
THE AMERICANS WITH DISABILITIES ACT (ADA) TITLE I: EMPLOYMENT

BACKGROUND

The Americans With Disabilities Act (ADA) was designed to protect persons with disabilities from a variety of forms of discrimination. The ADA contains several "Titles." Title I addresses the area of employment and became effective for the Agricultural Center on July 26, 1992. Title I of the ADA is concerned primarily with three issues:

1. Prohibiting selection criteria which screen out or tend to screen out persons with disabilities and which are neither job-related nor consistent with business necessity.
2. Identifying those job functions of a position which are truly essential and those which are only marginal.
3. Ensuring that disabled persons are provided with reasonable accommodations so that they can meet legitimate job requirements.

The following chart shows basic employer responsibilities in complying with the ADA. The remainder of this document defines key terms and provides details of these responsibilities.

Basics of the Americans with Disabilities Act	
<i>Determine whether an employee or applicant is covered by the ADA.</i>	Is the disability covered by the ADA <u>and</u> is the person otherwise qualified to perform the essential functions of the job (i.e., possesses the necessary skills, education and employment experience) ?
<i>Determine the essential functions of the job.</i>	Essential functions are the fundamental job duties as opposed to the marginal job duties.
<i>Determine whether reasonable accommodations are appropriate.</i>	Could the applicant/employee perform the essential job duties if reasonable accommodations were made? What reasonable accommodations are possible?
<i>Ensure that the interview and selection process is free from illegal inquiries.</i>	An applicant may not be asked any questions regarding disabilities and physical condition in the interview and selection process. An applicant may only be asked whether he/she is able to perform the essential functions of the job.
<i>All information concerning disabilities is strictly confidential.</i>	
<i>An employer may refuse to hire an individual whose disability poses a direct threat to his/her safety or the- safety of others.</i>	

The ADA differs from previous laws covering persons with disabilities by requiring more in the area of accommodation and looking only at essential functions when determining whether a person with a disability will be able to perform a particular job. It does *not* establish quotas or mandate the hiring of persons with disabilities who are not otherwise qualified to perform the essential functions of the job. The employer's goal remains hiring the person best qualified to perform the essential functions of the job. The qualifications of a person with a disability are not diminished as long as the person can perform the essential functions of the job with or without a reasonable -accommodation.

A proper attitude about disabilities is crucial to successful implementation of the ADA in the workplace. The primary goal of Title I of the ADA is to allow persons with various disabilities to participate as much as possible in the work force. It is estimated that 43,000,000 Americans have one or more physical or mental disabilities. The ADA encourages employers to recognize the valuable contributions these persons can make. It attempts to bring our focus on the *ability* of the person, not the *disability*.

In addition to *applicants* for positions, the ADA applies to existing employees with disabilities and existing employees who develop disabilities in the future.

IDENTIFYING QUALIFIED PERSONS WITH DISABILITIES UNDER THE ADA

In determining whether a person is a Qualified Person with a disability under the ADA, we must review two aspects: whether the disability is covered by the ADA and whether the person is qualified to perform the job in question. .

Definition of a DISABILITY:

A person has a disability under the ADA if he or she meets the criteria below.

1. *The person has a physical or mental impairment that substantially limits B major life activity.* A physical impairment is any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine.. A mental impairment is any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. An impairment affects how the body functions physically and mentally. A substantial limitation means that the person cannot perform a major life function at all or cannot perform a major life function as well as the average person. Major life activities include sitting, standing, lifting, reaching, hearing, breathing, seeing, speaking, walking, performing manual tasks, caring for oneself, learning or working. In looking at whether an impairment substantially limits major life activities, consider the impairment's nature and severity; how long it will last or is expected to last; and its permanent or long term impact or expected impact. Examples of disabilities covered under this criteria are blindness, cerebral palsy, dyslexia, identifiable stress disorders, and tuberculosis.
2. *The person has a record of a substantially limiting impairment.* Someone who has a record or a history of a past disability is considered to be a person with a disability under the ADA. Examples of these disabilities are a person with a history of cancer which is currently in remission, an

alcoholic who is currently under rehabilitation, a drug addict who has been successfully rehabilitated and has not engaged in the illegal use of drugs since receiving treatment.

3. *The person is regarded as having a substantially limiting impairment.* A person may have an impairment that does not limit a major life function. However, the employer who treats the person as if he/she has a disability, is in violation of the ADA. Examples are a person with severe facial scars or a person with high blood pressure that is not substantially limiting if the employer limits work opportunities out of fear that the person will suffer a heart attack under strenuous duty.
4. *The person is someone who associates with persons with a disability.* For example, it would be unlawful to refuse to hire someone who associates with a person who has AIDS.

Note that temporary conditions of short duration with little or no long-term impact, such as a broken leg, are generally not considered disabilities under the ADA. However, if the broken leg causes a permanent limp, the person is then covered by the ADA. Also, the following conditions are not covered by the ADA: illegal use of drugs, psychoactive substance use disorders resulting from current illegal use of drugs, homosexuality and bisexuality and sexual and behavioral disorders such as transvestism, pedophilia, and kleptomania.

Definition of QUALIFIED:

As mentioned above, just because a person has a disability as defined above does not mean the person is entitled to employment rights under the ADA. The person must also be *qualified* to perform the *essential functions of the job*. Two questions are asked in making this determination.

1. *Does the person have the skills, education, employment experience or licenses required for the job?*
2. *Can the person perform the essential functions of the job with or without reasonable accommodation?*

DETERMINING THE ESSENTIAL FUNCTIONS OF THE JOB

Essential functions are the *fundamental* job duties, as opposed to the *marginal* job duties. In determining what the essential functions are, the areas listed below must be analyzed.

1. Are employees actually required to perform tasks that the employer asserts are essential? In other words, have past incumbents of the job been required to perform those duties?
2. Is that function the reason the job exists? For example, if an individual is hired to proofread documents, the ability to proofread is an essential function since that is the reason the job exists. Otherwise, consider a position which is established to serve as a floating supervisor. to substitute when regular supervisors are absent from day, night, and graveyard shifts. The ability to work any time of day is an essential function.
3. How many employees are available to perform the job function? Are there a limited number of other employees who could perform the function in place of this position? It may be an essential function for a file clerk to answer the telephone if there is only one other employee in a very busy office.
4. How much time is spent performing the function. Generally, any function performed for only a small amount of time is not an essential function.

5. What degree of expertise or skill is required to perform the function? If skill in communicating in a foreign language is the reason a job is established, then the ability to communicate fluently is an essential function.

Several sources of information are used in determining essential functions.

- The job description (the primary source).
- The employer's judgment.
- Work experience of people who have performed the job in the past and people who currently perform similar jobs.
- The nature of the work operation and the organizational structure.

Remember, however, that a person with a disability who cannot perform the essential functions of the job cannot be excluded from consideration *if* the person *would* be able to perform the essential functions with a reasonable accommodation.

REASONABLE ACCOMMODATIONS

Many individuals with disabilities are qualified to perform the essential functions of jobs without need of any accommodation. However, if an individual with a disability who is otherwise qualified cannot perform one or more essential job functions because of a disability, the employer must consider whether there are modifications or adjustments that would enable the person to perform these functions. These are called *reasonable accommodations*. The employer generally has an obligation to make accommodations except where they would pose an undue hardship (i.e., significant difficulty or expense). Always contact the Ag Center Human Resource Management Office for assistance before implying to an applicant or employee that an accommodation would pose an undue hardship. The final determination will be made by the appropriate Vice Chancellor with the Chancellor's approval where necessary.

Examples of reasonable accommodations are:

- making facilities readily accessible to and usable by an individual with a disability
- restructuring a job by reallocating or redistributing marginal job functions
- altering when or how an essential job function is performed part-time or modified work schedules
- obtaining or modifying equipment or devices
- modifying examinations, training materials or policies
- providing qualified readers and interpreters
- reassignment to a vacant position
- permitting use of accrued paid leave or unpaid leave for necessary treatment
- providing reserved parking for a person with a mobility impairment
- allowing an employee to provide equipment that an employer is not required to provide

The employer is obligated to make an accommodation only for the *known* limitations of an otherwise qualified individual with a disability. In general, it is the responsibility of the applicant or employee with a disability to inform the employer that an accommodation is needed. The employer does, however, have the responsibility to notify applicants and employees of its obligation to provide accommodations for otherwise qualified individuals with disabilities.

Many employers are concerned that they lack sufficient knowledge to determine an appropriate accommodation. The key is to maintain an open mind and an open dialogue with persons with

disabilities. The person with the disability is often the best source for identifying possible accommodations. The employer should maintain written records on any accommodations considered along with the reasons that certain accommodations are not feasible. The employer also has the right to require proof of the disability. This should be done after a job offer has been made and the employee should be advised that any requested accommodation is contingent upon proof of the disability.

DIRECT THREAT EXCEPTIONS

The ADA does permit an employer to refuse to hire an individual who poses a direct threat to the individual's own health or safety or that of others. A direct threat means a significant risk with a "high probability of substantial harm." Employers must consider the duration of the risk, the nature and severity of the potential harm, and the imminence of the potential harm.