

LEGAL BRIEFS

Employment Law Training Series



The ADA: Tough Questions & Straight Answers

Facilitator's Guide

FOR
PREVIEW

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Introduction

This program is designed to help your managers gain a clearer understanding of how Title I of the Americans with Disabilities Act (ADA) impacts the workplace on a daily basis.

The ADA: Tough Questions & Straight Answers provides answers to several of the most common questions managers struggle with concerning the ADA.

- Does the ADA require me to hire an individual just because they are disabled?
- When hiring employees under the ADA, am I required to give preference to a "qualified individual with a disability"?
- Am I required to shift the essential functions of a job to other employees in order to provide a reasonable accommodation to an individual with a disability?
- Under the ADA, what is the appropriate way to deal with a disabled employee who is having performance problems?

In addition, the program provides managers with five specific actions they can take to help ensure they keep themselves and your organization in compliance with the law.

The program is designed to cut through the legal jargon to provide clear and concise information in terms that everyone can understand.

Uses

This program can be used in many ways:

- 60 minute training sessions
- Staff meetings
- Conferences
- New manager orientation
- Self-study/self-directed learning

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Key Learning Points

During this program, participants will learn:

- The primary purpose of the ADA
- The definition of "reasonable accommodation" and how it applies in the workplace
- The definition of "essential function" and its importance under the law
- The definition of "qualified individual with a disability"
- The five specific actions managers can take to help ensure compliance with the ADA

Training Materials

Video - The video, *The ADA: Tough Questions & Straight Answers*, is divided into three segments. The first segment provides information on key concepts and definitions. The second segment provides answers to common questions. The third segment provides information on specific actions managers should take to avoid problems with the ADA.

Facilitation Guide - The facilitation guide contains complete step-by-step directions for conducting this course. With the exception of the session evaluation, the facilitation guide is not reproducible. If additional guides are needed, please contact your vendor.

Participant's Desk Reference - The participant's desk reference contains a complete review of the key information covered in this course, along with supplemental information regarding the ADA. In addition, it includes a pre-assessment and post-assessment. The post-assessment is removable and designed to be included in the employee's personnel file, if desired. The participant's desk reference is not reproducible. If additional copies are needed, please contact your vendor.

Agenda

This program is designed to be presented in a one-hour training session.

60 Minute Agenda

Program Introduction	5 minutes
Show and Review Video	20 minutes
Optional Review of Supplemental Info.	30 minutes
Program Debrief	5 minutes

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Facilitator's Checklist

Before the Training

- Read through the entire facilitation manual
- Watch the video several times
- Determine the length of your session
- Send out a memo inviting participants to the training
- Locate audio/visual equipment and make sure it works
- Make copies of any exercises needed for the training
- Identify any personal stories that may make the session more meaningful to participants

Day of the Training

- Review your notes
- Check the TV/VCR
- Prepare flipcharts
- Check the lighting of the room
- Set up room arrangement. Participants will need to get into small groups during the session

After the Training

- Review the post-assessment and session evaluation
- Document recommended changes to your presentation or materials
- Follow-up with participants on next steps, commitments, or action plans, as agreed

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Step-by-Step Facilitation Instructions

Step 1 - Introduce the program.

Communicate the following to participants:

The Americans with Disabilities Act has been described as one of the most confusing areas of employment law that managers have to deal with. The law actually has four sections - or titles - to it, but we're only going to be dealing with Title I, as that section has the most direct impact on employment issues from a manager's perspective. We're going to spend a few minutes going through some of the things you need to be aware of in terms of how the ADA impacts us on a day-to-day basis.

By the time we're done today, you should know:

- **The primary purpose of the ADA**
- **The definition of "reasonable accommodation" and how it applies in the workplace**
- **The definition of "essential function" and its importance under the law**
- **The definition of a "qualified individual with a disability"**
- **The five specific actions you can take to help ensure compliance with the ADA**

Before we go any further, let's take a few moments to introduce ourselves.

Step 2 - Introduce yourself and then have participants introduce themselves.

This would be a good time to share a story or personal experience regarding making an inaccurate assumption about someone with a disability, or having to deal with an individual with a disability, etc. By opening yourself up and sharing something personal, you will give participants permission to do the same.

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Step 3 - Distribute a copy of the participant's desk reference to each participant.

Communicate the following:

Before we view the video, I'd like you to take a few minutes to complete the pre-assessment in your desk reference. This self-assessment is designed to give you a clearer picture of your present understanding of the ADA.

Give participants a few minutes to complete the assessment.

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Pre-Assessment - Facilitator's Copy

Instructions:

Please answer the following questions.

1. The primary intent of the ADA is to minimize discrimination against individuals with disabilities.

True or False

2. Title I of the ADA prohibits discrimination against the disabled in all employment practices.

True or False

3. A reasonable accommodation is anything that enables an individual with a disability to enjoy an equal employment opportunity.

True or False

4. An essential function is defined as one of the responsibilities of the job.

True or False

5. A qualified individual with a disability is someone who - with or without a reasonable accommodation - can perform the essential functions of the job.

True or False

6. The ADA does not require you to hire an individual just because they're disabled.

True or False

7. When hiring employees under the ADA, you are required to give preference to a "qualified individual with a disability."

True or False

8. Under the ADA, you are required to shift the essential functions of a job to other employees in order to provide a reasonable accommodation to an individual with a disability.

True or False

9. In dealing with a disabled employee who has a performance problem, you should keep your focus on job performance and use progressive discipline to address the issue.

True or False

10. It's always a good idea to ask for medical certification of what an employee can and can't do.

True or False

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Step 4 - Show the video.

Communicate the following:

Now we're going to watch a video which addresses some of the tough questions managers have asked concerning the ADA. When we're done, we'll take a few minutes to review the information the video covers and talk about how those ideas apply within our organization.

Play the video from start to finish.

Step 5 - Discuss the case study.

Communicate the following:

In order to gain some perspective on the information covered in the video, let's take a few minutes to discuss a hypothetical situation that you might face as a manager.

Let's say you have an employee who has worked for you for five years as an outside sales representative. Her job requires her to travel extensively and be available at odd hours to entertain clients. She has done an outstanding job and is one of the top performing people in your organization. She recently has been diagnosed with adult-onset diabetes.

Her physician has written a medical restriction saying that, while she can continue to travel, due to interference with her daily sleep and eating routine, and schedule of insulin shots, she needs to work a more regular set of hours.

Because an individual with diabetes is considered an individual with a disability under the ADA, what are some of the issues you would need to consider in this situation? And why?

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We've included some questions and potential responses below to help you guide the discussion of this case study.

Q. Is an insulin-dependent diabetic whose condition is controlled through medicine considered a disabled person under the ADA?

A. *Courts have disagreed when mitigating measures such as medicine are involved. The Supreme Court seems to be leaning toward requiring an individual assessment of the circumstances of each case. Consequently, in this scenario, if it is deemed that the outside salesperson is not a disabled person under the ADA, there is no ADA issue.*

Q. Assuming that the employee is disabled under the ADA, are extensive travel and working at odd hours essential functions of the job?

A. *It is important to ask this question because this would determine whether or not the employer must provide reasonable accommodation.*

Q. How should the employer determine what type of reasonable accommodation might be appropriate?

A. *The employer should consult with the employee to determine whether her diabetes might be controlled after she begins to regularly take her insulin. If so, this could affect types of reasonable accommodation that might be offered (e.g., a part time or modified work schedule, reassignment to a vacant position, allowing paid/unpaid leave).*

Q. Is it a reasonable accommodation to reduce the employee's travel, work hours or entertaining responsibilities?

A. *Under the ADA, employers should determine if there's any flexibility and if exceptions are possible.*

Q. Would the reasonable accommodation result in an undue hardship to the employer?

A. *Employers need not offer a reasonable accommodation if it would result in an undue hardship (e.g., excessive cost, disruption of work, etc.).*

Q. Should the employer consider the effect on workplace morale if this long-term top producer is not accommodated?

A. *If this employee has excelled in her job and she "gets kicked in the teeth" by the employer, it might send the wrong message to other employees if they are struck with illness or injury in the future.*

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Q. What if the employer requires the diabetic employee to continue her current work schedule and she has an accident or medical incident related to her diabetic condition?

A. If the employer requires her to continue her current work schedule when the employer knew that the employee's physician recommended against such a work schedule, the employer could have significant liability, including liability not covered by Workers' Compensation.

Step 6 - Review the key points.

Communicate the following:

The five actions you can take to help make sure you're in compliance with the ADA are:

- 1. Make sure you understand the four key terms and concepts identified in the video - the basic intent of the ADA, reasonable accommodation, essential function, and qualified individual with a disability.**
- 2. Stay informed about the law and how it's being interpreted in the courts.**
- 3. Make sure your decisions and actions are always consistent with our organization's policies and procedures and in compliance with the ADA.**
- 4. Make sure you know what you're talking about before you respond to someone concerning the ADA.**
- 5. Ask for medical certification of what an employee can and can't do; and work directly with the disabled individual as the first step in considering a reasonable accommodation.**

Step 7 - Complete the post-assessment.

Ask participants to complete the post-assessment in their desk reference. Then take a few minutes to review the correct answers with the participants.

Ask the participants to sign and date the certification of training, then remove it from the desk reference and turn it in to you.

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Post-Assessment - Facilitator's Copy

Instructions:

Please answer the following questions. Once you have completed the assessment and reviewed your answers with your facilitator, please sign and date the Certification of Training on the next page. Then remove this page and turn it in to your facilitator.

1. The primary intent of the ADA is to minimize discrimination against individuals with disabilities.

True or False (False - the intent is to eliminate discrimination)

2. Title I of the ADA prohibits discrimination against the disabled in all employment practices.

True or False (True)

3. A reasonable accommodation is anything that enables an individual with a disability to enjoy an equal employment opportunity.

True or False (True)

4. An essential function is defined as one of the responsibilities of the job.

True or False (False - an essential function is defined as primary responsibility)

5. A qualified individual with a disability is someone who - with or without a reasonable accommodation - can perform the essential functions of the job.

True or False (True)

6. The ADA does not require you to hire an individual just because they're disabled.

True or False (True)

7. When hiring employees under the ADA, you are required to give preference to a "qualified individual with a disability."

True or False (False - you are free to consider the most qualified candidate for the position)

8. Under the ADA, you are required to shift the essential functions of a job to other employees in order to provide a reasonable accommodation to an individual with a disability.

True or False (False - you may be required to shift marginal functions, or change how or when the essential function is performed, but you are not required to eliminate the essential functions as a reasonable accommodation)

9. In dealing with a disabled employee who has a performance problem, you should keep your focus on job performance and use progressive discipline to address the issue.

True or False (True)

10. It's always a good idea to ask for medical certification of what an employee can and can't do.

True or False (True)

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Step 8 - Wrap up the session.

Distribute the session evaluation and give the participants a few minutes to complete it.

Communicate the following:

No one expects you to become an expert in the ADA. But the organization does expect you to take the five actions we've just talked about, use your common sense, treat individuals with disabilities fairly, and provide them with equal opportunities to prove they're capable of doing the job.

Your desk reference contains answers to more frequently asked questions regarding the ADA, as well as a list of additional resources available to you.

I encourage you to take the time to review the information, and keep the booklet in a handy place for future reference.

Thanks for your time.

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Session Evaluation

Instructions:

Please answer the following questions. Your answers will help assess the effectiveness of this training and identify areas for improvement.

As a result of this training, are you better able to:

1. Explain the primary purpose of the ADA?

Yes No Not Sure

2. Explain the definition of "reasonable accommodation" and how it applies in the workplace?

Yes No Not Sure

3. Explain the definition of "essential function" and its importance under the law?

Yes No Not Sure

4. Explain the definition of a "qualified individual with a disability?"

Yes No Not Sure

5. Identify five specific actions to take to help ensure compliance with the ADA?

Yes No Not Sure

My overall rating of the presentation is:

a. Excellent b. Good c. Satisfactory d. Needs Improvement e. Unsatisfactory

Comments for Presenter:

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Supplemental Reference - Facilitator's Copy

The following supplemental reference information is contained in the participant's desk reference.

FAQ's about the ADA

This information was developed by the U.S. Equal Employment Opportunity Commission and the U.S. Department of Justice Civil Rights Division to address frequently asked questions concerning Title I of the ADA.

Q. What employers are covered by Title I of the ADA, and when is the coverage effective?

- A. The Title I employment provisions apply to private employers, State and local governments, employment agencies, and labor unions. Employers with 25 or more employees were covered as of July 26, 1992. Employers with 15 or more employees were covered two years later, beginning July 26, 1994.

Q. What practices and activities are covered by the employment nondiscrimination requirements?

- A. The ADA prohibits discrimination in all employment practices, including job application procedures, hiring, firing, advancement, compensation, training, and other terms, conditions, and privileges of employment. It applies to recruitment, advertising, tenure, layoff, leave, fringe benefits, and all other employment-related activities.

Q. Who is protected from employment discrimination?

- A. Employment discrimination is prohibited against "qualified individuals with disabilities." This includes applicants for employment and employees. An individual is considered to have a "disability" if s/he has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Persons discriminated against because they have a known association or relationship with an individual with a disability also are protected.

The first part of the definition makes clear that the ADA applies to persons who have impairments and that these must substantially limit major life activities such as seeing, hearing, speaking, walking, breathing, performing manual tasks, learning, caring for oneself, and working. An individual with epilepsy, paralysis, HIV infection, AIDS, a substantial hearing or visual impairment, mental retardation, or a specific learning disability is covered, but an individual with a minor, nonchronic

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condition of short duration, such as a sprain, broken limb, or the flu, generally would not be covered.

The second part of the definition protecting individuals with a record of a disability would cover, for example, a person who has recovered from cancer or mental illness.

The third part of the definition protects individuals who are regarded as having a substantially limiting impairment, even though they may not have such an impairment. For example, this provision would protect a qualified individual with a severe facial disfigurement from being denied employment because an employer feared the "negative reactions" of customers or co-workers.

Q. Who is a "qualified individual with a disability"?

- A. A qualified individual with a disability is a person who meets legitimate skill, experience, education, or other requirements of an employment position that s/he holds or seeks, and who can perform the essential functions of the position with or without reasonable accommodation. Requiring the ability to perform "essential" functions assures that an individual with a disability will not be considered unqualified simply because of inability to perform marginal or incidental job functions. If the individual is qualified to perform essential job functions except for limitations caused by a disability, the employer must consider whether the individual could perform these functions with a reasonable accommodation. If a written job description has been prepared in advance of advertising or interviewing applicants for a job, this will be considered as evidence, although not conclusive evidence, of the essential functions of the job.

Q. Does an employer have to give preference to a qualified applicant with a disability over other applicants?

- A. No. An employer is free to select the most qualified applicant available and to make decisions based on reasons unrelated to a disability. For example, suppose two persons apply for a job as a typist and an essential function of the job is to type 75 words per minute accurately. One applicant, an individual with a disability, who is provided with a reasonable accommodation for a typing test, types 50 words per minute; the other applicant who has no disability accurately types 75 words per minute. The employer can hire the applicant with the higher typing speed, if typing speed is needed for successful performance of the job.

Q. What limitations does the ADA impose on medical examinations and inquiries about disability?

- A. An employer may not ask or require a job applicant to take a medical examination before making a job offer. It cannot make any pre-employment inquiry about a disability or the nature or severity of a disability. An employer may, however, ask questions about the ability to perform specific job functions and may, with certain

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limitations, ask an individual with a disability to describe or demonstrate how s/he would perform these functions.

An employer may condition a job offer on the satisfactory result of a post-offer medical examination or medical inquiry if this is required of all entering employees in the same job category. A post-offer examination or inquiry does not have to be job-related and consistent with business necessity.

However, if an individual is not hired because a post-offer medical examination or inquiry reveals a disability, the reason(s) for not hiring must be job-related and consistent with business necessity. The employer also must show that no reasonable accommodation was available that would enable the individual to perform the essential job functions, or that accommodation would impose an undue hardship. A post-offer medical examination may disqualify an individual if the employer can demonstrate that the individual would pose a "direct threat" in the workplace (i.e., a significant risk of substantial harm to the health or safety of the individual or others) that cannot be eliminated or reduced below the direct threat level through reasonable accommodation. Such a disqualification is job-related and consistent with business necessity. A post-offer medical examination may not disqualify an individual with a disability who is currently able to perform essential job functions because of speculation that the disability may cause a risk of future injury.

After a person starts work, a medical examination or inquiry of an employee must be job-related and consistent with business necessity. Employers may conduct employee medical examinations where there is evidence of a job performance or safety problem, examinations required by other Federal laws, examinations to determine current fitness to perform a particular job, and voluntary examinations that are part of employee health programs.

Information from all medical examinations and inquiries must be kept apart from general personnel files as a separate, confidential medical record, available only under limited conditions.

Tests for illegal use of drugs are not medical examinations under the ADA and are not subject to the restrictions of such examinations.

Q. When can an employer ask an applicant to "self-identify" as having a disability?

- A. Federal contractors and subcontractors who are covered by the affirmative action requirements of section 503 of the Rehabilitation Act of 1973 may invite individuals with disabilities to identify themselves on a job application form or by other pre-employment inquiry, to satisfy the section 503 affirmative action requirements. Employers who request such information must observe section 503 requirements regarding the manner in which such information is requested and used, and the procedures for maintaining such information as a separate, confidential record, apart

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from regular personnel records.

A pre-employment inquiry about a disability is allowed if required by another Federal law or regulation such as those applicable to disabled veterans and veterans of the Vietnam era. Pre-employment inquiries about disabilities may be necessary under such laws to identify applicants or clients with disabilities in order to provide them with required special services.

Q. Does the ADA require employers to develop written job descriptions?

A. No. The ADA does not require employers to develop or maintain job descriptions. However, a written job description that is prepared before advertising or interviewing applicants for a job will be considered as evidence along with other relevant factors. If an employer uses job descriptions, they should be reviewed to make sure they accurately reflect the actual functions of a job. A job description will be most helpful if it focuses on the results or outcome of a job function, not solely on the way it customarily is performed. A reasonable accommodation may enable a person with a disability to accomplish a job function in a manner that is different from the way an employee who is not disabled may accomplish the same function.

Q. What is "reasonable accommodation"?

A. Reasonable accommodation is any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to participate in the application process or to perform essential job functions. Reasonable accommodation also includes adjustments to assure that a qualified individual with a disability has rights and privileges in employment equal to those of employees without disabilities.

Q. What are some of the accommodations applicants and employees may need?

A. Examples of reasonable accommodation include making existing facilities used by employees readily accessible to and usable by an individual with a disability; restructuring a job; modifying work schedules; acquiring or modifying equipment; providing qualified readers or interpreters; or appropriately modifying examinations, training, or other programs. Reasonable accommodation also may include reassigning a current employee to a vacant position for which the individual is qualified, if the person is unable to do the original job because of a disability even with an accommodation. However, there is no obligation to find a position for an applicant who is not qualified for the position sought. Employers are not required to lower quality or quantity standards as an accommodation; nor are they obligated to provide personal use items such as glasses or hearing aids.

The decision as to the appropriate accommodation must be based on the particular facts of each case. In selecting the particular type of reasonable accommodation to provide, the principal test is that of effectiveness, i.e., whether the accommodation

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will provide an opportunity for a person with a disability to achieve the same level of performance and to enjoy benefits equal to those of an average, similarly situated person without a disability. However, the accommodation does not have to ensure equal results or provide exactly the same benefits.

Q. When is an employer required to make a reasonable accommodation?

- A. An employer is only required to accommodate a "known" disability of a qualified applicant or employee. The requirement generally will be triggered by a request from an individual with a disability, who frequently will be able to suggest an appropriate accommodation. Accommodations must be made on an individual basis, because the nature and extent of a disabling condition and the requirements of a job will vary in each case. If the individual does not request an accommodation, the employer is not obligated to provide one except where an individual's known disability impairs his/her ability to know of, or effectively communicate a need for, an accommodation that is obvious to the employer. If a person with a disability requests, but cannot suggest, an appropriate accommodation, the employer and the individual should work together to identify one. There are also many public and private resources that can provide assistance without cost.

Q. What are the limitations on the obligation to make a reasonable accommodation?

- A. The individual with a disability requiring the accommodation must be otherwise qualified, and the disability must be known to the employer. In addition, an employer is not required to make an accommodation if it would impose an "undue hardship" on the operation of the employer's business. "Undue hardship" is defined as an "action requiring significant difficulty or expense" when considered in light of a number of factors. These factors include the nature and cost of the accommodation in relation to the size, resources, nature, and structure of the employer's operation. Undue hardship is determined on a case-by-case basis. Where the facility making the accommodation is part of a larger entity, the structure and overall resources of the larger organization would be considered, as well as the financial and administrative relationship of the facility to the larger organization. In general, a larger employer with greater resources would be expected to make accommodations requiring greater effort or expense than would be required of a smaller employer with fewer resources.

If a particular accommodation would be an undue hardship, the employer must try to identify another accommodation that will not pose such a hardship. Also, if the cost of an accommodation would impose an undue hardship on the employer, the individual with a disability should be given the option of paying that portion of the cost which would constitute an undue hardship or providing the accommodation.

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Q. Must an employer modify existing facilities to make them accessible?

- A. The employer's obligation under Title I is to provide access for an individual applicant to participate in the job application process, and for an individual employee with a disability to perform the essential functions of his/her job, including access to a building, to the work site, to needed equipment, and to all facilities used by employees. For example, if an employee lounge is located in a place inaccessible to an employee using a wheelchair, the lounge might be modified or relocated, or comparable facilities might be provided in a location that would enable the individual to take a break with co-workers. The employer must provide such access unless it would cause an undue hardship.

Under Title I, an employer is not required to make its existing facilities accessible until a particular applicant or employee with a particular disability needs an accommodation, and then the modifications should meet that individual's work needs. However, employers should consider initiating changes that will provide general accessibility, particularly for job applicants, since it is likely that people with disabilities will be applying for jobs. The employer does not have to make changes to provide access in places or facilities that will not be used by that individual for employment-related activities or benefits.

Q. Can an employer be required to reallocate an essential function of a job to another employee as a reasonable accommodation?

- A. No. An employer is not required to reallocate essential functions of a job as a reasonable accommodation.

Q. Can an employer be required to modify, adjust, or make other reasonable accommodations in the way a test is given to a qualified applicant or employee with a disability?

- A. Yes. Accommodations may be needed to assure that tests or examinations measure the actual ability of an individual to perform job functions rather than reflect limitations caused by the disability. Tests should be given to people who have sensory, speaking, or manual impairments in a format that does not require the use of the impaired skill, unless it is a job-related skill that the test is designed to measure.

Q. Can an employer maintain existing production/performance standards for an employee with a disability?

- A. An employer can hold employees with disabilities to the same standards of production/performance as other similarly situated employees without disabilities for performing essential job functions, with or without reasonable accommodation. An employer also can hold employees with disabilities to the same standards of production/performance as other employees regarding marginal functions unless the

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disability affects the person's ability to perform those marginal functions. If the ability to perform marginal functions is affected by the disability, the employer must provide some type of reasonable accommodation such as job restructuring but may not exclude an individual with a disability who is satisfactorily performing a job's essential functions.

Q. Can an employer establish specific attendance and leave policies?

- A. An employer can establish attendance and leave policies that are uniformly applied to all employees, regardless of disability, but may not refuse leave needed by an employee with a disability if other employees get such leave. An employer also may be required to make adjustments in leave policy as a reasonable accommodation. The employer is not obligated to provide additional paid leave, but accommodations may include leave flexibility and unpaid leave.

A uniformly applied leave policy does not violate the ADA because it has a more severe effect on an individual because of his/her disability. However, if an individual with a disability requests a modification of such a policy as a reasonable accommodation, an employer may be required to provide it, unless it would impose an undue hardship.

Q. Can an employer consider health and safety when deciding whether to hire an applicant or retain an employee with a disability?

- A. Yes. The ADA permits employers to establish qualification standards that will exclude individuals who pose a direct threat -- i.e., a significant risk of substantial harm -- to the health or safety of the individual or of others, if that risk cannot be eliminated or reduced below the level of a direct threat by reasonable accommodation. However, an employer may not simply assume that a threat exists; the employer must establish through objective, medically supportable methods that there is significant risk that substantial harm could occur in the workplace. By requiring employers to make individualized judgments based on reliable medical or other objective evidence rather than on generalizations, ignorance, fear, patronizing attitudes, or stereotypes, the ADA recognizes the need to balance the interests of people with disabilities against the legitimate interests of employers in maintaining a safe workplace.

Q. Are applicants or employees who are currently illegally using drugs covered by the ADA?

- A. No. Individuals who currently engage in the illegal use of drugs are specifically excluded from the definition of a "qualified individual with a disability" protected by the ADA when the employer takes action on the basis of their drug use.

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Q. Is testing for the illegal use of drugs permissible under the ADA?

- A. Yes. A test for the illegal use of drugs is not considered a medical examination under the ADA; therefore, employers may conduct such testing of applicants or employees and make employment decisions based on the results. The ADA does not encourage, prohibit, or authorize drug tests.

If the results of a drug test reveal the presence of a lawfully prescribed drug or other medical information, such information must be treated as a confidential medical record.

Q. Are alcoholics covered by the ADA?

- A. Yes. While a current illegal user of drugs is not protected by the ADA if an employer acts on the basis of such use, a person who currently uses alcohol is not automatically denied protection. An alcoholic is a person with a disability and is protected by the ADA if s/he is qualified to perform the essential functions of the job. An employer may be required to provide an accommodation to an alcoholic. However, an employer can discipline, discharge or deny employment to an alcoholic whose use of alcohol adversely affects job performance or conduct. An employer also may prohibit the use of alcohol in the workplace and can require that employees not be under the influence of alcohol.

Q. Does the ADA override Federal and State health and safety laws?

- A. The ADA does not override health and safety requirements established under other Federal laws even if a standard adversely affects the employment of an individual with a disability. If a standard is required by another Federal law, an employer must comply with it and does not have to show that the standard is job related and consistent with business necessity. For example, employers must conform to health and safety requirements of the U.S. Occupational Safety and Health Administration. However, an employer still has the obligation under the ADA to consider whether there is a reasonable accommodation, consistent with the standards of other Federal laws, that will prevent exclusion of qualified individuals with disabilities who can perform jobs without violating the standards of those laws. If an employer can comply with both the ADA and another Federal law, then the employer must do so.

The ADA does not override State or local laws designed to protect public health and safety, except where such laws conflict with the ADA requirements. If there is a State or local law that would exclude an individual with a disability from a particular job or profession because of a health or safety risk, the employer still must assess whether a particular individual would pose a "direct threat" to health or safety under the ADA standard. If such a "direct threat" exists, the employer must consider whether it could be eliminated or reduced below the level of a "direct threat" by reasonable accommodation. An employer cannot rely on a State or local law that conflicts with ADA requirements as a defense to a charge of discrimination.

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Q. How does the ADA affect workers' compensation programs?

- A. Only injured workers who meet the ADA's definition of an "individual with a disability" will be considered disabled under the ADA, regardless of whether they satisfy criteria for receiving benefits under workers' compensation or other disability laws. A worker also must be "qualified" (with or without reasonable accommodation) to be protected by the ADA. Work-related injuries do not always cause physical or mental impairments severe enough to "substantially limit" a major life activity. Also, many on-the-job injuries cause temporary impairments which heal within a short period of time with little or no long-term or permanent impact. Therefore, many injured workers who qualify for benefits under workers' compensation or other disability benefits laws may not be protected by the ADA. An employer must consider work-related injuries on a case-by-case basis to know if a worker is protected by the ADA.

An employer may not inquire into an applicant's workers' compensation history before making a conditional offer of employment. After making a conditional job offer, an employer may inquire about a person's workers' compensation history in a medical inquiry or examination that is required of all applicants in the same job category. However, even after a conditional offer has been made, an employer cannot require a potential employee to have a medical examination because a response to a medical inquiry (as opposed to results from a medical examination) shows a previous on-the-job injury unless all applicants in the same job category are required to have an examination. Also, an employer may not base an employment decision on the speculation that an applicant may cause increased workers' compensation costs in the future. However, an employer may refuse to hire, or may discharge an individual who is not currently able to perform a job without posing a significant risk of substantial harm to the health or safety of the individual or others, if the risk cannot be eliminated or reduced by reasonable accommodation.

An employer may refuse to hire or may fire a person who knowingly provides a false answer to a lawful post-offer inquiry about his/her condition or workers' compensation history.

An employer also may submit medical information and records concerning employees and applicants (obtained after a conditional job offer) to state workers' compensation offices and "second injury" funds without violating ADA confidentiality requirements.

Q. What is discrimination based on "relationship or association" under the ADA?

- A. The ADA prohibits discrimination based on relationship or association in order to protect individuals from actions based on unfounded assumptions that their relationship to a person with a disability would affect their job performance, and from actions caused by bias or misinformation concerning certain disabilities. For example, this provision would protect a person whose spouse has a disability from

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being denied employment because of an employer's unfounded assumption that the applicant would use excessive leave to care for the spouse. It also would protect an individual who does volunteer work for people with AIDS from a discriminatory employment action motivated by that relationship or association.

Q. How are the employment provisions enforced?

- A. The employment provisions of the ADA are enforced under the same procedures now applicable to race, color, sex, national origin, and religious discrimination under Title VII of the Civil Rights Act of 1964, as amended, and the Civil Rights Act of 1991. Complaints regarding actions that occurred on or after July 26, 1992, may be filed with the Equal Employment Opportunity Commission (EEOC) or designated State human rights agencies. Available remedies will include hiring, reinstatement, promotion, back pay, front pay, restored benefits, reasonable accommodation, attorneys' fees, expert witness fees, and court costs. Compensatory and punitive damages also may be available in cases of intentional discrimination or where an employer fails to make a good faith effort to provide a reasonable accommodation.

Q. What financial assistance is available to employers to help them make reasonable accommodations and comply with the ADA?

- A. A special tax credit is available to help smaller employers make accommodations required by the ADA. An eligible small business may take a tax credit of up to \$5,000 per year for accommodations made to comply with the ADA. The credit is available for one-half the cost of "eligible access expenditures" that are more than \$250 but less than \$10,250.

A full tax deduction, up to \$15,000 per year, also is available to any business for expenses of removing qualified architectural or transportation barriers. Expenses covered include costs of removing barriers created by steps, narrow doors, inaccessible parking spaces, restroom facilities, and transportation vehicles. Information about the tax credit and the tax deduction can be obtained from a local IRS office, or by contacting the Office of Chief Counsel, Internal Revenue Service.

Tax credits are available under the Targeted Jobs Tax Credit Program (TJTCP) for employers who hire individuals with disabilities referred by State or local vocational rehabilitation agencies, State Commissions on the Blind, or the U.S. Department of Veterans Affairs, and certified by a State Employment Service. Under the TJTCP, a tax credit may be taken for up to 40 percent of the first \$6,000 of first-year wages of a new employee with a disability. This program must be reauthorized each year by Congress. Further information about the TJTCP can be obtained from the State Employment Services or from State Governors' Committees on the Employment of People with Disabilities.

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Q. What are an employer's recordkeeping requirements under the employment provisions of the ADA?

- A. An employer must maintain records such as application forms submitted by applicants and other records related to hiring, requests for reasonable accommodation, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship for one year after making the record or taking the action described (whichever occurs later). If a charge of discrimination is filed or an action is brought by EEOC, an employer must save all personnel records related to the charge until final disposition of the charge.

Q. Does the ADA require that an employer post a notice explaining its requirements?

- A. The ADA requires that employers post a notice describing the provisions of the ADA. It must be made accessible, as needed, to individuals with disabilities. A poster is available from EEOC summarizing the requirements of the ADA and other Federal legal requirements for nondiscrimination for which EEOC has enforcement responsibility. EEOC also provides guidance on making this information available in accessible formats for people with disabilities.

For Further Information

Here are some sources for additional information on the ADA.

Web Sites

U.S. Department of Justice ADA Home Page -
<http://www.usdoj.gov/crt/ada/adahom1.htm>

The Americans with Disabilities Act Document Center -
<http://janweb.icdi.wvu.edu/kinder/>

The U.S. Equal Employment Opportunity Commission Home Page -
<http://www.eeoc.gov/>

FindLaw.com labor and employment law links -
<http://guide.biz.findlaw.com/01topics/27labor/index.html>

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Telephone Numbers

ADA Information Line
U.S. Department of Justice

For ADA documents and questions

800-514-0301 (voice)
800-514-0383 (TDD)

Equal Employment Opportunity Commission
For ADA documents

800-669-3362 (voice)
800-800-3302 (TDD)

For ADA questions

800-669-4000 (voice)
800-669-6820 (TDD)

U.S. Department of Transportation
ADA documents and information

202-366-1656 (voice)
202-366-4567 (TDD)

ADA legal questions

202-366-1936 (voice)
TDD: use relay service

Federal Communications Commission
202-418-0190 (voice)
202-418-2555 (TDD)

Architectural and Transportation Barriers Compliance Board
800-872-2253 (voice)
800-993-2822 (TDD)
Job Accommodation Network
800-526-7234 (voice)
800-526-7234 (TDD)

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President's Committee on Employment of People with Disabilities
202-376-6200 (voice)
202-376-6205 (TDD)

U.S. Department of Education
Regional Disability and Business Technical Assistance Centers
Call automatically connects to your regional center
800-949-4232 (voice)
800-949-4232 (TDD)

Addresses for ADA Information

U.S. Department of Justice
Civil Rights Division
Disability Rights Section
P.O. Box 66738
Washington, DC 20035-6738

U.S. Equal Employment Opportunity Commission
1801 L Street, NW
Washington, DC 20507

U.S. Department of Transportation
Federal Transit Administration
400 Seventh Street, SW
Washington, DC 20590

Architectural and Transportation Barriers Compliance Board
1331 F Street, NW Suite 1000
Washington, DC 20004-1111

Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

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