

## Reasonable Accommodations: Employer Defenses to Accommodation Claims

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Under the Americans with Disabilities Act (ADA), an employer with 15 or more employees is required to provide a covered job applicant or employee with a reasonable accommodation in most cases. A reasonable accommodation is "any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities."

Employers may be able to deny accommodation requests or defend against legal claims of failure to accommodate by citing recognized defenses. The ADA and its implementing regulations recognize a number of defenses, but the most relevant to the question of accommodation are undue hardship and direct threat.

### Undue Hardship

Under the ADA, an employer is not required to make reasonable accommodations that would impose an undue hardship on the employer. The burden is on the employer to prove an undue hardship. Whether an accommodation will impose an undue hardship is determined on a case-by-case basis. Undue hardship includes any action that is unduly costly, extensive, substantial, disruptive or fundamentally alters the nature or operation of the business.

The ADA and Equal Employment Opportunity Commission (EEOC) regulations identify the following factors to consider when determining whether an accommodation would impose an undue hardship:

- The number, type and location of facilities
- The overall financial resources of the covered entity
- The number of employees employed by the covered entity
- The type of operation of the covered entity, including:
  - composition, structure and functions of the workforce
  - geographic separateness and administrative or fiscal relationship of the facility where the accommodation will be provided
- The effect of the accommodation of the operation of the facility making the accommodation

Further, employers asserting "cost" as a reason for undue hardship should note that the EEOC has routinely said that the cost that must be spent on an accommodation depends on the employer's resources, not on the employee's salary, position or status within the company.

## Direct Threat

Some disabilities pose a direct threat to the health and safety of individuals in the workplace. Where there is no reasonable accommodation available to negate that threat, employers may cite the direct threat defense. A speculative or remote risk is insufficient. The assessment of whether an individual poses a direct threat is based on reasonable medical judgment that may be based on current medical knowledge or the best available objective evidence. Factors considered in assessing whether an individual poses a direct threat include:

- The duration of the risk
- The nature and severity of the potential harm
- The likelihood that the potential harm will occur
- How soon the potential harm may occur

For example, consider a heavy machinery worker with epilepsy. The worker who operated heavy machinery and who has been suffering from seizures might pose a direct threat to his or someone else's safety. If no reasonable accommodation is available (*i.e.*, an open position to which the employee could be reassigned), the employer would not violate the ADA by laying the worker off.

If you have any questions about reasonable accommodations or other employment law matters, please contact George Morrison (610.782.4911; [morrisong@whiteandwilliams.com](mailto:morrisong@whiteandwilliams.com)) or any member of our Labor and Employment Practice Group.

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