Employment for People with Physical Disabilities
The ADA and Section 503
Wendy Strobel, M.S., Director of the Northeast ADA Center, Cornell University

Plan for Today
• Overview of Title I of the ADA
• Overview of Sections 501 and 503 of the Rehabilitation Act
• Decisions points for job seekers

THE ADA AND ITS AMENDMENTS

Overview of the ADA: Titles
• Title I – Employment
• Title II – State and Local Government
• Title III – Places of Public Accommodations
• Title IV – Telecommunications
• Title V – Miscellaneous Provisions

Title I of the ADA
• Anti-discrimination law enforced by EEOC
• Remove barriers to equal employment opportunities
• Access based on merit
  – No quota’s
  – No affirmative action requirements
• The ADA was established into law by President George HW Bush on July 26, 1990
• Simply put ADA is an “equal opportunity” law for people with disabilities. It is modeled after the Civil Rights Act of 1964 which prohibits discrimination on the basis of race, color, religion, sex, or national origin
Discrimination is prohibited at every phase of the employment process:
- Job application
- Hiring
- Firing
- Advancement
- Compensation
- Job Training
- Other terms, conditions, and privileges of employment

Who is Protected?
Qualified Individuals with Disabilities

What is Qualified?
- Requisite skills and experience necessary to perform the job
- Able to perform the essential functions of the job with or without reasonable accommodation
- To be protected by ADA one must have a disability defined by the ADA

ADA Amendments Act

What Changed?
The Rules of Construction regarding the definition of disability

Definition of Disability as amended by ADAAA
- Congress has “lowered the bar” on disability inquiry
- Focus should be on whether or not covered entities have complied with their obligations
- Disability should not demand extensive analysis
  “Definition of disability should be construed in favor of broad coverage to maximum extent permitted”
**Major Life Activities**
- Caring for oneself
- Performing manual tasks
- Seeing, hearing, eating
- Sleeping, walking, standing, sitting
- Reaching, lifting, bending, speaking
- Breathing, learning, reading, concentrating
- Thinking, communicating, interacting with others and working

The ADAAA regulations make it clear that the lists are NON-EXHAUSTIVE.

**Major Body Functions**
- The operation of major bodily functions including: immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal and reproductive functions.

**Mitigating Measures**
Mitigating measures no longer considered in determining disability

**Episodic Conditions**
If a condition would be classified as a disability when in its active state, it is a disability

**What is Reasonable Accommodation?**
- Any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities
  

**And Equal Employment Opportunities?**
- The opportunity to attain the same level of performance or to enjoy equal benefits and privileges of employment
  
  29 C.F.R. § 1630.2(o)(1)(i-iii) (1997)
Three Categories of Accommodations

- Application Process
- Performing the essential functions of the position
- Enjoyment of equal benefits and privileges of employment

Reasonable...

- Modifications to increase facility accessibility
- Job restructuring
- Flexible scheduling
- Acquiring new equipment
- Providing qualified readers and interpreters
- Modification of application and testing procedures or training materials

...not so much!

- Eliminating essential job functions
- Lowering production standards applied to all employees
- Providing personal use items
- Changing an employee’s supervisor
- Excusing a violation of uniformly applied conduct rules

Asking for an accommodation

- Let your employer know you have a disability (called disclosure)
- You or your representative can ask
- No special language
- You may need to fill out a form if your employer asks
- Participate in the interactive process with your employer

Reasonable Accommodation: Employer Obligations

- Engage in an interactive process
- Accommodate known disabilities
- Get limited medical documentation only when necessary (i.e. not for an obvious disability)
- Make the final decision as to what accommodation gets implemented
- Provide effective accommodations

THE REHABILITATION ACT

Section 501 and Section 503
About the Rehab Act
• Prohibits discrimination on the basis of disability
  – Programs run by federal agencies
  – Programs that receive federal financial assistance
  – Federal employment
  – Employment practices of federal contractors

The Sections... 501
• Applies to federal employers
• Affirmative action to hire and advance in employment qualified individuals with disabilities.
• Protects applicants as well as employees.
• Complaints initially go to an EEO counselor at the agency where the alleged discrimination took place.
• Sharing new regulations that may impact hiring of people with disabilities

The Sections... 503
• Prohibits discrimination by covered federal contractors and subcontractors against individuals on the basis of disability
• Requires affirmative action on behalf of qualified individuals with disabilities.
• Complaints go to OFCCP

The Why?
• Federal Government as model employer
• Legal compliance alone does not link to competitive advantage or success... disability inclusiveness does.

The Scope
• All employers with federal contracts or sub-contracts of $10,000 or more are covered
• The Government spends over $500 B on Federal Contracts

Section 503: Changes in two areas
Affirmative Action
• Data collection and reporting
• Self-identification
• Training
• EEO clause
• Recruitment pipelines and Partnerships
• Aspirational utilization goal

Non-Discrimination
• Implements the ADA Amendments Act
• Strongly recommends accessible IT
Job Candidate Outreach

- Requires that contractors undertake “appropriate outreach and positive recruitment activities”

- Remember...the purpose of 503 is to “employ and advance in employment”

DECISION POINTS FOR JOB SEEKERS

Disclosure

- May or may not be a choice
- When to disclose may be a choice
  - In your application?
  - Before your interview?
  - At your interview?
  - After hire?
- You must disclose to get an accommodation
- The decision not to disclose a disability is a legally protected choice.

Culture Matters

- How people feel about disclosure is not predicted by whether a person has an obvious or non-obvious disability

Culture Matters

• When employees with disabilities work within departments in which employees overall feel supported and fairly treated they are more likely to feel “safe” about disclosing their disability


Think it through...

• Explain the challenges you face at work on your own terms
  – What do you want to tell people?
  – Focus on what you are good at.
  – How does your disability advantage you in the workplace?
  – What will help you do your job?

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Consider this...

Joe just got a job in a warehouse. He is working hard to get to know his colleagues and to fit in with everyone else. He doesn’t want to do anything to make himself stand-out.

But Joe is struggling. He has rheumatoid arthritis and the working conditions in the warehouse make doing the physical work difficult for him. The swing shifts are especially difficult.

He needs some accommodation in order to continue to be effective. He’s worried his co-workers will think he wants special treatment.

What should Joe do?

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What should Joe do?

Two sides of the story

If he asks...

• People will know he’s doing something differently.
• Will they know he has a disability?
• An accommodation will allow him to do his job well
• He will not make his condition worse
• He will be able to continue working

If he doesn’t ask...

• He won’t have to worry how people will react to him
• His performance will likely suffer in the long run
• He may lose his job

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Workplace Accommodation

• Overall, people with and without disabilities are equally likely to be granted or partially granted accommodations by their employers

Von Schrader, Xu, & Bruyère, 2014.
It’s not always done right…

• About 30% of respondents who asked for accommodation reported experiencing one or more of these problems to some extent:
  – Focus on disability over performance,
  – Treated differently by supervisor or coworker,
  – Loss of advancement opportunities

(Nishii & Bruyère, 2014)

DECISION POINTS FOR JOB SEEKERS

Medical inquiry

Medical questions

• The ADA prohibits medical inquiry during recruitment, screening and hiring
  • No direct or “indirect” questions about disability while applying for a job
  • If a question about disability is asked after employment is offered, it must be asked of all job applicants

What should you do...

• Reframe the question?
  “I think what you are asking me is how I will do this job…let me tell you.”
  • Do you educate the employer?
  • If asked an illegal question, you can file a charge with the EEOC. It’s entirely up to you

Performance Questions

• Employers may be reluctant to hire people with disabilities because they think they can’t be held to the same performance standards as others
Dispelling myths...

- People with disabilities perform as well as any other employee.
- Don’t take up more of a manager’s time.
- Have no more workplace accidents than employees without disabilities.
- Have the same absence rate as other employees.

DePaul University, 2008

Performance Standards

- People with disabilities can and should be held to equally applied performance standards.
- Customized employment options can remove performance standards when meeting them will be an issue.

The ADA National Network

- 800-949-4232
- Adata.org