

A Review: Americans with Disabilities Act (ADA)

The Americans with Disabilities Act (ADA) prohibits disability discrimination in employment for employers with 15 or more employees. The prohibition is far-reaching and covers hiring, firing, and everything in between, such as promotions, benefits, and harassment in the workplace. The smallest of businesses are not affected by the ADA because of the 15-employee threshold for coverage. The ADA does apply to many of the roughly 25 million small businesses in the nation.

Who Is Protected?

The ADA protects three categories of individuals: those with a physical or mental impairment that substantially limits one or more major life activities (like sitting, standing, or sleeping); those with a record of such an impairment, such as a person who had debilitating cancer but is now in remission; and those who are regarded by employers as having such an impairment, even though the individuals otherwise are not so impaired as to be "disabled" under the ADA. Regardless of the category, the ADA protects only persons who are qualified, that is, they meet job-related requirements and can perform essential functions for the job, with or without a reasonable accommodation.

Hiring

While an employer can ask an applicant a wide range of questions concerning job qualifications, the ADA does not allow medical examinations or questions about disability until the employer has made the applicant a conditional job offer. An exception is recognized for questions directed to an apparently disabled applicant about whether a reasonable accommodation will be required.

After a job offer is made, an employer can ask any disability-related questions and require medical examinations, so long as these requirements apply to everyone in the same job category. For example, if, during a medical examination required of all employees in a job involving the use of dangerous machinery, it is revealed that an applicant has frequent and unpredictable seizures, the employer can withdraw a job offer to that individual.

Medical Information

Once a person is on the job, the ADA allows required medical examinations or questions about a

disability only where there is a reasonable belief, based on objective evidence, that a particular employee will not be able to perform essential job functions or will pose a direct threat because of a medical condition. As an example, if a normally reliable employee has told her employer that a new medication she takes makes her lethargic, and she begins to make many mistakes, the employer can ask her how long the medication can be expected to affect job performance.

Reasonable Accommodation

The ADA differs from most other employment discrimination laws in imposing an accommodation duty on employers. If a disabled person needs a reasonable accommodation in order to apply for, or perform, a job, the employer generally must provide it unless to do so would create an undue hardship. An undue hardship means significant difficulty or expense, based on an employer's resources and operations.

Most accommodations are not expensive or burdensome. A diabetic employee may need regular breaks to eat properly and monitor blood sugar and insulin levels, or a blind employee may need someone to read information posted on a bulletin board. If more than one accommodation will work, the employer may take the option that is less costly or easier to provide.

In addition to the undue hardship defense, an employer need not provide an accommodation which:

- assists an individual off the job;
- removes or alters the essential functions of a job;
- lowers production or performance standards; or
- excuses violations of rules on good conduct.

Helpful Handbook

The Equal Employment Opportunity Commission, which is charged with enforcement of the ADA, has issued a new handbook to help small businesses comply with the ADA. The handbook provides many examples of factual situations with which small businesses could be confronted. The ADA primer can be accessed online at www.eeoc.gov.