



EAF
Employers Association Forum

AMERICANS WITH DISABILITIES ACT

The Americans with Disabilities Act (ADA) prohibits discrimination against individuals with disabilities and requires employers with 15 or more employees to reasonably accommodate them in order to perform the essential functions of their jobs.

What is a disability?

The ADA defines a disability as:

“a physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.”

This is a very broad definition and encompasses a myriad of health conditions. Additionally, the Americans with Disabilities Act Amendments Act (ADAAA) more clearly defines a major life activity to include:

“...major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.”

“...a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.”

For employers, this means that many medical conditions will be covered by this law.

However, the ADA specifically excludes the following conditions in the definition of disability:

“Disability does not include:

- (1) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;
- (2) Compulsive gambling, kleptomania, or pyromania; or
- (3) Psychoactive substance use disorders resulting from current [illegal use of drugs](#).

Homosexuality and bisexuality are not impairments and so are not disabilities...”

It is of note that alcoholism is considered a disability under this Act and there may be circumstances where you are required to accommodate an individual because of his or her alcoholism. Also, while current illegal drug use is not protected by this Act, the ADA does afford protections to individuals who are currently in or who have completed rehabilitation.

Medical Inquires

ADA limits an employer's ability to collect medical information from its employees. An employer may ask medically-related questions **AFTER** a job offer has been extended but **BEFORE** the individual actually begins work. Once the individual is employed, the employer may only ask medical questions or require a medical exam if the employer needs documentation to support a request for an accommodation or if the employer believes the employee is unable to perform the essential job functions successfully or safely because of a medical condition.

Confidentiality

ADA requires employers to maintain the confidentiality of medical information it obtains about an individual's health condition. According to the EEOC's [Americans with Disabilities Act: A Primer for Small Business](#), medical information should not be placed in the general personnel file. Instead, medical information is to be kept in a separate medical folder that has limited accessibility and is only available to designated officials. The handbook further states that:

The ADA recognizes that employers may sometimes have to disclose medical information about applicants or employees. Therefore, the law contains certain exceptions to the general rule requiring confidentiality. Information that is otherwise confidential under the ADA may be disclosed:

- *to supervisors and managers where they need medical information in order to provide a reasonable accommodation or to meet an employee's work restrictions;*
- *to first aid and safety personnel if an employee would need emergency treatment or require some other assistance (such as help during an emergency evacuation) because of a medical condition;*

- *to individuals investigating compliance with the ADA and with similar state and local laws; and*
- *pursuant to workers' compensation laws (e.g., to a state workers' compensation office in order to evaluate a claim) or for insurance purposes.*

Reasonable Accommodations

The law requires that employers make reasonable accommodations (adjustments or modifications to the work environment) that will enable the disabled individual to perform their job. For example, it may be reasonable for an organization to raise a desk by several inches to enable a person in a wheelchair to perform data entry work.

The “reasonableness” of an accommodation and whether or not such an accommodation creates an undue hardship on the organization is determined by such factors as nature and cost of the accommodation, the size and resources of the organization, and nature and structure of the organization. Undue hardship is determined on a case-by-case basis.

The Job Accommodation Network ([JAN](#)) was established by the Department of Labor to free, expert, and confidential guidance on workplace accommodations and disability employment issues. Their website contains all types of resources to help employers understand specific disabilities and provide guidance on how to reasonably accommodate those conditions.

As the war for talent continues to escalate, networking with organizations that specialize in training and helping disabled individuals to enter the workforce will give employers a much larger pool of talent to fill their jobs. Additionally, working with your current employees to accommodate their medical conditions will help you maintain an engaged and productive workforce.

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