

# CRP BRIEF



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Community Rehabilitation**

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## **The Americans With Disabilities Act**

*"I am pleased to provide you with information on the Americans with Disabilities Act (ADA) and how it pertains to you. This issue contains highlights of the ADA, implications of the ADA for consumers and community rehabilitation providers, as well as available resources." - Wendy Wilkinson, Director, Disability Law Resource Project*  
*The Disability Law Resource Project (DLRP) is available when you need expert information on the ADA. Anytime you have questions or concerns, you can speak with an expert technical assistant by calling 800-949-4232, or visit their Web site at [www.dlrp.org](http://www.dlrp.org)*

### **BACKGROUND**

"Let the shameful walls of exclusion finally come tumbling down," said President George H. W. Bush while signing the Americans with Disabilities Act into law on July 26, 1990.

The ADA is essentially civil rights legislation. It was specifically designed to assure that persons with disabilities have equal access to employment possibilities. It does NOT mandate quotas, nor is it a way to get employers to hire persons with disabilities in preference to non-disabled persons.

The ADA has five sections that elaborate areas of accessibility. It is Title I that deals with employment issues, which is the focus of this CRP Brief.

### **Who is Protected Under the ADA**

To be protected by Title I an individual must meet the definition of disability, be qualified for the position, and be able to perform the essential job functions with or without a reasonable accommodation.

To meet the definition of disability, a person must meet one of the following criteria:

- 1) Have a physical or mental impairment that substantially limits one or more major life activities. Major life activities impacted by the impairment must be identified, and, the individual has to demonstrate how their ability to perform them is

significantly limited. An example is someone with a severe learning disability who is unable to read.

- 2) Have a record of such an impairment. An example is a cancer survivor.
- 3) Be regarded as having such an impairment. An example is someone who has facial scarring from a burn, which does not impact major life activities, but they are perceived as having a disability.

### **IMPLICATIONS FOR CONSUMERS**

Title I of the Americans with Disabilities Act (ADA) simply "asks" that individuals with disabilities have access to employment opportunities just like everyone else in our society. Title I lays out the actions employers must take to make sure that the employment "playing field" is level for individuals with disabilities.

### **Key Employment Requirements**

#### *Employment Questions*

In order to assure that employers focus on an individual's ability to perform a job, Title I places restrictions on what sort of questions employers may ask of job applicants and employees. An employer may not ask disability-related questions or conduct medical examinations until a conditional job offer is made to the applicant. The prohibition includes directly asking whether an applicant has a particular disability as well as questions that are likely to elicit

information about a disability. An employer may not ask questions on an application or in an interview about whether an applicant will need a reasonable accommodation to perform a job. This helps ensure that an applicant's qualifications are considered and not the person's disability.

These prohibitions do not mean that employers cannot ask questions to determine whether an applicant is qualified for a job. Employers may ask whether applicants can perform any or all job functions. They may ask applicants to describe or demonstrate how they would perform essential job tasks, as long as they request the same of all applicants in that job category. If the individual has an obvious disability that would clearly interfere with job performance, such as an individual who has had both hands amputated and is applying for a position that requires working on a computer keyboard, the employer may ask for a demonstration of ability to perform.

An employer may also ask questions about the applicant's education, work history, and required certifications and licenses. Employers may test applicants to determine current use of illegal drugs or tests measuring physical fitness or agility (as long as it is job-related).

After an applicant is given a conditional job offer, but before they start work, an employer may make disability-related inquiries and conduct medical examinations, regardless of whether they are related to the job, as long as it does so for all entering employees in the same job category. After an individual is working, an employer may make disability-related inquiries and require medical examinations *only* if they are job-related and consistent with business necessity, for example, to determine the appropriate accommodation.

#### ***Reasonable Accommodation: What is it?***

The ADA requires employers to provide a "reasonable" accommodation so a person with a disability can perform one or more essential job functions. These accommodations can take many forms. For example, a court clerk must retrieve files stored in boxes on floor-to-ceiling shelves. A

reasonable accommodation might be assigning this retrieval function to another employee. However, should this be a one-clerk operation, the employer may not be able to provide such an accommodation without encountering a significant hardship. In such a case, the employer would also have to look at reassignment as a reasonable accommodation. If no accommodation is possible and no vacant position exists, the employer would not be in violation of the ADA.

#### ***What Type of Accommodation Should be Provided?***

What is reasonable will depend on the individual needs of the worker, the entire resources of the employer, and the structure (both physical environment and nature of the job) of the workplace. Given the individualized nature of disability as well as the differences in job requirements and workplace environments, it is impossible to predict what will be considered reasonable in each case.

#### ***Who Decides?***

It is up to the employee with a disability to request an accommodation, but ultimately it is the employer who makes the final decision as to what type of accommodation will be provided. The process should be interactive with both parties acting in good faith to determine the appropriate accommodation. The baseline requirement is that the accommodation must be effective.

The Job Accommodation Network (JAN) is a free consulting service providing information and advice to employers and people with disabilities on reasonable accommodations in the workplace. Call (800) 526-7234.

## **RELEVANCE TO CRPS**

### **Disclosure Implications**

Employers may assume that an individual represented by a 3rd party, such as a rehabilitation counselor or an employment specialist, has a disability; however, they cannot act upon that assumption by treating the individual in a manner different from other applicants.

Under Title I, employers are only permitted to

have disability-related information on employees that is necessary for them to determine the existence of a disability as defined by the ADA, and the type of accommodation that will be effective. Ordinarily, the individual should provide this type of information, but may delegate this to the person who is representing them. Beyond this narrow scope, providers should not release other disability-related information that they may possess. Any medical or disability-related information obtained by an employer must be kept confidential and separate from an employee's personnel file.

### ***Requesting Accommodations***

When a job applicant or existing employee with a disability requires an accommodation, it is their obligation to request the accommodation, and, if possible, the specifics of that request. The employee should request an accommodation from his/her supervisor or human resources department. Neither "reasonable accommodation," nor the ADA must be mentioned. "Plain English" may be used. An employee simply needs to request a change and link it to their disability. The request does not have to be in writing, however, individuals should be advised to document their request and keep a record of any conversations and/or correspondence with their employer related to the request.

### ***Negotiating the Accommodation***

There is no particular process that must be followed to determine the appropriate accommodation. Both employer and employee should be involved in the negotiation process. Most employers will have reasonable accommodation policies and procedures in place. Once an accommodation is requested, the employee may have to provide disability-related documentation for the following reasons: to substantiate that they are an individual with a disability entitled to the protection of the ADA where the disability is not obvious; to verify that the disability is causing the impairment; and to demonstrate that the accommodation requested is necessitated by the disability.

## **Available Tax Credits**

Tax credits are available that can be used to defray the cost of accommodations provided. The tax credit may be used to pay for sign language interpreters, the purchase of adaptive equipment or modification of equipment and removal of architectural barriers. If the employer is unable to provide an accommodation because it imposes an undue hardship, even after factoring the tax credits, a rehabilitation agency may pay for the accommodation, to assist the person in obtaining the job.

For questions regarding reasonable accommodations, or to get a complete list of who and what is eligible under the IRS tax credits, you can request the fact sheet, "Business Tax Credits and Deductions for Employment of People with Disabilities" by contacting the Disability Law Resource Project at (800) 949-4232 or view it on the web at [www.dlrp.org/html/publications/employment/general/factsheet3.pdf](http://www.dlrp.org/html/publications/employment/general/factsheet3.pdf).

## **SUMMARY**

The ADA, over a decade old, is generally regarded as having achieved its primary purpose ... leveling the playing field so that persons with disabilities can compete for available employment positions.

The concept of "reasonable accommodations" has been widely recognized and generally accepted by the business community. Physical accessibility has clearly improved. Full interpretation of the ADA is an evolving process. It will take an educated consumer, a fully informed employment community, as well as court decisions to continue the success of the Americans with Disabilities Act.

Understanding and utilizing parts of the ADA can sometimes be difficult, especially since case law has refined the meaning of some key terms of the ADA. Resources are available to help you understand how the ADA applies to any issue. Contact the Disability Law Resource Project, the Southwest's leading resource for ADA expertise at 800-949-4232 for answers to your ADA questions (all calls are confidential). You can also visit DLRP's website at [www.dlrp.org](http://www.dlrp.org) or submit E-mail inquiries

*Meeting the continuing education needs of community rehabilitation providers*

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to [dlrp@irlu.org](mailto:dlrp@irlu.org). Additional web resources are listed below. Complaints about violations of Title I should be filed with the Equal Employment Opportunity Commission at (800) 669-4000.

**References**

The Americans with Disabilities Act Handbook

**Websites**

Disability Law Resource Project

[www.dlrp.org](http://www.dlrp.org)

Job Accommodation Network

[www.janweb.icdi.wvu.edu](http://www.janweb.icdi.wvu.edu)

Equal Employment Opportunity Commission

[www.eeoc.gov](http://www.eeoc.gov)

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