

# Undue Hardship

## What is Undue Hardship?

An employer is required to provide a qualified person with a disability a reasonable accommodation unless the accommodation would impose an undue hardship on the operation of the business. Undue hardship is defined as any action requiring significant difficulty or expense when considered in light of factors such as the employer's size, financial resources, and the nature and structure of the operation.

## Factors to be Considered in Determining Whether an Accommodation Would Cause an Undue Hardship

- The nature and cost of the accommodation, taking into consideration the availability of tax credits, deductions and outside funding.
- The overall financial resources of the facility or facilities involved in providing the reasonable accommodation; the number of persons employed at the facility; the effect on the expenses, resources, or the impact of such accommodation upon the operation of the facility.
- The overall financial resources of the business; its size with respect to the number of its employees, and the number, type, and location of its facilities.
- The type of operation or operations of the business, including the composition and structure of the work force as well as, the geographic separateness, administrative, and fiscal relationship of the facility or facilities in question to the business.

An undue hardship would also exist if an accommodation fundamentally alters the nature or operation of the business. For example, it would be an undue hardship for a nightclub to turn up their lights to accommodate a waiter with a visual impairment. The change in lighting would be an undue hardship because the club's ambiance would be destroyed and the customers would not be able to see clearly.

ADA guidelines also note that an undue hardship may exist where a requested accommodation "would be unduly disruptive" to other employees or the functioning of the business.

Although it is difficult to prove undue hardship it is not impossible. According to the Equal Employment Opportunity Commission, cost will seldom be recognized as a hardship for a number of reasons:

- An employer must show that the cost is undue in comparison to the employer's overall budget;
- It is not sufficient to compare the cost of the accommodation to the salary of the individual to demonstrate undue hardship;
- An employer must take into account the funding from any tax deductions or credits the operation incurs as a result of providing accommodations, as well as funding from any external sources. Cost factors thus refer only to the net cost of the action to the employer; and

## Source

*What Business Must Know About the ADA: A 1992 Compliance Guide.* Prepared and published by the U.S. Chamber of Commerce, (1992).

- Even if an accommodation is too costly, an employer still must offer the accommodation, and pay for its share of it, if the employee or applicant is willing to pay for the remainder.

## What are the Guidelines to Prove Undue Hardship?

- Avoid jumping to conclusions.
- Document the process.
- Maintain records on all accommodations.
- Be consistent.
- Document attempts to obtain public funding.
- Document all aspects of your organization's size, budget, or operation that will result in undue hardship.

*Remember: It is the employer's responsibility to prove undue hardship.*

## What is the Direct Threat?

An employer may require as a qualification standard that an individual not pose a "direct threat" to the health or safety of the individual or others. To claim a direct threat an employer must apply this standard to all applicants and the employer must meet specific, stringent ADA requirements that establish the existence of a direct threat. The employer must be prepared to show that there is:

1. significant risk of substantial harm;
2. the specific risk must be identified;
3. it must be a current risk, not one that is speculative or remote;
4. the assessment of risk must be based on objective medical or other factual evidence regarding a particular individual; and
5. even if a genuine risk of substantial harm exists, the employer must consider whether the risk can be eliminated or reduced below the level of a "direct threat" by reasonable accommodation.

## What is a Direct Threat to Self?

An employer may require that an individual not pose a direct threat of harm to his or her own safety or health or to the health and safety of others. However, as emphasized above, such determination must be strictly based on valid medical analyses or other objective evidence related to this individual. A determination that a person might cause harm to himself or herself cannot be based on stereotypes, patronizing assumptions about a person with a disability, or generalized fears about risks that might occur if an individual with a disability is placed in a certain job. Any such determination must be based on evidence of specific risk to a particular individual.





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