

DHR WINTER FORUM

Monday, December 18, 2017

8:00 a.m. – 4:45 p.m. | Lincoln Auditorium, Idaho State Capitol



8:00 a.m. – 8:30 a.m.	Check In
8:30 a.m. – 10:00 a.m.	Welcome / Respectful Workplace Susan E. Buxton, Esq., <i>DHR Administrator</i> Colleen Zahn, Esq., <i>Deputy Attorney General</i>
10:00 a.m. – 10:15 a.m.	The Competitive Advantage of Hiring Deaf and Hard of Hearing in the Workplace Steven Snow, <i>CDHH Executive Director</i> Kristy Buffington, <i>Post-Secondary Transition Specialist, IESDB</i>
10:15 a.m. – 10:30 a.m.	Break
10:30 a.m. – 11:30 a.m.	Practice Pointers on Investigations Pam Howland, Esq., <i>Idaho Employment Lawyers</i>
11:30 a.m. – 12:00 p.m.	Background Checks and Fingerprinting Dawn Peck, <i>ISP Bureau Manager</i>
12:00 p.m. – 1:00 p.m.	Lunch – On Your Own
1:00 p.m. – 2:30 p.m.	Making Safety & Security a System Priority – Addressing Workplace Violence Brian Armes, <i>Building Safety Program Manager</i>
2:30 p.m. – 3:00 p.m.	Office of Group Insurance Update Jennifer Pike, <i>OGI Administrator</i>
3:00 p.m. – 3:15 p.m.	Break
3:15 p.m. – 3:45 p.m.	Am I an Employee or Am I a Person? Sarah Hugues, <i>Governor's Office Special Assistant</i>
3:45 p.m. – 4:15 p.m.	When Does an Agency Need to be Concerned About Off Duty Conduct? Leslie Hayes, Esq., <i>Deputy Attorney General</i>
4:15 p.m. – 4:45 p.m.	Updates and Open Questions DHR Staff

Watch it LIVE at: <http://idahoptv.org/INSESSION/>

How Much Do You Know About Creating a Respectful Workplace?

Answers will be reviewed and highlighted throughout presentation.

1. T F If I did not mean to offend anyone I cannot be held responsible.
2. T F For a harassment claim to be filed, the harasser must be the victim's supervisor.
3. T F The State of Idaho protected categories are:
 - i. Age
 - ii. Color
 - iii. Disability
 - iv. Genetic Information
 - v. National Origin
 - vi. Race
 - vii. Religion
 - viii. Sex
4. T F It is okay to ask a job applicant about a disability before offering them a position.
5. T F Unlawful harassment or discrimination must take place inside the workplace.
6. T F There is a specific legal "test" to assess and verify a hostile workplace.
7. T F An employee may still file a claim even if he or she ultimately submits to the supervisor's inappropriate requests.
8. T F It is okay to give a holiday card to all of my staff.
9. T F My office décor is not subject to harassment guidelines.
10. T F Gossip is not considered harassment if the information is true.
11. T F I am not harassing a coworker if I make racial jokes about my own race.
12. T F Obscene gestures are okay as long as the targeted person does not see them.
13. T F Blowing air kisses to a coworker is not harassment because I'm not physically touching them.
14. T F It is okay to greet all of my staff with a hug.
15. T F It is not possible to "harass" a job applicant.
16. T F If I see a coworker being harassed, I do not have to act or report the incident.
17. T F Human Resources can choose to ignore certain complaints.
18. T F If an employee complains to me about harassment but requests confidentiality, I cannot take action.
19. T F As a supervisor, I cannot promise complete confidentiality for a reporting employee.
20. T F If an investigation takes place, I have the right to decline or omit pertinent information.
21. T F As an employee, I can speak to a coworker about her inappropriate conduct.
22. T F A complaint based on a good faith belief is protected conduct.
23. T F A plaintiff needs to have a successful harassment or discrimination claim to succeed on a claim for retaliation.
24. T F Creating and sustaining a respectful workplace starts with committed and engaged leadership.



Creating and Maintaining a Respectful Workplace

Idaho Division of Human Resources

Susan E. Buxton, Administrator

Colleen Zahn, Deputy Attorney General

WHAT IS HARASSMENT?

Legal Definition of Harassment

- Unwelcome or unwanted sexual advances, requests or demands for sexual favors, or other conduct based on a protected status when:
 1. Submission to such conduct is made explicitly or implicitly a term or condition of employment; or
 2. Submission or rejection of such conduct is used as the basis for employment decisions; or

Legal Definition of Harassment (cont'd)

3. Such conduct has the purpose OR effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

Protected Classes

- Age (40+)
- Color
- Disability
- Genetic Information
- National Origin
- Race
- Religion
- Sex

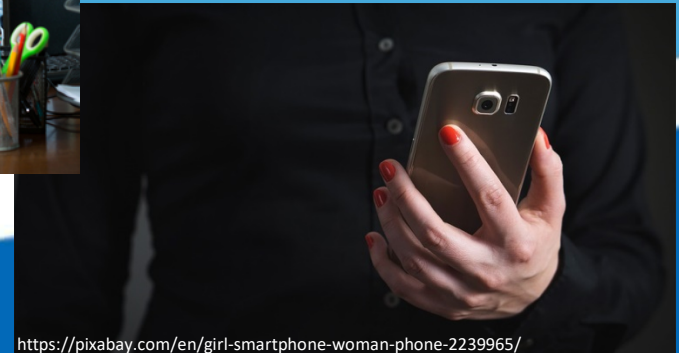
Bullying

- There is no law in Idaho that prohibits bullying in the workplace nor defines what bullying in the workplace may be, however under certain fact scenarios, bullying may constitute unlawful harassment.

BULLYING

WHAT DOES HARASSMENT LOOK LIKE?

Written



<https://pixabay.com/en/girl-smartphone-woman-phone-2239965/>

8.True 9. False

Verbal



10.False 11.False

Nonverbal



12.False 13.False

Physical



http://a.abcnews.com/images/Politics/al-franken-02-ht-jc-171116_4x3_992.jpg



WHAT ARE THE REAL LIFE IMPACTS?

Personal Responsibility

- Create and maintain a respectful workplace
- Immediate and Proportionate Corrective Action
 - Whether claim was reported directly to you, or if you witness it
- Refuse to participate in harassing behavior



Ethical Considerations

- Consider and protect the rights of individuals and confidentiality whenever possible
- Recognize and avoid conflicts of interest
- Fairness and justice require respecting the uniqueness and intrinsic value of every individual
- Adhere to conflict of interest laws and rules:
 - Idaho Ethics in Government Manual, Office of the Attorney General- July 2015, www.ag.idaho.gov
 - Idaho Rules and Professional Conduct, Revised by the Idaho Supreme Court effective July 1, 2004, www.isb.idaho.gov
 - Code of Ethics, Society for Human Resource Management, Amended November 21, 2014, www.shrm.org/about-shrm/pages/code-of-ethics.aspx

Confidentiality

- Know when you can and cannot keep things confidential
- Initiate an investigation with appropriate personnel
- Inform the employee of your responsibility to address their claim

Personal Rights



- To be treated fairly
- Ask the harasser to stop
- Have a safe person to report to for help in ending the harassment

Retaliation

- Persons who oppose unlawful discrimination or participant in charges in good faith are protected from retaliation.
- Cannot be treated differently with regard to compensation, terms, conditions or privileges of employment due to reporting.



Respectful Workplace

- Committed and Engaged Leadership
- Consistent and demonstrated accountability
- Strong and comprehensive policies
- Trusted and accessible complaint procedures
- Regular interactive training tailored to the audience and organization

*EEOC Publications Promising Practices

Respectful Workplace Training References

Arizona ex rel. Thorne v. The Geo Group, Inc., 816 F.3d 1189 (9th Cir. 2016), cert. denied, 137 S. Ct. 623 (2017)
(Cumulative effect of sexually harassing and lewd comments)

Daniel v. T&M Protection Resources, LLC, 2017 WL 1476598 (2d Cir. Apr. 25, 2017) (Hostile work environment, racial discrimination)

Zetwick v. County of Yolo, 850 F.3d 436 (9th Cir. 2017) (Physical sexual harassment)

Hawkins v. Anheuser-Busch, Inc. 517 F.3d 321 (6th Cir.) reh'g en banc denied, 2008 U.S. App. LEXIS 15501 (6th Cir. July 14, 2008).

Trina C v. Department of Justice, EEOC Appeal No. 0120131971 (May 12, 2017) Hostile work environment based on sex and retaliation found)

Roy F. v. Dept. of Health & Human Services, EEOC Appeal No. 0720170018 (June 6, 2017) (Retaliation for participation in EO investigation)



INVESTIGATION CHECKLIST

1. WHO SHOULD CONDUCT INVESTIGATION?

- HR staff
- Legal staff
- Outside counsel
- Third-party investigator

2. PLAN THE INVESTIGATION.

- a. Define scope and reason for investigation
- b. Gather relevant documents to start a confidential investigative file:
 - 1.) Analyze written complaint or factual summary
 - 2.) Gather policies, employee files, job descriptions, evaluations, discipline, organizational chart, and any relevant relationships to other witnesses or the matter under review
 - 3.) Gather emails, recordings, texts, photos, surveillance videos, social media & complaints made to other agencies or third parties
 - 4.) Ask complainant and respondent for relevant documents
 - 5.) Consider whether you need to conduct IT search
- c. Identify potential witnesses
- d. Establish need-to-know group and decision-makers
- e. Determine type of investigation:
 - 1.) Factual only
 - 2.) Factual and analysis of facts to relevant policies, laws, codes of conduct
 - 3.) Factual, analysis of facts to law & policy, and recommendations
- f. Determine report format and who will receive
- g. Assess whether interim measures are necessary:
 - 1.) Work assignments/temporary transfers
 - 2.) Supervisory assignments

1116 S. Vista Ave., #474
Boise, ID 83705
(208) 484-8921

phowland@idemploymentlawyers.com

- 3.) Administrative leave
- 4.) Access to records

3. CONDUCT THE INVESTIGATION.

- a. Review Appropriate Documents and Evidence
- b. Determine Where to Conduct Witness Interviews & Conduct Them
- c. Draft Witness Statements if Applicable
- d. Draft Report
- e. Take Corrective Action
- f. Create Relevant Documentation

4. CONSIDERATIONS FOR DECISION-MAKER.

- a. Contents of investigative file & completeness and fairness of investigation
- b. Quality of evidence (hearsay, memory and/or bias of witnesses, etc.)
- c. Truthfulness and/or extent of cooperation from witnesses
- d. Consistency of accounts
- e. Tenure and disciplinary history of accused
- f. Clarity of policies and respondent's awareness of applicable policies
- g. Employee training and/or awareness of expected conduct
- h. Decisions in other similar circumstances
- i. Is a "second chance" appropriate, or has it already been given?
- j. Advice of counsel, H.R., senior management
- k. Liability/risk
- l. Severity of allegations, including frequency and type of conduct
- m. What is necessary to ensure misconduct never happens again?

5. RESPOND TO COMPLAINT.

- a. Mediation
- b. Formal apology
- c. Change in supervision
- d. Counseling
- e. Training/ personal coaching
- f. Disciplinary action
- g. Increased supervision/monitoring

6. POST-INVESTIGATION ACTIVITIES.

- a. Debrief Complainant and Respondent
- b. Monitor resolutions
- c. Remind employees of anti-retaliation policy
- d. Evaluate and revise policies
- e. Conduct training
- f. Make sure adequate documentation exists
- g. Consider if documents need to be preserved
- h. Review investigative procedure to improve for next time

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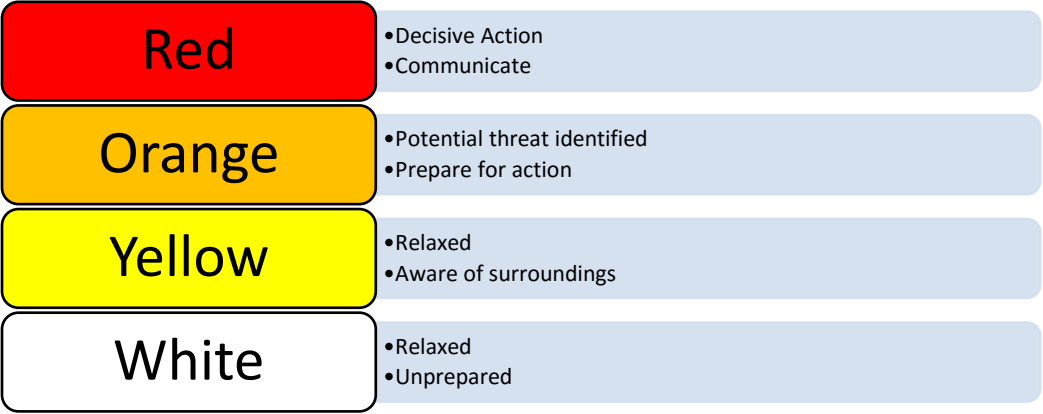
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People	Operations	Facilities
	<p data-bbox="732 175 1180 207"><u>Standard Operation Procedure (SOP)-</u></p> <p data-bbox="732 743 1205 776"><u>Emergency Operation Procedure (EOP)-</u></p>	



Idaho Office of School Safety
1090 E Watertower St Suite 150, Meridian, ID, 83642
P: 208.332.7155

 Inquiry Item   Action Item





Benefits At A Glance

The State of Idaho is pleased to offer a comprehensive benefits package for employees of state agencies, political subdivisions, universities and colleges which includes medical and dental insurance; as well as life insurance, disability coverage and flexible spending accounts.

Benefits are an important component of Total Compensation along with salary and retirement. We encourage employees to explore and understand the benefits available to them in order to make the best decisions to meet their insurance needs.

This is only an overview of the benefits program administered by the State's Office of Group Insurance (OGI). For detailed benefits, plan coverage, eligibility, premiums and more, visit:

<https://ogi.idaho.gov>



Consult your agency's human resource office or the Office of Group Insurance for enrollment periods applicable to benefits summarized below.

MEDICAL INSURANCE: Options include Blue Cross of Idaho Preferred Provider (PPO), Traditional or High Deductible plans. Each medical plan provides comprehensive coverage with different levels of out-of-pocket expenses and premium contribution rates. The Blue Cross of Idaho member portal gives participants access to a cost transparency tool (CostAdvisor), wellness resources (WellConnected), and a searchable database of network providers.

No enrollment waiting periods for medical insurance for benefit eligible employees. The agency and the employee share the cost of premiums. The employee's share of medical premium is based on the plan type and number of people they enroll for coverage. A detailed Summary of Benefits & Coverage (SBC) for each plan type as well as full plan contracts and premium rates are available on the Office of Group Insurance website. Employees may also choose to decline benefits.

VISION BENEFIT: Each medical plan includes a Vision Benefit. Blue Cross of Idaho contracts with VSP (Vision Service Plan) to administer this benefit. Participants can choose a VSP network vision care provider or non-network provider; the benefit is the same, the difference is in the method in which claims are submitted.

DENTAL INSURANCE: When an employee enrolls in a medical plan, they are required to enroll for at least self-only dental coverage. Employees can continue with self-only coverage, regardless of the number of dependents on their medical plan, or they can elect family dental coverage. Premiums are based on the number of people enrolled on the employee's plan. Premiums are posted on the Office of Group Insurance website.

PREMIUM ONLY PLAN: A tax-advantaged program where employees can elect to have medical and dental premiums deducted on a pre-tax basis, before federal or state income tax or FICA taxes are withheld.

EMPLOYEE ASSISTANCE PROGRAM (EAP): All benefit eligible employees and their dependents have access to confidential, short-term counseling to help them handle concerns constructively, before they become major issues. The EAP includes up to five (5) visits per person per plan year with no copayment required.

FLEXIBLE SPENDING ACCOUNTS: Health Care Flexible Spending Accounts (HCFA) and/or Day Care Flexible Spending Accounts (DCFA) allow employees to use pre-tax dollars to pay for expenses not covered by health insurance (i.e. copayments, deductibles, prescriptions) and/or dependent care expenses. Employees do not have to enroll in any other health benefit plan to participate in flexible spending.

New employees, or those with a qualified life event specific to the Day Care FSA, have 30 days from date of hire to enroll, or you must wait until the next open enrollment period. Enrollment for flex accounts is done on an annual basis and does not carry over from year-to-year.

BASIC LIFE INSURANCE: Life insurance is provided by the agency at no cost to the employee. The agency's human resource office will provide employees with the Principal Life Insurance Enrollment/Beneficiary Designation form.

ACCIDENTAL DEATH & DISMEMBERMENT: Included in the Basic Life Insurance policy, no special enrollment is required. AD&D provides a percentage of annual salary for certain serious physical losses, including loss of life, due to a covered accident.

SHORT & LONG TERM DISABILITY: Disability coverage is included in the Basic Life policy, no special enrollment is required. When an employee is unable to work because of an illness (including pregnancy) or injury, the employee may be eligible for disability benefits. Disability benefits can provide a source of continuing income and/or continued access to group insurance coverages for a period of time. Disability benefit amounts may be directly reduced by other sources of income.

VOLUNTARY TERM LIFE (VTL) INSURANCE: Employees may purchase additional term life insurance up to 3x their annual salary as well as additional spouse and dependent coverage. New employees who elect coverage will need to check the appropriate box on the Principal Life Insurance Enrollment/Beneficiary Designation form **AND** complete a Voluntary Term Life enrollment form within 30 days of hire. The agency human resource office will then calculate the appropriate premium deduction. Employees can apply for VTL coverage at anytime; those without a qualifying life event who apply after the 30-day initial enrollment period must provide proof of insurability before enrollment can be evaluated.

STATE POLICE OPTIONAL LIFE: Purchase of this additional coverage is available only to police office members of the Idaho State Police, as defined in I.C. 59-1303(3). The agency and employee share the cost of the premiums. The agency human resource office will provide the Principal Life Insurance Enrollment/Beneficiary Designation form.

Office of Group Insurance

650 W. State Street, Room 145

P. O. Box 83720

Boise, ID 83720-0035

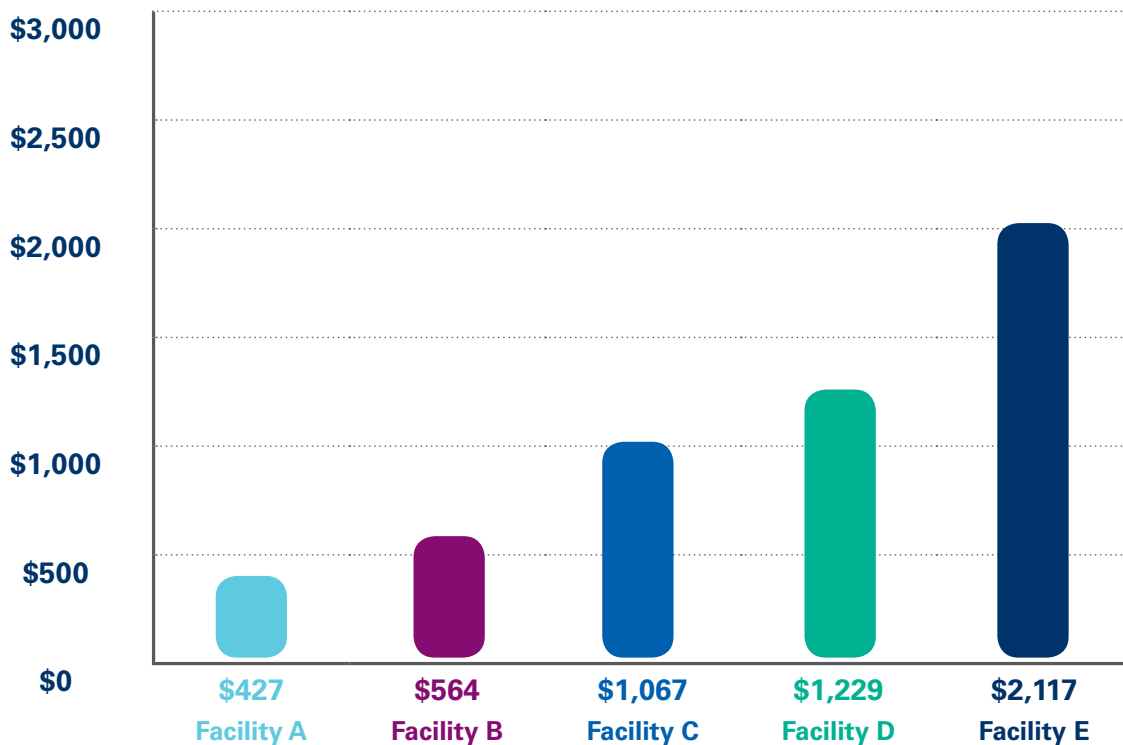
Phone: (208) 332-1860 or (800) 531-0597

Fax: (208) 332-1888 Email: ogi@adm.idaho.gov

Website: <https://ogi.idaho.gov>

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State of Idaho Employee Assistance Program (EAP)



EASY AS 1, 2, 3

Getting help from your State of Idaho EAP couldn't be easier. By phone, online or on your smartphone, help is just a call, click or tap away. Whether you are dealing with stress or depression, trying to mend a broken relationship or deal with job pressures, our resources are available at no cost to you, 24 hours a day, seven days a week. The process is as easy as 1,2, or 3:

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WHEN DOES AN AGENCY NEED TO BE CONCERNED ABOUT OFF DUTY CONDUCT?

Leslie Hayes, Deputy Attorney General

IDAPA Rules

- Conflict of Interest
- Dual Employment
- Nepotism
- Classified employees – Rule 190



Definition of Off-Duty Conduct

- Conduct that occurs on personal time and off work-premises



After Hours Conduct in the Workplace or With Co-Workers

- At the office
- At an office sponsored event
- Traveling
- Socializing amongst co-workers



Non-Employee Conduct

- Contractors
- Delivery People
- Visitors to your Agency



Constitutional Concerns

- Employee's right to privacy
- First Amendment implications



Questions to ask about the conduct?

- Does the conduct directly impact the employee's job?
- Does the conduct affect any other aspect of the workplace?
- Are there any constitutional considerations
- Consult with legal

Questions?





State of Idaho

DIVISION OF HUMAN RESOURCES

Executive Office of the Governor

C.L. "BUTCH" OTTER
Governor
SUSAN E. BUXTON
Administrator

Idaho Personnel Commission
Mike Brassey, Chair
Mark Holubar
Diana Bishop
Sarah E. Griffin
Amy Manning

Americans with Disabilities Act (ADA): A Reasonable Accommodation Checklist for HR Professionals

- ✓ What is a disability? A physical or mental impairment that substantially limits one or more major life activities¹; a record of having an impairment; or regarded as having an impairment.
- ✓ Have you been made aware an employee has a disability? How did you become aware? Start the Interactive Process with the employee. This means the employer and employee with a disability work together to find an accommodation. Ask the employee how you can assist them in the performance of their job tasks.
- ✓ Accurately identify which job functions are essential in the job description. These are tasks which cannot easily be reassigned to other employees. Can the employee perform the essential functions² of the job, either with or without accommodation?
- ✓ Is input needed from a health care provider? Have the employee take a Medical Inquiry Form to their medical provider and have the medical provider indicate which major life activity(ies) are limited. Inquire as to whether impairment is long-term or permanent.
- ✓ Discuss possible accommodations with the employee and supervisor as appropriate. Determine whether the accommodation creates an undue hardship. Consult with legal counsel or DHR if there are questions or concerns.
- ✓ Identify and document the reasonable accommodation³ or the reason no accommodation is needed or was denied.
- ✓ Implement the accommodation and discuss a follow-up date to ensure the accommodation is both helping the employee and remains reasonable for the employer.
- ✓ Keep all medical information in a file which is separate from the employee's personnel file.
- ✓ Keep communication open! This is an ongoing process.

- 1. Major Life Activities**
Including, but not limited to: caring for oneself; performing manual tasks; walking; seeing; hearing; speaking; breathing; learning; thinking; concentrating; reading; bending; communicating; interacting with others; working; major bodily functions.
- 2. Essential Functions**
The “fundamental job duties”, not the marginal functions of the position. A function may be considered essential for reasons including but not limited to: the positions exists to perform that function; a limited number of employees are available to perform that function; the function is highly specialized so that the individual is hired for their expertise or ability to perform the particular function.
- 3. Reasonable Accommodation**
Modifications or adjustments to the job process or work environment that enable a qualified individual with a disability to perform the essential functions of that position. Examples include but are not limited to: accessibility to facility; equipment or devices; readers or interpreters; modification of work schedule; training materials; job restructuring (i.e. reassignment of marginal functions); reassignment.

