U.S. Equal Employment Opportunity Commission

Hearing Disabilities in the Workplace and the Americans with Disabilities Act

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The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

Introduction

This document, which is one of a series of question-and-answer documents addressing particular disabilities in the workplace,**[1]** explains how the Americans with Disabilities Act (ADA) applies to job applicants and employees with hearing disabilities. In particular, this document explains:

- when an employer may ask an applicant or employee questions about a hearing condition and how it should treat voluntary disclosures;
- what types of reasonable accommodations applicants or employees with hearing disabilities may need;
- how an employer should handle safety concerns about applicants and employees with hearing disabilities; and
- how an employer can ensure that no employee is harassed because of a hearing disability or any other disability.

The U.S. Equal Employment Opportunity Commission (EEOC) enforces the employment provisions of the ADA, a federal law that prohibits discrimination against qualified individuals with disabilities. The ADA provides that individuals with disabilities include those who have "a physical or mental impairment that substantially limits one or more major life activities . . . ," have a record (or history) of a substantially limiting impairment, or are regarded as having such an impairment. This document uses ADA statutory terminology for its legal meaning and to refer inclusively to individuals who are deaf or hard of hearing, as well as those who have other hearing conditions, such as tinnitus and sensitivity to noise. **[2]**

Title I of the ADA covers employment by private employers with 15 or more employees as well as state and local government employers. Section 501 of the Rehabilitation Act provides similar protections related to federal employment. In

addition, most states have their own laws prohibiting employment discrimination on the basis of disability. Some of these state laws may apply to smaller employers and may provide protections in addition to those available under the ADA.**[3]**

General Information about Hearing Conditions

Approximately 15 percent of American adults report some trouble hearing.**[4]** People with a variety of hearing conditions (including deafness, being hard of hearing, experiencing ringing in the ears, or having sensitivity to noise) may have ADA disabilities.

There are many different circumstances that may contribute to individuals becoming deaf, hard of hearing, or experiencing other hearing conditions (including childhood illnesses, pregnancy-related illnesses, injury, heredity, age, and excessive or prolonged exposure to noise).**[5]** These circumstances can affect the way such individuals experience sound, communicate with others, and view their hearing conditions.**[6]** For example, some individuals who develop a hearing condition later in life may not use American Sign Language (ASL) or other common communication methods used by some with hearing conditions or may not use them as proficiently as some individuals who are deaf or hard of hearing at birth or from a very young age.

Individuals who are deaf, hard of hearing, or have other hearing conditions can perform successfully on the job and, under the ADA, should not be denied opportunities because of stereotypical assumptions about those conditions. Some employers assume incorrectly that workers with hearing conditions will cause safety hazards, increase employment costs, or have difficulty communicating in fast-paced environments. In reality, with or without reasonable accommodation, individuals with hearing conditions can be effective and safe workers.

1. When does someone with a hearing condition have a disability within the meaning of the ADA?

According to the ADA, the definition of "disability" is interpreted broadly in favor of expansive coverage.**[7]** Under the ADA, individuals with an impairment of hearing will meet the first prong of the ADA's definition of disability ("actual disability") if

they can show that they are substantially limited in hearing or another major life activity (*e.g.,* the major bodily function of special sense organs).**[8]** A determination of disability must ignore the positive effects of any mitigating measure that is used. **[9]** For example, if someone uses a hearing aid or has a cochlear implant, the benefits of such a device would not be considered when determining if the impairment is substantially limiting.**[10]** People who are deaf should easily be found to have a disability within the meaning of the first part of the ADA's definition of disability because they are substantially limited in the major life activity of hearing.**[11]**

Individuals with a history of an impairment will be covered under the second prong of the ADA definition of disability if they have a record of an impairment that substantially limited a major life activity in the past.**[12]** An applicant or employee may have a "record of" disability, for example, when the individual's hearing has been corrected surgically. Finally, an individual is covered under the third ("regarded as") prong of the ADA definition of disability if an employer takes a prohibited action (for example, refuses to hire or terminates the individual) because of a hearing condition or because the employer believes the individual has an impairment of hearing, other than an impairment that is not both transitory and minor.

Obtaining, Using, and Disclosing Medical Information

The ADA limits an employer's ability to ask applicants or employees questions related to disabilities (including hearing disabilities) and to conduct medical examinations. Different rules apply for these inquiries and exams at three distinct stages: pre-offer, post-offer, and during employment.

Job Applicants

Before an Offer of Employment Is Made

2. May an employer ask whether a job applicant has or had a hearing condition, or treatment related to a hearing condition, prior to making a job offer?

No. An employer may not ask questions about an applicant's medical condition**[13]** or require an applicant to have a medical examination before it makes a conditional job offer. This means that an employer *cannot* ask an applicant such questions as:

- whether the applicant has ever had any medical procedures related to hearing (for example, whether the applicant has a cochlear implant);
- whether the applicant uses a hearing aid; or
- whether the applicant has any condition that affects the applicant's hearing.

Of course, an employer may ask questions pertaining to the applicant's ability to perform the essential functions of the position, with or without reasonable accommodation, such as:

- whether the applicant can respond quickly to instructions in a noisy, fast-paced work environment;
- whether the applicant has good communication skills; or
- whether the applicant can meet legally mandated safety standards required to perform a job.

3. Does the ADA require an applicant to disclose a current or past disability before accepting a job offer?

No. The ADA does not require applicants to disclose that they have or had a hearing disability or another disability *unless* they will need a reasonable accommodation for the application process (for example, a sign language interpreter). Some individuals with a hearing condition, however, choose to disclose or discuss their condition to dispel myths about it or to ensure that employers do not assume that the condition means the person is unable to do the job.

Sometimes, the decision to disclose depends on whether an individual will need a reasonable accommodation to perform the job (for example, specialized equipment, removal of a marginal function, or another type of job restructuring). A person with a hearing condition, however, may request an accommodation after becoming an employee even if they did not do so when applying for the job or after receiving the job offer.

4. May an employer ask questions about an obvious hearing condition, or ask follow-up questions if an applicant discloses a non-obvious hearing condition?

No. An employer generally may not ask an applicant about obvious impairments. Nor may an employer ask an applicant who has voluntarily disclosed a hearing condition any questions about its nature or severity, when it began, or how the individual manages the condition. However, if an applicant has an obvious impairment or has voluntarily disclosed the existence of an impairment **and the employer reasonably believes that the applicant will require an accommodation to complete the application process, or to perform the job because of the condition**, the employer may ask whether the applicant will need an accommodation and what type. The employer must keep any information an applicant discloses about a medical condition confidential. (*See* **"Keeping Medical Information Confidential,"** below.)

Example 1: Julie has a severe hearing condition in her right ear and is applying to the telephone sales department of a clothing company. Julie tells the employer of her hearing condition during the interview. The employer's sales associates currently wear headsets with earpieces for the right ear. The employer may ask Julie during her interview if she would need a left-sided headset as an accommodation.

After an Offer of Employment Is Made

After making a job offer, an employer may ask questions about the applicant's health (including questions about the applicant's disability) and may require a medical examination, as long as all applicants for the same type of job are treated equally (that is, all applicants are asked the same questions and are required to take the same examination). After an employer has obtained basic medical information from all individuals who have received job offers, it may ask specific individuals for more medical information if the request is medically related to the previously obtained medical information. For example, if an employer asks all applicants post-offer about their general physical and mental health, it can ask individuals who disclose a particular illness, disease, or impairment for medical information or require them to have a medical examination related to the condition disclosed.

5. What may an employer do when it learns that an applicant has or had a hearing condition after the applicant has been offered a job but before starting work?

When an applicant discloses, *after receiving a conditional job offer,* that the applicant has or had a hearing condition, an employer may ask the applicant additional questions, such as how long the individual has had the hearing condition; what, if any, hearing the applicant has; what specific hearing limitations the individual experiences; and what, if any, reasonable accommodations the applicant may need to perform the job. The employer also may send the applicant for a follow-up hearing or medical examination or ask the individual to submit medical documentation answering questions specifically designed to assess the applicant's ability to perform the job's functions safely. Permissible follow-up questions at this stage differ from those at the pre-offer stage, when an employer may only ask an applicant who voluntarily discloses a disability or whose disability is obvious whether the individual needs an accommodation either in the application process or to perform the job.

An employer may not withdraw an offer from an applicant with a hearing disability if the individual is able to perform the essential functions of a job, with or without reasonable accommodation, without posing a **direct threat (https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.2(r))** (that is, a significant risk of substantial harm) to the health or safety of the applicant or others that cannot be eliminated or reduced through reasonable accommodation. (Below, "**Accommodating Applicants and Employees**" addresses reasonable accommodations (Questions 9 – 15) and "**Concerns about Safety**" addresses "direct threat" (Questions 16 and 17).)

Example 2: Lydia applies for a position as an aircraft mechanic. After receiving a job offer, she is given a physical examination. The examination reveals that she has a slight hearing loss in her left ear. Although Lydia worked as an aircraft mechanic in a noisy environment with the same level of hearing while she was a member of the military, the employer is concerned that Lydia will pose a risk to herself or others because she may not be able to hear sounds that might alert her to dangers in the work area, such as the presence of moving aircraft or other moving vehicles. The employer may not withdraw the job offer simply because it believes Lydia cannot work safely in a high-noise environment. The employer could only do so if it determined that Lydia's hearing loss would result in a direct threat (that is, a significant risk of substantial harm to Lydia or to others in the workplace that cannot be eliminated or reduced through reasonable accommodation). The employer may seek additional information about Lydia's

hearing, including how her hearing loss affected her past work experience, to make this determination.

Employees

The ADA strictly limits the circumstances under which an employer may ask questions about an employee's medical condition or require the employee to have a medical examination. Once an employee is on the job, actual performance is the best measure of ability to do the job.

6. When may an employer ask an employee if a hearing condition, or some other medical condition, may be causing the employee's performance problems?

Generally, an employer may ask disability-related questions or require an employee to have a medical examination when it knows about a particular employee's medical condition, has observed performance problems, and reasonably believes that the problems are related to a medical condition. At other times, an employer may ask for medical information when it has observed symptoms, such as difficulties hearing, or has received reliable information from someone else (for example, a family member or co-worker) indicating that the employee may have a medical condition that is causing performance problems. Often, however, poor job performance is unrelated to a medical condition and generally should be handled in accordance with an employer's existing policies concerning performance.**[14]**

Example 3: Rupa wears a hearing aid to improve her bilateral, moderate hearing condition. She was recently promoted from an administrative position to sales associate for a cable company. The new position requires significantly more time on the phone interacting with customers. Although Rupa has received excellent reviews in the past, her latest review was unsatisfactory, citing many mistakes in the customer orders she records over the phone. The employer may lawfully ask Rupa if she has any difficulty hearing customers and, if so, whether she would benefit from an accommodation. Possible accommodations could be a captioned telephone that would allow Rupa to communicate verbally while receiving a real-

time text relay of the conversation or providing technology that allows Rupa to stream a telephone conversation to her hearing aid.

Example 4: An employee with a hearing disability has received below average evaluations for six months, starting when she was not selected for a vacant supervisory position. Moreover, the kinds of performance problems the employee is having—a significant increase in the number of late arrivals and typographical errors in written reports the employee routinely produces—cannot reasonably be attributed to a problem with the employee's hearing. The employer may not ask for medical information about the employee's hearing, but instead should counsel the employee about the performance problems or otherwise proceed as appropriate in accordance with its policies applicable to employee performance.

7. Are there any other instances when an employer may ask an employee about the employee's hearing?

Yes. An employer also may ask an employee about a hearing condition when it has a reasonable belief that the employee will be unable to safely perform the essential functions of the job because of it. In addition, an employer may ask an employee about the employee's hearing to the extent the information is necessary:

- to support the employee's request for a reasonable accommodation needed because of a hearing disability;
- to enable the employee to participate in a voluntary wellness program;**[15]** or
- to verify the employee's use of sick leave related to a hearing condition if the employer requires all employees to submit a doctor's note to justify their use of sick leave.**[16]**

Example 5: An employer maintains a leave policy requiring all employees who use sick leave for a medical appointment to submit a doctor's note upon returning to work. Mark uses sick leave to attend an audiologist appointment to

adjust his hearing aids. In accordance with its policy, the employer can require Mark to submit a doctor's note for his absence; however, it may not require the note to include any additional information (such as the degree of Mark's hearing loss, the strength of his hearing aids, or the results of the adjustment) if it is not needed to verify that Mark used his sick leave properly.

Keeping Medical Information Confidential

With limited exceptions, an employer must keep confidential any medical information it learns about an applicant or employee. Under the following circumstances, however, an employer may disclose that an employee has a hearing condition:

- to supervisors and managers, if necessary to provide a reasonable accommodation or meet an employee's work restrictions;
- to first aid and safety personnel if an employee may need emergency treatment or require some other assistance at work;
- to individuals investigating compliance with the ADA and similar state and local laws; and
- where needed for workers' compensation or insurance purposes (for example, to process a claim).

8. May an employer tell employees who ask why their co-worker is allowed to do something that generally is not permitted (such as working at home or working a modified schedule) that the co-worker is receiving a reasonable accommodation?

No. Telling coworkers that an employee is receiving an ADA reasonable accommodation amounts to a disclosure that the employee has a disability.**[17]** Rather than disclosing that the employee is receiving a reasonable accommodation, the employer may find it helpful to point out that many employee issues are personal and focus on the importance of maintaining the privacy of all employees. **[18]**

Employers may also be able to avoid many of these kinds of questions by training all employees on the requirements of equal employment laws, including the ADA, and by providing information about reasonable accommodation to all of their employees. Education on reasonable accommodation can be done in a number of ways, such as through written reasonable accommodation procedures, employee handbooks, staff meetings, and periodic online or in-person training. This kind of proactive approach may lead to fewer questions from employees who misperceive co-worker accommodations as "special treatment."

Example 6: A large store does not provide its sales employees with smartphones. However, the employer does provide a deaf employee with one, as a reasonable accommodation, so that she can receive text messages instead of the numerous communications made over the public address system that she cannot hear, such as requests for sales representatives to report to different parts of the store to assist customers. If other employees ask why only she has a smartphone, the employer may not divulge any information about the impairment, including the fact that the smartphone is a reasonable accommodation.

Accommodating Applicants and Employees

The ADA requires employers to provide adjustments or modifications—called reasonable accommodations—to enable applicants and employees with disabilities to enjoy equal employment opportunities unless doing so would be an undue hardship (that is, a significant difficulty or expense). Accommodations vary depending on the needs of the individual with a disability. Not all applicants or employees with a hearing condition will need an accommodation or require the same accommodations.

9. What type of reasonable accommodations may applicants or employees with hearing disabilities need?

Some applicants or employees may need one or more of the following accommodations:

A sign language interpreter.

Example 7: Based on Shawn's online application and score on an initial assessment questionnaire, a manager contacts Shawn to schedule an in-person interview. Shawn requests that the employer provide an American Sign Language (ASL) interpreter for the interview. Absent undue hardship, the employer's ADA obligation is to provide an ASL interpreter (in person or through a video remote interpreting service) for Shawn's interview as a reasonable accommodation in the application process. (For more information about "reasonable accommodations" for applicants, see **Question 14**, below.)

Example 8: Simon has a hearing disability and works as a project manager for a regional telephone company. Simon is usually able to use his lip-reading ability to communicate individually with his co-workers. However, Simon occasionally requests a sign language interpreter for large-group conferences and meetings, because it is not possible for him to use lip-reading when people who are not in his line of sight are speaking. Simon's employer would have to provide the sign language interpreter (in person or through a video remote interpreting service) as a reasonable accommodation, absent undue hardship. (For more information about "undue hardship," see **Question 12**, below.)

Assistive technology, including:

- Access to a video relay service or video remote interpreting service using equipment such as a videophone, computer, laptop, tablet, or smartphone.
- A hearing aid-compatible telephone headset, a telephone amplifier, and/or adapters for using a phone with hearing aids or cochlear implants.
- Appropriate emergency notification systems (for example, strobe lighting on fire alarms or vibrating pagers).
- Enabling the streaming of sound directly from a device to hearing aids or cochlear implants.

- Utilizing accessibility features of mainstream technology (for example, using the captioning feature on virtual meeting platforms).
- A voice carry-over telephone, captioned telephone, text telephone, or TTY.**[19]**
- Equipment used for hearing protection to block noise or to protect hearing function, including equipment that can be used with hearing aids.
- Assistive software or applications (for example, for automated captioning, voice recognition, videoconferencing, or sound detection).

Example 9: Allen, who has a hearing disability, works as an information technology (IT) specialist with a small, internet-advertising firm. The IT specialist position requires frequent one-on-one meetings with the firm's president. Because it will not cause an undue hardship, the firm accommodates Allen by acquiring voice recognition or automated captioning software for him to use in his meetings with the president. The software is programmed to transcribe spoken words into written electronic text.

- Assistive listening devices (ALDs).

Example 10: An employer has an annual all-employee meeting for more than 200 employees. Thelma, who has a hearing disability, requests the use of an ALD in the form of a personal FM system. Speakers would wear small microphones that would transmit amplified sounds directly to a receiver in Thelma's ear. The employer determines that an ALD is a reasonable accommodation that will allow Thelma to participate in the meeting without causing an undue hardship.

- Augmentative communication devices that allow users to communicate orally by typing words that are then translated to sign language or a simulated voice.
- Communication access real-time translation (CART), which translates voice into text at real-time speeds.

Example 11: Kendall works as an associate for an international consulting firm. Kendall has a hearing disability for which he uses a hearing aid and lip reading.

His company sometimes conducts video-conferencing meetings with clients in other countries. During these meetings, Kendall finds it difficult to participate because the video feedback is not continuous. Kendall requests the use of remote CART services as an accommodation during international client meetings. The requested accommodation would translate the client's spoken word on Kendall's notebook computer monitor at real-time speed. This accommodation would allow Kendall to participate fully in the meetings and should be provided, absent undue hardship.

Appropriate written memos and notes (especially used for brief, simple, or routine communications).

Note-taking assistance for those using CART services or sign language interpretation (to allow individuals using CART services or sign language interpretation to remain focused on translations).

Work area adjustments (for example, a desk away from a noisy area or near an emergency alarm with strobe lighting).

Example 12: Ann works as an accountant in a large firm located in a high-rise building. Ann has a large window in her office that faces the street-side of the building. She wears a hearing aid to mitigate her severe hearing condition. Throughout the workday many exterior noises (for example, police sirens, car horns, and street musicians) are amplified by Ann's hearing aid and interfere with her ability to hear people speaking in her office. Ann requests, and her employer agrees, that moving her to a vacant interior office is a reasonable accommodation without causing an undue hardship.

Time off in the form of accrued paid leave or unpaid leave if paid leave has been exhausted or is unavailable.**[20]**

Example 13: Beth is deaf and requests leave as a reasonable accommodation to train a new hearing dog. Hearing dogs assist deaf and hard of hearing individuals by providing alerts to a variety of household and workplace sounds such as a telephone ring, door knock or doorbell, alarm clock, buzzer, name call, speaker

announcement, and smoke or fire alarm. A hearing dog is trained to make physical contact and direct a person to the source of the sound. Under Beth's employer's leave policy, Beth does not have enough annual or sick leave to cover the requested absence. The employer must provide additional unpaid leave as a reasonable accommodation, absent undue hardship.

Altering an employee's marginal (that is, non-essential) job functions.

Example 14: Manny, a librarian, is primarily responsible for cataloguing books, writing book summaries, and scheduling book tours. Recently, Manny has had to fill in as a desk librarian since the regular librarian is on vacation. Manny has a hearing disability and uses a hearing aid. Manny finds it difficult to hear patrons if there is any background noise. He asks to switch his front desk duties with another librarian who processes book orders transmitted over the phone or internet. Since working at the front desk is a minor function of Manny's job, the employer should accommodate the change in job duties, absent undue hardship.

Reassignment to a vacant position.

Example 15: Sonny, a stocking clerk on the floor of a large grocery store, develops Ménière's disease, which produces a loud roaring noise in his ears for long periods of time. It is difficult for him to hear customers and co-workers on the floor because of music and frequent announcements played over the store's public address system and background noise in the store, particularly during busy periods. The store manager tried several unsuccessful accommodations. Upon request, the employer should reassign Sonny to a vacant position as a stocking clerk in the warehouse at the same location, absent undue hardship. The employee is qualified for the reassignment position and the warehouse is a quieter environment with fewer background sounds.

Other modifications or adjustments that allow a qualified applicant or employee with an ADA disability to enjoy equal employment opportunities.

Example 16: Maria is hired as a chemist for a pharmaceutical company. She communicates primarily through sign language and lip reading due to a hearing disability. Shortly after she is hired, she is required to attend a two-hour orientation meeting. The meeting includes a brief lecture session followed by a series of video vignettes to illustrate key concepts. As an accommodation, Maria requests a seat near the trainer, closed captioning during the video segments, and adequate lighting to allow her to read lips throughout the meeting. There is no undue hardship and the employer grants these reasonable accommodations to allow Maria to participate fully during the orientation session.

Although these are some examples of the types of accommodations commonly requested by employees with hearing conditions, other employees may need different changes or adjustments.**[21]** Employers should ask the particular employee requesting an accommodation what is needed that will help the employee do the job. There also are extensive public and private resources to help employers identify reasonable accommodations. For example, the **Job Accommodation Network (http://askjan.org)** (JAN) is a free, confidential service that provides information about many types of accommodations for applicants and employees with disabilities based on the needs of a given individual and workplace.

10. How does an applicant or employee request a reasonable accommodation?

There are no "magic words" that a person has to use when requesting a reasonable accommodation. A person simply has to tell the employer that the individual needs an adjustment or change at work because of an impairment. A request for reasonable accommodation also can come from a family member, friend, health professional, or other representative on behalf of a person with a disability. If an employer requires more information about the disability and why an accommodation is needed, it should engage in an "interactive process"—a dialogue with the applicant or employee—to obtain information that will help the employer in handling the request.

Applicants and employees may find it helpful to discuss any necessary accommodations with the employer prior to starting a new position or assuming new job duties, even if an accommodation was provided during the job application process or in a previous position. Similarly, employers may, as a best practice,

inform all new hires post-offer that they may request any needed accommodation in advance of their start date or once on the job.

Example 17: Liona has a hearing disability and is employed as an electrician. As a team leader, Liona is responsible for receiving her team's list of daily work sites and any accompanying special instructions, traveling to the sites with her team, and directing the day's work at each site. Liona receives the list of assignments and accompanying special instructions from the company owner during daily morning meetings attended by all of the team leaders. The special instructions are given orally. One morning, at the conclusion of a team leader meeting, Liona passes a note to the owner reminding the owner of her difficulty hearing and requesting that all special instructions for the team's assignments be written down because she is having difficulty hearing them. Liona has requested a reasonable accommodation.

11. May an employer request documentation when an applicant or employee requests a reasonable accommodation?

Sometimes. When a person's hearing condition is not obvious, the employer may ask the person to provide reasonable documentation about how the condition limits major life activities (that is, whether the person has a disability) and why a reasonable accommodation is needed. An employer, however, is entitled only to documentation sufficient to establish that the individual has a hearing disability and to explain why an accommodation is needed. A request for an individual's entire medical record, for example, would be inappropriate, as it likely would include information about conditions other than the individual's hearing.**[22]**

Example 18: Luíz, who has a hearing disability and communicates primarily through lip reading and speech, works as a programmer for an internet security firm. The firm acquires a new client and promotes Luíz to be the senior programmer responsible for all consultations regarding the internet security system design for the new client. Luíz's new assignment requires frequent phone conversations and teleconference meetings that do not allow for the use of Luíz's lip reading skills to aid in his verbal comprehension. As a result, Luíz's audiologist recommends, and Luíz requests, the use of a voice carry-over phone, which would provide an almost real-time text relay of the client's speech and also allow

the client to hear Luíz. Because Luíz's impairment is not an obvious disability, his employer may lawfully request medical documentation to verify his disability.

12. Does an employer have to grant every request for a reasonable accommodation?

No. An employer does not have to provide an accommodation if doing so would be an undue hardship. Undue hardship means that providing the reasonable accommodation will result in significant difficulty or expense. An employer also does not have to eliminate an essential function of a job as a reasonable accommodation, tolerate performance that does not meet its standards, or excuse violations of conduct rules that are job-related and consistent with business necessity and that the employer applies consistently to all employees (such as rules prohibiting violence, threatening behavior, theft, or destruction of property). Nor do employers have to provide employees with personal use items, such as hearing aids or other devices that are used both on and off the job.

If more than one accommodation would be effective, the employee's preference should be given primary consideration, although the employer is not required to provide the employee's first choice of reasonable accommodation. If a requested accommodation is too difficult or expensive, an employer may choose to provide an easier or less costly accommodation as long as it is effective in meeting the employee's needs.

Example 19: An employee with a moderate hearing disability requests use of communication access real-time translation (CART) for an upcoming training. In place of the CART device, the employer suggests an assistive listening device (ALD) because it is less expensive than CART. Twelve managers and supervisors are scheduled to take the training in a conference room at the employer's offices. Much of the information will be presented in a lecture format, accompanied by slides with printed information. The size of the room, the number of participants in the training, and the format of the training make it possible for the employee to use a portable assistive listening system effectively. The employer may, therefore, provide an ALD instead of CART under these circumstances.

Example 20: A deaf employee requests a sign language interpreter for regular staff meetings. The employer suggests that a co-worker could take notes and share them with the deaf employee or that a summary of the meeting could be prepared. These alternatives are not effective because they do not allow the deaf employee to ask questions and participate in discussions during the meetings as other employees do. Absent undue hardship, the employer must provide a sign language interpreter (in person or through a video remote interpreting service) for the meetings.

13. May an employer be required to provide more than one accommodation for the same applicant or employee?

Yes. The duty to provide a reasonable accommodation is an ongoing one. Although some applicants or employees with a disability may require only one reasonable accommodation, others may need more than one. An employer must consider each request for a reasonable accommodation and determine whether it would be effective and whether providing it would pose an undue hardship.

Example 21: A deaf employee can communicate effectively with her supervisor by lip-reading and with written notes. The employee wants to attend a three-day training program that will involve extensive communication between participants and the instructor and among participants themselves. The employee requests CART— communication access real-time translation—for the training. The employer may explore whether another form of reasonable accommodation—for example, a sign language interpreter—would be effective. But, the employer must provide the CART service or another effective form of reasonable accommodation, absent undue hardship, since lip-reading and exchanging occasional notes will not enable the employee to participate fully in the training.

14. Does an employer have to provide a reasonable accommodation to an applicant with a disability during the application process even if it believes that it will be unable to provide this individual with a reasonable accommodation on the job?

Yes. An employer must provide a reasonable accommodation to a qualified applicant with a disability that will enable the individual to have an equal opportunity to participate in the application process and to be considered for a job (unless the employer can show undue hardship). Thus, individuals with disabilities who meet initial requirements to be considered for a job should not be excluded from the application process because the employer speculates, based on a request for reasonable accommodation for the application process, that it will be unable to provide the individual with reasonable accommodation to perform the job. In many instances, employers will be unable to determine whether an individual needs reasonable accommodation to perform a job based solely on a request for accommodation during the application process. And even if an individual will need reasonable accommodation to perform the job, it may not be the same type or degree of accommodation that is needed for the application process. Thus, an employer should assess the need for accommodations for the application process separately from those that may be needed to perform the job.**[23]**

Example 22: An employer is impressed with an applicant's resume and contacts the individual to come in for an interview. The applicant, who is deaf, requests a sign language interpreter for the interview. The employer cancels the interview and refuses to consider this applicant further because it believes it would have to hire a full-time interpreter. The employer has violated the ADA. The employer should have proceeded with the interview, using a sign language interpreter (in person or through a video remote interpreting service), absent undue hardship, and at the interview inquired to what extent the individual would need a sign language interpreter to perform any essential functions requiring communication with other people.

By contrast, if the employer provides a requested sign language interpreter and the applicant fails a test that is a requirement of the application process, and the poor performance is unrelated to the deafness, the employer does not have to provide any further reasonable accommodations for this individual because the individual is no longer qualified to continue with the application process.**[24]**

15. What kinds of reasonable accommodations are related to the benefits and privileges of employment?

Reasonable accommodations related to the benefits and privileges of employment include accommodations that are necessary to provide individuals with disabilities access to facilities or portions of facilities to which all employees are granted access (for example, employee break rooms and cafeterias), access to information communicated in the workplace, and the opportunity to participate in employer-sponsored training and social events.

Example 23: Karin, who is deaf, works as an associate in a large investment firm. Every December, the partner in charge of the team for which Karin works holds a party at his residence for all of the team's members and a number of the firm's clients. Upon Karin's request, her employer provides her a sign language interpreter to allow Karin to fully participate in the social event.

An employer will not be excused from providing an employee with a disability with a necessary accommodation because the employer has contracted with another entity to conduct the event.

Example 24: An employer offers its employees a training course on organization and time management provided by a local company with which the employer has contracted. An employee who is deaf wants to take the course and asks for CART services or a sign language interpreter. The employer claims that the company conducting the training is responsible for providing what the deaf employee needs, but the company responds that the responsibility is the employer's. Even if the company conducting the training has an obligation, under Title III of the ADA,**[25]** to provide "auxiliary aids and services," which could include CART services and sign language interpreters, this fact would not alter the employer's obligation to provide the employee with a reasonable accommodation for the training.**[26]**

Concerns About Safety

When it comes to safety concerns, an employer should be careful not to act on the basis of myths, fears, or stereotypes about hearing conditions. Instead, the

employer should evaluate an individual on the individual's skills, knowledge, experience, and how the hearing condition affects the individual.

16. When may an employer refuse to hire, terminate, or temporarily restrict the duties of a person who has or had a hearing disability because of safety concerns?

An employer only may exclude an individual with a hearing disability from a job for safety reasons when the individual poses a direct threat. A "direct threat" is a significant risk of substantial harm to the individual or others that cannot be eliminated or reduced through reasonable accommodation.**[27]** An employer should conduct an individualized "direct threat" assessment of an individual's present ability to safely perform the essential functions of the job.**[28]** This determination must be based on reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence. In making a direct threat assessment, the employer must consider:

(1) the duration of the risk;

(2) the nature and severity of the potential harm;

(3) the likelihood that the potential harm will occur; and

(4) the imminence of the potential harm.**[29]**

The harm must be serious and likely to occur, not remote or speculative. Finally, the employer must determine whether any reasonable accommodation would reduce or eliminate the risk.**[30]**

Example 25: A school district denies an applicant with a hearing disability a job as a school bus driver for elementary school students, believing that she will not be able to drive safely and will not be able to monitor students, especially in the event of a medical or other emergency. The applicant has a clean driving record and has previously performed jobs transporting elderly patients by van to doctor's appointments and social events. Based on past experiences with accommodations, the applicant could monitor students effectively—and without compromising her driving—if an additional mirror highlighting the rear of the bus were installed. The mirror, placed above the driver, would allow her to better monitor students whose conversations she may not be able to hear or

understand as well as those students located in the front of the bus. Under these circumstances, the school district cannot demonstrate that this applicant would pose a direct threat to the safety of others, and its refusal to hire her would violate the ADA.**[31]**

Example 26: An employee with a hearing disability requests training to operate a forklift at a large hardware store. For safety reasons, the employer requires that forklift operators be able to communicate with a spotter employee while operating the machine. The employee and the employer contact the **JAN (http://www.askjan.org/)** , which suggests that they explore whether the employee could be accommodated using a visual alert on a smartwatch, a vibrating pager with a light signal, or a smartphone or tablet on a dashboard mount to allow communication with the spotter. If the employer determines that there is a reasonable accommodation that does not pose an undue hardship, based on the facts of the specific work setting and tasks, it must provide the accommodation and allow the employee training on the forklift. If no reasonable accommodation can be provided absent undue hardship, the employer may deny the employee training on a forklift.**[32]**

17. What should an employer do when another federal law prohibits it from hiring individuals with a hearing condition for particular positions?

If a federal law prohibits an employer from hiring a person with a hearing condition for a particular position, the employer is not liable under the ADA. The employer should be certain, however, that compliance with the law actually is required, not voluntary. The employer also should be sure that the law does not contain any exceptions or waivers.

Example 27: Terry has a severe hearing condition that is improved by her cochlear implant. She applies for a position driving large trucks. These positions are subject to hearing requirements and other standards enforced by the Department of Transportation (DOT), and Terry has not obtained an **exemption (https://www.fmcsa.dot.gov/medical/driver-medical-requirements/new-**

hearing-applicant-doc-email-version) from the DOT from its hearing requirements. The employer may rely on DOT's hearing requirement in denying Terry employment. However, the employer may not rely on the DOT hearing requirement to exclude Terry from a position driving smaller trucks, which are not subject to DOT's standards. Instead, the employer would have to establish that Terry would pose a direct threat, within the meaning of the ADA, if it denied her a position driving smaller trucks because of a hearing disability.

Harassment

The ADA prohibits harassment, or offensive conduct, based on disability just as other federal laws prohibit harassment based on race, sex, color, national origin, religion, age, and genetic information. Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance. Although the law does not prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

Example 28: Leonard works as a stocker at a local electronics store. Leonard lost his hearing two years ago as the result of a rare and debilitating illness. Since Leonard's recovery and return to work, his co-workers have constantly taunted him about his condition and recklessly driven the forklift near him while yelling for him to move. The employees know that Leonard cannot hear their warnings and often laugh at Leonard's startled reaction when he sees the forklift approaching him. Leonard complains to his supervisor in accordance with his employer's anti-harassment policy. The employer must promptly investigate and address the harassing behavior.

18. What should employers do to prevent and correct harassment?

Employers should make clear that they will not tolerate harassment based on disability or on any other protected basis. This can be done in a number of ways, such as through a written policy, employee handbooks, staff meetings, and periodic training. The employer should emphasize that harassment is prohibited and that employees should promptly report such conduct to a manager. Finally, the employer should immediately conduct a thorough investigation of any report of harassment and take swift and appropriate corrective action. For more information on the standards governing harassment under all of the EEO laws, see EEOC's **Harassment (https://www.eeoc.gov/harassment)** webpage.

Retaliation and Interference

The ADA prohibits retaliation by an employer against someone who opposes discriminatory employment practices, files a charge of employment discrimination, or testifies or participates in any way in an investigation, proceeding, or litigation related to a charge of employment discrimination. It is also unlawful for an employer to retaliate against someone for requesting a reasonable accommodation, or to **interfere with the exercise of ADA rights (https://www.eeoc.gov/laws/guidance/enforcement-guidance-retaliation-and-related-issues#III._ADA)**. Persons who believe that they have been retaliated against or subjected to ADA interference may file a charge as described below.

How to File a Charge of Employment Discrimination

Against Private Employers and State/Local Governments

If you believe that your employment-related ADA rights may have been violated, the EEOC can help you decide what to do next. For example, if the employer refuses to consider your request for a reasonable accommodation to complete an application process or perform your job, and if you think you would be able to do the job with a reasonable accommodation, you might consider filing a charge of discrimination with the EEOC. A discrimination charge is an applicant's or employee's statement alleging that an employer engaged in employment discrimination and asking the EEOC to help find a remedy under the EEO laws.

If you **file a charge of discrimination (https://www.eeoc.gov/how-file-charge-employment-discrimination)** , the EEOC will conduct an investigation. Mediation, which is an informal and confidential way for people to resolve disputes with the help of a neutral mediator, may also be available. Because you must file an EEOC charge within 180 days of the alleged violation in order to take further legal action (or 300 days if the employer is covered by a state or local employment discrimination law), it is best to begin the process early. It is unlawful for an employer to retaliate against you for contacting the EEOC or filing a charge.

If you would like to begin the process of filing a charge, go to our **EEOC Online Public Portal (https://publicportal.eeoc.gov/Portal/Login.aspx)** , contact **your local EEOC office (https://www.eeoc.gov/field-office)** (contact information available on the local office page), or contact us by phone at 1-800-669-4000 (voice), 1-800-669-6820 (TTY), or 1-844-234-5122 (ASL Video Phone).

Against the Federal Government

If you are a federal employee or job applicant and you believe that a federal agency has discriminated against you, you have a right to file a complaint. Each agency is required to post information about how to contact the agency's EEO Office. You can contact an EEO Counselor by contacting the office responsible for the agency's EEO complaints program. Generally, you must contact the EEO Counselor within 45 days from the day the discrimination occurred. In most cases the EEO Counselor will give you the choice of participating either in EEO counseling or in an alternative dispute resolution (ADR) program, such as a mediation program.

If you do not settle the dispute during counseling or though ADR, you can file a formal discrimination complaint against the agency with the agency's EEO Office. You must file within 15 days from the day you receive notice from your EEO Counselor about how to file.

Once you have filed a formal complaint, the agency will review the complaint and decide whether or not the case should be dismissed for a procedural reason (for example, your claim was filed too late). If the agency doesn't dismiss the complaint, it will conduct an investigation. The agency has 180 days from the day you filed your complaint to finish the investigation. When the investigation is finished, the agency will issue a notice giving you two choices: either request a hearing before an EEOC Administrative Judge or ask the agency to issue a decision as to whether the

discrimination occurred. A **detailed description of the federal sector EEO process (https://www.eeoc.gov/federal-sector/overview-federal-sector-eeo-complaint-process)** is available on our website.

If you require language assistance (such as a sign language interpreter or assistive technology) to file a complaint, participate in an EEOC investigation, or as part of an EEOC hearing process, you should submit a request to your agency for assistance. It will then be the **responsibility of the responding agency (https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/statutes/section-504-rehabilitation-act-of-1973)** to provide needed language assistance.

This information is not new policy; rather, this document applies principles already established in the ADA's statutory and regulatory provisions as well as previously issued guidance. The contents of this publication do not have the force and effect of law and are not meant to bind the public in any way. This publication is intended only to provide clarity to the public regarding existing requirements under the law. As with any charge of discrimination filed with the EEOC, the Commission will evaluate alleged ADA violations based on the facts and circumstances of the particular matter and applicable legal principles.

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[1] *See* **EEOC Disability-Related Publications (http://www.eeoc.gov/laws/types/disability.cfm)** and **People with Certain Types of Health Conditions/Disabilities (https://www.eeoc.gov/eeoc-disability-related-resources/people-certain-types-health-conditionsdisabilities)** .

[2] The ADA uses terminology that has specific legal meanings. Two central ADA terms are "disability" and "impairment."

On the issue of self-identification, the National Association of the Deaf (NAD) states that:

> The deaf and hard of hearing community is diverse. There are variations in how a person becomes deaf or hard of hearing, level of hearing, age of onset, educational background, communication methods, and cultural identity. How people "label" or identify themselves is personal and may reflect identification

with the deaf and hard of hearing community, the degree to which they can hear, or the relative age of onset.

See National Association of the Deaf (NAD), **Community and Culture–Frequently Asked Questions (https://www.nad.org/resources/american-sign-language/community-and-culture-frequently-asked-questions/)** , (last accessed January 17, 2023).

In addition, NAD addresses particular labels that often are favored or disfavored. In this document, EEOC does not use the terms that NAD indicates are most often disfavored, including the term "hearing impaired." However, to ensure consistency with the ADA definition of disability, which incorporates references to physical "impairment," this document uses the terms "disability" and "impairment" as necessary as a legal matter.

[3] For example, disability laws in California, Pennsylvania, New Jersey, New York, and a number of other states apply to employers with fewer than 15 employees.

[4] *See* National Institute on Deafness and Other Communication Disorders, **Quick Statistics About Hearing (http://www.nidcd.nih.gov/health/statistics/Pages/quick.aspx)** (citing to CDC report) (last accessed January 17, 2023).

[5] *See* Note 2, above.

[6] *Id.*

[7] The definition of "disability" is construed broadly in favor of expansive coverage to the maximum extent permitted by the terms of the ADA, and the primary object of attention in cases brought under the ADA should be whether covered entities have complied with their obligations and whether discrimination has occurred, not whether the individual meets the definition of disability. **29 C.F.R. § 1630.1(c)(4) (https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.1(c)(4))** .

[8] *See* **29 C.F.R. §1630.2(i)(1)(ii) (https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.2(i)(1)(ii))** .

[9] 42 U.S.C. § 12102(4)(E) (https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada) .

[10] *Id*.; **29 C.F.R. § 1630.2(j)(5)(i) (https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.2(j)(5)(i))** .

[11] **29 CFR 1630.2(j)(3)(iii) (https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.2(j)(3)(iii))** .

[12] **29 C.F.R. § 1630.2(k) (https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.2(k))** .

[13] Federal contractors are required under 41 C.F.R. § 60-741.42, a regulation issued by the Office of Federal Contract Compliance Programs (OFCCP), to invite applicants to voluntarily self-identify as persons with disabilities for affirmative action purposes. The ADA prohibition on asking applicants about medical conditions at the pre-offer stage does not prevent federal contractors from complying with the OFCCP's regulation. *See* **Letter from Peggy R. Mastroianni, EEOC Legal Counsel, to Patricia A. Shiu, Director of OFCCP (https://www.dol.gov/sites/dolgov/files/ofccp/regs/compliance/sec503/Self_ID_Forms/OLC_letter_to_OFCCP_8-8-2013_508c.pdf)** (Aug. 8, 2013)(last accessed January 18, 2023).

[14] An employer also may ask an employee about the employee's hearing or send the employee for a medical examination when it reasonably believes the employee may pose a direct threat because of an impairment. *See* "**Concerns About Safety**."

[15] The ADA allows employers to conduct voluntary medical examinations and activities, including obtaining voluntary medical histories, which are part of an employee wellness program (such as a smoking cessation program), as long as any medical records (including, for example, the results of any diagnostic tests) acquired as part of the program are kept confidential. *See* EEOC _____ _____ **(http://www.eeoc.gov/policy/docs/guidance-inquiries.html)** at Question 22.

[16] An employer also may ask an employee for periodic updates on the employee's condition if the employee has taken leave and has not provided an exact or fairly specific date of return or has requested leave in addition to that already granted. Of course, an employer may call employees on extended leave to check on their progress or to express concern for their health without violating the ADA.

[17] An employer's attempt to indirectly advise an employee's colleagues that the employee is receiving a reasonable accommodation (by, for example, telling an employee's colleagues that the ADA requires the employer to make changes for that employee) may also amount to a disclosure that the employee has a disability.

[18] *See* EEOC **(https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada)** at Question 42.

[19] A text telephone or teletypewriter (TTY) allows a telephone user to send typed messages to another caller and to receive typewritten messages from the caller either directly (if the caller is also using a TTY) or through a telephone relay service (TRS) operator. A voice carry-over telephone allows someone with a hearing condition to communicate orally over the telephone and to receive text communications from the other caller that are transcribed by a TRS operator. A captioned telephone allows users with hearing conditions to receive communications over the telephone orally while receiving an almost simultaneous text translation.

[20] For more information regarding an employer's responsibility to provide leave for covered individuals, see **(https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada)** at Questions 17 - 21 (2002); **(https://www.eeoc.gov/laws/guidance/employer-provided-leave-and-americans-disabilities-act)** (2016).

[21] *For information on specific accommodation ideas for different types of limitations, see* the Job Accommodation Network's **Searchable Online Accommodation Resource (https://askjan.org/soar.cfm)** (SOAR)(last accessed January 17, 2023). JAN can also be reached at 800-526-7234 (Voice) or 877-781-9403 (TTY).

[22] Requests for documentation to support a request for accommodation may violate Title II of the Genetic Information Nondiscrimination Act (GINA) where they are likely to result in the acquisition of genetic information, including family medical history. **29 C.F.R. §1635.8(a) (https://www.ecfr.gov/current/title-29/subtitle-**

B/chapter-XIV/part-1635#p-1635.8(a)) . For this reason, employers may want to include a warning in the request for documentation that the employee or the employee's doctor should not provide genetic information. *Id.* at **1635.8(b)(1)(i)(B) (https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1635#p-1635.8(b)(1)(i)(B))** .

[23] _____

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(https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada) at Question 13.

[24] *Id.* at Question 13, Examples A & B.

[25] In an effort to eliminate discrimination against individuals with disabilities, Title III of the ADA requires businesses and non-profit organizations that are public accommodations to comply with basic nondiscrimination and building accessibility requirements, provide reasonable modifications to policies and practices, and supply auxiliary aids (for example, assistive listening devices) to ensure effective communication with persons with disabilities. For more information on the requirements of Title III of the ADA, visit the website for the U.S. Department of Justice, Civil Rights Division, **Disability Rights Section (http://www.justice.gov/crt/about/drs/)** (last accessed January 17, 2023).

[26] An employer should include, as part of any contract with an entity that conducts training, provisions that allocate responsibility for providing reasonable accommodations. This can help to avoid conflicts or confusion that could arise and result in an employee being denied a training opportunity. An employer should also remember, however, that it remains responsible for providing a reasonable accommodation that an employee needs to take advantage of a training opportunity, regardless of how that responsibility has been allocated in the contract.

[27] 29 C.F.R. § 1630.2(r) (https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.2(r)) .

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] *See Rizzo v. Children's World Learning Center*, 213 F.3d 209 (5th Cir. 2000).

[32] *See* Job Accommodation Network's **(https://askjan.org/disabilities/Hearing-Impairment.cfm)** (last accessed January 17, 2023), describing a process for determining if a particular accommodation would meet employer and employee needs and providing links to specific accommodation ideas for different types of hearing conditions.