



The Academy for
Addiction Professionals

The American's With Disability Act

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American's With Disability Act

The Americans with Disabilities Act (ADA), which was signed into law on July 26, 1990, is the nation's first comprehensive civil rights law addressing the needs of people with disabilities, prohibiting discrimination in employment, public services, public accommodations, and telecommunications. The ADA assures equality of opportunity, full participation, independent living, and economic self-sufficiency to persons with disabilities.

The Five Titles of Americans with Disabilities Act

I—Employment

Title I states that businesses must provide reasonable accommodations to protect the rights of individuals with disabilities in all aspects of employment. These include but are not limited to hiring, promotion and transfers, discharges, wages, job training, benefits, and job description.

II—Public Services

Title II prohibits discrimination to all subdivisions of State and Local Government.

III—Public Accommodations

Title III prohibits discrimination by a private business serving the public.

IV—Telecommunications

Title IV prohibits discrimination in public communications.

V—Miscellaneous Provisions

Title V applies to miscellaneous provisions which apply to The United States Equal Employment Opportunity Commission's enforcement of Title I.

- Title I of the Act covers employers with 15 or more employees, including State and local governments. It also applies to private employers, employment agencies and to labor organizations.
- Title V of the Act allows states to be sued under the ADA. Title V prohibits coercion or threatening. Title V prohibits retaliating against the disabled or those attempting to aid people with disabilities in asserting their rights under the ADA.

Definition of Disability

There are two definitions that are key to the Title I employment provisions of the ADA: “individual with a disability”, and “qualified individual with a disability.”

According to the ADA, a person who is “disabled” must have at least one of the following:

- A physical or mental impairment that substantially limits one or more major life activities;
- Has a record of having such an impairment; or
- Being regarded as having such an impairment.

**Diagnosis of impairment does not necessarily mean a disability.*

Qualified Individual

A “qualified individual” is a person with or without reasonable accommodation that can perform the essential functions of the employment position that such individual holds or desires. Consideration shall be given to the employer’s judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

Major Life Activities

Major life activities include, but are not limited to:

Walking, seeing, hearing, breathing, eating, speaking, learning, reading, communicating, and caring for oneself. This also includes major bodily functions such as the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

Mental Impairment

ADA defines a Mental Impairment as:

“any mental or psychological disorder, such as an intellectual disability (formerly termed “mental retardation”), organic brain syndrome, emotional or mental illness, and specific learning disabilities.”

Conditions / Lifestyles Not Covered

There are certain conditions or lifestyles **not** covered by the ADA as follows:

- Current illegal drug use
- Certain sexual disorders and sexual preference – The ADA definition of disability does not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders. The ADA does not view homosexuality or bisexuality as covered disabilities.
- Compulsive gambling, kleptomania, and pyromania

Undue Hardship

An employer is required to make a reasonable accommodation to 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. Reasonable accommodations are adjustments or modifications provided by an employer to enable people with disabilities to enjoy equal employment opportunities. For example; a modified work schedule, modified equipment, job restructuring, providing readers or interpreters, changing training materials or policies. 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. For example:

- 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 have radiation or chemotherapy treatments.

An employer does not have to provide a reasonable accommodation if it imposes an “undue hardship.” **Undue hardship** is defined as 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 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 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. Where more than one accommodation would work, the employer may choose the one that is less costly or that is easier to provide.

Discrimination

No covered entity shall discriminate against a qualified individual on the basis of disability, in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions and privileges of employment. Disability discrimination occurs when an employer or other entity covered by the Americans with Disabilities Act, as amended, or the Rehabilitation Act, as amended, treats a qualified individual with a disability who is an employee or applicant unfavorably because she has a disability.

Disability discrimination also occurs when a covered employer or other entity treats an applicant or employee less favorably because she has a history of a disability (such as cancer that is controlled or in remission) or because she is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if she does not have such an impairment).

The law also protects people from discrimination based on their relationship with a person with a disability (even if they do not themselves have a disability). For example, it is illegal to discriminate against an employee because her husband has a disability.

It is also 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.

Title I of the ADA also covers:

➤ **Medical Examinations 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 specific 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 are confidential. The basic rule is that with limited exceptions, employers must keep confidential any medical information they learn about an applicant or employee. 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.

➤ **Drug and Alcohol Abuse**

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 such 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.

Title V – Miscellaneous Provisions

- Allows states to be sued under the ADA – A State shall not be immune from an action in Federal or State court for a violation of the ADA.
- Permits payment of attorney/expert witness fees.
- Prohibits coercion and retaliation – No person shall discriminate against any individual because such individual has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter. It is unlawful to coerce, intimidate, threaten, or interfere with any individual that has aided or encouraged rights protected under ADA.
- Does not invalidate laws that provide greater protection.
- Encourages alternative methods of resolutions – Where appropriate, the use of alternative means of dispute resolution, including settlement negotiations, mediation, fact finding, mini trials and arbitration are encouraged to resolve disputes.

Enforcement of Title I ADA

The Equal Employment Opportunity Commission (EEOC) enforces the provisions of the ADA which prohibit job discrimination. Individuals who believe they have been discriminated against on the basis of their disability can file a charge with the Commission at any of its offices located throughout the United States. A charge of discrimination must be filed within 180 days of the discrimination.

The Commission will investigate and initially attempt to resolve the charge through conciliation, following the same procedures used to handle charges of discrimination filed under Title VII of the Civil Rights Act of 1964. The ADA also incorporates the remedies contained in Title VII. These remedies include hiring, promotion, reinstatement, back pay, and attorney's fees.

Reasonable accommodation is also available as a remedy under the ADA. The complainant can file a private lawsuit. Compensatory and punitive damages may be awarded. The Commission believes that employers want to comply with the ADA and that if they are given sufficient information on how to comply, they will do so voluntarily.

The ADA requires that you post a notice in an accessible format to applicants, employees and members of labor organizations, describing the provisions of the Act. EEOC will provide employers with a poster summarizing these and other Federal legal requirements for nondiscrimination. EEOC will also provide guidance on making this information available in accessible formats for people with disabilities.

Clarifications of ADA

- The Act does not require an organization to hire the disabled.
 - The Act does not require an organization to give preference to the disabled.
 - The Act requires that the disabled be given an equal opportunity, and if best qualified, be given the job.
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For more specific information about ADA requirements affecting *employment* contact:

Equal Employment Opportunity Commission

P.O. Box 7033

Lawrence, Kansas 66044

(800) 669-4000 (Voice), (800) 669-6820 (TDD)

For more specific information about ADA requirements affecting *public accommodations and State and local government services* contact:

Department of Justice

Office on the Americans with Disabilities Act

Civil Rights Division

P.O. Box 66118

Washington, DC 20035-6118

(202) 514-0301 (Voice)

(202) 514-0381 (TDD)

(202) 514-0383 (TDD)

References

http://www.ada.gov/ada_title_I.htm

webpages.shepherd.edu/MJACOBS/**Americans**.

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