

# **The Americans With Disabilities Act**



## *An Overview of Title I for Supervisors*

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TITLE

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**The Americans With Disabilities Act**  
**An Overview of Title I for Supervisors**

**I. Purpose**

- A. The purpose of the Americans With Disabilities Act (ADA) is to prevent discrimination in our society on the basis of disability.
- B. Title I specifically provides for equal opportunity for disabled individuals in the workplace.

**II. Protections**

- A. Title I of ADA protects otherwise qualified disabled individuals from discrimination in the workplace.
- B. This protection includes hiring and all benefits, privileges, and responsibilities of employment.

**III. Under ADA, a person with a disability is a person who has:**

- A. A physical or mental impairment that substantially limits one or more major life activities;
- B. Who has a record of such an impairment; or
- C. Who is regarded as having such an impairment.

**IV. Physical or mental impairment**

- A. *A physical impairment* is defined as any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:
  - 1. neurological;
  - 2. musculoskeletal;
  - 3. special sense organs;
  - 4. respiratory (including speech organs);
  - 5. cardiovascular;
  - 6. reproductive;
  - 7. digestive;
  - 8. genitourinary;
  - 9. hemic and lymphatic;
  - 10. skin; and

11. endocrine.

B. A *mental impairment* is defined as any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

C. According to the Equal Employment Opportunity Commission (EEOC) Technical Assistance Manual for Title I of the ADA, a person's impairment is determined without regard to any medication or assistive device that he or she may use. However, several recent Supreme Court decisions have indicated that measures that correct a disability may, in fact, have an impact on whether the individual does qualify as disabled and that determination needs to be made on a case by case basis.

## **V. Major life activities**

A. These are activities that the average person can perform with little or no difficulty.

B. Examples of major life activities are walking, speaking, seeing, breathing, performing manual tasks, hearing, learning, caring for oneself, working, sitting, standing, lifting, and reading.

## **VI. Substantially limits**

A. This means that a person is unable to perform, or is significantly limited in his or her ability to perform, a major life activity when compared to an average person in the general population.

B. Factors to consider when determining if an impairment substantially limits a major life activity are:

1. Its nature and severity;
2. How long it will last or is expected to last;
3. Its permanent or long term impact, or expected impact.

C. Temporary impairments are generally not viewed as disabilities.

1. While they may briefly limit a major life activity, the duration and impact may not be great enough to come under the disability definition.
2. However, complications resulting from a temporary disability may then meet the ADA definition of disability.

## **VII. Substantially limited in working**

A. If a person is substantially limited in any other life activity, it is not necessary to consider whether he or she is substantially limited in the life activity of working to have protection under ADA.

B. To be substantially limited in the life activity of working, an individual must be significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes.

### **VIII. Specific exclusions**

A. Current use of illegal drugs is not protected by ADA but a former drug user who is rehabilitated does have protection.

B. Also specifically excluded from the definition of disability are homosexuality and bisexuality, transvestitism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance abuse disorders resulting from the current illegal use of drugs.

### **IX. Record of a substantially limiting condition**

A. Individuals who have a record of a condition that substantially limits a major life activity are protected under ADA even though they are not currently substantially limited in performing a major life activity.

B. This includes individuals who may have once had a disability but are no longer disabled or who have never had a disability but may have been misclassified or misdiagnosed.

C. Such records may include old employment records, school records, or military records.

### **X. Regarded as substantially limited**

A. An individual who is not substantially limited in performing a major life activity but is regarded as such also has protection under ADA.

B. Examples of being regarded as having a substantially limiting condition include:

1. Having an impairment which is not substantially limiting but being treated by an employer as having such an impairment;
2. Having an impairment that is substantially limiting because of the attitudes of others toward the condition; or
3. Having no impairment at all, but being regarded by an employer as having a substantially limiting impairment.

### **XI. Otherwise qualified**

A. Before an individual has protection under ADA, he or she must be otherwise qualified for the job.

- B. The mere existence of a disability does not give a person automatic protection under ADA.
- C. The person must be otherwise qualified to perform the job which includes:
  - 1. Meeting prerequisites for the job such as education, work experience, training, skills, licenses, certifications and other job related requirements; and
  - 2. Being able to perform the essential job functions, either with or without reasonable accommodation.

## **XII. Essential job functions**

- A. The essential job functions are those duties that must be performed in the job.
  - 1. If it weren't for the essential job functions, there would be no need for the job.
  - 2. Reasons why a job function might be considered essential include:
    - a. The position exists to perform the function;
    - b. There are a limited number of other employees available to perform the function, or among whom the function can be distributed; or
    - c. A function is highly specialized and the person in the position is hired for special expertise or ability to perform it.
- B. Evidence that a function may be considered essential include:
  - 1. The employer's judgment;
  - 2. A written job description, prepared prior to the job being advertised, listing the function;
  - 3. The amount of time spent performing the function;
  - 4. The consequences of not requiring the person in the job to perform the function;
  - 5. The terms of a collective bargaining agreement;
  - 6. Whether the function has been performed in the past.
- C. Employers must be careful to not list marginal job functions as essential job functions.
  - 1. Marginal functions are those tasks that are helpful to an employer but are not an essential part of the job.
  - 2. An employer cannot discriminate against an individual because of a disability that prevents him or her from performing marginal job functions.

## **XIII. Reasonable accommodation**

A. Under ADA, employers are required to provide reasonable accommodation to otherwise qualified disabled individuals to give them the same opportunities for employment as non-disabled individuals.

1. A reasonable accommodation is a modification or adjustment to a job, the work environment, or the way things are usually done that enables a qualified individual with a disability to have equal employment opportunity.
2. An accommodation that creates an undue hardship for an employer is not considered a reasonable accommodation. Generally, an undue hardship is created when the accommodation is cost prohibitive for the employer or the accommodation would be unduly disruptive to the employer's operations.
3. The obligation to provide a reasonable accommodation is ongoing and applies any time a person's disability status changes or the job changes.
4. An employer does not have to make a reasonable accommodation to a person who is not otherwise qualified to perform the job.
5. An employer is not obligated to make a reasonable accommodation if he or she is not aware of the individual's disability and it is generally the obligation of the disabled individual to request an accommodation.
6. A qualified individual with a disability may refuse an accommodation but he or she may no longer be qualified for the job if he or she cannot do it without the accommodation.
7. If the cost of an accommodation would impose an undue hardship on an employer, the disabled individual must be given the option of providing the accommodation or paying the portion of the cost that would constitute an undue hardship.

B. Some basic issues in considering a reasonable accommodation include:

1. The accommodation must be an effective accommodation.
2. The reasonable accommodation requirement applies only to those accommodations that reduce barriers to employment related to a person's disability and not to accommodations that a person may request for other reasons.
3. A reasonable accommodation need not be the best available as long as it is effective for its purposes.
4. An employer is not required to provide an accommodation that is primarily for personal use.

C. Steps involved in identifying a reasonable accommodation include:

1. Looking at the job involved and determining its essential functions;
  2. Consulting with the disabled individual to determine his or her specific physical or mental limitations as they relate to the performance of the job;
  3. In consultation with the disabled individual, identifying potential accommodations and assessing how effective each would be;
  4. Where necessary, consulting outside resources, such as the Job Accommodation Network (JAN), to identify potential accommodations; and
  5. If there are several effective accommodations, considering the preference of the individual with a disability and selecting the accommodation that best serves the needs of the individual and employer.
- D. Factors to consider in determining if an undue hardship exists include:
1. The nature and net cost of the accommodation needed;
  2. The financial resources of the facility making the accommodation, the number of employees at the facility, and the effect on expenses and resources of the facility;
  3. The overall financial resources, size, number of employees, and type and location of facilities of the entity covered by ADA;
  4. The type of operation of the covered entity, including the structure and functions of the workforce, the geographic separateness, and the administrative or fiscal relationship of the facility involved in making accommodation to the larger entity; and
  5. The impact of the accommodation on the operation of the facility that is making the accommodation.
- E. Examples of reasonable accommodation include:
1. Making facilities accessible and usable;
  2. Job restructuring;
  3. Modified work schedules;
  4. Flexible leave policies;
  5. Reassignment to a vacant position; or
  6. Acquisition or modification of equipment or devices.

#### **XIV. Nondiscrimination in other employment practices**

- A. An employer cannot discriminate against a qualified individual with a disability, because of the disability, in any employment practice or any term, condition, privilege, or benefit of employment.

- B. An employer cannot discriminate against an employee because of a relationship with an individual with a disability.
  - 1. The employee does not have to have a disability himself to have protection under ADA in this situation
  - 2. The employer is not obligated to provide an accommodation to an employee who is not disabled because this person has a relationship or association with a disabled person.
- C. Disabled employees must have the same opportunities for promotions, training, raises and other advancement opportunities as non-disabled employees.
- D. Disabled employees can be held to the same standards of performance and production as other similarly situated employees.
  - 1. Employers should not give the disabled employee “special treatment” but instead should evaluate the disabled employee on the same standards as non-disabled employees.
  - 2. The same discipline levels should apply to the disabled employee as to the non-disabled employee who fails to meet performance standards or who violates the employers policies or rules.
- E. An employer cannot reduce the pay of a disabled employee because the employee is not able to perform certain marginal job functions as a result of the disability.
- F. A disabled employee is entitled to the same health insurance and other employee benefit plans that are available to nondisabled employees.
- G. Disabled employees are entitled to the same leave benefits provided to non-disabled employees.
  - 1. An employer is not required to give more paid leave to a disabled employee, but the employer may be required to modify the leave program by granting shorter leave periods than are normally granted or giving additional leave without pay where it would not create an undue hardship.
  - 2. Under ADA, an employer is not required to give leave as an accommodation to an employee who has a relationship with a person with a disability to enable the person to care for the individual.
- H. Other benefits and privileges of employment
  - 1. Employees with disabilities must have an equal opportunity to attend and participate in any social functions conducted or sponsored by the employer.

2. Employees with disabilities must have equal access to break rooms, lounges, cafeterias and any other non-work area provided by the employer for use by employees.
3. While equal access is required under ADA, an employer does not have to eliminate a facility or program because a disabled employee cannot use the facility or participate in the program because of his or her disability.

## **XV. Substance abuse**

- A. An individual who is currently engaging in illegal drug use is not a person with a disability under ADA.
  1. While active drug use is not protected, a former drug user or someone who is regarded as a drug user may have protection.
  2. Drug testing is not considered to be a medical examination under ADA and thus may be administered at any time in accordance with an employer's established drug testing program.
- B. Under ADA, a person who is an alcoholic is an individual with a disability.
  1. The employer can hold an alcoholic to the same standards as any other similarly situated employee but the employer cannot discipline an alcoholic employee more severely than a nonalcoholic employee who failed to meet the same standard or who committed the same infraction.
  2. A alcoholic may be entitled to accommodation if he or she is otherwise qualified for the job.
- C. Under ADA, the employer still has the right to take efforts to prevent the use of drugs and alcohol in the workplace.

## **XVI. Summary**

- A. The purpose of Title I of ADA is to give a person with a disability the same opportunities in the work place that a person without a disability has.
- B. Employers must consider reasonable accommodation to allow an otherwise qualified individual with a disability to enjoy the same opportunities and privileges as all other employees.
- C. The goal of ADA is not to give an individual with a disability an unfair advantage, but to give them an equal advantage.

*NOTE: This outline is provided for informational purposes only. It covers some of the key issues of Title I of the Americans With Disabilities Act that apply to the role of the supervisor, but it does not address all aspects of this complex law. The full text of the regulations can be found in 29 C.F.R. Part 1630. Additional information may also be found in the EEOC Technical Assistance Manual on the Employment Provisions (Title I) of the Americans With Disabilities Act. Assistance with workplace reasonable accommodation can be obtained by calling the Job Accommodation Network (JAN) at 1-800-526-7234. Nothing in this outline is intended to be, nor should it be construed as, legal advice. Where legal assistance is needed, the services of a qualified attorney should be sought.*