

ADA Brief Overview:

The ADA is a federal law that protects the rights of people with disabilities. The ADA prohibits covered employers from discriminating against people with disabilities in the full range of employment-related activities, from recruitment to advancement, to pay, and benefits. **A person may be considered to have a disability if they have an impairment that affects or substantially limits a major life activity.**

What is a covered employer?

Covered employers under the ADA include those that employ 15 or more employees.

What does the ADA provide?

The ADA requires employers to provide reasonable accommodation for people with disabilities to allow them to participate in the job application process, to perform the essential functions of a job, or to enjoy the benefits and privileges of employment equal to those enjoyed by employees without disabilities. Reasonable accommodation could include but is not limited to:

- Providing or modifying equipment or devices
- Job restructuring
- Part-time or modified work schedules
- Reassignment to a vacant position
- Adjusting or modifying examinations, training materials, or policies
- Providing readers and interpreters
- Making the workplace readily accessible and usable by people with disabilities

What is the best way to identify a reasonable accommodation?

Frequently, when a qualified individual with a disability requests a reasonable accommodation, the appropriate accommodation is obvious. The individual may suggest a reasonable accommodation based upon her own life or work experience. However, when the appropriate accommodation is not apparent, you must make a reasonable effort to identify one. The best way to do this is to consult informally with the applicant or employee about potential accommodations that would enable the individual to participate in the application process or perform the essential functions of the job. If this consultation does not identify an appropriate accommodation, you may contact Helpside for guidance.

What if providing the accommodation will pose an undue hardship on our business?

Employers are not required to provide accommodations if the accommodation would be:

- Unduly costly
- Extensive
- Substantial
- Disruptive to business
- Or would fundamentally alter the nature or operation of the business

However, in cases where a particular accommodation poses an undue hardship, employers must try to identify another accommodation that would not pose a hardship. If cost is at play, employers must consider whether funding for an accommodation is available from an outside source, such as a vocational rehabilitation agency, and if the cost of providing the accommodation can be offset by state or federal tax credits or deductions. You must also give the applicant or employee with a disability the opportunity to provide the accommodation or pay for the portion of the accommodation that constitutes an undue hardship.

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What questions can I ask about an individual's disability?

You can ask an applicant questions about their ability to perform job-related functions, as long as the questions are not phrased in terms of a disability. You can also ask an applicant to describe or demonstrate how, with or without reasonable accommodation, the applicant will perform job-related functions.

- Example: *Can you type at least 45 wpm?*
 - Not: *Are you able to type at least 45 wpm despite your missing fingers?*
 - Not: *Can you tell me how you lost your fingers? Are there any other health issues you have that we should be aware of?*
- Example: *Are you able to stand for up to 8 hours a day and routinely lift 25 lbs with or without reasonable accommodation?*
 - Not: *I see you walk with a limp. How long can you stand before getting tired?*
 - Not: *Do you have an issue with your knee? Can you tell me about that?*

Can I require the employee to provide medical certification?

When a current employee requests an accommodation or you are aware of an impairment that is substantially limiting their ability to perform their job, you may require the employee to provide medical certification from their health care provider for the purpose of determining how best to accommodate their disability.

What is the employee's responsibility under the ADA?

Employees are responsible for:

- Providing enough information for an employer to know they might have a condition covered under the ADA and need a reasonable accommodation.
- Providing medical certification from their health care provider within a reasonable amount of time in cases where it should be required.

How do ADA, FMLA, and Workers Compensation work together?

While the ADA provides some protections for employees, it does not offer job or benefits protection in cases where reduced hours or time off is requested. FMLA can and should run concurrently with other applicable laws that help protect employees. Generally, whichever law offers the greatest rights and benefits to the employee must be followed but **doing this protects the employer as well**. Running FMLA concurrently with both the ADA and Workers Compensation minimizes the risk of an employee being away from work longer than they would otherwise be entitled.

- Example: *An employee who works for an ADA covered employer is injured at work, absent for three months, and placed on workers' compensation only. A few months later, the same employee requests to go on FMLA leave for three months due to a separate non-work-related medical need. Because FMLA was not run concurrent with the first injury, the employer is required to give the additional time off under FMLA for a total of six months. This can be burdensome for the business.*
- Example: *An employee is taking six weeks of leave due to an ADA covered impairment. FMLA should be offered concurrently to protect the employee's job and benefits. Without FMLA, the employee will be dropped from their employer sponsored benefits after 30 days for not meeting the hours worked requirement.*

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FMLA, ADA, AND WORKERS COMPENSATION COMPARISON			
	ADA	Workers' Compensation	FMLA
Purpose	Prohibits Discrimination against people with disabilities	Provides for payment of lost wages and rehabilitation	Provides unpaid, job protected leave for eligible individuals
Basic Provisions	Provides reasonable accommodations including leave if applicable.	Defined by state statute <i>(Employer may not retaliate against employee for filing a WC claim)</i>	Up to 12 weeks of benefit and job protected leave.
Job Protection	No	No	Yes
Benefits Protection	No	No	Yes
Time Limit	No specific time limit: Accommodations must be reasonable and can't pose an undue hardship on the employer	Employees have 2 years to file a claim. Claims last a lifetime unless there is no activity.	12 weeks per year or 26 weeks for Military Caregiver Leave.