

# HR Insights

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## Americans with Disabilities Act: Questions and Answers

The Americans with Disabilities Act (ADA) gives civil rights protections to disabled individuals that are similar to those provided to on the basis of race, color, sex, national origin, age and religion. It guarantees equal opportunity for disabled individuals in public accommodations, employment, transportation, state and local government services and telecommunications. The following are questions frequently asked by employers regarding the ADA.

### Q. What employers are covered by the ADA, and when is the coverage effective?

A. The employment provisions of title I of the ADA apply to private employers, state and local governments, employment agencies and labor unions. Employers with 15 or more employees are covered.

In addition, the employment practices of state and local governments of any size are covered by title II of the ADA. The standards to be used under title II for determining whether employment discrimination has occurred depend on whether the public entity at issue is also covered by title I. If the public entity is covered by title I, then title I standards will apply. If not, the standards of section 504 of the Rehabilitation Act will apply.

### Q. What practices and activities are covered by the employment nondiscrimination requirements?

A. The ADA prohibits discrimination in all employment practices, including job application

procedures, hiring, firing, advancement, compensation, training and other terms, conditions and privileges of employment. It applies to recruitment, advertising, tenure, layoff, leave, fringe benefits and all other employment-related activities.

### Q. Who is protected from employment discrimination?

A. Employment discrimination is prohibited against "qualified individuals with disabilities." A person discriminated against because he or she has a known association or relationship with a disabled individual is also protected. The ADA defines an "individual with a disability" as a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment or is regarded as having such an impairment.

The first part of the definition makes clear that the ADA applies to persons who have substantial, as distinct from minor, impairments, and that these must be impairments that limit major life activities such as seeing, hearing, speaking, walking, breathing, performing manual tasks, learning, caring for oneself and working. An individual with epilepsy, paralysis, a substantial hearing or visual impairment, mental retardation or a learning disability would be



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covered, but an individual with a minor, nonchronic condition of short duration, such as a sprain, infection or broken limb, generally would not be covered.

The second part of the definition would include, for example, a person who has a history of cancer but is in remission, or a person with a history of mental illness.

The third part of the definition protects individuals who are regarded and treated as though they have a substantially limiting disability, even though they may not have such an impairment. For example, this provision would protect a severely disfigured qualified individual from being denied employment because an employer feared the "negative reactions" of others.

### **Q. Who is a "qualified individual with a disability?"**

A. A qualified individual with a disability is a person who meets legitimate skill, experience, education or other requirements of an employment position that he or she holds or seeks, and who can perform the "essential functions" of the position with or without reasonable accommodation. Requiring the ability to perform "essential" functions ensures that an individual will not be considered unqualified simply because of inability to perform marginal or incidental job functions. If the individual is qualified to perform essential job functions except for limitations caused by a disability, the employer must consider whether the individual could perform these functions with a reasonable accommodation. If a written job description has been prepared in advance of advertising or interviewing applicants for a job, this will be considered as evidence, though not necessarily conclusive evidence, of the essential functions of the job.

### **Q. Does an employer have to give preference to a qualified applicant with a disability over other applicants?**

A. No. An employer is free to select the most qualified applicant available and to make decisions based on reasons unrelated to the existence or consequence of a disability. For example, if two persons apply for a job opening as a typist, one a person with a disability who accurately types 50 words per minute, the other a person without a disability who accurately types 75 words per minute, the employer may hire

the applicant with the higher typing speed, if typing speed is needed for successful performance of the job.

### **Q. What is "reasonable accommodation"?**

A. Reasonable accommodation is a modification or an adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to participate in the application process or to perform essential job functions. Reasonable accommodation also includes adjustments to ensure that a qualified individual with a disability has rights and privileges in employment equal to those of nondisabled employees.

### **Q. What kinds of actions are required to reasonably accommodate applicants and employees?**

A. Examples of reasonable accommodation include making existing facilities used by employees readily accessible to and usable by a disabled individual; restructuring a job, modifying work schedules, acquiring or modifying equipment, providing qualified readers or interpreters or appropriately modifying examinations, training, or other programs. Reasonable accommodation may also include reassigning a current employee to a vacant position for which he or she is qualified, if the person becomes disabled and is unable to do the original job. However, there is no obligation to find a position for an applicant who is not qualified for the position sought. Employers are not required to lower quality or quantity standards in order to make an accommodation, nor are they obligated to provide personal use items such as glasses or hearing aids.

The decision about the appropriate accommodation must be based on the particular facts of each case. In selecting the particular type of reasonable accommodation to provide, the principal test is that of effectiveness, i.e., whether the accommodation will enable the disabled person to do the job in question.

### **Q. Must employers be familiar with many different disabilities to know whether or how to make a reasonable accommodation?**

A. No. An employer is required to accommodate only a "known" disability of a qualified applicant or employee. The requirement generally will be triggered by a request from an

individual with a disability who often can also suggest an appropriate accommodation. Accommodations must be made on an individual basis, because the nature and extent of a disabling condition and the requirements of the job will vary in each case. If the individual does not request an accommodation, the employer is not obligated to provide one. If a disabled person requests, but cannot suggest, an appropriate accommodation, the employer and the individual should work together to identify one. There are also many public and private resources that can provide low-cost assistance.

### **Q. What are the limitations on the obligation to make a reasonable accommodation?**

A. The disabled individual requiring the accommodation must be otherwise qualified, and the disability must be known to the employer. In addition, an employer is not required to make an accommodation if it would impose an "undue hardship" on the operation of the employer's business. "Undue hardship" is defined as "an action requiring significant difficulty or expense" when considered in light of a number of factors. These factors include the nature and cost of the accommodation in relation to the size, resources, nature and structure of the employer's operation. Where the facility making the accommodation is part of a larger entity, the structure and overall resources of the larger organization would be considered, as well as the financial and administrative relationship of the facility to the larger organization. In general, a larger employer would be expected to make accommodations requiring greater effort or expense than would be required of a smaller employer.

### **Q. Must an employer modify existing facilities to make them accessible?**

A. An employer may be required to modify facilities to enable an individual to perform essential job functions and to have equal opportunity to participate in other employment-related activities. For example, if an employee lounge is located in a place inaccessible to a person using a wheelchair, the lounge might be modified or relocated, or comparable facilities might be provided in a location that would enable the individual to take a break with coworkers.

### **Q. May an employer inquire about whether a prospective employee is disabled?**

A. An employer may not make a pre-employment inquiry on an application form or in an interview about whether, or to what extent, an individual is disabled. The employer may ask a job applicant whether he or she can perform particular job functions. If the applicant has a disability known to the employer, the employer may ask how he or she can perform job functions that the employer considers difficult or impossible to perform because of the disability, and whether an accommodation would be needed. A job offer may be conditioned on the results of a medical examination, provided that the examination is required for all entering employees in the same job category regardless of disability, and that information obtained is handled according to confidentiality requirements specified in the Act. After an employee enters duty, all medical examinations and inquiries must be job-related and necessary for the conduct of the employer's business. These provisions of the law are intended to prevent the employer from basing hiring and employment decisions on unfounded assumptions about the effects of a disability.

### **Q. Does the ADA take safety issues into account?**

A. Yes. The ADA expressly permits employers to establish qualification standards that will exclude individuals who pose a direct threat—i.e., a significant risk of substantial harm—to the health or safety of the individual or of others, if that risk cannot be lowered to an acceptable level by reasonable accommodation. However, an employer may not simply assume that a threat exists; the employer must establish through objective, medically supportable methods that there is genuine risk that substantial harm could occur in the workplace. By requiring employers to make individualized judgments based on reliable medical or other objective evidence rather than on generalizations, ignorance, fear, patronizing attitudes or stereotypes, the ADA recognizes the need to balance the interests of people with disabilities against the legitimate interests of employers in maintaining a safe workplace.

## **Q. Can an employer refuse to hire an applicant or fire a current employee who is illegally using drugs?**

A. Yes. Individuals who currently engage in the illegal use of drugs are specifically excluded from the definition of a "qualified individual with a disability" protected by the ADA when an action is taken on the basis of their drug use.

## **Q. Is testing for illegal drugs permissible under the ADA?**

A. Yes. A test for illegal drugs is not considered a medical examination under the ADA; therefore, employers may conduct such testing of applicants or employees and make employment decisions based on the results. The ADA does not encourage, prohibit or authorize drug tests.

## **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.

## **Q. How does the ADA recognize public health concerns?**

A. No provision in the ADA is intended to supplant the role of public health authorities in protecting the community from legitimate health threats. The ADA recognizes the need to strike a balance between the right of a disabled person to be free from discrimination based on unfounded fear and the right of the public to be protected.

## **Q. What is discrimination based on "relationship or association"?**

A. The ADA prohibits discrimination based on relationship or association in order to protect individuals from actions based on unfounded assumptions that their relationship to a person with a disability would affect their job performance, and from actions caused by bias or misinformation concerning certain disabilities. For example, this provision would protect a person with a disabled spouse from being denied employment because of an employer's unfounded assumption that the applicant would use excessive leave to care for the spouse. It also would protect an individual who does volunteer work for people with AIDS from a discriminatory employment action motivated by that relationship or association.

## **Q. Will the ADA increase litigation burdens on employers?**

A. Some litigation is inevitable. However, employers who use the period prior to the effective date of employment coverage to adjust their policies and practices to conform to ADA requirements will be much less likely to have serious litigation concerns. In drafting the ADA, Congress relied heavily on the language of the Rehabilitation Act of 1973 and its implementing regulations. There is already an extensive body of law interpreting the requirements of that Act to which employers can turn for guidance on their ADA obligations. The Equal Employment Opportunity Commission, which has issued regulations implementing the ADA's title I employment provisions, published a technical assistance manual with guidance on how to comply and will provide other assistance to help employers meet ADA requirements. Equal employment opportunity for people with disabilities will be achieved most quickly and effectively through widespread voluntary compliance with the law, rather than through reliance on litigation to enforce compliance.

## **Q. How are the employment provisions enforced?**

A. The employment provisions of title I of the ADA are enforced under the same procedures applicable to race, sex, national origin and religious discrimination under title VII of the Civil Rights Act of 1964. Complaints may be filed with the Equal Employment Opportunity Commission or designated state human rights agencies. Remedies may include hiring, reinstatement, back pay, court orders to stop discrimination and reasonable accommodation. Compensatory damages may be awarded for actual monetary losses and for future monetary losses, mental anguish and inconvenience. Punitive damages may be available as well, if an employer acts with malice or reckless indifference. Attorney's fees may also be awarded.

For more information see [www.ada.gov](http://www.ada.gov) or [www1.eeoc.gov/eeoc/publications/adaqa1.cfm](http://www1.eeoc.gov/eeoc/publications/adaqa1.cfm).

*Source: U.S. Equal Employment Opportunity Commission*