

Employment Basics: A Primer for ADA Title I

DBTAC Rocky Mountain ADA Center

Serving CO, MT, ND, SD, UT, & WY

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Who's Covered by the ADA?

Definition of Disability
ADA vs. FMLA vs. Worker's Comp

Definition of Disability

- Mental or physical condition that **substantially limits** one or more of life's major functions
- Record of impairment which substantially limits...
- Regarded by others as having...

Note: Diagnosis of an impairment does NOT necessarily mean a “disability”

Substantially Limiting

Factors to consider

- Nature and severity of the impairment
- Duration or expected duration
- Permanent or long-term impact
- Mitigating Measures (medications, auxiliary aids, etc.)

Is your employee covered?

- A physical or mental impairment?
- What is the impairment?
- Long-term or permanent?
- Does it impact a major life activity?
- If yes, what activity?
- Is it a substantial limitation?

Coverage Comparison

- ADA: Mental or physical impairment substantially limiting 1 or more major life activity
- FMLA: Serious injury or illness that involves inpatient care or ongoing treatment
- Worker's Comp: Only work-related illnesses or injuries

Overview of Title I

What employers have responsibilities under Title I?

What are the basic provisions of Title I?

What Employers Must Comply?

- Private employers with 15 or more employees
- All state and local government entities
- Employment agencies
- Labor unions
- Joint labor-management committees

General Employment Rule

Unlawful to discriminate against a qualified individual with a disability with regards to:

- Job application process
- Hiring
- Promotion
- Discharge
- Compensation
- Benefits
- Training
- All aspects of employment!

It's All About Equality!

Hire, fire, and
promote the most
qualified, deserving
individual!

Essential Job Functions

What is the purpose of a position and how can I identify a position's essential functions?

Essential Functions

- Fundamental job duties of the employment position
- Does not include marginal or peripheral functions
- Specifies what needs to be done, not how

Identifying Essential Functions

- The position is *actually required* to perform the function
- Position exists to perform function
- Fundamental change to position if removed
- Limited number of other employees available to perform
- Function highly specialized- person hired for special expertise or ability

Evidence of Essential

- Employer's judgment
- Written job description
- Amount of time performing function
- If infrequently performed, serious consequences if not performed when needed
- Terms of collective bargaining agreement
- Other employees in same position
- Nature of the work operation or organizational structure

The Reasonable Accommodation Process

What is a reasonable accommodation?
What are the employer's responsibilities in the accommodation process?

Reasonable Accommodations

- Modifications or adjustments to a job, employment practice, or work environment that makes it possible for an individual with a disability to enjoy an equal employment opportunity
- Equal employment opportunity: opportunity to attain same level of performance or to enjoy equal benefits and privileges of employment

When Accommodations are Required

- Application process
- Performance of the essential functions of the position
- Enjoyment of equal benefits and privileges of employment

Accommodation Basics

- Must be an effective accommodation
- Need not be *best* accommodation, just *effective*
- Must only reduce employment-related barriers
- Personal devices not required
- Employer not prevented from providing extra accommodations

Employee Responsibilities

- Process must be initiated by the employee with a disability- disclosure required
- Provide documentation of need for accommodation if requested
- Be involved in process of identifying effective accommodation

The Interactive Process

- Look at particular job and determine essential functions
- Consult with employee about abilities and limitations
- Consult with employee, identify potential accommodations, and assess effectiveness
- Consider the preference of the employee
- Select the accommodation that best addresses needs of the employee and the employer

Strategies for the Accommodation Process

- Develop strategies for recognizing RA requests
- Consider developing accommodation request forms
- Don't be afraid to ask for documentation of need for accommodation
- Consult with the employee
- Know your accommodation resources
- Designate an organization resource/coordinator
- Consider implementing a centralized funding mechanism
- Monitor implementation of the accommodation

Accommodation Factoids

- Over 70% of employees with disabilities never request an accommodation
- Cost effectiveness: 50% cost \$50 or less
- \$50 return in productivity and saved costs for every \$1 spent on ADA-related accommodations

Undue Hardship

- Action that requires significant difficulty or expense—unduly costly, extensive, substantial, disruptive, fundamentally alters nature or operation of business
- In relation to size of the employer, resources available, nature of the operation
- Must be determined on a case-by-case basis
- **IMPORTANT:** Consider alternate accommodations that do not create undue hardship

Tax Incentives Available

- Disabled Access Credit
- Barrier Removal Deduction
- Work Opportunity Tax Credit

Employment Resources

It's not about knowing all the answers. It's about knowing where to find the answers!

Key Publications

- Title I Technical Assistance Manual
- Cornell Series
- Job Accommodation Network's Fact Sheet Series
- EEOC Guidance Documents
- Employer Responsibilities Under the ADA

Other Resources

- DBTAC 800/949-4232 (V, TTY)
www.adainformation.org
- Job Accommodation Network 800/526-7234 (V, TTY)
www.jan.wvu.edu
- EEOC 800/669-4000 www.eeoc.gov
- DOL's Office of Disability Employment Policy
www.dol.gov/odep/pubs/publicat.htm