

Americans with Disabilities Act **(ADA)**

The Americans with Disabilities Act (ADA), enacted in 1990 and amended in 2008, prohibits private employers with 15 or more employees, state and local governments, employment agencies, and labor unions from discriminating against qualified individuals with disabilities in employment activities. Such activities include hiring, termination, training, promotion, compensation, and other terms and conditions of employment.



Disability Defined

ADA defines an individual with a disability as a person with a physical or mental impairment that limits one of their major life activities; has a record of such an impairment; or is regarded as having such an impairment.

Major life activities include, but are not limited to, “caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working; and the operation of a major bodily function, including functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions.” (Source: Job Accommodation Network).

As a result of this definition, a wide range of medical and psychological conditions can be considered a disability if they substantially limit one or more of these life activities. By contrast, conditions of limited or temporary durations (such as broken limbs or acute illnesses like the flu) are generally not protected under ADA.

There are a number of factors that employers can use to determine if an impairment is substantially limiting. One of these factors being mitigating measures. Mitigating measures, such as medication, therapy, and assistive technology, are not considered when determining whether an individual is limited in one of their major life activities. Similarly, episodic or in-remission limitations are considered when determining if an impairment or condition is substantially limiting as if they are active conditions.



Essential Functions of the Job

ADA requires employers to provide reasonable accommodations to qualified individuals (employees or job applicants) with disabilities so that they can perform the essential functions of the job unless the accommodation would cause undue hardship. ADA does not require employers to change their expectations/standards of performance or conduct for disabled individuals, but rather requires that employers change the work environment and/or ways in which the job is done to enable a disabled individual to perform the job.

The EEOC defines the essential functions of the job as the basic job duties that employees must be able to perform with or without a reasonable accommodation - essentially the tasks that are most important to satisfactory performance of the job. Non-essential job functions may be reassigned to other employees for the purposes of accommodations, but essential job functions may not be. A job description typically lists the essential and non-essential functions of the job. The EEOC recommends considering three factors when determining if a duty is essential:

1. the reason for the position exists to perform the function
2. the number of other employees available to perform the function or among whom the performance of the function can be distributed
3. the degree of expertise or skill required to perform the function



Reasonable Accommodation

Individuals may request accommodation in “plain English,” letting employers know that they need an adjustment or change at work for a reason related to a medical condition. If the disability is not obvious, an employer may ask an individual for documentation when they request an accommodation. If the disability is obvious and the employee has already provided their employer with sufficient information to substantiate a disability, an employer may not ask for such documentation.

The Job Accommodation Network (JAN) is an ideal resource for employers in regards to reasonable accommodations. It includes suggestions for accommodations and work environment modifications for common medical and psychological conditions which can be disabling. Generally, there are three categories of reasonable accommodation, those that include modifications or adjustments to:

1. the job application process which enables qualified job applicants to be considered for a position
2. the work environment or manner in which the position held or desired is customarily performed to enable a qualified individual to perform the essential functions of a position
3. enable an employee with a disability to enjoy equal benefits and privileges of employment enjoyed by other similarly situated employees without disabilities

Your Responsibilities as an Employer

As an employer, there are a few basic obligations and responsibilities that your organization must take to ensure that it is compliant with ADA.

- Put an ADA policy in your handbook
- Do not ask questions about medical conditions in the hiring process, rather ask if employees can perform the essential functions of the job
- Post a notice which is accessible to job applicants and employees that describes ADA's provisions
- Clearly define the essential and non-essential functions of the job in your job descriptions
- Establish a process by which applicants or employees can request reasonable accommodation
Create a form to handle requests for reasonable accommodation and medical documentation
- Train supervisors and managers to recognize when they must comply with ADA

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