

Administrative Procedures

The Americans With Disabilities Act

I. General Composition of the Act

The Americans With Disabilities Act prohibits discrimination against persons with disabilities in four major areas:

- A. Employment (Title I)
- B. Public Services (Title II)
- C. Public Accommodations and Services Operated by Private Entity (Title III)
- D. Telecommunications (Title IV)

II. Key Definitions

A. Disability -- The term "disability" means, with respect to an individual:

- 1. A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- 2. A record of such an impairment; or
- 3. Being regarded by others as having such an impairment.

B. Qualified Individual With A Disability -- The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the position.

- 1. Note: An employer's description of what particular functions of a job are "essential" is an important consideration.
- 2. Example: Duties set forth in employer's job descriptions or notice of vacancy.

C. Reasonable Accommodation -- The term "reasonable accommodation" may include:

- 1. Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
- 2. Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the

provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

D. Undue Hardship

1. IN GENERAL – The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (2).
2. FACTORS TO BE CONSIDERED – In determining whether an accommodation would impose an undue hardship on an employer, factors to be considered include – (i) the nature and cost of the accommodation needed under this Act; (ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility; (iii) the overall financial resources of the employer; the overall size of the business of an employer with respect to the number of its employees; the number, type, and location of its facilities; and (iv) the type of operation or operations of the employer, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the employer.

III. Discrimination

- A. General Rule – No employer shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, or employee compensation.
- B. Discrimination includes:
 1. Limiting, segregating, or classifying an applicant or employment in a way that affects opportunities or status because of the disability.
 2. Entering into contracts (including labor contracts) which subject a qualified applicant or employee to discrimination.
 3. Using standards, criteria or methods of administration:
 - a. which have the effect of discrimination.
 - b. which perpetuate the discrimination of others who are under common administrative control.

4. Exclusion or denial of jobs or benefits because of a qualified individual's relationship or association with an individual who has a known disability.
5. Not making a reasonable accommodation to known or physical or mental limitations of an otherwise qualified individual with a disability unless the employer can demonstrate undue hardship.
6. Denial of employment opportunities based upon the need to make reasonable accommodations.
7. Using standards or tests which tend to screen out a disabled individual or class unless the standard or test is shown to be job related and is consistent with business necessity.
8. Administering a test to a qualified employee who has a disability that impairs sensory, manual or speaking skills where such a test masks the real skill involved in the job.

IV. Employer Considerations

A. "Essential" Job Functions:

1. Individual must be able to perform essential functions of job with or without reasonable accommodation.

Note: This determination must be made at time of employment and not based on the employer's subjective belief that the applicant cannot perform essential functions at some future date.

2. Essential functions are fundamental job duties (not marginal or peripheral duties).
 - a. Does some employee already in the position actually perform the function?
 - b. Does elimination of this function destroy the reason for the job?
 - c. Are there other employees available to perform the job function?
 - d. What level of skill or expertise is required?
3. Establishment of Essential Functions:
 - a. Employer judgment is relevant consideration.
 - b. Job description.
 - c. Previous work experience/survey of existing employees.
 - d. Amount of time devoted to essential function.
 - e. Consequence of failure to require performance of essential function.
 - f. Limitations in collective bargaining agreement.

4. Employer has a right to maintain "production standards" so long as the purpose of the standard is not to exclude disabled individuals.

B. Employment Criteria

1. Pre-employment:

- a. May inquire as to ability to perform essential and marginal job functions but may not reject applicant based on inability to perform marginal functions.
- b. May state or demonstrate requirements of job and ask if applicant can perform function with or without reasonable accommodation.

2. All qualification standards and tests cannot screen or tend to screen out individuals with disabilities because of their disabilities.

Exception: Tests are job-related and consistent with business necessity.

3. Medical examination:

a. Pre-employment:

Exam permitted only after a conditional offer of employment is made which may be conditioned on results of medical exam, provided exam is:

- (1) Routinely given to all applicants for similar positions;
- (2) Job-related and consistent with business necessity or not operate to screen out disabled individuals; and
- (3) Confidential and maintained in separate file.

b. Post-Employment:

- (1) Exam or inquiry permitted only if job-related and consistent with business necessity.
- (2) Voluntary as part of employee health program.

C. Reasonable Accommodation

1. Types of accommodation

- a. Accessibility
- b. Acquisition or modification of equipment
- c. Job restructuring/work schedules
- d. Reassignment of existing employee to vacant position
- e. Readers or interpreters

- f. Modification of leave provisions
- 2. Exceptions to reasonable accommodation requirement:
 - a. Undue hardship
 - (1) Cost of accommodation vs. employer's overall budget/financial resources;
 - (2) Nature of accommodation;
 - (3) Financial resources of employer;
 - (4) Number of persons employed at the facility;
 - (5) Interference with job performance or other employees;
 - (6) Type of operation; and
 - (7) Impact of changes on operation.
 - b. Direct threat to the health and safety of others.

Assessment of "direct threat" must be based upon individualized assessment of employee's present ability to safely perform essential job functions.

D. Drugs and Alcohol

- 1. Illegal drug use not protected by ADA.
- 2. Former drug users and those in rehabilitation are protected as long as they currently do not use illegal drugs.
- 3. Alcoholics are covered by ADA.
 - a. Note: Alcoholics must meet employer's performance standards.
 - b. Duty to accommodate only arises upon employee's request.

V. Recommended Employer Actions

A. Job Descriptions

- 1. Prepare job descriptions for each position, including part-time positions
- 2. Identify necessary qualifications and essential functions for each position - include skills, licenses, experience, etc.
- 3. Objectives:
 - a. Assists in identifying individuals qualified for position with or without reasonable accommodation.

b. Limits exposure to potential ADA claims.

4. Methods

- a. Review prior job descriptions
- b. Survey employees re job duties
- c. Contact supervisors for each position - identify amount of time spent on each function

B. Applications

- 1. Delete references to:
 - a. Disability status
 - b. Prior medical problems
 - c. Workers compensation claim
- 2. Reason: Information establishes basis for retaliation claim.
- 3. Include specific job-related questions, if necessary.
Examples: Can you lift 50 pounds?
Can you work evening shifts?

C. Medical Exams/Tests

- 1. Avoid pre-employment testing for physical handicaps or drug use.
Reason: ADA prohibits because employers may otherwise utilize to "screen out" qualified applicants with disabilities.
- 2. Consider post-employment medical exams for all employees in job category (e.g., bus drivers)
 - a. Maintain any medical exam information confidential and separate from employee's personnel file.
 - b. Note: Inclusion in personnel file could establish basis for retaliation claim.

D. Employment Inquiries

- 1. Cannot ask applicant or employee if they have a disability (or are associated with someone with a disability)

2. Can ask whether applicant or employee has ability to perform job-related functions.
 - a. Example: Question custodian on whether he/she can lift chairs onto tables (to sweep floors underneath)
 - b. Note: Employer must still determine whether individual can perform function with reasonable accommodation.

E. Personnel Policies

1. Review personnel policies which may adversely affect employees with disabilities
Examples: leave of absence or disability policy
2. Uniformly-applied policies do not violate ADA
 - a. Example: Employer need not provide additional paid sick leave to disabled employees
 - b. But note: Employer should consider possible extension of unpaid disability leave as reasonable accommodation.
3. Review policies restricting disabled employees return to work
Note: Requirement that employee submit full and unconditional medical release (i.e., with no restrictions) may violate reasonable accommodation standards.

F. Posting Requirements

1. Employer must post notices (in conspicuous places) for all job applicants and employees regarding ADA's provision
2. Note: Notice deadline of July 26, 1992

G. Specific Problems/Current Disabled Employees

1. Analyze job in question and employees' ability to perform essential functions
 2. Consult physician if necessary
 3. Document any workplace accommodations
 4. Prepare checklist of action items
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