

Job-Driven Vocational Rehabilitation Technical Assistance Center (JD-VRTAC)

The Reasonable Accommodation Process for Vocational Rehabilitation Counselors Part 1 of 2

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Objectives:

Part 1 of the Webinar Series

- Briefly review the basics of the ADA (Americans with Disabilities Act) and the definition of disability
- Discuss what is a Reasonable Accommodation (RA)
- Look at the steps of the Interactive Process
- Disability and Employment Data
- Questions



Objectives:

Part 2 of the Webinar Series

- Needs and wants of all the 'players' - *employers, customers, VRCs*
- Strategies and Best Practices for VRCs
- Questions
- Resources for Accommodations



Job-Driven Center Goals

Improve skills of state VR agency staff, other rehab professionals & providers of VR services, who are trained to provide “job-driven” VR services & supports to PWD, employers & customized training providers.

Four Topic Areas:

1. Business Engagement
2. Employer Supports
3. Labor Market Information (LMI)
4. Customized Training Providers

www.explorevr.org



Job-Driven Center Partners

Institute for Community Inclusion (ICI) at Univ. of Massachusetts,
Boston

In Partnership with:

- Jobs for the Future (JFF)
 - Univ. of Arkansas
 - Univ. of Washington
- Council of State Administrators of Vocational Rehabilitation (CSAVR)
 - United States Business Leadership Network (USBLN)
 - Association of University Centers on Disabilities (AUCD)

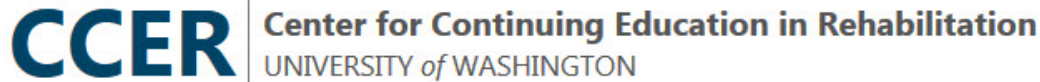
In Collaboration with:

- National Council of State Agencies for the Blind (NCSAB)



University of Washington

Northwest Center



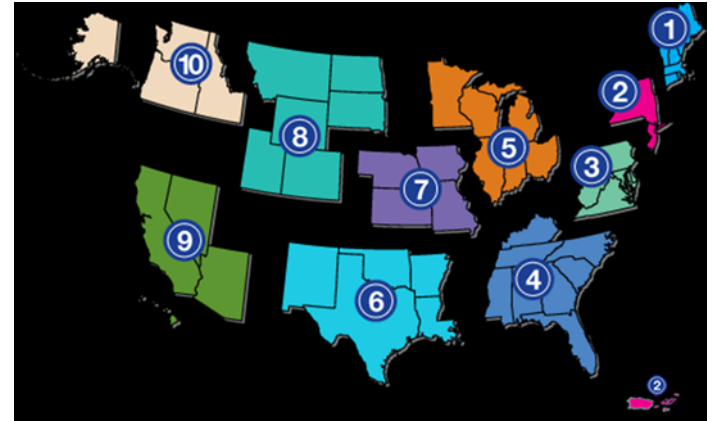
NWADAC Primary Purpose:

- Technical Assistance
- Training
- Material Dissemination
- Research
- Public Awareness



ADA National Network Role and Structure

- 10 Regional ADA Centers
- NW ADA Center - Region 10
 - AK, ID, OR, & WA
- Funded by the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR)
- With the passage of the Workforce Innovation Opportunity Act, NIDILRR has a new home in the Administration for Community Living within the Department of Human Services



Disclaimer

- The information, materials, and/or technical assistance, that are provided by the Northwest ADA Center, is intended as general, and are neither a determination of your legal rights or responsibilities under the ADA or any other law nor binding on any agency with enforcement responsibilities under the ADA.
- The Northwest ADA Center is funded under a grant from the Administration for Community Living (ACL), NIDILRR grant. However, these contents do not necessarily represent the policy of the ACL, and you should not assume endorsement by the Federal Government



Americans with Disabilities Act

- Title I: Employment
- Title II: State & Local Government
- Title III: Places of Public Accommodation
- Title IV: Telecommunications
- Title V: Miscellaneous Provisions



NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT

In accordance with the requirements of title II of the Americans with Disabilities Act of 1990 ("ADA"), the [name of public entity] will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities.

Employment: [name of public entity] does not discriminate on the basis of disability in its hiring or employment practices and complies with all regulations promulgated by the U.S. Equal Employment Opportunity Commission under title I of the ADA.

Effective Communication: [Name of public entity] will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in [name of public entity's] programs, services, and activities, including qualified sign language interpreters, documents in Braille, and other ways of making information and communications accessible to people who have speech, hearing, or vision impairments.

Modifications to Policies and Procedures: [Name of public entity] will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all of its programs, services, and activities. For example, individuals with service animals are welcomed in [name of public entity] offices, even where pets are generally prohibited.

Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a program, service, or activity of [name of public entity], should contact the office of [name and contact information for ADA Coordinator] as soon as possible but no later than 48 hours before the scheduled event.

The ADA does not require the [name of public entity] to take any action that would fundamentally alter the nature of its programs or services, or impose an undue financial or administrative burden.

Complaints that a program, service, or activity of [name of public entity] is not accessible to persons with disabilities should be directed to [name and contact information for ADA Coordinator].

[Name of public entity] will not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the cost of providing auxiliary aids/services or reasonable modifications of policy, such as retrieving items from locations that are open to the public but are not accessible to persons who use wheelchairs.



What is the Definition of Disability?

“Disability” a physical or mental impairment that:

- i. Substantially limits one or more major life activities;
- ii. A record (or past history) of such an impairment; or
- iii. Being regarded as having a disability.*

*ADA Amendments Act of 2008



Disabilities Under the ADAAA (Not Limited) Include:

- Psychiatric Disabilities
- Cancers
- HIV/AIDS
- Seizure Disorders
- Respiratory Diseases
- Diabetes
- Infertility



Who is a Qualified Individual with a Disability?

- Satisfies the skills, experience, education, and other job-related requirements of the position
- Can perform essential functions of the job, with or without a reasonable accommodation

A person is NOT a qualified individual with a disability if they solely have a perceived disability or solely have a record of a disability (no current disability)



What is a Reasonable Accommodation?

A reasonable accommodation is any modification or adjustment to the application or hiring process, to the job, an employment practice, or the work environment that allows *a qualified individual with a disability* to perform the essential functions of the job and enjoy equal opportunity in the workplace.



Equal Opportunity

Equal employment opportunity:

The opportunity to attain the same level of performance or to enjoy the equal benefits and privileges of employment as others.



Employee Responsibilities

- Process must be initiated by the employee with a disability - disclosure required.
- Provide documentation of need for the accommodation if requested.
- Be involved in process of identifying effective accommodation.



Disability Disclosure

- Not required (personal choice) except when requesting reasonable accommodation.
- Reasonable accommodation may be requested verbally or in writing which serves the purpose of disability disclosure.
- Employees or potential employees may request accommodations at any time throughout the hiring or employment process.



Disability Inquiries

- **Application:** Voluntary “Do you have a disability?” checkbox.
- **Interview:** No disability-related questions may be asked.



Disability Inquiries

Post-Conditional Job Offer:

Disability-related questions may be asked and medical exams (consistent with business necessity) may be required. Job offer may not be rescinded solely based on answers.



Disability Inquiries

Employment:

No disability-related questions may be asked. All disability and accommodation information goes in a separate, confidential file.



Interactive Process

- Employers - Recognize when an accommodation request has been made.
- Intended to be informal process between employer and employee to gather information needed to process the request.
- Explore the different accommodation options - input from medical provider can help.

*JAN – Effective Accommodation Practices



What is an Interactive Process?

- The employer may choose among reasonable accommodations as long as the choice is effective.
- The employer may offer alternate suggestions as long as the alternate is equally effective.



What are Some Types of Reasonable Accommodations?

- Modify a job
- Modify a policy
- Modify a facility for accessibility
- Modify tests and training materials
- Provide a product, equipment, or software
- Modify or design a product
- Modify a work schedule
- Obtain a service
- Reassign to a vacant position



When Might an Employer Not be Obligated to Provide a Reasonable Accommodation?

- **Undue Hardship**—When an accommodation is expensive, difficult, disruptive to the work environment, or will fundamentally change the nature of the position.
- **Direct Threat**— A significant risk of threat to the safety of the employee or others that cannot be eliminated or lessened by reasonable accommodation.



Accommodations Facts

- Over 70% of employees with disabilities never request an accommodation*
- Cost effectiveness: 58% of employers reporting cost data paid nothing*
- 74% of employers report that accommodations are effective*

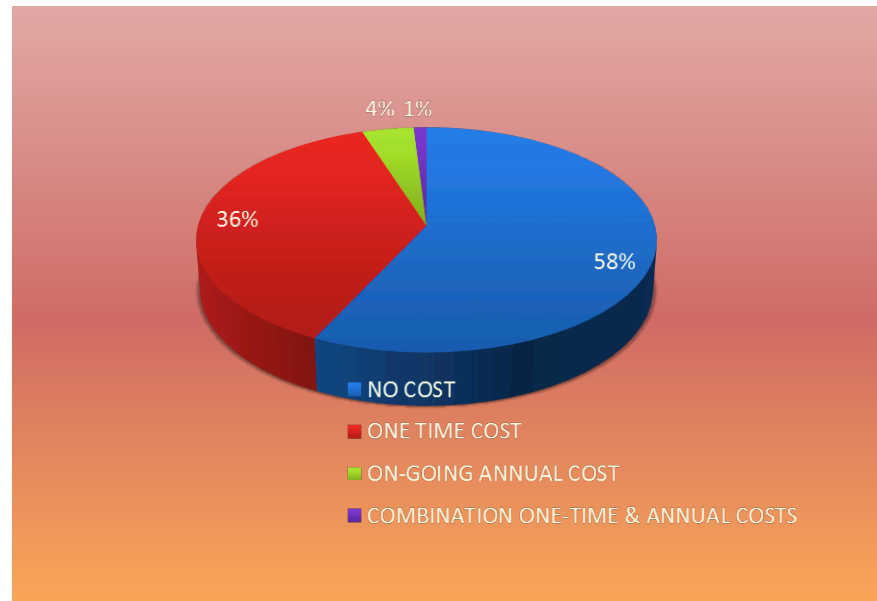
* Job Accommodation Network (Original 2005, Updated 2007, Updated 2009, Updated 2010, Updated 2011, Updated 2012, Updated 2013, Updated 2014, Updated 2015). Workplace accommodations: Low cost, high impact. Retrieved November 30, 2015, from <http://AskJAN.org/media/lowcosthighimpact.html>



Cost of Job Accommodations

Employers report no cost or low cost

Of those that did have a cost, the typical on-time expenditure was \$500



Source: Job Accommodation Network (2015)



Employment Discrimination Charges Filed with (EEOC) or (FEPA)

Most Common Issues on ADA Charges filed in U.S.: 2008-2010 and 2014*

Rank	Charge	% of all charges
1	Discharge	59.14%
2	Accommodation	29.94%
3	Terms/Conditions	21.01%
4	Harassment	16.12%
5	Discipline	10.51%
6	Hiring	6.1%
7	Constructive Discharge	4.23%

Source: Calculations by S. von Schrader, Cornell University, Employment and Disability Institute, using the EEOC IMS files, 2008-2010. Development of this table was supported by Employer Practices Related to Employment Outcomes Among Individuals with Disabilities (H133B100017) funded by the U.S. Department of Education National Institute on Disability and Rehabilitation Research to Cornell University.



ADA Higher Rate of Charges

- Smaller establishments
- Establishments with larger parent organizations
- Federal contractors
- Multi-unit headquarters
- Establishments with a high proportion of minority employees relative to state/ industry level
- Sectors of Transportation and Services (as compared to Manual, Professional and Sales Sectors)

*Cornell University Research Brief: Research presented at the Innovative Research on Employer Practices: Improving Employment for People with Disabilities; State of the Science Conference on October 22-23, 2013, Washington, DC.



RA: Some Common Variables

- Culture
- Attitudes
- Co-Worker Support
- Employee Preparation
- Nature of Request
- Cost
- Timing



RA Challenge #1

Rodney is an HR professional for a service agency. He has a seizure disorder. His morning meds cause him to be sluggish and drowsy so he takes advantage of the employer's flex time policy. One day, his supervisor informs him he can no longer "be late" and suggests the doctor change his medication regimen. Rodney is eventually suspended without pay. He formally requests an accommodation, allowing him to arrive before 11 am as long as he works the required 35 hours per week. The request is denied without any conversation with Rodney.

Is this a reasonable request or not?



RA Challenge #2

Ellen has worked for the state for more than five years. She is a good performer, but her supervisor retires and Ellen begins having problems at work. She feels her new supervisor, Richard, is overbearing and pays too much attention to trivial details. After just a few weeks under his supervision, Ellen informs the HR personnel in her department that she had recently developed symptoms of depression, and that her condition was being severely exacerbated by the way that Richard treats her. Ellen commences a leave of absence, and her psychiatrist soon sends her employer a letter asking that she be accommodated for her depression by being placed under the supervision of someone else within the department. Ellen was ready and able to return to work as long as she did not have to work under Richard's supervision. Richard acknowledges that his management style differs from the past supervisor.

However, he has been employed by the state in a supervisory position for an extended period of time, and he has a reputation of being tough but fair.

Is this a reasonable request or not?



RA Challenge #3

Sally is a salesclerk for a major retail store. She experiences difficulty with her RA and had to miss three days of work. When she returns to work, she presents a note from her doctor that says “Off from work Nov. 2nd to Nov. 4th, 2015 and able to return Nov. 5th, 2015”. Her supervisor refused or denied to excuse the absences because the note fails to mention the nature of the condition being treated.

Is Sally’s documentation sufficient?



Documentation

- Describe why documentation is needed (i.e., to verify existence of disability and need for accommodation)
- Identify the types of professional who can provide documentation
- Describe the type of information needed in the documentation



Documentation

- Has a covered disability
- Functional limitations that the person experiences because of the disability
- Suggested accommodations in the workplace
- If the information provided does not clarify, employer may send to professional of their choice



Questions??



Presenter Contacts

Contact nearest ADA Center at
1-800-949-4232

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Andrea Olson -
andreaadata@gmail.com



Resources

**ADA National Network – ADA Centers Hotline:
1-800-949-4232 or www.adata.org**

**Job Accommodation Network (JAN):
(800)526-7234 (Voice) (877)781-9403 (TTY)**

**Equal Employment Opportunity Commission:
1-800-669-4000 (Voice) 1-844-234-5122 (ASL Video Phone)**

**Department of Labor - Employment and Training
Administration (ETA):
1-877-US2-JOBS**

