



Employment Rights Helpline at Equip for Equality

SELF-ADVOCACY ASSISTANCE ★ LEGAL ADVICE ABOUT EMPLOYMENT RIGHTS ★ SAMPLE LETTERS & FORMS ★ REFERRALS

FACT SHEET: Reassignment as a Reasonable Accommodation

The Americans with Disabilities Act (ADA) requires covered employers to provide reasonable accommodations to employees with known disabilities. One possible accommodation is reassignment, or job transfer, to a vacant position for which the employee is qualified.

When is reassignment an appropriate accommodation?

The Equal Employment Opportunity Commission (EEOC) has called reassignment an accommodation of last resort because generally, it is required only if you can no longer perform the essential functions your current position and no accommodations would enable you to remain in your current position. In other words, employers are not *required* to reassign you if you could continue working in your current position with an accommodation.

What type of position can I be reassigned to?

There are a few ground rules to keep in mind when exploring possible reassignments.

- You must be qualified for the job you are seeking
- The position must be vacant or must become vacant within a reasonable amount of time
- Your employer does not have to create a new position
- Your employer does not have to promote you

I don't know if my employer has any vacant positions. What should I do?

First, do everything that you can to try to determine whether any vacant positions exist.

- Does your employer have an internal job board?
- Does your employer post vacant positions on its website or on an online job posting site?
- Have you heard of any openings through word of mouth?

After you have done your due diligence, you can ask your employer's human resources department to assist you in identifying vacant positions. See template letter for possible language.

What does reassignment mean? Will I be automatically placed in the vacant position?

It depends where you work and whether your desired position is part of a seniority system.

Where you work:

- If you work in Illinois, in most cases, your employer must place you in the vacant position, so long as all other requirements are met. *See EEOC v. United Airlines*, 693 F.3d 760 (7th Cir. 2012).

- Courts across the country are divided on this question, so be sure to consult with an attorney.

Whether your desired position is part of a seniority system:

- Generally, if your employer would need to violate a seniority system to reassign you, it is not required to do so. However, if your employer makes exceptions to the seniority system for other reasons, then it may need to make exceptions for you as well.

If you work in Illinois and your desired position is not part of a regularly enforced seniority system, and if your disability prevents you from doing your current job with or without reasonable accommodations, then your employer should place you in a vacant position for which you are qualified.

I don't want to admit to my employer that I cannot do my job. Should I still seek reassignment?

There is some risk to requesting reassignment, so it should be done thoughtfully. There are many factors to consider when deciding whether reassignment is right for you, including:

- Are you able to do your current job?
- Have you explored all possible accommodations to keep you in your current position?
- Have you been disciplined because you cannot perform the essential functions of your job?
- Do you work for a large employer that is likely to have vacancies?
- Do you believe there is (or will soon be) a vacant position for which you are qualified?
- Does your employer have a seniority system in place for filling vacancies?

Despite the risk, reassignment is a very good option in certain situations, including the following scenario:

- You are no longer able to perform the essential functions of the job with accommodations due to a newly acquired or progressive disability. You know of a position that is vacant and you are qualified for the position. It is a lateral transfer and is not subject to a seniority system.

I can do my current position, but would like to be reassigned. Can I still ask for reassignment?

Although the ADA only requires your employer to reassign you if you can no longer do your job, there may be reason to explore reassignment. If you choose to do this, make clear that you can still perform your job duties, but that you are seeking reassignment as a possible solution that would benefit you and your employer. The ADA does not prohibit your employer from going above and beyond what the ADA requires.

Given these legal complexities, you should consult with an attorney before requesting reassignment to discuss your options.

I want to request reassignment as a reasonable accommodation. What do I do next?

- Identify a vacant position that you are qualified to do.
- Confirm that this position is not a promotion and not governed by a seniority system.
- Apply for the position, as any other applicant would (i.e., submit cover letter, resume, or other required application materials)

- Draft a letter to your employer's human resources department explaining that you have applied for the position and are requesting to be placed in the position as a reasonable accommodation under the ADA. See attached template for an example.
- Send the letter to your employer's human resources department *with* a copy of your application.
- Follow-up within a reasonable amount of time after sending the letter (e.g., two weeks) with a polite request to check in on the status of your request for reasonable accommodation.

Where can I learn more?

Equal Employment Opportunity Commission, Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, Section on Reassignment

- www.eeoc.gov/policy/docs/accommodation.html#reassignment

TEMPLATE LETTER

Requesting Reassignment as a Reasonable Accommodation

DATE (January 1, 2017)

METHOD OF DELIVERY (Email/U.S. Mail/Hand Delivered, etc.)

Human Resources Department
Employer's Address

Re: Request for Reassignment as a Reasonable Accommodation (JANE DOE)

Dear Mr./Ms. (Human Resources):

I am writing to touch base about the _____ (position) at _____ (employer). I applied for this position on _____ (date). I have attached a copy of my application. I am excited about and well-qualified for the position because _____.

As you may know, I have _____ (disability). I am requesting to be reassigned to the _____ (position) as a reasonable accommodation under the Americans with Disabilities Act.

If _____ (position) is no longer vacant, I am interested in engaging in the interactive process to identify other vacant positions for which I am qualified, or other possible accommodations that would be effective.

If you have any questions about my request you can contact me in writing or by phone. Thank you very much.

Very truly yours,

Jane Employee
your phone number/email



DO YOU HAVE A QUESTION?

Contact Equip for Equality's Employment Rights Helpline

1-844-RIGHTS-9 (toll free) or (844) 744-4879

800-610-2779 (tty)

employment@equipforequality.org

www.equipforequality.org

This resource material is intended as a guide for people with disabilities. Nothing written here shall be understood to be legal advice. For specific legal advice, an attorney should be consulted.

Equip for Equality, an independent nonprofit organization, is the Illinois state Protection & Advocacy System whose mission is to advance the human and civil rights of children and adults with disabilities. The Employment Rights Helpline seeks to empower individuals with disabilities to advocate effectively. This publication is made possible by funding support from The Chicago Community Trust, the U.S. Department of Health and Human Services, the Administration on Intellectual and Developmental Disabilities and the Center for Mental Health Services of the Substance Abuse and Mental Health Services Administration; the U.S. Department of Education, Rehabilitation Services Administration; and the Social Security Administration. The contents of this publication are solely the responsibility of Equip for Equality and do not necessarily represent the official views of any of these agencies.

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