

THE AMERICANS WITH DISABILITIES ACT OF 1990 AND INJURED WORKERS

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a more extensive review of the
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available for purchase from
your Regional Disability and
Business Technical Assistance
Center at 1-800-949-4232
(voice/TTY), or from LRP
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What is the Americans with Disabilities Act?

The Americans with Disabilities Act of 1990 is civil rights legislation that extends to persons with disabilities the same protection against discrimination that has been in place for other persons on the basis of race, sex, religion, and national origin. The ADA covers all aspects of participation in society--employment, public accommodations, transportation, and telecommunications. The employment provisions of the Americans with Disabilities Act (Title I) prohibit discrimination against persons with disabilities in all facets of employment, including: recruitment, pre-employment screening, hiring practices, promotional practices, and layoffs and terminations. Employers, human resource professionals, and labor union representatives need to be aware of the requirements of the ADA in order to respond appropriately to accommodation requests by workers with disabilities.

Is there a relationship between the ADA and injured workers?

The employment provisions of the ADA became effective on July 26, 1992. Private employers, state and local governments, employment agencies, labor unions, and joint labor-management committees must comply with Title I of the ADA. Covered employers are those who have 25 or more employees

(July 26, 1992) or 15 or more employees (July 26, 1994), working for them for 20 or more calendar weeks in the current or preceding calendar year. The definition of "employer" includes persons who are "agents" of the employer such as managers, supervisors, foremen, or others who act for the employer, such as agencies used to conduct background checks on candidates. Therefore, the employer is responsible for actions of such persons that may violate the law. In the four years of the implementation of these provisions, close to 72,000 charges have been filed with the Equal Employment Opportunity Commission, that branch of the federal government that oversees compliance with the employment provisions of the ADA. The ADA violations most often alleged in these complaints during this time, have been wrongful discharge (52%) and failure to provide reasonable accommodation (28%). The most often cited disability where discrimination has been charged is in back impairments (18%). These figures suggest that people already in the workforce who incur an illness or injury are using the coverage of the ADA to seek protection against discrimination.

The areas which employers and workers should consider when trying to identify whether an issue for an injured worker is one that is relevant to coverage by the Americans with Disabilities Act are the following: whether the employee is one who is covered

under the ADA, medical examination and medical inquiries under the ADA, confidentiality of medical records, and accommodation of injured workers.

Is an injured worker automatically covered under the ADA?

Whether an injured worker is protected by the ADA will depend on whether or not the person meets the ADA definitions of "an individual with a disability" and "qualified individual with a disability." For purposes of the ADA, a person with a disability is one whose physical or mental impairment substantially limits one or more major life activities of that individual, or the person has a record of such an impairment, or is regarded as having such an impairment. The key factor under this definition is that the person is substantially limited in his or her major life functioning. However, as the expanded definition indicates, a person who may no longer be experiencing this serious disability, but is discriminated against based on the history of that disability or the perception of being disabled, may also be a person protected under the ADA.

Another important facet of definition under the ADA is the concept of the person being qualified for the job. The ADA protects an employee or job applicant who meets the applicable qualification standards and is able to perform the essential functions of the job, with or without the employer making a reasonable

accommodation for that disability. The fact that an employee is awarded workers' compensation benefits, or is assigned a high workers' compensation disability rating, does not automatically establish that this person is protected by the ADA.

Does the ADA change anything about my ability to find out about a worker's prior workers' compensation history?

An employer may not inquire into an applicant's workers' compensation history before making a conditional offer of employment. After making a conditional job offer, an employer may ask about a person's workers' compensation history in a medical inquiry or examination that is required of all applicants in the same job category. After an employer has obtained basic medical information from all individuals who have been given conditional offers in a job category, it may ask specific individuals to take follow-up examinations and/or answer more questions if they are medically related to the previously obtained medical information.

What does the ADA say about pre-employment medical examinations?

Under the ADA, it is illegal to conduct medical exams prior to an employment offer. However, a covered entity may require a

medical examination after making an offer of employment to a job applicant before beginning his or her employment duties, and may condition an offer of employment on the results of such examination, if all entering employees in the same job category are subjected to such an examination regardless of disability.

If the employer withdraws a job offer because the medical examination reveals that the person does not satisfy certain employment criteria, the employer must be able to show that:

- the exclusionary criteria does not screen out or tend to screen out an individual with a disability or a class of individuals with disabilities; or
- the exclusionary criteria is job-related and consistent with business necessity, and that there is no reasonable accommodation that will permit the individual with a disability to perform the essential functions of the job.

With whom can medical records be shared?

Information obtained from permitted medical examinations and inquiries is a "confidential medical record," and shall be collected and maintained on separate forms and in separate medical files. Access to the file and the information contained in it must be strictly limited and disclosed only under the following circumstances:

- supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;
- first-aid safety personnel may be informed, when appropriate, if the disability might require emergency treatment;
- government officials investigating compliance with this chapter shall be provided relevant information on request; and
- employers may give information to state workers' compensation offices, state second injury funds, or workers' compensation insurance carriers in accordance with state workers' compensation laws or also use the information for insurance purposes.

What is reasonable accommodation under the ADA?

A critical concept in the employment provisions (Title I) of the Americans with Disabilities Act of 1990 (ADA) is that of *reasonable accommodation*. Reasonable accommodation is any modification or adjustment to a job, an employment practice, or the work environment that makes it possible for a qualified individual with a disability to participate in and enjoy an equal employment opportunity. The employer's obligation to provide a reasonable accommodation applies to all aspects of employment; the duty is ongoing and may arise any time a person's disability or job changes,

unless the accommodation causes an undue hardship to the employer. An undue hardship is an action that requires significant difficulty or expense in relation to the size of the employer, the resources available, and the nature of the operation. An employment opportunity cannot be denied to a qualified applicant or employee solely because of the need to provide reasonable accommodation. If the cost of the accommodation would impose an undue hardship on the employer, the individual with a disability should be given the option of paying that portion of the cost which would otherwise constitute an undue hardship for the employer.

The ADA does not require an employer to create "light duty" positions unless the "heavy duty" tasks an injured worker can no longer perform are marginal job functions which may be reallocated to co-workers as part of the reasonable accommodation of job restructuring. An employer is not required to reallocate essential job functions when restructuring a job. However, if an employer already has a vacant light duty position for which an injured worker is qualified, it might be a reasonable accommodation to reassign the worker to that position.

Does filing a workers' compensation claim prevent an injured worker from filing a charge under the ADA?

Filing a workers' compensation

claim does not prevent an injured worker from filing a charge under the ADA. "Exclusivity" clauses in state workers' compensation laws bar all other civil remedies related to an injury that has been compensated by a workers' compensation system. However, these clauses do not prohibit a qualified individual with a disability from filing a discrimination charge with the Equal Employment Opportunity Commission (EEOC), or filing a suit under the ADA, if issued a "right to sue" letter by the EEOC.

Where can I go to get more information on these issues?

The following are national resources available to you that will provide you with further information on the employment provisions of the Americans with Disabilities Act of 1990 and reasonable accommodation:

ADA Regional Disability and Business Technical Assistance Center Hotline, (800) 949-4232 (voice/TTY).

Job Accommodation Network, West Virginia University, PO Box 6080, Morgantown, WV 26506-6080, (800) ADA-WORK (voice/TTY).

Equal Employment Opportunity Commission, 1801 L Street, NW, Washington, DC 20507, Technical Assistance - (800) 669-4000 (Voice) (800) 669-6820 (TTY) Publications - (800) 669-EEOC (Voice) (800) 800-3302 (TTY).

For Further Information Contact:

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OTHER TITLES IN THIS *IMPLEMENTING THE ADA* SERIES ARE:

A Human Resource Perspective on Implementing the ADA
Pre-Employment Screening Considerations and the ADA
Pre-Employment Testing and the ADA
Reasonable Accommodations Under the ADA
Health Benefit Plans and the ADA
The ADA and Injured Workers
The ADA and Collective Bargaining Issues
The ADA and Personnel Training
The ADA and Total Quality Management
Cultural Diversity and the ADA

These and other informational brochures can be accessed on the World Wide Web at:

www.ilr.cornell.edu/ped/ada

For further information about publications such as these, contact the ILR Program on Employment and Disability, Cornell University, 102 ILR Extension Division, Ithaca, NY 14853-3901; or at 607/255-2906 (Voice), 607/255-2891 (TTY), or 607/255-2763 (Fax).

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