

AMERICANS WITH DISABILITIES ACT (ADA)

This is a brief overview of what the ADA is, and how agency employers are responsible for implementing its intent. Most of this information was taken from the U.S. Equal Employment Opportunity Commission Technical Assistance Manual on the Employment Provisions of the ADA. If you have any questions about any of the content, please contact one of the entities listed at the end of this explanation.



The ADA is a Federal law, enacted by Congress in January, 1992. It protects qualified individuals with disabilities from employment discrimination.

The ADA has a three-part definition of "disability". It is based on the definition found in the Rehabilitation Act, and reflects the specific types of discrimination experienced by people with disabilities.

Under the ADA, an **individual with a disability** is a person who has:

1. A physical or mental **impairment** that **substantially limits** one or more **major life activities**;
2. a **record** of such an impairment; or
3. is **regarded** as having such an impairment.

Employers frequently ask whether "temporary disabilities" are covered by the ADA. How long an impairment lasts is a factor to be considered, but does not by itself determine whether a person has a disability under the ADA. The basic question is whether an impairment "substantially limits" one or more major life activities. This question is answered by looking at the extent, duration and impact of the impairment. Temporary, non-chronic impairments that do not last for a long time and that have little or no long-term impact usually are not disabilities.

Persons who currently use drugs illegally are **not** considered individuals with disabilities and are **not** protected by the ADA when an employer takes action because of their continued use of drugs. This includes people who use prescription drugs illegally as well as those who use illegal drugs. Former drug addicts who have been successfully rehabilitated may be protected by the ADA.

Other specific exclusions under the ADA are homosexuality, bisexuality, compulsive gamblers and a number of other sexual and behavioral disorders.

To be protected by the ADA, a person must not only be an individual with a disability, but must be **qualified**. An employer is not required to hire or retain an individual who is not qualified to perform a job. The regulations define a **qualified individual with a disability** as a person with a disability who:

"satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position."

ESSENTIAL FUNCTIONS

Essential function(s) are those job functions for which the position exists, and removing the function(s) would fundamentally change the job. These are distinguished from marginal functions in that marginal functions are not the reason the job exists. An example would be a clerical position

that requires typing, filing and proofreading as essential functions, and cleaning the break room as a marginal function. OHS has provided a "decision tree" with the essential functions worksheets to assist agencies in identifying essential vs. marginal job functions. See "Essential Functions Worksheets."

Many individuals with disabilities are qualified to perform the essential functions of jobs without need of any accommodation. However, if an individual with a disability who is *otherwise qualified* cannot perform one or more essential job functions because of his or her disability, the employer, in assessing whether the person is qualified to do the job, must consider whether there are modifications or adjustments that would enable the person to perform these functions. Such modifications or adjustments are called **reasonable accommodations**.

Reasonable accommodation is a key nondiscrimination requirement under the ADA.

It is the responsibility of the hiring agency to accurately determine essential functions of each individual position and to provide this information to OHS in the Essential Functions Worksheet package. It is also the agency's responsibility to assess and provide reasonable accommodation for restrictions that may be determined by the examining physician for qualified individuals with disabilities.

For additional information, consult your agency ADA coordinator or Human Resources professional, or visit the ADA website at www.ada.gov . You may also call OHS at 602-542-3481.