

This article was published in 1992, in the American Ink Maker. It demonstrates Greg's long and ongoing, legal & personal commitment to American's with disabilities.

Over the years, Greg has published scores of articles in regional, national and international magazines, newspapers and business publications.



The Americans With Disabilities Act

By Gregory P. Hawkins, JD • Claude T. Hawkins

It took almost 215 years for Americans with disabilities to achieve equality of opportunity under the law. Their doors opened on July 26, 1990, when President George Bush signed The Americans With Disabilities Act and effectively enlisted the support of the entire population. Business men and women are acutely aware that they have been drafted as front line troops in the campaign by handicapped Americans for their right to work at any job they qualify for.

On July 26, 1992, Title I of the Act, Employment, became effective for companies with 25 or more employees; on the same date in 1994, the clause becomes effective for companies with 15 or more employees.

Almost everyone, it seems, publicly hails the Act as truly landmark legislation, rightly deserved by a group described as "...the largest [43 million], poorest, least employed, and least educated minority in America," by Jane West, editor of "The ADA — From Policy To Practice." Privately, some business people are horrified by the possible monetary impact on their companies.

Title I 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 as well as employees seeking advancement within a company. The Act does not require affirmative action; employers are not

required to seek out disabled candidates or meet a quota.

The person must be qualified, and the Act allows employers to define the essential functions of a particular job. To this end, employers are

How The Law Defines a Disabled Person



(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 (HIV), 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" are defined 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 or mental illness.



(C) or being regarded as having such an impairment.

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



advised to establish written job descriptions to authenticate essential functions before advertising and interviewing applicants for a job or promotion. But they cannot set up criteria that purposely exclude or screen out disabled applicants, nor can they name marginal activities as essential functions.

An essential function for a receptionist may be to answer the phone, and someone unable to do this

might be unqualified. Conversely, even if everyone in the office occasionally picks up the phone, the inability to do that probably would not disqualify someone applying for a file clerk or typist position.

MODIFICATIONS

The Law also requires the employer to make "reasonable accommodations," unless the accommodation can be proved to be "an undue hardship on the operation of the business." Would an altered job description or special equipment allow the applicant to handle the job? Those accommodations might include modifying the work schedule, widening aisles between desks, installing telephone amplification devices, or purchasing special computer screens. If the alterations do allow the applicant to do the job, it is very likely that the employer would be required

to make the changes or provide the equipment. Because of the huge diversity of disabilities, and because "reasonable accommodations" will be different for each individual, plus the fact that "undue hardship" for one company may be feasible for another, each case must be decided as an individual occurrence.

Certainly no business person relishes the opportunity to comply with yet another federally mandated benefits program, especially one as complex and potentially expensive as this one; The Americans With Disabilities Act is 50 pages long. Still, employers who respond to the spirit and intent of the law may find some gems hidden within the folds of the Act, some as tangible as money in the bank, others less easily grasped.

The ADA rests firmly on

Where To Get More Information

**Americans With Disabilities Act
Information Line**
202/514-0301



**Architectural and Transportation
Barriers Compliance Board**
111 18th St. N.W., Suite 501
Washington, DC 20036
202/653-7848



**Department of Education
National Institute on Disability
and Rehabilitation Research**
400 Maryland Ave. S.W.
Washington, D.C. 20202
202/732-5066



**Equal Employment
Opportunity Commission**
1801 I. St. S.W.
Washington, D.C. 20507
202/663-4900

Other Guidance



• You cannot require an applicant to take a medical exam before making a job offer. However, after an offer is made, you may ask an applicant to take a medical exam if everyone who will be working in that job category is required to do so.



• Do not ask if an applicant is disabled, the nature of any disability, or how the disability occurred. You may ask an applicant about his or her ability to perform job-related functions, provided that the questions are not phrased in terms of a disability. You may also ask an applicant to describe or demonstrate how, with or without reasonable accommodation, he or she will perform job-related functions.



• You may not refuse to hire an applicant with a disability because the person represents a slightly increased risk of harm to self or others. You may not deny an otherwise qualified applicant a position based on speculation that he or she won't be able to perform the job in the future, or because by hiring that person your workers' compensation or health insurance costs may increase.

the foundation created by section 504 of the Rehabilitation Act of 1973. Where section 504 covered only entities receiving federal funds, the ADA is essentially an extension into the private sector of that federal statute.

Lessons learned from the 20-year existence of section 504 can perhaps provide some welcome piece of mind for employers troubled by the adverse economic ramifications of ADA. A 1987 Harris poll showed that a large percentage of supervisors rated the performance of employees with disabilities as "high." In the same year another study concluded that, "50% of accommodations cost less than \$50, 69% less than \$500, and less than 1% more than \$5,000." The higher figures generally corresponded to higher skill levels of employees.

Much careful research has been done that adds to the mass of anecdotal verification underlining the truth that it pays to hire people with disabilities. Yet, the majority of disabled people do not work (66%, according to a 1986 Harris

survey). The overwhelming majority (78%) want to work.

If they want to work and generally prove valuable as employees, why can't the disabled find jobs? The second paragraph of section 2 states, "Historically, society has tended to isolate and segregate individuals with disabilities ..." Jane West takes it a bit further. "They have been described in

terms of 'diseases, deformities, and abnormalities'... They have been considered lifelong children who need to be taken care of and shielded from life's vicissitudes ... They have encountered policies that exclude them by implication in virtually every aspect of society — housing, employment, education, recreation, transportation, public accommodations, communication,

health services, and even voting — persons with disabilities have been shunned."

The Americans With Disabilities Act seeks to "assure equality of opportunity, full participation, independent living, and economic self-sufficiency ...," a chance to participate in the American dream. The spirit of the law invites all Americans to participate.

Questions and Answers For The Ink Industry



Q: Do I have to widen doorways, modify restrooms, and install an elevator now?

In most cases the answer is no, because most ink makers, suppliers, and printers do not fall under Title III of the ADA, the public accommodation aspect of the law. However, under Title I, which covers the employment side, people must be able to apply for positions. This could entail some modification in buildings and procedures. Gaining access through your doors will probably be your biggest challenge right now. If a disabled applicant cannot get to the personnel office, a change in procedure may suffice. The applicant can fill out an application or hand in a resume in the lobby and interview in a nearby room.

Title III does cover existing commercial facilities if modifications were made after January 26, 1992. *Any renovations or modifications must be accessible.*



Q: My company leases the building we're in. Are we responsible for removal of architectural and structural barriers?

You may be. Check the language of your lease. The Department of Justice has said that responsibility for ADA compliance between the landlord and tenant in both common areas and within places of accommodation may be determined by lease or other contract.

If the lease or contract does not specify, the Justice Department says that the landlord "in general," would be responsible for making readily achievable changes and providing auxiliary aids and services *in common areas*, and for modifying policies, practices, or procedures applicable to all tenants. A tenant is responsible, "in general," for readily achievable changes, provision of auxiliary aids, and modification of policies *within its own place of business*. Tenants and landlords must work together on possible shared responsibility if cost becomes an issue.



Q: How specific should a job description get?

Most job descriptions are general in their enumeration of duties and responsibilities. However, because of the ADA, it may be a challenge

to come up with job descriptions that include essential functions that are not procedural descriptions. The ADA does not require job descriptions, but they can be a valuable tool as a defense in legal action.

In some cases, you may need to have more of a procedural description for more physical jobs, but for others, a simple description of physical/mental requirements after essential function may be enough.



Q: How do I react to someone in a wheelchair who applies for a job?

Treat the person as you would any applicant. Even though it may be difficult to interview an applicant because it initially appears they would not be able to perform the job, you must first determine if they are qualified. "Qualified for the job" means the applicant possesses the knowledge, skill, and ability to perform the duties.

Here are some tips to help you deal with uneasiness:

- Address the applicant directly. Deliberately averting your gaze is impolite and can be uncomfortable.
- Do not automatically assume the person needs assistance. However, feel free to offer assistance if the need arises.
- Ask permission before pushing someone's wheelchair.
- Ask permission to guide a blind person to a chair or to another room. If permission is granted, allow the person to gently grasp your arm just above the elbow, then guide him or her. When arriving at a chair, place the person's hand on the back of the chair and let her or him do the rest. If permission is not granted, give verbal directions.
- If you cannot understand the person's response, ask for it to be repeated.
- Face a person who is lip reading. Speak slowly and distinctly. Avoid gesturing around your face.
- When addressing a deaf person who is using an interpreter, look at the applicant when speaking. If an applicant requires an interpreter to work, the employer will be required to supply one, but must receive notice beforehand.

— The Printing Industries Association