ADA & Employment: An Overview

About this module

Goal: To provide a brief overview of the Title I employment provisions of the ADA.
Format: PowerPoint presentation
Time: About 30 minutes
Potential audience: Job-seekers with disabilities, employers, recruiting/staffing professionals, disability service providers, employers/business leaders, educators
Materials needed:
- Hard copy of presentation optional. Offer to send text version to those who need it after the session.

Facilitator’s Tips for this Module

PLEASE NOTE: This module is only intended to provide a quick, basic overview of Title I of the ADA and is not designed to go into depth about any one issue. You may notice that some ADA employment concepts are not included here or are only briefly mentioned. Keep in mind that this module can be combined with other modules, depending on audience needs. For example, the following modules could be combined with this module to provide greater depth on hiring, accommodation, disclosure, the ADAAA and other topics:

3a. ADA & Employment (tile 1) – An Overview – PPT and guided discussion – 30 minutes
3b. ADA Amendments Act: An Overview – PPT and guided discussion – 20-30 minutes
3c. About Reasonable Accommodations – PPT and guided discussion – 30 minutes
3d. Reasonable Accommodation Case Studies – Activity – 30 minutes
3e. It’s About Talent – Hiring People with Disabilities – PPT and guided discussion – 30 minutes
3f. Navigating the Hiring Process as a Job-seeker with a Disability – PPT and activity – 30 minutes
3g. Preparing for Upcoming Workforce Trends – Activity – 30 minutes (45 minutes for groups of more than 40 participants)
3h. Guess that person: Profiles of people with disabilities – Activity – 15 minutes
3i. Talking to an Employer about Disability – Activity – 25 minutes
3j. Nonobvious Disabilities in the Workplace: An Overview – PPT and guided discussion – 30 minutes
3k. Employment & Disability Resources – PPT and guided discussion – 10 minutes

EEOC documents that you can use as background information to prepare for this module can be found at http://www.eeoc.gov/laws/types/disability.cfm

Here are a few “Do’s” and “Don’ts” to consider when facilitating this module:
Do:
- Keep the presentation moving forward, finishing the module in the time promised.
- Ask participants to hold their questions/comments until the end of the module.
- Remind participants that you cannot provide a decision on specific cases.
- Refer participants with specific cases to either the ADA Center TA line (800 949 4232) or ask them to see you after the session.

Don’t:
- Get derailed by questions related to very unusual or unlikely scenarios.
- Try to give answers when you are not sure. It’s perfectly fine to refer participants to the ADA Center TA call line for more detailed or complicated questions.

Facilitator’s Notes for this Module

ADA Trainer Network
Module 3a

ADA & Employment (Title I)

An Overview

Facilitator’s notes (Slide 1)
This is the title slide for this module. The purpose of this module is to provide a brief overview of the employment provisions of the ADA. This module has been designed for a variety of audiences and presents information from the vantage point of a range of audiences.

Often, this module will provide an introduction to Title I of the ADA and will be combined with other modules based on the interests of the audience. If presenting other employment-
focused modules, you may find some slight areas of overlap. Based on the needs of your audience, you can deal with this overlap in several ways. You may simply skip over material that’s already been covered or cover this material very briefly as a means of reinforcing learning. In any case, you will want to ensure that participants are aware that the ADA is divided into five titles:

Employment (Title I)
State and Local Government Entities (Title II)
Public Accommodations (Title III)
Telecommunications (Title IV)
Miscellaneous (Title V)

Please note that this module does not focus primarily on the ADAAA. You may wish to pair this module with the module on the ADAAA.

Remind participants that this module provides an overview of Title I. If they have additional questions about Title I or any of the Titles of the ADA, direct them to the toll-free, confidential TA Line of the ADA National Network at 800 949 4232.
Disclaimer

Information, materials, and/or technical assistance are intended solely as informal guidance, and are neither a determination of your legal rights or responsibilities under the ADA, nor binding on any agency with enforcement responsibility under the ADA.

The Northeast ADA Center is authorized by the National Institute on Disability and Rehabilitation Research (NIDRR) to provide information, materials, and technical assistance to individuals and entities that are covered by the ADA. The contents of this document were developed under a grant from the Department of Education, NIDRR grant number H133 A110020. However, those contents do not necessarily represent the policy of the Department of Education, and you should not assume endorsement by the Federal Government.

Facilitator’s notes (Slide 2)

Change this slide to reflect your regional information.

Trainers, be sure to advise participants that this training is not intended as legal advice.
Facilitator’s notes (Slide 3)

We begin this module by showcasing some prominent quotes of those who were intimately involved with the passing of the ADA in 1990. The purpose of these quotes are not so much to explain the “what” of the employment provisions of the ADA, but the “why.”

This statement by Justin Dart described the spirit of the ADA when it was passed in 1990. The statement reflects the fact that, as Americans, we can be proud of the ADA. The ADA was one of the world’s first pieces of legislation that had the “teeth” and scope to promote the broad civil rights of people with disabilities. The USA truly was a global leader in this area.

Justin Dart (1930 – 2002) was an American advocate, organizer and activist for the rights of people with disabilities. He is one of the individuals responsible for ensuring the passing of the ADA in 1990. Also, he is a co-founder of the American Association of People with Disabilities (AAPD). Justin Dart’s activism in disability issues stemmed in part from his early experience as a student with a mobility disability who, though graduating with all the qualifications needed to become a teacher, was denied a teaching certificate from his college because of his disability in 1954. After becoming a successful entrepreneur, Mr. Dart went on to become a tireless advocate for federal legislation for the rights of people with disabilities. For more information about Justin Dart, go to [http://www.disabilityhistory.org/people_dart.html](http://www.disabilityhistory.org/people_dart.html)
For an in-depth view of the origins of the ADA, please go to the recent PBS documentary on the passing of the ADA. This can be found at http://www.pbs.org/independentlens/lives-worth-living/

Facilitator’s notes (Slide 4)
This slide extends the spirit of the ADA theme presented in slide 2 to the realm of employment.

This slide refers briefly to the ADA Amendments Act (ADAAA) by focusing on a statement made by Rep Steny Hoyer during the passing of the ADAAA in 2008. Rep Steny Hoyer, currently the Majority Leader in the Senate and is the representative for Maryland's 5th Congressional District and has served since 1981. He was one of the leaders of the effort to pass the ADAAA. Others included Senators Harkin, Hatch, Enzi and Kennedy as well as Congressman McKeon, Sensenbrenner and Nadler. The ADAAA was passed with a broad coalition of disability and employer groups.

During this slide, briefly introduce the fact that the ADAAA was passed nearly two decades after the original ADA in order to restore the ADA to the original intent of Congress in 1990; importantly it clarified and expanded the definition of disability providing more people with protection under the law. If your program also includes the ADAAA module, you may wish to skip this slide. If not, use this opportunity to briefly explain that the ADAAA was signed into law in 2008.
Historically, people with disabilities have been subjected to automatic assumptions about what someone with a disability can and cannot do. These automatic assumptions and lowered expectations have led to significant discrimination against people with disabilities in the workplace.

The employment provisions of the ADA were not intended to create hiring quotas. Rather, these provisions were intended to provide equal opportunity so that people with disabilities, like anyone else, could succeed as far as their talents and drive would take them.

The Basics: ADA and employment (Title I)

- Enforced by Equal Employment Opportunity Commission (EEOC)
- Applies to private sector workplaces with 15 or more employees
- Applies to all state/local government employers
- Protects against disability discrimination in all employment processes
- Limits employer disability inquiry
- Reasonable accommodation unless there is undue hardship

Facilitator’s notes (Slide 5)

This slide provides a quick overview of the basics of Title I of the ADA. The purpose of this slide is just to summarize the main points of Title I of the ADA. Some of these points will be further discussed later in the module. At this point, do not go into detail. Just point out that:

- The employment provisions of the ADA are enforced by a federal agency: the U.S. Equal Employment Opportunity Commission (EEOC)
- The ADA applies to any private sector organization that has 15 or more employees (but state laws may differ about what workplaces are covered by disability law)
- The ADA applies to all state/local government employers
- Please note: Federal sector employers and federal contractors are also covered by the Rehabilitation Act
• Provides protection against discrimination across all employment processes, such as job application, hiring, employee development/training, promotion, performance management and termination.
• Limits employer inquiry (For example, what questions can be asked during hiring)
• Requires covered employers to provide reasonable accommodations to employees who have disabilities as long as these accommodations do not cause undue hardship.

Who is covered (has rights) under the ADA?

Applies to applicants or employees who:
- Have a disability
- Have a record of having a disability
- Are regarded as having a disability

What is a “disability?”
...A physical or mental impairment that substantially limits one or more major life activities*

* [http://www.eeoc.gov/laws/regulations/ada_qa_final_rule.cfm](http://www.eeoc.gov/laws/regulations/ada_qa_final_rule.cfm)

Facilitator’s notes (slide 6)

This slide further discusses the definition of disability, giving the three “prongs” of the ADA’s definition.

When giving the definition of disability given at the bottom of this slide, emphasize that this definition specifies physical OR MENTAL impairment. People with both obvious and nonobvious disabilities are covered under the ADA.

If time allows: After reading the definition of disability, pause for a moment to ask participants if they have any thoughts about this definition. Typically, participants may be surprised by the fact that there are no medical diagnoses in this definition—no guidelines as to which diagnoses will be covered and which will not. Explain that the ADA uses a functional, not a medical, definition of disability. However, as explained later in the program, the ADAAA has now
expanded the definition of disability and specified that certain medical conditions can be, for the most part, automatically assumed to be included under the protections of the ADA.

**What are some recent changes?**

**The ADA Amendments Act (ADAAA)**

What gave rise to ADAAA?
- Supreme Court decisions narrowed original disability definition
- The “catch 22” of disability definition

ADAAA has broadened (or re-stored) the definition of disability

**Facilitator’s notes (slide 7)**

We touch upon the ADAAA here both because there is a need for audience members to understand this key legislation and because many audience members will probably be aware of the ADAAA. However, if this module will be paired with the module on the ADAAA, you may wish to skip this slide.

**Be very brief in your overview of this slide,** merely pointing out that the ADAAA was passed in 2008 to restore the ADA to the original intent of Congress. Without going into detail, point out why the ADAAA was passed. Supreme Court decisions taken in the 1990’s lead to a situation where courts were only paying attention to whether or not someone had a “disability” instead of to the alleged discrimination event. Further, the vast majority of people with disabilities were excluded from legal protections when the definition of disability was narrowed.

The “Catch 22” referred to in the slide refers to the bind many people with disabilities found themselves in prior to the passing of the ADAAA. Generally, the vast majority of people trying to bring a charge under the ADA fell through a large crack. Though their impairment did not rise to the level of “disability” as defined by the ADA (and hence was often dismissed by the courts), they clearly had enough of an impairment to experience discrimination. Also, if their impairment did rise to the level of a “disability” under the ADA, they could then be covered by
the ADA, but dismissed because they were deemed unqualified to perform the essential functions of the job. Either way, they could not win—no one seemed to have a disability that was “just right.” To read more about the “Catch 22” of the original ADA, see [http://www.dcbar.org/for_lawyers/resources/publications/washington_lawyer/july_august_2000/ada.cfm](http://www.dcbar.org/for_lawyers/resources/publications/washington_lawyer/july_august_2000/ada.cfm).

### About hiring (Pre-employment)...

- The hiring process must be made accessible and accommodations must be provided if requested
- No disability inquiry during recruitment, screening or hiring
- No medical inquiries or “indirect” questions about disability
- Many disabilities covered under the ADA are not apparent to others
- The decision to not tell about a disability during hiring is not a “lie.” It is a legally protected right

### Facilitator’s notes (slide 8)

This slide expands upon the basic legal protections of Title I by focusing on hiring. These five points are self-explanatory and can be reviewed quickly, keeping in mind that the purpose of this module is a basic overview, not an in depth discussion of ADA pre-employment issues. The time you spend on this slide will depend on how much time you have allotted for this module and on which other modules you will be presenting with this module.

A common misperception some employers may have revolves around hiring and screening applicants. Employers may make the mistake of dismissing some applicants from the screening/hiring process because “everybody knows someone with that disability could not do this job.” No one can be denied full access to the hiring process because of a disability. This includes the right to a reasonable accommodation to go through the hiring process. Examples of accommodations used during the hiring process are:

- Application form in alternative format
- More time in a test/assessment
• Test/assessment provided in alternative format
• Use of accommodation in a job task simulation
• Use of sign language interpreter

If time allows, give some examples of disability inquiries that are not permissible but are often included in application or hiring processes, such as:
• Are you currently taking any prescription medications?
• Do you have any disability which would prevent you from doing this job?
• Will you need any accommodations if you are hired for this job?
• Have you been hospitalized in the last year?

This slide also introduces the idea of nonobvious disabilities, emphasizing that the ADA’s definition of disability includes both obvious and nonobvious disabilities. Whether or not a disability is obvious to others somewhat impacts disability inquiry guidelines for employers and what an employer can ask during hiring. If a disability is nonobvious, the employer cannot make disability inquiries such as those in the interview question examples given above. However, if the employer has a reasonable belief that an applicant might need an accommodation to perform an essential function of the job, the employer can ask some limited questions during hiring that pertain directly to the accommodation need. How would the employer get a reasonable belief that an applicant has a disability? First, a reasonable belief could be based on the applicant having an obvious disability, such as using a wheelchair. Second, the applicant has voluntarily chosen to disclose a disability. Third, the applicant has chosen to disclose an accommodation need with the employer. For more information, go to http://www.eeoc.gov/policy/docs/preemp.html.

Depending on the audience, the last point on the slide can be expanded upon. A misperception about disability disclosure during hiring centers around assuming that those who do not disclose a disability during hiring are “lying.” Briefly touch upon the fact that this is a choice, not a “lie.” Also, the choice to disclose at time of hire has no bearing on the person’s right to an accommodation later, if hired.
Facilitator’s notes (slide 9)

This slide discusses the next stage in the employment process: When a job offer has been extended and accepted, but work has not yet started. This is often referred to as the “post-offer” stage.

At this stage, employers can require individuals to take a medical examination. However, there are some limitations to this inquiry. All individuals applying for a job within a particular job category can be required to go through a medical examination. Certain individuals cannot be singled out for this examination.

If a disability becomes apparent during the post-offer stage, the employer cannot automatically withdraw the job offer. The job offer can only be withdrawn if the employer can show that the reasons for withdrawing the job offer are job-related and consistent with business necessity. Also, the employer must be able to show that there is no reasonable accommodation the individual could use to perform the essential functions of the job.

For more information, go to http://www.eeoc.gov/policy/docs/guidance-inquiries.html http://www.eeoc.gov/policy/docs/preemp.html
Facilitator’s notes (slide 10)

This slide moves on to an overview of the basics around reasonable accommodation. Though many more points could be made about accommodation, the intent of this module is just to provide a quick overview of the employment provisions of the ADA. Hence, we only provide the definition of reasonable accommodation and key points pertaining to the interactive process and collecting medical information.

A challenge in presenting this slide is to provide the right amount of information. Keep in mind that this module is only intended to be 30 minutes long in total. Each of the points on this slide could invite an extremely detailed discussion. The time you spend on each of these points should be guided by the needs of your audience, the time you’ve allotted for your entire session and which other modules you will be presenting with this overview module. If, for example, you are also presenting Module 3C--Reasonable Accommodation, you can defer any detailed discussion or questions about accommodation to later in the session.

Also, keep in mind that some of the points on this slide will be further discussed on the following slides which engage participants in a myth/fact overview of the key points of ADA Title I.

The first point on this slide is the EEOC definition of accommodation. It is fairly self-explanatory. Please note: Do not give examples of reasonable accommodations here; the next slide contains examples of reasonable accommodations.
The bulleted points following the definition provide a little more detail about the accommodation process. Again, the discussion below is only intended for your background as a facilitator. You need not read these points to participants.

Some audience members may be surprised to learn that the accommodation obligation covers both the job application process as well as employment. Employers should notify all job applicants of their right to request an accommodation to go through the hiring process.

Employers are required to make a good faith effort to accommodate KNOWN disabilities. Most of the time, the employee or job applicant him/herself will notify the employer of an accommodation need. However, an accommodation request can come from other individuals, such as a job coach. If the employer has a reasonable belief that an applicant or employee will need an accommodation to perform the essential functions of a job, the employer can ask the individual if an accommodation is needed. For example, if a librarian who uses a wheelchair will not be able to reach high bookshelves, the employer can ask if an accommodation will be needed for this essential function. Also, an accommodation request need not contain particular legal or medical phrases. The request can be made in plain language.

Accommodations are identified through an interactive process that involves both the employee and the employer. The EEOC refers to this process as “…an informal process to clarify what the individual needs and identify the appropriate reasonable accommodation” (See http://www.eeoc.gov/policy/docs/accommodation.html#requesting). This means that the accommodation request should trigger a timely dialogue with the employee to discuss the accommodation need and identify an effective accommodation.

If an individual has chosen to disclose the disability at time of hire or during the post-offer state, the interactive process to find an accommodation can begin before employment starts.

The employer can choose to (but is not required to) gather medical documentation in response to an accommodation request. However, the medical documentation gathered must pertain to making the determination that the individual has a disability as defined by the ADA, to identifying the functional limitations of the disability and to determining an effective accommodation. This medical information must be kept confidential. The employer is obligated to keep medical information gathered as part of the reasonable accommodation process in a separate file from the employee’s employment file.
Facilitator’s notes (slide 11)

This slide builds upon the last slide by providing some examples of accommodations. Point out that this list is not exhaustive. The important point in determining accommodations is flexibility and creativity. Also, many times the search for an accommodation has resulted in better work processes for everyone. For example, in Project Search, individuals with intellectual disabilities were trained to work in routine hospital jobs, such as sterilizing and stocking medical equipment. Prior to this project, this task had been done with the use of complicated text and number labels to stock equipment into the correct place. In trying to find accommodations for the Project Search workers, a new system was tried where pictures of equipment were used instead of text-based labels. Using this new system, all employees were able to stock equipment faster and more accurately. This process proved to be so effective that it was adopted for all employees.

For more information and ideas about reasonable accommodation, visit the Job Accommodation Network (JAN) at www.askjan.org or Cornell University’s Employment and Disability Institute’s HR Tips Series at www.hrtips.org
Facilitator’s notes (slide 12)

The next slides (12 – 22) focus on five myth/fact questions. One slide poses the statement; the following slide provides the answer and brief explanation.

These myth/fact statements go beyond the points presented in the earlier slides of this module. The myths/facts we present are based on the most common misunderstandings or “gray areas” of the ADA—the areas upon which many participants will have questions. The purpose of using this myth/fact format is to build curiosity, stimulate thought and engage participants in discussion.

As is the case with other slides, a challenge here is to provide the right amount of information. Again, the right amount of information depends on several factors. Who is the audience? What other modules are you presenting? Can you go over the 30 minutes allotted for this module? In any case, you will probably need to avoid lengthy, detailed discussions of each of these issues. Refer these more detailed questions/issues to the ADA Center TA line: 800 949 4232.

We have included this format in order to provide a more engaging and interactive learning experience. To go through these slides, pose the statement, then take a minute (no longer) to get ideas from the audience. Then provide the correct response and the explanation.
Myth or Fact?

*Employers can discipline and/or terminate an employee with a disability.*

Facilitator’s notes (slide 13)

Pose this question and take a minute to get ideas from the audience.
Facilitator’s notes (slide 14)

This is a FACT. The explanation given points out that employees with disabilities can be held to the same performance standards as any other employee. However, they must be allowed to use an accommodation when their performance is assessed. This is a good time to talk about how an employee with a disability must be qualified to perform the essential functions of the job with or without a reasonable accommodation.

For more information, go to
http://www.eeoc.gov/facts/performance-conduct.html
http://www.eeoc.gov/laws/regulations/ada_qa_final_rule.cfm
Myth or Fact?

The employer cannot take measures to prevent a dangerous situation if this measure would impact the rights of people with disabilities.

Facilitator’s notes (slide 15)

Pose this question and take a minute to get ideas from the audience.
Facilitator’s notes (slide 16)

This is a MYTH. This slide provides the correct answer and an explanation.

This statement refers to “direct threat.” The ADA permits an employer to require that an individual not pose a direct threat to the health and safety of the individual or others in the workplace. A direct threat means a significant risk of substantial harm. You cannot refuse to hire or fire an individual because of a slightly increased risk of harm to himself or others. Nor can you do so based on a speculative or remote risk. The determination that an individual poses a direct threat must be based on objective, factual evidence regarding the individual’s present ability to perform essential job functions. If an applicant or employee with a disability poses a direct threat to the health or safety of himself or others, the employer must consider whether the risk can be eliminated or reduced to an acceptable level with a reasonable accommodation.

Note: Direct threat is a complex concept. Please refer questions to the ADA TA line: 800-949-4232.
For more information, go to: Legal Briefing Direct Threat under the ADA, 2008 http://www.eeoc.gov/facts/ada17.html
Facilitator’s notes (slide 17)

Pose this question and take a minute to get ideas from the audience.
Facilitator’s notes (slide 18)

This is a FACT. The ADA does not protect employees who are using drugs illegally. This would include the use of illegal narcotics as well as the illegal use of prescription medications. For more information, go to: http://www.eeoc.gov/eeoc/foia/letters/2008/ada_illegal_drug.html

The ADA does not protect against discrimination on the basis of drug use, even if the drug use was in accordance with state law unless the use was authorized by federal law. The ADA defers to the Federal Controlled Substances Act to define illegal drug use.

Note: Again, this is a complex area of the law. If participants have questions, please refer them to the ADA TA line: 800-949-4232.
Myth or Fact?

A job applicant can be screened out if it’s obvious that a disability will stand in the way of being able to do the job.

Facilitator’s notes (slide 19)

Pose this question and take a minute to get ideas from the audience.

Applicants can be screened out if it’s obvious that a disability will stand in the way of being able to do the job.

The job application process must be made accessible to all who want to apply. The employer must make all aspects of the application process accessible and provide accommodations to applicants who request them.
Facilitator’s notes (slide 20)

This is a MYTH. All applicants must be given the opportunity to go through the application process. The employer cannot make automatic pre-judgments about whether or not applicants with particular types of disabilities can/cannot perform the job.

Hiring/recruiting communication materials should include a description of how applicants can request accommodations needed for the application process.

For more information, go to:
http://www.eeoc.gov/policy/docs/preemp.html
http://www.eeoc.gov/facts/jobapplicant.html

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**Myth or Fact?**

_The average cost of an accommodation is about $500._

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Facilitator’s notes (slide 21)

Pose this question and take a minute to get ideas from the audience.
Facilitator’s notes (slide 22)

This is a FACT. According to a study by the Job Accommodation Network, about half of all accommodations cost nothing. Of those accommodations that do incur a cost, the average expense was about $500.

Often, employers are unfamiliar with the cost of accommodations. Hence, some audience members will be very surprised by this finding.
Facilitator’s notes (slide 23)

National Network: Please replace this slide with your centers contact information.

Conclude by reminding participants that the training materials were produced by the Northeast ADA Center in collaboration with the National ADA Network. Remind them of the free and confidential technical assistance and other services available from your local ADA Center and from the ADA Centers throughout the country. Mention the ADA TA line: 800-949-4232.