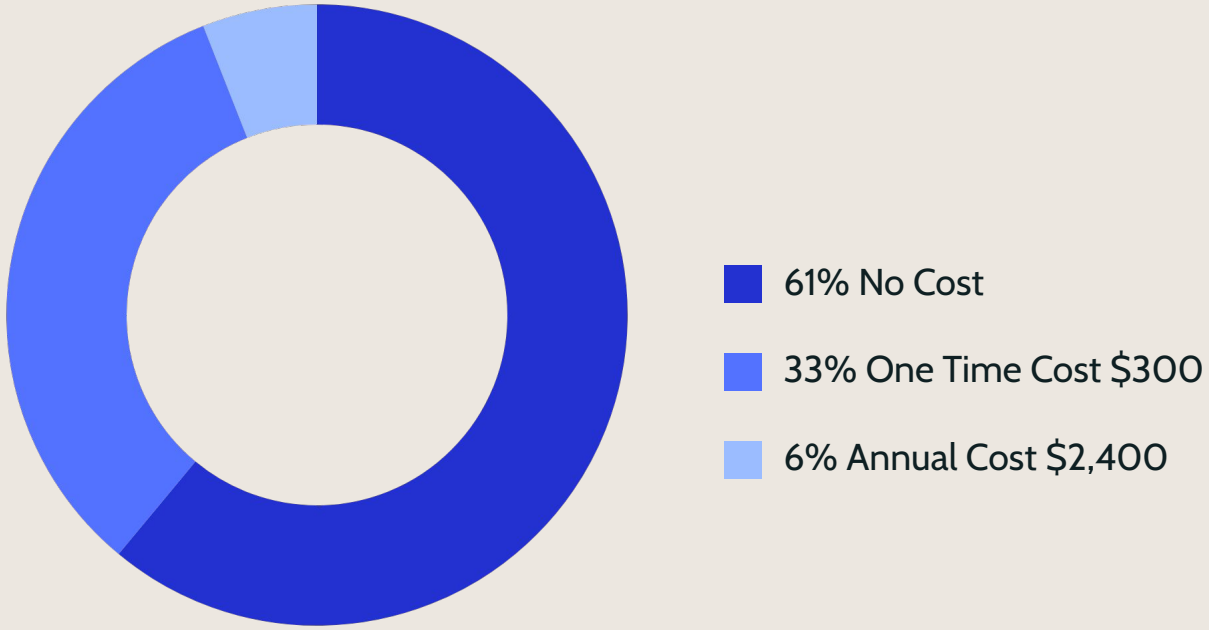
# Cost of accommodation

**61%**

Of accommodations have no cost

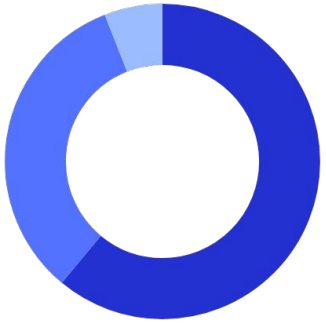
Job Accommodation Network
January 1, 2019 – December 31, 2024

MEDIAN COST OF ACCOMMODATION



# Employer cost estimate

MEDIAN COST OF ACCOMMODATION



- 61% No Cost
- 33% One Time Cost $300
- 6% Annual Cost $2,400

## If 2% of workforce is granted a disability accommodation...

1,000 EMPLOYEES

**2% = 20**

COST BREAKDOWN

- **12** have no cost
- **7** have one time cost (median $300)
- **1** has ongoing cost (median $2,400)

10,000 EMPLOYEES

**2% = 200**

COST BREAKDOWN

- **122** have no cost
- **66** have one time cost (median $300)
- **12** have ongoing cost (median $2,400)

02

# How to assess requests for reasonable accommodation



02 · HOW TO ASSESS REQUESTS

# Play ball!

**Quickly determine eligibility for reasonable accommodation under ADA**

- Request supporting medical documentation
- When in doubt, tie goes to the runner – this means accommodate according to the ADA

**Assess each request for its impact on employer's operations**

**Approve quickly if it is easy to do so**

**Communicate directly with the employee and get health care provider's input, if necessary**

**Document the process as it occurs, from beginning to end**

# What's a major life activity?

| | | | | | |
|---|---|---|---|---|---|
| Caring for oneself | Sleeping | Breathing | Lifting | Immune System | Neurological |
| Performing manual tasks | Seeing | Hearing | Walking | Normal Cell Growth | Respiratory |
| Communicating | Bending | Eating | Thinking | Digestive | Brain |
| Concentrating | Standing | Learning | Speaking | Bowel | Circulatory |
| **Working**** | Sitting | Reading | Reproductive | Bladder | Endocrine |

**"Working" is a major life activity and under FEHA the ability to perform a specific position is effected. Under ADA, the disability must affect the person's ability to obtain a broad class of employment.

# What medical conditions qualify for reasonable accommodation under ADA?

*(Non-exhaustive list)*

- Autism
- Intellectual Disabilities
- Blindness
- Bipolar Disorder
- Major Depressive Disorder
- Mobility Impairments that require use of a wheelchair
- Diabetes
- Post-Traumatic Stress Disorder (PTSD)
- Obsessive-Compulsive Disorder (OCD)
- Partially or fully missing limbs
- Deafness
- Human Immunodeficiency Virus (HIV) Infection
- Muscular Dystrophy
- Schizophrenia
- Cancer
- Epilepsy
- Cerebral Palsy
- Multiple Sclerosis



# Best practices

## Assessing what is reasonable to approve

1



Respond expeditiously to communicate what is approved

2



When unsure if an accommodation is reasonable, try it

3



Continue trying to accommodate until all possibilities are exhausted

# Best practices

## Accommodating long term needs while working

1



Approve the accommodation long term if it is reasonable to do so

2



Set expectations

3



Only request new medical documentation when it is necessary to identify limitations that have changed and require reasonable accommodation. Do not reconfirm a disability impairment exists

# What about leave of absence when medical provider says they can work?

Where two or more forms of accommodation are possible, employer can choose among effective accommodations

**Leave of absence is not considered equally effective...**
to a reasonable accommodation that keeps the employee working

**Leave of absence is appropriate...**
in situations when the individual cannot perform their job without accommodation and it will take time to implement the accommodation or there are safety concerns

https://askjan.org/articles/Leave-as-an-Ineffective-Accommodation.cfm * https://www.eeoc.gov/foia/eeoc-informal-discussion-letter-50

# Medical documentation – second opinions



Medical documentation - employers may make disability related inquiries and require medical examinations only if they are **"job related and consistent with business necessity"**

**Reasonable belief based on objective evidence that either:**

1. An EE's ability to perform essential functions of their job will be impaired by a medical condition,
2. An employee will pose a direct threat to themselves or others due to a medical condition

Second opinions - only if no or insufficient documentation has been received

https://www.eeoc.gov/laws/guidance/enforcement-guidance-disability-related-inquiries-and-medical-examinations-employees

https://www.eeoc.gov/laws/guidance/job-applicants-and-ada

# Find a way to say “yes.”

## Employers with strong stay-at-work / RTW programs report:



**20-50%**

shorter disability durations



**25-60%**

cost reductions

IBM reported saving $21.8M in one year through early accommodation and reintegration strategies.
(DMEC and Integrated Benefits Institute)

JAN resource on Stay at Work/RTW programs: https://askjan.org/topics/return.cfm?csSearch=26454195_1

# 03

# EEOC FAQs on telework accommodations for disabilities

## Does the Rehabilitation Act require agencies to continue all previously granted recurring or full-time telework accommodations?

No.

- An employer must assess individualized circumstances to determine if there remains a need for accommodation and whether alternative reasonable accommodations might effectively meet those needs
- The employer has the ultimate discretion to choose between effective accommodations
- It is not the employee's preference that determines if they should be allowed to telework

# When and how may an agency reevaluate and modify a previously granted recurring or full-time telework accommodation?

Telework is only required if it effectively enables the employee to perform one or more essential job functions

- ➔ "If reevaluation and individual assessment demonstrate that telework is not necessary under the Act, the agency may replace a previously granted recurring or full-time telework accommodation with a reasonable and effective in-office option (or combination of options)."
- ➔ "This can include, but is not limited to, assistive devices, modified equipment, environmental modifications (sounds, smell, light, etc.), job restructuring, modified or flexible work scheduling, etc. It can also include a reduction in telework, combined with in-office accommodations, provided the net result is still reasonable and effective."

# Is an agency required to provide recurring or full-time telework to employees with disabilities for reasons unrelated to work?

Telework that is for the employee's personal benefit without enabling them to perform one or more essential job functions does not qualify for reasonable accommodation

- ➔ For example, telework requests that "would help them manage their condition, mitigate their symptoms, or improve their quality of life" without explaining how telework also would enable them to perform essential job functions does not establish an entitlement to telework as reasonable accommodation.
- ➔ "To say.... an employer must provide accommodations that only mitigate symptoms of a disability without also enabling the performance of essential functions is indistinguishable from requiring the agency to directly treat the disability, something courts and the EEOC have repeatedly stressed it need not do."

## An employee asserts they experience anxiety or other disability-related symptoms when working in the office. Is the agency required to provide recurring or full-time telework as an accommodation?

- ➔ "[T]he Act does not create a general right to be free from all discomfort and distress in the workplace, including anxiety"
- ➔ Determine by observing employee in the workplace
- ➔ If there is a material barrier, consider reasonable accommodation including in-office measures, and telework if all other options are demonstrably ineffective

## Is an agency required to provide recurring or full-time telework to disabled employees with difficult or lengthy commutes?

Generally, no.

- ➔ It's the employee's responsibility to arrange how they will commute to and from the office unless the employer assists others who are not disabled with their commutes
- ➔ Still may need to provide other reasonable accommodations, such as flexible work scheduling or temporary telework to allow employee time to make arrangements to report to the office

# Long term WFH requests

## Evaluating Long Term Requests

- **Essential functions**
  What essential function(s) is affected?
- **Schedule scope**
  Is the request to work from home full time or part time?
- **Reasoning**
  Why is work from home being requested?

## Alternatives & Trials

Review each request and identify the restrictions or limitations

- **In-office feasibility**
  Are there effective alternatives that enable the employee to be in office?
- **Trialing accommodations**
  Is long term approval is feasible? When in doubt, approve a trial period

# Revisiting long term accommodations

## When an approved long-term accommodation must be revisited

DON'T

**1 Don't reconfirm the disability**

Don't ask the employee to confirm a disability exists. Doing so would be noncompliant with the ADA.

START HERE

**2 Notify the employee and explain why**

Communicate that the approved accommodation is no longer effective, and explain why.

NEXT

**3 Re-engage the interactive process**

Work together to determine what alternative accommodation may be reasonably approved.

**4 Throughout the process: limit requests for medical documentation**

Only request clarification or an update on the employee's limitations, or ask whether a potential alternative would be effective, if you're unsure based on your conversations with the employee.

# 04

# Examples

EXAMPLE #1

# Approved accommodations were working effectively. Then, the manager changed

CASE BACKGROUND

## Self-service checkout attendant with neuropathy

Worked successfully for 3 years with approved accommodations:

- ➔ **Mobility support:** using a walker on shift
- ➔ **Rest periods:** ability to sit periodically

MANAGER ALLEGEDLY:

| | |
|---|---|
| **Denied access.** | Denied access to the previously approved accommodations. |
| **No engagement.** | Failed to engage in an interactive discussion process to determine if granted accommodations were reasonable or if alternatives existed. |
| **Forced leave.** | Forced employee onto an unwanted/unneeded leave of absence until she could return without any accommodation. |
| **Terminated** | Terminated employment when medical documentation did not support the need for the forced leave. |

EEOC Sues Kroger for Firing Employee with Disability After Stripping Her Of Existing Accommodation | U.S. Equal Employment Opportunity Commission

EXAMPLE #1

Approved accommodations working effectively
Then, the manager changed

**“An employer, in consultation with an employee facing a disability, must consider whether an accommodation is reasonable,” EEOC Senior Trial Attorney Claudia Molina said. “Revoking a previously granted reasonable accommodation can violate the ADA.”**

EXAMPLE #1

# Approved accommodations were working effectively. Then, the manager changed

## EEOC SEEKS

- ➔ Back pay and instatement or front pay for the aggrieved employee
- ➔ Compensatory & punitive damages in amounts to be determined at trial
- ➔ Permanent injunction enjoining Kroger from engaging in future disability discrimination
- ➔ "An order requiring Kroger to institute and carry out policies, practices & programs which govern requesting, processing and granting reasonable accommodations for disabilities, and which eradicate the effects of Kroger's alleged discriminatory employment practices."

## TAKEAWAYS

- ➔ If accommodations are working, take them into account
- ➔ Document what has actually changed, not just a change in leadership
- ➔ Reengage in the interactive process if there is concern about the approved accommodation
- ➔ Have a process that involves HR before risky decisions are made

EXAMPLE #2

# Revisiting work from home

INITIAL ACCOMMODATION

A work from home accommodation was granted indefinitely for a Senior Engineer in Technology.

Due to an internal work from home policy change where employees were called back to the office, employees who had WFH accommodations were asked to revisit the accommodation.

RESULTS

| | |
|---|---|
| **Review Request** | Updated documentation requested due to a change in business operations. |
| **Medical Confirmation** | Updated documentation confirmed ongoing restrictions, long term. |
| **Final Outcome** | The business granted long term WFH.* |

*https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada#general

EXAMPLE #3

# Restroom accessibility: The Challenge

THE CASE

An individual with limited arm strength and mobility asked their employer to install a bidet toilet in the employee restroom because they had difficulty using toilet paper.



EXAMPLE #3

# Restroom accessibility: The Outcome

OUTCOME

Although not clearly defined by the ADA, the employer opted to furnish a bidet attachment to the existing facilities. This accommodation limited break time in the restroom and was effective in meeting the needs of the individual.



EXAMPLE #4

# Disabled employee promoted

1

**Initial Situation**

Sam has diabetes and related neuropathy. To manage his limitations, he was approved to use a sit/stand desk.

2

**Promotion & Role Change**

Sam was promoted into a national manager position requiring travel and attending conferences throughout the year.

3

**New Functional Impact**

Walking and lifting/pushing/pulling limitations didn't impact his former role, but now impact essential functions of the new role.



KEY FOCUS AREA

When job duties change, existing accommodations must be re-evaluated against the new essential functions.

EXAMPLE #4

# Disabled employee promoted

## To meet the requirements of the new role, Sam requested:



### 1. Travel buffer day

A travel buffer day after a travel day to work and participate in meetings virtually, and respond to emails to regain strength and energy.



### 2. Motorized wheelchair support

Motorized wheelchair while attending events with heavy walking demands of more than 6,000 steps because Sam is unable to self propel a wheelchair. At the airport, wheelchair assistance provided by the airport is adequate.



**Takeaway**

Re-evaluating long term accommodations may be necessary if an employee's role changes. Accommodation needs may change, stay the same, or no longer be necessary.

EXAMPLE #5

# Terminal illness - ALS

- Amyotrophic lateral sclerosis (ALS) is also known as Lou Gehrig's disease, Motor Neuron Disease (MND), and Charcot's disease
- Typically affects people between ages 40 & 70
- Around 30,000 people are living with ALS in the U.S. at any time
- It is a progressive disease of the nervous system that affects the brain and spinal cord, paralyzing muscles needed to move, speak, eat and breathe
- There are currently no treatments to stop or reverse the disease progression
- The average life expectancy upon receiving the diagnosis is two to five years



EXAMPLE #5 ·

# Terminal illness - ALS

PROGRESSION

| | |
|---|---|
| **March 2025** | Software Developer notified employer of diagnosis and was approved for intermittent time off under FMLA |
| **December 2025** | Accommodations were requested while working<br>➔ No prolonged sitting<br>➔ No travel<br>➔ Flexible schedule to complete daily tasks<br>➔ Participate in virtual or in-person meetings only by written messaging such as by text or instant messaging; no using voice<br>➔ No phone call conversations |
| **March 2026** | Requested mouse controlled with mouth called a MouthPad |
| **May 2026** | Requested continuous leave of absence, indefinitely |

EXAMPLE #5

# Terminal illness - ALS

TAKEAWAYS

- The ability to reasonably accommodate depends on the essential function affected by the limitation
- Say “yes” to reasonable accommodation whenever possible
- When in doubt, do a trial accommodation to assess its actual effectiveness

EXTRAS

- An employer does not have to request medical documentation with each new accommodation request
- Manage performance separately from the reasonable accommodation

# Is LOA reasonable?

| FMLA is an entitlement once eligibility criteria are met | Leave as an accommodation is not an entitlement |
| --- | --- |
| How long is the request for leave? | Which job duties can the employee still perform? |
| How long can be approved before it becomes overly burdensome on the business? | Can the essential functions of the job be performed remotely? |
| Can someone temporarily backfill the employee's position during the leave? | Are there alternative accommodations that if implemented, would enable the employee to return to work in some capacity? |
| What is the impact of the employee's absence on their coworkers? On operations? | Can the employee's position be held for the requested duration of the leave? |

EXAMPLE #6

# Leave beyond reasonable duration

1. EMPLOYEE PROFILE

Charles is a sales manager with a team of 10 agents reporting to him

2. EXTENSION REQUEST

Requested to extend continuous medical leave for 6 months beyond when FMLA exhausts

3. EMPLOYER DETERMINATION

Employer determines they cannot reasonably extend the leave more than 2 months beyond FMLA



EXAMPLE #6

# Leave beyond reasonable duration

## Employee exhausted FMLA and requested 6 more months of leave as an ADA accommodation.

**Months 1–2: Approved**
Keeps the employee employed and allows time to improve

**Months 3–6: What are the options as month 2 ends?**

AS MONTH 2 ENDS

### 1 Interactive process

- Can the employee return to work in some capacity?
- Is it reasonable to extend the leave as originally requested?

IF NEITHER IS REASONABLE

### 2 Check for open positions

Look for a vacant or soon-to-be-vacant position the employee is qualified for and that can be held. Reassign if one exists.

IF NO POSITION EXISTS

### 3 Consult legal counsel

You've met your obligation to try to accommodate. Work with legal counsel before taking further action.



### Document all efforts throughout the process

Record the interactive process and the positions you considered and why they weren't reasonable, so you can show a good-faith effort to accommodate.

EXAMPLE #7

# RTW from mental health LOA

| REQUESTED ACCOMMODATION | GRANTED ACCOMMODATION |
| --- | --- |
| Work from home 4 hours per day the first two weeks | Work in office 9AM to 1PM the first two weeks |
| No working more than 8 hours | Self manage time to maintain an 8-hour workday with flexible start and end times to allow for extra breaks and to attend monthly appointments. Expected to start work by 10AM once working full time |
| Flexible start and end times to allow for extra breaks to manage symptoms and to attend monthly appointments | Inform manager at least a day in advance when working different hours than 8AM to 5PM including what the work hours will be and when attending appointments |
| Daily focus time without interruption, one hour in the morning and one hour in the afternoon | Daily focus time of one hour in the morning and one hour in the afternoon |
| Attend management meetings virtually even though he is in the office | Attend management meetings virtually and meet in person for one-on-one meetings with manager, and with direct reports |

EXAMPLE #8

# Multiple LOA extensions, appears indefinite

CASE BACKGROUND

Charles had **3 extensions** of continuous leave before being released to RTW

Charles worked **3 days** on reduced schedule before resuming continuous LOA

LOA was **temporarily extended** while the interactive process continued

**ADDITIONAL RESPONSES FROM HEALTH CARE PROVIDER:**

Unable to communicate with and supervise others

Unable to manage workload without becoming overwhelmed

Past time on leave was not enough to stabilize symptoms

Extension of continuous leave is recommended for 4 months

There is **50% certainty** at this time that Charles will be capable of returning to work at the end of 4 months

EXAMPLE #9

# Long term intermittent leave

## What happens when there is a long term need for intermittent leave?

### SCENARIO

Employee works 5 days a week, Monday-Friday and has a chronic condition that requires them to attend appointments monthly. They also need intermittent time off for flare-ups. They request intermittent leave for such instances on a long term basis.

### OUTCOME

Employer reviews the employee's role and how intermittent leave would impact their operational needs. They determine the position requires regular and predictable attendance, and offer an alternative work schedule instead.



**Reminder:** Be sure to account for an employee's eligibility for leave under FMLA or a state leave law

EXAMPLE #10

# Shortened leave - equipment

SCENARIO

A warehouse worker returned to work with lifting restrictions and a reduced schedule for the first 3 weeks, ramping up to full time.

SOLUTION

| | |
|---|---|
| **Reduced schedule leave** | The employer provided a reduced schedule leave as an accommodation for the employee to ramp up to full time. |
| **Lifting devices** | The employer identified lifting devices to assist with the employee's lifting restrictions. |

EXAMPLE #11

# Neurodiversity

## LIMITATIONS

### Ability constraints:

- Communicate effectively
- Complete tasks
- Perform executive functions
- Slowed ability to learn new tasks

## REQUESTED ACCOMMODATIONS

### Long-term requests:

- More time for hands on instruction and training
- More consistent schedule or structure to workdays
- Extended time to learn new tasks and get questions answered
- More 1:1 learning to minimize distractions
- Written instructions to reference

## AFFECTED JOB FUNCTIONS

- Collaborating with onsite teams and internal departments to ensure smooth operational workflows
- Participating in end-user training sessions and supporting platform usage
- Documenting & communicating user feedback to internal teams for process improvement
- Proactively learning & contributing to operations in preparation for more advanced business analysis roles
- Traveling up to 90%

EXAMPLE #11

# Neurodiversity: potential outcomes

### INTERACTIVE PROCESS & SUFFICIENT INFO

If employee requests but doesn't submit sufficient information, they can be expected to work without accommodation and meet standards.

"A request for reasonable accommodation is the first step in an informal, interactive process between the individual and the employer." — EEOC

### ESSENTIAL JOB FUNCTIONS & PERFORMANCE STANDARDS

An employer can choose to provide accommodations, but it is generally **unreasonable to remove an essential job function** or lower performance standards or metrics.

### TRIAL PERIODS & ALTERNATIVES

**Trial Period:** If unsure an accommodation will be effective or reasonable, do it for a short trial period and reassess.

Continue to modify, tweak, or try alternatives until options are exhausted or effective solutions work.

### ACCOMMODATION OF LAST RESORT

**Job Reassignment** is considered the accommodation of last resort.

Reference: EEOC Sutter Roseville Settlement

# References & resources


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# Questions?



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# Thank you

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