

Reasonable Accommodation in the Work Place Under ADA

A Fact Essay

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There may be as many as one thousand different disabilities that affect over forty-three million Americans. Of all the laws and regulations governing the treatment of those Americans the American with Disabilities Act (ADA) is the most recent major law. It was passed in 1990 and although it is spelled out in a technical ADA manual that is several hundred pages in length. Two of ADA's two major sections, Titles II and III concern the operation of state and local government and places of public accommodation. They require new public and commercial facilities to be accessible to people with disabilities. Modifications to existing facilities need to be made only if the cost is "readily achievable" and does not cause an undue financial or administrative burden. This essay will concentrate on Title I, the employment aspects of the law. This section forbids employment discrimination against people with disabilities who are able to perform the essential functions of the job with or without reasonable accommodation. This definition poses three main questions: Who is considered disabled? What is an essential function of a job? What is considered Reasonable Accommodation?

To be protected under the ADA an individual must have a physical or mental impairment that substantially affects one or more major life activities. The impairment may not be due to environmental, cultural, or economic disadvantages. For example a person who cannot read because they have dyslexia is considered disabled but a person who cannot read because they dropped out of school is not. In addition persons who are perceived to be disabled are protected by ADA. For example, if a person were to suffer a heart attack, when he tries to return to work the boss might be scared the workload will be too much and refuse to let him come back. The employer would be in violation of the ADA because he perceives the employee as disabled and is discriminating based on that perception. Two classes that are explicitly excluded from protection under ADA are those individuals whose current use of alcohol or illegal drug is affecting their job performance. However those who are recovering from their former use of either alcohol or drugs are covered.

The Equal Employment Opportunity Commission (EEOC), the federal agency responsible for enforcing the ADA and other EEO laws that apply to most public and private employers, separates job duties into two categories: essential and marginal. Essential functions are those duties that each person in a certain position must do or must be able to do to be an effective employee. Marginal functions are duties that are required of only some employees or are not critical to job performance. The ADA requires that employers make decisions about applicants with disabilities solely on the basis of their ability to perform essential job functions.

Reasonable accommodations are the actions taken to accommodate the known disabilities of applicants or employees so that disabled persons can enjoy equal employment opportunities. Since it is not generally acceptable for a potential

employer to ask about a disability or conduct test such as HIV test to look for disabilities, it is the responsibility of the applicant or employee to inform the employer of the disability and needed accommodation. At that point the employer must make "reasonable accommodation for the known disability. An employer may not deny employment in order to avoid providing the reasonable accommodation unless it would cause an undue hardship. Even then the applicant or employee should be given the option of providing accommodation himself.

The employment provisions began to be enforced for business with 25 or more employees on July 26, 1992. This affected approximately 264,000 employers. The second phase of the employment provision went into affect July 26, 1994, and was implemented for the approximately 666,000 U.S. employers with 15 or more employees. Many opponents of the ADA suggested that the law would cost small businesses too much. They contended that the legislation would backlog the courts with lawsuits from scorned job applicants. However this has not been the case. Over eighty percent of the discrimination complaints filed with the EEOC have been entered by current employees who claim a prior disability or recently disabled workers who contend that their employers have not reasonably accommodated their needs under the law. According to EEOC records the most common type of disabilities suffered by workers who claim employment discrimination is back problems, which account for about eighteen percent of complaints. Mental illness has the next largest portion of complaints, making up about ten percent. It is followed by heart trouble, neurological disorders, and diabetes. Only around twenty percent of all complaints filed argue that the employer failed to provide them with reasonable accommodations for their jobs. Ten percent of complaints received claim that they have unfairly disciplined because of their disability, while nearly four percent contend they have been denied rightful benefits. Although the ADA was passed to bring disabled people into the mainstream, these numbers show that most of the complaints filed have not been what would traditionally be called handicapped people. In fact only six percent of all the actions filed during the first three years the law was in force were filed by the blind and the deaf.

As of November 1994 two-thirds of all severely disabled adults remain unemployed, the same number as when ADA was passed in 1991. Many experts believe that people with traditional disabilities are not exploiting the law as expected, partly because many fear losing comprehensive medical benefits from programs like Medicaid. "Most of us are scared to death to get a job and lose out on poverty-based health care," said Justin Dart, former chairperson of the President's Committee on Employment of People with Disabilities. Meanwhile, the ADA has armed less severely disabled workers with a law that is broad and vague.

The cost of "reasonable accommodation" has been a controversial topic since the bill's inception. Many feared it would force many small businesses under or at least add another barrier to entry for small business. In one example a Denver restaurant owner paid thousands of dollars in additional construction cost, legal fees, and fines to comply with the ADA. By the time he was finished these additional expenses amounted to more than half the original cost of opening the business. This is however by no means the norm. To the contrary, studies show that costs of installing required accommodations average less than one percent during construction. If the job had been done right at the outset, none of the additional expenses would have been incurred, according to the former Democratic representative from California who was the principle author of the ADA. In fact according to a two year survey from the Job Accommodations Network at West Virginia University, two-thirds of respondents said their accommodations cost less than \$500, and only four percent said the accommodations cost more that \$5000. The survey also reported that business persons estimated they get back \$30 in benefits such as increased productivity for every dollar they spend. Over half of the sixty-one thousand businesses that participated in this survey last year had less than a thousand employees.

Experts agree that a proactive and collaborative approach is the best way to accommodate workers with disabilities and thereby avoid litigation. Since the first step is for the employee or applicant to identify himself as disabled, the

employer is not obligated to consider or provide any kind of accommodation until that identification is made. The request should be made in written form. At that point the individual and the employer collaborate in identifying the barriers that limit the employee's ability to perform essential job functions. There are standardized surveys that may assist in determining the employee's existing or potential accommodation needs. One example is the Work Experience Survey, which is a structured interview that enables respondents to determine career adjustments and advancements in a variety of areas. Next the employer should identify a variety of accommodations, using the person with the disability as a resource. The alternatives are then considered and employer determines which would impose fewest economic hardships, considering the employee's preference when two equivalent accommodations have been identified. The chosen accommodation is then implemented. As with any company policy, it is important to document it and provide for ongoing reviews. Another important factor is to make sure there is a clear channel of communication with the disabled person for addressing future needs.

According to an article in HR Focus there are some steps employers can take in designing work areas to easily accommodate employees. Some of the suggestions include: Use panel systems so that work spaces can be easily modified and work surface heights can be raised or lowered as needed. Install electronically controlled work surfaces and tables. Lower storage areas or install storage areas that are movable. Install adjustable keyboard pads that adjust easily with little hand pressure. Install adjustable lighting with variable intensity that can add more or less light to the work space as needed.

The Americans with Disabilities Act was enacted with the best of intentions. Although it has undergone much scrutiny it is clearly a step in the right direction. As is apparent by the previously mentioned statistics and surveys, the ADA has not put too large a burden upon business to provide reasonable accommodation. However since the employment rate of the traditional handicapped person has not been affected since the laws inception there is obviously much work to be done. In the future if handicapped people are going to be integrated into the mainstream of society it will take a collective effort not from the United States Government, but from society in general. People from both all walks of life, including handicapped and nonhandicapped, must want the changes and take some initiative to make it happen.

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