

EMPLOYERS AND THE ADA: MYTHS AND FACTS



The Americans with Disabilities Act (ADA) is a landmark federal law that protects the rights of people with disabilities by eliminating barriers to their participation in many aspects of living and working in America. In particular, 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. The foundation for the ADA is America's promise of equal access to opportunity for all citizens.

Being inclusive of people with disabilities—in recruitment, retention, promotion, and in providing an accessible environment—gives businesses a competitive edge. Below are some of the common myths about how the ADA affects employers and research and facts that negate them.

Myth: The ADA forces employers to hire unqualified individuals with disabilities.

Fact: Applicants who are unqualified for a job cannot claim discrimination under the ADA. Under the ADA, to be protected from discrimination in hiring, an individual with a disability must be qualified, which means he or she must meet all requirements for a job and be able to perform its essential functions with or without reasonable accommodations.

Myth: When there are several qualified applicants for a job and one has a disability, the ADA requires the employer to hire that person.

Fact: An employer is always free to hire the applicant of its choosing as long as the decision is not based on disability. If two people apply for a data entry position for which both speed and accuracy are required, the employer may hire the person with the higher speed and level of accuracy, because he or she is the most qualified.

Myth: The ADA gives job applicants with disabilities advantages over job applicants without disabilities.

Fact: The ADA does not give hiring preference to persons with disabilities.

Myth: Under the ADA, employers must give people with disabilities special privileges, known as accommodations.

Fact: Reasonable accommodations are intended to ensure that qualified individuals with disabilities have rights in employment equal—not superior—to those of individuals without disabilities. A reasonable accommodation is a modification to a job, work environment or the way work is performed that allows an individual with a disability to apply for a job, perform the essential functions of the job, and enjoy equal access to benefits available to other individuals in the workplace.

Myth: Providing accommodations for people with disabilities is expensive.

Fact: The majority of workers with disabilities do not need accommodations to perform their jobs, and for those who do, the cost is usually minimal. According to the Job Accommodation Network (JAN), a service from the U.S. Department of Labor's Office of Disability Employment Policy, two-thirds of accommodations cost less than \$500, with many costing nothing at all. Moreover, tax incentives are available to help employers cover the costs of accommodations, as well as modifications required to make their businesses accessible to persons with disabilities.

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Myth: The ADA places a financial burden on small businesses that cannot afford to make accommodations for individuals with disabilities.

Fact: Businesses with fewer than 15 employees are not covered by the employment provisions of the ADA. Moreover, a covered employer does not have to provide a reasonable accommodation that would cause an “undue hardship.” Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an organization’s size, financial resources and the nature and structure of its operation.

Myth: ADA lawsuits are flooding the courts.

Fact: The majority of ADA employment-related disputes are resolved through informal negotiation or mediation. The Equal Employment Opportunity Commission (EEOC), which enforces the ADA’s employment provisions, carefully investigates the merits of each case and offers many alternatives to litigation as a way to resolve any potential problem. The number of ADA employment-related cases, whether filed privately or by the EEOC, represents a tiny percentage of the millions of employers in the U.S.

Myth: The ADA is frequently misused by people with vague complaints or diagnoses.

Fact: If an individual files a complaint of discriminatory treatment, denial of accommodation or harassment under the ADA and does not have a condition that meets its definition of disability, the complaint is dismissed. While claims by people with false or minor conditions may get considerable media attention, the reality is that these complaints are usually dismissed.

Myth: The ADA protects employees who have difficult or rude personalities or are troublemakers.

Fact: Improper behavior in and of itself does not constitute a disability, and having a disability does not excuse employees from performing essential job tasks and following the same conduct standards required of all employees. The courts have consistently ruled that “common sense” conduct standards, such as getting along with co-workers and listening to supervisors, are legitimate job requirements that employers can enforce equally among all employees.

Myth: Under the ADA, an employer cannot fire an employee who has a disability.

Fact: Employers can fire workers with disabilities under three conditions:

- The termination is unrelated to the disability or
- The employee does not meet legitimate requirements for the job, such as performance or production standards, with or without a reasonable accommodation or
- Because of the employee’s disability, he or she poses a direct threat to health or safety in the workplace.

■ RESOURCES TO ASSIST EMPLOYERS

A number of resources are available to assist employers in understanding their responsibilities under the ADA:

Job Accommodation Network (JAN)

www.jan.wvu.edu

1-800-526-7234 (V/TTY)

JAN is a free, confidential service from the U.S. Department of Labor's Office of Disability Employment Policy (ODEP) that provides individualized accommodation solutions and technical assistance on the ADA. Among the areas that JAN can address are:

- Accommodation options and low-cost solutions
- Hiring, retaining and promoting qualified employees with disabilities
- Employer responsibilities under the ADA
- Reducing workers' compensation and other insurance costs
- Addressing accessibility issues

Equal Employment Opportunity Commission (EEOC)

www.eeoc.gov

1-800-669-4000 (V); 1-800-669-6820 (TTY)

The EEOC enforces the ADA's employment provisions. The section of its Web site titled "Disability Discrimination" provides access to numerous publications, including several specifically designed to answer employer questions and concerns.

U.S. Department of Justice (DOJ) ADA Home Page

www.ada.gov

The ADA Home Page includes many excellent resources for employers. The "ADA Business Connection" section of the site includes business briefs and tax incentive information.

ADA & IT Technical Assistance Centers

www.adata.org

1-800-949-4232 (V/TTY)

Ten regional ADA & IT Technical Assistance Centers, which are sponsored by the U.S. Department of Education's National Institute on Disability and Rehabilitation Research, provide ADA information, training and technical assistance across the nation.



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