

KNOW YOUR RIGHTS!

DISABILITY & HARDSHIP ACCOMMODATIONS

COVID-19 EDITION

AMERICANS WITH DISABILITIES ACT

The Americans with Disabilities Act, or ADA, is a federal law. It has a lot of provisions to protect people with disabilities. One is a provision to protect people with disabilities at work.

A specific protection of the ADA is that it requires employers to make reasonable accommodations for an employee's disability so the employee can keep doing their job. Let's look more at the terms "reasonable accommodation" and "disability."

WHAT COUNTS AS A DISABILITY IN THE TIME OF COVID-19?

Disability is a physical or mental impairment that substantially limits one or more major life activities.

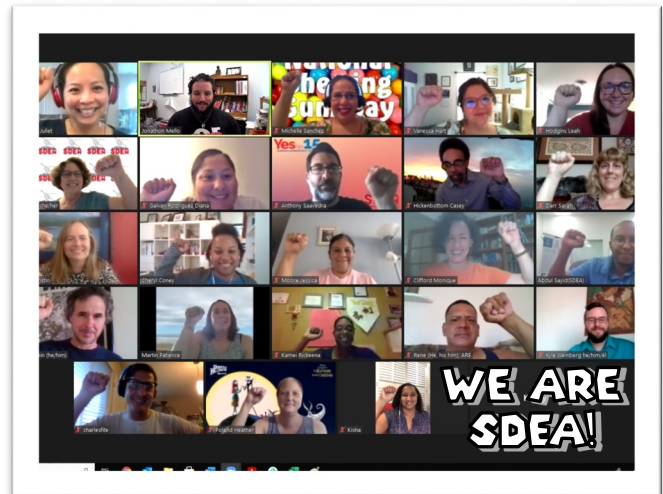
Major life activities include walking, lifting, or working. (Yes, "working" is a major life activity!)

In the time of Covid, conditions that previously were not disabling for you – conditions that didn't impair major life activities, like your ability to work – might now be disabling. Other conditions that will likely qualify as disabilities under the ADA are:

- Health conditions that may put an employee at increased risk of severe illness or death due to Covid-19
- Certain mental health conditions that may be worsened by stress and disruption caused by the pandemic (e.g. post-traumatic stress disorder, anxiety disorder)

Just a note that stress itself would likely not qualify as a disability, but a mental health condition like obsessive-compulsive disorder, which is worsened by stress, may qualify as a disability.

A good source on which conditions are likely to qualify as disabilities in the time of Covid-19 is this [CDC list of medical conditions that increase risk of severe illness due to Covid-19](#). The CDC list is medical conditions only, and does not include mental health conditions, which may also be qualifying disabilities.



WHAT IS A REASONABLE ACCOMMODATION?

Reasonable accommodation is a modification to a job or work environment that will enable an employee with a disability to continue to perform the essential functions of their job and enjoy equal benefits and privileges of employment.

In the time of Covid-19, reasonable accommodations may look like:

- Additional PPE
- Clear masks
- Schedule changes
- Reassignment to a position with less exposure
- Telework
- Temporary leave
- Eliminating, reducing, or substituting less critical, non-essential job functions

This is not an exhaustive list. [The Job Accommodation Network's A—Z list of accommodations is a good resource.](#)

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A REASONABLE ACCOMMODATION IS NOT...

A reasonable accommodation is *not* any accommodation you ask for. It must be reasonable. Reasonable, under ADA, means that the accommodation does not create "undue hardship" on the employer. An example of an accommodation that would create an undue hardship, and is not considered reasonable under ADA, is a request for a different position if that different position does not currently exist. The District does not have to create a new position to accommodate an employee's disability.

WHAT HAPPENS AFTER REQUESTING A DISABILITY ACCOMMODATION?

The District has to engage in what is called an interactive process. This is a back-and-forth with the member requesting an accommodation. In an interactive process, the District might say, We don't think we can give you X accommodation, but what about Y accommodation? To which you can say, No, I really need that accommodation because of A, B, and Y accommodation won't work for me because of C. Or you might say, Actually, I hadn't thought of Y accommodation. I think that would work if we can also do Z. The main points here are:

- This is a back-and-forth between you and the District.
- You know your disability better than anyone else, so you are your own best advocate in the interactive process!

WHAT IF A FAMILY MEMBER IS AT INCREASED RISK OF SEVERE ILLNESS DUE TO COVID-19?

Many of us are not at increased risk of severe illness due to Covid-19, but we have a child or family member who is. The problem is that the ADA does not require an employer to accommodate employees *based on a family member's disability – only on the employee's own disability*. But in March 2021, SDEA members bargained new rights for situations like this.

NEW SDEA RIGHTS ON HARDSHIP ACCOMMODATIONS*

[Under an agreement with SDUSD, newly bargained by SDEA members](#), members who have a "demonstrable hardship" have the right to request a modification to their work. The request must be

made to Human Resources.

Examples of hardships (which must be demonstrable, or in other words, provable), include but are not limited to:

- Being a caregiver to a family member at increased risk of severe illness due to Covid-19
- Childcare is not sufficiently available to you

WHAT IF THE DISTRICT DENIES MY REQUEST FOR AN ACCOMMODATION?

If the District denies a request for a reasonable accommodation [based on your disability](#), dues-contributing union members can be referred to a union attorney to investigate and, if necessary, enforce your rights under the ADA. Union attorneys are not available for denial of hardship modifications because this is not a matter covered by the law.

GOOD RESOURCES FOR FURTHER LEARNING

- [Job Accommodation Network Coronavirus Resources](#)
- [California Department of Fair Employment and Housing \(DFEH\) Employment Information on Covid-19](#)

** These rights are only implemented and effective if the [five-part tentative agreement](#) is approved by a majority of SDEA members during the March 23—26 ratification election.*