



## The Americans with Disabilities Act (ADA)

### Title I: Employment



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## Agenda

- Introduction to the ADA
- Title I coverage
- Title I protections
  - Definition of disability
  - Qualified individual
- Disability-related questions and medical examinations
- Reasonable accommodation

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ADA = Civil Rights

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## Discrimination

- Discrimination prohibited
  - Disparate **treatment**: *intentional* exclusion or denial of opportunities based on disability
  - Disparate **impact**: exclusion or segregation that may result from architectural, transportation, and communication barriers, paternalistic rules, unnecessary eligibility criteria, and failure to take steps to make improvements

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## Title I: Who's Covered?

- **State and local government agencies and private employers**
  - 15 or more employees
- **Employment agencies**
- **Labor unions**
  - Hiring hall or at least 15 members
- **Joint labor management committees**
  - Apprenticeship and job training programs



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## Title I: Who's Protected?

- Definition of disability
  1. An individual **who has a physical or mental impairment** that **substantially limits** one or more **major life activities**
  2. An individual **who has a record of** such an impairment
  3. An individual **who is regarded as** having such an impairment

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## Impairments

- Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems (such as neurological, musculoskeletal, respiratory, cardiovascular, and many others)
- Any mental or psychological disorder, such as intellectual disability, mental illness, and learning disability

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## Major Life Activities

- Activities such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working
- Operations of major bodily functions, including functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions

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## Substantial Limitation

- Consider if or how a person performs a major life activity, compared to most people in the general population
- Does the individual use any *mitigating measures*?
  - For example: medications, therapies, learned behavior, assistive technologies, equipment, prosthetics, or other devices



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### How Do Mitigating Measures Affect the Determination of Disability?

- Determining substantial limitation
  - DON'T consider *positive* effects of mitigating measures
  - DO consider *negative* effects (for example, negative side effects of medications)

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### Example: Mitigated Disability

- Jason has diabetes. He takes medication that helps stabilize his blood sugar, but the medication causes some digestive problems.
- We view Jason *without* the positive effects of his medication, and *with* the negative effects – as if he has uncontrolled blood sugar levels *and* digestive problems.

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### Individualized Assessment

- Determining disability requires individualized assessment
  - Two people with the same impairment may be affected in different ways
- Some impairments will almost invariably meet the definition of disability
  - *For example:* quadriplegia, HIV/AIDS, blindness, schizophrenia, diabetes, cancer

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### "Record of" a Disability

- An individual with a record or history of a substantially limiting impairment



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### "Regarded as" Having a Disability

- An individual who is **discriminated against** based on an actual or perceived impairment, regardless of whether the impairment substantially limits, or is perceived to substantially limit, a major life activity
  - Unless the impairment is both transitory (duration of 6 months or less) and minor
    - *This provision is only relevant under the "regarded as" prong of the definition of disability*

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### Which Employment Practices Are Covered?

- **Title I covers *all* aspects of employment**
  - Recruitment, application, interviews, pre-employment tests
  - Hiring, training, assignments
  - Evaluation, discipline
  - Compensation, promotion
  - Layoff and recall, termination
  - Benefits and privileges (leave, health insurance, transportation, fitness facilities, etc., *if provided*)

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## Workers Must Be Qualified

A qualified individual with a disability "satisfies the requisite skill, experience, education and other job-related requirements of the employment position ... and, with or without reasonable accommodation, can perform the essential functions ..."

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## Disability-Related Questions and Medical Examinations

### What, When, and How

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## Asking Disability-Related Questions and Requiring Medical Exams

- Three stages of employment
  - Pre-offer
  - Post-offer, before beginning work
  - On the job
- Tests for *illegal* drug use may be required at any time



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## What Are Disability-Related Questions?

### • Examples

- Have you ever been hospitalized? If so, for what condition?
- Have you ever been treated for a mental condition? If so, what condition?
- Do you have any health related conditions which would preclude you from doing certain kinds of work?
- Have you ever been treated for drug addiction or alcoholism?
- Are you taking any prescription drugs?

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## What Are Medical Exams?

- Factors that indicate a procedure or test may be medical
  - Administered by a health care professional
  - Results interpreted by a health care professional
  - Takes place in a health care setting (e.g., office of health care professional)
  - Uses medical equipment
  - Invasive (e.g., requires drawing blood, breath, or urine)
  - Measures physiological responses
  - Designed to reveal impairments



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## NOT Medical

- Polygraph exam or test designed to measure traits such as honesty
  - If *impairments* are identified, it's a *medical exam*
- Fitness or agility test (e.g., measuring ability to run or lift)
  - If physiological or biological responses (e.g., heart rate, blood pressure) are measured before, during, and/or after the tasks, it's a *medical exam*

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## Pre-Offer Questions and Medical Exams

- Employers may **not** generally ask disability-related questions or require medical exams before making a conditional job offer
  - On application forms
  - In interviews
  - In background or reference checks



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## Narrow Exceptions

- When an employer *reasonably believes* an applicant will not be able to perform a job function because of a *known* disability, the employer may ask the applicant
  - To describe or demonstrate how she would perform the function
  - If she will need a reasonable accommodation to perform the function
- Employer may **not** ask additional questions about the underlying condition, prognosis, treatments, medications, etc.

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## Post-Offer, Before Beginning Work

- Employers may ask **any** disability-related questions and require **any** medical exams *as long as all entering employees in the same job category are subjected to the same questions/exams*
  - **Questions/exams do not have to be related to the job, however ...**

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### Withdrawing a Job Offer

- If a job offer is withdrawn because post-offer questions or exams show an individual does not meet valid job requirements due to disability
  - The job requirements must be job-related and consistent with business necessity *and*
  - There is no reasonable accommodation that will enable the individual to meet the requirements

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### On the Job

- Employers may ask specific individual employees *limited* disability-related questions and/or require *limited* medical exams only if ...
  - Employer has *reasonable belief*, based on *objective information or evidence* that employee
    - May be unable to perform essential functions due to disability
    - May pose a direct threat to health or safety of herself or others

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### Direct Threat

- **Significant risk** of **substantial harm** that cannot be reduced or eliminated by reasonable accommodation, determined by ...
- **Individualized assessment** based on current medical knowledge and objective evidence

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## Confidentiality

- Medical information obtained by employers must be kept confidential and separate from other personnel records



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## Reasonable Accommodations and the Interactive Process

### Finding Solutions

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## Who Is Entitled to Reasonable Accommodation?

- A **qualified applicant or employee** (full- or part-time, seasonal, temporary, etc.) with ...
  - A **disability**
  - A **record/history of disability**
- Individuals who are *regarded* as having a disability are protected from discrimination but are *not* entitled to reasonable accommodation

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### What Is Reasonable Accommodation?

- A modification, adjustment, allowance, or provision that facilitates an *equal employment opportunity* for a worker with a disability
  - Applying for a job
  - Performing essential job duties
  - Accessing benefits and privileges of the job

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### Reasonable Accommodation: Examples



- Equipment or assistive technologies
- Making facilities accessible
- Adjustments in the work environment (e.g., lighting, temperature, air quality, noise)
- Adjustments in communication or supervisory methods
- Schedule adjustments
- Changing location, including working from home
- Exchanging marginal job tasks
- Time off for disability-related needs

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### Limitation: Undue Hardship

- Undue hardship means “significant difficulty or expense,” including “any accommodation that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation” of the employer

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### Undue Hardship Factors

- Nature and net cost, considering tax credits and deductions or outside funding, if available
- Overall resources of the employer
- Impact on operations, including impact on ability of other employees to perform their work

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### Reasonable Accommodation: Let's Get This Process Started



- Individuals generally must **request** accommodation to start the interactive process
- Formal request or specific language is not necessary, but the individual must let the employer know he *needs something* from the employer *because of a disability, health condition, etc.*

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### Reasonable Accommodations: Individual Solutions

- Remember, reasonable accommodation depends on the nature of ...
  - The job
    - Application process
    - Essential functions
    - Benefits and privileges
  - The specific limitations and needs of the individual applicant or employee

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## Title I Enforcement

- EEOC complaint or
- Fair Employment Practices Agency (FEPA)
  - State or local human rights, human relations, or civil rights agency



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## ADA National Network

- Ten regional centers provide guidance, training, and materials on the ADA

**800-949-4232**

[ADAa.org](http://ADAa.org)



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## Mid-Atlantic ADA Center

- Operated by TransCen, Inc.
- Serves Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and the District of Columbia

**800-949-4232**

[ADAinfo.org](http://ADAinfo.org)

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Certificates of Attendance: CODE

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- Please email the code above to [ADAttraining@transcen.org](mailto:ADAttraining@transcen.org) by 5 PM E.T. on July 24, 2023
- Certificates are emailed 1 – 2 weeks after the session

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