



COVID 19 - Undue Hardship

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One of the exceptions under the American with Disabilities Act, as amended (the “ADA”) to making a reasonable accommodation to an employee subject to the ADA is when the particular reasonable accommodation poses an “[undue hardship](#)” to the employer. Under the ADA, an undue hardship means “significant difficulty or expense.” Based on the effects of the current COVID 19 environment, an accommodation that would not have necessarily posed an undue hardship on an employer in the past may pose one now.

Per the EEOC Guidelines, an employer may consider whether circumstances create “significant difficulty” in acquiring or providing certain accommodations, considering the facts of the particular job and workplace. For example, it may be significantly more difficult during the pandemic to conduct a needs assessment or to acquire certain items, and delivery may be impacted, particularly for employees who may be teleworking. It may also be significantly more difficult to provide employees with temporary assignments, to remove marginal functions, or to readily hire temporary workers for specialized positions.

With respect to a significant expense, most accommodations did not pose a significant expense when considered against an employer’s overall budget and resources (considering the budget/resources of the entire entity and not just its components) prior to the COVID 19 outbreak; however, the sudden loss of some or all of an employer’s income stream because of a community lockdown is an important consideration. Also relevant is the amount of discretionary funds available to an employer during this time - when considering other expenses - and whether there is an expected date that current restrictions on an employer’s operations will be lifted or other new restrictions implemented. These considerations do not mean that an employer can reject any reasonable accommodation requested that costs money, but an employer must weigh the cost of the accommodation against its budget while taking into account the constraints created by the lockdown.

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