



ADA & Workplace Accommodations

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Americans with Disabilities Act

42 U.S.C. §§ 12101 *et seq.* (“ADA”)

Under the ADA, employers must provide **reasonable accommodations** to qualified employees (and job applicants) where such an accommodation does not cause the employer **undue hardship**. 42 U.S.C. § 12112(b)(5)



Definitions Under the ADA

Who is considered an employer?

- Employers with 15 or more employees are considered “covered employers” and must comply with the ADA.

Who is protected by the ADA?

- Must have a disability or have a relationship or association with an individual with a disability.

Who is considered a qualified individual?

- A person who can perform the essential functions of the position with or without reasonable accommodation.

What is considered a disability?

The ADA covers any individual with a disability who:

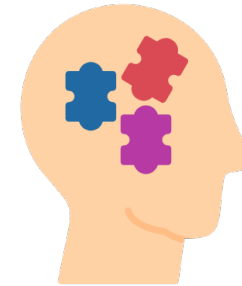
- (1) has a physical or mental impairment that substantially limits one or more major life activities; or
- (2) has a record of such impairment; or
- (3) is regarded as having such an impairment.

Substantially Limiting

A medical condition **does not** need to be **long-term, permanent, or severe** to be substantially limiting. Also, if symptoms come and go, what matters is how limiting the symptoms are when they are active.

Examples of Disabilities Covered by the ADA

- Cancer
- Diabetes
- Post-traumatic stress disorder
- Autism
- Deafness or hearing loss
- Blindness or low vision
- Epilepsy
- Mobility disabilities such as those requiring the use of a wheelchair, walker, or cane



Reasonable Accommodation

A **reasonable accommodation** is any change to the application or hiring process, to the job, to the way the job is done, or the work environment that allows a person with a disability to perform the essential functions or that job.

A **job function is essential** when the reason the position exists is to perform that function, when there aren't enough employees available to perform the function, or when the function is so specialized that someone is hired specifically because of his or her expertise in performing that function.

How to Determine What is a Reasonable Accommodation

An employer must look at the request made by the applicant or employee with a disability and make a determine on a **case-by-case basis**.

Whether or not an accommodation is reasonable will vary according to the position the employee holds, the way their disability affects their ability to do their job, and the environment they work in.

Common Reasonable Accommodations

- Making the workplace accessible for wheelchair users
- Providing reserved parking
- Providing a reader or interpreter for someone who is blind or hearing impaired
- Making a schedule change
- Granting telework
- Allowing leave for disability-related treatment or symptoms
- Reassignment to a vacant position where reasonable accommodation is not possible in the current job

Interactive Process

The interactive process requires employers and employees to engage in **good-faith, flexible dialogue** to explore possible accommodations for employees with disabilities.

Employers have a **legal obligation** to engage in the interactive process once they are aware of an employee's disability.

Even after an accommodation is put in place, the employer and employee should **continue communication** to determine if the accommodations are working and make adjustments accordingly.

Documentation

Under the ADA, no formal written document is required, but it is a **best practice** to document accommodations.



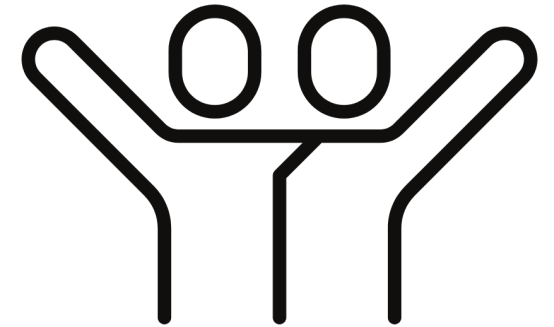
Disability-Related Questions, Medical Exams, and Confidentiality

- Information that employers may obtain about employee's disabilities must be treated as **confidential**.
- An employer **may not** ask a job applicant to answer disability-related questions, such as if they have a disability, or require them to take a medical exam, before extending a job offer.
- An employer **may** ask job applicants whether they can perform the job and how they would perform the job, with or without accommodation.

Association

The law also protects people from discrimination based on their **relationship** with a person with a disability (even if they do not themselves have a disability).

For example, it is illegal to discriminate against an employee because the employee's spouse has a disability.



Examples of Actions That Would Violate the Association Provision of the ADA

- Refusing to hire an individual who has a child with a disability based on the assumption that the applicant will be away from work excessively or be otherwise unreliable.
- Denying an employee health care coverage available to others because of the disability of the employee's dependent.

Harassment

Harassment is a form of employment discrimination, under various federal laws, including the ADA.

Harassment is **unwelcome conduct** that is based on race, color, religion, sex (including pregnancy), national origin, age, **disability** or genetic information.

Harassment

Harassment becomes **unlawful** where:

- (1) Enduring the **offensive conduct** becomes a condition of continued employment, or
- (2) The conduct is **severe and pervasive** enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

Petty slights, annoyances, and isolated incidents (unless extremely serious) **will not** rise to the level of illegality.

Retaliation

Employees are protected from **retaliation** from asserting their rights under the ADA.

Speaking out about or exercising rights related to workplace discrimination is called a “protected activity” and can take many forms, including complaint to a supervisor about harassment.

Interference

The ADA also prohibits **interference** with an individual's ADA rights.

Employers may not **intimidate, threaten, or otherwise interfere** with a job applicant's or current or former employee's exercise of ADA rights.



Thank you!



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