



ADA Title I - Employment

ISSUES FORUM
April 16, 2008
Presented by
DBTAC-Great Plains ADA Center



“DBTAC”

Disability and Business Technical Assistance Center
Region VII

Disability and Business Technical Assistance Centers DBTACs
Toll-free...1-800-949-4232



Website...www.adaproject.org




WHAT DO WE DO?

- Toll-Free Information Line---1-800-949-4232
- Training--Targeted, need-based training
- Consultations
- On-Line Services---www.adaproject.org
- Publications---ADA Update, TADAR
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Title I of the ADA Protects Qualified Individuals with Disabilities From Employment Discrimination



Who is covered by the employment provisions of the ADA?

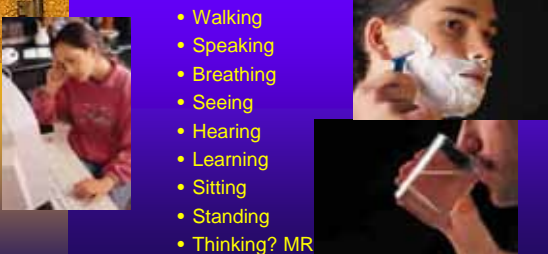
- All Private Employers with 15 or more employees
 - Some states have different standards via state laws
- Exceptions:
 - The United States or a corporation owned by the U.S.
 - An Indian tribe
 - A bona fide private membership club that is exempt for taxation under the 1986 IRS code.

What is the ADA Definition of an Individual with a Disability?

- Established on a Case-by-Case basis
- A person with a disability is an individual who:
 - Has an physical or mental impairment that substantially limits one or more of his/her major life activities
 - Has a record of such an impairment; or
 - Is regarded as having such an impairment

What is a Major Life Activity?

- Activities that an average person can perform with little or no difficulty.
 - Walking
 - Speaking
 - Breathing
 - Seeing
 - Hearing
 - Learning
 - Sitting
 - Standing
 - Thinking? MR




What does "Substantially Limited" Mean?

- 3 Main Factors to Consider
 - Nature and Severity
 - How long it will last or expected to last
 - Permanent or long term impact, or expected impact

Are Temporary Impairments Covered?

- Depends upon:
 - Extent
 - Duration
 - Impact
- Temporary non-chronic impairments that do not last for a long time and that have no long term impact usually are not disabilities.



What is Substantially Limited in Working?

- The person must be significantly restricted in the ability to perform either:
 - Class of jobs, or
 - A broad range of jobs in various classes
- Supreme Court rulings have restricted this definition.

Are there specific exclusions?

- A person who currently uses drugs is not protected by the ADA
 - Former persons with addictions who have successfully rehabilitated may be protected
- Other Exclusions
 - Transvestism, pedophilia, exhibitionism, voyeurism, homosexuality, compulsive gambling, kleptomania, pyromania, transsexualism, gender identity disorders not resulting from physical impairments, other sexual behavior disorders, psychoactive substance use disorders resulting from current illegal use of drugs

How does the ADA define "Qualified"?

"...satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position."

- Title I Technical Assistance Manual

What does that mean? Two basic steps

• Step 1

- determine if the individual meets prerequisites for the job based on:

- Education
- Work experience
- Training
- Skills
- Licenses
- Certificates
- Others



What does that mean? Two basic steps

- Step two:

- Determine if the individual can perform the essential functions of the job with or without reasonable accommodations.

What are essential functions?

- Basic job duties that an employee must be able to perform, with or without reasonable accommodation

- Two basic considerations:

1. Are employees in the position actually required to perform the function?
2. Would removing that function fundamentally change the job?

How are essential functions identified?

- The position exists to perform the function.
- There are a limited number of other employees available to perform the function, or among whom the function can be distributed.
- A function is highly specialized, and the person in the position is hired for special expertise or ability to perform it.

What kind of evidence is used in identifying an essential function?

- Employer's judgment
- Written job description prepared before advertising or interviewing applicants.
- The amount of time spent performing the function

cont.

What kind of evidence is used in identifying an essential function?

- The consequences of not requiring a person to perform a function
- The terms of collective bargaining agreement
- Work experience of those who have performed a job in the past or currently

What are reasonable accommodations?

- Modification or adjustment to the job application process.
- Modification to the work environment or the manner in which the job is customarily performed.
- Modification or adjustment to allow the equal enjoyment of benefits and privileges of employment.

What are some of the basic principles of a reasonable accommodation?

- The accommodation must be effective
- The accommodation must reduce barriers related to a person's disability
- The accommodation doesn't have to be the best as long as it is effective

cont.

When is an employer obligated to make a reasonable accommodation?

- An employer is obligated to make an accommodation only to the known limitations of an otherwise qualified individual with a disability

Whose responsibility is it to inform the employer?

- It is the employee's responsibility to request an accommodation
- However, the employer is responsible for notifying applicants and employees of its obligation to provide accommodations

How does an employer determine if an individual is covered?

- Once an employee asks for an accommodation, an employer may request documentation.
- The information must be kept confidential.
- The information must not be more intrusive or extensive than is job-related or consistent with business necessity.

How is the right accommodation determined?

- *Informal, interactive process between employer and employee.*
- Employer makes final determination for the best R.A. in compliance with the ADA.
- Not required if it would impose an "Undue hardship."

What is an undue hardship?

- An undue hardship is an action that requires "significant difficulty or expense" in relation to the resources available and the nature of the operation.

cont.

What is an undue hardship?

- Determined on a case-by-case basis
- Unduly costly
 - Based upon business size and resources
- Fundamentally alters the nature of the business
- Significant administrative difficulty

Does claiming an undue hardship remove accommodation requirements?

- NO, the portion of the accommodation not considered an undue hardship must be provided.

The ADA Protects Qualified Individuals with Disabilities From Employment Discrimination and in the Application Process

What can't an employer ask an applicant?

- It is unlawful to:
 - Ask an applicant whether they are disabled or about the nature or severity of a disability, or...
 - To require the applicant to take a medical examination before making a job offer.

What can an employer ask?

- About ability to perform job-related functions
 - As long as the questions are not phrased in terms of a disability.
- Describe or demonstrate the ability to perform the job functions:
 - With or without reasonable accommodation

Can an employer give a medical exam to an individual with a disability?

- Yes,
- But only after a job offer is made and prior to the commencement of employment duties
 - As long as **everyone** who will be working in the job category is also required to take the examination.
 - Police Officer

May an employer condition the job offer on the results of the medical examination?

- Yes, but must be able to show that the reasons are job related and necessary for conducting of business.
- Must be able to show that there was no reasonable accommodation.

Can an employer require a medical exam after commencement of a job?

- No medical examinations or questions about a disability.
 - Unless, job related and necessary for the conduct of business.
 - Must be the policy across the board.
 - Applying for a new position or promotion?
- Employers may conduct voluntary medical examinations that are part of an employee health program.

How are the employment sections of the ADA enforced?

- Internal Grievance Procedure
 - Not Required by law
- Filing Administrative Complaint with the EEOC within 180 days of an event.
- Filing Lawsuit
 - Requires "Right to Sue" letter from EEOC
- Alternative Dispute Resolution

Disability Harassment

Courts are beginning recognize claims for disability-based harassment

To establish a hostile work environment claim under ADA, plaintiff must prove:

- 1) She is a qualified individual with a disability.
- 2) She was subjected to unwelcome harassment.
- 3) The harassment was based on her disability.
- 4) The harassment was sufficiently severe or pervasive to alter a term, condition, or privilege of employment, and
- 5) Employer knew or should have known about the harassment, but failed to take proper action to end it.



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Teamwork!

- Break into sub-groups!
- Choose a team name!
- Pick a spokesperson!
- Make a list of what you do now for your employers!
- You have 3 minutes!
- Spokespersons report!



Name your Knowledge, Skills and Abilities - KSA's


- Resources
- Trust building
- Expertise
- Job-carving
- Partners in Business networks.
- Interviewing
- Job descriptions



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A poll...


How are you a resource to your employer?



Perception

“The mind is it's own place,
and in itself
can make a heaven of hell,
a hell of heaven.”

John Milton, Paradise Lost




Perceptions

- It is not the event, but our reactions to the event which establishes reality...
- “Reframing”
- “Reconceptualizing”
- Shift in Perception
- Paradigm shift
- Attitude adjustment



Why are we here?

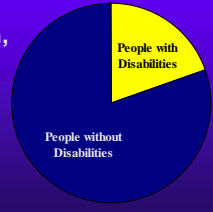
- To assist in successful employment.
- Enhance outcomes
- Assist individuals, organizations, businesses, local governments and agencies
- Assist employer with initiatives
- Enhance the understanding of rights and responsibilities under the ADA.



Why are we here?

- The 1996 census bureau data states that 19.7% of the general population, about 52.6 million people, live with some level of disability.

U.S. Population





Why are we here?

Employment Rates

- Declining since Y2K
- Declined from 26% to about 17%-18%

• Source HR magazine- April 2008



In 2006, the employment rate of working-age people with disabilities in the US was 37.7 percent.

In 2006, the employment rate of working-age people without disabilities in the US was 79.7 percent.

The gap between the employment rates of working-age people with and without disabilities was 42.0 percentage points.

Source : Cornell University, 2006.



Barriers, education and disability.


- **High School Diploma or Equivalent:** In 2006, the percentage of working-age people with disabilities with only a high school diploma or equivalent in the US was 35.0 percent.
- **Some College or Associate's Degree:** In the US in 2006, the percentage of working-age people with disabilities with only some college or Associate's degree was 27.7 percent.
- **Bachelor's Degree or More:** In 2006, the percentage of working-age people with disabilities with a Bachelor's degree or more in the US was 12.5 percent.



A QUIZ:


Name the biggest barriers we face today in employment...

?



A QUIZ:


Education?
 Funding?
 Gender or Race issues?
 Access to services?
 Support for the disability?
 What else?



PERCEPTIONS.


"The mind is it's own place, and in itself can make a heaven of hell, a hell of heaven."

John Milton, Paradise Lost



Walgreens


- In November 2007 Walgreens launched an initiative to employ persons with disabilities. At their new distribution center in Windsor Conn., their workforce identifies themselves as 40% having a disability.
- Walgreens shifted perception and began to look at the disabled policies in a holistic reconceptualization.



Walgreens

Production at the facility is up 20%, in part because of changes in process...

Assistive technology designed for the disabled employees helped the entire workforce of 800 to be more productive.




WHO ARE YOUR CLIENTS?

- Who came first to mind when considering this question?
- Can you keep everybody happy?



WHO ARE YOUR CLIENTS?

- Individuals with disabilities and their family/friends
- Service Providers
- Government Entities
- Business entities



PERCEPTIONS...So what would happen for our objective of getting clients employed if we begin to first reconceptualize employers as our clients?




Ask Not What Your Employer Can Do For You...

Ask what *you* can do
For your employer!





Name your Knowledge, Skills and Abilities - KSA's

- Resources
- Trust building
- Expertise
- Job-carving
- Partners in Business networks.
- Interviewing
- Job descriptions




Identifying the employer as your client

- What does this employer need?
- What does the employer want?
- Do they know what skills, expertise and abilities you have to assist them in reaching those goals?
- Do they "get" disabilities?
- How can you help them succeed as a business, a manager and look good?




KSA's include teaching employers about the disabled workforce advantages.

- Tax benefits for hiring persons with disabilities.
- Larger labor pool. Look at rural shrinking populations.
- Intangible sense of community enhancement and valuable human capital as employees.
- 92% of Americans view companies that hire persons with disability more favorable than those who do not.
- Risk Aversion – ADA is complaint generated and adjudicated by the legal system.
- Lower turnover with a good job fit.
- Keeping seasoned employees.




Perception and your KSA's

- "The mind is it's own place, and in itself can make a heaven of hell, a hell of heaven."
- In a 2006 a study of the disability n hiring practice 200 HR managers of differing size companies, nearly 50% responded that people with disabilities could not adequately perform required work duties.
- The study did not include job duties or specific disabilities.
- 20% mentioned concerns about costs for accommodation and adjustments.
- 15% admitted a lack of knowledge about accommodation.
- Source HR magazine- April 2008



KSA's

- Reframing the employers perception of what disability means and how it will impact the company.
- Extend their knowledge.
- Enhance a sense of comfort.
- Discuss functional abilities and limitations.
- HR managers tend to think in terms of... what?




Investing in Disability

- Persons with disabilities have been shown in national studies to attain equal or higher job performance evaluations, higher rates of retention and lower absenteeism. (Unger, 2002).
- Du Pont, (1990) reports identical safety records.
- Persons with disabilities have more than 175 Billion in discretionary spending. Does your retailer or service manager want to extend their client base?



Perception and your KSA's

- What model of disabilities is your employer using? Are you an "enabler"?
- Charitable or holistic?
- Functional disability or ability?
- Cost benefit analysis distinctions between job accommodations or the enhances productivity, job stability and job fit?




Job descriptions can be the difference between placement and job fit.

- KSA - Can you write a accurate job description?
- Define essential functions.
- Define marginal functions.
- Dictate interview questions (and responses).
- Experience.
- Define reasonable accommodations.
- Risk aversion/EEOC



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