



# The Americans with Disabilities Act (ADA) Title I

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# What is the Americans with Disabilities Act (ADA)?

- The ADA is a landmark **civil rights law** that **guarantees equal treatment** for people with all disabilities or individuals who have an association or relationship with someone who has a disability.

# What does the ADA cover?

- **Title I**                      **Employment Protections**
- Title II                      Public Entities and Transportation
- Title III                      Public Accommodation and Commercial Facilities
- Title IV                      Telecommunications
- Title V                      Technical Provisions

# The ADA Amendments Act (ADAAA) Restoration of the Definition of Disability

- Supreme Court rulings narrowed the definition of disability so fewer people had protections
- Focus became proving disability not the alleged discrimination
- ADAAA restored the definition of disability
- Requires a broad interpretation of mitigating measures, episodic conditions and broadened “regarded as”



# Non-Obvious Disabilities

- Most disabilities are not obvious, yet they have an impact on daily lives. For instance:
  - Arthritis
  - Intellectual disability
  - HIV/AIDS
  - Seizure disorders
  - Substance Abuse disorders
- This can lead to misunderstanding and to greater stigmatization.



# What is a disability?

- The ADA defines disability as a legal term, not a medical term
- ...A physical or mental impairment that substantially limits one or more major life activities

# Title I of the ADA – The Basics

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- Employers cannot discriminate against people who have disabilities in:
  - any employment practices or terms;
  - conditions; or
  - privileges of employment.
- This prohibition covers **all aspects** of the employment process.





# ADA and Disability Determination

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- The ADA has three prongs of disability determination:
  - have a disability;
  - have a record of having a disability;
  - are regarded as having a disability.

# Exemptions


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- Private employers with fewer than 15 employees
- The Federal Government
- Corporations fully owned by the US Government
- Private Membership Clubs
- US Government Executive Agencies
- The 573 Tribal Nations
- Businesses operating in foreign countries, if compliance violates foreign law

# ADA Title I: Qualified Applicant

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- An employer cannot discriminate against qualified applicants and employees based on disability.
- A ***qualified applicant*** is an individual who:
  - meets the skill, experience, education, and other job-related requirements of a position held or desired, **AND**
  - can perform the **essential functions of a job**, with or without **reasonable accommodation**.



# ADA and Reasonable Accommodation

- Any change in the work environment or how things are usually done that results in equal employment opportunity for an **individual with a disability**.
- A business must make a reasonable accommodation to the ***KNOWN*** physical or mental limitations of a person with a disability unless it can show that the accommodation would cause an undue hardship on the operation of the business.

## Examples of Reasonable Accommodations (slide 1 of 2)

- Using assistive technology (Screen readers, JAWS, Audio-text software)
- Change in schedule
- Changes in break times
- Work from home
- Using job aids

# Examples of Reasonable Accommodations (slide 2 of 2)

- Change in work location
- Change in work environment
- Change in equipment
- Elimination or exchange of marginal job tasks
- Re-assignment
- Leave

# Who has rights under the ADA?

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- Qualified individuals who are:
  - Pre-employed applicants
  - Full-time employees
  - Part-time employees
  - Seasonal workers
  - Temporary workers

# Essential Job Functions

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- The reason the job exists is to perform that function.
- Only a few employees can perform the function.
- The function is so highly specialized that the employer hires people into the position specifically because of their expertise in performing that function.



# Disclosure vs. Self-Identification

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**Disclosure** voluntarily sharing information about a disability

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**Self-identification** Invitation from an employer to voluntarily check a box that says the individual has a disability, anonymous, typically used for data collection purposes (Section 503)

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# Why Disclose?

- The person has an obvious disability and wants to address any concerns head-on.
- The person needs an accommodation to participate in the interview or do the job.
- Disclosure would offer a competitive advantage in the selection process.
- The person wants to bring his/her “whole self” to work.
- Explain the participation of a job coach or employment specialist in the process.

# Accommodation Basics

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- **No standardized form or set of basic information required** for seeking accommodation in the workplace.
- **Requests can be made:**
  - Verbally
  - Written
  - Email
  - Someone can make the request for you

# Employer Responsibilities in the Reasonable Accommodation Process

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- **Recognize a request** for accommodation has been made
- Begin an **interactive process** with the employee
- **Confirm the existence** of a disability
- Determine the **essential functions and marginal functions** of the job
- Investigate **solutions**
- **Implement** the accommodation
- **Document** the accommodation

# Employer Rights and Responsibilities in the Reasonable Accommodation Process

- **Documentation**
- The employer has the right to request documentation about the disclosed disability.
- The documentation must be job-related and consistent with business necessity.
- Disability documentation must be kept confidential.
- Must be kept in a secure file separate from the employee's work file.

# Employer Rights and Responsibilities in the Reasonable Accommodation Process

- **Granting an accommodation does not result in:**
  - Eliminating the essential functions of the job
  - Reducing the performance standards for the job



# Employer Rights in the Reasonable Accommodation Process

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- **Employers are *not* required to honor accommodation requests that:**
  - Create an undue hardship for the business;
  - Are extensive, disruptive, too costly, or fundamentally change the essential function of the job; and/or
  - Are dangerous or illegal.



# Disability Inquiry

A question, or series of questions,  
that are likely to solicit information  
about a person's disability  
or related medical condition.



# Phases of the Employment Process and Disability Inquiries

Pre-Employment (Before an offer of employment has been made)	No disability inquiries are allowed
Pre-Employment-Post Offer (After an employment offer has been made)	Disability inquiries are allowed only if the same inquiry is made of all candidates for the job category
Employment	Disability inquiry can only be made if it is <b><u>job related</u></b> and of a <b><u>business necessity</u></b>

# What Can Employers Ask in Disability Inquiry?

- A person's general well-being
- A non-disability related impairment
- Whether a person can perform the essential job functions
- Whether a person has been drinking alcohol
- Current illegal use of drugs
- Pregnancy information (i.e., due date and well-being)
- Emergency contact information

# What can't Employers Ask in Disability Inquiry?

- Whether a person has, or had, a disability.
- Medical documentation of a condition.
- Genetic information.
- Prior workers' compensation history.
- Current or past prescription medication usage.

# Questions ?



# Southeast ADA Center

**Phone:** 404-541-9001 or 1-800-949-4232

**E-mail:** [adasoutheast@syr.edu](mailto:adasoutheast@syr.edu)

**Web:** [adasoutheast.org](http://adasoutheast.org)

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# Disclosure Tools

(slide 1 of 3)

[The 411 on Disability Disclosure Workbook \[PDF\]](#)

**Source:** National Collaborative on Workforce and Disability  
for Youth

**Link:**

[heath.gwu.edu/files/downloads/411\\_disability\\_disclosure\\_complete.pdf](http://heath.gwu.edu/files/downloads/411_disability_disclosure_complete.pdf)

# Disclosure Tools

(slide 2 of 3)

## [Advising Youth with Disabilities on Disclosure: Tips for Service Providers](#)

**Source:** U.S. Department of Labor - Office of Disability  
Employment Policy

**Link:** [dol.gov/odep/pubs/fact/advising.htm](http://dol.gov/odep/pubs/fact/advising.htm)

## [The Art of Disclosing Your Disability \[PDF\]](#)

**Source:** Richard Pimentel

**Link:** [miltwright.com/articles/artofdisclosingyourdisability.pdf](http://miltwright.com/articles/artofdisclosingyourdisability.pdf)

# Disclosure Tools

(slide 3 of 3)

## [Disclosure Decisions to Get the Job](#)

**Source:** Virginia Commonwealth University Rehabilitation Research & Training Center

**Link:** [vcurrctc.org/resources/viewContent.cfm/585](http://vcurrctc.org/resources/viewContent.cfm/585)

## [Disclosure Tools](#)

**Source:** Job Accommodation Network

**Link:** <https://askjan.org/topics/discl.htm>