

# What managers need to know about the ADA

When you're faced with an employee or applicant who may have a physical or mental disability, your legal antenna should go up right away. That's because the complex Americans with Disabilities Act (ADA) gives qualified disabled people special rights in the workplace. Here's what a manager needs to know about the ADA:

## Who is protected?

The ADA covers more than just people who are deaf, blind or in wheelchairs. Technically, people are "disabled" under the ADA if they have a physical or mental impairment that "substantially limits one or more major life activities," such as sleeping, standing or working.

Depending on the person's condition, that can include ailments such as epilepsy, diabetes or arthritis, plus mental impairments, such as major depression and bipolar disorder. The ADA protects people with a history of such impairments, such as an employee whose cancer is in remission. And on Jan. 1, 2009, a new law broadened the definition of "disability" even further, thus allowing more employees to request accommodations and file lawsuits.

The law also says that if an employer treats a person as being disabled, then that person earns protection under the law, even if he or she wouldn't otherwise qualify. That's why, when faced with an employee or applicant who may be disabled, it's important for managers to talk with **HR** about how to respond.

## What are you required to do?

Employers must make sure that people with disabilities have an equal access to jobs, compensation and promotions. The ADA also requires employers to prevent harassment because of a person's disability. With limited exceptions, you must keep confidential any medical information about applicants or employees. If a person is "disabled" under the law, we must provide reasonable accommodations to assist that person.

## Can you ask about disabilities?

The ADA says employers can't ask questions about a person's disability during the application process. That includes direct questions about the impairment, questions about medications they take or questions about the person's workers' comp history.

You can, however, make business-based inquiries, such as:

- Whether they have the right experience, training and skills.
- Whether they can satisfy the job's essential functions.
- How much time off the applicant took in past jobs (but not why).

After making a job offer, you can then ask any disability-related questions and conduct medical exams, as long as you do this for everyone in that same job category. You can't pull back a job offer simply because you discover a person is disabled. That would be blatant discrimination.

You can, however, withdraw a job offer if it's clear after the medical inquiry that the person can't perform the job's essential functions with or without a "reasonable accommodation."

Note: You don't have to hire a disabled person who doesn't have the appropriate skills and experience. But if the deciding factor is the disability, you must prove that the disability interferes with the job's essential functions.

### **What's a 'reasonable' accommodation?**

If an employee is a qualified disabled person, you must make "reasonable accommodations" to help him or her perform the job's essential functions. Some examples:

- A diabetic employee may need regular breaks to eat properly and monitor blood levels.
- A person with a back problem may need a stiff-backed chair.
- A person with cancer may need leave to have radiation treatments.

When potentially disabled employees approach you with accommodation requests, they set in motion the ADA's "interactive process."

It's important to be able to identify such requests as possible ADA-covered requests and then alert HR. You should begin laying a paper trail now to show a good-faith effort to comply with the law.

Employers don't have to go along with every accommodation request. Requests are unreasonable if they cause the organization an "undue hardship," meaning it's too difficult or too expensive to provide.

### **What if a disability threatens safety?**

The ADA allows you to ask questions related to a disability and even require a medical exam if an employee's medical condition appears to be causing performance or safety problems. You can also reject a job applicant (or terminate an employee) with a disability for safety reasons if the person poses a direct threat to others.

### **What about drug and alcohol use?**

Current illegal use of drugs isn't protected by the ADA, so you don't need to hire or retain someone who is using illegal drugs or fails a drug test. Also, employees who are found drinking on the job can be fired for company violations.

However, recovering alcoholics may be a different story; they could be covered under ADA protections. As a result, you may need to offer accommodations, such as allowing periodic calls to their AA sponsor or leave for meetings.

### **At a glance: Americans with Disabilities Act**

- Prohibits private employers with 15 or more employees from discriminating against qualified people with disabilities during hiring, firing, promotions, pay and training. (Some state laws apply to smaller employers.)
- You can't ask about a person's disability during hiring.
- Job offers can be conditional on a medical exam, as long as all applicants take the same exam.
- The ADA defines a disability as "a physical or mental impairment that substantially limits one or more major life activities."
- Employers must make reasonable accommodations for the person's disability unless doing so would create an "undue hardship" for the organization.