

How an Internal Job Search Can Help Make an ADAAA Accommodation

By
Kevin Ufier, MEd, CRC

National Director of Managed Disability
Genex Services

When employees request accommodations under the Americans with Disabilities Act Amendments Act (ADAAA), employers attempt to make reasonable accommodations that will enable employees to stay in their current positions. However, it's not always possible when limitations prevent employees from performing the essential job functions or an accommodation would create undue hardship for the employer.

As a rehab specialist with more than 20 years of experience in disability management, I've worked with a variety of employers on ADAAA accommodations. One national manufacturing company fabricated large mechanical equipment. Assembly was performed in a regimented fashion with machines that required employees to stand. When one employee made an ADAAA request for a long-term accommodation, needing to sit rather than stand, such a job modification would have created undue hardship for the employer, as it would have had to modify its assembly line and expensive manufacturing equipment.

Of course, this employer went through all the appropriate steps in the ADAAA accommodation process. The

employer carefully reviewed the request, inquiring with the attending physician for clarification about the physical and functional limitations, and the length of the limitations. They also held an interactive dialogue with the employee and manager. However, it soon became clear that a reasonable accommodation was not available.

Reassignment as Accommodation

It sometimes happens that an employer explores accommodations such as making the work environment more compatible to the employee's needs, modifying the work schedule, or installing assistive equipment, but nothing can help the employee succeed in the original position. In cases like this, employers may need to reassign the employee to a different job to accommodate the functional limitations. Reassignment has long been viewed as an accommodation of last resort, after trying all other reasonable accommodations.

One company we worked with was able to reassign an employee from a night shift position to a daytime job for which the person was equally qualified. The accommodation was needed because the employee suffered from insomnia and mental health issues, which made working a night shift problematic.

The option to consider reassign-

ment has long been a form of reasonable accommodation under ADAAA regulations, and such an accommodation should be considered if and when it's reasonable for the employer. After all, the ADAAA has a positive intent: to enable employees with disabilities to continue working and employers to keep an employee who wants to continue to make a valued contribution to the company.

While many employers often wait until they've exhausted all accommodation options under the employee's current position, it is possible during the interactive process for the employer and employee to both agree that an alternative position might be a more appropriate accommodation solution.¹

The Internal Job Search

Employers must define their reassignment process, starting with how an internal job search will be conducted. Oftentimes, human resources (HR) is most aware of the company's open or soon-to-be-available positions. And the employer is not obligated to create a new position.² As part of the interactive process, employees may also wish to join in the internal job search if they have access to job listings; for example, perhaps openings are posted on the company's website.

In the job search, a key benefit to employees is that they don't have to

Leave Your Leaves to Us



ReedGroup delivers exceptional experiences for your employees and their families. We return people to work at the right time, with the right support.

Gain peace of mind. Leave your leaves to us.

compete against other candidates.³ However, they do need to meet the minimum qualifications for the position, and they must be capable of performing the essential functions of the reassigned position — with or without an accommodation.

When I have assisted with internal job searches, various stakeholders are often involved and consulted, including HR, an ADAAA specialist, and the attending physician. Typically, a skill transfer assessment is also useful. This evaluation will vet the employee's skills and functional capabilities with any new limitations. Using this assessment, the team is then able to match the employee's skills, qualifications, and functional abilities to other openings.

If it's a small employer with just one location, it will likely have fewer job openings, so the internal job search may be simple and straightforward. But a large, national employer might have hundreds of openings across the country among different departments and cities. An internal job search can span any department and location, although the employer is not obligated to pay for relocation expenses unless it routinely does so for any employee's voluntary transfer.⁴

COVID-19 Considerations

In light of COVID-19, some employees may request an

ADAAA accommodation due to health risks that make them particularly vulnerable to serious infection. For example, adults who are 60 or older, or people of any age who have certain underlying medical conditions (e.g., severe asthma or pulmonary hypertension) are particularly susceptible. Even if these employees utilize personal protective equipment and have been vaccinated, they may still be at higher risk.

In such cases, employers may be asked to make accommodations for employees with age and health concerns. For



**New NAME.
Same IDAM Platform.**

We're happy to announce that ClaimVantage has been acquired by Majesco. Our expanded team is here to help you successfully manage absence and disability for each customer in our cutting-edge integrated solution.

- ▶ Smart no-code configuration tools
- ▶ Data-driven insights
- ▶ Compliance with Federal and State regulations
- ▶ Next-gen digital customer portal

 www.majesco.com | info@majesco.com



EXPANDED OFFERINGS EXPAND YOUR OPPORTUNITIES.

Now available from Aflac: **LIFE, ABSENCE MANAGEMENT,
DISABILITY, DENTAL AND VISION SOLUTIONS.**

Now you can get even more of what you need from Aflac. Our latest portfolio expansions, combined with the supplemental insurance products we're known for, give you even more options to help with expenses health insurance doesn't cover.

Get the full picture at [Aflac.com/GetMore](https://www.aflac.com/GetMore)



AGC2002844

Aflac herein refers to Aflac and/or Aflac New York and/or Continental American Insurance Company and/or Continental American Life Insurance Company. WWWHQ | 1932 Wynnton Road | Columbus, GA 31999 Continental American Insurance Company | Columbia, SC

12/21

example, they may reduce employees' direct interaction with the public or allow them to have a longer period of remote work or a hybrid work arrangement. Some employees with severe chronic conditions (e.g., emphysema or a compromised immune system) may be vulnerable even after vaccination; in such cases, reassignment away from public-facing positions might be a better option.

If remote work is permitted or extended as an accommodation, employers may want to conduct a performance check to ensure employees are indeed performing the essential job functions remotely. And as the pandemic evolves and conditions change, employers may also need to change job requirements. Some companies will need employees who typically interact with customers to begin traveling again to visit those accounts in-person rather

than interacting via Zoom or phone calls. In other situations, a manager may feel it's imperative to have increased in-person team meetings for enhanced communication, collaboration, and creativity. And, as the economy picks up, there may be increased need to have more face time with managers, colleagues, and other partners. It's natural to restart practices that have produced business success in the past, yet they may conflict with new pandemic-driven compliance mandates; employers are encouraged to seek legal counsel during the long transition to the "next normal."

In regard to COVID-19 and ADAAA accommodations, employers must continue to be flexible to see how things develop with vaccinations, infections, and the evolving needs of job positions as the economy rebounds. Regardless of COVID-19, however,

reassignment, internal job searches, and skill transfer assessments are useful and much-needed tools in a thorough accommodation process.

References

1. Equal Employment Opportunity Commission (EEOC). *Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA*. (Section: Reassignment; sixth Paragraph begins "Before considering..."). Oct.17, 2002. Retrieved from <https://bit.ly/3erVbMR>
2. EEOC. *Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA*. (Section: Reassignment; seventh Paragraph begins "'Vacant' means..."). Oct.17, 2002. Retrieved from <https://bit.ly/3erVbMR>
- . EEOC. *Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA*. (Section: Reassignment; second paragraph). Oct.17, 2002. Retrieved from <https://bit.ly/3erVbMR>
- . EEOC. *Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA*. (Section: Reassignment; Question 27). Oct.17, 2002. Retrieved from <https://bit.ly/3erVbMR>