



ADA Policy Guide Series #5 Undue Hardship and Direct Threats Under the ADA

Title I of the Americans with Disabilities Act (ADA) requires employers to provide reasonable accommodations to employees with disabilities for performing essential job functions or to enjoy the privileges or programs provided by their employers. On rare occasions there may be circumstances where such accommodations will create undue hardship or burden on the employer. In other situations, an employee's disability may present a significant risk of harm to the employee or to others in the performance of essential job duties. The ADA and U. S. Equal Employment Opportunity Commission (EEOC), the agency responsible for enforcing the Act, establishes a very high threshold for an employer's decisions specific to Undue Hardship and Direct Threats. Therefore, the following guidance is provided:

- Undue Hardship or Direct Threats must be determined on a case-by-case basis.
- Generalized conclusions or assumptions are insufficient in supporting claims of Undue Hardship or Direct Threat.
- Agencies are encouraged to seek legal counsel prior to issuing a decision or determination based upon Undue Hardship or Direct Threat.

Assessments of Undue Hardship

A determination of undue hardship must be based on several factors, including:

- The nature and cost of the accommodation needed in relation to the overall financial resources of the Agency, the number of employees, and type/location of agency facilities.
- The overall financial resources of the Agency making the reasonable accommodation, the number of persons employed at this Agency, the effect on expenses, and resources of the Agency; and
- Any significant disruptions to the Agency's business operations.

The Commonwealth of Virginia may be viewed by the EEOC as a large employer with available financial resources to provide the accommodation even if the costs cannot be provided through a program-level budget within the Agency.

If a requested accommodation will establish an undue hardship, agencies must attempt to identify an alternative accommodation that will not pose such a hardship. Also, if the cost of an accommodation will impose an undue hardship on the employer, the individual with a disability may be provided the option of paying that portion of the cost which would constitute an undue hardship of providing the accommodation.

An individualized assessment of the accommodation shall consider:

- Nature of the requested accommodation(s)

- Assessment of the accommodation (costs or other impacts on the employer)
- Other accommodations considered
- Serious or significant disruptions to business operations; and
- Impacts on other employees, such as significantly increased workloads, scheduling, etc.

Examples of Undue Hardship

- Accommodations that require the displacement of another employee.
- Removal of essential core responsibilities of the position that significantly impacts the purpose/intent of the position. Core responsibilities that are low in frequency or importance may be adjusted with careful considerations.
- Creation of a new position. Alternatively, a more reasonable accommodation may be reassigning the employee to an available vacant position that will accommodate their disability or may allow for the requested accommodation. The employee must meet the minimum qualifications for the new position.
- Requests to work remotely full-time when the position duties must be performed on the worksite or involve public facing duties. Agencies may consider a reassignment to a vacant-funded position that will allow for telework provided the employee meets the minimum qualifications of the position.

Assessment of Direct Threats

In some instances, agencies must conduct a Direct Threat assessment of the employee's present ability to safely perform the essential functions of the job may indicate that a significant risk of substantial harm exists to the health or safety of the individual or others (co-workers and/or the public) that cannot be eliminated or reduced by the accommodation(s) requested. The agency must conduct an individualized assessment relying upon the treating health care provider's most recent medical assessment, agency resources, and the best available objective evidence. Factors that must be considered include but are not limited to:

- Duration of the current risk
 - Temporary or permanent
 - Must **not** be speculative or remote in nature
 - Based upon objective medical or other factual evidence
- Nature and severity of the potential harm
- High probability the potential harm will occur; and
- Imminence of the potential harm

Examples of Direct Threats:

- Potential loss of consciousness or motor control and the employee's position involves operating machinery or heavy equipment.
- Diagnosis of an infectious disease where patients/residents, students, clients, public or other stakeholders are at risk to exposure.