

# Reassignment as a Reasonable Accommodation Under the ADA

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If an employer has to assign a qualified employee with a disability to a vacant position, is it a part of the employer's duty to reasonably accommodate the disability? The employer believed that, if he had a vacant position and the disabled employee was qualified for it, he had to give the job to that employee. While reassignment to a vacant position may be a reasonable accommodation under the ADA, there is no requirement that you must reassign the employee. Let's see if we can clear up this misconception.

An employer's obligation under the ADA when dealing with a disabled employee is to provide a *reasonable* accommodation to the disability, not a perfect accommodation. And disabled employees are not entitled to the accommodation of their choice. Generally speaking, a reassignment is only necessary if the employee is unable to perform his or her existing job, with or without a reasonable accommodation. If the employee is not able to perform his or her existing job, and as part of the interactive process you are considering reassignment, there are several factors that can determine whether reassignment is reasonable.

First, an employer is not required to create a new job for the disabled employee. Second, an employer is not required to "bump" another employee in order to reassign the disabled employee. The position must be vacant at the time of the request. Reassignment might also be a reasonable accommodation if you know that a position will become vacant shortly. For example, if you know an employee in a position for which the disabled employee is qualified will be retiring soon, you might hold that position and reassign the disabled employee there after the other employee retires.

You also do not have to reassign the employee if, under a collective bargaining agreement or a well-established system, you make assignments based upon seniority and a more-senior employee is eligible for the position. On the other hand, sometimes your policies may have to take a back seat to your obligation to reasonably accommodate your employees' disabilities. For instance, if you have a policy against ever conducting lateral transfers, you may have to make an exception if such a reassignment is the only way to reasonably accommodate an employee's disability.

Also, an employer is not required to reassign a disabled employee if the reassignment would require a promotion for which that employee is not otherwise eligible. You should first consider lateral transfers to equivalent positions. If there are no such positions, you may reassign the employee to a

lower paid position if he or she cannot be accommodated any other way.

But what if you have multiple positions for which the employee is qualified? The employer is free to choose the reassignment that is to be offered, so long as it is a reasonable accommodation.

Finally, employers do not have to offer a reassignment if it would cause an undue hardship. You should be aware that “undue hardship” means more than a little hassle. One court has characterized “undue hardship” as “an action requiring significant difficulty or expense.” Whether there is actually an undue hardship will vary from case to case. Some things to consider are the cost of the accommodation, the number of employees in the company, the company’s financial resources, and the impact of the accommodation on the operation of the company.

But assuming that the employee is unable to perform his or her job with or without reasonable accommodation, and there is a vacant position that you can reassign the employee to, you should reassign the employee.

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