



Reasonable Accommodations

*A Legal Right Not Special
Treatment*

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WHY
ARE
WE
HERE?



To give general overview of the law regarding what is known as a “reasonable accommodation” and how it pertains to individuals with a psychiatric diagnosis. We will focus on a few examples in housing.

LAWS GRANTING REASONABLE ACCOMMODATIONS

There are federal statutes that contain or have been interpreted by courts to require the granting of reasonable accommodations depending on the situation.

- Federal Fair Housing Act (signed into law as part of the Civil Rights Act of 1968 on April 11, 1968)

42 U.S.C. § 3604(f)(3)(b)

Section 504 of the Rehab Act

29 U.S.C. § 794



- Federal Americans with Disabilities Act
 - Title I Employment
 - Title II Public Services: State and Local Government
 - Title III Public Accommodations and Services Operated by Private Entities
 - Title IV Telecommunications
 - Title V Miscellaneous Provisions

MORE DISABILITY RELATED LAWS ... (as amended)

- Individuals with Disabilities Education Act
- Workforce Investment Act of 1998 (WIA)
- Workforce Innovation and Opportunity Act
- Title VI of the Civil Rights Act



MAINE REASONABLE ACCOMMODATIONS

Statutes:

The Maine Human Rights Act

5 M.R.S.A. § 4581-4583

Example of Regulations

Certain Assisted Living Facility Regulations

10-144 CMR Ch. 113, § 5.26.2

5.26.2 Make reasonable accommodation in regulations, policies, practices or services



WHO IS CONSIDERED A PERSON WITH A DISABILITY?

A person....

- 1) with a “physical or mental impairment that substantially limits one or more major life activities”; or
- 2) who has a record of having such an impairment; or
- 3) who is perceived or regarded as having such an impairment

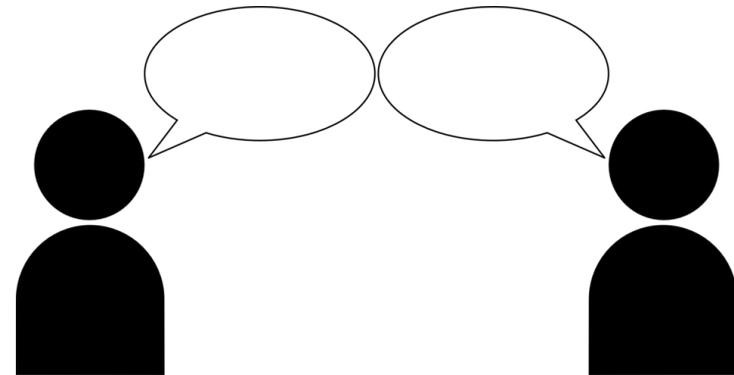
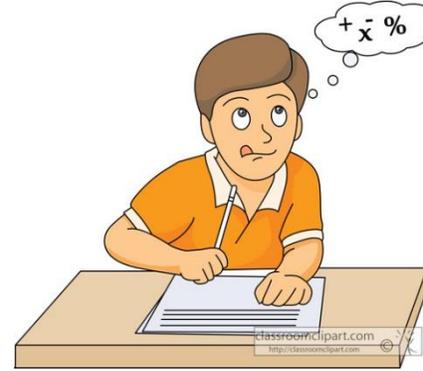


MAJOR LIFE ACTIVITIES

Major Life Activities Include:

- Caring for oneself
- Learning
- Reading
- Concentrating
- Thinking
- Communicating
- Operation of brain functions

42 USC 2102(2)(A) ADA Title I



CAN I BE DISABLED WITHOUT MEETING SOCIAL SECURITY CRITERIA?

A person can still meet the definition of “disability” even if they don’t meet Social Security’s definition.

Important to note that denial of Social Security Disability benefits **does not** mean you do not qualify for protection as a person with a disability under other laws. Those laws are independent of each other.



WHAT IS A REASONABLE ACCOMMODATION?

Any change in policy or procedure so that a person with a disability is given equal opportunity as compared to a person without a disability.



REASONABLE ACCOMMODATION VS. REASONABLE MODIFICATION

A reasonable modification is a ***physical*** change to any structure.

Example of a reasonable modification:

- Installing a ramp or elevator
- Widening doorways
- Installing grab bars
- Installing a light-up doorbell



In what areas do reasonable accommodations apply?

WORK



HOUSING



**GOVERNMENTAL
SERVICES**



**PUBLIC
ACCOMMODATIONS**

LEGAL ACCOMMODATIONS IS NOT SPECIAL TREATMENT!

These laws are not granting special rights to be people with disabilities

They just ensure that people with disabilities have equal rights!



YOU ARE NOT ASKING FOR A FAVOR....

You are asserting a legal right that belongs to you!



This is commonly known as requesting a “reasonable accommodation”

Generally speaking it requires 5 things:

- 1) A less than ideal situation presents itself
- 2) The situation effects a person with a disability as defined under the law
- 3) A different person or entity covered under the law has the ability to help with this situation
- 4) A request is made of this person or entity for a change in their policy, practice or procedure that adequately addresses this situation

LESS THAN IDEAL SITUATION...

In many cases whatever the less than ideal situation is can be pegged into one of these categories:

- Housing
- Employment
- Dealing with State and Local Government (everyone's favorite)
- Dealing with the Private Sector
- Dealing with the Private Sector that receives federal government money

VIOLATION FOR REFUSAL...

A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; 42 U.S.C. § 3604 (f)(3)(b) (Fair Housing Act)

RECEIVING SOCIAL SECURITY DISABILITY HAS BEEN FOUND TO MEET DEFINITION (HOUSING)

“Tenant, who suffers from a psychological illness and is entitled to Social Security Disability Income payments, is deemed to be a disabled individual within the meaning of the Fair Housing Act”

Wiesner v. 321 W. 16th St. Assocs., No. 00–Civ.–1423(RWS), 2000 WL 1191075 (S.D.N.Y. Aug. 22, 2000)

REASONABLE ACCOMMODATION UNDER THE FAIR HOUSING ACT

5-17-2004 Joint Statement of The Department of Housing & Urban Development and The Department of Justice. Reasonable Accommodations Under the Fair Housing Act

“Persons who meet the definition of disability for purposes of receiving ... Social Security Disability Insurance ... benefits in most cases meet the definition of disability under the Fair Housing Act.”

CRAFTING A REASONABLE REQUEST (cont.)...

If you are generally familiar with the law a strong accommodation request can be crafted.



There is are a large number of statutes, court decisions and executive guidance all relating to the law of reasonable accommodations but we will keep this simple...

CRAFTING A REASONABLE REQUEST...

Crafting a reasonable accommodation request with some idea of whether it should be granted is not like asking...



WHAT MAKES THIS A VIOLATION OF MY RIGHTS?

If the accommodation request meets the requirements under the law but is still refused. This refusal is a violation of the law.

How do I know, prior to making such a request, if the refusal of it would be in violation of the law?

You can't know for certain ahead of time. You can often make a determination as to the strength of the request based upon previous legal guidance, including previous court decisions and executive guidance, as well as past outcomes involving similar fact patterns.



The difference here is that if you meet certain requirements under the law, unlike other denials of requests, this denial may be a...



VIOLATION OF YOUR RIGHTS!

Some example of reasonable accommodation in housing:

- Allowing a service animal despite “no pet” policy
- Reserving a parking space
- Allowing a live-in aide
- Changing the rent due date
- Moving from one unit to another without fee
- Informing others (family, social worker, etc.) of new policies



Examples of How Reasonable Accommodations Work

In 2004 the Department of Housing and Urban Development (HUD) and the Department of Justice (DOJ) issued a joint statement regarding reasonable accommodations under the Fair Housing Act, [which is available on the DOJ website](#). While this document is not a law or a regulation, it is intended as guidance and has been cited in court opinions as recently as 2013. The following are two examples, included in the memorandum, that illustrate the concept of a reasonable accommodation.



Example 1: A housing provider has a policy of providing unassigned parking spaces to residents. A resident with a mobility impairment, who is substantially limited in her ability to walk, requests an assigned accessible parking space close to the entrance to her unit as a reasonable accommodation. There are available parking spaces near the entrance to her unit that are accessible, but those spaces are available to all residents on a first come, first served basis. The provider must make an exception to its policy of not providing assigned parking spaces to accommodate this resident.

Example 2: A housing provider has a policy of requiring tenants to come to the rental office in person to pay their rent. A tenant has a mental disability that makes her afraid to leave her unit. Because of her disability, she requests that she be permitted to have a friend mail her rent payment to the rental office as a reasonable accommodation. The provider must make an exception to its payment policy to accommodate this tenant.

THANK YOU FOR ATTENDING OUR WORKSHOP!



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