

Ergonomics and Reasonable Accommodations Under the Americans With Disabilities Act

Part One of a Four Part Series

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As an employment law attorney who focuses on preventive law for employers, I do a lot of legal training for managers through [Fair Measures Corp.](#), as well as training for human resources professionals through [HR Training Center](#). One of the issues I deal with repeatedly is how to provide legally-mandated reasonable accommodations for disabled employees. In this series of articles, I will first lay out the Americans with Disabilities Act's requirements for reasonable accommodations, including the 2009 changes in the law. In Part Two, I will present and analyze a case study, and in Parts Three and Four I will provide a survey of recent case decisions involving ergonomics and reasonable accommodations.

For nearly 20 years, the Americans with Disabilities Act was very narrowly construed by the courts, with employers winning more than 90% of the cases. One reason was the statute's complicated definition of "disability." Under other employment laws, such as the Age Discrimination in Employment Act and Title VII of the Civil Rights Act, the protected characteristic is easy to find. For instance: Is the employee male or female? Under or over 40? What is his/her religion? National origin? Race?

It was not so easy under the ADA. While Congress's stated purpose in enacting the ADA in 1990 was to "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities," the law was not interpreted broadly by the courts. Instead, the Supreme Court emphasized the idea that, using rigorous criteria, careful individual assessments had to be made in every case as to whether a person had a disability under the ADA. Physical and mental impairments as serious as monocular vision, epilepsy, muscular dystrophy, diabetes, cancer, and schizophrenia were all held by courts not to meet the statutory definition of "disability". Most of the time, the court never got to the issue of whether the employer reasonably accommodated a worker's physical or mental limitations, but threw the case out because the employee was unable to show that he or she had a covered disability.

Congress reacted to the courts by passing the Americans with Disabilities Amendments Act of 2008 (ADAAA), which went into effect on January 1, 2009. In the new law, Congress made it clear that the definition of "disability" must be construed in favor of broad coverage. What Congress wanted to do was shift the emphasis in ADA cases away from fighting over whether the worker had a covered disability. Now the EEOC, the courts, and employers must focus on the interactive process with a disabled worker, where the employer and employee discuss what reasonable accommodations will enable the employee to perform the essential job duties.

A "reasonable accommodation" is a change made to enable a person with a disability to perform the essential functions of the job. Most reported cases involve changes in the work

environment, so a qualified worker with a disability can perform the job, and that is where ergonomics often plays an important part.

An individual with a disability is entitled to a reasonable accommodation to enable him/her to perform the essential functions of the job; the ability to do non-essential job functions is irrelevant. It is important that all jobs have current, accurate job descriptions, which detail the essential and non-essential job functions, as well as all physical requirements. In general, it is the responsibility of the disabled individual to inform the employer that an accommodation is needed, but the ADA does not mandate that an employee follow a formal procedure or use “magic words”. To be safest, an employer should consider as a request for accommodation any statement by an employee that a job modification is needed because of a medical condition that might be a disability.

Since each disabled person and his/her medical condition is unique, so will be the reasonable accommodations necessary to enable that person to perform the job.

<p style="text-align: center;">Reasonable Accommodation</p> <p style="text-align: center;">Seven common ways employers may be required to reasonably accommodate people with disabilities:</p> <ul style="list-style-type: none">reassign to a vacant position<i>buy equipment*</i><i>modify structures*</i><i>restructure jobs*</i>schedule part-time workrewrite testsprovide readers and interpretersgrant extra leave time <p style="text-align: center;">* = <i>possible ergonomic solution</i></p>

An accommodation is not reasonable if it causes “undue hardship” to the employer. An undue hardship causes significant difficulty or creates a significant expense for the company (not just one department). It would "fundamentally alter the nature of the business." Buying equipment may well be considered reasonable, especially since according to the EEOC’s [ADA Handbook](#), more than 70% of all accommodations cost between \$0 and \$500, and the median cost is approximately \$240.

Next time: An ADA/ergonomics case study

About the author: [Ann F. Kiernan, Esq.](#) has more than 20 years of experience as an employment lawyer, having litigated claims of wrongful discharge and discrimination before state and federal courts and administrative matters before the New Jersey Division on Civil Rights, the

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Part Two of a Four Part Series

Ann F. Kiernan, Esq.

In the first part of this series, we reviewed the ADA's mandate for reasonable accommodations, and why those accommodations are even more important under the ADA's 2009 amendments. Many medical disabilities for which an employee may request reasonable accommodation have ergonomic aspects. In this part, we will look at a case study.

Joanie, a clerical employee, is returning to work after carpal tunnel surgery on both hands, related to severe hereditary arthritis. In her return-to-work note, Joanie's orthopedist advises:

Typing/keyboard work for no more than 30 minutes per hour Use of split keyboard 5 minute break each hour to rest and stretch/exercise Maintenance of neutral posture while working

Since Joanie's arthritis substantially limits her ability to perform manual tasks, she is an individual with a disability under the ADA, and the orthopedist's note is certainly a request for a reasonable accommodation. But, before we get to the question of whether we have to make these accommodations for Joanie, we need some more information. We need to know what are her job duties, which are essential, and which are non-essential.

When we review Joanie's job description we find:

- Essential functions:
 - Entering laboratory data into computer program
 - Performing quality assurance checks on data
 - Producing routine reports
 - Answering telephone, assisting callers, and taking messages
- Non-essential functions:
 - Acting as back-up for time-keeper for her work area

Then, we review how Joanie does her work, and we find that she sits at a computer workstation, shared with workers on other shifts, with a pull-out keyboard tray and a mouse on the desk. The lab data she enters is from work done the night before, and Joanie does data entry

for the first 3 hours every morning. The rest of her day is spent on telephone duty, QA checks, and reports, with intermittent keyboard use.

After this review, we come up with a number of possible accommodations to Joanie's disability (ergonomics solutions in *italics*):

- Change the way work is done to reduce time on keyboard:
 - Scanning lab data
 - Dictating reports
- Restructure work to avoid long periods of keyboarding
 - *Spread data entry out over the course of the day*
 - *Build in short breaks*
- Purchase equipment
 - *Split keyboard, per doctor's recommendation*
 - *Adjustable tray that will hold keyboard and mouse*
 - *Footrest*
- Provide training
 - *Proper posture*
 - *Hand and wrist exercises*
 - *Workstation adjustment: How to set the chair, monitor, etc. for optimal fit and efficiency*
 - Voice-recognition software

Armed with this analysis, we determine that scanning the lab data would not be a reasonable accommodation, because purchasing and customizing the necessary software and equipment would be prohibitively expensive, and, therefore, an undue hardship. But all of the other ideas seem reasonable, so we discuss them with Joanie, as the next step in the ADA interactive process. Joanie agrees that, with some training, she could use the voice-recognition software our organization already owns for dictating her reports. After talking with her supervisor, Joanie reports that she can reorganize her workday to split up the data entry into six 30-minute sessions. She also agrees to get coaching on proper posture and other ergonomics-related principles. We decide an adjustable tray is not needed if the chair is properly adjusted for Joanie, so we purchase the new keyboard and footrest (cost = \$75), and arrange for Joanie to get voice-recognition software training and ergonomics-related instruction on the day she returns to work.

Six weeks later, we check in with Joanie and her supervisor. The supervisor is happy, since Joanie is meeting or exceeding all of the supervisor's expectations for productivity and accuracy. Joanie reports that not only are her hands pain-free, but that she enjoys her more varied work day, now that data entry is spread throughout the day instead of consuming almost all of every morning.

Result: A successful accommodation, benefitting both the employer and employee.

Next time: A survey of recent ADA reasonable accommodation cases involving ergonomics.

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