

THE AMERICANS WITH DISABILITIES ACT OF 1990

TITLE I EMPLOYMENT

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LEARNING OBJECTIVES

- Understand the definition of disability under the ADA.
- Discuss the key provisions of Title I such as inquiries, essential functions and reasonable accommodations.
- Apply the Title I provisions to the application process, interviews, hiring, employment, accommodations and benefits.

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UNDERSTANDING THE CHARACTERISTICS AND NEEDS OF PEOPLE WITH DISABILITIES

U.S. POPULATION

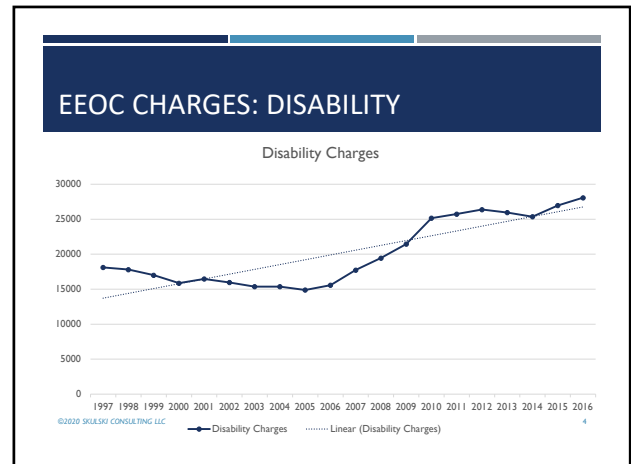
In 2015¹

- 17% of people with disabilities employed
- 65% of people without disabilities employed
- Employed people with disabilities are²
 - underrepresented in management and professional/technical jobs
 - overrepresented in service, production, and transportation jobs

Source: 1. Persons with a Disability Labor Force Characteristics Summary. Published by the Bureau of Labor Statistics, June 2016.
2. Census Bureau's 2010-2012 American Community Survey, matched to the Bureau of Labor Statistics' 2012-2022 occupational Projections. Published by DOL's Office of Disability Employment Policy, Employment and Training Administration

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PURPOSE OF ADA

- Eliminate discrimination
 - Employment
 - Public Services
 - Transportation
 - Public Accommodations
 - and more
- Expand integration

- Title I - Employment
- Title II - State & Local Government
- Title III - Public Accommodations
- Title IV - Telecommunications
- Title V - Miscellaneous

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AMERICANS WITH DISABILITIES ACT

Prohibits discrimination on the basis of disability against qualified individuals with disabilities.

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DEFINITION OF A DISABILITY

- A physical or mental impairment that substantially limits one or more major life activities;
- A record of such an impairment; or
- Regarded as having such an impairment.

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AFFECTED MAJOR LIFE ACTIVITIES

- Caring for oneself
- Performing manual tasks
- Hearing
- Seeing
- Speaking
- Learning
- Ambulating
- Sleeping
- Working

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NOT CONSIDERED IMPAIRMENTS

- Stress
- Irritability
- Chronic lateness
- Poor judgement
- Bereavement reactions

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INDIVIDUALS NOT COVERED BY THE ADA

- Current illegal drug users
- Sexual behavior disorders
- Compulsive gambling
- Kleptomania
- Pyromania
- Psychoactive substance use disorders (from use of illegal drugs)

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ALCOHOL & DRUG ABUSE

- Past illegal drug use covered
- Current illegal drug use not covered
- Employer may prohibit use of illegal drugs and alcohol in workplace
- Drug tests are not illegal

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ALCOHOL & DRUG ABUSE

- Past alcohol use covered
- Current alcohol use covered
- Discipline, discharge or deny employment when alcohol impairs job performance or conduct

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TITLE I - EMPLOYMENT

- Private employers
- State & local governments
- Employment agencies
- Labor Unions

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TITLE I - EMPLOYMENT

- Application
- Hiring
- Evaluation
- Training
- Promotion
- Layoff/Recall
- Compensation
- Disciplinary Action
- Medical Exams
- Leave
- Benefits
- Termination

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QUALIFIED INDIVIDUAL WITH A DISABILITY

- An individual with a disability who satisfies the requisite skill, experience and education requirements of the position the person holds or desires and who, with or without reasonable accommodation, can perform the essential functions of such position.

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TITLE I - EMPLOYMENT

- The ADA prohibits disability-related inquiry

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INTERVIEW: ACCEPTABLE QUESTIONS

- Are you capable of standing for 3 hours?
- Would you be able to arrive to work by 8 am everyday?
- Can you perform the essential functions of the job with or without a reasonable accommodation?
- Can you move 50 lbs from point A to point B?
- Can you sit for 2 hours at a time?
- Can you read a video display terminal?

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INTERVIEW: UNACCEPTABLE QUESTIONS

- How much alcohol do you drink?
- What medications are you taking?
- Have you ever taken AZT?
- Have you ever filed or received worker's compensation?

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REFERENCE CHECKS

May ask about:

- job functions & tasks
- quality & quantity of work
- how job functions were performed
- attendance record
- other job-related issues that do not relate to disability

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BACKGROUND & REFERENCE CHECKS

Cannot ask about:

- Disability
- Illness
- Workers compensation history

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MEDICAL INQUIRY: PRE-EMPLOYMENT

- No questions which could elicit medical information
- Agility testing or aptitude testing permissible if it is consistent with business necessity
- All other applicants are subject to same

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MEDICAL INQUIRY: POST-OFFER

- Permissible if all applicants or individuals in similar positions subject to same inquiry
- Additional inquiry allowed to follow-up on information found in initial inquiry
- Withdrawal of offer must be based on direct threat

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MEDICAL INQUIRY: POST-HIRE

- No medical inquiry unless consistent with business necessity
- Participation in wellness or other health promotion activities sponsored by employer must be voluntary

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MEDICAL EXAMS OR INQUIRIES

- Pre-employment = not permissible
- After job offer = medical exams & drug testing are permissible
- After hire = voluntary medical exams

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MEDICAL RECORDS

- Confidential
- Separate

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CAN THE PERSON PERFORM ESSENTIAL
JOB FUNCTIONS...?

....WITH OR WITHOUT
REASONABLE ACCOMMODATION

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WHAT ARE ESSENTIAL FUNCTIONS?

- Fundamental “job duties of the employment position the individual holds or desires.”

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WHAT MAKES A FUNCTION ESSENTIAL?

- Does the employer actually require employees in the position to perform the function?
- Would removing the function fundamentally alter the position?
- Does the position exist to perform a specific function?

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WHAT MAKES A FUNCTION ESSENTIAL?

- Number of other employees available to perform that job function or among whom the performance of that job function can be distributed
- Degree of expertise or skill required to perform the function

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WHAT IS A REASONABLE ACCOMMODATION?

- In general, an accommodation is any change in the work environment or in the way things are done that allow people with disabilities to enjoy equal employment opportunities as long as the required modifications do not result in an “undue hardship” for the employer

(EEOC, 2000)

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REASONABLE ACCOMMODATIONS

- Accessible work environment
- Modify exams, training materials, job-restructuring
- Modify work practices and procedures (written instructions, periodic evaluation, co-buddy)
- Part - time or modified work schedules
- Qualified interpreters or readers
- Leave
- Reassignment

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WHEN IS AN ACCOMMODATION REQUIRED?

- To ensure equal opportunity in application process
- To enable a qualified individual with a disability to perform essential functions of a job
- To enable employee with a disability to enjoy equal benefits and privileges of employment

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PRINCIPLES OF REASONABLE ACCOMMODATIONS

- Must be effective
- Only applies to disability-related barriers
- Doesn't have to be the best
- Not primarily for personal use
- Employer can go beyond ADA requirement

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NOT REASONABLE ACCOMMODATIONS:

- Transfer to a different supervisor
- Reassignment of essential functions
- Lowering production standards
- Provision of personal use items
- Provision of "light duty" position
- Violent or abusive behaviors
- Non-adherence to policy and procedure that is consistent with business necessity

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DEFENSES:

- Undue hardship
 - Significant expense or difficulty
- Direct threat
 - ...to health & safety of others
 - Significant risk that can not be eliminated by reasonable accommodation

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ISSUES COURTS SUPPORT AS "NOT A REASONABLE ACCOMMODATION"

- "The disability made me do it"
- "I'll be back to work....eventually"
- "Accommodate me by promoting me"
- "You say this job function is important, but let's eliminate it"
- "This is the only accommodation I will accept"

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GRIEVANCE PROCEDURES

- Informal
 - Alternative Dispute Resolution
 - Conciliation
 - Mediation
 - Fact finding & more
- Formal
 - Administrative Process
 - Discrimination charge filed with EEOC, 180 days to file, hearing officer
 - Judicial Process (Federal Court)
 - Administrative Exhaustion

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RECOMMENDATIONS FOR EMPLOYEES

- Understand the demands of the job
- See if self-accommodation is an option
- Present accommodation request positively
 - Enhancements to job performance
 - Benefits to the employer, coworkers
- Improve relationships and communication skills
 - Disclosing
 - Identifying and requesting accommodations
 - Negotiating
 - Managing reactions to accommodation requests

(Fabian, MacDonald-Wilson, & Vessels, University of Maryland & Mid-Atlantic ADA Center, 2011)

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RECOMMENDATIONS FOR EMPLOYERS

- Train managers to respond to requests for accommodations
- Develop and disseminate accommodation policy
- Always involve the direct supervisor in process
- Understand the physical, emotional, and cognitive demands of the job
- Be sensitive to reactions to disability in employees themselves, managers, and coworkers
- Accommodation as a Tool to Enhance Productivity
- Accommodations and Universal Design can benefit all employees

(Fabian, MacDonald-Wilson, & Vessels, University of Maryland & Mid-Atlantic ADA Center, 2011)

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RESOURCES & CONTINUING EDUCATION

<ul style="list-style-type: none"> ■ EEOC www.eeoc.gov ■ ADA Network (800) 949-4232 ■ Job Accommodation Network www.askjan.org 	<ul style="list-style-type: none"> ■ ADA National Network – webinars www.ada-audio.org ■ ADA Basics Building Blocks www.adabasics.org
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RECOMMENDED READING

- EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act
<https://www.eeoc.gov/policy/docs/accommodation.html>
- EEOC Enforcement Guidance: Pre-employment Disability-Related Questions and Medical Examinations
<https://www.eeoc.gov/policy/docs/preemp.html>

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