

# Navigating Workplace Accommodations

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Navigating workplace accommodations can be a difficult task for employers and HR professionals. With significant legal ramifications for failing to navigate these situations correctly, Oregon employers should remain diligent and informed about what their obligations are under both federal and state law.



## When Is an Employee Entitled to a Workplace Accommodation?

An employee is entitled to a workplace accommodation when they have a disability which qualifies under one of any number of federal or state laws — including the Americans with Disabilities Act (ADA), the Family Medical Leave Act (FMLA), the Oregon Family Leave Act (OFLA) or any other state-specific law covered under Oregon statute (specifically those covered under ORS 659A). FMLA and OFLA leave may be taken for a “serious health condition,” which may also qualify as a “disability” under federal and state disability laws.

The ADA and Oregon’s statutory scheme covering qualifying disabilities require employers to provide reasonable accommodations to persons with disabilities unless doing so would impose an undue hardship or pose a direct threat to the safety of the employee or others. A person with a disability is an individual who has a physical or mental impairment that substantially limits one or more major life activities, or an individual who is perceived as having such an impairment. An employer’s statutory obligations begin when the employer becomes aware of the need for an accommodation. Ideally, an employee with a disability requests an accommodation, but even if they do not, an employer is required to initiate the process if they are *aware* that an employee needs an accommodation.

## What Accommodations Must Employers Provide?

Reasonable accommodations. A reasonable accommodation is a modification or adjustment that enables a person with a disability to have the same opportunity that an applicant or employee without a disability enjoys. Employers must provide a reasonable accommodation that enables a person with a disability to apply for a job, perform the essential functions of a job or enjoy the same benefits and privileges of employment as other employees.

What counts as a reasonable accommodation under the circumstances depends on a number of different factors — including the nature of the work, the job duties of the employee and the expense associated with the requested accommodation. Generally, an accommodation is reasonable unless it would create an “undue hardship” or “direct threat.” An undue hardship is “an action requiring significant difficulty or expense” in light of the employer’s size, available resources and nature

of the business. A direct threat is a “significant risk to the health or safety” of the individual requesting the accommodation or others in the workplace.

Many times, an appropriate reasonable accommodation is obvious (e.g., an employee who uses a wheelchair requests an adjustment in the height of her desk). When an appropriate accommodation is not obvious, the Equal Employment Opportunity Commission (EEOC) recommends employers engage in an “interactive process.” In other words, the employer and employee with a disability work together to determine an appropriate accommodation through a flexible, interactive process. The interactive process obligation is triggered by an employer’s knowledge of the need for an accommodation, and the EEOC recommends employers:

- (1) Analyze the particular job involved and determine its purpose and essential functions;
- (2) Consult with the individual with a disability to ascertain the precise job-related limitations imposed by the individual’s disability and how those limitations could be overcome with a reasonable accommodation;
- (3) In consultations with the individual to be accommodated, identify potential accommodations and assess the effectiveness each would have in enabling the individual to perform the essential functions of the position; and
- (4) Consider the preference of the individual to be accommodated and select and implement the accommodation that is most appropriate for both the employee and the employer.

## Can an Employer Terminate an Employee Who Has a Disability?

Yes, but only if the employer can show that the employee cannot perform the essential functions of their job with or without an accommodation. Employees who are unable to perform the essential functions of their job with or without an accommodation are not considered qualifying individuals under federal and state disability laws.

However, employers should exercise extreme caution when considering taking any adverse employment action (including termination) against an employee who has a disability or who has recently returned from medical leave. Employers should err on the side of being as accommodating as possible — and should ensure that they have adequately exhausted the interactive process prior to making a definitive determination that the employee is unable to perform the essential functions of their position, even with an accommodation.

Navigating workplace accommodations is extremely tricky. When navigating this fact-intensive process, we encourage employers to reach out to counsel with questions to ensure compliance with applicable laws.

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