

# JAN

Job Accommodation Network

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## Accommodation and Compliance Series

# Accommodation and Compliance Series: Temporary or Trial Accommodations

Job Accommodation Network  
PO Box 6080  
Morgantown, WV 26506-6080  
(800)526-7234 (V)  
(877)781-9403 (TTY)  
[jan@askjan.org](mailto:jan@askjan.org)  
[AskJAN.org](http://AskJAN.org)



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## **JAN'S Accommodation and Compliance Series**

### **Introduction**

The Americans with Disabilities Act (ADA) does not establish a requirement for the duration of time accommodations must be provided, but the duty to provide accommodations is an on-going one. Many accommodations are implemented long-term, while some accommodations last for only a temporary period. Every situation is unique and requires case-by-case analysis of the individual's limitations, restrictions, specific accommodation needs, and the impact accommodation will have on job performance and business operations.

While we tend to think of accommodation as a long-term commitment, employers are not precluded from implementing trial or short-term solutions as part of the accommodation process. Implementing temporary or trial accommodations can benefit both the employee and the employer. For example, implementing a temporary change offers the opportunity to evaluate an accommodation for effectiveness before making the decision to implement the change long-term. From a practical standpoint, employers should consider providing temporary accommodations, even in situations that may go beyond the requirements of the ADA, because doing so demonstrates good faith. Situations that can warrant provision of a temporary or trial accommodation may include, but are not limited to:

- when time is needed to research a permanent accommodation solution, to acquire equipment, arrange a service, or identify an alternative vacancy;
- when it is necessary to test an accommodation to determine if it is effective;
- when the medical impairment is temporary but sufficiently severe enough to entitle the employee to accommodation;
- when it is necessary to avoid temporary adverse conditions in the work environment; or
- when an accommodation can currently be provided, but may eventually pose an undue hardship if provided long-term.

### **Temporary Accommodations While Researching a Permanent Solution**

At the beginning stage of the interactive process, it may be necessary to research accommodation solutions, including products or services that may be needed to enable the individual with a disability to perform essential job functions. Sometimes the accommodation cannot be implemented immediately because equipment must be

purchased, a service must be arranged, or a vacant position is not yet available. In situations such as these, a temporary solution may need to be implemented at first. For example, if an employee cannot perform an essential function of a job and requests an accommodation that requires some research, the employer could consider temporarily removing the essential function until a permanent accommodation can be made. If an employer chooses to do this, the employer should make clear to the employee that the interim accommodation is temporary and for what duration the accommodation will be allowed. Under the ADA, essential functions do not have to be removed permanently as an accommodation. However, this type of job restructuring may be feasible for a short duration of time, until an alternative effective solution can be implemented.

## **Temporary Accommodations to Test Effectiveness**

There can be some hesitation to implement an accommodation that has never been implemented before. The uncertainty of not knowing if a change will affect business operations, or enable performance of job duties, or if the accommodation will be burdensome to provide, can affect the decision of whether to accommodate an employee. Sometimes employers are uncomfortable implementing accommodations because they do not want to be locked into a situation that may not work. One way to ease this apprehension is to implement a trial period to test the effectiveness of an accommodation. It is possible to test and discontinue accommodations if not effective or they become an undue hardship. When testing accommodations, it is suggested that a written agreement be drafted that makes clear that the accommodation is being allowed temporarily, notes how long the test period will last, describes how the accommodation (and in-turn, job performance) will be monitored, and indicates what will happen if the accommodation is not effective or creates undue hardship.

There is no standard process for monitoring accommodations for effectiveness. Sometimes employers are unaware of the types of questions or concerns that may need to be addressed. It can be useful to follow a checklist or use a form to guide and document the process. JAN has developed a sample form to be used as a guide when monitoring accommodations. This form may be customized to gather information relevant to each unique situation. Please note that this sample form is to be used as a guide only and is not legal advice. If legal advice is needed, contact a legal service.

- [Download sample form \(.doc\)](#)

## **Temporary Impairments and Temporary Accommodations**

The ADA does not generally cover what would be considered minor, temporary conditions (such as a cold, the flu, a minor broken bone, etc.). However, the duration of an impairment does not alone determine disability. Per the ADA Amendments Act (ADAAA) of 2008, a temporary condition can be an actual disability if the condition is “sufficiently severe.” The effects of an impairment lasting or expected to last fewer than six months can be substantially limiting within the meaning of the ADAAA. Thus, employees with temporary impairments can be eligible to receive accommodation in

some cases; the key is whether the impairment is sufficiently severe. For more information, see JAN's [A to Z: ADA Amendments Act](#).

In the case of a temporary impairment, clearly the accommodation will be temporary as well. For example, there are many situations where a light duty assignment may need to be considered due to temporary, but significant limitations in lifting. One of the most common examples of this is when an employee has a lifting restriction related to an impairment associated with pregnancy. Assuming temporary light duty is an option, it may be possible to temporarily restructure job duties or offer a light duty assignment to an employee who is pregnant and limited in her ability to lift. After recovering from child birth, the employee hopefully will be able to return to normal duties. In this type of situation, a temporary accommodation allows an employee to continue working while managing limitations. It also enables the employer to retain a qualified employee and avoid the expense of hiring a new employee.

### **Temporary Accommodations to Avoid Adverse Conditions in the Work Environment**

Temporary accommodations may be necessary when an individual with a disability is affected by adverse conditions in the work environment. These include situations such as construction and remodeling, equipment repairs (e.g., inoperable elevator), heavy-duty cleaning (e.g., duct work, carpets, floor waxing), or parking lot resurfacing. A short-term, temporary accommodation may be needed due to these kinds of barriers in the work environment. For example, if an employee who uses a wheelchair works on the third floor of a building and cannot access the elevator because it is in need of repair, it may be necessary to provide alternative work arrangements until the elevator is operational. This might include temporarily moving the employee's workstation to the first floor or allowing work from home or an alternate location.

### **Temporary Accommodations That Cannot Be Long-Term Solutions**

A temporary accommodation may be a solution in some situations when an accommodation can be provided now, but the employer is aware that the accommodation could eventually become an undue hardship. Here the accommodation cannot be guaranteed to be provided long-term, but is currently feasible. For example, a part-time or flexible schedule may be reasonable now, but as staffing and business needs change, these types of accommodations can become an undue hardship based on their impact on operations. An employer may provide an accommodation now knowing that it cannot be a long-term solution due to the likelihood of undue hardship. An individual receiving an accommodation is not necessarily entitled to receive it forever. However, it is important to document and communicate to the employee that the accommodation is intended as a short-term solution and that alternative effective solutions may need to be explored if/when undue hardship results.

## Documenting Temporary or Trial Accommodations

Under the ADA, employers are not required to document their effort to provide reasonable accommodation, but documentation is recommended and can be a vital way to demonstrate engagement in the interactive process. Temporary or trial accommodation solutions should be documented in the same manner as any accommodation. If a reasonable accommodation approval form is used to document the terms of an accommodation, this type of form can include information about temporary accommodations. For example, the form might include the following types of questions:

- Is the accommodation being provided on a temporary or trial basis? If yes, why?
- When will the temporary or trial period begin and end?
- Who will monitor the temporary or trial accommodation?
- What action will be taken at the end of the temporary or trial period?
- [Download sample form \(.doc\)](#)

If an approval letter is more the employer's style than a form, below is sample language to consider including in the body of a letter:

This letter serves to inform you that your request for [list accommodation(s)], requested on [date], has been approved on a temporary basis and will be in effect until [date]. We are providing this accommodation on a temporary basis [for XYZ reason(s)]. At the completion of the temporary/trial time period, the accommodation will be reviewed to determine [if it is still needed/if it is effective/can continue to be provided without posing an undue hardship/alternative or additional accommodations are necessary.]

Overall, temporary or trial accommodations can be beneficial for employers and employees alike. Implementing temporary accommodations allows for time to properly research an effective accommodation, offers an opportunity to test an accommodation before implementing it on a long-term basis, and can keep workers productive rather than out on a leave of absence.

## **Situations and Solutions:**

### **An attorney with asthma could not be in the office while renovations were taking place.**

The employer temporarily moved the attorney to another location and allowed work from home several days a week until the renovations were completed.

### **A building manager with post-traumatic stress disorder (PTSD) asked to bring an emotional support animal to work with her.**

The employer was concerned about the behavior of the animal as the employee trained it herself. The employer and employee agree to a trial period to assess whether the animal could be in the workplace without causing a disruption.

### **A therapist with chronic fatigue had difficulty maintaining the stamina needed to work full time**

Part of the problem was that she had a difficult commute to and from work every day. She asked her employer if she could telework two times a week and do her paperwork on those days. Her employer had never had an employee telework before so decided to allow it on a trial basis to determine whether it would work. After trying it for a month, the employer agreed to allow the employee to continue teleworking.

### **An employer who hired Josh to do some very limited and specific office work for a trial period was very pleased with his performance and offered him a part-time job on a more long-term basis.**

Since Josh showed such an interest in the copy machine, the employer was looking to see about more tasks with the printing department.

### **Juliette loves clothes and fashion.**

Her job specialist worked with her to get a job at a retail clothing store unpacking merchandise and placing it on hangers, freeing up the sales people to be on the sales floor more frequently to attend to customer needs. The employer was open to the discussion of Juliette working in that capacity on a trial basis to see how it could work, since this was not a current position. It turned out to be very beneficial for the store. The new merchandise was able to be placed onto the sales floor much quicker and sales increased. Juliette was offered a more long-term position in the job that had been customized for her.

### **A bus driver recently diagnosed with sleep apnea asked for a light duty position.**

The employer contacted JAN asking for other options. JAN suggested a flexible schedule, temporary reassignment to shorter bus runs, and time off for treatment.

### **A warehouse worker who underwent rotator cuff surgery had temporary lifting and push/pull restrictions.**

The employer opted to temporarily remove an essential function that required lifting rather than have the worker to stay out on leave until recovered or purchase lifting equipment that would only be needed for a short period.

**A court employee was having difficulty with emotions after returning to work following an acquired brain injury due to a stroke.**

She was diagnosed with pseudo-bulbar affect (PBA) that caused outbursts of uncontrollable laughter at seemingly inappropriate times. The employee asked that her co-workers be educated on PBA so they would better understand what could be viewed as inappropriate behavior. The employee agreed to talk to her neurologist about the training. She was also accommodated with extra breaks to help manage her stress, a temporary lightening of her workload, and a flexible schedule to allow her time for counseling and doctor appointments.

**An office administrator at a university had mobility issues and used a cane.**

The elevator had been broken, so the employee was accommodated with telework on a part-time basis and a temporary office set up on the ground floor.

**An employee recently had surgery, which was needed as a result of a bladder condition.**

She was not able to commute to work so she asked to telework. The telework policy was extended to only senior employees. The employer agreed to modify the telework policy for the employee, who was considered a new employee, on a temporary basis, to see how the accommodation works.

**Due to seasonal affective disorder (SAD) an elementary teacher experienced temporary but extreme fatigue that was expected to persist for several months due to a change in medication and the onset of winter.**

He was accommodated with the removal of two extra duty requirements. Job restructuring, which consisted of temporarily removing his early and late bus duties, caused no hardship to the employer and greatly reduced his expenditure of depleted energy.

**A customer service rep with Marfan syndrome which resulted in heart issues.**

The employee needed to attend periodic medical appointments, but the appointments were scheduled during their shift at work. The employee requested leave and a flexible schedule as reasonable accommodations, which the employer approved on a temporary basis.

**A graphic arts professional whose company was in the process of remodeling was having some difficulty working in the building due to paint fumes and construction materials.**

It was too far into the process to change the products that were being used so the company needed some other way to accommodate. The employee was able to work from home on a temporary basis during the remodeling phase of her portion of the building. The employee already had a computer at home so the employer provided all of the necessary software, modem, and a new telephone line to be used for business purposes only. The company also provided a fax machine so the employee could fax materials back and forth between the work-site and her home office. To monitor her work performance, the employee was required to respond to e-mails in a given time

period and to keep a log of all work completed. The employee attended weekly meetings by speakerphone.

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