

Accommodating Deaf and Hard-of-Hearing Employees

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Hearing loss is the 2nd most prevalent health issue around the world; in the US, about 1 in 5 people, and 3 in 5 combat veterans, have some amount of hearing loss [1]. Managers or supervisors will inevitably have an employee who has some degree of hearing loss. Employers have a legal obligation to make reasonable accommodations that enable employees with disabilities, including hearing loss, to be successful in the workplace.

People with hearing loss are among the 49.7 million Americans who have a disability as defined by the Americans with Disabilities Act (ADA). The ADA is a comprehensive civil rights law prohibiting discrimination based on disability in employment, state and local government programs, public accommodations, commercial facilities, transportation, and telecommunications. The ADA was designed to remove barriers that prevent individuals with disabilities from enjoying the same opportunities available to persons without disabilities.

Legal Protections for Employees with Disabilities

The ADA defines a person with a disability as someone who has a physical or mental impairment that substantially limits 1 or more major life activities. Even if individuals with disabilities use hearing aids, prosthetics, medication, or other measures that mitigate symptoms of their disabilities, they are still protected under the ADA.

Title I of the ADA contains the employment provisions [2]. Employers with 15 or more employees working 20 or more calendar weeks in the current or preceding calendar year are covered under Title I. (Organizations with fewer than 15 employees, but which accept Medicaid or Medicare insurance, are covered by the Rehabilitation Act, which is substantially equivalent to the ADA) [3]. Covered employers are prohibited from discriminating against qualified individuals with a disability in all employment practices. This includes application procedures, medical testing, reasonable accommodations, workplace policies and procedures, benefits, discipline, harassment, and termination.

Employees with disabilities have the right to reasonable accommodations, defined as any modification, adjustment, or change to their work environment that will enable them to perform the job or to access the benefits available to simi-

larly situated employees who do not have a disability.

Once an employee with a disability requests a reasonable accommodation, the ADA requires the employer to make an individualized assessment of the employee's request. The employer can request medical documentation substantiating the employee's need for an accommodation only if the disability and the nature of the employee's need for accommodation is not obvious. For example, individuals who wear hearing aids should not be required to provide proof of hearing loss because the nature of the employee's disability and need for accommodation is obvious.

Other employees may receive information about a person's disability only on a need-to-know basis. That means that if an employer allows an employee to, for example, work in an enclosed office rather than a cubicle as an accommodation for a disability, the employer cannot tell others who question that arrangement about the employee's disability. Instead, an employer should respond to curious employees with a reminder that information about other employees is confidential and invite them to let the employer know if they need anything to help them do their jobs better.

Accommodations for People with Hearing Loss

Many employees with hearing loss will benefit from an assistive technology to perform their jobs. For example, employees responsible for answering telephones may require a handset amplification system, a captioned phone (which provides a real-time text display of what the caller is saying), a videophone for video relay calls, or other technology that enables them to communicate effectively over the phone. Employees who work in an environment that relies on audible communication systems, such as intercom or paging systems, may need a text-based or other visually alerting substitute. Installing FM loop systems, which operate like miniature radio stations broadcasting sound directly to compatible hearing aids, can assist employees (and patients) with hearing aids in receiving high quality

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sound without background noise or loss of sound quality.

Employees with hearing loss have varying needs for accommodations based on the nature of their employment, but some accommodations are nearly universal. These include holding meetings or other conversations in a well-lit room and ensuring that the employee is able to face the individual who is speaking during all communications. Doctors and health care staff take note—if your back is to your patients while you gather their medical history or describe a treatment regimen, you should not be confident that patients understand the information provided. Ask them to repeat information back to you to test their understanding.

A note on lip reading: While many individuals with hearing loss have developed lip-reading skills, you should not assume that the person you are speaking to is a good lip-reader, nor should you want them to rely solely on lip-reading abilities. As little as 30 to 40% of English is visible on the lips. To test this, mouth the words “beach,” “pitch,” “peach,” and “parched” while looking in the mirror. You will see that they are visually the same on the lips.

If an employer is unsure which accommodations are best suited for a situation, the Job Accommodation Network (JAN) and the Employer Assistance and Resource Network on Disability Inclusion (EARN) can assist. Do not assume that providing an accommodation will be cost-prohibitive. JAN reports that most accommodations cost nothing (eg, ensuring that communications take place in a well-lit room), and many cost less than \$500 [4].

In some cases, the employer is not responsible for providing assistance or accommodations for an employee. An example is equipment or devices of a personal nature, such as hearing aids or personal attendants. The employee may be able to get such items or services through Vocational Rehabilitation (VR). VR services are available to anyone with a disability who may need training or services to secure or maintain employment, regardless of whether he or she receives Social Security benefits. A VR individual plan for employment may include the purchase of assistive technology; modifications to a vehicle, home, job, or worksite; college or vocational training; and supported employment. The North Carolina Division of Vocational Rehabilitation Services can be found online at www.ncdhhs.gov/dvrs.

Denying an Accommodation

An employer should follow a series of steps, known as the “interactive process,” before reaching any conclusion about the company’s ability to provide an employee with an accommodation. To start, an employer should identify the job function that is at issue and gain an understanding of how the requested accommodation will enable the employee to perform this function. If the employer is unsure if the employee has a disability or how the disability limits his or her ability to perform the identified job function, the employer may request additional, narrowly tailored documentation of the employee’s limitation and need for accommodation. If

the requested accommodation is too expensive or difficult to provide or would not effectively address the issue, the employer may suggest alternative accommodations. If there are no alternative accommodations available, only at this point can the employer determine that the accommodation poses an undue hardship and deny the request.

According to the US Equal Employment Opportunity Commission (EEOC), the administrative agency charged with enforcing the ADA, an employer who has denied an accommodation must demonstrate that the decision was “based on an individualized assessment of current circumstances that show that a specific reasonable accommodation would cause significant difficulty or expense.” Some factors involved in determining if there is an undue hardship include the following: the nature and cost of the accommodation needed; the overall financial resources of the facility making the reasonable accommodation; the effect on the facility expenses and resources; the type of operation of the employer, including the structure and functions of the workforce; the administrative or fiscal relationship of the facility involved in making the accommodation to the employer; and the impact of the accommodation on the operation of the facility [5].

An employee who does not agree with the employer’s decision may file a charge of discrimination with the EEOC. In North Carolina, an employee has 180 days from the alleged discriminatory act to file an administrative complaint with the EEOC. An employee who is covered by the North Carolina Human Resources Act (formerly the State Personnel Act) has 300 days to file a complaint. Administrative remedies available through the EEOC can include mediation or conciliation between the employer and employee about how to resolve a complaint.

The EEOC has the authority to investigate, mediate, and settle charges of discrimination, and pursue litigation in appropriate cases. If the EEOC does not resolve a charge of discrimination and declines to pursue litigation in its own name, it will issue the employee a “Right to Sue” letter. Once received, the employee has 90 days to file a complaint in court or forfeit his or her rights. Possible remedies if the employee prevails include injunctive relief (eg, getting a job back or getting a promotion that was denied); damages, including back pay and punitive damages, if there is proof of intentional discrimination; and attorney’s fees.

More information about reasonable accommodations and the EEOC process is available at www.eeoc.gov.

Complying with the ADA

Ensuring compliance with the ADA begins with the application process. Employers must make the job application process accessible to anyone with hearing loss or any individual with a disability who wishes to apply. The employer should let applicants know that accommodations are available by including a notice on the application, company website, or other places the job is advertised. Follow-up phone

calls to schedule interviews may also include a notice of available accommodations.

The application should not include any questions about illnesses, medication or medical treatment, substance abuse, disabilities, injuries, or workers' compensation. These questions are designed to elicit information about whether the individual has a disability. It is important to strive for diversity in a workplace; however, there is no requirement that an employer give preference to a qualified applicant with a disability. Employers may select the most qualified applicant for the position. After making a job offer, the employer may require a medical examination before a new hire begins employment duties, as long as the examination is consistent with business necessity and is required of all employees hired for the position.

When an employee with a disability is hired, the employer must provide reasonable accommodations to allow the employee to perform job duties, in accordance with the ADA. For example, this may include purchasing equipment as needed (such as telecommunications devices for communicating with persons with hearing loss) or entering into a contract or developing a relationship with an interpreter or interpreter agency. The North Carolina Division of Services for the Deaf and Hard of Hearing maintains a sign language interpreter directory of all duly licensed interpreters, available at <http://www.ncdhhs.gov/document/sign-language-interpretertransliterator-directory>.

Furthermore, all employers should consider providing annual training to all staff regarding the various degrees of hearing loss, the process for identifying communication needs, the auxiliary aids and services available (eg, TTY, video remote interpreting) and how to use them, and the proper role and use of interpreters. Employers may want to provide additional training on disabilities in the workplace, including office procedures regarding ADA accommodations and disability etiquette. The North Carolina Division of Services for the Deaf and Hard of Hearing may assist with training.

Conclusion

Individuals with hearing loss make up a significant portion of our population. Ensuring that your workplace is a welcoming, accommodating environment for employees with hearing loss will impact the overall quality of care your office provides. **NCMJ**

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Acknowledgments

Disability Rights North Carolina is part of the Protection and Advocacy (P&A) system, a nationwide network of congressionally mandated, legally based disability rights agencies. A P&A exists in every US state and territory (a Native American P&A serves the four corners region of the Southwest). P&As have the authority to provide legal representation and other advocacy services, under all federal and state laws, to all people with disabilities (based on a system of priorities for services). P&As maintain a presence in facilities that care for people with disabilities, where they monitor, investigate, and attempt to remedy adverse conditions.

The Community Access Team at Disability Rights NC handles employment discrimination, higher education, housing, and other issues that prevent people with disabilities from enjoying full participation in community life

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2. The Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, et seq.; the Equal Employment Opportunity Commission regulations implementing the ADA, 29 C.F.R. 1630, et seq.
3. The Rehabilitation Act, 29 U.S.C. 794.
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5. 29 C.F.R. §1630.2