

FAQ: ADA and Leave Options



The coronavirus pandemic presents questions on whether and how an employee can be accommodated due to personal/family coronavirus health related issues. The following advice is intended to provide a summary of the various leave options educators may have available to them under the Americans with Disabilities Act (ADA), federal emergency leave, and traditional leave options. This is not intended to provide legal advice.

Different rules apply depending on the employee's situation. Educators may need accommodations or leave because of a medical condition that increases the risk of serious illness or death from coronavirus, or one may reside with an individual who is at high risk, or one may have contracted coronavirus. See [this CDC page](#) for more information, and note that the CDC is constantly revising its guidance to reflect additional conditions. Therefore, educators are encouraged to verify the CDC guidance as it is being updated.

Federal and state laws, collective bargaining agreements, memoranda of understanding, and school policies will inform an employee of the type of leave available.

Qualifying for an Accommodation under the ADA

A disability includes a physical or mental impairment that substantially limits one or more major life activities. Disability is interpreted broadly to include in some cases impairments that are not permanent.

Major life activities include caring for oneself, performing manual tasks, seeing, hearing, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, thinking, communicating, and interacting with others. The operation of a major bodily function includes functions of the immune system, special sense organs and skin, normal cell growth, digestive, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, lymphatic, musculoskeletal, and reproductive functions.

While the CDC maintains a list of certain underlying medical conditions that place people at an increased risk for severe illness, it also distinguishes medical

conditions that may place an individual at an increased risk of severe illness, such as asthma (moderate to severe), cerebrovascular disease, cystic fibrosis, hypertension or high blood pressure, an immunocompromised state from a bone or blood marrow transplant, immune deficiencies, HIV, use of corticosteroids, or use of other immune weakening medicines, neurological conditions, such as dementia, liver disease, pregnancy¹, pulmonary fibrosis, smoking, thalassemia (a blood disorder), and Type I diabetes mellitus.

Mental health conditions may also qualify as a disability, such as an intellectual disability, organic brain syndrome, emotional or mental illness and specific learning disabilities, post-traumatic stress disorder, obsessive compulsive disorder, and anxiety disorder. The condition must substantially interfere with one or more major life activities as described above.

As with any accommodations request, employers can ask questions to determine whether the condition is a disability, discuss with the employee how the requested accommodation would assist and allow the employee to work, explore alternative accommodations that may effectively meet their needs, and request medical documentation if needed.

General concerns about coronavirus or apprehension about returning to school does not entitle an employee to reasonable accommodations under the ADA.

¹ In [a recent CDC study](#), it suggests that pregnant women with coronavirus are "more likely to be hospitalized and at increased risk for intensive care (ICU) admission and receipt of mechanical ventilation."

Pregnancy and Age

Pregnancy itself is not a qualifying condition under the ADA, however, certain pregnancy-related medical conditions may be. If you are pregnant, you should consult with your doctor regarding possible accommodations.

Age alone is not considered a disability under the ADA. The Equal Employment Opportunity Commission (EEOC) and CDC recognize that while employees who are 65 and older are at higher risk for developing complications from the coronavirus, they nonetheless do not qualify for accommodations under the ADA based only on age. If, however, these individuals have underlying medical conditions, they may be eligible for ADA accommodations.

What Rights Does an Employee Have to a Job Modification Under the ADA?

The ADA requires the employer to provide reasonable accommodations to qualified individuals with disabilities unless doing so would pose an undue hardship for the employer. A reasonable accommodation is an adjustment or modification to a job or work environment that will enable an employee with a disability to continue to perform the essential functions of their job and enjoy equal benefits and privileges of employment.

Under the ADA, accommodations may be requested upon hiring or at any point during employment when a need arises. The ADA does not require documentation of your medical condition when requesting an accommodation. The employer can request medical information that is relevant to deciding whether you have a qualifying disability. This can be done in advance of the start of the school year. The request triggers the interactive process, which is the process to determine appropriate accommodations.

During the interactive process, the EEOC recommends that the employer review the job description, and in consultation with the employee and any medical information from the medical provider, to understand the specific job-related limitations that the disability presents and what reasonable accommodations may be available. Every request for an accommodation is fact specific.

Employers and employees must work together to identify possible accommodations. The employer is not required to provide the requested accommodations and can offer alternatives; in other words, an employer is required to provide an effective accommodation,

but it does not have to provide the specific accommodation the employee requests if there are other viable alternatives.

An employer can deny an accommodation request if it causes an “undue hardship” or if there is insufficient information about the medical condition vis-à-vis the requested accommodation. An undue hardship could include significant difficulty or expense, considering the nature and cost of the accommodation, available resources, and the operations in place. In the case of an insufficient medical note, the employer may ask for additional information. In all cases where a requested accommodation is denied, the employee must seek the reasons for the denial in order to possibly cure any defects, such as insufficient information.

What Are Possible Accommodations Due to Coronavirus?

Possible accommodations include:

- Additional PPE
- Cleaning of surfaces
- Changes in classroom environment or school building
- Transfer to a position with less contact with others
- Telework
- Temporary leave (this should be analyzed on a case by case basis to determine alternatives exist).

The EEOC recommends the [Job Accommodation Network \(JAN\) website](#) for ideas on types of accommodations, although the examples provided on the JAN website may or may not be appropriate based on the individualized analysis.

Finally, the ADA does not require accommodations for people who are living with someone who is at high risk, but there are other possible leave options per the collective bargaining agreement, Family Medical Leave Act (FMLA), and if coronavirus related, leave per [the Families First Coronavirus Response Act \(FFCRA\)](#).