The Win-Win Approach to Reasonable Accommodations

EMPLOYMENT ISSUES

National Multiple Sclerosis Society

Ray (front cover), diagnosed in 2003.

The Win-Win Approach to Reasonable Accommodations

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Introduction

This booklet is for you if you are currently employed or looking for a job, and have a diagnosis of multiple sclerosis. Should problems related to your MS affect your job performance, you will need to identify job modifications — called "accommodations" in legal language — that will enable you to continue doing your job. The best argument for changing the way you do your job and/or the equipment you need to do it is to show that these accommodations will help you maintain your productivity level or become an even more productive employee.

Because everyone wins when employees maintain and enhance their productivity, we stress the importance of a "win-win" collaborative approach in discussing job accommodations with your employer. The "win-win" approach is much more likely to produce cooperative solutions to your on-the-job needs than is a legal procedure. It is also more likely to encourage a positive long-term working relationship with your employer.

Although we highly recommend this approach, we recognize that some employers may not respond to your needs for an accommodation review or for a satisfactory accommodation. We also recognize the risks involved in disclosing that you have a disability, which you must do to request an accommodation. Therefore, you first need to know your legal rights under the Americans with Disabilities Act (ADA).

What is the ADA all about?

Facts about the employment provisions of the ADA will help you participate as a knowledgeable and confident "win-win" strategist. The ADA provides civil rights protection for people with disabilities in areas that are parallel to those established by the federal government on behalf of women or minorities. One of the key provisions is Title I, the employment section, which requires employers to discuss your needs for on-the-job accommodations and to help you secure reasonable accommodations. (Note that the burden of starting the process is on you. It is not your employer's responsibility to figure out that you need an accommodation and then offer you one.)

You are covered by Title I of the ADA if (a) you have a disabling condition (such as multiple sclerosis — see Disability, page 4); (b) you meet the employer's requirements for a job; and (c) you have the capabilities, with or without reasonable accommodation, to perform the essential functions of your current job or a job for which you wish to apply.

Employers and the ADA

All employers must comply with Title I of the ADA, except employers with fewer than 15 employees, the federal government, Native American tribes, and tax-exempt private membership clubs. Sections 501–504 of the Rehabilitation Act of 1973 prevent the federal government, federal contractors, and any programs receiving federal funds from discriminating against people with disabilities.

What does the ADA prohibit?

Simply put, the ADA prohibits discrimination in employment against otherwise qualified people with disabilities. Here are some key definitions you should know:

Disability: Physical or mental impairment that substantially limits one or more major life activity such as walking, seeing, hearing, speaking, learning, or working.

Qualified: A person who satisfies the primary qualifications for a position and who can perform the essential functions of the job, with or without reasonable accommodations.

Essential Functions: Primary job duties, as opposed to marginal duties, that the person must be capable of performing, with or without reasonable accommodations. Essential functions may be established by a job analysis and recorded in the job description given to all prospective employees.

Why the ADA?

In 1990, the ADA was made a law by Congress to protect people with disabilities from unfair discrimination. In 2008, amendments to the ADA further broadened the protections for employees with disabilities. You should be judged on your ability to do the job, not on stereotypes about a certain diagnosis or on fears about a certain disability. MS may cause changes in your capacities over time, but there are ways to adjust for many of those changes. Furthermore, you have the legal right to a reasonable accommodation. Employers who are covered under Title I are required to consider and accommodate disability-related limitations.

But these accommodations must be reasonable and not cause undue hardship for the employer. Two key phrases require more discussion: "**reasonable accommodation**" and "**undue hardship.**"

What is a "reasonable accommodation"?

An accommodation is a modification to the work environment or to the way an essential job function is performed. The purpose of the accommodation is to allow an otherwise qualified person to enter or to continue in employment by removing or reducing significant disability-related work limitations.

Significant work limitations occur when problems related to your disability interfere with your abilities. For example, you may find that your main work station is located too far from other areas in which you are required to work. Physical barriers such as flights of stairs or slippery floor coverings may impede your movement about the workplace. You may have problems with the equipment you must operate or the conditions under which you must operate it; for example, temperature variations, or lighting that bothers you. Finally, you may encounter certain job functions with physical requirements that constitute hazards to you or to others; for example, lifting or moving heavy objects.

The ADA describes several remedies for on-the-job barriers. They are:

- restructuring of existing facilities
- restructuring of the job
- modification of work schedules
- reassignment to another position
- modification of equipment
- installation of new equipment
- provision of qualified readers or interpreters

Below are some solutions of interest to people coping with MS. You may request a meeting with your employer to develop solutions similar to those we have described, but, as the word "reasonable" implies, an accommodation option cannot constitute an undue hardship for the employer.

Job Function	MS Factor	Possible Accommodation
Entering place of business	Muscular weakness	Restructuring of existing facilities (e.g., electronic door opener)
Supervising activities in the gymnasium (climbing and standing)	Loss of strength in lower extremities	Restructuring of the job (e.g., supervising study halls instead of activities in the gymnasium)
Conducting medical examinations more than 8 hours a day	Fatigue	Modification of work schedules (e.g., 8-hour day with breaks)
Supervising construction operations and activities	Fatigue and coordination/ balance problems	Reassignment to another position (e.g., to indoor job as manager)
Turning office equipment off	Numbness of hands, problems with eye/hand coordination	Modification of equipment (e.g., installation of foot pedal to control equipment)

Job Function	MS Factor	Possible Accommodation
Remembering details, setting priorities, and developing production schedules	Impact on cognitive skills and short-term memory	Purchasing of new equipment (e.g., laptop computer or pocket-size electronic organizer)
Reading reports and self-generated typing	Blurred vision	Provision of qualified readers and interpreters (e.g., reader/ proofer in office when needed)

What does "undue hardship" mean?

Undue hardship refers to an accommodation that would be unduly costly, extensive, or disruptive. For example, does the accommodation cost more than alternatives that are equally effective in removing work limitations? Does it require extensive renovations that will disrupt the business? Will it affect other employees or customers in a negative way? If any of the answers are "yes," an employer is not required to provide the requested accommodation.

Undue hardship is decided on a case-by-case basis. Factors influencing whether a modification is considered an undue hardship on the employer include the size of the business and the availability of resources to reduce the net cost of the accommodation to the employer. An undue hardship for one business may not be an undue hardship for another. Don't limit your range of options by deciding in advance that a certain solution constitutes an undue hardship for your employer. The "win-win" approach will help you to explore a range of options with your employer.

Planning your approach

Now that you understand the ADA's key employment provisions and your civil rights under them, the next step involves discussing your on-the-job needs with your employer. We believe that an informal and friendly dialogue between you and your employer **without mentioning the ADA is the best way to start.**

But before you say anything to an employer, you should do some homework. Analyze the problems you are having. This booklet provides some suggestions about solutions. You might also want to call the nearest chapter of the National MS Society or your state's vocational rehabilitation office to learn about additional solutions that have worked for others.

In addition, contact the Job Accommodation Network, at 800-526-7234 (voice), 877-781-9403 (TTY), or visit their Web site, **AskJAN.org.**

Many people put off dealing with employment-related problems until these reach a crisis point. It is more effective to find solutions through the accommodation process before this happens.

Generate a written list of accommodations and then analyze it carefully. Would any of these accommodations increase your productivity? Think through each accommodation in terms of its effectiveness for you. Then, consider it from your employer's standpoint. Would it be cost-effective? Does it alter the nature of the business? Now, write your list a second time, putting the best suggestions first.

Next, identify the appropriate person with whom you should meet. You may feel most comfortable speaking with your supervisor, but company policy may require that you discuss these issues with someone in the personnel or human resources department. Some employers insist on a written communication. Find out what is required.

You now know to whom you will speak and, after reading the next sections, you will know the points you should cover. However, most people find it difficult to discuss their MS problems with their employers. In effect, you are informing your employer that you are no longer able to do your job without the help of accommodations.

You need to establish that your disability exists, especially if you speak to a person who does not know you. But you may not need to reveal your diagnosis. In general, you are not legally required to say you have MS. However, in practice most people disclose the diagnosis.

There are advantages and disadvantages to candor. They depend on the culture of an individual workplace. If other employees are using accommodations successfully, candor may be the best course. In job interviews, when your abilities are not known to your interviewer and, particularly, when you do not require a job accommodation, most experts advise **not** revealing a diagnosis. Remember too, you are not required to disclose the presence of a medical condition to discuss your need for an accommodation until after an offer to hire is made by the employer.

Start by saying simply, "I have developed a chronic medical condition." You should prepare yourself with a letter from your physician about your disabilities. If you are not going to reveal your MS, ask your physician to describe the symptoms that impact your work activities without naming your specific disease.

Focus your presentation on the goals of your job. Then explain that an accommodation will help you overcome problems caused by your symptoms and enable you to reach your goals more effectively.

Rehearse your presentation with a friend or advisor so that you have the best possible chance for success. Remember to stress the experience you have gained as an employee. Employers do not want to lose experienced and loyal workers. Replacing an experienced employee costs time and money, and always involves an element of risk for an employer.

Discussing the request with your employer

Here are some tips on preparing for your meeting:

- Dress in work-appropriate clothes. Wear what you would normally wear to work.
- Arrive on time.
- Thank your employer for meeting with you. Then begin by introducing the purpose of the meeting.
- Use appropriate body language. Maintain eye contact during the conversation, squarely face your employer, lean slightly forward, nod to indicate attention, and assume a receptive facial expression.
- Use appropriate verbal language. Answer questions honestly and directly. Use non-adversarial terms: "I would like to explore with you ...," "It makes sense for both of us to ...," and "Together, we could come up with ...." Avoid saying "I want ...," "I'm entitled to ...," or "You have to ...."
- Be positive. Focus on ways that your enhanced productivity will benefit your employer. Don't dwell on the past, and don't react angrily to resistance.

The ADA clearly states that you should be involved in deciding what specific accommodations your employer should implement. The collaboration phase of the "win-win" process involves you and your employer working together to identify the accommodations that would benefit both of you. As you follow these guidelines, keep in mind the mutual benefit of effective on-the-job accommodations.

Remember, although the ADA requires that your employer provide a reasonable accommodation, the employer does not have to provide the most reasonable one from your point of view. It is important to be willing to compromise.

- Give your employer a copy of the list you generated at home, with accommodations ranked in order of your preference. Ask your employer to rank them in order of his/her preference, as a way to start the process.
- Compare the two lists. If you and your employer do not agree, point out again the mutual benefits of the accommodation you prefer. Attempt to convince your employer that your idea is the right one, rather than pointing out that the employer is wrong.
- Be prepared to negotiate an agreement. You can negotiate from a position of strength by keeping in mind your ADA protections. Do not state your right to appeal your employer's decision, but remember that it does exist.

- Be open to questions from and dialogue with your employer. Don't simply make your needs known and walk out of the room. The ongoing communication you establish through this problem will help to solve any future issues that may arise regarding on-the-job accommodations.
- Close the meeting. If you reach an agreement, be sure to discuss follow-up procedures and agree on a timetable for action. If your employer proposes an unreasonable compromise, ask for time to think it over. If you cannot agree, suggest that you both think about it some more. In either of these cases, schedule another meeting within 10 days.

Implementing reasonable accommodations

In most cases, you and your employer will identify a mutually acceptable accommodation plan. Because the course of MS is unpredictable, you must monitor the effectiveness of your on-the-job accommodations and communicate frequently with your employer. Here are a few other points to remember:

- Take some time to become familiar with your accommodation. If the accommodation involves technology, ask for appropriate training.
- Be aware of changes in your medical condition and how those changes might be addressed through the "win-win" process. Remember, the ADA does not limit the number or types of accommodations that can be provided. You may need to ask for a different accommodation at a later date.
- Keep your employer informed about your condition, how your accommodations work, and your general job performance. Your employer will appreciate updates on your progress, and you both will enjoy the benefits of a good working relationship.

But, what if ...?

If the collaborative "win-win" strategy does not result in acceptable solutions to your needs, if you see signs of discriminatory conduct on the employer's part, or if you believe that the accommodation your employer has chosen would not enable you to do your job, you have legal recourse.

The ADA requires your employer to respond to your request in a timely manner. If your employer does not respond within 10 working days, make a follow-up telephone call or personal contact to arrange a meeting. If you cannot negotiate a satisfactory solution with your employer, you have the right to appeal outcomes of the "win-win" approach.

Mention the ADA if, **and only if**, the collaborative process breaks down and your employer is unwilling to participate any further. You may choose to file a formal complaint with the U.S. Equal Employment Opportunity Commission (EEOC). For information on the EEOC, call 1-800-669-4000 (voice) or 800-669-6820 (TTY), or visit their website at **eeoc.gov.**

Don't delay in making contact with the EEOC if you experience problems. A charge of discrimination must be filed with the EEOC within 180 days (or about six months) from the time of the alleged discriminatory act. You may want to secure the help of a disability-rights advocate or attorney.

For more information on legal or advocacy help, contact the nearest National MS Society chapter, your state or local bar association, state or local advocates for people with disabilities, and other voluntary health agencies or client assistance projects in your area. Don't assume legal help will be too expensive for you without investigating the resources.

We hope that the "win-win" strategy will work for you. But if it does not, you have rights under the ADA. The EEOC, disability advocates, and attorneys are available to help you protect your rights.

Filing a claim with the EEOC is free; also bear in mind that a lawsuit may result in financial restitution.

Conclusion

The "win-win" approach is designed to assist you in collaborating with your employer to identify and implement solutions to your on-the-job needs. **Mutually** beneficial and cost-effective steps for maintaining your productivity on the job are the ultimate goals. By identifying your needs, understanding your legal rights under the ADA, and keeping in mind cooperative negotiation strategies for discussing accommodations with your employer, you have prepared yourself to be a confident and effective "win-win" strategist.

Sources of additional information

- Job Accommodation Network:
  800-526-7234 (V), 877-781-9403 (TTY); **AskJAN.org**
- U.S. Equal Employment Opportunity Commission (EEOC):
  800-669-4000 (V), 800-669-6820 (TTY); **eeoc.gov**
- Rehabilitation Research & Training Center on Workplace Supports, Virginia Commonwealth University:
  804-828-1851 (V), 804-828-2494 (TTY); **worksupport.com**
- U.S. Department of Labor, Office of Disability Employment Policy:
  866-633-7365 (V), 877-889-5627 (TTY); **dol.gov/odep**
- ADA&IT Technical Assistance Centers:
  800-949-4232 (V/TTY); **adata.org**

Notes

The National Multiple Sclerosis Society is proud to be a source of information about multiple sclerosis. Our comments are based on professional advice, published experience and expert opinion, but do not represent individual therapeutic recommendations or prescriptions. For specific information and advice, consult your physician.

Early and ongoing treatment with an FDA-approved therapy can make a difference for people with multiple sclerosis. Learn about your options by talking to your health care professional and contacting the National MS Society at nationalMSsociety.org or 1-800-344-4867 (1-800-FIGHT-MS).

The Society publishes many other pamphlets and articles about various aspects of MS. Visit nationalMSsociety.org/brochures to download them, or call your chapter at 1-800-344-4867 to have copies mailed to you.

Some of our popular pamphlets include:

- ADA and People with MS
- Information for Employers
- Should I Work? Information for Employees
- Debo Trabajar? Información para Empleados
- Disclosure: The Basic Facts

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