



How to Help Your Patients with Epilepsy and Seizure Disorders Who Need Reasonable Accommodations at Work

1. What Is the Americans with Disabilities Act (ADA)?

The ADA is a federal law that prohibits employers with 15 or more employees from discriminating on the basis of disability, and gives employees and job applicants with disabilities a right to reasonable accommodations at work. It also provides rights outside the workplace (not discussed here), like equal access to state and local government programs, and activities and access to places that serve the public.

2. Could My Patient Get a Reasonable Accommodation?¹

The ADA defines "disability" as a mental or physical impairment that substantially limits one or more major life activities, including bodily functions. Because Epilepsy and Seizure Disorders are "impairments" that would "substantially limit" functions of the neurological system in the absence of medical treatment, a patient with Epilepsy and Seizure Disorders meets the ADA's definition of "disability." As a person with a disability, a patient with Epilepsy or Seizure Disorders is entitled to a reasonable accommodation under the ADA if one is needed, as long as it does not result in significant difficulty or expense for the employer (called "undue hardship").

3. What Is a Reasonable Accommodation?

A reasonable accommodation is a change in the way things are normally done at work that enables an individual with a disability to do a job, apply for a job, or enjoy equal access to the benefits and privileges of employment. However, an employer never has to excuse poor job performance, lower production or performance standards, eliminate essential functions (fundamental duties) of a job, or pay for work that is not performed as a reasonable accommodation.

4. What Kind of Reasonable Accommodation Could My Patient Get?

Your patient can get any kind of reasonable accommodation needed because of Epilepsy or Seizure Disorders, the side effects of their medication, or another medical condition that has developed because of Epilepsy or Seizure Disorders, unless the accommodation involves significant difficulty or expense. Common reasonable accommodations can include **altered break and work schedules** (e.g., a breaks to

¹ U.S.C. Section 12102(2); 29 C.F.R. 1630.2(g); 1630.(j)(1)(vi)(vii)



take medication or rest and recover from a seizure or a change in schedule to accommodate medical appointments or a later start time to accommodate the effects of medication), a rubber mat or rug to cushion a potential fall from a seizure, **unpaid leave**² for treatment or recuperation, and **permission to work from home in part or in whole**, among others. If a patient has been working successfully in a job but can no longer do so because of their Epilepsy or Seizure Disorder, the ADA also may require **reassignment to a vacant position** that the patient can perform. These are just examples; employees are free to request, and employers are free to suggest, other modifications or changes. If more than one accommodation would work, the employer may choose which one to provide.

5. When Is It Important for My Patient to Request a Reasonable Accommodation?

Because an employer does not have to excuse poor work performance, even if it was caused by a health condition, it is generally in your patient's interest to request an accommodation **before** any problems at work occur or become worse. An accommodation may help to prevent discipline or even termination by enabling your patient to perform his or her job successfully, and by preventing future problems.

6. How Can I Help My Patient Get a Reasonable Accommodation?

Your patient may ask you to document his or her medical condition and some of its associated functional limitations, and to explain how a requested accommodation would help. If your patient asks you not to disclose the specific diagnosis, it may be sufficient to state the general type of disorder (i.e., "neurological disorder"). The employer, perhaps in consultation with a health care professional, will use this information to evaluate whether to provide a reasonable accommodation, and, if so, which one. The person evaluating the accommodation request also may contact you to ask for clarification of what you have written, or to provide you with additional information to consider. For example, you may be asked whether a different accommodation would be effective if the requested accommodation would be too difficult or costly to provide.

² An employee with epilepsy who needs continuing or intermittent leave, or a part-time or modified schedule, as a reasonable accommodation also may be entitled to leave under the Family and Medical Leave Act (FMLA). For a discussion of how employers should treat situations in which an employee may be covered by both the FMLA and the ADA, see Questions 21 and 23 in the EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (rev. Oct. 17, 2002) at www.eeoc.gov/policy/docs/accommodation.html.



Employers are required to keep all information related to reasonable accommodation requests confidential.

7. Am I Permitted to Disclose My Patient's Medical Information?

The ADA does not alter a health provider's ethical or legal obligations. You should request a reasonable accommodation on behalf of a patient, or provide an employer with medical information about the patient, only if the patient asks you to do so and signs an appropriate release.

8. Could an Employer Discriminate Against My Patient Because of the Information I Provide?

The ADA prohibits employers from harassing your patient based on his or her condition, retaliating against your patient for requesting an accommodation, asking overly broad questions about your patient's health in response to a request for an accommodation, and terminating or taking other adverse actions based on the condition. Only if the information you provide shows that your patient is not capable of performing essential job functions safely and competently, even with a reasonable accommodation, can the employer lawfully use it as the basis for an adverse action.

9. What if my Patient's Employer Asks Whether my Patient Would Pose a Safety Risk?

The ADA has a very strict standard for excluding individuals with disabilities from jobs because of safety concerns. An employer may only do so if an individual would pose a "direct threat" (meaning a significant risk of substantial harm to the individual or others) that cannot be eliminated or reduced to an acceptable level with a reasonable accommodation. If you provide an opinion as to whether your patient would create a safety risk, you should estimate the probability of harm occurring *under the patient's actual day-to-day working conditions and current treatment regimen*, based on current medical research to the extent possible. (If a precise probability assessment is not possible, it may still be useful to describe the probability in general terms, such as "very unlikely" or "quite likely.") If safety precautions would reduce the risk of harm, you should describe what they are.

10. What Kind of Documentation Should I Provide?

Employers may require documentation that establishes your patient's condition and describes how it affects job performance. However, you should not simply provide



your patient's medical records, because they will likely contain unnecessary information unrelated to the request. Documentation is most likely to help your patient if, using plain language, it explains the following:

- Your professional qualifications and the nature and length of your relationship with the patient. A brief statement is sufficient.
- The nature of the patient's condition. If your patient asks you not to disclose the specific diagnosis, it may be sufficient to state the general type of disorder (i.e., "neurological disorder"). If your patient's situation at work is caused not by Epilepsy or a Seizure Disorder itself, but by a related condition, you may choose to disclose the related condition only.
- The patient's functional limitations in the absence of treatment. State that the patient's condition would substantially limit the functions of the neurological system in the absence of treatment. If the effects on functioning come and go, describe what they would be when the symptoms are at their worst. It is sufficient to establish substantial limitation of one major life activity.
- The need for a reasonable accommodation. Explain how the patient's condition makes changes at work necessary. For example, if your patient needs an accommodation to perform a particular job function, you should explain how the patient's symptoms - *as they actually are, with treatment* - make performing the function more difficult. If necessary, ask your patient for a description of his or her job duties. *Limit your discussion to the specific problems that may be helped by a reasonable accommodation.* Also explain to the employer why your patient may need an accommodation such as a schedule change (e.g., to attend a medical appointment during the workday) or unpaid time off (e.g., to receive treatment or recover from a seizure).
- Suggested Accommodation(s). If you are aware of an effective accommodation, you may suggest it. Do not overstate the need for a particular accommodation in case an alternative is necessary.

Further Information

This document was adapted from the EEOC document titled Helping Patients with HIV Infection Who Need Accommodations at Work, Issued 12-01-2015. It does not constitute a legal opinion and it does not have the force and effect of law.

For more information about reasonable accommodations and disability discrimination, visit the Equal Employment Opportunity's (EEOC's) website



(<https://www.eeoc.gov>), or call the EEOC at 800-669-4000 (voice) or 800-669-6820 (TTY).

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