

ADA 01-94  
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# Safety BULLETIN

(FILE UNDER ADA TAB)

## ADA EFFECTIVE DATE NEAR FOR SMALL EMPLOYERS

If you're considered a "small employer" (with 15 to 24 employees), you were required to comply with the provisions of the Americans with Disabilities Act (ADA) as of July 26, 1994. This deadline brings all employers who come under the law into compliance with ADA provisions. (Two years after its implementation on July 26, 1990, employers with 25 or more employees were required to comply.)

The Americans with Disabilities Act of 1990 was enacted to protect the rights of 43 million Americans who have physical and mental impairments. These individuals are often discriminated against in such areas as employment, education, transportation, communication, and access to public services. ADA's objectives are to eliminate discrimination, to integrate these individuals into economic life, and to transfer the cost of supporting them from the public to the private sector.

While the ADA seeks to ensure access to equal employment opportunities based on merit, it does not guarantee equal results, establish quotas, or require preferences favoring individuals with disabilities. When an individual's disability creates a barrier to employment opportunities, the law requires employers to determine whether "reasonable accommodations" could remove the barrier. Although ADA seeks to eliminate barriers, it does not relieve a disabled employee or applicant from the obligation to perform the essential functions of the job. It intends to enable disabled persons to compete in the workplace based on the same performance standards and requirements that employers expect of persons who are not disabled.

## QUESTIONS AND ANSWERS

The following paragraphs address common concerns of many employers regarding compliance with ADA requirements.

- Q. What employers are covered by the ADA, and when is the coverage effective?**
- A.** The employment provisions apply to private employers, State and local governments, employment agencies, and labor unions. Employers with 25 or more employees were covered as of July 26, 1992, when the employment provisions went into effect. Employers with 15 or more employees were covered two years later, beginning July 26, 1994.
- Q. What practices and activities are covered by the employment nondiscrimination requirements?**
- A.** The ADA prohibits discrimination in all employment practices, including job application procedures, hiring, firing, advancement, compensation, training, and other terms, conditions, and privileges of employment. It applies to recruitment, advertising, tenure, layoff, leave, fringe benefits, and all other employment-related activities.
- Q. Who is protected against employment discrimination?**
- A.** Employment discrimination is prohibited against "qualified individuals with disabilities." Persons discriminated against because they have a known association or relationship with a disabled individual also are protected. The ADA defines an "individual with a disability" as a person who has a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or is regarded as having such an impairment.

The first part of the definition makes clear that the ADA applies to persons who have substantial, as distinct from minor, impairments, and that these must be impairments that limit major life activities such as seeing, hearing, speaking, walking, breathing, performing manual tasks, learning, caring for oneself, and working. An individual with epilepsy, paralysis, a substantial hearing or visual impairment, mental retardation, or a learning disability would be covered, but an individual with a minor, non-chronic condition of short duration, such as a sprain, infection, or broken limb generally would not be covered.

The second part of the definition would include, for example, a person with a history of cancer that is currently in remission or a person with a history of mental illness.

The third part of the definition protects individuals who are regarded and treated as though they have a substantially limiting disability, even though they may not have such an impairment. For example, this provision would protect a severely disfigured, qualified individual from being denied employment because an employer feared the "negative reactions" of others.

**Q. Who is a "qualified individual with a disability"?**

**A.** A qualified individual with a disability is a person who meets legitimate skill, experience, education, or other requirements of an employment position that he or she holds or seeks, and who can perform the "essential functions" of the position with or without reasonable accommodation. Requiring the ability to perform "essential" functions assures that an individual will not be considered unqualified simply because of inability to perform marginal or incidental job functions. If the individual is qualified to perform essential job functions except for limitations caused by a disability, the employer must consider whether the individual could perform these functions with a reasonable accommodation. If a written job description has been prepared in advance of advertising or interviewing applicants for a job, this will be considered as evidence, although not necessarily conclusive evidence, of the essential functions of the job.

**Q. Does an employer have to give preference to a qualified applicant with a disability over other applicants?**

**A.** No. An employer is free to select the most qualified applicant available and to make decisions based on reasons unrelated to the existence or consequence of a disability. For example, if two persons apply for a job opening as a typist, one a person with a disability who accurately types 50 words per minute, the other a person with a disability who accurately types 75 words per minute, the employer may hire the applicant with the higher typing speed, if typing speed is needed for successful performance of the job.

**Q. What is "reasonable accommodation"?**

**A.** "Reasonable accommodation" is any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to participate in the application process or to perform essential job functions. Reasonable accommodation also includes adjustments to assure that a qualified individual with a disability has the same rights and privileges in employment as non-disabled employees.

**Q. What kind of actions are required to reasonably accommodate applicants and employees?**

**A.** Examples of reasonable accommodation include making existing facilities used by employees readily accessible to and usable by an individual with a disability; restructuring a job; modifying work schedules; acquiring or modifying equipment; providing qualified readers or interpreters; or appropriately modifying examinations, training, or other programs. Reasonable accommodation also may include reassigning a current employee to a vacant position for which the individual is qualified, if the person becomes disabled and is unable to do the original job. However, there is no obligation to find a position for an applicant who is not qualified for the position sought. Employers are not required to lower quality or quantity standards in order to make an accommodation, nor are they obligated to provide personal use items such as glasses or hearing aids.

The decision as to the appropriate accommodation must be based on the particular facts of each case. In selecting the particular type of reasonable accommodation to provide, the principal test is that of effectiveness, i.e., whether the accommodation will enable the person with a disability to do the job in question.

**Q. Must employers be familiar with the many diverse types of disabilities to know whether or how to make a reasonable accommodation?**

**A.** No. An employer is only required to accommodate a "known" disability of a qualified applicant or employee. The requirement generally will be triggered by a request from an individual with a disability, who frequently can suggest an appropriate accommodation. Accommodations must be made on an individual basis, because the nature and extent of a disabling condition and the requirements of the job will vary in each case. If the individual does not request an accommodation, the employer is not obligated to provide one. If a disabled person requests, but cannot suggest, an appropriate accommodation, the employer and the individual should work together to identify one. There are also many public and private resources that can provide assistance without cost.

**Q. What are the limitations on the obligation to make a reasonable accommodation?**

**A.** The disabled individual requiring the accommodation must be otherwise qualified, and the disability must be known to the employer. In addition, an employer is not required to make an accommodation if it would impose an "undue hardship" on the operation of the employer's business. "Undue hardship" is

defined as "an action requiring significant difficulty or expense" when considered in light of a number of factors. These factors include the nature and cost of the accommodation in relation to the size, resources, nature, and structure of the employer's operation. Where the facility making the accommodation is part of a larger entity, the structure and overall resources of the larger organization would be considered, as well as the financial and administrative relationship of the facility to the larger organization. In general, a larger employer would be expected to make accommodations requiring greater effort or expense than would be required of a smaller employer.

**Q. Must an employer modify existing facilities to make them accessible?**

**A.** An employer may be required to modify facilities to enable an individual to perform essential job functions and to have equal opportunity to participate in other employment-related activities. For example, if an employee lounge is located in a place inaccessible to a person using a wheelchair, the lounge might be modified or relocated, or comparable facilities might be provided in a location that would enable the individual to take a break with co-workers.

#### **REGULATORY COMPLIANCE DATES**

Complete structural changes to existing buildings to meet program accessibility requirements.	1/26/1995
Compliance date for retrofitting key rail station platforms with detectable warnings extended to.	7/26/1994
For rapid, light, commuter, and intercity rail systems at least one vehicle or car in each train of two or more cars must be accessible.	7/26/1995
Existing commuter rail stations may be granted extensions of up to 20 years to make modifications.	7/26/2010
Existing rapid and light stations may be granted extensions of up to 30 years to make modifications.	7/26/2020
Existing intercity rail stations must be made accessible.	7/26/2010
All public entities must be in full compliance with all paratransit provisions.	1/26/1997