

Enhance Your Human Resources: What You Need to Know About the ADA

• by Gregory P. Hawkins and Claude T. Hawkins •

"I also want to say a special word to our friends in the business community. You have in your hands the key to the success of this Act. For you can unlock a splendid resource of untapped human potential that, when freed, will enrich us all."

President George Bush at the signing ceremony for the ADA

Do you recognize the initials ADA? As a person in business, you should. The Americans with Disabilities Act (ADA) is the most significant piece of human rights legislation since the Civil Rights Act of 1964. Some say it will be one of the costliest laws ever legislated for American businesses, especially for small businesses, as many large companies already provide accommodations for people with disabilities. Others consider this response an overreaction.

Paul G. Hearse, president of the Dole Foundation for Employment of People with Disabilities in Washington, D.C., advised that "pessimism about the state of the economy, and therefore of its labor markets, should not underestimate the will to work of persons with disabilities." Jane West, editor of *The ADA—From Policy To Practice*, feels the ADA is rightly deserved by a group she describes as "the largest [43 million], poorest, least employed,

and least educated minority in America."

You may be alarmed by yet another federally mandated benefits program—especially one as complex and potentially expensive for you as this one. The fact is, you will be affected. In the words of a guide published by the U. S. Chamber of Commerce, "If you are [a company] of any size, the Americans with Disabilities Act is bound to have a profound effect on the way you do business."

The most logical course of action for you is to become informed, then to develop a plan before you are faced with a prospective employee with a disability or, worse, with litigation brought by that person or censure by one of the federal agencies assigned to administer the Act.

Understanding Title I of the ADA

Title I went into effect on July 26, 1992, for businesses with 25 employees or more, and becomes effective on July 26, 1994, for those with 15 employees or more. It prohibits all forms of discrimination against a "qualified individual with a disability ... who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual

holds or desires." This includes "new hires" and employees seeking advancement within a company.

The Act does not require affirmative action; as a business owner or manager, you are not required to seek out employees with disabilities or to meet a quota. Neither must you hire someone who is not qualified with regard to experience or training, nor hire a person with a disability who is less qualified than another applicant.

The huge diversity of disabilities necessitates a case-by-case definition as to what constitutes reasonable accommodation. This is complicated by the fact that undue hardship for one company may be feasible for another.

This lack of specific guidelines has engendered widespread frustration in the business community, often bordering on anger. Still, American entrepreneurs and executives by definition are problem solvers. When faced with a dilemma, they break it down to manageable pieces. While the ADA may seem monolithic, the basic pieces are (1) you, (2) the essential functions of the position for which you are hiring, (3) the qualifications and disability of the person applying for the position, and (4) what reasonable accommodations will work for all parties involved.

Essential job functions

A critical first step for you as an employer, whenever you are recruiting, advertising, hiring, promoting, or firing, is to prepare a written job description, concentrating on detailing essential functions of the specific job. An essential function for a receptionist may be to answer the phone; someone unable to do this might be unqualified. Conversely, simply because everyone in the office occasionally answers the phone, an individual who is unable to do so would not be disqualified from filling a clerk or typist position.

When writing a job description and listing the essential functions, consider that the U.S. Equal Employment Opportunity Commission (EEOC) has several criteria used to weigh evidence of essential functions:

- The actual work experience of present or past employees in the job
- The time spent performing the function
- The consequences to your business of not requiring that an employee perform the function
- The terms of a relevant collective bargaining agreement.

Additionally, you may not ask an applicant whether he or

she has a disability or about the nature or severity of a disability. Neither can you compel an applicant to take a medical examination before making a job offer. However, with respect to the job description you have written, you may ask them to describe or to demonstrate how, with or without reasonable accommodation, they will perform the essential functions of the job.

Once a job is offered to an individual, you may require a

medical examination if everyone who will be working in the same job category must also take the examination. In the words of the EEOC, "You may condition the job offer on the results of the medical examination. However, if an individual is not hired because a medical examination reveals the existence of a disability, you must be able to show that the reasons are job related and necessary for conduct of your business [and] that there is no reasonable accommodation

that would have made it possible for the individual to perform the essential job functions."

Reasonable accommodations

The overriding theme of the ADA is to grant a person with a disability the benefits and privileges of employment equal to those available to other employees. Would an altered job description or special equipment allow the applicant to handle the job? If so, it is likely that you would be required to make such changes and/or provide such equipment as a reasonable accommodation. Some examples of reasonable accommodation are modifying the work schedule, job restructuring, widening aisles between desks, installing telephone amplification devices for those with hearing disabilities, and purchasing special computer screens for those with a visual impairment.

In many cases, the disability may be obvious—a person in a wheelchair, for example—and the applicant could be the best person to suggest a reasonable accommodation, based upon his or her own life or work experience. This often makes for a win-win situation.

Undue hardship

Perhaps more than any other wording in the Act the "undue hardship" clause has created the most confusion. Already, reams of paper defining these two words are beginning to flow from government print shops. In essence, according to the EEOC, an undue hardship is an accom-

modation that is "unduly costly, extensive, substantial or disruptive, or would fundamentally alter the nature or operation of the business." The government regulatory agencies will consider the size of your business, financial resources, and the nature and structure of your operation.

At the same time that you are gearing up to make your employment practices accessible to people with disabilities, many government and private agencies are striving to help you comply. Special funding is increasingly available through vocational rehabilitation agencies, as are state and federal tax credits or deductions. The applicant or employee also may be willing to provide the accommodation or help pay for the portion that constitutes undue hardship.

The consequences of discrimination

After July 26, 1992, an individual with a disability may file a discrimination complaint with the EEOC within 180 days of an alleged discrimination. Many states and localities also have laws protecting the rights of people with disabilities, and in such a case, the complainant may have up to 300 days to file.

The EEOC will first attempt to resolve the complaint using informal methods—mediation, persuasion, and the like. If these are not sufficient, they may use more elaborate options as contained in Title VII of the Civil Rights Act of 1964.

How the Law Defines a Person with a Disability

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

Examples of a physical or mental impairment include, but are not limited to—orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, infection with the Human Immunodeficiency Virus, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, drug addiction, and alcoholism. Individuals currently using illegal drugs or those who pose a "direct threat" to the health and safety of others are not protected by the Act.

Major life activities mean "functions such as caring for

one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working."

(B) a record of such impairment;

This definition protects people who have recovered from an impairment but still experience discrimination because of their "record" of disability, such as someone who has recovered from cancer, mental illness, and drug or alcohol abuse.

(C) being regarded as having such an impairment.

This protects people from discrimination who either have no impairment but are perceived to have one, or a minor one that does not affect a "major life activity," like a cosmetic disorder such as a disfiguring birth mark.

The individual has the right to file a private lawsuit and obtain a court order to stop discrimination, but money damages cannot be awarded (except attorney's fees). An individual may also file a complaint with the Attorney General, who can file suit and obtain money damages and penalties.

The most common remedies will include hiring, promotion, reinstatement, and back pay. Reasonable accommodation is also included as a remedy.

Your choice to make

In all the confusion and misunderstanding surrounding the ADA, two things remain clear. Statistically, Americans

with disabilities have been excluded from America's workforce, and America's businesses have been commissioned to begin correcting the problem.

You must decide how best to comply with the Act. Call the agencies listed in the sidebar, read the material they send you, and prepare written job descriptions for each job category. You may discover, as have thousands of businesses that already employ people with disabilities, that these individuals will benefit not only your staff, your customers, and your peace of mind, but also your bottom line. ☐

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SALES MANAGERS

Profile Customers to Help You Sell

According to authors Robert Bolton and Dorothy Bolton, salespeople can lump customers into four basic personality styles.

Salespeople who can analyze their customer's style, and sell to that style, will be able to communicate more effectively to them and have a better chance of motivating them to buy.

The personality styles are:

- **Analytical.** Logical thinkers, well-organized, systematic. To sell to them, salespeople need to present hard numbers and follow-up with a benefits analysis. Be patient... they may take a long time to decide.

- **Amiable.** Trusting, empathetic and sensitive. Likely

to resist change to avoid conflict. Salespeople need to spend the time to build a relationship, easing the fear of taking a risk.

- **Expressive.** Flamboyant and spontaneous, good at seeing the big picture, and willing to take risks. Easy to sell to, if the salesperson gets them talking about themselves. Forget details; focus on a bold approach.

- **Driver.** Task-oriented, domineering, most interested in immediate short-term goals. They respond to blunt, to-the-point presentations with solid facts. Show them how they can meet their goals. ☐

Source: The Advisor, published by Delphi House, Houston, Texas.

Where to Get More Information about ADA

Americans with Disabilities Act Information Line
(202) 514-0301

Architectural and Transportation Barriers Compliance Board
111 18th Street, NW
Suite 501
Washington, DC 20036
(202) 653-7848

Department of Education
National Institute on Disability and Rehabilitation Research
400 Maryland Avenue, SW
Washington, DC 20202
(202) 732-5066

Equal Employment Opportunity Commission
1801 L Street, SW
Washington, DC 20507
(202) 663-4900

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