

Reasonable Accommodations During Reorganization

Federal Legal Requirements — Union Perspective and Analysis

BOTTOM LINE A reorganization does not change or diminish the agency's obligation to provide reasonable accommodation. Existing accommodations remain in effect unless and until reevaluated through an individualized interactive process. The agency bears the burden of proving “undue hardship,” a standard historically very difficult to establish for an agency of the Forest Service's size, resources, and mission.

CORE RULE: REORGANIZATION DOES NOT OVERRIDE ACCOMMODATION DUTIES

Under **29 U.S.C. § 791**, federal agencies are held to the standards of the Americans with Disabilities Act (ADA). The ADA defines discrimination to include the failure to provide reasonable accommodation unless the agency can demonstrate undue hardship. **42 U.S.C. § 12112(b)(5)(A)**. Reasonable accommodation includes *reassignment to a vacant position* and *modification of work conditions*. **42 U.S.C. § 12111(9)**. Undue hardship requires a showing of *significant difficulty or expense*. **42 U.S.C. § 12111(10)**.

STEP-BY-STEP: REORGANIZATION SCENARIOS

- 1. Existing Accommodation Controls.** If the employee can perform essential functions with the current accommodation, it remains in effect and relocation is not justified.
- 2. Relocation Requires Justification.** Relocation is permissible only if physical presence is truly an essential function or if accommodation would cause undue hardship—extremely difficult to prove for an agency of 25,000+ employees. See *Tricia B. v. HHS*, EEOC Appeal No. 2019000539 (Jan. 22, 2020); *Hae T. v. DOI*, EEOC Appeal No. 2019003385 (Sept. 23, 2020); *Anne W. v. SSA*, EEOC Appeal No. 0120172935 (Feb. 26, 2019).
- 3. Individualized Interactive Process Required.** Blanket statements and mass cancellations are prohibited. The interactive process is a dialogue between the employee and direct supervisor unless an official replacement is designated by either party. Once an accommodation is reasonable on its face, the burden shifts to the agency to prove undue hardship in the particular circumstances. *US Airways, Inc. v. Barnett*, 535 U.S. 391, 401–02 (2002).
- 4. Reassignment Only If Necessary.** Any reassignment must be to a vacant, qualified position at the same grade and pay if available and compatible with the employee's accommodation.
- 5. Reassignment Must Preserve the Accommodation.** Telework, geographic stability, and other accommodation terms tied to the disability must be preserved through any reassignment.
- 6. Relocation Is the Last Resort.** Permissible only if no other vacant, accommodating positions exist and no alternatives are viable. In an agency of 25,000+ employees, both findings are highly unlikely.

EXISTING ACCOMMODATIONS CANNOT BE MASS-RESCINDED

All modifications must occur through an individualized interactive process—not through directive employer methodology. See *Hendricks-Robinson v. Excel Corp.*, 154 F.3d 685, 699–700 (7th Cir. 1998) (holding that an employer's mechanical job-matching process did not satisfy the ADA's interactive-process requirement). Reevaluation is permitted only when: (1) essential job functions change; (2) staffing levels change; (3) the employee's medical condition changes; or (4) the accommodation is no longer effective. Once a medical need determination has been made, it cannot be rescinded without cause.

REQUESTING A REASONABLE ACCOMMODATION

A request is any communication expressing a need for change due to a medical condition. Submit Form AD-1163 to **sm.fs.ra@usda.gov**. The Reasonable Accommodation Coordinator has 5 business days to confirm receipt and 10 business days to request documentation. Decisions are due within **30 business days**; interim accommodations must be provided during any delay. Per EEOC guidance, where the disability and need for accommodation are obvious and already known, the agency may not request additional documentation.

GOVERNING AUTHORITY

- **Rehabilitation Act of 1973, 29 U.S.C. § 791(g)** (incorporating ADA Title I standards into federal-sector employment)
- **29 C.F.R. § 1630.2(o)** (reasonable accommodation); **§ 1630.2(n)** (essential functions); **§ 1614.203** (federal-sector obligations)
- **EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the ADA**, EEOC No. 915.002 (Oct. 17, 2002) (federal deference applied)
- **Executive Order 13164**, Requiring Federal Agencies To Establish Procedures To Facilitate the Provision of Reasonable Accommodation, 65 Fed. Reg. 46565 (July 26, 2000)