

## Ending Mutual Marginalization: A Proposal for a Universal Accommodation Mandate

Nicole Buonocore Porter  
University of Toledo College of Law

This paper expands on earlier work, where I argued that workers with caregiving responsibilities (primarily, though not exclusively, women) and individuals with disabilities share the common bond of being marginalized in the workplace because of their inability to conform to the ideal worker norm expected by their employers. This inability leads to “special treatment stigma,” where employers and co-workers resent the special treatment requested by or provided to these groups of employees. It is this stigma that causes the marginalization of both groups of employees. This paper argues that the best way to ameliorate the stigma that accompanies special treatment in the workplace is to implement a universal accommodation mandate.

A universal accommodation mandate would require employers to accommodate all employees who request an accommodation in the workplace, regardless of the reason for the accommodation. As long as the accommodation requested was “reasonable” and did not cause an “undue hardship,” employers would be required to provide it. For instance, individuals with disabilities, pregnant women with work restrictions, and other individuals with some kind of physical difficulty performing the tasks of the job (perhaps because of age or stature) should be accommodated regardless of the fact that our law has traditionally not offered accommodations to many of these individuals. Similarly, caregivers who have an unavoidable conflict between a mandatory caregiving obligation and a work obligation should also be accommodated. Providing accommodations in these situations, where the employee *needs* the accommodation to be able to perform the functions of the job or to avoid termination, has certainly been proposed before and is likely not seen as terribly controversial. However, this proposal would go one step further and also require employers to provide accommodations to employees who *desire* an accommodation. For instance, caregiving obligations that conflict with work but that are avoidable should also be accommodated as long as they are reasonable and do not create an undue hardship. So should all of the other reasons employees might request a variation in the job tasks or when and where work is to be performed.

However, because some of these accommodations are *necessary* to allow the employee to perform the job or remain employed and some are only *desired*, this paper proposes a two-tier undue hardship defense. If the accommodation is *necessary* in order to allow the employee to perform his job duties or remain employed, the undue hardship defense would be the more stringent test used under the Americans with Disabilities Act, where “undue hardship” is defined as “significant difficulty or expense.” If the accommodation is merely *desired*, and not *needed*, the undue hardship defense would be the more lenient standard used for religious accommodations under Title VII of the Civil Rights Act, where undue hardship has been defined as “nothing more than a de minimis expense.” My hope is that this universal accommodation mandate, which allows *all* employees to request an accommodation, but recognizes at least *some* hierarchy between *needed* accommodations and *desired* accommodations, will eliminate the bias of special treatment stigma while still creating a workable standard.