

The Americans with Disabilities Act (ADA): Applications to Higher Education and Employment



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Northwest  Center



• Technical Assistance



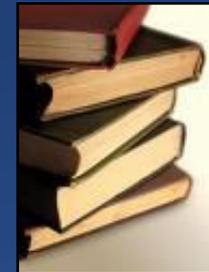
• Training



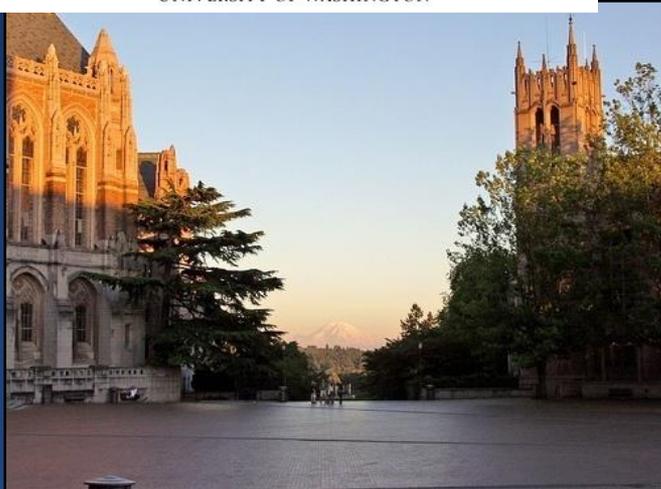
• Material Dissemination



• Research

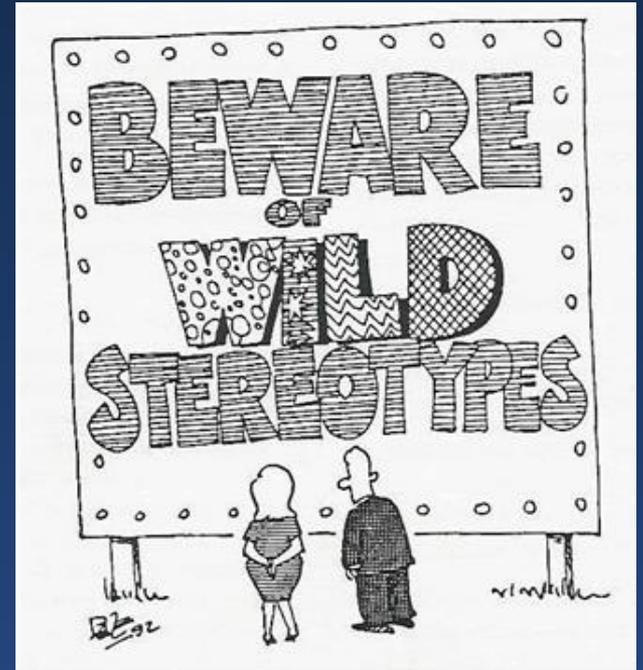


• Public Awareness



Major barriers faced by people with disabilities?

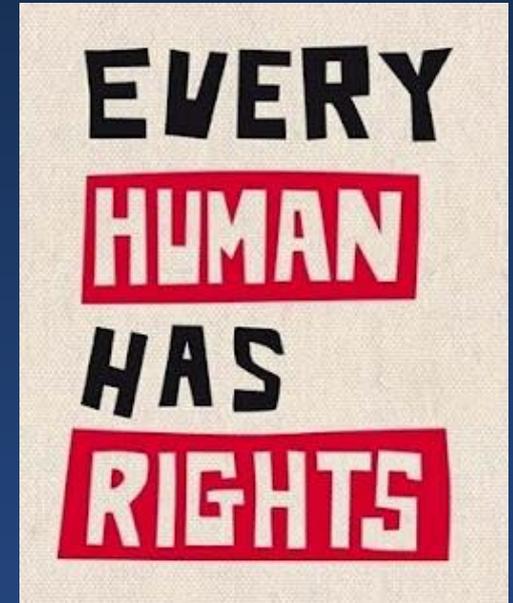
- unfounded stereotypes and negative attitudes
- lack of awareness of the adverse impact of...
 - inflexible and discriminatory policies and procedures
 - inaccessible buildings and facilities
 - ineffective communication processes and technologies



What is the ADA –

Americans with Disabilities Act?

- Civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, color, gender, national origin, age, and religion.
- Often “individualized” for the person and the context (e.g., jobs) → “accommodations”



What does the ADA do for people with disabilities?

- Guarantees equal opportunity for individuals with disabilities in public accommodations (businesses), employment, transportation, state and local government services, and telecommunications.
- Also have related federal and state laws – e.g., Oregon Disability Discrimination laws.



Section 504 of the Rehabilitation Act of 1973

Americans with Disabilities Act:

- **Both are Civil Rights Laws**
- **Both provide legal protection against discrimination of people with disabilities**
- **Who must comply? Programs and businesses that receive federal, state, or local funding**

K-12 Education

In K-12, there is a legal guarantee under IDEA of a “free and appropriate public education” (FAPE) - A structured framework of services is provided that includes:

- Significant parental involvement
- Publically funded assessments
- Substantial and fundamental modifications to the curriculum

Higher Education

Unlike the legal requirement for services in high school, there is no mandate for colleges and universities to provide special education, individualized support services, or free education.



Section 504 and the ADA prohibit discrimination based on disability and ensure equal access for those who are otherwise qualified.

Shift in Responsibilities

| Area | K-12 | Postsecondary |
|------------------------------------|-----------------|--|
| Identification | School district | Student |
| Evaluation | School district | Student |
| Payment for evaluation | School district | Student |
| IEP | School district | Not required |
| Course selection & programming | School district | Student |
| Transition planning | School district | Student |
| Progress monitoring | School district | Student |
| Assuming educational costs | School district | Student/parent |
| Ensuring reasonable accommodations | School district | Institution (upon student eligibility) |
| Monitoring effectiveness | School district | Student |

Prepare for Transition

A critical dimension of transition services is to prepare students with disabilities and their families for the dramatically different rights and responsibilities they will have in higher education compared to secondary school.



Wolanin & Steele, 2004

Acquiring Accommodations

Documentation of a disability in postsecondary education institutions is reliant on:

- Student disclosure of disability
- Professional staff observation of students' disability
- A third party professional assessment or evaluation

Accommodations

Postsecondary institutions are not required to:

- **Lower or substantially modify essential requirements (i.e., yes on extended exam time but will not change test).**
- **Provide modifications that would result in undue financial or administrative burden.**
- **Provide personal attendants or services of a personal nature.**

Who and what does the ADA cover?

- Title I - Employment
- Title II - State and Local Governments and Transportation
- Title III - Public Accommodations (“Businesses”)
- Title IV - Telecommunications
- Title V - Miscellaneous

Youth Finishing Their Education

Students with identified disabilities should focus strongly on their future employment while still in school.

The best transition programs offer:

- Learning about needed accommodations and practice discussing them
- Work-based learning experiences (the best predictor for future employment)
- Access to assistive technology

Youth Recommendations

- Internships may work especially well for youth who happen to have undeclared (hidden) disabilities.
- Mentors may surface disability-related needs long before the youth feels comfortable enough to ask.
- Manager awareness of the signs of disability can help identify potential issues – not to ID the disability but to work successfully with its characteristics.
- The power differential between manager and youth can be huge. Finding someone they can talk to is big.

Title I - Disability Discrimination in Employment

- ADA prohibits private employers (15 or more employees), state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment.



Title I - Disability Discrimination in Employment

- When an employer treats a qualified individual with a disability who is an employee or applicant unfavorably because she has a disability.
- ADA also protects people from discrimination based on their relationship with a person with a disability (even if they do not themselves have a disability).
 - For example, it is illegal to discriminate against an employee because her husband has a disability.



Who is “protected” under the employment provisions of the ADA?

- If an applicant or employee has a disability and is qualified to do a job, the ADA protects them from job discrimination on the basis of their disability.
- Must meet the ADA definition of “disability.”
- Includes short-term, long-term, part-time, full-time, and probationary employees.



So what do we mean by “disability” under the ADA?

With respect to an individual...

1. a physical or mental impairment that substantially limits one or more major life activities; or
2. has a record of such an impairment; or
3. is regarded as having such an impairment.

– Three “Prongs”



Health and safety considerations – “Direct Threat”

- May establish qualification standards that will exclude individuals who pose a direct threat -- i.e., a significant risk of substantial harm -- to the health or safety of the individual or of others, if that risk cannot be eliminated or reduced below the level of a "direct threat" by reasonable accommodation.
- May not simply assume that a threat exists.
- Must establish through objective, medically supportable methods that there is significant risk that substantial harm could occur in the workplace.

Can an employer maintain existing production/performance standards for an employee with a disability?

- Can hold employees with disabilities to the same standards of production/performance as other similarly situated employees for performing essential job functions, with or without reasonable accommodation.
- Not required to lower quality or production standards to make an accommodation.



Can I require medical documentation of disability?

It depends on “when” ...

1. Pre-employment

- May not ask or require a job applicant to take a medical examination before making a job offer.
- Cannot make any pre-employment inquiry about a disability or the nature or severity of a disability.
- An employer may ask questions about the ability to perform specific job functions and may, with certain limitations, ask an individual to describe or demonstrate how s/he would perform these functions.



Can I require medical documentation of disability?

2. After job offer has been made

- May condition a job offer on the satisfactory result of a post-offer medical examination if this is required of all entering employees in the same job category.
- If an individual is not hired because a post-offer medical examination or inquiry reveals a disability, the reason(s) for not hiring must be job-related and consistent with business necessity.



Can I require medical documentation of disability?

3. After a person starts work

- A medical examination or inquiry of an employee must be job-related and consistent with business necessity.
- An employer generally can only ask medical questions or require a medical exam if the employer needs medical documentation to support an employee's request for an accommodation.
- Employers may conduct employee medical examinations where there is evidence of a job performance or safety problem, examinations required by other Federal laws, examinations to determine current "fitness" to perform a particular job, and voluntary examinations that are part of employee health programs.



Should I Disclose my Disability?

- Yes, if you need to request a “reasonable accommodation” to help you perform the essential job functions.
- Some accommodations may not require disclosure. However, if your supervisor denies your requests, then you might want to disclose your diagnosis if you feel your job performance may be impacted.

What is meant by a “reasonable accommodation?”

EMPLOYEE PERFORMANCE

- ...any modification or adjustment to a job or the work environment that will enable an applicant or employee with a disability to participate in the application process or to perform essential job functions.
- Also includes adjustments to assure that an individual with a disability has rights and privileges in employment equal to those of employees without disabilities.

Common Accommodations

- **Flex time**
- **Telecommuting**
- **Voice recorder, for meetings**
- **Noise-blocking headset or room dividers**
- **Spell-check or grammar-check software**
- **Training for new aspects of the job**
- **Office with a door, or an enclosed workspace, to reduce distractions**

Common Accommodations

- Color-coded office supplies
- Cubicle in a less busy / noisy area
- Written instructions / e-mail reminders
- Help / advice on breaking down large projects into smaller pieces
- Timer / alarm
- White noise machine
- Printed cards with work procedures / instructions or workflow maps

Common Accommodations

- Talking calculator
- More frequent performance reviews / regular feedback
- Daytimer or electronic planner
- Short, frequent breaks
- Mentor or job-coach assistance

To request an accommodation...

- Employee may use “plain English” and need not mention the ADA or use the phrase “reasonable accommodation,” BUT
- Must indicate that a change or adjustment is needed for a reason related to a medical condition
- Oral request for accommodation okay despite any contrary company policy.
 - Kravits v. Shinseki, 2012 WL 604169 (W.D. Pa. Feb. 24, 2012)



What must an employer do if an employee requests a “reasonable accommodation?”

- Engage the employee in the interactive process.
- Once a reasonable accommodation is requested, the employer and the individual should discuss the individual's needs (precise limitations resulting from their disability) and identify the potential reasonable accommodation(s) that could overcome these limitations.
- Where more than one accommodation would work, the employer may choose the one(s) that are less costly or that are easier to provide.

Must an employer ask whether a reasonable accommodation is needed when an employee has not asked for one?

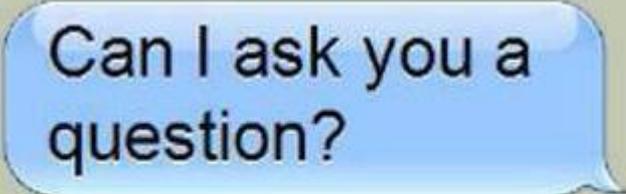
- **Generally, no.**
- **As a general rule, the individual with a disability -- who has the most knowledge about the need for reasonable accommodation -- must inform the employer that an accommodation is needed.**



However...

An employer should initiate the reasonable accommodation interactive process without being asked if the employer:

1. knows that the employee has a disability,
 2. knows, or has reason to know, that the employee is experiencing workplace problems because of the disability, and
 3. knows, or has reason to know, that the disability prevents the employee from requesting a reasonable accommodation.
- If the individual with a disability states that s/he does not need a reasonable accommodation, the employer will have fulfilled its obligation.



Can I ask you a question?

Is cost for a reasonable accommodation ever a consideration?

- An employer doesn't have to provide an accommodation if doing so would cause undue hardship to the employer.
- Undue hardship means that the accommodation would be too difficult or too expensive to provide, in light of the employer's size, financial resources, and the needs of the business.
- An employer does not have to provide the exact accommodation the employee or job applicant wants.
- If more than one accommodation works, the employer may choose which one to provide.



Is adjusting supervisory methods a form of reasonable accommodation?

- Adjusting the level of supervision or structure sometimes may enable an otherwise qualified individual with a disability to perform essential job functions.
- In some circumstances, supervisors may be able to adjust their methods as a reasonable accommodation by, for example, communicating assignments, instructions, or training by the medium that is most effective for a particular individual (writing, in conversation, or by electronic mail).



What about termination?

Employers can terminate workers with disabilities under three conditions:

1. The termination is unrelated to the disability; or
2. The employee does not meet legitimate requirements for the job, such as performance or production standards, with or without a reasonable accommodation; or
3. Because of the employee's disability, he or she poses a direct threat to health or safety in the workplace.



Disability Discrimination and Harassment

- It is illegal to harass an applicant or employee because he has a disability.
- Harassment can include, for example, offensive remarks about a person's disability.
- Harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).



Accommodation Examples

A journalist with AD/HD experienced sensitivity to visual and auditory distractions. The employer provided the individual with a private, high-wall cubicle workspace in a low-traffic area. The employer added an environmental sound machine to mask office noise.

Accommodation Examples

A retail employee with a TBI often forgot the closing and cash-out procedures, which resulted in missed printouts of daily sale reports. The employer created a numbered checklist that identified each step for proper closing procedures and identified which reports to run from cash registers. This accommodation benefited all employees.

Accommodation Examples

A teacher with AD/HD experienced disorganization in her classroom due to clutter from many years of teaching. The employer provided a job coach to help the teacher learn organization techniques, to help separate and store items, and to dispose of previous student work and projects from yesteryear.

Accommodation Examples

A social worker with AD/HD had difficulty completing handwritten paperwork in a neat and timely fashion. The employer created electronic forms for the employee, which allowed him to type responses. The employer arranged computer files labeled by month to help the employee prioritize open cases. The employer also sent email reminders of deadlines.

Resources – Job Accommodation Network

<https://askjan.org>



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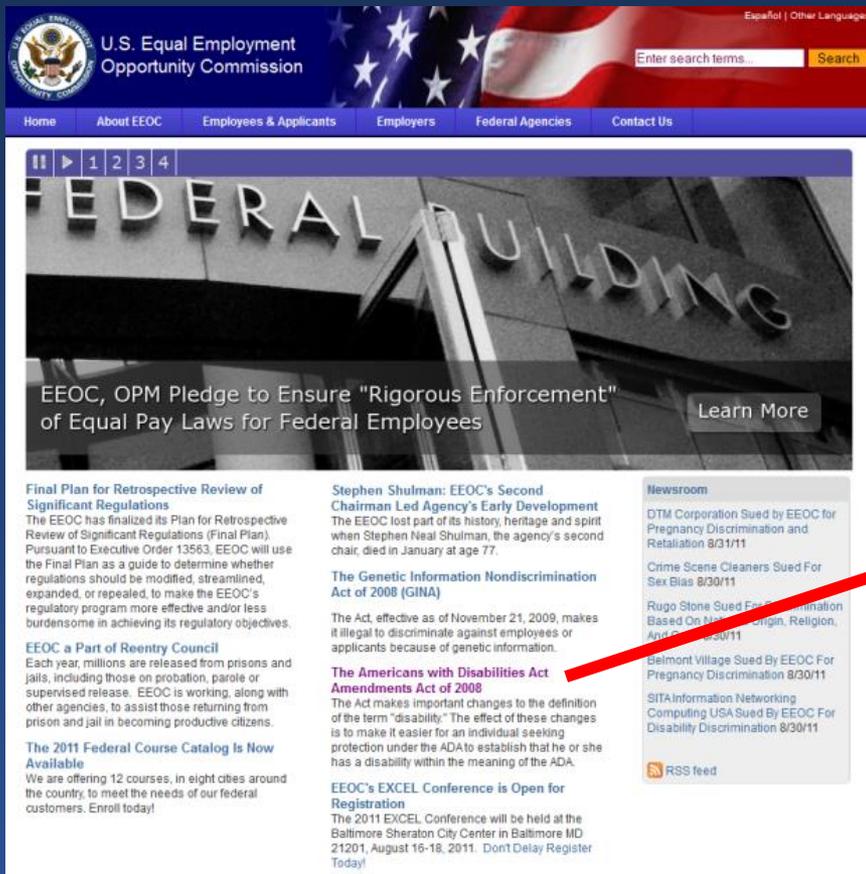
Introduction

JAN's Accommodation and Compliance Series is designed to help employers determine effective accommodations and comply with Title I of the Americans with Disabilities Act (ADA). Each publication in the series addresses a specific medical condition and provides information about the condition, ADA information, accommodation ideas, and resources for additional information.

Resources – EEOC

Equal Employment Opportunity Commission

www.eeoc.gov



The screenshot shows the EEOC website homepage. At the top left is the EEOC logo and the text "U.S. Equal Employment Opportunity Commission". To the right is a search bar with the text "Enter search terms..." and a "Search" button. Below the search bar is a navigation menu with links: Home, About EEOC, Employees & Applicants, Employers, Federal Agencies, and Contact Us. The main content area features a large banner image of the Federal Building with the text "EEOC, OPM Pledge to Ensure 'Rigorous Enforcement' of Equal Pay Laws for Federal Employees" and a "Learn More" button. Below the banner are several news items:

- Final Plan for Retrospective Review of Significant Regulations**
The EEOC has finalized its Plan for Retrospective Review of Significant Regulations (Final Plan). Pursuant to Executive Order 13563, EEOC will use the Final Plan as a guide to determine whether regulations should be modified, streamlined, expanded, or repeated, to make the EEOC's regulatory program more effective and/or less burdensome in achieving its regulatory objectives.
- EEOC a Part of Reentry Council**
Each year, millions are released from prisons and jails, including those on probation, parole or supervised release. EEOC is working, along with other agencies, to assist those returning from prison and jail in becoming productive citizens.
- The 2011 Federal Course Catalog Is Now Available**
We are offering 12 courses, in eight cities around the country, to meet the needs of our federal customers. Enroll today!
- Stephen Shulman: EEOC's Second Chairman Led Agency's Early Development**
The EEOC lost part of its history, heritage and spirit when Stephen Neal Shulman, the agency's second chair, died in January at age 77.
- The Genetic Information Nondiscrimination Act of 2008 (GINA)**
The Act, effective as of November 21, 2009, makes it illegal to discriminate against employees or applicants because of genetic information.
- The Americans with Disabilities Act Amendments Act of 2008**
The Act makes important changes to the definition of the term "disability." The effect of these changes is to make it easier for an individual seeking protection under the ADA to establish that he or she has a disability within the meaning of the ADA.
- EEOC's EXCEL Conference is Open for Registration**
The 2011 EXCEL Conference will be held at the Baltimore Sheraton City Center in Baltimore MD 21201, August 16-18, 2011. Don't Delay Register Today!

On the right side of the news items is a "Newsroom" section with a list of recent news items and an "RSS feed" link.



The screenshot shows the Federal Register website. At the top left is the Federal Register logo and the text "FEDERAL REGISTER The Daily Journal of the United States Government". Below the logo is a navigation menu with a "Rule" button. The main content area features a large banner image of the Federal Building with the text "Regulations To Implement the Equal Employment Provisions of the Americans With Disabilities Act, as Amended" and a "Learn More" button. Below the banner is a "SUMMARY" section with the text:

The Equal Employment Opportunity Commission (the Commission or the EEOC) issues its final revised Americans with Disabilities Act (ADA) regulations and accompanying interpretive guidance in order to implement the ADA Amendments Act of 2008. The Commission is responsible for enforcement of title I of the ADA, as amended, which prohibits employment discrimination on the basis of disability. Pursuant to the ADA Amendments Act of 2008, the EEOC is expressly granted the authority to amend these regulations, and is expected to do so.

Below the summary is a "UNIFIED AGENDA" section with the text:

Regulations To Implement the Equal Employment Provisions of the Americans With Disabilities Act Amendments Act

3 actions from September 23rd, 2009 to December 2010

| September 23rd, 2009 | November 23rd, 2009 | December 2010 |
|--|---|--|
| <ul style="list-style-type: none">NPRM74 FR 48631 | <ul style="list-style-type: none">NPRM Comment Period End | <ul style="list-style-type: none">Final Action |

On the right side of the page is a "LEGAL DISCLAIMER" section and a "Font Controls" section with buttons for PDF, XML, and PRINT. Below these is a "Publication Date" section with the text "Friday, March 25, 2011". Below that is an "Agency" section with the text "Equal Employment Opportunity Commission". Below that is an "Action" section with the text "Final Rule". Below that is an "Entry Type" section with the text "Rule". Below that is a "Page" section with the text "16978-17017 (40 pages)". Below that is a "Document Citation" section with the text "76 FR 16978".

ADA Resources

ADA NATIONAL NETWORK

www.adata.org



National Network

Information, Guidance, and Training on the
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Welcome

The ADA National Network provides information, guidance and training on the Americans with Disabilities Act (ADA), tailored to meet the needs of business, government and individuals at local, regional and national levels. The ADA National Network consists of ten Regional ADA National Network Centers located throughout the United States that provide local assistance to ensure that the ADA is implemented wherever possible. We are not an enforcement or regulatory agency, but a helpful resource supporting the ADA's mission to "make it possible for everyone with a disability to live a life of freedom and equality."

Search for comprehensive ADA information, services, products, training and guidelines, or visit your [Regional ADA National Network Center Website](#) for local events and support.

What's New

[Celebrate 22 Years of the ADA on July 26, 2012!](#)

[The ADA Title II and Title III Regulations Fact Sheets](#) are now available.



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Barrier-Free Employment



Strategies Promoting Barrier-Free Employment

1. Provide equal opportunity for persons with disabilities to participate in the registration process and be interviewed for a job.
2. Interviewers trained in ADA and disability issues.
3. Reasonable accommodations provided for qualified applicants and employees with disabilities.
4. Employee medical records kept confidential and separate from their personnel file.
5. Policies, practices, and procedures reasonably modified to allow equal access (e.g., to job posts).
6. Accessible employee rosters.
7. Applicant and employee materials offered in alternate formats (e.g., large print, Braille).
8. Accessible parking, route, and entrance for employees.
9. Online application and employment materials accessible to employees.
10. Accommodation and ADA resources.
11. Ongoing disability awareness training for employees and supervisors.

For detailed ADA information, call 800-949-4232 or visit www.adainformation.org.



Upcoming Events

Reasonable Accommodation Process for Vocational Rehabilitation Counselors webinar series
12/08/2015 to 12/15/2015
Online

Two Sides of the Same Coin: Aging and Disability
01/19/2016 to 01/26/2016
Online Webinar Series

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Thank you! Questions?



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ANY