

12.9 ADA—Reasonable Accommodation

To establish the plaintiff [name]'s claim that the defendant [name] discriminated against the plaintiff [name] in violation of the ADA by failing to provide a reasonable accommodation, the plaintiff [name] must prove, by a preponderance of the evidence, each of the following three elements:

First, the plaintiff [name] is a “qualified individual”;

Second, the defendant [name] received adequate notice of the plaintiff [name]'s disability and desire for a reasonable accommodation; and

Third, a reasonable accommodation is available that would have enabled the plaintiff [name] to [apply or qualify for] [perform the essential functions of] the job.

Under the ADA, [an] accommodation[s] by the defendant may include, but [is] [are] not limited to:

(1) [modifying or adjusting a job application process to enable a qualified applicant with a disability to be considered for the position][;]

(2) [making existing facilities used by employees readily accessible to and usable by individuals with disabilities][;]

(3) [job restructuring][;]

(4) [part-time or modified work schedule][;]

(5) [reassignment to a vacant position][;]

(6) [acquisition or modifications of examinations, training materials, or policies][;]

(7) [provision of qualified readers and interpreters][;] [or]

(8) [other similar accommodations for individuals with plaintiff's disabilities].

It is for you to determine whether the accommodation[s] requested by the plaintiff [name] [is] [are] reasonable.

A reasonable accommodation does not include changing or eliminating any essential function of employment, shifting any of the essential functions of the employment to others, or creating a new position for the disabled employee.

[If the plaintiff rejects a reasonable accommodation that could enable the plaintiff to perform the essential functions of the position, the plaintiff cannot be considered qualified for

the position.]

[An accommodation is generally not reasonable when it consists of a request to be reassigned to another job position that would be in violation of an employer's seniority system. This general rule, however, does not apply if the plaintiff has proved, by a preponderance of the evidence, special circumstances such as [the seniority system provides for exceptions] [the employer has exercised changes to the seniority system] [*state other special circumstance*].]

Comment

See Snapp v. United Transp. Union, 889 F.3d 1088, 1095 (9th Cir. 2018) ("The ADA treats the failure to provide a reasonable accommodation as an act of discrimination if the employee is a 'qualified individual,' the employer receives adequate notice, and a reasonable accommodation is available that would not place an undue hardship on the operation of the employer's business."); *see also Dunlap v. Liberty Nat. Prods., Inc.*, 878 F.3d 794, 798 (9th Cir. 2017) ("Liberty was aware of or had reason to be aware of Dunlap's desire for a reasonable accommodation. Such awareness triggered Liberty's duty to engage in the interactive process.") (internal citation omitted).

The bracketed words about special circumstances at the end of the instruction have been added based on *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391, 405-06 (2002).

The factors listed in this instruction are derived from 42 U.S.C. § 12111(9) and 29 C.F.R. §§ 1630.2(o)(1)(i), (3), 1630.9(d); *see also Barnett v. U.S. Air, Inc.*, 228 F.3d 1105, 1112-14 (9th Cir. 2000) (en banc) (holding that the interactive process is a mandatory, not permissive, duty of the employer, and the employer has a duty to initiate the interactive process in some circumstances), *vacated on other grounds*, 535 U.S. 391 (2002).

In *Barnett*, the Supreme Court addressed a requested accommodation (reassignment from the position of cargo handler to that of mailroom worker) that conflicted with a seniority system. 535 U.S. at 393-95. The Supreme Court recognized that while a proposed accommodation that would otherwise be reasonable typically becomes unreasonable when it conflicts with a seniority system, an employee should have an opportunity to establish any special circumstances that may constitute an exception to the general rule. *Id.* at 394, 405; *see also Willis v. Pac. Mar. Ass'n*, 244 F.3d 675, 679 (9th Cir. 2001) (holding that an employee's proposed accommodation was per se unreasonable because it directly conflicted with bona fide seniority system established under a collective bargaining agreement).

In *PGA Tour v. Martin*, 532 U.S. 661 (2001), the Supreme Court held that the petitioner's use of a golf cart that is normally prohibited during professional tour events is a reasonable accommodation for a professional golfer disabled by a degenerative circulatory disorder impairing the ability to walk a golf course in a golf tournament. The Supreme Court found that such an accommodation would not "fundamentally alter" a tournament. *Id.* at 690.

Unpaid medical leave may be a reasonable accommodation. “Even an extended medical leave, or an extension of an existing leave period, may be a reasonable accommodation if it does not pose an undue hardship on the employer.” *Dark v. Curry County*, 451 F.3d 1078, 1090 (9th Cir. 2006). However, “recovery time of unspecified duration may not be a reasonable accommodation (primarily where the employee will not be able to return to his former position and cannot state when and under what conditions he could return to work at all).” *Id.* In those jobs for which performance requires attendance at the job, “irregular attendance compromises essential job functions.” *Samper v. Providence St. Vincent Med. Ctr.*, 675 F.3d 1233, 1237-40 (9th Cir. 2012) (holding unreasonable an accommodation request that would allow a neo-natal intensive care unit nurse to miss work whenever that nurse felt missing work was needed and for so long as that nurse felt was needed).

In *Josephs v. Pacific Bell*, 443 F.3d 1050, 1060 (9th Cir. 2006), the court joined other circuits in expressly recognizing a discriminatory failure to reinstate as a separately actionable claim under the ADA.

The ADA does not impose a duty to create a new position to accommodate a disabled employee. *Wellington v. Lyon Cnty. Sch. Dist.*, 187 F.3d 1150, 1155-56 (9th Cir. 1999).

“Title II of the ADA applies to arrests.” *Hyer v. City & County of Honolulu*, 118 F.4th 1044, 1065 (9th Cir. 2024) (internal brackets omitted) (quoting *Sheehan v. City & County of San Francisco*, 743 F.3d 1211, 1232 (9th Cir. 2014), *rev’d in part on other grounds*, 575 U.S. 600 (2015)). A reasonable accommodation in the context of an arrest of a person with a mental illness could include the use of a throw phone or a crisis negotiation team. *Id.* at 1066. In the context of an arrest of a deaf person, “there is no per se obligation to provide ‘an on-site interpreter every time’ one is requested; ‘[r]ather, the test is whether an individual has received an auxiliary aid sufficient to prevent any “real hindrance” in her ability to exchange information.’” *Mayfield v. City of Mesa*, 131 F.4th 1100, 1110 (9th Cir. 2025) (quoting *Bax v. Doctors Med. Ctr. Of Modesto, Inc.*, 52 F.4th 858, 867 (9th Cir. 2022)). “Assessing whether an entity provided appropriate auxiliary aids where necessary to afford effective communication is a fact-intensive exercise. The trier of fact must weigh several factors, including the method of communication used by the individual; the nature, length, and complexity of the communication involved;” and “in the specific context of *arrests*, . . . whether any ‘exigent circumstances’ surrounding the plaintiff’s encounter with law enforcement would render a proposed reasonable accommodation impracticable.” *Id.* (citations omitted).

The ADA applies to inmates in prisons who need accommodations for transportation. *Weldeyohannes v. Washington*, 162 F.4th 972, 976 (9th Cir. 2025) (citing *Bell v. Williams*, 108 F.4th 809, 824 (9th Cir. 2024)). If a public entity receives a request for accommodation, the entity must make a “fact-specific investigation to determine what constitutes a reasonable accommodation.” *Duvall v. County. of Kitsap*, 260 F.3d 1124, 1139 (9th Cir. 2001). To obtain monetary damages, a plaintiff must show “deliberate indifference” to his need for accommodation.” *Id.* at 1138.

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