

JAIL BULLETIN

NUMBER 105

FEBRUARY 1994

The Jail Bulletin is a monthly feature of the Crime Commission Update. The Bulletin may be used as a supplement to your jail in-service training program if officers study the material and complete the attached "open book" quiz. The Bulletin and quiz may be reproduced for use by your staff. We welcome any jail training material you would like to contribute to the Bulletin.

AMERICANS WITH DISABILITIES ACT: AN OVERVIEW PART II

REASONABLE ACCOMMODATION, UNDUE HARDSHIP, AND DIRECT THREAT

If an otherwise qualified individual with a disability cannot perform the essential functions of the job, the employer may be obligated to provide a reasonable accommodation. However, an "employer has no duty to accommodate an employee with a disability unless the accommodation will enable the employee to perform the essential functions of the position." "Reasonable accommodation is any modification or adjustment to a job, an employment practice, or the work environment that makes it possible for an individual with a disability to enjoy an equal employment opportunity."

Defining reasonable accommodation. An employer's duty to reasonably accommodate individuals with disabilities applies to all aspects of employment. This includes the application and selection process, an employee's ability to perform the essential functions of the position currently held as well as those desired and the benefits and privileges other employees without disabilities enjoy.

This duty, however, only applies to known physical or mental disabilities. It is usually the responsibility of the person needing an

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accommodation to request one. An employer's applications, test announcements, or advertisements may request persons with

disabilities requiring an accommodation to participate in the application process to inform the employer within a reasonable time prior to applying or interviewing for a position or taking an examination.

Here are five additional explanations of reasonable accommodation.

- ! A reasonable accommodation must be an effective accommodation.
- ! The reasonable accommodation obligation applies only to accommodations that reduce barriers to employment related to a person's disability; it does not apply to accommodations that a disabled person may request for some other reason.
- ! A reasonable accommodation need not be the best accommodation, as long as it is effective for that purpose.
- ! An employer is not required to provide an accommodation that is primarily for the employees/applicant's personal use.
- ! An individual is not required to accept an accommodation if the individual has not requested an accommodation and does not believe that one is needed.

An employer, for example, might offer to raise a worktable so that a disabled employee's wheelchair would fit under it. The employee would be entitled to decline accepting the high table as an accommodation; the individual might prefer the lower table to permit easier use of a computer keyboard in her or his lap.

When is an accommodation effective? When it enables the person to perform the essential functions of the job. The accommodation should avoid limiting, segregating, or classifying the individual.

What happens if an applicant or employee refuses an accommodation? Remember, employers are not required to provide the accommodation the person requests, although where possible it is advisable to do so. The employer does not even have to provide the best accommodation. The accommodation must be effective in helping the individual perform the essential functions of the job. If the individual chooses not to accept this accommodation, there is a risk that doing so will render he or him unable to carry out the essential functions of the job. When that happens, the individual is no longer "otherwise qualified" for the position.

Examples of the reasonable accommodations. Because the same disability can manifest itself very differently in two different people, accommodations require a case-by-case determination, as noted above. The following list of possibilities is not meant to be exhaustive.

- ! **Making facilities accessible and usable.** For instance, providing designated parking spaces for those with disabilities if parking is provided to others.
- ! **Job restructuring.** This does not include reassigning essential functions of the job. It can include exchanging or reassigning marginal functions, or changing how and when essential functions are performed.
- ! **Modified work schedules.** This might include part-time work.
- ! **Flexible leave policies.** Accommodations do not include paid leave, but could include leave without pay.
- ! **Reassignment to a vacant position.** This is new to the ADA and applies to incumbents only and not to applicants.
- ! **Acquisition or modification of equipment and devices.** Examples include TDD's (telecommunications for the deaf) and apply to job-related equipment only. Employers are not required to provide devices for the personal use of the individual.
- ! **Adjusting and modifying examinations, training materials, and policies.** This includes using training sites that are accessible.
- ! **Providing qualified readers.** This does not mean two people must be hired to do one person's job.
- ! **Providing qualified interpreters.** This can be done on an as-needed basis.

There may be times when providing an accommodation will not be required. Obviously, no accommodation is required when it would not enable the individual to perform the essential functions of the job.

Likewise, no reasonable accommodation will be required if it would impose an undue hardship on the employer or a direct threat to the health and safety of the employee or others is created, which cannot be eliminated by a reasonable accommodation.

Defining undue hardship. The ADA defines this term as "significant

Information in this issue of the Jail Bulletin was obtained from the November 1993 issue of the Detention Reporter. The Detention Reporter is available from CRS, Inc. (207)725-9090. The original "National Institute of Justice Report", The Americans With Disabilities Act: An Overview, by Paul N. Rubin, may be ordered from: NIJ National Criminal Justice Reference, 1-800-732-3277.

difficulty or expense." What may be an undue hardship for one criminal justice agency may not be a hardship for a different agency in different circumstances. Accommodations may constitute undue hardship if they are unduly costly, extensive, substantial, disruptive, or would fundamentally alter the nature or operation of the agency.

"An undue hardship may be something less than a cost that would drive the employer to the verge of going out of business, but at the same time it must impose more than a negligible cost."

Defining direct threat. This involves a significant risk of substantial harm based on objective evidence and not mere speculation. It cannot be predicated on some remote possibility in the future but must be a present risk. Employers are required to reduce or eliminate the risk with an accommodation. When this is not possible, then a refusal to hire due to direct threat may be appropriate.

Deciding what accommodation to provide. The best place to start is with the person requiring the accommodation. Often she or he will know what accommodation will work and how to obtain that accommodation as cost-efficiently as possible. It may also be a good idea to consult with other employers and local vocational rehabilitation agencies. The Job Accommodation Network (JAN), offered by the President's Committee on Disabilities is an information and reference service that suggests accommodations. JAN may be reached at 1-800-ADA-WORK.

QUIZ

Nebraska Jail Standards require that jail staff receive eighteen (18) hours of inservice training each year. The Jail Bulletin may be used to supplement inservice training if an officer studies the bulletin, completes the quiz, and this process is documented by the jail administrator for review during annual jail inspections.

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**SUBJECT: Americans With Disabilities Act:
An Overview - Part II**

NAME: _____

DATE _____

1. If an otherwise qualified individual with a disability cannot perform the essential functions of the job, the employer may be obligated to provide a reasonable accommodation.

True False

2. Which of the following are explanations of reasonable accommodation?

_____ A reasonable accommodation must be an effective accommodation.

_____ A reasonable accommodation must cost less than \$500.

_____ An employer is not required to provide an accommodation that is primarily for the employee/applicant's use.

_____ An individual must be required to accept the accommodation.

3. The employer's responsibility to reasonably accommodate people with disabilities includes the application and selection process.

True False

4. Employees are required to provide an accommodation an employee requests.

True False

5. No reasonable accommodation is required if it would impose an undue hardship on the employer.

True False

CREDIT: One half hour credit for jail inservice training requirement

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ANSWER SHEET SHOULD BE RETAINED BY JAIL ADMINISTRATOR.