What is the Americans with Disabilities Act (ADA)?

The ADA is a federal civil rights law that was passed in 1990 and went into effect beginning in 1992. Its purpose is to protect people with disabilities from discrimination in employment (Title I). Title I of the ADA prohibits discrimination with respect to hiring, promotion, discharge, compensation, training, and all other terms, conditions and privileges of employment and requires employers to provide reasonable accommodations for qualified employees and applicants with disabilities, unless an accommodation would cause an undue hardship. The 2008 amendments to the ADA clarified and broadened the definition of disability, providing coverage and protection to a larger number of individuals under the law.

How do I know if I have rights under Title I of the ADA?

In general, Title I protects "qualified individuals". The term "qualified" means that you satisfy the skill, experience; education and other job-related requirements of the position sought or held, and can perform the essential job functions of the position, with or without reasonable accommodation(s).

The ADA defines “disability” to include:

(1) Physical or mental impairment that substantially limits one or more major life activities;

(2) Record of such an impairment or

(3) Being regarded as having such an impairment
A “physical or mental impairment” is any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin and endocrine or any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and learning disabilities.

A “major life activity” includes, but is not limited to, the following:

- Caring for oneself
- Bending, lifting, reaching, sitting, standing, walking
- Breathing, eating, hearing, seeing, sleeping
- Communicating, interacting with others, speaking
- Concentrating, learning, reading, thinking
- Performing manual tasks
- Operation of a major bodily function – e.g. bladder, bowel, cardiovascular, circulatory, digestive, immune system, musculoskeletal, neurological, respiratory

Similar to the ADA and its 2008 amendments (ADAAA), the New Jersey Law Against Discrimination (NJLAD) prohibits discrimination in employment on the basis of disability and requires employers to provide reasonable accommodations to individuals with disabilities, unless an accommodation would cause an undue hardship.

What is the responsibility of the employer?

Consistent with the ADA, ADAAA and NJLAD, RWJBarnabas Health (RWJBH) prohibits discrimination on the basis of disability with respect to all aspects of employment. RWJBH is also required to provide effective, reasonable accommodations for qualified employees and applicants with disabilities, and does so, in accordance with the requirements of these laws. RWJBH can expect that staff and leadership be able to perform the essential functions of the job with or without reasonable accommodation(s).

RWJBH will engage in an interactive process to collaboratively explore potential accommodations with applicants/employees with disabilities who request accommodations or when the need for accommodation is obvious. Any time an employee indicates that he/she is having a problem and the problem is related to a medical condition, their leader should consider whether the employee is making a request for accommodation under the ADA/ADAAA/NJLAD.

How do I know when to request an accommodation?

Employees can request an accommodation at any time during the application process or while employed. You can request an accommodation even if you did not ask for one when applying for a job or after receiving a job offer. In general, you should request an accommodation when you know that due to a medical condition or disability there is a workplace barrier that is preventing you, from competing for a job, performing a job, or gaining equal access to a benefit of employment like an employee cafeteria or employee parking. It is strongly recommended you request an accommodation before your work performance suffers or conduct/behavior problems occur because employers do not have to rescind discipline necessitated by poor performance.

Interactive Process

The interactive process requires the exchange of information with the disabled individual about the disability and work restrictions/functional limitations; identification of appropriate workplace accommodations and possible alternatives in an attempt to reach a mutually agreeable, effective accommodation to be provided. Applicants, employees and leaders are expected to participate and cooperate throughout the interactive process.

Step 1: Recognizing an Accommodation Request

An applicant/employee with a disability may request an accommodation directly to their supervisor, Employee Health/Corporate Care or Human Resources by asking for “help” (without ever using the word “accommodation”) with tasks, equipment, time, environment, or other assistance and/or completing the Reasonable Accommodation Request form on The Bridge or the need for accommodation may be obvious. The interactive process begins upon receipt of the request for accommodation or other notice of need for an accommodation.
Step 2: Gathering and Evaluating Information

Once an accommodation request has been received, Human Resources will gather the necessary information from the employee to process the request, including the nature, severity, duration of the disability; any associated restrictions or functional limitations and their anticipated duration; specific accommodations and alternatives; the medical necessity, rationale, and anticipated duration for the proposed accommodations. If documentation from an employee’s medical provider (Health Care Provider Release Form) is requested, it is essential that the applicant/employee take steps to ensure its timely completion and submission. Requests for medical information shall be consistent with the Genetic Information Nondiscrimination Act of 2008 (GINA).

In some cases, where the employee’s disability and need for accommodation are apparent and additional information may not be required. For example, if an employee who recently started using a wheelchair indicates that s/he needs a ramp to get into the workplace or a raised desk, the disability and need for accommodation(s) are obvious.

Information may also be gathered from the employee’s department to evaluate the accommodation request including, but not limited to, the essential functions of the position and the operational impact of any requested accommodation.

Step 3: Exploring Possible Accommodations

After the required information is gathered, the following will be evaluated:

- Whether the accommodation is necessary for the employee to perform the essential functions of the position or the applicant to apply/compete for the position
- Whether the accommodation requested, or an alternative accommodation (examples provided in the definition section), will enable to the employee to perform the essential functions of the position or the applicant to apply/compete for the position
- Whether the employee/applicant’s disability will cause him/her to be a “direct threat” to him/herself or others, and whether there is a reasonable accommodation which would either eliminate the potential threat or minimize to an acceptable level
- Whether providing the reasonable accommodation would create an undue hardship for the department and/or facility

The evaluation process will continue until a reasonable accommodation allowing the employee the employee to perform the essential functions of the position is identified, or a determination is made that no accommodation is possible, or all possible accommodations would be insufficient in eliminating/minimizing a direct threat or constitute an undue hardship.

When no reasonable accommodation is identified, or the identified accommodations would be insufficient in eliminating/minimizing a direct threat or constitute an undue hardship, the Human Resources Department will notify the employee, in writing, the specific determination.

RWJBH is not obligated to and will not provide personal use items needed to accomplish daily activities both on and off the worksite; e.g. eyeglasses, hearing aids, mobility aids.

Step 4: Implementing the Proposed Accommodation(s) and Monitoring

Once possible accommodations have been explored, Human Resources will work with the employee’s leader to discuss approving the appropriate accommodation(s) that enable the employee to safely perform the essential functions of the position. If there is more than one option, RWJBH will consider the preference of the employee, but will ultimately choose among effective options and cost effective options. RWJBH strives to implement all reasonable accommodation requests.

Human Resources will work with an employee’s department, Occupational Health, Risk Management, Safety, Facilities and others, as needed; to implement all approved reasonable accommodations. This includes arranging any needed training for the employee or others in the department, installation of technology, revisions of schedules, or environmental changes. If the accommodation is a reassignment, then the employee may need time to acclimate to the new job.

A trial period for a selected accommodation may be considered to ensure the needs of both the employee and site are met. Additionally, because changes occur over time, RWJBH may periodically check on the ongoing
effectiveness of the accommodation(s). The most important way to monitor accommodations is to encourage ongoing communication. Employees who are receiving accommodations need to understand that they should let their supervisor/manager or Human Resources know if there are changes or problems with the accommodation(s).

**Responsibilities**

An Applicant/Employee:

- Need not specifically use the words “accommodation” or “disability”
  - A request for “help” or for a workplace adjustment or technology change, for example might trigger obligations under the ADA
  - Must disclose the need for accommodation(s)
- Must follow RWJBH’s process regarding the provision of accommodations and participate and cooperate with the interactive process in good faith
- May choose to discuss his/her situation and accommodation request with his/her supervisor or Human Resources
- Provide requested documentation for review in a timely manner

A Leader/HR must:

- Inform the employee of the process for requesting accommodation(s) if the applicant/employee requests an accommodation or the leader/HR is made aware of the employee’s need for accommodation through alternate means
- Provide information concerning the applicant/employee’s essential job functions and the job description when requested
- Provide feedback concerning the request including comments concerning the reasonableness of the request
- Make a good faith effort to provide reasonable accommodation(s) to an individual covered by the ADA/ADAAA absent undue hardship or direct threat

**Additional ADA Information/Definitions**

- **Major Life Activities:** Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking communicating, interacting with others and working, and the operation of a major bodily function including, but not limited to, functions of the immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal and reproductive functions including the operation of an individual organic within a body system.

- **Qualified Individual with a Disability:** An applicant for employment or an employee who, with or without reasonable accommodation, can perform the essential functions of the position.

- **Essential Functions:** Essential job functions are the fundamental duties of a position and do not include the marginal functions that may exist. They are used to determine the rights of an applicant/employee with a disability under the ADA/ADAAA. An applicant/employee who cannot perform the essential functions of a position, even with a reasonable accommodation, is not considered qualified for the job and is not protected under the law.
  - A job function may be considered essential for several reasons, including:
    - Reason the position exists is to perform that function
    - A limited number of employees are available to perform the function
    - The function may be highly specialized so the individual is hired for their expertise to perform it
Evidence a function is essential includes, but is not limited to:
- Employer’s judgment
- Work experience of current and past employees
- Job description
- Amount of time spend performing the function
- Consequences of not requiring the function to be performed by the applicant/employee
- Terms of a collective bargaining agreement

**Reasonable Accommodation:** A reasonable accommodation is any modification or adjustment to a job or the work environment that removes a workplace barrier and enables an otherwise qualified applicant or employee with a disability to apply/compete in the application process, to perform essential job functions or enjoy equal benefits and privileges of employment. Reasonable accommodation may include, but is not limited to:
- Part-time or modified work schedule
- Modifying the work environment
- Modifying policies
- Remote/telework
- Job Restructuring - the reallocation or redistribution of non-essential, marginal job functions
- Providing materials in alternate formats such as Braille
- Reassignment to a vacant position
- Providing assistive devices or equipment
- Providing interpreters
- Permitting the use of paid or unpaid leave, including extending leave(s) of absence, when necessary, in conjunction with other eligible leaves such as FMLA and those provided under applicable collective bargaining agreements

**Undue Hardship:** RWJBH does not have to provide a reasonable accommodation that would cause an "undue hardship" to the organization. Undue hardship must be based on an individualized assessment of current circumstances that show that a specific reasonable accommodation would cause significant difficulty or expense. A determination of undue hardship should be based on several factors, including:
(i) the nature and cost of the accommodation needed
(ii) the overall financial resources of the facility making the reasonable accommodation; the number of persons employed at this facility; the effect on expenses and resources of the facility
(iii) the type of operation of the employer, including the structure and functions of the workforce, the geographic separateness, and the administrative or fiscal relationship of the facility involved in making the accommodation to the employer
(iv) the impact of the accommodation on the operation of the facility (i.e. disruptive to the operation)

If a particular accommodation would cause an undue hardship, effort should be made to identify an alternate accommodation.

**Direct Threat:** This means a significant risk of substantial harm to the health or safety of the applicant/employee or others that cannot be eliminated or reduced by a reasonable accommodation. An employer’s determination of whether an individual with a disability poses a direct threat to health and safety, to the individual or others, should be based on an individualized evaluation of the applicant/employee’s present ability to safely perform the essential functions of the position and a consideration of the following four factors:
(i) The duration of the risk
(ii) The nature and severity of the potential harm
(iii) The likelihood that the potential harm will occur
(iv) The imminence of the potential harm

The determination that an individual poses a direct threat must be based on objective, factual evidence regarding the individual’s ability to perform essential job functions. If the employee with a disability poses a direct threat to the safety
or health of staff members in the workplace, the employer must consider whether the risk can be eliminated or reduced to an acceptable level with a reasonable accommodation.

**Addressing Questions/Concerns**

Please reach out to the Human Resources Department that supports your site with any questions or concerns. Your confidentiality will be maintained to the extent it does not affect their ability to address your unique situation.

**RWJ BH Human Resources Telephone Numbers:**

- Barnabas Health Behavioral Health: 732-240-7828
- Barnabas Health Medical Group: 732-923-8131
- Children’s Specialized Hospital: 908-389-5686
- Clara Maass Medical Center: 973-450-2266
- Community Medical Center: 732-557-8030
- Corporate Services: 732.923.8022
- HR Service Center, Campus Drive: 732-937-8511
- Jersey City Medical Center: 201-309-2700
- Mobile Health: 732-937-8511
- Monmouth Medical Center: 732-923-6651
- Monmouth Medical Center Southern Campus: 732-886-4486
- Newark Beth Israel Medical Center: 973-926-7201
- RWJUH – Hamilton: 609-584-5815
- RWJUH – New Brunswick: 732-937-4111
- RWJUH -Rahway: 732-499-6023
- RWJUH – Somerset: 732-937-8511
- Saint Barnabas Medical Center: 973-322-2300

**Additional Resources:**

**JAN: Job Accommodations Network** - The Job Accommodation Network is a service provided by the United States Department of Labor’s Office of Disability Employment Policy. [https://askjan.org/](https://askjan.org/)

“**Diversity and inclusion are about giving value to every human being, no matter our differences.**”

Unknown

“We are better together”

RWJBH recognizes that equal opportunities must be made available to all employees and applicants for employment regardless of race, color, religion, creed, ancestry, affectional or sexual orientation, sex, genetic information, atypical hereditary cellular or blood trait, age, national origin, marital status, pregnancy, disability or handicapped status, gender identity or expression, for services in the United States Armed Forces, or any other legally protected characteristic. RWJBH believes that the full utilization of the talents of all individuals can be achieved by adopting practices, which will assure equal opportunities to all. Such practice not only results in effective operations, but also fosters an environment in which all individuals have the opportunity to benefit from the utilization of their talents.