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COUNSEL COMMENTARY

## Labor: 7 questions about the new ADAAA regulations

Employers are struggling to understand their obligation to provide reasonable accommodation under the new law.

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By now, all employers should know about the Americans with Disabilities Amendments Act (ADAAA). The ADAAA overturned the U.S. Supreme Court decisions that Congress believed had interpreted the definition of “disability” too narrowly.

Though the ADAAA went into effect on Jan. 1, 2009, the EEOC did not issue its new regulations until May 20, 2011. Now, employers are struggling to understand whether the ADAAA has changed their obligation to provide “reasonable accommodation” under federal law.

### 1. How has the ADAAA impacted the concept of “reasonable accommodation?”

Under the old ADA, employers frequently litigated the issue of whether or not an employee was *disabled*. Under the new ADAAA, it is much easier for an employee to prove he/she is disabled because the definition of disability is greatly expanded. As a result, the critical issue in ADAAA litigation will not be, “Is this employee disabled?” but rather, “Did this employer offer a reasonable accommodation?”

### 2. What does the law say about reasonable accommodation?

The ADAAA did not modify this part of the ADA. It is still unlawful to fail to make “a reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless ... the accommodation would impose an undue hardship on the operator of the business ...” 42 U.S.C. § 12112(b)(5)(A), (B); 29 C.F.R. §§ 1630.9, 1630.15(d).

### 3. How should employers assess a request for reasonable accommodation?

The EEOC suggests that employers consider three questions when presented with a request for accommodation:

- Is a reasonable accommodation needed?
- If needed, will the reasonable accommodation be effective, i.e., will it allow the employee to perform his/her job?
- If effective, will providing the reasonable accommodation impose an undue hardship on the employer?

### 4. What is an “undue hardship?”

To establish undue hardship, the employer must show that it will suffer significant difficulty or expense, either in finance or administrative difficulties. Whether an undue hardship exists will be based upon a review of the employer’s resources, and the cost and difficulty of providing accommodations based on those resources.

### 5. Does employee morale justify a finding of “undue hardship?”

No—low morale is not enough. (For example, if other employees are complaining about the fact that a coworker gets to start work at 9:00 a.m. when they need to arrive by 8:00.) However, if other employees are unable to perform job duties, or if business operations are disrupted, then undue hardship can be established.

### 6. What are some examples of reasonable accommodation?

Examples include: job restructuring; breaks during the workday; part-time or modified work schedules; reassignment to a vacant position; acquisition or modification of equipment or devices; and unpaid leave.

### 7. Where can employers get more information about reasonable accommodation for specific types of disabilities?

The Job Accommodation Network (JAN) is a good resource for employers—<http://askjan.org>.

## About the Author



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