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THE AMERICANS WITH DISABILITIES ACT (ADA): What It Is — What It Does — How It Will Affect the Workplace

It has been hailed as "the most significant law in terms of potential impact on business since the 1970 Occupational Safety and Health Act." Not since the 1964 Civil Rights Act have employers been so concerned about an anti-discrimination statute's effect on them. Here are some answers to some of the most frequently asked questions about the law.

- **What is ADA?**

The law prohibits discrimination against individuals with disabilities in employment (Title I), public services and transportation (Title II), public accommodations (Title III), and telecommunications services (Title IV). Title V is a miscellaneous section that includes such things as exemptions, attorney's fees, coverage of Congress, and amendments to the 1973 Rehabilitation Act.

- **When is it effective and who is covered by ADA?**

Beginning on July 26, 1992, ADA will cover employers engaged in an industry affecting commerce that have 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. Beginning on July 26, 1994, employers of 15 or more workers will be covered.

The law also applies to employment agencies, labor organizations, joint labor-managment committees, and state and local governments. Excluded are the federal government and government-owned corporations, Indian tribes, and bona fide tax exempt private membership clubs. Religious organizations may give preference in employment to their own members and may require that employees conform to their religious tenets.

- **What discrimination is prohibited?**

Covered employers may not discriminate against a "qualified individual with a disability" in regard to job applications, hiring, advancement, discharge, compensation, training, or other terms, conditions, or privileges of employment. This means that employers may not refuse to hire an applicant because of a disability, and the application process may not serve to screen out persons with disabilities.

Furthermore, employers may not refuse to promote or provide training to workers who are or become disabled, and must pay employees with disabilities the same salary as they would non-disabled workers holding the same or similar jobs. Moreover, employers may not fire a worker who develops a disability, including a disease such as cancer or AIDS, so long as that individual remains qualified and able to perform the duties of the job with reasonable accommodations.

- **Who is disabled?**

An individual with a disability is one who "has a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or who is regarding as having such an impairment." A major life activity

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Happy Holidays

Americans with Disabilities Act

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includes functions such as caring for oneself, walking, seeing, hearing, speaking, and working.

Court decisions under the Rehabilitation Act and state handicap laws are not uniform in their interpretations of what constitutes a disability, however. Obesity is a disability according to some courts but not others, for example. Furthermore, an individual may be covered by ADA even though no condition substantially limiting a major life activity exists — a recovered cancer patient is one example, a person with a disfiguring scar is another.

- **Who is a qualified individual?**

A qualified individual with a disability is one who, with or without reasonable accommodations, can perform the "essential functions" of the job. Essential job functions should be included in detailed job descriptions. A person who cannot safely perform a job is not qualified unless a reasonable accommodation would eliminate the risk. An individual suffering from uncontrolled seizures is not qualified to drive a school bus, for example. Such persons might be qualified to perform other jobs, however, where their conditions do not pose a threat to the health or safety of others.

- **What about workers with AIDS and other communicable diseases?**

Individuals with the AIDS virus and other communicable diseases are protected from bias by ADA so long as they are otherwise qualified and do not pose a risk to the health and safety of others. On January 26, 1991, the Secretary of Health and Human Services is required to publish a list of diseases that can be transmitted through the handling of food, a list that will not include AIDS. Employees with diseases on the secretary's list may be transferred from food handling jobs if the danger to public health and safety cannot be eliminated by some other reasonable accommodation.

- **What is a reasonable accommodation?**

A reasonable accommodation is one that will enable an otherwise qualified individual with a disability to perform the essential functions of a job. Such accommodations may include making existing facilities readily accessible, job restructuring, or providing modified equipment. Employers are not required to provide accommodations that would impose an undue hardship on their business.

- **What constitutes an undue hardship?**

To determine whether an accommodation would impose an undue hardship, and thus not be reasonable, factors including the cost of the accommodation and the size and financial resources of the employer are considered.

- **Is affirmative action required?**

There are no quota requirement under ADA and employers do not have to prepare affirmative action plans.

- **Can pre-employment physicals be given?**

Pre-employment physicals and inquiries as to whether job applicants have disabilities or as to the nature or severity of such disabilities are all discriminatory. However, employers can require medical examinations after an offer of employment has been made and prior to the commencement of employment duties, so long as such physicals are required uniformly of all entering employees, the information is kept confidential in seperate medical files, and it can be shown that such physicals are job-related and consistent with business necessity.

For example, a restaurant or hospital can require medical information to determine if an applicant has a communicable disease that can be transmitted by performing the essential duties of the job after the applicant has been offered employment. Employers also may conduct voluntary medical examinations that are part of employee health programs, so long as the information obtained is kept in separate confidential medical files.

- **Can employers conduct drug tests?**

Drug tests are not medical examinations under ADA and thus are not subject to the same restrictions as other employment physicals. The alcohol and illegal drug standards adopted by the Defense Department, Nuclear Regulatory Commission, and Transportation Department apply to employees in industries subject to those regulations, and employers may require that all employees conform with the requirements of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*).

- **Can an individual with a disability be fired?**

Workers with disabilities must be able to adequately perform the essential functions of the job. An unqualified employee need not be hired and an employee who cannot do the job with reasonable accommodations can be discharged. Employees with disabilities can and should be treated like any other employee with regard to dischargeable violations of agency policy. Moreover, an employer can prohibit the use of alcohol and illegal drugs at the workplace, can require that employees not be under the influence of alcohol or illegal drugs on the job, and can discharge any employee for violations of these requirements.

Current illegal drug users and alcoholics who cannot safely perform their jobs are not protected by ADA, although those who have been rehabilitated, who are participating in a supervised rehabilitation program and are not currently using drugs, or who are erroneously regarded as engaging in the use of illegal drugs are covered.

- **Does ADA required modifications to workplace facilities?**

It is discriminatory to fail to remove structural architectural and communication barriers in existing facilities where such removal is "readily achievable" — easily accomplished without much difficulty or expense. It is also discriminatory to fail to make reasonable accommodations in the workplace that would enable a person with a disability to perform a job, including making changes to the physical surroundings to provide accessibility.

With regard to existing facilities, Congress intends only changes that are quick, simple, and relatively inexpensive to make, according to the executive director of the federal Architectural and Transportation Barriers Compliance Board.

THE BOOKMARK

MegaSkills, by Dorothy Rich.
Houghton Mifflin, Boston, $8.95

Motivation, teamwork, initiative . . . these are among the "values that undergird our work ethic" and "play a strong role in determining success" in and outside the workplace, observes Dorothy Rich, president of the Home and School Institute based in Washington, D.C.

In her recently published book *MegaSkills*, Rich stresses that "while little is really known about what technical skills will be needed for the twenty-first century," it is clear that "our children will have to be able to use and adapt what they learn today." To succeed, Rich maintains, they will have to be taught achievement and knowledge-enhancing skills — "mega-skills" that are "good any year and any place."

Specifically, the mega-skills Rich describes include confidence, motivation, effort, responsibility, initiative, perseverance, caring, teamwork, common sense, and problem solving. Not only are these on every schoolchild's report card, Rich says, they also are basic to job success. "We're graded on them all through life," she maintains.

How are mega-skills acquired? Rich offers a collection of activities, teaching strategies, and "learning recipes" that parents can try at home to help their children get organized, develop sound work habits, build career awareness, and acquire the self-reliance and self-esteem needed to succeed in everyday life. Rich has designed the activities, which "span the age ranges," to take no more than 10 or 20 minutes and be suitable for even the busiest working parents. For each skill-building activity, Rich makes the connection between the in-school and on- the-job report card, and explains what the exercise involves and how to conduct it. While encouraging parents to follow the "recipes" as they would a road map . . . as starting points for learning, Rich also discusses working parents' roles in home management, provides guidance for involving caregivers in children's learning, and lists books that illustrate mega-skills concepts.

Americans with Disabilities Act

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The board will issue guidelines under ADA and work with the Justice Department in interpreting the law's public accommodations title. In determining whether removal of a structural barrier is readily achievable, such things as the nature and cost of the modification and the size, financial resources, and type of business are pertinent.

New facilities must be accessible and usable by individuals with disabilities except where it is structurally impractical to do so. In general, elevators do not have to be installed in buildings that are less than three stories or have less than 3000 square feet, except for shopping centers, malls, and the offices of professional health care providers.

The accessibility of buildings applies not just to otherwise covered employers but to all places of public accommodation without regard to size, except that during the first six months after Title III's effective date no civil action may be brought against businesses employing 25 or fewer workers with gross receipts of $1,000,000 or less, and during the first year after the effective date, against businesses employing 10 or fewer employees with gross receipts of $500,000 or less. Title III goes into effect on January 26, 1992.

GETTING LABOR-MANAGEMENT COMMITTEES OFF THE GROUND

Setting a labor-management committee in motion is a "process you can't do yourself," attests Nancy Shoop, personnel director at the Missouri Department of Social Services. Speaking in Toronto at the Ecology of Work conference, sponsored by the Portland, Oregon-based Organization Development Network and the Alexandria, Virginia-based National Training Laboratories Institute for Applied Behavioral Science, Shoop describes her agency's successful experience with an outside labor-management consultant in setting up such a committee.

When employees at the state's Department of Social Services elected the Communications Workers of America as their bargaining agent in the early 1980s, "our department was ripe for the picking," says Shoop. Besides a problem of low salaries and morale, there was very little communication between rank-and-file employees and management. Even with union representation, mistrust soared, causing grievances to "run rampant," Shoop says. Each grievance led to a frustrating, expensive, and drawn-out resolution process.

Recognizing the need for change, the agency and the union met to resolve their differences, with assistance from a Federal Mediation and Conciliation Service grant. The FMCS officer overseeing the grant, Shoop recalls, urged the department to hire a consultant to facilitate the committee's startup and to obtain "experience and objectivity." During a two-and-a-half-day training session by the labor-management facilitators, Shoop says, both sides learned to interact on equal footing and received "common sense" advice on conducting meetings. Now, with three 2 departmental committees and nine divisional ones, things are "working a lot better," she says.

Shoop offers this advice to organizations planning to start joint committees:

- Think through every aspect of what the committee is expected to do. Circumstances within the agency tend to change rapidly.
- Refrain from starting an action committee or a labor-management committee during negotiations, since it can quickly turn into a bargaining chip.
- Ensure that the effort has the support of top management, or else it may be "doomed for failure," Shoop warns.
- Ascertain that all parties involved are brought into the planning process early.
- Stay focused, and don't create multidimensional problems. For instance, if the labor-management committee is concerned with improving safety practices, avoid talking about pay issues.
- Leave both labor and management "hats at the door."

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QUALIFIED HUMAN RESOURCES MAJORS EASY TO RECRUIT

Qualified human resources majors are not difficult to recruit, according to 87 of the 150 respondents to an Employment Management Association Foundation survey of its membership.

Each year, the survey reveals, most respondents hire from one to five college and post-degree graduates who have majored in such fields as labor and industrial relations, personnel management, human resources development, management science, organizational behavior, organizational and industrial psychology, and organizational development (in order of frequency).

The survey also finds that:

- Job-related experience is key to hiring recent HR graduates. Almost three-quarters of the survey respondents look for evidence of job-related experience, while 53 percent require internship activity.
- Students with a high grade point average are preferred by half the respondents, but a high general professional ability in the major field is looked for by fewer than one-quarter (23 percent).
- Students' verbal and writing abilities (mentioned by 3 percent of those surveyed) and demonstrated interest in the HR profession (also 3 percent) apparently rank at the bottom of the list of respondents' hiring criteria.
- Forty-five percent of the respondents believe graduates are weak or lacking in certain necessary skills. Those who see such a gap cite a need for better writing skills, more practical experience, more knowledge of information systems and computers, greater familiarity with financial and business management, and more HR management "know how."

VIA OFFERS RESOURCES TO STATE EMPLOYEES

Are you presently working with volunteers or considering using them to supplement the work of your staff? If you are, you should know that there are resources available to you through Volunteers in Action that can help make the time you spend in planning and developing your volunteer program more effective and productive. These resources include the following:

- **Brown Bag Sessions** — These are opportunities for persons working with volunteers to meet informally, and discuss common issues and concerns — learning from each others' experiences. The focus of each session is determined by the group in advance, with VIA staff and committee members serving as facilitators.
- **Resource Library** — A lending library of books, periodicals, films, and information on local and national organizations dealing with volunteers and voluntarism, including reference material on trends and research in the field.
- **Volunteer Management Workshops** — A curriculum developed on such topics as basic volunteer administration, recruitment, volunteer-staff relations, supervision and evaluation, record-keeping, and working with the professional volunteer. Workshops are offered at least semi-annually around the state, and more frequently, on request.
- **Consultation and Technical Assistance** — Consultation in establishing and strengthening volunteer programs, technical assistance, and problem solving are readily available to agency directors and other staff who manage volunteer programs. For more information call 421-6547.

ISSUES IS SPONSORED BY THE FOLLOWING DEFERRED COMPENSATION CARRIERS . . .

Deferred Compensation — an employee benefit with far-reaching advantages . . .

State employees can save for the future by participating in the deferred compensation program, a way of putting money aside without having to pay taxes on it, or the income it earns, until retirement whe your tax rate is usually lower. Managers can assist their employees in learning more about deferred compensation by shjowing them an audio-visual presentation that clearly explains the deferred compensation program. To arrange to show this slide-tape production, call the Employee Benefits Section, Office of Personnel Administration at 277-3160.

This newsletter is sponsored by the state's five carriers of the deferred compensation plan.

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