

RISK COMMUNIQUE

A technical reference bulletin by the Risk Control Services Department of the Glatfelter Insurance Group

Americans with Disabilities Act – Management Liability/Employment Practices Risk Management

Title I of the Americans with Disabilities Act (ADA) prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions and privileges of employment. This Communiqué provides your entities with analysis and risk management guidelines for adhering to the ADA, which applies to employers with 15 or more employee.

Quick Facts about the Americans with Disabilities Act

An individual with a disability is a person who:

- has a physical or mental impairment that substantially limits one or more major life activities
- has a record of such an impairment
- is regarded as having such an impairment

A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question. Requiring the ability to perform “essential” functions assures that an individual with a disability will not be considered unqualified simply because of inability to perform marginal or incidental job functions. Reasonable accommodation may include, but is not limited to:

- making existing facilities used by employees readily accessible to and usable by persons with disabilities
- job restructuring, modifying work schedules, reassignment to a vacant position
- acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, and providing qualified readers or interpreters.

An employer is required to make an accommodation for the known disability of a qualified applicant or employee if it would not impose an “undue hardship” on the operation of the employer's business. Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources and the nature and structure of its operation.

Additional Aspects of the ADA

Medical Examinations and Inquiries

- Employers may not ask job applicants about the existence, nature or severity of a disability. Applicants may be asked about their ability to perform specific job functions. A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in similar jobs. Medical examinations of employees must be job-related and consistent with the employer's business needs.

This is a sample guideline furnished to you by MemberGuard. Your organization should review it and make the necessary modifications to meet the needs of your organization. The intent of this guideline is to assist you in reducing risk exposure to the public, personnel and property. For additional information on this topic, you may contact your Risk Control Representative. www.MyMemberGuard.com

Drug and Alcohol Abuse

- Employees and applicants currently engaging in the illegal use of drugs are not covered by the ADA, when an employer acts on the basis of such use. Tests for illegal drugs are not subject to the ADA's restrictions on medical examinations. Employers may hold illegal drug users and alcoholics to the same performance standards as other employees.

Retaliation

- It is unlawful to retaliate against an individual for opposing employment practices that discriminate based on disability or for filing a discrimination charge, or for testifying or participating in any way in an investigation, proceeding, or litigation under the ADA.

What Entities Need to Do to Adhere to the Americans with Disabilities Act:

Recommendations for entity leaders include, but are not limited to:

- create and implement a personnel policy specifically regarding disability discrimination and reasonable accommodations
 - review the entity's current disciplinary policies and procedures in the employee handbook/rules and regulations to determine what changes, if any, are necessary to comply with the ADA.
- maintain accurate written job descriptions that account for the essential mental and physical job functions for each position within the entity.
- conduct training for all personnel on disability discrimination and compliance with the ADA (training may be provided through internal resources or an outside third-party consultant and/or attorney)
- rely on legal counsel with experience in labor and employment matters to address ADA concerns

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