

Things that need to be included in new letter, following the template given:

Employers are allowed to refuse to provide accommodations in some circumstances. They are trying to claim there is NO accommodation that works to enable me to continue in my current position. They're using the previous documentation to claim that I'm not qualified for the job because there's no accommodation that works. If there is not accommodation that works, they may not be required to provide one. I need to make it clear that there ARE accommodations that would allow me to continue in my current position.

Basically, there are a few points in the original questionnaire that were worded in a way to trap the medical provider filling it out.

As a result, there are a few points my company is referencing that supposedly support them demoting me 'as a reasonable accommodation'. If you can respond by indicating they had misunderstood your statements, which they did, it will help show them that that is not a reasonable accommodation when there are other options available.

These are the specific things the lawyer said should be indicated:

Question 1- Your answer to this was yes; this can stay the same

Question 2- HR is claiming that you indicated that the nature of my work is what is exacerbating my disabilities. You need to state that she misunderstood, and that it is not WORK DUTIES that are exacerbating my disabilities, by outside elements like COVID-19. Indicate that the word "stressors" that you used does not mean the same thing as 'normal work stress'. Additionally indicate that you have never indicated that any of the assistant management 'work duties' are causing exacerbation to my disabilities.

Question 3- needs to indicate clearly at least 2 or more of the legally defined "major life functions" being impacted by my disabilities. The ones you should focus on are 'concentration' and 'thinking', both of which are listed on ADA stuff as 'major life functions'. You gave good examples before. The purpose of the detail is to indicate it is not customer interactions that cause this; it was criminal behavior (the threats!) that impacted my disability. Not the fact that I have to engage in customer interaction (which is an essential part of the job). State that a specific incident that occurred outside of the realm of normal customer interaction, and was criminal activity, impacted my disability, and that the assistant management duties did not impact how this would be experienced. State that threats fall outside of the capacity of providing service.

Question 4- They need timeframes. If we give a vague or indefinite answer, they can refuse it. We need to give specific details; tell them that we are starting (med adjustments) on this date (today), and that we have another appointment set up for (next date); at this date, state that we

can expect to confirm that (specific symptom) has improved. We need to indicate certainty that I will be improving via this course of treatment.

Question 5- State that "I had previously indicated a 6 month duration as current est. for recent exacerbation to be controlled adequately to return to baseline level of disability." Basically, you need to indicate this isn't returning to not having a disability; it returns me to a level of disability that will no longer need accommodations. Also elaborate in more detail, example, "here are additional milestones anticipated (when our appointments will be, what we expect at each one). We need to explain why your estimate stated '3-6 months' as an expected duration, because it isn't specific enough.

We need to explain what will be expected at 3 month, and the 6 month marks. Identify the extent the accommodation could be expected to be reduced prior to six months, and what is expected to resolve sooner than 6 months. It needs to show that there are no self-contradictions. State that I can have incremental adjustments to needed acc in the process; list what these are and timeframe (3 months, 6 months).

Question 6- Do not make it seem like I will not be disabled in six months. indicate the total improvement is not expected to eliminate substantial impairment in major life activities; it is expected to reduce the level of accommodation that is needed. State that "Jack is expected to continue experiencing ptsds, ocd, and gad permanently. The symptoms that require a work acc, in my prognosis will abate in my projected 3-6 month timeframe. even in 6 months, substantial impairment in major life activities will continue."

Question 7- clarify that this timeframe is given for improvement related to the acc; the conditions (my disabilities) are permanent.

Question 8- You answered yes. They are misinterpreting your answer (due to how the worded the question). They need you to indicate this: (explain) "here's what I meant: I meant that Jack's conditions prevent performing essential job functions ONLY IF it is expected that Jack must carry out these responsibilities without reasonable accommodation of any sort. WITH a reasonable accommodation, Jack can perform all essential job functions. You could read this question in multiple ways; it is ambiguous. you are reading my answer wrong."

Question 9-

From lawyer- NEED TO CLARIFY QUESTION 9 OR ELSE IT WILL BE REJECTED. NEEDS TO SAY I NEED SUPPORT TO DO THESE THINGS, NOT THAT I CAN'T DO THEM, AND THAT SUPPORTS ARE AVAILABLE TO MAKE IT POSSIBLE TO DO THESE THINGS.

USEFUL LANGUAGE: "I UNDERSTAND THAT YOU MISTOOK MY RESPONSE AS AN INDICATION THAT JACK IS UNABLE TO PERFORM WHAT YOU REFER TO AS 'OFFERING FAST AND FRIENDLY SERVICE' AND THAT THE WORK TASKS THEMSELVES

EXACERBATED JACKS CONDITION. YOU MISUNDERSTOOD. NOTHING THAT I WROTE SHOULD HAVE BEEN TAKEN TO SUGGEST THAT HE COULD NOT PERFORM THOSE FUNCTIONS WITH AN ACCOMMODATION. I WAS STATING THAT ACCOMMODATIONS ARE NECESSARY, NOT THAT ACCOMODATIONS WONT WORK.”

Further clarification is needed:

“Based on my reading of your question 8 as 'performing without any accomodation at all', i identified two tasks where accommodations would be necessary. To avoid misunderstanding, i want to be clear that Jack CAN work 40 hrs per week, with reasonable accomodations in place, and CAN provide “fast and friendly service” with reasonable acc in place. I identified these things specifically as being things Jack **could do** with acc. What will enable him to work 40 hrs:

- Flexible scheduling: Explain that initial accommodation request for a reduction to 32 hrs a week was intended to reduce the NUMBER of shifts worked weekly, not the hours. Reduction to 4 shifts a week to enable him to have a day to schedule therapy and psychiatric appointments. This proposed accomodation does not mean working less than 40 hours; it would mean shifting his 40 hours to be 4 10 hour days. His manager has indicated willingness to work with this. (important to include that my manager had been willing)

Give clarification about the request for 32 hrs weekly in previous medical documentation. Explain that that recommendation was made based indicating that I could work the 32 hours without any of the other changes put in place as accommodations. But, with the other changes in place, then I **would** be able to work the 40 hrs. Indicate that you had said one accommodation that would work would be the schedule change to 32 hrs; then state that you had actually referenced the other accommodation options as a way for me to work 40 hours.

- Request for additional official signage to workplace for ID and night time entry policies: these signs improve Jack’s PTSD and GAD by allowing him to reference the store policies when interacting with customers who are angry, providing anxiety relief.

DIRECTLY SAY: “I quoted the job desc. bullet point 'fast and friendly service'; I was specifically referring to the fast service portion, though I quoted the entire phrase.”

Continue to clarify that: “the portion of this that is limited, WITHOUT accommodations, is specifically the 'fast service' aspect. This is because of the obsessive increase in time spent cleaning and sanitizing work conditions (give examples if possible).

State that, "with these accommodations, he COULD provide fast service:

- Providing disposable wipes (vs. spray bottle and cloth) to make cleaning work area between transactions faster: this allows Jack to focus on service, vs. his obsessive fears about contamination
- Marking social distancing spots on the floor: this decreases Jack's fears of infection in relation to customers, allowing him to focus on providing fast service
- Providing signs encouraging customers to wear masks: these signs allow Jack to feel less anxiety, and lessens the need to engage in obsessive cleaning, as customers will be informed on how to reduce COVID-19 transmissions in your establishment.

Question 10- state, "In my response to q10, I gave one example of an acc that would work. I also gave other examples in q12. This is not meant to be an exhaustive list; here are some other examples of things that would be effective, and how:

In relation to working 40 hrs/week:

- Short term disability leave: Explain that short term leave CAN be an accommodation, if it restores LONG TERM reduction in symptoms, allowing me to perform all essential job functions on return. If Jack is given a short term leave (I suggest 8 weeks from the point at which the ADA process is resolved) to focus full -time on mental health treatment, I project he will be able to return to working 40 hours a week, over 5 days, when combined with suggested workplace accommodations. Explain the specific medical and therapeutic treatments we would be following (what meds, how often we meet, how often I will go to therapy, what type of therapy---specific to PTSD), and what milestones we could expect, and at what specific points we could expect them. Example, "Jack is increasing his ssri dosage; this is projected to decrease his anxiety and hypervigilance. His next appointment is on (date); we expect to confirm improvements in his conditions."
- Flexible scheduling: in addition to the two required ASM closing shifts weekly, schedule Jack's other three shifts as morning or mid-shifts (no later than 3PM). This allows Jack more time in the day to attend therapy and medical appointments. This would allow Jack to work the required 40 hours a week. Additionally, there are more employees around during the day, so it would improve Jack's anxiety and PTSD hypervigilance. Combined with other accommodation, this would allow him to work 40 hours weekly over 5 shifts.

Decreasing PTSD, OCD, & GAD in the Workplace:

- Ability to listen to podcasts during shift: having non-musical background noise to focus on helps decrease Jack's anxiety symptoms. This allows him to improve his concentration, focus, and stress tolerance.
- Continued provision of disposable face masks (instead of relying on cloth ones), OR provision of cleaning time for cloth masks: due to his OCD, Jack has fears of

contamination in relation to re-using the same cloth mask daily. Providing scheduled time in which Jack can use the provided industrial strength cleaners to wash and dry his mask prior to starting a shift. This could also be added to the end of his shifts, allowing the mask to be left overnight to dry, so it could be immediately worn the next day. The lessened fears of contamination would improve Jack's anxiety and OCD symptoms. I would project this would be about a 15 minute process.

It's important to make sure this is said not to be an exhaustive list.

Question 11- Emphasize that, "I understood your question to mean 'could he do these things **without** any accommodations'; it says "with OR without". WITH accomodation, Jack can perform all essential functions fine. This is why I left that blank."

Question 12- State that, "these are just additional examples of accommodations that would be effective for return to work as soon as accommodations are able to be implemented. These are not an exhaustive list. These proposed items would, for example....."

- Don't mention the part about having additional employee coverage; they can easily argue this is unreasonable because it's a cost to the company
- Explain that the examples you gave were because:
 - *increased signage would decrease the anxiety and hypervigilance because Jack would feel safer having official store fixtures to reference when explaining policies to customers.
 - *increased or improved PPE supplies, including signs, would allow Jack to focus on providing service, instead of obsessing about contamination risk

It's important to indicate that I would be able to effectively return to work ONCE ACCOMMODATIONS ARE IMPLEMENTED. Otherwise they will try to just immediately force me to return to work as is.

Question 13-

State, "where I indicated there is risk to Jack, I was specifically referring to risks if expected to carry out the position without accommodation. With acc, there would be no increased risk."

If they can prove I am a 'direct health or safety threat', they have no requirement to provide for reasonable acc.

Question 14- State that, "this is an elaboration of my understanding of q13 to mean Jack working without acc."

Question 15- Very important to answer this one in a specific way to indicate if they don't like any of the suggestions we made, that there ARE more options, so they can't say that their proposal is the only one left (the demotion).

Lawyer suggested this language:

"to ensure there are no questions about the understanding of this letter, Jack is able to do the job with accommodation, and there is no threat to health or safety, if he is performing the job with accomodation. If none of accomodation examples provided are acceptable, I request jack be given an opportunity to consult with me about the many other acc options that would ensure his continued effectiveness in his current role. "