

THE AMERICANS WITH DISABILITIES ACT

On July 26, 1994, all employers with fifteen or more employees came under the provisions of **The Americans with Disabilities Act (ADA)**.

Some of the most intricate provisions of the ADA relate to medical examinations and inquiries. The questions which you as employer may ask and the examinations which you as employer may require vary depending upon where you are in the employment process: **Pre-Offer, Post-Offer/Pre-Employment or Post-Employment**.

- During the **Pre-Offer** stage, you cannot ask a prospective employee about any pre-existing injuries, accidents, illnesses or disabilities. You should, however, explain the job functions and ask the prospective employee if he/she can perform them with or without reasonable accommodations.
- During the **Post-Offer/Pre-Employment** stage, you can make a conditional or provisional job offer to the prospective employee. At this point, you may have the employee fill out a medical history questionnaire and require a physical examination if:
 - All entering employees are requested to do the same
 - Information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that:
 - Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations
 - First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and
 - Government officials investigating compliance with (the ADA) shall be provided relevant information on request; and
 - The information obtained is used only in accordance with the ADA

For the **Post-Offer/Pre-Employment** stage (“conditional offer”) to be effective, the employer should allow several days to a week after making the job offer before having the prospective employee begin work.

- In the **Post-Employment** stage, the employee has begun working for you. At this point, you can only ask questions about prior conditions where you can prove that your inquiry is job-related and consistent with business necessity.

Remember, the ADA is very far reaching Federal legislation. Any questions regarding its impact on your business should be directed to your attorney.

THE AMERICANS WITH DISABILITIES ACT (CONTINUED)

Reasonable Accommodations

A reasonable accommodation is any modification or adjustment to a job, an employment practice, or the work environment that makes it possible for an individual with a disability to enjoy an equal employment opportunity.

As the employer, it is not your responsibility to determine if someone has a disability, but, if any limitations are identified, you must make a reasonable effort to determine what, if any, accommodation could be made to allow the employee to perform the job function. Use the following 4-step approach:

- Analyze the particular job involved; determine its purpose and essential functions
- Consult with the individual to assess his/her job-related limitations and how they can be overcome through accommodation
- Consult with the individual to identify potential accommodations and assess the effectiveness of each one
- Consider the individual's preferred method of accommodation and select and implement the one that is most appropriate for both the employer and employee

Examples of reasonable accommodation:

- An employee who cannot carry large items long distances due to a bad knee is furnished with a hand truck or cart
- Work station lowered so an employee in a wheelchair can do light assembly work

Undue Hardships

Under the ADA, an employer is not required to provide a reasonable accommodation if it would pose an undue hardship on the employer's business. While this has been included in the law, you should be aware that of all the provisions, this one is one of the most difficult to prove due to the number of and accessibility to devices and means of accommodating a person's disabilities available today. Any action under undue hardship should be discussed with your attorney before proceeding.

Several factors taken into consideration when determining undue hardship are:

- Nature and net cost of the accommodation, including availability of tax credits and deductions (studies have shown that 50% of accommodations made cost less than \$50, with 80% being done at less than \$500)
- Overall financial resources of the employer and facility or facilities involved
- Number of persons employed at the facility
- Type of operation of the employer
- Impact of the accommodation on the facility's ability to conduct its business

Further information on accommodations is available by contacting the Job Accommodation Network at (800) 526-7234 or online at <https://askjan.org/>.