

COMPLIANCE OVERVIEW

Provided by Clarke & Company Benefits, LLC

Americans with Disabilities Act (ADA)

The Americans with Disabilities Act (ADA) makes it illegal for covered employers to discriminate against qualified individuals with disabilities in all employment practices, such as recruitment, compensation, hiring and firing, job assignments, training, leave and benefits. Employers with **15 or more employees** are covered by the ADA.

The ADA requires a covered employer to provide a reasonable accommodation to an employee or job applicant with a disability, unless doing so would impose an **undue hardship** on the operation of the employer's business. Reasonable accommodation might include, for example, making the workplace accessible for wheelchair users or providing a reader or interpreter for someone who is blind or hearing impaired.

Not everyone with a medical condition is protected by the ADA. In order to be protected, a person must be qualified for the job and have a disability as defined by the law.

LINKS AND RESOURCES

- [Text of the ADA](#)
- U.S. Equal Employment Opportunity Commission (EEOC) [overview](#) regarding disability discrimination
- EEOC's [fact sheet](#) on recruiting, hiring, retaining and promoting people with disabilities
- EEOC's [fact sheet](#) on employer-provided leave and the ADA

This Compliance Overview is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

HIGHLIGHTS

ADA BASICS

- The ADA prohibits disability discrimination in the workplace.
- Disability discrimination occurs when an employer treats a qualified applicant or employee unfavorably because he or she has a disability.
- The EEOC is the federal agency that enforces the ADA.

EMPLOYER RESPONSIBILITIES

- After being made aware of an employee's disability, the employer should discuss his or her needs (interactive process).
- The employer should make adjustments or modifications (reasonable accommodations).
- The employer is not required to make accommodations that are too difficult or expensive (undue hardship).



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COVERED EMPLOYERS

The ADA covers employers with **15 or more employees**, including state and local governments. It also applies to employment agencies and labor organizations. The ADA's nondiscrimination standards also apply to federal sector employees under a separate federal law.

PROHIBITED EMPLOYMENT PRACTICES

The ADA prohibits covered employers from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training and other terms, conditions and privileges of employment.

In addition, the ADA prohibits an employer from retaliating against an applicant or employee for asserting his rights under the ADA. It is also unlawful to discriminate against an applicant or employee, whether disabled or not, because of the individual's family, business, social or other relationship or association with an individual with a disability.

QUALIFIED INDIVIDUALS WITH DISABILITIES

The ADA protects qualified individuals with disabilities from employment discrimination. Under the ADA, a person has a disability if he 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.

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.

A major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.

A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question. **Essential functions are the basic job duties that an employee must be able to perform, with or without reasonable accommodation.** 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 that function can be distributed); and
- The degree of expertise or skill required to perform the function.

REASONABLE ACCOMMODATION

A reasonable accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. Reasonable accommodation may include, but is not limited to:

- Making existing facilities used by employees readily accessible to and usable by persons with disabilities;
- Job restructuring, modifying work schedules, reassignment to a vacant position; and
- Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies and providing qualified readers or interpreters.

Examples of reasonable accommodations:

- A deaf applicant may need a sign language interpreter during the job interview
- An employee with diabetes may need regularly scheduled breaks during the workday to eat properly and monitor blood sugar and insulin levels
- A blind employee may need someone to read information posted on a bulletin board
- An employee with cancer may need leave to undergo radiation or chemotherapy treatments

An employer is required to make a reasonable accommodation for the known disability of a qualified applicant or employee if it would not impose an undue hardship on the operation of the employer's business. Accommodations vary depending upon the needs of the individual applicant or employee. Not all people with disabilities (or even all people with the same disability) will require the same accommodation.

An employer does not have to provide a reasonable accommodation if it imposes an undue hardship. An employer is not required to lower quality or production standards to make an accommodation; nor is an employer obligated to provide personal use items such as glasses or hearing aids.

An **undue hardship** is an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources and the nature and structure of its operation.

An employer generally does not have to provide a reasonable accommodation unless an individual with a disability has asked for one. If an employer believes that a medical condition is causing a performance or conduct problem, it may ask the employee how to solve the problem and if the employee needs a reasonable accommodation. Once a reasonable accommodation is requested, the employer and the individual should discuss the individual's needs and identify the appropriate reasonable accommodation. This is the interactive process. Where more than one accommodation would work, the employer may choose the one that is less costly or that is easier to provide.

ADDITIONAL PROTECTIONS

The ADA provides these additional protections to employees:

Medical examination and inquiries	Employers may not ask job applicants about the existence, nature or severity of a disability. Applicants may be asked about their ability to perform essential job functions. A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in similar jobs. Medical examinations of employees must be job-related and consistent with the employer's business needs.
Medical records	Medical records are confidential. The basic rule is that, with limited exceptions, employers must keep any medical information they learn about an applicant or employee confidential. Information can be confidential even if it contains no medical diagnosis or treatment course and even if it is not generated by a health care professional. For example, an employee's request for a reasonable accommodation would be considered medical information subject to the ADA's confidentiality requirements.

Employees and applicants currently engaging in the illegal use of drugs **are not** covered by the ADA when an employer acts on the basis of illegal drug use. Tests for illegal drugs are not subject to the ADA's restrictions on medical examinations. Employers may hold illegal drug users and alcoholics to the same performance standards as other employees.

RETALIATION

It is unlawful to retaliate against an individual for opposing employment practices that discriminate based on disability or for filing a discrimination charge, testifying or participating in any way in an investigation, proceeding or litigation under the ADA.

POSTING NOTICES

Every employer covered by the ADA must post notices, including the [EEO is the Law](#) poster, in an accessible format to applicants, employees and members describing the applicable ADA provisions.

Source: U.S. Equal Employment Opportunity Commission