

# Punctuality Policy May Require Reasonable Accommodations Under The Americans with Disabilities Act (ADA)

Punctuality is an important workplace policy that employers regularly enforce. Your company may overlook an employee showing up late a minute or two, as long as it doesn't become a habit. But for some employees, lateness is a habit. If that perpetually-late employee has a disability, is it fair to hold him/her to the rule the same as employees without disabilities? The Americans with Disabilities Act (ADA) says it might not be fair. Your company should not assume it is safe from ADA liability because it treats employees with disabilities the same as other employees.

A qualified employee with a disability is an individual who can perform the essential functions of the job with or without reasonable accommodation. You're required to provide a reasonable accommodation if it allows the employee to perform the essential functions of his/her job, unless it imposes an undue hardship (i.e., significant difficulty or expense) on your company's operations. So basically, the ADA's reasonable accommodation provision requires you to actually treat employees with disabilities *differently* in some circumstances.

What is a reasonable accommodation for an employee with a disability who can't meet a punctuality requirement? That depends on whether punctuality is considered an essential function of his/her job. Typically, to determine whether punctuality is an essential function, look at whether other employees depend on that employee's presence to complete work, whether the employee's lateness causes production to significantly decrease or any other detriment to the business, and whether the employee completes his/her work on time.

## Punctuality Is Essential

If you determine that, in fact, punctuality is essential for all employees regardless of disability, you're not done. Next, you must engage in the interactive process with the employee because he/she needs to provide you with relevant details about his/her limitations and abilities in order for you to determine possible accommodations.

*Consider:* What is causing the employee to be late? For example, if the employee uses a wheelchair, is there adequate handicapped parking at the facility? How long does it take for the employee to get from his/her vehicle to the building entrance? To his/her workspace? Much as the employee might try, it might be out of his/her control to be on time according to policy requirements without some type of accommodation.

Employees with disabilities may be entitled to a closer parking space, a first-floor workspace, or other reasonable accommodations when punctuality is an essential function. For example, at one employer, cubicles were unassigned so employees took the first empty cubicle they could find as they reported to work. An employee who used a wheelchair could not see over the tops of the cubicles so he had to navigate through the rows until he found an empty one, which often caused him to be a few minutes late. A possible accommodation for that employee is an assigned cubicle in order to allow him to meet punctuality requirements.

# Punctuality Is Not Essential

You may instead determine that punctuality is not an essential function of the employee's job. Then another reasonable accommodation could be a schedule modification, which is generally not appropriate when punctuality is essential. The ADA even says that reasonable accommodation may include modified work schedules.

For the previously mentioned employee who used a wheelchair (but not necessarily limited to employees with wheelchairs), a possible accommodation is a grace period for reporting to work and returning from breaks. Giving the employee an additional 15 minutes would simply create a different time requirement for the employee to arrive to work and to return from a break. It would not create an open-ended schedule where the employee could come and go as he/she pleases. It would instead help the employee overcome his/her lateness problem.

Exploring possible accommodations, such as a punctuality policy exception, for an employee with a disability where he/she uses a wheelchair or other mobility device is somewhat easier because the disability is obvious. Some disabilities are not obvious, though. For example, which psychiatric or mental conditions are considered disabilities? What types of accommodations may an employee with a less obvious disability need?