



AMERICANS WITH DISABILITIES ACT (ADA)

The American with Disabilities Act: The Basics

<p>Which employers does the law apply to?</p> <p>Those with:</p> <ul style="list-style-type: none"> • At least 15 employees... • ...during 20 weeks in the current OR preceding year. The weeks don't have to be consecutive. 	<p>Who is protected?</p> <p>People who have an impairment that substantially limits one or more major life activities</p> <p>Employees must be qualified and able to fulfill the essential functions of the job, with or without accommodations</p>
<p>What actions are illegal?</p> <p>Discriminating in hiring, firing, promoting, training and compensating disabled employees, including:</p> <ul style="list-style-type: none"> • Inquiring about disability during the hiring process • Failing to provide access to company facilities, benefits and services • Failing to offer reasonable accommodation that would allow a qualified individual with a disability to perform the job 	<p>Important employer responsibilities</p> <ul style="list-style-type: none"> • Communicating employee rights under the ADA • Protecting confidential employee information • Ensuing an interactive process to determine reasonable accommodation

Discrimination: What's illegal?

Employers could be held legally responsible for employment discrimination, and could have to pay for both compensatory and punitive damages, if they or HR Professionals:

- Make an inappropriate **inquiry** about disability
- Fail to make **reasonable accommodation** for an otherwise qualified individual with a disability unless the accommodation would create an **undue hardship** for your company
- Take an adverse employment action against an individual because of their disability OR
- Fail to hire an otherwise qualified individual with a disability in order to **avoid** making a reasonable accommodation

Under the ADA, employers and HR Professionals **may not**:

- Use **pre-employment tests** that reveal the effects of a sensory, manual or speaking-skills impairment unless the test focus on relevant job skills or aptitudes. Standards or tests that are likely to elicit information about a disability are impermissible. All applicants must be required to take the same tests, without regard to disability, and the tests or job standards cannot be used unless they are job-related and necessary to the business.
- Restrict otherwise qualified applicants or employees with disabilities from employment opportunities or job benefits unless no reasonable accommodation can be made to enable them to perform **essential job functions**
- Eliminate a qualified application who is **caring for a family member** with a disability simply because of a belief that person will miss more work than an applicant without such a commitment
- Include **provisions or terms in contractual relationships**—such as those with employment agencies, labor unions or employee benefit providers—that result in discrimination against employees with disabilities



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The Hiring Process

Under the ADA, you must include qualified individuals with disabilities in your efforts to fill jobs, whether from within or outside the company. Reasonable accommodations may be required during the application process for the applicant with disabilities. Here is how the ADA specifically affects the hiring process:

<p style="text-align: center;">Access</p> <p>Accommodations during the hiring process may be required to assist an applicant in gaining access to the interview locations. You may need to modify architectural barriers or alter the location of an interview as an accommodation.</p>	<p style="text-align: center;">Testing</p> <p>If you require tests, they must be given to all applicants for similar positions and measure only skills required for the job. You must also make reasonable accommodations for people with disabilities to take the test, such as providing a reader or audio-taped test for someone with impaired vision.</p>
<p style="text-align: center;">Application and interview</p> <p>During the hiring process, you may not ask if the applicant has disability or about its nature or severity, unless the condition is obvious, like when an applicant wears a brace. However, you can describe the job and ask about the applicant’s ability to perform the essential job functions. You may not selectively ask some applicants that you suspect are disabled to demonstrate how they will do the job, but not ask all applicants to undertake a similar demonstration.</p>	<p style="text-align: center;">Decision not to hire</p> <p>You do not have to hire an applicant who does not meet job qualifications. For example, if you have a job that requires full-time regular attendance, such as a receptionist job, you do not have to hire an applicant who can only work part-time or who can’t perform the essential functions of the job.</p>



When can you ask disability questions?

Before offering an applicant a job, you can ask disability-related questions only if you are asking for voluntary self-identification of disability for affirmative action purposes, or if you are a federal contractor taking affirmative action under the Rehabilitation Act. In these cases, you must inform the applicant that it isn’t necessary to answer, and that not answering will have no effect on the employment decision. You must also advise the person that the information will be used only in accordance with the law. Finally, the information must be kept separately from the employment application.

Questions? Please contact:

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