



Americans with Disabilities Act and Employment

Section Purpose

Provide information on the aspects of the Americans with Disabilities Act (ADA) which apply to employment, so that One-Stop staff can assist customers with disabilities in understanding their rights to equal opportunity, and also ensure that employers are not in violation of the ADA. This information may also be helpful to One-Stop Systems as employers of people with disabilities.

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Tools for Inclusion: Americans with Disabilities Act (ADA) Overview

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Introduction

The Emancipation Proclamation of 1863. The Civil Rights Act of 1964. The Americans with Disabilities Act of 1990. Three legislative promises to keep freedom, equality, and opportunity. This issue of “Tools For Inclusion” gives an overview of the Americans with Disabilities Act (ADA), Public Law 101-336. The ADA extends previous civil rights legislation by providing a clear mandate to end discrimination against people with disabilities in all areas of life. The ADA is made up of five titles that cover employment, state and local government services, transportation, public accommodations (i.e., public places and services) and telecommunications. The primary scope and emphasis of each title is presented here. By learning more about the ADA, individuals with disabilities, their families and friends will be able to take full advantage of this landmark civil rights law.

Title I: Employment

The ADA prohibits discrimination in all aspects of employment. The law requires that reasonable accommodation be made to enable qualified individuals with a disability to work on par with other employees. Working conditions, job applications, hiring and firing practices and employment-related services are some of the things covered by the law. A qualified individual is someone who has the education and/or experience required to do the job. Reasonable accommodation means an adjustment to the job or to the work site which does not cause too much hardship for the employer. Examples of job accommodation include rearranging the person’s work schedule, modifying the building or work environment and providing additional on-the-job training, on an assistive device or extra personal assistance.

Title II: State and Local Government Services & Public Transportation

Discrimination by state or local government agencies is prohibited by the ADA which also requires that all governmental services or activities be made available and accessible to people with disabilities. These services include communication and public transportation systems. Title II requires that all new public transit buses and rail vehicles be wheelchair accessible and that transit authorities provide comparable transportation services to individuals who cannot use fixed route bus services.

Title III: Public Accommodations

The ADA prohibits discriminatory practices in providing goods and services to the general public and requires that all public buildings be accessible to people who use wheelchairs. Physical barriers in existing facilities have to be removed, if this is easy to accomplish and not too expensive. Furthermore, all new construction and any alterations must be accessible. Restaurants, banks, parks, theaters, stores and so on must change policies, practices and procedures. Examples include widening aisles and doorways, installing ramps and railings and putting up signs in alternative formats such as Braille. When feasible, public entities must also provide special aids or services to people with vision or hearing impairments.

Title IV: Telecommunications

The ADA requires that companies offering telephone services to the general public provide telephone relay services to people with hearing and/or speech impairments. For example, New England Telephone Relay Services are available at any time of day, to any Massachusetts resident with a teletypewriter (TTY) or a computer. Among other services, a relay operator transposes messages from type to voice and voice to type mediums.

Title V: Miscellaneous

The ADA prohibits retaliation against individuals who seek to enforce their own or another's rights under the ADA. Title V covers insurance issues and explains the relationship between the ADA and other, previously existing, laws.

Conclusion

Through the passage of the Americans with Disabilities Act, a commitment has been made to end discrimination against people with disabilities in all aspects of American life.

Americans with Disabilities Act - Focus on Employment

Title I of the ADA governs employment issues. It states:

“No covered entity 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; employee compensation; job training; and other terms, conditions, and privileges of employment.”

Major Employment Provisions

- The ADA requires equal opportunity in the selection, testing, and hiring of qualified applicants with disabilities.
- The ADA prohibits discrimination against workers with disabilities. “Covered entities” are all employers with 15 or more employees.
- The ADA employment provisions apply to private employers, state and local governments, employment agencies, labor organizations, and joint labor-management committees.
- The ADA requires equal treatment in promotion and benefits.
- The ADA requires reasonable accommodation for applicants and workers with disabilities when such accommodations would not impose “undue hardship.” Reasonable accommodation is a concept already familiar to and widely used in today’s workplace.
- Employers may require that an individual not pose a direct threat to the health and safety of the individual or others.
- Employers may not make pre-employment inquiries about an applicant’s disability or conduct pre-employment medical tests. Employers may ask if applicants can perform specific job functions and may condition a job offer on results of a medical exam, but only if the exam is required for all entering employees in similar jobs.
- Drug testing is not considered to be a medical exam, and can be required as part of the application process. Employers may conduct tests for the illegal use of drugs and may prohibit illegal use of drugs and alcohol in the workplace.

Some Key Definitions

The term “disability” means:

- a physical or mental impairment that substantially limits one or more of the major life activities, for example, walking, seeing, speaking or hearing;
- a record of such an impairment, for example, a person who has recovered from cancer;
- being regarded as having such an impairment even when no limitations exist, for example, a person who is scarred from burns.

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 employment position that such individual holds or desires.

“Reasonable accommodation” may include:

- making existing facilities used by employees readily accessible to and usable by individuals with disabilities;
- 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;
- other similar accommodations.

See section 6, “Job Accommodation,” for more information

The term “undue hardship” means that an action requires significant difficulty or expense. Factors to be considered in determining whether an accommodation would cause an undue hardship include:

- the nature and cost of the accommodation
- the resources and size of the business as a whole and of the facility making the accommodation
- the type of business operation, including the composition, functions, and structure of the workforce
- the impact that the accommodation would have on the facility making it and on the business as a whole.

In general, a larger employer will be expected to make accommodations requiring greater effort or expense than a smaller employer.

Enforcement

The Equal Employment Opportunity Commission (EEOC), the Federal agency that regulates and enforces other employment discrimination laws, is responsible for enforcing ADA employment provisions.

Important Note

Impact of State and Local Laws and Regulations Concerning Nondiscrimination

This section contains information only on federal laws and regulations. Federal requirements are the baseline standards for nondiscrimination and equal opportunity. State and local laws and regulations may have additional requirements that employers must comply with.

The Americans with Disabilities Act: Employment Rights of Individuals with Disabilities

Introduction

The Americans with Disabilities Act of 1990 (ADA) makes it unlawful to discriminate in employment against a qualified individual with a disability. The ADA also outlaws discrimination against individuals with disabilities in state and local government services, public accommodations, transportation and telecommunications. This information explains the part of the ADA that prohibits job discrimination. This part of the law is enforced by the U.S. Equal Employment Opportunity Commission (EEOC) and state and local civil rights enforcement agencies that work with the Commission.

What Employers Are Covered by the ADA?

Job discrimination against people with disabilities is illegal if practiced by:

- private employers,
- state and local governments,
- employment agencies,
- labor organizations, and
- labor-management committees.

The part of the ADA enforced by the EEOC outlaws job discrimination by all employers, including state and local government employers, with 15 or more employees (note: under Massachusetts law, the ADA applies to employers with six or more employees).

Who Is Protected by The ADA?

If you have a disability and are qualified to do a job, the ADA protects you from job discrimination on the basis of your disability. Under the ADA, you have a disability if you have a physical or mental impairment that substantially limits a major life activity. The ADA also protects you if you have a history of such a disability, or if an employer believes that you have such a disability, even if you do not.

To be protected under the ADA, you must have, have a record of, or be regarded as having a substantial, as opposed to a minor, impairment. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, walking, breathing, performing manual tasks, caring for oneself, learning or working.

U.S. Equal Employment Opportunity Commission
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*The full text of this material is available at: www.eeoc.gov/facts/ada18.html
Copies of this material in booklet form are available from:
Publications Information Center
P.O. Box 12549
Cincinnati, OH 45212-0549
Voice: (800) 669-3362; TTY: (800) 800-3302
Web site: www.eeoc.gov/eeoinfo.html*

If you have a disability, you must also be qualified to perform the essential functions or duties of a job, with or without reasonable accommodation, in order to be protected from job discrimination by the ADA. This means two things:

- First, you must satisfy the employer's requirements for the job, such as education, employment experience, skills or licenses.
- Second, you must be able to perform the essential functions of the job with or without reasonable accommodation. Essential functions are the fundamental job duties that you must be able to perform on your own or with the help of a reasonable accommodation. An employer cannot refuse to hire you because your disability prevents you from performing duties that are not essential to the job.

What is Reasonable Accommodation?

Reasonable accommodation is any change or adjustment to a job or work environment that permits a qualified applicant or employee with a disability to participate in the job application process, to perform the essential functions of a job, or to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities. For example, reasonable accommodation may include:

- providing or modifying equipment or devices
- job restructuring
- part-time or modified work schedules
- reassignment to a vacant position
- adjusting or modifying examinations, training materials, or policies
- providing readers and interpreters
- making the workplace readily accessible to and usable by people with disabilities.

An employer is required to provide a reasonable accommodation to a qualified applicant or employee with a disability unless the employer can show that the accommodation would be an undue hardship — that is, that it would require significant difficulty or expense.

What Employment Practices are Covered?

The ADA makes it unlawful to discriminate in all employment practices such as:

- ◆ recruitment
- ◆ firing
- ◆ hiring
- ◆ training
- ◆ job assignments
- ◆ promotions
- ◆ pay
- ◆ benefits
- ◆ lay off
- ◆ leave
- ◆ all other employment related activities.

It is also unlawful for an employer to retaliate against a person with a disability for asserting his or her rights under the ADA. The ADA also protects you if you are a victim of discrimination because of your family, business, social or other relationship or association with an individual with a disability.

Can an Employer Require Medical Examinations or Ask Questions About a Disability?

If you are applying for a job, an employer cannot ask you if you are disabled or ask about the nature or severity of your disability. An employer can ask if you can perform the duties of the job with or without reasonable accommodation. An employer can also ask you to describe or to demonstrate how, with or without reasonable accommodation, you will perform the duties of the job.

An employer cannot require you to take a medical examination before you are offered a job. Following a job offer, an employer can condition the offer on your passing a required medical examination, but only if all entering employees for that job category have to take the examination. However, an employer cannot reject you because of information about your disability revealed by the medical examination, unless the reasons for rejection are job-related and necessary for the conduct of the employer's business. Nor can the employer refuse to hire you because of your disability if you can perform the essential functions of the job with an accommodation.

Once you have been hired and started work, your employer cannot require that you take a medical examination or ask questions about your disability unless they are related to your job and necessary for the conduct of your employer's business. Your employer may conduct voluntary medical examinations that are part of an employee health program, and may provide medical information required by state workers' compensation laws to the agencies that administer such laws. The results of all medical examinations must be kept confidential, and maintained in separate medical files.

Do Individuals Who Use Drugs Illegally Have Rights Under the ADA?

Anyone who is currently using drugs illegally is not protected by the ADA and may be denied employment or fired on the basis of such use. The ADA does not prevent employers from testing applicants or employees for current illegal drug use.

What Does A Person With A Disability Do If They Think They Are Being Discriminated Against?

If you think you have been discriminated against in employment on the basis of disability you should contact the EEOC. A charge of discrimination generally must be filed within 180 days of the alleged discrimination. You may have up to 300 days to file a charge if there is a state or local law that provides relief for discrimination on the basis of disability. However, to protect your rights, it is best to contact EEOC promptly if discrimination is suspected.

You may file a charge of discrimination on the basis of disability by contacting any EEOC field office, located in cities throughout the United States. If you have been discriminated against, you are entitled to a remedy that will place you in the position you would have been in if the discrimination had never occurred. You may be entitled to hiring, promotion, reinstatement, back pay, or reasonable accommodation, including reassignment. You may also be entitled to attorney's fees.

While the EEOC can only process ADA charges based on actions occurring on or after July 26, 1992, you may already be protected by state or local laws or by other current federal laws. EEOC field offices can refer you to the agencies that enforce those laws. To contact the EEOC, look in your telephone directory under U.S. Government. For information and instructions on reaching your local office, call:

Voice: (202) 663-4900; TDD: (800) 800-3302
(In the Washington, D.C. 202 Area Code, call 202-663-4494 (TDD))

Additional Questions and Answers About the ADA

Q. Is an employer required to provide reasonable accommodation when an employer applies for a job?

A. Yes. Applicants, as well as employees, are entitled to reasonable accommodation. For example, an employer may be required to provide a sign language interpreter during a job interview for an applicant who is deaf or hard of hearing unless to do so would impose an undue hardship.

Q. Should a person with a disability tell his/her employer that he/she has a disability?

A. If you think you will need a reasonable accommodation in order to participate in the application process or to perform essential job functions, you should inform the employer that an accommodation will be needed. Employers are required to provide reasonable accommodation only for the physical or mental limitations of a qualified individual with a disability of which they are aware. Generally, it is the responsibility of the employee to inform the employer that an accommodation is needed.

Q. Does a person with a disability have to pay for a needed reasonable accommodation?

A. No. The ADA requires that the employer provide the accommodation unless to do so would impose an undue hardship on the operation of the employer's business. If the cost of providing the needed accommodation would be an undue hardship, the employee must be given the choice of providing the accommodation or paying for the portion of the accommodation that causes the undue hardship.

Q. Can an employer lower a person with a disability's salary or pay an individual less than other employees doing the same job because a person with a disability needs a reasonable accommodation?

A. No. An employer cannot make up the cost of providing a reasonable accommodation by lowering your salary or paying you less than other employees in similar positions.

Q. Does an employer have to make non-work areas used by employees, such as cafeterias, lounges, or employer-provided transportation accessible to people with disabilities?

A. Yes. The requirement to provide reasonable accommodation covers all services, programs, and non-work facilities provided by the employer. If making an existing facility accessible would be an undue hardship, the employer must provide a comparable facility that will enable a person with a disability to enjoy benefits and privileges of employment similar to those enjoyed by other employees, unless to do so would be an undue hardship.

Q. If an employer has several qualified applicants for a job, is the employer required to select a qualified applicant with a disability over other applicants without a disability?

A. No. The ADA does not require that an employer hire an applicant with a disability over other applicants because the person has a disability. The ADA only prohibits discrimination on the basis of disability. It makes it unlawful to refuse to hire a qualified applicant with a disability because of the disability or because a reasonable accommodation is required to make it possible for this person to perform essential job functions.

Q. Can an employer refuse to hire a person with a disability because he believes that it would be unsafe, because of the disability, for the individual to work with certain machinery required to perform the essential functions of the job?

A. The ADA permits an employer to refuse to hire an individual if he/she poses a direct threat to the health or safety of him/herself or others. A direct threat means a significant risk of substantial harm. The determination that there is a direct threat must be based on objective, factual evidence regarding an individual's present ability to perform essential functions of a job. An employer cannot refuse to hire you because of a slightly increased risk or because of fears that there might be a significant risk sometime in the future. The employer must also consider whether a risk can be eliminated or reduced to an acceptable level with a reasonable accommodation.

Q. Can an employer offer a health insurance policy that excludes coverage for pre-existing conditions?

A. Yes. The ADA does not affect pre-existing condition clauses contained in health insurance policies even though such clauses may adversely affect employees with disabilities more than other employees.

Q. If the health insurance offered by a person with a disability's employer does not cover all of the medical expenses related to the disability, does the company have to obtain additional coverage for a person with a disability?

A. No. The ADA only requires that an employer provide employees with disabilities equal access to whatever health insurance coverage is offered to other employees.

Q. An individual thinks they were discriminated against because their spouse is disabled. Can the individual file a charge with the EEOC?

A. Yes. The ADA makes it unlawful to discriminate against an individual, whether he/she has a disability, or not, because of a relationship or association with an individual with a known disability.

Q. Are people with AIDS covered by the ADA?

A. Yes. The legislative history indicates that Congress intended the ADA to protect persons with AIDS and HIV disease from discrimination.

This booklet is available in Braille, large print, audiotape and electronic file on computer disk. To obtain accessible formats call the Office of Equal Employment Opportunity at (202) 663-4395 (voice) or (202) 663-4399 (TDD), or write to this office at 1801 L Street, N.W., Washington, D.C. 20507.

The Americans with Disabilities Act: Employer Responsibilities

Introduction

The Americans with Disabilities Act of 1990 (ADA) makes it unlawful to discriminate in employment against a qualified individual with a disability. The ADA also outlaws discrimination against individuals with disabilities in State and local government services, public accommodations, transportation and telecommunications. This information explains the part of the ADA that prohibits job discrimination, focusing on the role of the employer. This part of the law is enforced by the U.S. Equal Employment Opportunity Commission (EEOC) and state and local civil rights enforcement that work with the Commission.

What Employers are Covered?

Job discrimination against people with disabilities is illegal if practiced by: private employers, state and local governments, employment agencies, labor organizations, and labor-management committees.

The part of the ADA enforced by the EEOC outlaws job discrimination by all employers, including state and local government employers, with 15 or more employees (Massachusetts law extends the ADA to employers with six or more employees).

What Employment Practices are Covered?

The ADA makes it unlawful to discriminate in all employment practices such as:

- ◆ recruitment
- ◆ firing
- ◆ hiring
- ◆ training
- ◆ job assignments
- ◆ promotions
- ◆ pay
- ◆ benefits
- ◆ lay off
- ◆ leave
- ◆ all other employment related activities.

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The ADA prohibits an employer from retaliating against an applicant or employee for asserting his/her rights under the ADA. The ADA also makes it unlawful to discriminate against an applicant or employee, whether he/she has a disability or not, because of the individual's family, business, social or other relationship or association with an individual with a disability.

Who Is Protected?

Title I of the ADA protects qualified individuals with disabilities from employment discrimination. Under the ADA, a person has a disability if he/she has a physical or mental impairment that substantially limits a major life activity. The ADA also protects individuals who have a record of a substantially limiting impairment, and people who are regarded as having a substantially limiting impairment.

To be protected under the ADA, an individual must have, have a record of, or be regarded as having a substantial, as opposed to a minor, impairment. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, caring for oneself, learning or working.

An individual with a disability must also be qualified to perform the essential functions of the job with or without reasonable accommodation, in order to be protected by the ADA. This means that the applicant or employee must: satisfy your job requirements for educational background, employment experience, skills, licenses, and any other qualification standards that are job related; and be able to perform those tasks that are essential to the job, with or without reasonable accommodation. The ADA does not interfere with your right to hire the best qualified applicant. Nor does the ADA impose any affirmative action obligations. The ADA simply prohibits an employer from discriminating against a qualified applicant or employee because of his/her disability.

How Are Essential Functions Determined?

Essential functions are the basic job duties that an employee must be able to perform, with or without reasonable accommodation. You should carefully examine each job to determine which functions or tasks are essential to performance. (This is particularly important before taking an employment action such as recruiting, advertising, hiring, promoting or firing).

Factors to consider in determining if a function is essential include: whether the reason the position exists is to perform that function, the number of other employees available to perform the function or among whom the performance of the function can be distributed, and the degree of expertise or skill required to perform the function. Your judgment as to which functions are essential, and a written job description prepared before advertising or interviewing for a job will be considered by EEOC as evidence of essential functions. Other kinds of evidence that EEOC will consider include: actual work experience of present or past employees in the job, time spent performing a function, consequences of not requiring that an employee perform a function, and terms of a collective bargaining agreement.

What Are My Obligations to Provide Reasonable Accommodations?

Reasonable accommodation is any change or adjustment to a job or work environment that permits a qualified applicant or employee with a disability to participate in the job application process, to perform the essential functions of a job, or to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities. For example, reasonable accommodation may include acquiring or modifying equipment or devices, job restructuring, part-time or modified work schedules, reassignment to a vacant position, adjusting or modifying examinations, training materials or policies, providing readers and interpreters, and making the workplace readily accessible to and usable by people with disabilities. Reasonable accommodation also must be made to enable an individual with a disability to participate in the application process, and to enjoy benefits and privileges of employment equal to those available to other employees. It is a violation of the ADA to fail to provide reasonable accommodation to the known physical or mental limitations of a qualified individual with a disability, unless to do so would impose an undue hardship on the operation of your business. Undue hardship means that the accommodation would require significant difficulty or expense.

What is the Best Way to Identify a Reasonable Accommodation?

Frequently, when a qualified individual with a disability requests a reasonable accommodation, the appropriate accommodation is obvious. The individual may suggest a reasonable accommodation based upon his/her own life or work experience. However, when the appropriate accommodation is not readily apparent, an employer must make a reasonable effort to identify one. The best way to do this is to consult informally with the applicant or employee about potential accommodations that would enable the individual to participate in the application process or perform the essential functions of the job. If this consultation does not identify an appropriate accommodation, an employer may contact the EEOC, state or local vocational rehabilitation agencies, or state or local organizations representing or providing services to individuals with disabilities. Another resource is the Job Accommodation Network (JAN). JAN is a free consultant service that helps employers make individualized accommodations. The telephone number is 1-800-526-7234.

When Does a Reasonable Accommodation Become An Undue Hardship?

It is not necessary to provide a reasonable accommodation if doing so would cause an undue hardship. Undue hardship means that an accommodation would be unduly costly, extensive, substantial or disruptive, or would fundamentally alter the nature or operation of the business. Among the factors to be considered in determining whether an accommodation is an undue hardship are the cost of the accommodation, the employer's size, financial resources and the nature and structure of its operation.

If a particular accommodation would be an undue hardship, an employer must try to identify another accommodation that will not pose such a hardship. If cost causes the undue hardship, an employer must also consider whether funding for an accommodation is available from an outside source, such as a vocational rehabilitation agency, and if the cost of providing the accommodation can be offset by state or federal tax credits or deductions. You must also give the applicant or employee with a disability the opportunity to provide the accommodation or pay for the portion of the accommodation that constitutes an undue hardship.

Can employers Require Medical Examinations or Ask Questions About an Individual's Disability?

It is unlawful to ask an applicant whether he/she has a disability or about the nature or severity of a disability, or to require the applicant to take a medical examination before making a job offer.

You can ask an applicant questions about ability to perform job-related functions, as long as the questions are not phrased in terms of a disability. You can also ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will perform job-related functions.

After a job offer is made and prior to the commencement of employment duties, an employer may require that an applicant take a medical examination if everyone who will be working in the job category must also take the examination. You may condition the job offer on the results of the medical examination. However, if an individual is not hired because a medical examination reveals the existence of a disability, an employer must be able to show that the reasons for exclusion are job related and necessary for conduct of your business. You also must be able to show that there was no reasonable accommodation that would have made it possible for the individual to perform the essential job functions.

Once an employer has hired an applicant, an employer cannot require a medical examination or ask an employee questions about disability unless an employer can show that these requirements are job related and necessary for the conduct of your business. You may conduct voluntary medical examinations that are part of an employee health program.

The results of all medical examinations or information from inquiries about a disability must be kept confidential, and maintained in separate medical files. You may provide medical information required by state workers' compensation laws to the agencies that administer such laws.

Do Individuals Who Use Drugs Illegally Have Rights Under the ADA?

Anyone who is currently using drugs illegally is not protected by the ADA and may be denied employment or fired on the basis of such use. The ADA does not prevent employers from testing applicants or employees for current illegal drug use, or from making employment decisions based on verifiable results. A test for the illegal use of drugs is not considered a medical examination under the ADA; therefore, it is not a prohibited pre-employment medical examination, and an employer will not have to show that the administration of the test to employees is job related and consistent with business necessity. The ADA does not encourage, authorize or prohibit drug tests.

How is the ADA Enforced and What Are the Available Remedies?

The provisions of the ADA which prohibit job discrimination are enforced by the U.S. Equal Employment Opportunity Commission. Individuals who believe they have been discriminated against on the basis of their disability can file a charge with the Commission at any of its offices located throughout the United States. A charge of discrimination must be filed within 180 days of the discrimination, unless there is a state or local law that also provides relief for the discrimination on the basis of disability. In most cases where there is such a law, the complainant has 300 days to file a charge.

The Commission will investigate and initially attempt to resolve the charge through conciliation, following the same procedures used to handle charges of discrimination filed under Title VII of the Civil Rights Act of 1964. The ADA also incorporates the remedies contained in Title VII. These remedies include hiring, promotion, reinstatement, back pay, and attorney's fees. Reasonable accommodation is also available as a remedy under the ADA.

Additional Questions and Answers About the ADA

Q. What is the relationship between the ADA and the Rehabilitation Act of 1973?

A. The Rehabilitation Act of 1973 prohibits discrimination on the basis of disability by the federal government, federal contractors and by recipients of federal financial assistance. If an employer were covered by the Rehabilitation Act prior to the passage of the ADA, the ADA will not affect that coverage. Many of the provisions contained in the ADA are based on Section 504 of the Rehabilitation Act and its implementing regulations. If an employer is receiving federal financial assistance and is in compliance with Section 504, an employer is probably in compliance with the ADA requirements affecting employment except in those areas where the ADA contains additional requirements. Your nondiscrimination requirements as a federal contractor under Section 503 of the Rehabilitation Act will be essentially the same as those under the ADA; however, an employer will continue to have additional affirmative action requirements under Section 503 that do not exist under the ADA.

Q. If employers have several qualified applicants for a job, does the ADA require that employers hire the applicant with a disability?

A. No. You may hire the most qualified applicant. The ADA only makes it unlawful for an employer to discriminate against a qualified individual with a disability on the basis of disability.

Q. An employee has a broken arm that will heal, but he/she is temporarily unable to perform the essential functions of his/her job as a mechanic. Is this employee protected by the ADA?

A. No. Although this employee does have an impairment, it does not substantially limit a major life activity if it is of limited duration and will have no long term effect.

Q. Are employers obligated to provide a reasonable accommodation for an individual if they are unaware of his/her physical or mental impairment?

A. No. An employer's obligation to provide reasonable accommodation applies only to known physical or mental limitations. However, this does not mean that an applicant or employee must always inform an employer of a disability. If a disability is obvious (e.g., the applicant uses a wheelchair), the employer "knows" of the disability even if the applicant never mentions it.

Q. How do employers determine whether a reasonable accommodation is appropriate and the type of accommodation that should be made available?

A. The requirement generally will be triggered by a request from an individual with a disability, who frequently can suggest an appropriate accommodation. Accommodations must be made on a case-by-case basis, because the nature and extent of a disabling condition and the requirements of the job will vary. The principal test in selecting a particular type of accommodation is that of effectiveness (i.e., whether the accommodation will enable the person with a disability to perform the essential functions of the job). It need not be the best accommodation, or the accommodation the individual with a disability would prefer, although primary consideration should be given to the preference of the individual involved. However, an employer has the discretion to choose between effective accommodations, and an employer may select one that is least expensive or easier to provide.

Q. When must employers consider reassigning an employee with a disability to another job as a reasonable accommodation?

A. When an employee with a disability is unable to perform his/her present job even with the provision of a reasonable accommodation, an employer must consider reassigning the employee to an existing position that he/she can perform with or without a reasonable accommodation. The requirement to consider reassignment applies only to employees and not to applicants. An employer is not required to create a position or to bump another employee in order to create a vacancy. Nor is an employer required to promote an employee with a disability to a higher level position.

Q. What if an applicant or employee refuses to accept an accommodation that I offer?

A. The ADA states that an employer cannot require a qualified individual with a disability to accept an accommodation that is neither requested nor needed by the individual. However, if a necessary reasonable accommodation is refused, the individual may be considered not qualified.

Q. If our business has a fitness room for its employees, must it be accessible to employees with disabilities?

A. Yes. Under the ADA, workers with disabilities must have equal access to all benefits and privileges of employment that are available to similarly situated employees without disabilities. The duty to provide reasonable accommodation applies to all non-work facilities provided or maintained by an employer for its employees. This includes cafeterias, lounges, auditoriums, company-provided transportation and counseling services. If making an existing facility accessible would be an undue hardship, an employer must provide a comparable facility that will enable a person with a disability to enjoy benefits and privileges of employment similar to those enjoyed by other employees, unless this would be an undue hardship.

Q. If employers contract for a consulting firm to develop a training course for its employees, and the firm arranges for the course to be held at a hotel that is inaccessible to one of its employees, are employers liable under the ADA?

A. Yes. An employer may not do, through a contractual or other relationship, what it is prohibited from doing directly. An employer would be required to provide a location that is readily accessible to, and usable by, its employees with disabilities unless to do so would create an undue hardship.

Q. What are my responsibilities as an employer for making my facilities accessible?

A. An employer is responsible under Title I of the ADA for making facilities accessible to qualified applicants and employees with disabilities as a reasonable accommodation, unless this would cause undue hardship. Accessibility must be provided to enable a qualified applicant to participate in the application process, to enable a qualified individual to perform essential job functions and to enable an employee with a disability to enjoy benefits and privileges available to other employees. However, if your business is a place of public accommodation (such as a restaurant, retail store or bank) an employer has different obligations to provide accessibility to the general public, under Title III of the ADA. Title III also will require places of public accommodation and commercial facilities (such as office buildings, factories and warehouses) to provide accessibility in new construction or when making alterations to existing structures. Further information on these requirements may be obtained from the U.S. Department of Justice, which enforces Title III.

Q. Under the ADA, can employers refuse to hire an individual or fire a current employee who uses drugs illegally?

A. Yes. Individuals who currently use drugs illegally are specifically excluded from the ADA's protections. However, the ADA does not exclude persons who have successfully completed or are currently in a rehabilitation program and are no longer illegally using drugs, and persons erroneously regarded as engaging in the illegal use of drugs.

Q. Does the ADA cover people with AIDS?

A. Yes. The legislative history indicates that Congress intended the ADA to protect persons with AIDS and HIV disease from discrimination.

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

A. The ADA permits an employer to require that an individual not pose a direct threat to the health and safety of the individual or others in the work-place. A direct threat means a significant

risk of substantial harm. You cannot refuse to hire or fire an individual because of a slightly increased risk of harm to him/herself or others. Nor can an employer do so based on a speculative or remote risk. The determination that an individual poses a direct threat must be based on objective, factual evidence regarding the individual's present ability to perform essential job functions. If an applicant or employee with a disability poses a direct threat to the health or safety of him/herself or others, an employer must consider whether the risk can be eliminated or reduced to an acceptable level with a reasonable accommodation.

Q. Are employers required to provide additional insurance for employees with disabilities?

A. No. The ADA only requires that an employer provide an employee with a disability equal access to whatever health insurance coverage an employer provides to other employees. For example, if an employer's health insurance coverage for certain treatments is limited to a specified number per year, and an employee, because of a disability, needs more than the specified number, the ADA does not require that an employer provide additional coverage to meet that employee's health insurance needs. The ADA also does not require changes in insurance plans that exclude or limit coverage for pre-existing conditions.

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

A. The ADA requires that an employer post a notice in an accessible format to applicants, employees and members of labor organizations, describing the provisions of the Act. EEOC will provide employers with a poster summarizing these and other federal legal requirements for nondiscrimination. EEOC will also provide guidance on making this information available in accessible formats for people with disabilities.

This material is available in Braille, large print, audiotape and electronic file on computer disk. To obtain accessible formats call the Office of Equal Employment Opportunity at (202) 663-4395 (voice) or (202) 663-4399 (TDD), or write to this office at 1801 L Street, N.W., Washington, D.C. 20507.

Discrimination in Employment: What to Do

If a person with a disability feels they have been discriminated against in employment in violation of the ADA, he or she should contact the EEOC. A charge of discrimination generally must be filed within 180 days of the alleged discrimination. An individual may have up to 300 days to file a charge if there is a state or local law that provides relief for discrimination on the basis of disability. However, to ensure that the individual's rights are protected, it is best to contact EEOC promptly if discrimination is suspected.

An individual may file a charge of discrimination on the basis of disability by contacting any EEOC field office, located in cities throughout the United States.

Getting Additional Assistance

In addition to directly contacting the EEOC, an individual can:

- file a complaint with the state anti-discrimination board (if the state has such an entity)
- contact a legal advocacy organization for advice and/or to determine if they would be willing to accept the case. Such organizations include Protection and Advocacy Organizations, Legal Aid Organizations, etc.
- hiring a private attorney to provide representation with the EEOC, or file suit against the business.

Alternative Dispute Resolution

The ADA supports the use of alternative dispute resolution (ADR) as a quick and fair method for settling complaints without going to court. ADR is a non-judicial means of settling ADA disputes outside of the courtroom, avoiding costly and time-consuming litigation after a complaint or dispute arises. The use of ADR mechanisms is intended to supplement, not replace, other enforcement mechanisms available under the ADA. Two of the ADA's provisions, "reasonable accommodation" and "readily achievable," have often been successfully resolved through ADR conflict-resolution strategies. ADR techniques include:

- **Arbitration:** use of a neutral third party to resolve a dispute after hearing arguments and reviewing evidence from both parties.
- **Conciliation:** use of a neutral third party to help resolve disputes by improving communications, lowering tensions and identifying issues and potential solutions by shuttling information between the disputing parties.
- **An Ombudsman:** investigates and expedites complaints, helping either of the parties settle a dispute or proposing changes to make the employer, government agency, business, etc. more responsive to the needs of the complainant.
- **Mediation:** Mediation is an informal process in which a neutral third party assists the opposing parties to reach a voluntary, negotiated resolution of a charge of discrimination. The decision to mediate is completely voluntary for the charging party and the employer. Mediation gives the parties the opportunity to discuss the issues raised in the charge, clear up misunderstandings, determine the underlying interests or concerns, find areas of agreement and, ultimately, to incorporate those areas of agreements into resolutions. A mediator does not resolve the charge or impose a

decision on the parties. Instead, the mediator helps the parties to agree on a mutually acceptable resolution. The mediation process is strictly confidential. Information disclosed during mediation will not be revealed to anyone, including other EEOC employees.

EEOC Mediation Services

The EEOC provides mediation services to those interested in using this type of ADR technique. An EEOC representative will contact the employee and employer concerning their participation in the program. If both parties agree, a mediation session conducted by a trained and experienced mediator is scheduled. While it is not necessary to have an attorney in order to participate in EEOC's Mediation Program, either party may choose to do so. If mediation is unsuccessful, the charge is investigated like any other charge. Successful mediation avoids a time consuming investigation and achieves a prompt resolution of the charge. The majority of mediations are completed in one session, which usually lasts for one to five hours.

For additional information about the mediation program at EEOC, visit EEOC's web page at: www.eeoc.gov, or by calling the EEOC field office nearest you: Voice - (800) 669-4000; TTY - (800) 669-6820.

Based in part on materials from the President's Committee on Employment of People with Disabilities and EEOC. Used with permission

Dispelling Myths about the Americans with Disabilities Act

The Americans with Disabilities Act (ADA) is a civil rights law that is opening doors to the mainstream of life for the 49 million Americans with disabilities. There are many misconceptions surrounding the ADA. Listed below are the most commonly heard myths and the facts.

MYTH: ADA employment suits are flooding the courts.

FACT: The ADA has resulted in a surprisingly small number of lawsuits on employment issues - only about 1,200 nationwide in the first seven years of the law. The Equal Employment Opportunity Commission (EEOC) has made rulings on approximately additional 83,000 cases. That is tiny compared to the 6 million businesses, 666,000 public and private employers, and 80,000 units of state and local governments that must comply.

MYTH: The ADA's definition of disability is broad and vague and has resulted in "bizarre and arcane" discrimination claims that waste the time of the EEOC and the courts.

FACT: As with any new statute, there is a period during which employers and employees learn about the implications of the law. While individuals have the right to file charges, not all charges are meritorious. The flexibility provided by the ADA definition of "disability" means that there will be individuals who bring claims for conditions that do not satisfy the statutory standards, and those claims will be dismissed. The job of the EEOC investigator is to separate the wheat from the chaff.

MYTH: People with disabilities win most of their cases against employers under the ADA, which has resulted in employers paying out massive awards.

FACT: As of 1996, employers have won approximately 90% of the employment (Title I) cases that have come before the courts and the EEOC. Total awards to people with disabilities to date totaled a relatively small \$211 million.

MYTH: The ADA forces business and government to spend lots of money hiring unqualified people with disabilities.

FACT: To be protected by the ADA an individual must be qualified. No unqualified job applicant or employee with a disability can claim employment discrimination under the ADA. Employees or job applicants must meet all the necessary requirements of the job and perform the essential functions of the job with or without reasonable accommodation. No accommodation must be provided if it would result in an undue hardship on the employer.

MYTH: The ADA, along with other laws such as the FMLA and Workers' Compensation, are squeezing out small businesses that cannot afford to hire human resource specialists to advise them regarding the complexities of these laws.

FACT: Truly small businesses, those with fewer than 15 employees, are not covered by the ADA. (The FMLA only applies to employers with 50 or more employees.) For employers who are covered, the ADA provides an undue hardship defense against reasonable accommodations that are unduly costly or burdensome. Smaller employers can more easily establish undue hardship because they have fewer resources.

MYTH: The ADA is being misused by people alleging mental and neurological impairments.

FACT: The ADA covers individuals with psychiatric and neurological impairments that substantially limit major life activities because individuals with such impairments have traditionally been subjected to pervasive employment discrimination, not because they

are unable to successfully perform job duties, but because of myths, fears, and stereotypes associated with such impairments.

(Neurological impairments are conditions or diseases involving the nervous system, including the brain, spinal cord, ganglia, nerves, and nerve centers. Psychiatric impairments involve biological, social, or psychological dysfunction.) However, just as the ADA excludes people with temporary physical problems, so does it exclude people with mild or short-term mental health problems.

MYTH: The ADA is rigid and requires businesses to spend lots of money to make their existing facilities accessible.

FACT: The ADA is based on common sense. The law recognizes that altering existing structures is more costly than making new construction accessible. The law only requires that public accommodations (e.g., stores, banks, hotels, and restaurants) remove architectural barriers in existing facilities when it is “readily achievable” (i.e., it can be done “without much difficulty or expense”). Inexpensive, easy steps that can be taken include ramping one step, installing a bathroom grab bar, lowering a paper towel dispenser, rearranging furniture, installing offset hinges to widen a doorway, or painting new lines to create an accessible parking space.

MYTH: ADA requires that sign language interpreters be used in all situations involving persons who are deaf.

FACT: The ADA only requires that effective communication not exclude people with disabilities, which in many situations means providing written materials or exchanging notes. The law does not require any measure that would cause an undue financial or administrative hardship.

MYTH: The ADA requires extensive renovations of all state and local government buildings to make them accessible.

FACT: The ADA requires all government programs, not all government buildings, to be accessible. “Program accessibility” is a very flexible requirement and does not require a local government to do anything that would result in an undue financial or administrative burden. Local governments have been subject to this requirement for many years under Title 5 of the Rehabilitation Act of 1973. Not every building, nor each part of every building needs to be accessible. Structural modifications are required only when there is no alternative available for providing program access. Let’s say a town library has an inaccessible second floor. No elevator is needed if it provides “program accessibility” for persons using wheelchairs by having staff retrieve books.

MYTH: Everyone claims to be covered under the ADA.

FACT: To be protected under the law, a person must have an impairment that substantially limits a major life activity, must have a record of such an impairment, or must be regarded as having such an impairment. While people have the right to file charges, not all charges are meritorious. EEOC investigators are instructed to analyze whether a charging party has an ADA-protected disability. If an individual does not have a substantially limiting impairment (and does not allege “record of” or “regarded as” discrimination), the complaint is dismissed.

The information in this fact sheet came from the following sources:

The U.S. Equal Employment Opportunity Commission and the U.S. Justice Department. - July, 1996

The President’s Committee on Employment of People with Disabilities

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What Does Business Really Think About the ADA?

Despite statements in the media and elsewhere that business does not support the Americans with Disabilities Act (ADA), several recent surveys challenge that perception. In fact, based on these surveys, there is a great deal of support for ADA in critical American industries.

Global Strategy Group, Inc., Survey - October 1995

Survey conducted for President's Committee on Employment of People with Disabilities

The study examined a nationwide random sample of 300 CEOs and human resource managers in Fortune 5000 companies related to manufacturing, technology and communications.

Key general findings:

- 73% of the top industries across the United States are hiring people with disabilities.
- 87% of companies with more than 200 employees are hiring people with disabilities.
- 75% of companies employing 51-200 people are hiring people with disabilities.
- 58% of companies employing fewer than 50 people are hiring people with disabilities.
- 54% of the people who make hiring decisions for these companies say that the ADA has had a positive impact on their corporations.

Key findings by industry:

Technology:

- 66% of executives in the technology industry believe the ADA has had a positive impact on their corporations.
- 76% of technology-based industries are hiring people with disabilities.

Communications:

- 52% of executives in the communications industry believe the ADA has had a positive impact on their corporations.
- 69% of companies in the communications industry are hiring people with disabilities.

Manufacturing:

- 46% of human resource managers in manufacturing companies think the ADA has made a positive impact on companies across the United States.
- 74% of the companies in the manufacturing industry are hiring people with disabilities.

Mason-Dixon Poll - January 1995

Survey funded by the Florida Chamber of Commerce Foundation's Disability Awareness Project

Researchers polled 309 randomly selected Florida Chamber of Commerce members (owners, CEOs, or top managers) with at least 15 full-time employees.

- 94% of executives said their businesses were very or somewhat familiar with the ADA.
- 38% of the businesses reported hiring at least one person with a disability over the last three years. Of them,
 - 72% said that the employment of people with disabilities has had a favorable effect on their business.
 - 87% said that, in view of their experience, they would encourage other employers to hire persons with disabilities.

Louis Harris and Associates, Inc. Survey - July 1995

Survey conducted for the National Organization on Disability

The survey assessed the attitudes of 404 senior corporate executives nationwide regarding the acceptance of the ADA by America's corporate employers.

- 70% of the executives surveyed support the ADA and do not favor weakening the law in any way.
- 8% said that the ADA should be strengthened.
- 64% of the companies surveyed are hiring people with disabilities.
- 89% of the employers and their employees supported policies to increase the number of people with disabilities in their companies.
- 75% of managers said they are likely to make greater efforts to hire people with disabilities in the next three years.

University of Michigan - Dearborn Study - 1994

Study conducted by University of Michigan-Dearborn, School of Management and School of Education

A nationwide survey of 408 human resource management professionals and general managers in companies ranging in size from 15 to 300,000+ employees, with a median number of 843 employees.

- 45% of the human resource managers said hiring people with disabilities results in productivity gains for their companies.
- 63% of those companies rejected the idea that the costs of the ADA will adversely affect the ability of their companies to compete.
- 63% of the resource managers said their companies rejected the idea that the ADA will result in higher costs with few benefits to the firm.

Adapted from President's Committee on Employment of People with Disabilities. Used with permission

Resources on the Americans with Disabilities Act

REGIONAL RESOURCES

National Association of Protection and Advocacy Systems, Inc.
900 Second Street, NE, Suite 211
Washington, DC 20002
Voice: (202) 408-9514
Fax: (202) 408-9520
Web site: www.protectionandadvocacy.com

This is the national association for the Protection and Advocacy (P & A) Systems, which are federally mandated to protect the rights of persons with disabilities through legally-based advocacy. There is a P & A in every state and territory. The location of the P & A in your local area can be found by contacting NAPAS; a listing is also available on the web site. P & A's can be helpful resources when questions arise concerning the ADA and other disability-related legal issues.

Disability and Business Technical Assistance Centers (DBTACs)
Web site: www.adata.org/index-dbtac.html
Voice/TTY: (800) 949-4232 (will connect with your regional DBTAC)

Ten federally-funded regional centers that provide information, training, and technical assistance to employers, people with disabilities, and other entities concerning the ADA. The purpose of the centers is to act as a central, comprehensive resource on ADA issues in employment, public services, public accommodations, and communications. DBTACs can be a helpful resource for ensuring accessibility in One-Stop service delivery, as well as in the development of accommodations for employment.

NATIONAL RESOURCES

General ADA Information

ADA Technical Assistance Program.
Voice: (800) 949-4232
Web site: www.adata.org

A federally funded network of grantees that provide information, training, and technical assistance to businesses and agencies with duties and responsibilities under the ADA and to people with disabilities with rights under the ADA.

Disability Rights Education & Defense Fund, Inc.
2212 Sixth Street
Berkeley, CA 94710
Voice/TTY: (510) 644-2555
Fax: (510) 841-8645 fax
ADA Hotline (Voice/TTY): 1-800-466-4232
E-mail: dredf@dredf.org
Web site: www.dredf.org

General information and resources on the ADA and legal rights of people with disabilities.

Job Accommodation Network (JAN)
West Virginia University
P.O. Box 6080
Morgantown, West Virginia 26506-6080
Accommodation Information (Voice /
TTY): (800) 526-7234
ADA Information (Voice / TTY): (800)
232-9675
Fax: (304) 293-5407
E-mail: jan@icdi.wvu.edu
Web site: <http://janweb.icdi.wvu.edu>
ADA documents available at: [http://
janweb.icdi.wvu.edu/Kinder/](http://janweb.icdi.wvu.edu/Kinder/)

Information and assistance on questions
related to the ADA and accommodations.

Office of Disability Employment Policy
U.S. Department of Labor
1331 F Street, N.W.; Suite 300
Washington, DC 20004
Tel: (202) 376-6200
TTY: (202) 376-6205
Fax: (202) 376-6219
E-mail: info@pcepd.gov
Web site: www.pcepd.gov

Federal department whose mission is to
promote employment of people with
disabilities. Has wide variety of
publications and resources on the ADA.

U.S. Department of Justice ADA Hotline
Voice: (800) 514-0301
TTY: (800) 514-0383
Web site: [www.usdoj.gov/crt/ada/
adahom1.htm](http://www.usdoj.gov/crt/ada/adahom1.htm)

Call to obtain answers to general and
technical questions about the ADA and to
order technical assistance materials. Web
site contains extensive materials and
resources.

Information on ADA requirements affecting
employment:

Equal Employment Opportunity Commission (EEOC)
1801 L. Street
Washington, DC 20507
Voice: (800) 669-4000
TTY: (800) 669-6820
Fax: (513) 791-2954
Web site: www.eeoc.gov

ADA information and information on how
to file complaints.

EEOC Publications
Publications Information Center
P.O. Box 12549
Cincinnati, OH 45212-0549
Voice: (800) 669-3362
TTY: (800) 800-3302
Web site for publications: [www.eeoc.gov/
eeoinfo.html](http://www.eeoc.gov/eeoinfo.html)

Free booklets on regulations and guidelines
for the ADA

*Additional resources are listed in the resource
section at the end of this manual under
“Americans with Disabilities Act and Other Legal
Information”*