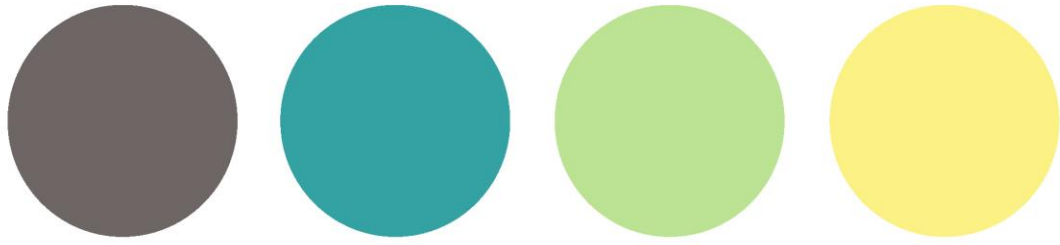


The ADA

Accommodations may be preferential



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The ADA: Reasonable Accommodation

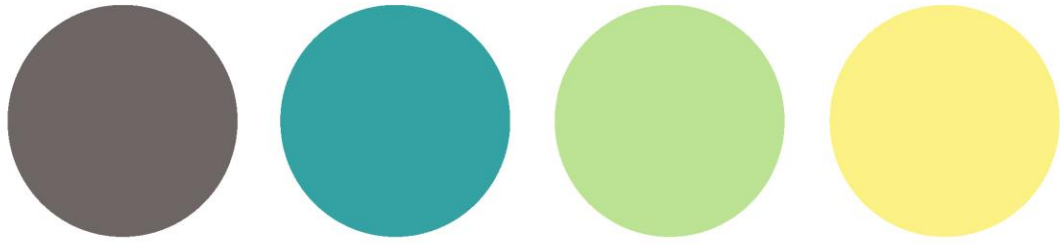
Q. How would you respond?

An employee with a diagnosis of Bi-Polar Disorder works with Human Resources to request a flexible schedule for medication changes, including an exemption from night shifts and additional leave he would otherwise not be entitled to under the regular leave system. One of his co-workers complains to you that “it’s not fair” that the employee does not have to work the night shift and “gets more than his fair share” of leave.



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The ADA: Reasonable Accommodation

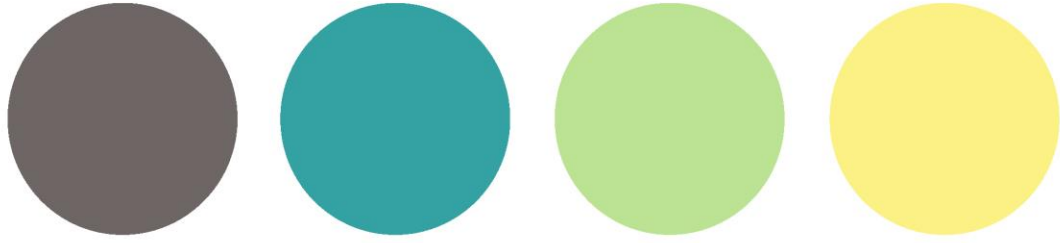
Q. What would you do?

You work in Human Resources. A supervisor in charge of 30 employees manages an on-call schedule in which each employee is required to be on-call 3-4 nights per month. An employee with a seizure disorder requests an exemption from on-call as a reasonable accommodation. She has supporting documentation from her treating physician, but the supervisor informs her that “I don’t make exceptions to the rule for anyone or any reason.”



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The Case

In *U.S. Airways, Inc. v. Barnett*, the Supreme Court elaborated its position on reasonable accommodations as preferential treatment. *Id.* at 397.

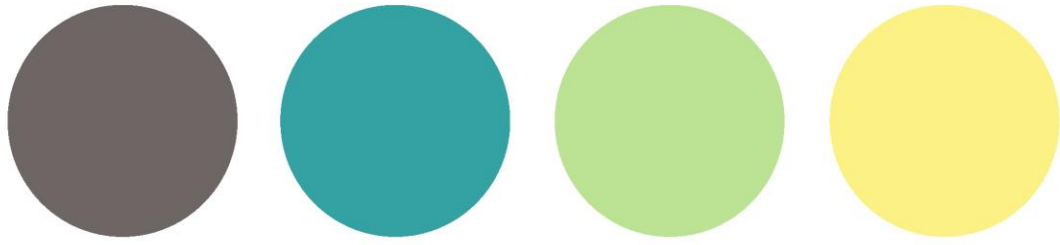
Discussing whether the ADA sanctions such treatment, the Court noted that, “[t]he Act requires preferences in the form of ‘reasonable accommodations’ that are needed for those with disabilities to obtain the same workplace opportunities that those without disabilities automatically enjoy. By definition any special ‘accommodation’ requires the employer to treat an employee with a disability differently, i. e., preferentially.” *Id.* Thus, the Court established that reasonable accommodations are, by their very nature, often an exception to a rule, policy, or practice within the organization.

U.S. Airways, Inc. v. Barnett, 535 U.S. 391 (2002).



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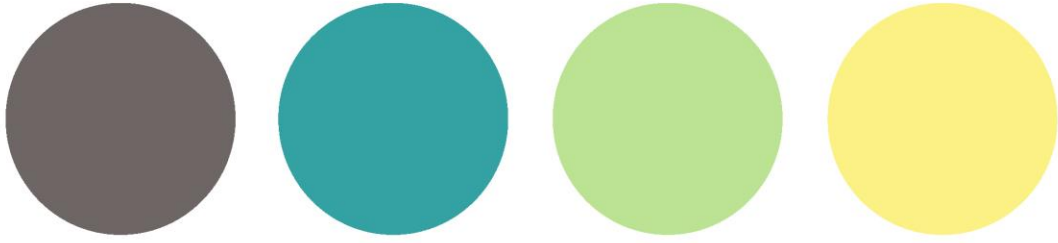
The Bottom Line

Employers must provide reasonable accommodation to employees with disabilities unless doing so would cause undue hardship for the business. *U.S. Airways* clarified that, in many cases, an accommodation constitutes preferential treatment. Reasonable accommodations therefore may grant preference to individuals with disabilities, despite company policies, rules, or practices.



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