

## **ADA**

### **Americans With Disabilities Act: *An Overview***

The Americans with Disabilities Act, Public Law 101-336, prohibits discrimination on the basis of disability in employment, activities of state and local governments, public and private transportation, public accommodations and telecommunications. The purpose of the law is to provide uniform protection against discrimination throughout the United States. Some of the ADA's provisions are borrowed from Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability by any entity that receives federal funding. Thus, Section 504 applies to institutions of higher learning, medical facilities, public schools, and state and local programs that are funded by the federal government.

Prior to enactment of the ADA, several states and localities passed statutes and ordinances which bar discrimination on the basis of disability. The ADA does not invalidate or limit the rights or remedies provided by an state or local law that provides greater protection than the Act. For example, some states require that employers with only five employees comply with non-discrimination prohibitions, while under the ADA only employers with more than fifteen employees are covered. In such cases, the state law still remains in effect; it is not superseded by the federal statute.

Individuals with epilepsy are covered under the ADA, since epilepsy is a physiological disorder affecting the neurological system. Persons with seizure disorders therefore have an impairment that substantially limits participation in a major life activity (i.e., working).

### **Public Accommodations**

Title III of the ADA covers any private entity that makes its goods and services available to the public. Public accommodations include stores, restaurants, theaters, hotels, stadiums, auditoriums, museums, gas stations, amusement parks, health spas, barber shops, funeral parlors, child care providers, professional office buildings, and providers of social services such as senior citizen centers, food banks and adoption agencies.

The law states that public accommodations cannot exclude or refuse to serve persons with disabilities. For example, a bowling alley cannot refuse to allow a person with a seizure disorder to use the facility because of fear that the individual may be hurt during a seizure. Similarly, day care centers cannot have blanket policies which exclude children with epilepsy or any other disability.

Further, a public accommodation must modify any criteria for receipt of its services that discriminates on the basis of disability. For example, a store that only accepts a valid driver's license as identification for credit is discriminating against persons with seizure disorders who cannot drive. The store must modify its criteria and accept another type of identification.

### **Transportation**

The ADA covers both public (fixed-route) and private transit. Buses, light and rapid rail, ferries, AMTRAK, hotel shuttles, Greyhound: all must adhere to general non-discrimination principles. Thus, a local transit authority cannot refuse to allow a person with epilepsy to use public transportation. Further, the ADA requires that comparable paratransit (door-to-door service) be available to those who because of their disability cannot use regular fixed route service.

## Employment

The underlying premise of the ADA's employment provisions (incorporated in Title I) is that persons with disabilities are not to be excluded from employment opportunities unless they are actually unable to do the job. The law applies to employers (with 15 or more employees), employment agencies, labor organizations, and joint labor-management committees. A fundamental principle of the ADA is that an individual with a disability be qualified to perform the essential functions of the position, with or without reasonable accommodation.

The Equal Employment Opportunity Commission (EEOC), one of the federal agencies responsible for the ADA's implementation, states in its regulations that essential functions are job tasks that are fundamental, not marginal. For example, driving is obviously an essential function for some positions (courier, bus or taxi driver, truck driver, etc.) since the reason the position exists is to perform the function. But driving would be a marginal or non-essential function of a job in which another worker could drive, or driving was only occasionally required.

The purpose of the reasonable accommodation requirement is to create equal opportunity, so that those with disabilities can compete equally with their non-disabled peers in the work setting. The EEOC's regulations set forth three areas in which reasonable accommodations apply: the application process, performance of essential functions, and equal benefits and privileges of employment. The ADA requires that employers accommodate only the known limitations resulting from the disability of an applicant or employee. Thus, the employer and the qualified person with a disability must take a problem solving approach in together finding the most appropriate accommodation. This process takes into account the reality that the employer is the best expert on the job, and the employee (or applicant) is the best expert on the limitations imposed by his/her disability.

Employment Activities Covered by the ADA:

The ADA's non-discrimination rule applies to the broadest spectrum of employment activities, including:

- recruitment and application procedures
- hiring, promotion, tenure, transfer, layoff, termination
- rates of pay
- job assignment and classification, job descriptions, seniority lists
- leaves of absence, sick leave
- fringe benefits
- selection and financial support for training, professional
- meetings, conferences and other related activities
- employer sponsored activities, including social/recreational
- programs

Discrimination includes limiting, segregating, or classifying an applicant or an employee in a way that adversely affects his/her opportunities or status because of disability. Employment decisions are to be based on facts, not on presumptions as to what an individual or class of individuals with a particular disability can or cannot do. The law requires that the capability of each person with a disability be evaluated on an individualized basis. This case-by-case determination is critical for people with epilepsy, since the manifestations of seizure disorders vary from person to person.

## **Medical Examinations**

The ADA prohibits an employer from conducting any type of medical examination of an applicant at the pre-offer stage. After a conditional offer of employment has been given (i.e., it has been determined that the applicant is qualified for the job), the employer may require a medical exam or a psychological test only if all entering employees in that job category have the same testing requirement. It is lawful for employers to require medical examinations of its employees (with or without a disability), including fitness for duty exams, if there is a need to determine whether the employee continues to be able to perform the essential functions of his/her job.

The results of all medical examinations must be kept confidential and maintained in separate medical files.

Drug tests are not considered medical exams under the ADA and are thus permitted at any stage of the application process. To avoid prohibited pre-offer disclosure of disability, employers must either give drug tests after conditional offers of employment have been made, or ensure that any drug test given before a conditional offer will test strictly for the illegal use of drugs and not for drugs taken legally pursuant to medical supervision.

## **Health Insurance, Life Insurance**

As stated above, the ADA's employment requirements prohibit discrimination on the basis of disability in the provision of benefits. Thus, employers may not deny health insurance coverage to selected members of their workforce based on diagnosis of disability. Additionally, employers may not refuse to hire applicants because of a feared or actual increase in insurance costs. Insurance policies which limit coverage for certain treatments or procedures do not violate the ADA. Also, the law does not affect pre-existing condition clauses included in insurance policies; a policy can exclude coverage for an individual's epilepsy-related treatment.

## **Remedies**

The remedies available for violation of the ADA are specific for the type of discrimination that has occurred. That is, if the violation pertains to Public Accommodation (Title III), complaints can be directed to either the Department of Justice, to the Architectural & Transportation Barriers Compliance Board, or to the Department of Transportation. If the violation pertains to the ADA's employment provisions (Title I), an individual alleging discrimination must file a complaint with the EEOC within 180 days of the alleged discriminatory incident.

The EEOC, or a designated state or local fair-employment practices agency, investigates the allegation to determine if discrimination has occurred. If the agency issues a "no cause" finding, an individual may request that the EEOC district office review the case. This request must be made within 15 days of receipt of the "no cause" finding from the state or local agency. An individual does not have the right to appeal a "no cause" finding to the central EEOC office in Washington, D.C.

However, if there is reasonable cause to believe that discrimination occurred, the EEOC must resolve the complaint or issue a right-to-sue letter. An individual may bring a lawsuit in federal district court within 90 days of receipt of this letter. If the EEOC cannot resolve the complaint by conciliation, it may choose to litigate the case in federal district court on behalf of the person with a disability.

## **Relief Available**

The ADA gives an individual with a disability the right to get equitable relief from a judge. Such relief includes:

- an injunction to hire or reinstate the individual
- back-pay and benefits
- the provision of reasonable accommodation

As a result of the Civil Rights Act of 1991, individuals may choose a jury trial and are permitted to seek compensatory damages for pain and suffering in cases of intentional discrimination. To contact the EEOC, look in the telephone directory under "U.S. Government."