

# GEORGIA LUPUS SUMMIT



Renaissance Atlanta Waverly Hotel

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# Workplace and Educational Accommodations

# Workplace Accommodation

# A Short History of the Americans with Disabilities Act

- The Act was passed in 1991 to require employers of 15 or more employees to take steps to reasonably accommodate disabilities.

- Under the ADA, the definition of “disability” is “a physical or mental impairment that substantially limits one or more of the major life activities of an individual.”

- The courts narrowly interpreted the 1991 Act which led Congress to enact the ADA Amendments Act of 2008 (“ADAA”).

# What Did the ADAA Change?

- The ADAA broadened an expansive list of life activities, including: sleeping, reading, thinking, eating, concentrating, communicating, working, performing manual tasks, caring for one's self, standing, lifting, bending, seeing, hearing, speaking, learning, walking and breathing.



- The ADAA clarified that the term “disability” included impairments that would limit a major life activity if active, even if currently in remission. Examples:
  - Multiple Sclerosis
  - Lupus
  - Cancer
  - Epilepsy
  - General Seizure Disorder

- Under the ADAA, an employee is considered disabled if she is regarded as having any impairment, whether it substantially limits a major life activity or not. Under this interpretation, if an employer mistakenly believes some impairment suffered by an employee makes the employee

unfit to perform a job, that employee will have a cause of action under the ADAA.

- “Regarded as” claims cannot be based on minor impairments where the impairment is expected to last less than six months. In addition, employers are not required to provide a reasonable accommodation to individuals who are “regarded as” disabled. The employer, however, cannot discriminate against such individuals.

- Under the ADAA, a person is considered “disabled” even if his disability is lessened by devices such as hearing aids, prosthetics, wheelchairs or medication.

If I am Disabled, How Do I  
Obtain Relief?

- Under the law, an employee must initiate what is known as “the interactive process.” What this means is that the employee must advise the employer he has a disability and needs some modification to his job.

- In the interactive process:
  - An employer may ask questions concerning the nature of the disability and the individual's functional limitations in order to identify an effective accommodation.



- While the employee does not have to be able to specify a precise accommodation, the employee does need to describe the problems posed by the job.

- An employee should try to suggest types of accommodation. The employer, however, does not have to accept the precise accommodation requested if another method is equally effective.

# What are the Limits of Accommodation?

- The standard for accommodation is what is “reasonable.”
- What is “reasonable” for a large employer may be unreasonable for a smaller employer or an employer with limited financial resources.

- It is not “reasonable” to expect an employer to provide “personal use items” which are needed in accomplishing daily activities both on and off the job. For example, it is not reasonable to expect an employer to purchase a hearing aid for an employee who will use the device away from the job.

- Any accommodation is only the business of the employee and certain key management employees. While coworkers may expect to have explanations on why an employee's job has been modified, it is management's job to advise the inquiring employee that the modification is none of his business.

- For medical conditions such as lupus, it is advisable to have the treating physician's involvement in both the interactive process and in the process of assisting the design of a reasonable accommodation.

# What are my Rights as a College Student Affected by Lupus?



The Office of Civil Rights enforces § 504 of the Rehabilitation Act of 1973 (“§ 504”) and Title II of the Americans with Disabilities Act of 1990 (“Title II”), which prohibit discrimination on the basis of disability.

Practically every school district and post-secondary school in the United States is subject to one or both of these laws.

# Do My Rights Change Moving from High School to College?

- As a high school student, § 504 requires a school district to provide a disabled student with a free appropriate public education. This means a school district must identify an individual's educational needs and provide any regular or special education and related aids and services necessary to meet those needs.

- Unlike high school, colleges are not required to provide free appropriate public education. Colleges are, however, required to provide appropriate academic adjustments to ensure they do not discriminate on the basis of disability.

- If the college provides housing for non-disabled students, it must provide comparable housing to students with disabilities at the same cost.

# What Must Be Done for an Academic Adjustment?

- You must inform the college you have a disability and the need for an academic adjustment. Unlike high school, a college is not required to identify an individual as having a disability or assessing the needs of the disabled.



- If your college does not publish how to obtain academic adjustments, check with college admissions or the college counseling office.

- It is advisable to request academic adjustment as soon as possible. Adjustments take time and need to be analyzed at an early stage.

- The college has the right to documentation of disability. This may require you to undergo an evaluation at your own expense. If you are eligible for services through your state vocational rehabilitation agency, you may qualify for an evaluation that will be performed at no cost to the student.

Once the Disability  
is Documented,  
How Do I Obtain an  
Academic Adjustment?

- A disabled student, like a disabled employee, must request and undergo an interactive process. When an academic adjustment has been identified, it must be implemented by the college at no cost to the student.

# What Can I Do if I Believe the School is Discriminating Against Me?

- The college most likely has a grievance procedure. If a procedure is not outlined in a school publication, contact your college counseling office.

- If you are not satisfied with the outcome of a grievance procedure, you may file a complaint against the college with the Office of Civil Rights or seek relief in court.



- The Office of Civil Rights has prepared a brochure entitled “Auxiliary Aids and Services for Post-Secondary Students with Disabilities: Higher Education’s Obligations under § 504 and Title II of the ADA.”

- You may obtain a copy by contacting the Office of Civil Rights.