The ADAAA

Americans with disabilities act amendments act
Disclaimer

This training is designed to provide general information about the subject matter covered. Neither TAC nor the trainers are engaged in rendering legal advice. If you need legal advice, TAC recommends that you seek the services of a competent attorney who is familiar with your specific situation.
Americans with Disabilities Act
Amendments Act
ADAAA

ADA was effective
July 26, 1992
Amended 2008

New regulations effective date was
May 24, 2011
Americans with Disabilities Act Amendments Act

“No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures; the hiring, advancement, or discharge of employees; employee compensation; job training; and other terms, conditions, and privileges of employment”
Who’s covered?

ADAAA applies to all local government employers with 15 or more employees.

Employees who meet the definition of “qualified individual with a disability” who, with or without a reasonable accommodation, can perform the essential functions.
**Key Changes**

Expands the definition of disability.
- Employee now only has to prove the condition “substantially limits them”

Introduces 9 rules of construction.
- You must use the 9 rules of construction to determine whether an impairment substantially limits a major life activity
- The term “substantially limits” will now be broadly interpreted
Key Changes

More activities added to the list of “major life activities” that create a disability when people cannot perform them

A new category of major life activities was added to include “major bodily functions”
ADAAA Key Changes

A health condition that amounts to a disability now counts as a disability even if the individual takes medicine or uses a device that limits the disability’s impact (hearing aids, insulin, drugs, etc).

A medical condition may still qualify as a disability even if it is episodic or in remission.
Key Changes

Makes it much easier for employees to sue under the “regarded as” section

• If an employer wrongly considers an employee or applicant as disabled when they are not—they can sue and win, even if the impairment that caused them to view them as disabled was not a disability.
What’s makes a “qualified individual”? ADAAA states that an individual with a disability is qualified when:

- They satisfy the requisite skill, experience, education and other job related requirements of the position
- With or without reasonable accommodation
- And can perform the essential functions.
What is a disability?

- A physical or mental impairment that “substantially limits a major life activity” of an individual
- A record of such an impairment
- Being “regarded as” having such an impairment

Regulations state the term “major” does not create a demanding standard for disability and should not be interpreted strictly.
Purpose

To “reinstate a broad scope of protection” by expanding the definition of the term “disability to include many types of impairments that were originally left out of the ADA.

It’s easier now for employees to show they have a disability.
“physical impairment”

includes any

Physiological disorder or condition, or anatomical loss affecting one or more body systems such as:

- Neurological
- Musculoskeletal
- Special sense organs
- Respiratory (including speech organs),
- Cardiovascular
- Reproductive
- Digestive
- Genitourinary
- Immune
- Circulatory
- Hemic
- Lymphatic
- Skin
- Endocrine
“mental impairment” includes any Mental or psychological disorder such as:

- Intellectual disability (formerly termed “mental retardation,”)
- Organic brain syndrome,
- and specific learning disabilities.
"major life activities"

Caring for oneself
Performing manual tasks
Seeing
Hearing
Eating
Sleeping
Walking
Standing

Sitting
Concentrating

Reaching
Thinking

Lifting
Communicating

Bending
Interacting with others

Speaking
Working

Breathing

Learning

Reading
“major bodily function”

Functions of the immune system
Special sense organs and skin
Normal cell growth
Digestive
Genitourinary
Bowel
Bladder
Neurological

Brain
Respiratory
Circulatory
Cardiovascular
Endocrine
Hemic
Lymphatic
Musculoskeletal
Reproductive functions

* Includes the operation of an individual organ within the body.
“record of disability”

A history of a mental or physical impairment that substantially limits a major life activity, or has been misclassified as having such an impairment.

Employers are required to provide a reasonable accommodation if needed and if related to the past disability.
What does the EEOC say?

The primary focus in an ADAAA case should be if the employer complied with their obligations under the ADAAA and if discrimination occurred, not if the individual meets the definition of disability.

No extensive demand analysis to determine if disabled.
What do you do now?

- Review job descriptions to ensure regulatory compliance
- Train supervisors to comply
- Assure interactive process in place with documentation
- Check your policies
The ADAAA and steps to the interactive process:

Reasonable Accommodation under the ADAAA
Gather necessary documents:
✓ Checklist
✓ Employee questionnaire
✓ Medical provider questionnaire
✓ Job description

Please have your county attorney or legal counsel review these documents before use
The disability comes to the attention of the manager or supervisor through observation or request.
Question One

True or False –

Employees must ask for an accommodation.
Identify the essential and non-essential functions of the job
What is an “essential job function?”

- Does this position exist to perform this function?
- Can this function be performed by other employees in the department?
- Would taking this function from the job fundamentally change the job?
- Would there be significant consequences if this function is not performed?
- Is special expertise or judgment required?
- Is special training or education required?
- Is a license or certification required?
Only essential functions may be used in determining reasonable accommodation

Only essential functions must be reasonably accommodated
Consult with the employee to identify any job-related limitations and complete the employee questionnaire.
<table>
<thead>
<tr>
<th>“major life activities”</th>
</tr>
</thead>
<tbody>
<tr>
<td>Caring for oneself</td>
</tr>
<tr>
<td>Performing manual tasks</td>
</tr>
<tr>
<td>Seeing</td>
</tr>
<tr>
<td>Hearing</td>
</tr>
<tr>
<td>Eating</td>
</tr>
<tr>
<td>Sleeping</td>
</tr>
<tr>
<td>Walking</td>
</tr>
<tr>
<td>Standing</td>
</tr>
</tbody>
</table>
Have the employee sign the Employee Questionnaire!
Question Two

Which of the following is an example of a major life activity under the ADAAA?

A. Bending
B. Concentrating
C. Interacting with Others
D. All of the Above
Provide the medical questionnaire to the employee to seek documentation of functional limitations from the medical provider.
The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. 'Genetic Information' as defined by GINA includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.
Consult with the employee to identify possible accommodations.
Employee and manager or supervisor research possible accommodations and discuss options
Question Three

True or False –

The accommodation that the employee asks for is always the best accommodation to give
Implement the accommodation that is most reasonable for both the employee and the employer.
Undue Hardship

Determination should be based on:

- Nature and cost of accommodation
- Overall financial resources and number of persons employed
- Facility specifics if part of a larger entity
- Type of Operations
- Impact on Operations
Buying a new police car that sits higher off the ground is an undue hardship for the county.

A. Always true
B. Sometimes true
C. Never True
Disclaimer

This training is designed to provide general information about the subject matter covered. Neither TAC nor the trainers are engaged in rendering legal advice. If you need legal advice, TAC recommends that you seek the services of a competent attorney who is familiar with your specific situation.
Request for Information from Medical Provider

________________, who is an employee of _______________, has requested a reasonable accommodation under the Americans with Disabilities Act (ADA). In response to that request, we are seeking specific information as detailed below. Please provide the requested information only – please do not send copies of medical records.

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. 'Genetic information' as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

Note: The ADA defines disability as a physical or mental impairment that substantially limits one or more major life activities.

1. Does the employee have a physical or mental impairment?
   - Yes  - No

2. What is the impairment?
   __________________________________________
   __________________________________________

3. What is the expected duration of the impairment?
   - Permanent
   - Temporary (please explain)
     __________________________________________
     __________________________________________
   - Chronic (please explain)
     __________________________________________
     __________________________________________
   - Episodic (please explain)
     __________________________________________
     __________________________________________
ADAAA EMPLOYEE QUESTIONNAIRE

This questionnaire should be used when an employee with a disability requests an accommodation, which could include a change to county policy or practice or some other job restructuring (modified work schedules, medical leave, reassignment, modifying equipment, etc.). While it is generally the responsibility of the employee to request an accommodation, there are some situations where an employer should start the interactive process as long as they know about the disability and the need for an accommodation. Either way, no “magic language” is needed from the employee.

As with any form, this questionnaire provides general guidance only. You should always consult with your labor and employment attorney before using this questionnaire for any particular fact situation.
A. Are We Legally Required to Have Job Descriptions? Everyone at This Company Already Knows How to Do Their Job Anyway.

Job descriptions are not required by federal law for most employers, but they are advisable and strongly recommended for many reasons. Job descriptions are used directly or indirectly to:

- Assign work and document work assignments.
- Help clarify missions.
- Establish performance requirements.
- Assign occupational codes, titles, and/or pay levels to jobs.
- Recruit for vacancies.
- Explore reasonable accommodation.
- Counsel people on career opportunities and their vocational interests.
- Check for compliance with legal requirements related to equal opportunity, equal pay, overtime eligibility, etc.
- Make decisions on job restructuring.
- Evaluate requests for accommodation under the ADA.
- Evaluate requests for any type of leave under the FMLA (including return to work qualifications)

1. Simple Approach to Job Descriptions

Here is a simple approach to job descriptions. Make sure that the descriptions tell:

- Who (usually the incumbent or the supervisor).
- Does what work (including review of the work of others).
- Where (the work is done).
- When (or how often).
- Why (the purpose or impact of the work).
- How (it is accomplished).

To the extent practicable, the job description writer should use action verbs with an implied subject (who) and explicit work objects and/or outputs (what).

For example:

- (Implied subject) Evaluates (action verb) jobs (what) by assigning official title, occupational code and grade in accordance with the job evaluation system (how).

- (Implied subject) Collects (action verb) key job information (what) from various sources, e.g., work interviews and direct observation (where).

2. An "Essential" Task Can Be a Small Part of the Workload

Typically, the tasks that comprise the bulk of the workload are the "essential functions." But a job that is just a small part of the workload could also be essential, particularly if the jobholder is the only one qualified to do it.

For example, a particular task may require a certified person, whether that task is an accounting filing or boiler inspection. Or, as another example, if only one person is available to answer the phone during the receptionist's lunch period, then answering the phone could be an essential function even though it is only an hour a day.
ADAAA MEDICAL PROVIDER QUESTIONNAIRE

This questionnaire should be used when an employee with a disability requests an accommodation, which could include a change to county policy or practice or some other job restructuring (modified work schedules, medical leave, reassignment, modifying equipment, etc.). While it is generally the responsibility of the employee to request an accommodation, there are some situations where an employer should start the interactive process as long as they know about the disability and the need for an accommodation. Either way, no “magic language” is needed from the employee.

As with any form, this questionnaire provides general guidance only. You should always consult with your labor and employment attorney before using this questionnaire for any particular fact situation.
### Helpful Human Resource Links

<table>
<thead>
<tr>
<th>Site</th>
<th>Hyperlink</th>
</tr>
</thead>
<tbody>
<tr>
<td>EEOC</td>
<td><a href="http://www.eeoc.gov">www.eeoc.gov</a></td>
</tr>
<tr>
<td>EEOC Guidance (ADAAA)</td>
<td><a href="http://www.eeoc.gov/policy/docs/accommodation.html">http://www.eeoc.gov/policy/docs/accommodation.html</a></td>
</tr>
<tr>
<td>EEOC Publications</td>
<td><a href="https://www.eeoc.gov/eeoc/publications/index.cfm">https://www.eeoc.gov/eeoc/publications/index.cfm</a></td>
</tr>
<tr>
<td>EEOC Facts About Retaliation</td>
<td><a href="https://www.eeoc.gov/laws/types/retaliation.cfm">https://www.eeoc.gov/laws/types/retaliation.cfm</a></td>
</tr>
<tr>
<td>Job Accommodation Network</td>
<td><a href="http://askjan.org/">http://askjan.org/</a></td>
</tr>
<tr>
<td>Texas Workforce Commission</td>
<td><a href="http://www.twc.state.tx.us/">http://www.twc.state.tx.us/</a></td>
</tr>
<tr>
<td>Texas Association of Counties</td>
<td><a href="http://www.county.org">www.county.org</a></td>
</tr>
<tr>
<td>DOL Posters Page</td>
<td><a href="https://www.dol.gov/whd/resources/posters.htm">https://www.dol.gov/whd/resources/posters.htm</a></td>
</tr>
</tbody>
</table>
MEDICAL PROVIDER QUESTIONNAIRE

To: __________________________________________________________

Name of Employee: ___________________________________________

Job Evaluated: ______________________________________________

Please answer and return the following questionnaire to your patient within the time frame indicated. The questionnaire format is a guide and we would appreciate a response to every question. We need your complete medical opinion, so please feel free to include a more detailed narrative response to any and all questions if needed to answer more fully. Thank you for your anticipated cooperation.

IMPORTANT NOTE TO HEALTH CARE PROVIDER: When answering these questions, please do not take into consideration any ameliorative effects of mitigating measures, such as medications, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; or learned behavioral or adaptive neurological modifications.

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. ‘Genetic Information’ as defined by GINA includes an individual’s family medical history, the results of an individual’s or family member ’s genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual’s family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.
1. Does _______________ have a physical or mental impairment? Yes No
   If so, please state the type of impairment:
   ____________________________________________________________________
   ____________________________________________________________________

2. Does _________________’s impairment substantially limit any major life activities? Yes No

3. If so, which major life activity or activities are limited? _________________
   ____________________________________________________________________

4. For each major life activity that is limited by the impairment, please describe how _________________ is restricted as to the condition, manner, or duration under which that activity can be performed, as compared to the way in which an average person in the general population can perform that activity:
   ____________________________________________________________________
   ____________________________________________________________________
   ____________________________________________________________________
   ____________________________________________________________________

5. What is the duration or expected duration of _________________’s impairment? ____________________________________________________________________

6. Attached is a job description for the _________________ position. Please review the job description and assess whether _________________ can perform all job functions: Yes No
7. If not, which job functions cannot be performed, and why not?

______________________________________________________________________________
______________________________________________________________________________

8. Please describe any reasonable accommodations that would allow this employee to be able to perform those job functions:

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

9. If medical leave is one of the possible accommodations listed above, please provide an estimated duration for the leave:

______________________________________________________________________________

10. Would performing any of the job functions listed result in a direct safety or health threat to this employee or other people (co-workers, members of the general public, etc.)? Yes No

11. If yes, please describe:
   - which job function(s) would pose such a threat:

______________________________________________________________________________
______________________________________________________________________________
- the direct safety or health threat posed:

__________________________________________________________________
__________________________________________________________________

- any reasonable accommodations that would eliminate the direct safety or health threat, or reduce it to an acceptable level:

__________________________________________________________________
__________________________________________________________________

_________________________________  ________________________  __________
Signature                        Title                                Date

Printed Name and Address:
__________________________________________________________________
__________________________________________________________________
__________________________________________________________________
B. Do the Feds Want to See Job Descriptions in Place?

1. Make the DOL Happy

Yes. The DOL obviously thinks that job descriptions are important because it has included several places on DOL FORM WH-380-E: CERTIFICATION OF HEALTH CARE PROVIDER FOR EMPLOYEE'S SERIOUS HEALTH CONDITION (FAMILY AND MEDICAL LEAVE ACT) to discuss it. Specifically, Form 380-E provides for the following information to be completed:

SECTION I: For Completion by the EMPLOYER

Employee’s essential job functions

Check if job description is attached:

PART A: MEDICAL FACTS

3. Use the information provided by the employer in Section I to answer this question. If the employer fails to provide a list of the employee’s essential functions or a job description, answer these questions based upon the employee’s own description of his/her job functions.

Is the employee unable to perform any of his/her job functions due to the condition: __ No __ Yes.

If so, identify the job functions the employee is unable to perform:

* * * * *

PART B: AMOUNT OF LEAVE NEEDED

7. Will the condition cause episodic flare-ups periodically preventing the employee from performing his/her job functions? ____No ____Yes.

2. Make the EEOC Happy

Yes. On October 14, 2008, the EEOC published a guidance entitled, “The ADA: Applying Performance and Conduct Standards to Employees with Disabilities”, see http://www.eeoc.gov/facts/performanceconduct.html. This guidance (as well as other EEOC related publications) is premised upon the fundamental concept that an employer can identify and articulate the essential and marginal functions of a particular job. During an investigation, the Commission always requests a copy of the job description. An employer who has no job descriptions in place, or outdated or poorly written decisions faces harsh scrutiny, and the inference may be drawn that the employer’s conduct regarding that employee was not based on a legitimate business necessity or other clearly articulated objective criteria.

C. How Do I Create a Job Description That Is Compliant with the ADA?

Writing job descriptions that are compliant with the ADA/ADAAA is tricky. In your efforts to be clear, you can also be exclusionary.

Take, for example, the requirement to be "able to walk" around the office. That language would be unnecessarily exclusionary if the actual requirement is just to be able to move around the office, from a desk to a file cabinet and back. That could easily be accomplished by, for example, an employee in a wheelchair who can't "walk." Here are some tips on managing the wording for most common tasks and demands:

1. Wording for Time Required

Here’s some suggestions of the following terms for describing the amount of time a task takes:

- Task takes less than one-third of the time — describe as "seldom" to "occasionally"
- Task takes one-third to two-thirds of the time — describe as "occasionally" to "frequently"
- Task takes more than two-thirds of the time — describe as "constantly"

If the amount of time spent on a task or responsibility is "none," then omit that task from the job description.
2. Wording for Describing Physical Demands

a. General Descriptions

The general idea here, as mentioned above, is to avoid unnecessary exclusionary words. Also, if a physical demand is not essential in the performance of the job, reference to that demand should be omitted. The following table is instructive:
<table>
<thead>
<tr>
<th>Physical Demand</th>
<th>ADA/ADAAA Compliant Words</th>
<th>Job Description Language Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stand or Sit</td>
<td>Stationary position</td>
<td>Must be able to remain in a stationary position 50% of the time.</td>
</tr>
<tr>
<td>Walk</td>
<td>Move, Traverse</td>
<td>The person in this position needs to occasionally move about inside the office to access file cabinets, office machinery, etc.</td>
</tr>
<tr>
<td>Use hands/fingers to handle or feel</td>
<td>Operate, Activate, Use, Prepare, Inspect, Place, Detect, Position</td>
<td>Constantly operates a computer and other office productivity machinery, such as a calculator, copy machine, and computer printer.</td>
</tr>
<tr>
<td>Climb (stairs/ladders) or balance</td>
<td>Ascend/Descend, Work atop, Traverse</td>
<td>Occasionally ascends/descends a ladder to service the lights and ceiling fans.</td>
</tr>
<tr>
<td>Stoop, kneel, crouch, or crawl</td>
<td>Position self (to), Move</td>
<td>Constantly positions self to maintain computers in the lab, including under the desks and in the server closet.</td>
</tr>
<tr>
<td>Talk/hear</td>
<td>Communicate, Detect, Converse with, Discern, Convey, Express oneself, Exchange information</td>
<td>The person in this position frequently communicates with students who have inquiries about their tuition bill or financial aid package. Must be able to exchange accurate information in these situations.</td>
</tr>
<tr>
<td>See</td>
<td>Detect, Determine, Perceive, Identify, Recognize, Judge, Observe, Inspect, Estimate, Assess</td>
<td>Must be able to detect funnel clouds from long distances.</td>
</tr>
<tr>
<td>Taste/Smell</td>
<td>Detect, Distinguish, Determine</td>
<td>Occasionally must be able to distinguish sweet and bitter flavors when creating desserts for Applewood Bakery's customers.</td>
</tr>
<tr>
<td>Carry weight, lift</td>
<td>Move, Transport, Position, Put, Install, Remove</td>
<td>Frequently moves Audio/Visual equipment weighing up to 50 pounds across campus for various classrooms and events needs.</td>
</tr>
<tr>
<td>Exposure to Work</td>
<td>Exposed, Work around</td>
<td>Constantly works in outdoor weather conditions.</td>
</tr>
</tbody>
</table>
b. *Specific Descriptions*

<table>
<thead>
<tr>
<th>EQUIPMENT/DEVICE OPERATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>List all computers, peripherals, and other hardware <strong>required</strong> to perform this job:</td>
</tr>
<tr>
<td>List all computer software <strong>required</strong> to perform this job:</td>
</tr>
<tr>
<td>List all office machines <strong>required</strong> to perform this job:</td>
</tr>
<tr>
<td>List any other machines (including heavy equipment) <strong>required</strong> to perform this job:</td>
</tr>
<tr>
<td>List all tools involving manipulation that are <strong>required</strong> to perform this job:</td>
</tr>
<tr>
<td>List all vehicles that <strong>must</strong> be operated to perform this job:</td>
</tr>
</tbody>
</table>

3. **Wording for Describing Mental Demands**

a. *General Descriptions*

<table>
<thead>
<tr>
<th>MENTAL DEMAND</th>
<th>FUNCTION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>General Intelligence</strong> (typical requirement for machine operators, office staff, etc.)</td>
<td>Does the employee have the ability to learn and comprehend basic instructions and orientation on the job?</td>
</tr>
<tr>
<td><strong>Motor Coordination Skills</strong> (typical for a hand assembler, automobile mechanic, watch repair technician)</td>
<td>Is the employee able to coordinate eyes, hand, and fingers rapidly and accurately and handle precise movements?</td>
</tr>
<tr>
<td><strong>Coordination of Eyes, Hand and Feet</strong> (typical for a tractor trailer driver, foot press operator)</td>
<td>Does the employee have the ability to coordinate the eyes, hand, and feet with each other in response to visual stimuli?</td>
</tr>
<tr>
<td><strong>Verbal Intelligence</strong> (typical for a sales clerk, production supervisor)</td>
<td>Does the employee have the ability to understand the meanings of words and respond effectively?</td>
</tr>
<tr>
<td><strong>Numerical Intelligence</strong> (typical for an accounting clerk, a shipping checker)</td>
<td>Does the employee have the ability to perform basic arithmetic accurately and quickly?</td>
</tr>
<tr>
<td>MENTAL FUNCTION</td>
<td>DESCRIPTION</td>
</tr>
<tr>
<td>------------------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Comprehension</td>
<td>Ability to understand, remember, and apply oral and/or written instructions or other information</td>
</tr>
<tr>
<td></td>
<td>Ability to understand, remember, and communicate routine, factual information</td>
</tr>
<tr>
<td></td>
<td>Ability to understand complex problems and to collaborate and explore alternative solutions</td>
</tr>
<tr>
<td></td>
<td>Ability to understand opposing points of view on highly complex issues and to negotiate and integrate different viewpoints</td>
</tr>
<tr>
<td>Organization</td>
<td>Ability to organize thoughts and ideas into understandable terminology</td>
</tr>
<tr>
<td></td>
<td>Ability to organize and prioritize own work schedule on short-term basis (longer than one month)</td>
</tr>
<tr>
<td></td>
<td>Ability to organize and prioritize work schedules of others on short-term basis</td>
</tr>
<tr>
<td></td>
<td>Ability to organize and prioritize work schedules of others on long-term basis</td>
</tr>
<tr>
<td>Reasoning and Decisionmaking</td>
<td>Ability to apply common sense in performing job</td>
</tr>
<tr>
<td></td>
<td>Ability to make decisions which have moderate impact on immediate work unit</td>
</tr>
<tr>
<td></td>
<td>Ability to make decisions which have significant impact on the immediate work unit and monitor impact outside immediate work unit</td>
</tr>
<tr>
<td></td>
<td>Ability to make decisions which have significant impact on the department's credibility, operations, and services</td>
</tr>
<tr>
<td>Communication</td>
<td>Ability to understand and follow basic instructions and guidelines</td>
</tr>
<tr>
<td></td>
<td>Ability to complete routine forms, use existing form letters and/or conduct routine oral communication</td>
</tr>
<tr>
<td></td>
<td>Ability to compose letters, outlines, memoranda, and basic reports and/or to orally communicate technical information</td>
</tr>
<tr>
<td></td>
<td>Ability to communicate with individuals utilizing a telephone, computer or other electronic device; requires ability to hear and speak effectively on phone, and to use a computer or other electronic device</td>
</tr>
<tr>
<td></td>
<td>Ability to express or exchange ideas by means of the spoke word, communicating orally with others accurately, loudly, and quickly</td>
</tr>
<tr>
<td></td>
<td>Ability to make informal presentations, inside and/or outside the organization. Speaking before groups</td>
</tr>
<tr>
<td></td>
<td>Ability to compose materials such as detailed reports, work-related manuals, publications of limited scope or impact, etc., and/or to make presentations outside the immediate work area</td>
</tr>
<tr>
<td>MENTAL FUNCTION</td>
<td>DESCRIPTION</td>
</tr>
<tr>
<td>-----------------</td>
<td>-------------</td>
</tr>
<tr>
<td>Mathematics</td>
<td>No/some/extensive mathematical ability is required</td>
</tr>
<tr>
<td></td>
<td>Ability to count accurately</td>
</tr>
<tr>
<td></td>
<td>Ability to add, subtract, multiply, divide and to record, balance, and check results for accuracy</td>
</tr>
<tr>
<td></td>
<td>Ability to compute, analyze, and interpret numerical data for reporting purposes</td>
</tr>
<tr>
<td></td>
<td>Ability to compute, analyze, and interpret complex statistical data and/or to develop forecasts and computer models</td>
</tr>
<tr>
<td>Other</td>
<td>Additional comments regarding mental capability requirements:</td>
</tr>
</tbody>
</table>

4. **Wording for Describing Workplace Environmental Conditions**

<table>
<thead>
<tr>
<th>ENVIRONMENTAL CONDITION</th>
<th>FUNCTION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Noise Conditions</strong> (typical environmental condition for a manufacturing plant worker)</td>
<td>Is the employee exposed during a shift to constant or intermittent sounds at a level sufficient to cause hearing loss or fatigue?</td>
</tr>
<tr>
<td><strong>Heat</strong> (typical for furnace operator or heat treater)</td>
<td>Is the employee subject to high temperatures that result in significant body discomfort?</td>
</tr>
<tr>
<td><strong>Cold</strong> (typical for an outdoor worker in cold climates or a freezer operator)</td>
<td>Is the employee exposed to low temperatures that result in significant body discomfort?</td>
</tr>
<tr>
<td><strong>Injury Exposure</strong> (typical for electricians, forklift truck operators, tractor trailer drivers)</td>
<td>Is the employee exposed to workplace hazards more frequently than normal? To potential injuries?</td>
</tr>
<tr>
<td><strong>Atmospheric Exposure</strong> (typical for welders, solvent handlers)</td>
<td>Is the employee exposed to dusts, fumes, vapor or mists that could affect the occupational health of the employee?</td>
</tr>
</tbody>
</table>

D. **What Criteria Should Be Used to Differentiate Between Marginal and Essential Functions?**

*Marginal* functions are those that are:

- Passable
- Peripheral
- Minimal
- Incidental

*Extra* functions are those that are:

- Critical
- Indispensable
- Crucial
- Fundamental

*Accessory* functions are those that are:

- Integral
- Necessary
- Primary
- Imperative

1. **Most Common Mistake—Function vs. Method**

46
One common mistake in identifying essential functions is confusing method with function. "An essential function is what the completed task is, not how that task is completed." Use results-oriented language wherever possible to avoid this problem. For example, do not say employees have "to lift 50-pound boxes" when the actual task is "to relocate 50-pound boxes." And do not say employees have to "walk" from one place to another when the actual requirement is to "move" from one station to another.

The second common mistake is to rely on assumptions about what the employee does in the job. "It is imperative that the employee actually perform the particular function for it to be considered essential." Therefore, do not rely on job titles or traditional roles for jobs. Find out what the person on the job actually does.

A third common mistake is to use percentages to determine essential functions. Generally, that is probably not good practice because the amount of time spent performing a function is not always indicative of whether or not a function is "essential."

2. Factors to Determine Essential Functions

So what criteria do you use? Typically, a number of factors are used to determine essential functions. No one factor is necessarily determinative. Here are the main considerations:

a. Employer's Judgment

An employer's judgment as to which functions are essential is important evidence; however, it is not the only evidence or prevailing evidence. Rather, the employer's judgment is a factor to be considered along with other relevant evidence. The employer's judgment can be quickly discounted if, for example, a court finds that the employer doesn't actually require all employees in a particular position to perform an allegedly essential function. Typically, however, the employer will not be second-guessed on production quality or quantity standards that must be met by a person holding the job, nor will the employer be required to set lower standards for the job.

b. Written Job Description

The written description of the job or position, based on job analysis, is also critical information. Note that the job description should be prepared before advertising or interviewing for the job. Job descriptions prepared after hire, or after a suit is filed, will be suspect, at best. A job description must accurately identify and clearly describe the functions that the employee is actually required to perform. An inaccurate or incomplete job description can be detrimental in court. Typically, employers may not claim functions as essential when they are not on a job description.

c. Amount of Time Spent Performing the Function

While the amount of time spent performing a particular function is clearly relevant to determine whether or not it is essential for purposes of the ADA, there are circumstances under which a function must be deemed essential regardless of the fact that it may be performed infrequently or have little time spent on it. For example, a clerical worker may spend only a few minutes a day answering telephones, but this could be an essential function of the position if no one else is available to answer the phones at that time and business calls would otherwise go unanswered.

d. The Consequences of Not Performing the Function

Another factor for determining whether a particular function is essential is the consequences of not requiring the incumbent of the position to perform the function. For example, although an airline pilot may spend only a few minutes of a flight landing an airplane, or a firefighter may only occasionally have to carry a heavy person from a burning building, these are essential functions of their jobs because of the very serious consequences emanating from the inability of employees to perform them.

e. A Collective Bargaining Agreement's Terms

The terms of a collective bargaining agreement may be relevant to determining the essential functions of a position.
f. On-the-Job Experience

Another factor can be the work experience of people who have performed the job or are performing it. Given that past and current incumbents have actually performed the duties, their opinions should be an important indicator about whether a particular job function is essential.
EMPLOYEE QUESTIONNAIRE

Name of Employee: _____________________________________________

Job Evaluated: ________________________________________________

Date: _______________________________________________________

Please answer the following questionnaire.

1. Do you have a physical or mental impairment? Yes  No

   If so, please state the type of impairment:
   ____________________________________________________________________
   ____________________________________________________________________

2. Does your impairment substantially limit any major life activities? Yes  No

3. If so, which major life activity or activities are limited? ______________
   ____________________________________________________________________
   ____________________________________________________________________

4. For each major life activity that is limited by the impairment, please describe how you are restricted as to the condition, manner, or duration under which that activity can be performed, as compared to the way in which an average person in the general population can perform that activity:
   ____________________________________________________________________
   ____________________________________________________________________
   ____________________________________________________________________
   ____________________________________________________________________
5. What is the duration or expected duration of your impairment?
__________________________________________________________________

6. Attached is a job description for your position. Please review the job description and assess whether you can perform all job functions: Yes  No

7. If not, which job functions cannot be performed, and why not?
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

8. Please describe any reasonable accommodations that would allow you to be able to perform those job functions:
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

9. If medical leave is one of the possible accommodations listed above, please provide an estimated duration for the leave:
______________________________________________________________________________

10. Would performing any of the job functions listed result in a direct safety or health threat to you or other people (co-workers, members of the general public, etc.)? Yes  No

11. If yes, please describe:
• which job function(s) would pose such a threat:

__________________________________________________________________
__________________________________________________________________

• the direct safety or health threat posed:

__________________________________________________________________
__________________________________________________________________

• any reasonable accommodations that would eliminate the direct safety or health threat, or reduce it to an acceptable level:

__________________________________________________________________
__________________________________________________________________

_________________________________ __________________________ ____________
Signature     Title     Date

Printed Name, Position, Department:
__________________________________________________________________
__________________________________________________________________
__________________________________________________________________
__________________________________________________________________
4. Does the impairment affect a major life activity?
(Examples of major life activities include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and the operation of a major bodily function such as the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive systems).

☐ Yes  ☐ No

5. Does the impairment *substantially limit* one or more major life activity?

☐ Yes  ☐ No

6. Does the employee have any functional limitations resulting from the impairment? Please describe:

_________________________________________________________________
_________________________________________________________________

7. Please refer to the attached description of the employee’s job that contains a list of essential job functions. How does the functional limitation impact the employee’s ability to perform the essential functions?

_________________________________________________________________
_________________________________________________________________

8. Do you have any suggestions for possible accommodations that will enable the employee to perform the essential functions? Please describe:

_________________________________________________________________
_________________________________________________________________

9. How would your suggested accommodation enable the employee to perform the essential functions?

_________________________________________________________________
_________________________________________________________________

Please return this form to: _____________________
____________________
_____________________