



Human Resources

Reasonable Accommodation Guide

Adopted November 14, 2017

Revised November 21, 2023 – contact details only

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Introduction

Oregon Tech’s reasonable accommodation process is designed to help employees with disabling conditions remain in their jobs, with or without accommodation.

This guide affects all employees and candidates for employment with the University. Persons with disabilities have the right to request and receive reasonable accommodation in all aspects of employment procedures with the University, including but not limited to: application, recruitment, selection/hiring, promotion, testing, medical examinations, layoff/recall, assignments, termination, evaluation, compensation, disciplinary actions, leave, training, employee benefits including insurance, and employer supported activities. It also covers appointees.

This guide further provides general information to managers, supervisors, job applicants, and employees regarding the rights and protections that individuals with disabilities have under Title I of the Americans with Disabilities Act (ADA) (42 U.S.C. § 12101) and Oregon state law (ORS 659A) regarding reasonable accommodations and disability-related employment discrimination.

All questions or concerns regarding the Reasonable Accommodation Process as it relates to employees or candidates for employment should be directed to:

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What is the Americans with Disabilities Act (ADA)?

Congress passed the Americans with Disabilities Act (ADA) in 1990 to protect the civil rights of people with disabilities.

Title I and Title V of the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. § 12101 et seq.) prohibit employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments.

The ADA aims to reduce barriers in employment, public accommodations, public services, transportation, and telecommunications for people with disabilities.

People with disabilities may not have equal opportunity in employment because of physical and societal barriers. Title I of the ADA eliminates barriers to equal opportunity in employment and protects people who can prove they have experienced employment discrimination.

EXAMPLES OF PHYSICAL BARRIERS

- Workplace access
- Use of equipment
- Communicating by different means

EXAMPLES OF SOCIETAL BARRIERS

- Prejudice
- Fear
- Misconceptions about job performance

Signed into law on September 25, 2008, the ADA Amendments Act of 2008 (ADAAA) provides additional protections effective January 1, 2009. In amending the ADA, Congress made it clear that the definition of disability should be construed in favor of broad coverage of individuals and generally not require extensive analysis.

How does Oregon's anti-discrimination law differ from the ADA?

Oregon's anti-discrimination law offers most of the same employment protections as the ADA. Whether federal or state law applies is based upon the number of people a private employer employs. Oregon's law covers private employers with 6 or more employees. The ADA covers private employers with 15 or more employees.

Oregon's law covers employment agencies, labor organizations and all non-federal public corporations and entities, including the state.

Do I have a disability as defined by the ADA?

The term disability has a particular meaning under the ADA. Just because you have a condition commonly considered a disability does not necessarily mean you have a disability under the ADA. Whether you meet the ADA definition of disability is determined by looking at all the facts and circumstances surrounding your impairment and how the impairment limits you. Nor are you automatically considered to have a disability under the ADA if you receive Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI).

It is the effect an impairment has on your ability to do major life activities that determines whether you are protected by the ADA.

What is the ADA definition of disability?

The ADA definition of disability is:

- A physical or mental impairment that substantially limits one or more major life activities
- A record of such an impairment
- Being perceived by your employer as having a physical or mental impairment.

What is a physical or mental impairment?

Physical or mental impairments include a broad range of illnesses, conditions and disorders.

EXAMPLES OF PHYSICAL AND MENTAL IMPAIRMENTS

- Epilepsy
- HIV infection/AIDS
- Intellectual disability
- Paralysis
- Serious mental illness
- Specific Learning Disability (SLD)
- Substantial hearing/visual impairment
- Traumatic brain injury (TBI)

What conditions are excluded from ADA protection?

Certain conditions are excluded from ADA protection. The effects of minor, temporary and non-chronic conditions such as pregnancy, a broken limb or a common cold or infection are short-term and therefore they do not substantially limit a major life activity. Current illegal drug use is not protected. However, former drug users who do not currently use drugs or are currently in a drug rehabilitation program are considered individuals with a history of a disability.

Having a condition not covered by ADA does not preclude you from requesting or obtaining a short term reasonable accommodations.

What does substantially limit mean?

In order to meet the ADA definition of disability, your impairment must substantially limit your ability to perform an activity compared to an average person.

However, your impairment need not severely or significantly restrict performance of a major life activity in order to be substantially limiting. Certain impairments like blindness, deafness or Down syndrome and other cognitive disorders are obviously substantially limiting.

If you have a physical or mental impairment that is controlled by mitigation measures such as medication or assistive technology, you are still deemed a person with a disability if, without the mitigation measures, you would have a disability.

Examples of mitigation measures:

- Hearing aids
- Seizure medications
- Service animals

If you have an episodic disability that only impairs you sometimes, or a disability that is in remission, you are still considered to have a disability under the ADA if your disability or disease, when active, substantially limits a major life activity.

What are major life activities?

Major life activities are activities that people do throughout the day. Only one major life activity need be substantially limited.

Examples of major life activities include:

- Bending
- Breathing
- Caring for oneself
- Communicating
- Concentrating
- Eating
- Hearing
- Learning
- Lifting
- Performing manual tasks
- Reading
- Seeing
- Sleeping
- Speaking
- Standing
- Thinking
- Walking
- Working

Major life activities also include the operation of a major bodily function. Examples of major bodily functions include:

- Bowel and bladder function
- Circulatory system
- Digestive system
- Endocrine system
- Immune system
- Normal cell growth
- Neurological system
- Respiration

Am I a qualified individual under the ADA?

In addition to having a disability, to be protected by the ADA you must be qualified and able to perform the essential functions of your job either with or without reasonable accommodation.

The fact that you need an accommodation does not necessarily mean that you cannot perform the essential functions of the job. You do need to meet the minimum qualifications for the job. This includes education, experience, skills, licenses, or credentials.

What are the essential functions of a job?

The essential functions, or duties, of a job are the most important functions of a job. They cannot be redesigned, transferred to another employee, or eliminated from the position description.

To determine what an essential job function is, it is important to look at the written position description.

There are many reasons why a job duty could be considered essential. The following are a few examples to illustrate what an essential job function means.

The position exists to perform a particular set of duties – removing one would fundamentally change the position.

Example: *Answering the telephone, assisting callers, routing calls, and taking messages are essential job functions of a receptionist.*

A limited number of employees are available to perform this duty.

Example: *There are only three other employees who can do this job and they cannot complete their duties and yours as well.*

The position requires training or expertise.

Example: *All registered nurses (RNs) must be licensed. In order to be licensed, an RN must graduate from an approved nursing program and pass a national licensing exam.*

What is a reasonable accommodation?

A reasonable accommodation is any modification or adjustment to a job, or to the work environment, that will enable a qualified applicant or employee with a disability to participate in the application process or to perform essential job functions.

Reasonable accommodations may also include adjustments to assure that a qualified individual with a disability has rights and privileges in employment equal to those of employees without disabilities.

Do I have to ask for an accommodation?

Yes. The university needs a request form you in order to start the accommodation process. If you are incapacitated and unable to do so the request may come from another person (typically a family member) acting on your behalf.

How do I request a reasonable accommodation?

If you are a job applicant or job candidate, please contact the Benefits Consultant directly to request an accommodation in the job application or interview process. Due to the time sensitivities involved in these requests an abbreviated process may be used at the discretion of Human Resources. Upon a request to a search chair, supervisor or manager, the request should be redirect to the Benefits Consultant.

If you are a current employee, the best way to ask for an accommodation is to complete the request form found in Appendix A. This form ask a number of questions which assist in the process. Documentation from a medical professional may also be required, unless your disability and the impacts are obvious – for example, you are blind or use a wheelchair.

Upon a verbal request to Human Resources, you will be directed to complete the appropriate paperwork. Upon a verbal request to a supervisor or manager, the request should be redirected to Human Resources.

The first step is for you to ask for a reasonable accommodation. Once you have requested a reasonable accommodation Oregon Tech will start the interactive process with you.

What is the interactive process?

The interactive process means that both the requesting employee and Oregon Tech are involved in finding and deciding on the most effective accommodation for you to do your job. This involves open communication between you and Oregon Tech about the particular issues you are experiencing that relate to your disability, how it affects your job performance, and what reasonable accommodation best solves your issue.

As the person with the disability, you are usually the best source of information on how to adapt your workspace and your essential job functions through accommodations to deal with your functional limitations. The process may require a number of meetings. It is important to know that Oregon Tech decides which option is ultimately implemented, not the employee, as long as the accommodation is reasonable.

Once an accommodation is chosen, if you try it and it does not solve your issue, let Human Resources know immediately. Explain specifically how and why it is not working for you. You may need to provide additional documentation from a professional explaining why the accommodation is not sufficient as well as provide examples of solutions that would address your needs.

What are some examples of accommodations?

Whether you are a job applicant or an employee, you might find the following examples useful in thinking about the best reasonable accommodation to address your individual issue.

VISION IMPAIRMENT OR BLINDNESS

An application form in an alternate format such as large print
Screen reading software

PHYSICAL DISABILITY

Modification of a workspace or restroom
An alternative input device such as a switch or joystick

MENTAL DISABILITY

A quiet workspace to reduce distractions
Daily to-do lists

HEARING IMPAIRMENT OR DEAFNESS

A TTY or video relay system for telephone use
A sign language interpreter at staff meetings

INTELLECTUAL OR COGNITIVE DISABILITY

A watch with an alarm for going on and returning from breaks
Supplementing text descriptions of job duties with pictures

Other examples of reasonable accommodation include job restructuring, a modified work schedule, assistive technology, or modifying an exam. Reasonable accommodation also may include reassigning you to a vacant position for which you are qualified, if you are unable to do your original job because of your disability.

Oregon Tech is not required to lower quality or quantity standards as an accommodation; nor are they obligated to provide personal use items such as glasses or hearing aids.

In order to decide which accommodation is the appropriate one, Oregon Tech will base decisions based on the particular facts of each case. Any reasonable accommodation must be effective. That means the accommodation must give you the chance to achieve the same level of performance, and to enjoy similar benefits, as an average person without a disability in the same situation.

Are there limits on accommodations?

Oregon Tech is required to provide a reasonable accommodation to you as a qualified applicant or employee with a disability unless Oregon Tech can show that the accommodation modifies or eliminates an essential function of the job or would be an undue hardship.

What is an undue hardship?

Undue hardship means something that requires significant difficulty or expense, when compared to a number of factors.

These factors include the nature and cost of the accommodation in relation to the size, resources, nature, and structure of Oregon Tech's operation. Undue hardship is determined on a case-by-case basis.

If a particular accommodation you suggest would be an undue hardship, Oregon Tech will try to identify another accommodation that would not be an undue hardship. Also, if the cost of an accommodation would impose an undue hardship on your employer, you will be given the option of paying some of the costs or getting the accommodation from another source. However, Oregon Tech will not require applicants or employees to pay for an accommodation or accept a lower salary because of an accommodation.

Can I bring my service animal to work?

Allowing you to bring your service animal into your workplace is a form of reasonable accommodation. As with any accommodation request, your employer must consider allowing you to use your service animal at work unless doing so poses an undue hardship or could disrupt the workplace.

Your employer may require documentation that your service animal is fully trained, is needed to address your functional limitations resulting from your physical or mental disability, and capable of functioning in the work environment. This documentation does not need to be from a medical professional.

Can I take time off work as a reasonable accommodation?

Maybe. Reasonable accommodations may include getting flexible leave, or getting additional unpaid leave even if you have used all of your paid leave. However, your employer does not have to give you unlimited or indefinite leave, so it is important to tell your employer when you expect to return to work.

You may also be eligible to take time off work under federal or state family and medical leave laws – which usually protect your job. Contact Human Resources for additional information.

How does the ADA affect the hiring process?

The ADA divides the hiring process into two distinct stages: the pre-offer and post-offer.

Before a conditional offer of employment is made, the university may not make any disability-related inquiries. Likewise, applicants may not be required to take any medical exams.

What questions will the University ask me during the pre-offer stage of the hiring process?

The University may not ask disability-related questions before you have been given a conditional offer of employment. A disability-related question is one that will likely cause you to reveal information regarding your disability.

The University cannot ask you as a job applicant about the nature or severity of your disability, although the University can ask you if you can perform the duties of the job either with or without reasonable accommodation.

The University cannot require a medical examination before offering you a job. Even if your disability is obvious, such as a missing limb, that by no means makes you unhealthier than someone who has all of their limbs. Generally, most people with disabilities are just as healthy as people who do not have disabilities.

What questions will the University ask me during the post-offer stage of the hiring process?

An employer can condition a job offer on you passing a required medical examination if all employees for that job classification have to be examined.

Employers may not withdraw the conditional offer on the basis of your disability, unless doing so is job-related and consistent with business necessity.

Once you have been hired and have started work, your employer cannot require a medical examination or ask questions about your disability unless such questions are related to the job and necessary for business. However, an employer can request documentation from a doctor or rehabilitation counselor when you request a reasonable accommodation.

Finally, your employer may conduct voluntary medical examinations as part of an employee health program, and may provide medical information required by state workers' compensation laws to local and state agencies.

Is Oregon Tech covered by the ADA?

Yes, Title I of the federal ADA applies to private employers with 15 or more employees and includes employment agencies and labor unions. Oregon Tech is also covered by state law.

The ADA also prohibits discrimination in employment.

What constitutes discrimination on the basis of disability?

The ADA prohibits job discrimination against qualified individuals with disabilities in many areas, including:

- Recruitment, application procedures and hiring
- Testing, training, medical examinations, promotion and disciplinary actions
- Benefits, compensation and termination
- Other terms, conditions and privileges of employment

Volunteers are not protected by the ADA's employment provisions.

Examples of discrimination faced by applicants and employees with disabilities include:

- Using selection criteria that screens out people with disabilities, unless the criteria are job-related and necessary for business
- Refusing to provide an accommodation for a known physical or mental limitation of a qualified applicant or employee, unless doing so would pose an undue hardship
- Firing an employee because of his or her disability
- Limiting, segregating or classifying an employee in a way that adversely affects his or her employment opportunities because of his or her disability
- Participating in a contractual or other relationship that subjects a qualified applicant or employee with a disability to discrimination
- The ADA does not require an employer to hire an applicant with a disability over other applicants – the ADA prohibits discrimination only on the basis of disability. An employer may not refuse to hire you because of your disability or because a reasonable accommodation is required for you to perform the essential job functions.
- An employer may refuse to hire or may fire you if you pose a direct threat (a significant risk of substantial harm) to the health and safety of yourself or others.
- The determination of direct threat must be based on factual evidence regarding your ability to perform essential portions of the job. An employer cannot refuse to hire you because of slightly increased risk or because of fears that there might be significant risk sometime in the future.

- Employers must also consider whether a risk can be eliminated or reduced to an acceptable level with a reasonable accommodation.

Does the ADA protect me if I do not have a disability?

Yes. The ADA protects individuals without disabilities in four situations:

1. You are qualified and have a history of a disability or impairment.
2. You are qualified and your employer believes you have an impairment though you do not actually have a disability.
3. You have a known relationship or association with an individual with a disability.
4. You have opposed an act or practice of your employer that violates the ADA, made a charge of discrimination under the ADA, or testified, assisted or participated in an investigation, proceeding or hearing under the ADA.

While you are protected even if you do not have a disability, you are not entitled to a reasonable accommodation.

Where do I go with questions and/or additional information?

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Appendix A: Reasonable Accommodation Form for Employees with Disabilities

Sources:

Oregon Bureau of Labor and Industries (BOLI)

800 NE Oregon Street, Suite 1045 | Portland, OR 97232

Voice: 971-673-0761 | TTY: 971-673-0766 | Fax: 971-673-0762

E-mail: boli.mail@state.or.us | Website: www.oregon.gov/BOLI

US Equal Employment Opportunity Commission (EEOC)

Federal Office Building | 909 First Avenue, Suite 400 | Seattle, WA 98104

Voice: 1-800-669-4000 | TTY: 1-800-669-6820 | Fax: 206-220-6911

Website: www.eeoc.gov

2009 Disability Rights Oregon

610 SW Broadway, Suite 200, Portland OR 97205

Voice: 503-243-2081 or 1-800-452-1694 | Fax: 503-243-1738

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