

Preventing Disability Discrimination in the Workplace



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Introduction

The Americans with Disabilities Act (ADA) of 1990 was the first comprehensive civil rights law in this country that addressed the needs of people with disabilities. The law was amended by the ADA Amendments Act (ADAAA) of 2008. It applies to employers with 15 or more employees.

The ADA as amended prohibits discrimination in employment, public services and accommodations, and telecommunications. It also requires employers to make a reasonable accommodation to an applicant or employee if needed to perform the essential functions of a job.

The Alaska State Commission for Human Rights is the state agency that enforces the Alaska Human Rights Law, AS 18.80. The Mission of the ASCHR is to eliminate and prevent discrimination for all Alaskans.



Introduction (cont.)

It is essential that all supervisors, in addition to the HR staff, know how to comply with the fundamental employment aspects (Title I) of the ADA and the Alaska Human Rights Law.

This presentation provides that knowledge and will help you, as supervisors, provide equal employment opportunities for people with disabilities.



Covered Employment Practices

The ADA and Alaska Human Rights Law makes it unlawful to discriminate in these employment practices:

- Recruitment
- Pay
- Hiring
- Firing
- Training
- Job assignment
- Promotion
- Benefits
- Tenure
- Layoff
- Leave
- All other employment-related activities



Covered Employment Practices (cont.)

In addition, the ADA prohibits an employer from retaliating against applicants or employees for asserting their rights under the ADA.

The act also makes it unlawful to discriminate against an applicant or employee, whether disabled or not, because of the individual's family, business, social, or other relationship or association with an individual with a disability.

The Alaska Human Rights Law (AS 18.80) also makes it illegal to discriminate based on physical or mental disability.

Both laws make it illegal for an employer to retaliate against an employee for opposing any practice forbidden under the ADA or Human Rights Law, or because the person has filed a complaint, testified, or assisted in a proceeding under the ADA or Human Rights Law.



Enforcement

The ADA's employment provisions are enforced by the Equal Employment Opportunity Commission (EEOC).

The Alaska Human Rights Law Alaska is enforced by the Alaska State Commission for Human Rights (ASCHR).



Covered Individuals - ADA

Employment discrimination is prohibited against qualified individuals with disabilities. Covered individuals include applicants for employment and employees.

Persons discriminated against because they have a known association or relationship with an individual with a disability also are protected.

As defined by the ADA, a **qualified individual with a disability** is

- 1) an individual 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
- 2) an individual who, with or without reasonable accommodation, can perform the **essential functions** of such position.



Covered Individuals - ADA (cont.)

An individual is considered to have a disability if he or she has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

The term "**substantially limits**" means:

An impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity to be considered substantially limiting.

Covered Individuals - ADA (cont.)

“Physical or mental impairment” means:

Any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.



Covered Individuals - ADA (cont.)

"Major life activities," as defined by the ADA, include:

Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working; and

The operation of a major bodily function, including functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.



Covered Individuals - ADA (cont.)

Whether an impairment is substantially limiting is made *without regard* to “ameliorative effects” of mitigating measures.

Mitigating measures may include:

- Medication.
- Medical supplies, equipment or appliances.
- Low-vision devices (not including ordinary eyeglasses or contact lenses).
- Prosthetics.
- Hearing aids and other hearing devices.
- Mobility devices.
- Other types of medical assistance or therapy.

Covered Individuals - ADA (cont.)

The ADAAA specifically states certain conditions that can quite easily be determined to be a covered disability under the law.

These include an individual with:

- Epilepsy
- Paralysis
- HIV infection
- AIDS
- Substantial hearing or visual impairment
- Cancer
- Post-traumatic stress disorder (PTSD)
- Obsessive-compulsive disorder (OCD)
- Multiple sclerosis (MS)
- Muscular dystrophy
- Major depressive disorder
- Bipolar disorder
- Schizophrenia
- Autism
- Intellectual impairment
- Mobility impairments requiring use of a wheelchair
- Partial or missing limbs



Covered Individuals – AS 18.80

AS 18.80.300 defines a physical or mental disability as:

- A physical or mental impairment that substantially limits one or more major life activities;
- A history of, or a misclassification as having, a mental or physical impairment that substantially limits one or more major life activities;
- A condition that may require the use of a prosthesis, special equipment for mobility, or service animal;
- Having:
 - A physical or mental impairment that does not substantially limit a person's major life activities but that is treated by the person as constituting such a limitation;
 - A physical or mental impairment that substantially limits a person's major life activities only as a result of the attitudes of others toward the impairment; or
 - None of the impairments defined in this paragraph but being treated by others as having such an impairment; or



Covered Individuals – AS 18.80 (cont.)

- a condition that may require the use of a prosthesis, special equipment for mobility, or service animal.

Physical or mental impairment means

- Physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine;
- Mental or psychological disorder, including intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.



Disabilities & Substance Abuse

Alcohol

A person who currently uses alcohol is not automatically denied protection simply because of alcohol use.

An alcoholic is a person with a disability under the ADA and may be entitled to consideration of accommodation, if he or she is qualified to perform the essential functions of a job.

However, an employer may discipline, discharge or deny employment to an alcoholic whose use of alcohol adversely affects job performance or conduct to the extent that he or she is not qualified.

Disabilities & Substance Abuse (cont.)

Drugs

A drug addict is protected as having a disability only if he or she *is receiving recovery treatment* and is not a current user.

Persons addicted to drugs, but who are no longer using drugs illegally and are receiving treatment for drug addiction or who have been rehabilitated successfully, are protected by the ADA from discrimination on the basis of past drug addiction.

Making Reasonable Accommodations

Reasonable accommodation is any modification or adjustment to a job or the work environment that will enable the qualified individual with a disability to participate in the application process or to perform essential job functions (the fundamental duties of the job).

Reasonable accommodation also includes adjustments to ensure that a qualified individual with a disability has rights and privileges in employment equal to those of employees without disabilities.



Making Reasonable Accommodations (cont.)

Examples of reasonable accommodations include:

- Providing a special phone for a receptionist who has a hearing impairment.
- Providing frequent stretching breaks for an employee with a muscular/joint/vascular disorder whose job requires long periods of sitting or standing.
- Modifying an employee's work schedule to allow them to attend treatment or appointments related to their disability.
- Adjusting supervisory or training methods for an individual with a learning disability.
- Job restructuring or reassignment (temporary or permanent).

Circumstances will vary with different disabilities and work environments.



Making Reasonable Accommodations (cont.)

Tolerating poor performance unrelated to a disability is not an accommodation.

Accommodations must be reasonable and not create an undue hardship on the employer. These criteria are very high standards and cannot be easily demonstrated.

Partner with human resources before making any disability-related inquiry and when assessing what is a reasonable accommodation and what constitutes undue hardship.

Always maintain the confidentiality and privacy of medical information.



Navigating the ADA

Employers are frequently puzzled as to when the duty to provide a reasonable accommodation is triggered.

This is especially difficult when a disability disclosure coincides with behavioral or performance issues.



Interactive Process

- An informal practice in which the covered individual and the employer:
 - Determine the precise limitations created by the disability; and
 - How to best respond to the need for accommodation.
- Can be dialog between the employee and a supervisor, HR manager or ADA Coordinator
- Be aware that a request for accommodation could come from sources other than the employee:
 - A doctor's note outlining medical restrictions
 - Information from a family member or other representative
- If the disability and need for accommodation are obvious, the employee does not need to expressly ask for reasonable accommodation.



Interactive Process (cont.)

- What is the employee asking for? This must be something concrete.
- Identify which job duties the employee cannot perform and if these are essential or marginal functions.
- Identify potential accommodations.
 - Will the proposed accommodation be effective to enable the employee to perform the essential functions of the job?
 - Assess the effectiveness of each potential accommodation.
- Consider the employee's preference and select and implement the accommodation that is most appropriate for both the employee and the employer.



Supporting Documentation

- An employer may require information about the disability
 - Documentation may be required that is sufficient to substantiate the employee has an ADA disability and needs the reasonable accommodation requested.
 - Employer cannot ask for unrelated documentation (e.g.- complete medical records)
- If an employee provides insufficient documentation, an employer does not have to provide reasonable accommodation until sufficient documentation is provided.
- Document if the employee does not cooperate in the interactive process.



Supporting Documentation (cont.)

- Documentation is sufficient if it:
 - Describes the nature, severity, and duration of the impairment;
 - The activities that the impairment limits;
 - The extent to which the impairment limits the employee's ability to perform the activity or activities; and
 - Substantiates why the request for reasonable accommodation is needed.
- Documentation might be insufficient where, for example:
 - The health care professional does not have the expertise to give an opinion about the employee's medical condition and the limitations imposed by it;
 - The information does not specify the functional limitations due to the disability; or,
 - Other factors indicate that the information provided is not credible or is fraudulent.



Best Practices

- ADA demands a process, not an outcome.
- Don't prejudge the outcome.
- Attentively listen to the employee's requests, and perform a customized inquiry with the supervisors and HR.
- There may be several reasonable options for accommodation.
- Focus on a process that gets a fair result.
- Document, document, document!



Resources

EEOC Enforcement Guidance for Disability-Related Inquiries and Medical Examinations: <https://www.eeoc.gov/policy/docs/guidance-inquiries.html>

Alaska State Commission for Human Rights:
<https://humanrights.alaska.gov/>

Job Accommodation Network: <https://askjan.org/>

