

7 | ADDRESSING SIGNIFICANT JOB DIFFICULTIES BY EFFECTIVELY NEGOTIATING REASONABLE ACCOMMODATIONS

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INTRODUCTION

It is not uncommon for YA peers to have job difficulties due to intrapersonal disruptions, the peer role not being well-defined, lack of workplace support, and/or a negative workplace culture. The evidence shows that creating a system to address significant mental health-related job performance difficulties shortly after they arise greatly improves job performance and retention of employees, including transition age youth.^{lxxv} When these kinds of job difficulties are not addressed in a timely fashion, productivity decreases and stress, and absenteeism increase.^{lxxvi}

Fortunately, the ADA and related discrimination laws have placed an affirmative duty upon employers to help qualified employees with disabilities to perform the job's essential functions. That is, a YA peer² having job difficulties can consider asking for reasonable accommodations.

Reasonable Accommodations (RA) are modifications or adjustments to ordinary business operations that enable a “qualified” individual with a disability to:

- successfully perform essential job functions;
- enjoy equal employment benefits, privileges and opportunities; and
- apply for a job.

Overall, the evidence shows that RAs for people with SMHC enhance productivity when employees understand the process for requesting accommodations and supervisors are knowledgeable about assessing requests and providing them.^{lxxvii} Nevertheless, human resources personnel and workplace supervisors are often not enthusiastic about dealing with RA requests or working with an employee to identify and implement the best accommodation. This is largely due to not understanding their RA responsibilities, as well as being concerned about unsubstantiated costs.^{lxxix} (Recent research shows that the *direct*

Common accommodations for people with psychiatric disabilities include:

- Flexible scheduling in order to attend counseling or support meetings
- Enhanced job training and coaching
- Training and coaching for co-workers on diversity and stigma
- More intensive individualized supervision
- Provide praise and positive reinforcement
- Divide large assignments into smaller tasks and steps
- Reduce distractions in the workplace
 - Moving workplace to quieter area
 - Provide space enclosures or a private office
- Unpaid leave

²As discussed in chapter 4, “peers” are generally considered as having a “disability”.

costs associated with RAs for people with SMHC are often nominal, though there can be *indirect* costs, such as payments for additional coaching or training.)

Because of the broader productivity implications on providing assistance to people with mental health impairments, **We recommend that employers apply this RA mandate not only when there is a legal requirement, but also when the job difficulty has to do with a non-essential job function or is related to a health impairment that does not rise to the level of “disability.”**

The questions we address in this chapter regarding YA peers are:

1. What are the employer’s RA responsibilities?
2. How do supervisors et al. work with the peer to identify the best accommodation?
3. How do they become knowledgeable and practiced regarding their responsibilities?

RA MANDATE BASICS

There are two primary phases of employer responsibilities with regard to the RA mandate:

- | | |
|-------------------------------|---|
| 1. <i>How</i> to take action. | Employer Notice; |
| 2. <i>When</i> to take action | Reasonable Accommodation (RA) framework |

Employer Notice

The employer’s responsibility to consider providing a RA comes into play when:

- An employee states or otherwise indicates that s/he is having trouble with an essential job function that may be related to a disability or illness. Notices do not have to be in writing, use any official language, or even ask for accommodation. Valid requests typically happen when an employee:
 - *Reports a difficulty* with an essential job function, and it relates to his/her health impairment;
 - *Requests an accommodation* because of an impairment is impacting job performance.
- It is “*otherwise obvious*” to the employer that an employee is having trouble with the job due to an impairment. *For example: An employer knows about an employee’s psychiatric condition from previous experiences/communications with the employee. If the employer becomes aware that the employee is having trouble with essential job functions possibly related to his/her impairment, that employer is effectively put on notice.*

Reasonable Accommodation Framework

When put on such notice, an employer must engage in an “interactive process” with the employee with the aim of reaching a resolution on the most appropriate RA(s) (see next section- “Employer-employee interactive dialogue”).

Threshold standards to assess the legitimacy of a proposed accommodation
(i.e., whether it meets threshold standards)

1. Is it reasonable?
2. Will it cause “undue hardship” (UH) on business operations?

The factors addressing these two questions are discussed in Appendix F, and specifically regarding the YA peer and undue hardship in the box below.

Assessing Undue Hardship and the YA peer:

- Accommodation costs are usually indirect:
 - YA peer supervisor providing additional supervision;
 - When a peer reduces weekly hours and takes leave, other roles on the team may need to be restructured.
- Direct financial costs are not common; they are usually payments for external training or support (e.g., class fees or job coaches) and for replacement staff when the peer takes a leave of absence.
- The YA peer provider can be difficult to replace because of the unique qualities and skills necessary for the role and the limited number of YA peers on staff. Thus “leave” for a YA peer is more likely to present undue hardship issues than for other employees, at least from an operational perspective.
- It is the company’s obligation to make every effort to cover the YA peer’s hours.

Additional resources on the Reasonable Accommodation mandate include:

- Appendices F & G of this toolkit
- Federal Guidances:
 - Job Accommodation Network (JAN) is a free service offered by the U.S. Department of Labor’s Office of Disability Employment Policy and the leading source of guidance in workplace accommodations. Phone consultation is available to both employers and employees. JAN’s website offers a variety of [learning materials on RAs](#).
 - There are [10 Americans with Disabilities Act \(ADA\)](#) regional centers that cover the United States, each responsible for technical assistance and research, including trainings.
 - The [United States Equal Opportunity Commission](#) also has good background information on the ADA.

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In the remainder of this Chapter we introduce a systemic approach to address job difficulties of TAY employees and provide them with specific RAs and other direct assistance. The four critical cornerstones of this approach are in the box below.

Critical cornerstones for providing RAs and addressing significant job difficulties

1. There are clearly described protocols for employees to request accommodations or other assistance for disability-related job difficulties;
2. Employers and employees use appropriate interactive tools and processes to discuss RA solutions;
3. RA responsibilities are clearly defined and understood by the employer and staff;
4. Supervisors have the willingness and support to address accommodation issues.

THERE ARE CLEARLY DESCRIBED PROTOCOLS FOR EMPLOYEES TO REQUEST ACCOMMODATIONS OR OTHER ASSISTANCE FOR DISABILITY-RELATED JOB DIFFICULTIES

As noted earlier, many people with SMCH are reluctant to ask for a RA or other assistance. Employees with SMHC are more likely to disclose RA needs and disability status to employers who express enthusiasm for supporting their success (otherwise, disclosure may be seen as risking their job status).^{lxxx} This starts as early as the job interview process, in which interviewers express the value the organization places on the use of RAs. This expression of RA value should continue into the workplace, through clear signs/posters, orientations, trainings, as part of the personnel handbook, on the company website, and as expressed through senior staff.

Employees are also more likely to disclose when there is a clear and structured RA request process with a good deal of flexibility.

We thus suggest that organizations:

- Offer a structured form for requesting RAs. As discussed in the next section, a good form can help the requestor provide the employer with the most important information needed to take action. Of note, an employee does not legally need to use the organization's form to make a request- it could be done verbally or using any kind of written note.
- Recommend that employees make their RA requests directly to their supervisors, with the option of approaching other staff when that makes more sense (e.g., the issue directly concerns the supervisor).

- Post an RA policy statement for all to see in the appropriate format that includes:
 - The employer’s obligation and desire to accommodate;
 - Principles for providing appropriate accommodation (e.g., individualized, respecting the dignity of the worker, maximizing autonomy and integration);
 - How to request an RA or related job assistance;
 - How the request will be processed;
 - The responsibilities of both the employee and employer in this interactive process (see next section);
 - A time frame for assessing and deciding on the request;
 - Procedures for maintaining confidentiality of health-related information in accordance with applicable privacy legislation.¹

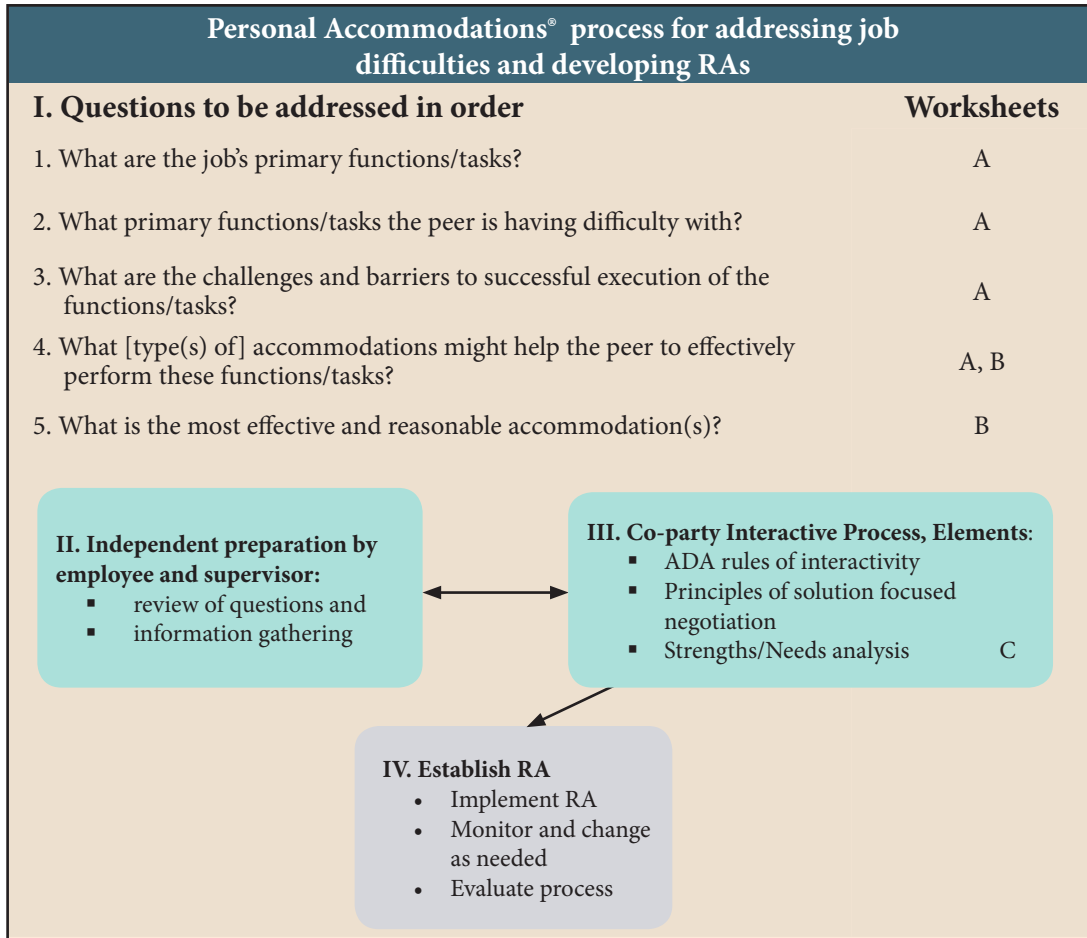
A very good example of a RA policy statement is the [University of Washington RA policy statement](#).

Employers and employees use appropriate interactive tools and processes to discuss reasonable accommodation solutions

The Personalized Accommodation® (PA) process is a methodologically sound approach for employers and employees to develop a shared understanding of the job challenges facing an employee with SMHC as well as the supports that will promote his/her success. A four-component framework to direct the PA process is described below:

<p><u>Four- component framework to direct the PA process</u></p> <ol style="list-style-type: none"> 1. The list of questions to be considered in order by both employees and supervisors 2. Independent preparation and information gathering 3. Employer-employee interactive dialogue 4. Develop a RA and evaluate it
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¹ Sometimes, a significant concern for the employee might be whether anyone else in the workplace will be told about the accommodation or the disability. According to the ADA and other laws, no co-worker should be told about the diagnosis or the type of disability. Only co-workers who have oversight and responsibility for RA implementation may know though they are not permitted to share unless necessary.



The process is generated by a guiding set of consecutive questions and interactive worksheets to provide collective focus, transparency, and accelerated resolutions of issues.

When the employer adopts the PA framework, it should be shared, including the worksheets and advisory tools, with all staff. When employees and employers are working from the same accommodation framework, there is a level of transparency that generates clarity for both parties.

Worksheet	
A	The Job Challenges and Accommodations Worksheet
B	The Accommodations Analysis Worksheet
C	Strengths/Needs Worksheet

I. Questions to be addressed in order

The employer and employee will use the 5 questions listed below and other tools herein

to deliberate individually and together towards selecting an RA(s). The five questions are designed to be addressed in the order presented when preparing independently and as a framework for employer- employee discussions. The questions to be addressed and worksheets associated are:

<u>Questions</u>	<u>Worksheet</u>
1. What are the job’s primary functions/tasks	A
2. What primary functions/tasks is the peer is having difficulty with?	A
3. What are the challenges and barriers to successful execution of these functions/tasks?	A
4. What [type(s) of] accommodations might help the peer to effectively perform these functions/tasks?	A, B
5. What is the most effective and reasonable accommodation(s)?	B

The questions are ordered as such because initial consideration and discussion should not focus on the nature of the person’s disability or diagnosis, but instead on identifying the difficulties the employee is having with primary job functions. When a discussion starts with “disability,” it becomes very easy for the parties to stay on that topic rather than addressing the perhaps more challenging aspects of improving job performance. In addition, when using labels/diagnoses in such a discussion, misunderstandings can arise from terminology that is ambiguous and/or understood differently by the parties.

In addition, peer supervisors have reported that when discussing a YA peer’s mental health problems with him/her, they are tempted to act as (and can feel like) therapists or crisis managers *for that person*. This approach takes an emotional toll on supervisors who begin to feel responsible for the person’s overall wellbeing, and it creates a relationship more similar to psychologist/patient than supervisor/employee. It also does not address the functional concerns that will reduce tension in the existing relationship. Thus, the question format initially pulls the supervisor away from those roles and narrows the focus toward holistic problem-solving that takes into consideration workplace factors, such as staff training needs. (As part of that there may be accommodations related to the person’s healthcare or just general advice, but it’s not the initial focus.)

The consecutive nature of the questions does not mean that each one needs to be addressed fully and completely before moving to the next one. For example, it may be difficult to provide a complete answer for question 3 until discussing with the other party, but that shouldn’t stop each party from “penciling in” some possible accommodations in question 4.

The Job Challenges and Accommodations Worksheet [A] is the worksheet people can use to answer questions 1-4 initially as they go through the process. The *Accommodations Analysis* worksheet [B] guides the parties toward evaluating and selecting proposed RAs (questions 4 and 5). These worksheets provide a framework for identifying valid/legitimate accommodations, assessing their relative utility, and agreeing on the best one.

II. Independent preparation and information gathering

The Precision Accommodation[®] process starts when an employee with SMHC or an employer/supervisor believes that there are difficulties related to that employee's job performance. The first step for this initiating party then is to go through at least the first 4 of the 5 consecutive questions using the *Job Challenges and Accommodations Worksheet* [A]. For the employee, this will result in a coherent narrative identifying these job difficulties and the kinds of accommodations that might help. An employer/supervisor will also have a coherent narrative to present to an employee. Completing these questions will allow them to present to the other party:

[Employee] "I am having difficulties with_____job functions probably because_____
Here are some job changes I think could address them and make me more productive_____”

[Supervisor] "I believe you are having difficulties with_____job function[s]..... here are some ideas for addressing them_____”

Independent preparation by the employee and employer is very important in framing the concern holistically, including consideration of workplace culture and behavior of other staff. In responding to these questions each party should consider obtaining advice from people they know or experts in needed areas:

Supervisor

- Staff, consultants, or colleagues with knowledge of the kinds of difficulties the employee is having, such as learning difficulties, anxiety, poor communications; EAP staff can be useful here (chapter 4);
- Staff with expertise in providing RAs, including knowledge of costs and success rates of RAs under consideration;
- Other staff with knowledge of the employee's performance.

Employee:

- Health care professionals who treat the employee;
- Case managers and other people who provide support;
- Independent health/disability assessment professionals;
- Friends and family;
- Trusted co-workers, current or past;
- Mentors.

III. Employer-employee interactive process

It is a legal requirement that employers and employees engage in an interactive process toward reaching the best RA decision. There are two main reasons: First, both parties have important information to offer. Second, employee involvement builds trust, and increases the likelihood that s/he will make a strong effort to make the RA work.

The element of the interactive process presents a structure for engaging in productive discussions towards agreeing to the best RA. It may take only a single discussion to reach a resolution, or there could be more complex issues that require a more extended discussion and negotiation. The

primary procedural elements of an interactive process here are:

- Principles of Interactive Dialogue for RA discussions
- Principles of Negotiation and Communications

Principles of Interactive Dialogue for RA discussions

- The employer should acknowledge receipt of an employee's RA request immediately. The supervisor should meet with the employee as soon as possible, or if not available, delegate the task;
- The initial discussion should ALWAYS begin with the employee's job tasks and functions. **Do not start by discussing illness, etc.;**
- As people go through each question, they should stop and ask for the other party's perspective and/or affirmation;
- The employer must engage in a "flexible give-and-take," including:
 - Being active in seeking information as needed from the employee or designees (e.g., doctors);
 - If rejecting an RA proposal, communicate the specific reasons to the employee, which allows the employee to make a reasonable counter-proposal;
- An ongoing discussion is necessary because issues are not always fully addressed in a single session. Parties need time to step away from meetings, think on their own (questions 1-5), seek out additional information, and gain outside advice;
- The employer should not, in any way, condition the granting of an RA on the employee's promise of improved performance, nor require the employee to take unpaid medical leave until the employer has time to consider at-work accommodations.

Principles of Negotiation RA Discussions and Communications

At any point of discussion there may be feelings or disagreement, but these basic rules will help ameliorate those emotions and refocus parties on the issues at hand.

Common techniques include:

- **Focus on interests [productivity, wellness], not positions**
 - Explain and reiterate your interests clearly.
 - Ask the other party to describe his/her interests.
 - Discuss these interests to identify common goals.
- **Separate the people from the problem:**
 - Rather than resolve conflict, solve the problem.
 - Think of each other as partners in negotiation rather than as adversaries.
 - Avoid blaming or attacking the other person.
 - Speak primarily about yourself or your opinions. Use “I” statements, such as “I feel” or “I think.”
 - Acknowledge your emotions to the other party.
 - Try not to react emotionally to another’s emotional outbursts.
 - Symbolic gestures such as apologies or expressions of sympathy can help to defuse strong emotions.
- **While talking, stay focused on what you are trying to communicate:**
- Actively listen to the other party (with your full attention), occasionally summarizing the speaker’s points to confirm your understanding without conveying judgment.
- Have a pad of paper present to take notes and clarify the relevant matters you are trying to communicate to the other party.
- **Use experts agreed to by both parties to inform discussion.**

Types:

 - Topical, e.g., guidance with a specific disability
 - Facilitator of discussions

Utilizing the worksheets

Now the parties can use Worksheets A and B as their personal guide for presenting information, and leave it at that. They can also share with the other party their responses/narrative on paper or electronically. (We have found the third question on reasons for difficulties to be the most sensitive to others, so the parties may agree to not share that part.) Keep in mind that it should be the peer’s choice of whether and to what extent they share their Worksheet A. We have seen that as the process goes along, employees are more likely to share their worksheet with the employer.

Worksheet A can be used more interactively by using a web-based “shared documents” interface in which different authors can work on a shared document together, and by uploading and downloading supporting reports, such as doctor’s records and estimated costs of an accommodation. With this level of transparency there is greater potential for issues to be addressed more quickly.

Because each party likely possesses incomplete information for most questions (particularly

3-5, e.g., employee - nature of the employee's impairment; employer - the company's available resources for particular accommodations), each must be prepared to readjust his/her responses to a questions. Regardless of attempts to follow this question set approach, negotiation may stall and the parties may start to feel emotional and less focused on the problem. In this case we recommend the use of the *Strengths/Needs Worksheet C*, which in our experience can redirect participants to thoughtful discussion and resolution.

IV. Develop RA and Evaluate It

Below we outline the process for developing and evaluating the chosen RA. It is important to record the RA agreement and an implementation plan in writing, including objectives and goals, actions taken to date, and a timeline for implementation and re-evaluation. Since each employee is unique, there may be some trial and error in developing the accommodation.

The RA plan should be revised if:

- The RA is not producing the desired results;
- The RA is overly burdensome (costs/time);
- There are obvious ways to improve the RA; and/or
- The employee prefers a legitimate alternative.

Employment culture and policies have a major impact on the capacity to identify and implement the best RA. After providing a number of RAs, the employer should evaluate the factors that have supported and/or impeded successful implementation. Information can be gathered from employees with disabilities, other employees, and supervisors. Major questions for this analysis include:

- Do company policies and practices need to be revised?
- How does workplace culture impact the success of employees with disabilities, including RA implementation?
 - How can culture be impacted to improve working conditions for people with disabilities?
[See chapter 4 of this toolkit.]

RA RESPONSIBILITIES ARE CLEARLY DEFINED AND UNDERSTOOD BY THE EMPLOYER AND STAFF

RA responsibilities apply not only to management and supervisors, but also to employees in terms of

- Providing the needed information;
- Engaging in interactive dialogue;
- Implementing the RA and making modifications as needed.

Resources on the RA mandate (above) all provide useful training materials, with several specific to people with mental health conditions. In addition, the ADA regional centers provide various levels of training for employers (above). Nevertheless, it is vital for the organization to produce a robust RA training for all employees, using effective training methods discussed in chapter 8. In

addition, supervisors should be able to access organizational RA specialists (often residing in HR) who can advise on sticky issues.

SUPERVISORS HAVE THE WILLINGNESS AND SUPPORT TO ADDRESS ACCOMMODATION ISSUES

Staff can be trained and knowledgeable, but to carry out their RA responsibilities they will need organizational support and a willingness to engage. That is, supervisors in particular will need to have:

- An open mind and heart, valuing the perspectives and contributions of people with diverse backgrounds and cultures, with the assistance of company diversity initiatives as described in chapter 4;
- The support of higher level and HR staff to attend to their own practical and emotional needs while making headway toward addressing employment issues of people with disabilities (see chapter 8);
- Performance evaluations that assess in part their effectiveness in managing job difficulties for people with SMHC, YA peers in particular, and RA requests (chapter 9).