



## FACTS ABOUT The ADA Americans with Disabilities Act

This Facts Sheet is intended to provide valuable information to you. Please read this Facts Sheet carefully and keep it in a safe place for future reference. If you have further questions, contact your immediate supervisor or human resources department.

### What is the Americans with Disabilities Act (ADA)?

The ADA is a federal law that prohibits employers from discriminating against qualified disabled applicants and employees in hiring, firing, advancement, and other terms and conditions of employment. The ADA also requires employers to provide reasonable accommodation for qualified individuals with disabilities, unless doing so would cause the employer undue hardship. Reasonable accommodation is integral to achievement of the ADA's objectives, because it is one of the ways employers can assist qualified disabled individuals in overcoming unnecessary barriers that may prevent or restrict their employment opportunities. The ADA was not intended to give disabled applicants and employees advantages over nondisabled individuals, however. Rather, the law was enacted to give them a level playing field with their nondisabled counterparts.

### Who must comply with the ADA?

State and local governments, employment agencies, labor unions, joint labor-management committees, and private employers with 15 or more employees must comply with the ADA.

### What does it mean to be "disabled" under the ADA?

According to the ADA, an individual with a disability is a person who meets any of the following criteria:

- has a physical or mental impairment that substantially limits one or more major life activities

- has a record of such an impairment
  - is regarded as having such an impairment
- "Major life activities" are those that an average person can perform with little or no difficulty, including but 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. Major life activities also include the operation of major bodily functions, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.

Disabilities recognized by the ADA may be mental or physical. Common examples include: alcoholism, asthma, attention deficit disorders, blindness, blood disorders, brain/head injuries, cancer, cardiovascular/heart problems, cerebral palsy, carpal tunnel syndrome, cystic fibrosis, depression, diabetes, disfigurement, drug addiction (excluding current illegal abuse), dyslexia, eating disorders, epilepsy/seizures, hearing impairments, HIV/AIDS, learning disabilities, mental retardation, multiple sclerosis, paralysis, psychiatric disorders, and speech impairments.

"A record of such impairment" would include someone who:

- had a physical or mental disorder but no longer has that impairment; or
- was misclassified as having such impairment.

An example would be individuals with a history of heart disease or cancer whose illnesses are either cured, controlled or in remission, or an individual of normal intelligence who was mistakenly classified as "mentally retarded" or "learning-disabled."

An individual who is "regarded as having such an impairment" is someone who is not substantially limited in a major life activity but who may be perceived as having such a limitation.

### Who is protected by the ADA?

The person must meet the definition of "disabled" as discussed in the previous section. But disability alone does not guarantee an individual protection under the act. The ADA specifically prohibits employment discrimination against *qualified* individuals with disabilities. To be considered "qualified," the individual must meet the skill, experience, education, and other job-related requirements of the position he or she holds or is seeking. In addition, to be qualified, the applicant or employee must be able to perform the job's essential functions, with or without reasonable accommodation. Essential functions are usually considered to be tasks that are so central to the position that they cannot be eliminated without fundamentally changing the job.

### May an employer take into account the medication I am taking when determining whether I am disabled under the ADA?

According to the Americans with Disabilities Act Amendments Act (ADAAA), effective January 1, 2009, employers should not take into account the benefits of available treatment or medication when making the determination of whether an individual is disabled. The ADAAA requires employers to evaluate the existence of a qualifying disability without considering positive effects of:

- Medication; medical supplies, equipment, or appliances; low-vision devices, prosthetics, including limbs and devices; hearing aids and cochlear implants or other implantable hearing devices; mobility devices; or oxygen therapy equipment and supplies



- Use of assistive technology
- Reasonable accommodations or auxiliary aids or services (e.g., qualified interpreters or readers)
- Learned behavioral or adaptive neurological modifications

As an exception to the rule, when it comes to vision impairments, employers are permitted to consider the corrective effects of ordinary eyeglasses and contact lenses. In other words, a person whose vision is 20/20 with ordinary glasses cannot assert an ADA claim based on his/her vision impairment.

## What is a reasonable accommodation?

Many disabled individuals are qualified to perform the essential functions of a job without any accommodation. However, when an otherwise qualified individual cannot perform one or more of the essential functions of a job because of his or her disability, the employer must consider whether there are any modifications or adjustments that could be made to the job that would allow the person to perform the job. These modifications or adjustments are "reasonable accommodations." These could be changes or modifications to the job's functions or the job's physical environment, or modifying the way the job is performed. Stated another way, a reasonable accommodation is any change in the work environment or in the way a job is performed that enables a person with a disability to enjoy employment opportunities equal to those of nondisabled persons.

## How should an applicant or employee let an employer know that he or she needs an accommodation?

The individual must let the employer know that he or she needs an adjustment or change at work for a reason related to that person's disability. An individual may use "plain English" and need not mention the ADA or use the phrase, "reasonable accommodation." Requests for reasonable accommodation do not need to be in writing, though an employer may choose to write a memorandum or letter confirming the request.

## What should an employer do after receiving a request for an accommodation?

The employer and the individual with a disability should **engage in an informal process** to clarify what the individual needs and identify the appropriate reasonable accommodation. The employer may ask the individual questions that will enable him/her to make an informed decision about the request. This includes asking what form of reasonable accommodation is needed.

When the **disability and/or the need for accommodation is not obvious**, the employer may ask the individual for **reasonable documentation** about his or her disability and functional limitations.

## May an employer ask an employee whether a reasonable accommodation is needed when an employee with a disability has not asked for one?

If an employer knows an employee has a disability, he/she may ask whether he or she needs a reasonable accommodation when it reasonably believes that the employee may need an accommodation to perform the job, especially if there are safety concerns.

## Must an employer provide the employee the accommodation the individual prefers?

The employer may choose among reasonable accommodations, as long as the chosen accommodation is effective (i.e., it removes the workplace barrier at issue). The employer may offer other suggestions for reasonable accommodations to remove the workplace barrier in question. If there are two possible reasonable accommodations, and one costs more or is more difficult to provide, the employer may choose the one that is less expensive or easier to provide, so long as it is effective.

## Are there certain things that are not considered reasonable accommodations and are therefore not required?

An employer does not have to eliminate a primary job responsibility.

An employer is not required to lower production standards that are applied to all employees, though it may have to provide reasonable accommodation to enable an employee with a disability to meet them.

An employer does not have to provide an employee's personal use items, such as a prosthetic limb, a wheelchair, eyeglasses, hearing aids or similar devices.

An employer never has to excuse a violation of a uniformly applied conduct rule that is job-related and consistent with business necessity. This means, for example, that an employer never has to tolerate or excuse violence, threats of violence, stealing, or destruction of property. An employer may discipline an employee with a disability for engaging in such misconduct if it would impose the same discipline on an employee without a disability.

## What if the employer believes that the accommodation would constitute an undue hardship?

An employer never has to provide any reasonable accommodation that causes undue hardship, meaning significant difficulty or expense. Undue hardship refers not only to financial difficulty, but also to reasonable accommodations that are unduly extensive or disruptive, or those that would fundamentally alter the nature or operation of the business.