

THE EMPLOYER'S GUIDE TO THE

AMERICANS WITH DISABILITIES ACT



THE AMERICANS WITH DISABILITIES ACT OF 1990

The federal Americans with Disabilities Act (ADA) of 1990 applies to employers with 15 or more employees. Under Title I of the Act, employers are prohibited from discriminating against individuals with disabilities. The ADA's employment provisions generally require equal opportunity in selecting, testing, and hiring qualified applicants with disabilities; reasonable job accommodation for applicants and workers with disabilities when such accommodations would not impose "undue hardship"; and equal opportunity in promotion and benefits.

According to the Equal Employment Opportunity Committee (EEOC), a "disability" means:

- A physical or mental impairment substantially limiting one or more major life activities of an individual,
- A record or history of such an impairment, or
- Being regarded as having such impairment.

THE ADA AMENDMENTS ACT OF 2008

Also applicable to employers with 15 or more employees, the ADA Amendments Act (ADAAA) became effective on January 1, 2009. This Act emphasizes that the definition of disability should be taken in favor of broad coverage for individuals. In line with the ADAAA provisions, the EEOC regulations retain the ADA's definition of "disability" as well as implement key changes regarding how the terms of disability should be interpreted.

For example, under the ADAAA, "major life activities" include, but are not limited to: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

When determining whether an employee is substantially limited in performing a major life activity, consider some “rules of construction”:

- An impairment does not need to significantly restrict an employee’s major life activity to be considered “substantially limiting”
- “Substantially limits” is to be interpreted broadly to the maximum coverage allowed under the ADA
- Determining whether an impairment substantially limits a major life activity requires an individualized assessment
- Except for “ordinary eyeglasses or contact lenses”, if an employee's condition would qualify without mitigating measures (e.g., medication or hearing aids) that may lessen the effects of an impairment, the individual would be considered to have a protected disability
- If substantially limiting a major life activity when active, an impairment deemed episodic or in remission (e.g., cancer, epilepsy, and post-traumatic stress disorder) is still considered a disability
- As the ADA’s main focus is on identifying whether unfair discrimination had occurred, the determination of an employee’s disability should not require extensive analysis

REASONABLE ACCOMMODATIONS

An employer providing a reasonable accommodation enables an employee to perform the essential functions of the job. While much depends on the nature of the disability and the state of the business, examples of employer actions may include the following:

- Modifying work schedules (e.g., changing start/end times or allowing time-off for medical appointments)
- Adjusting when, how, or where an essential job function is performed
- Restructuring the job by reallocating or redistributing marginal job functions
- Offering the employee in question a leave of absence
- Revising relevant workplace policies or procedures, including those governing leaves of absence
- Establishing remote work or telecommuting options
- Acquiring the services of an interpreter or qualified reader
- Providing or modifying furnishings, equipment, tools, etc.
- Making existing facilities readily accessible and usable by individuals with disabilities

THE INTERACTIVE PROCESS

The ADA requires employers to reasonably accommodate the disabilities of their employees and to engage in an interactive process of steps to handle an employee's request for accommodations.

- Analyze the specific job position involved to determine its purpose and essential job functions
- Ensure that the employee with the disability provides in a timely manner relevant medical information and appropriate supporting documentation as requested
- Discuss with the employee about various challenges which may affect the individual's job performance
- Explore with the employee a range of potential reasonable accommodations to help minimize or remove the identified challenges
- Assess the effectiveness of each agreed-upon reasonable accommodation
- Communicate regularly with the employee to demonstrate good-faith efforts of providing reasonable accommodations and document these conversations
- Monitor for conditions that impose an undue hardship against the company

UNDUE HARDSHIP

An employer does not need to provide an employee's requested accommodation if doing so would create an undue hardship. Undue hardship is defined as any employer action that would require significant difficulty or expense. Please note, it is difficult to make the case for undue hardship. Please consult with an HR Professional before determining that a request is an undue hardship on the company. Many factors must be considered to determine if an accommodation causes the business an undue hardship, such as the:

- • Type and cost of the accommodation
- • Effect of the accommodation on resources
- • Impact of the accommodation on operations
- • Number of workers employed
- • Overall financial resources of the company

CONCLUSION

Employers subject to the ADA and ADAAA provisions must explore reasonable accommodations and engage in the interactive process with employees deemed to have a disability.

Demonstrating good-faith activities and proactive behaviors (e.g., supervisor training on how to handle such issues) can go a long way to prove your company's efforts in identifying and promoting an appropriate accommodation. On the other hand, be careful of making any improper employee requirements for an accommodation without communicating with the employee first. If choosing not to apply best practices within the interactive process, then an employer is setting up the business for increased risks of employee complaints and punitive damages. Thus, before deciding whether an employee should, can, or cannot be accommodated, be sure to consult with an HR Professional for guidance.

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