

VII. LEGAL ISSUES AND EMPLOYEE ACCOMODATIONS: ADA and EEOC guidelines¹

The Americans with Disabilities Act (ADA), signed into law by President George Bush on July 26, 1990, prohibits discrimination against people with disabilities, including psychiatric disabilities in employment, state and local government activities, public accommodations, public transportation, telecommunications, and public services.

The following is for informational purposes only and is not to be used as legal guidance.

Q: *What kinds of employers have to comply with Title I of the ADA?*

A: Private employers with at least 15 employees, state and local governments, employment agencies, labor organizations, and management committees must conform to the ADA. Although the ADA does not apply to the federal government as an employer, discrimination by the federal government or by federally assisted programs is prohibited under Title V of the Rehabilitation Act of 1973.

Q: *What is a psychiatric disability under the ADA?*

A: Under the ADA, the term "disability" means: "(1) a physical or mental impairment that substantially limits one or more of the major life activities of [an] individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment." It's important to note that under this definition, not every impairment is a disability. To rise to the level of a disability, an impairment must substantially limit one or more major life activities.

Q: *How does the ADA define "mental impairment"?*

A: The ADA defines "mental impairment" as "any mental or psychological disorder, such as . . . emotional or mental illness." As examples of emotional or mental illnesses, the ADA lists bipolar disorder, major depression, anxiety disorders (which include panic disorder, obsessive-compulsive disorder, and post-traumatic stress disorder), schizophrenia, and personality disorders.

Q: *To be protected by the ADA, do applicants or employees have to disclose their disability?*

A: Yes. Employers are obligated to make reasonable accommodation only if they are aware of an individual's disability. In general, it is the applicant's or employee's responsibility to inform the employer that an accommodation is needed. However, if an employee with a known disability is having difficulty performing his or her job, the employer may ask whether he or she is in need of a reasonable accommodation.

Q: *May employers ask questions about psychiatric disabilities after an offer of employment has been extended?*

A: Yes. After an offer of employment has been made, the employer may ask questions related to disability, including psychiatric disability, and may require a medical examination, including a psychiatric examination, as long as the employer subjects all new employees in the same job category to the same inquiries and examinations.

Q: *The ADA requires employers to provide "reasonable accommodations" for qualified individuals with disabilities. What are considered reasonable accommodations?*

A: Because workplaces, jobs and people with disabilities vary, reasonable accommodations for employees with disabilities must be determined on a case-by-case basis. Accommodations for individuals with psychiatric disabilities may involve changes to workplace policies, procedures, or practices, or they may involve physical changes to the workplace. The following are examples of reasonable accommodations for individuals with psychiatric disabilities:

- Time off from work -- Permitting the use of accrued paid leave or providing additional unpaid leave for treatment or recovery related to a disability is a reasonable accommodation, as long as the employee's absence does not impose undue hardship on the operation of the business.
- A modified work schedule -- Allowing an individual with a disability to change his or her regularly scheduled working hours, working from 10 AM to 6 PM instead of from 9 AM to 5 PM, for

example is considered a reasonable accommodation and might be helpful to an employee who takes medication that makes him or her tired or groggy in the morning.

- Simple physical changes to the workplace -- Physical changes to the workplace may be effective accommodations for some employees with psychiatric disabilities. For example, for those who have disability-related concentration difficulties, the use of room dividers, partitions, or other visual barriers may be helpful.
- Modification of workplace policy -- As long as it does not create undue hardship, modifying a workplace policy is considered a reasonable accommodation. For example, for an employee who has disability-related concentration difficulties, it might be helpful to allow him or her to tape-record staff meetings, even if tape-recording is not usually allowed.
- Adjustment of supervisory methods -- The ADA states that supervisors play a central role in achieving effective "reasonable accommodations" for their employees. Therefore, adjustment of supervisory methods is among the accommodations that are considered reasonable. For example, a supervisor who usually meets with employees on a weekly basis might offer to meet with an employee with a psychiatric disability on a daily basis for the purpose of providing more regular feedback.
- Providing a job coach -- An employer may be required to provide a temporary job coach to assist in the training of a qualified employee with a disability. Allowing an employee to be accompanied by a job coach who is paid by a public or private social service agency is also considered a reasonable accommodation.

Q: Are there any exceptions to the "reasonable accommodations" requirements of the ADA?

A: Yes, there are two circumstances under which employees would not be required to provide reasonable accommodations: First, an employer is not required to provide an accommodation that would impose "undue hardship" on its business. Employers do not, for example, have to provide accommodations that are excessively costly, substantial, or disruptive to the normal operation of the enterprise.

Second, employers are not required to employ or to provide accommodations for an individual who poses a "direct threat" to the health or safety of the workplace. The determination that the individual poses a direct threat cannot be made based simply on stereotypes or generalizations about people with mental illness. Instead, it must be based on objective evidence obtained from a healthcare professional or some other credible source.

Q: Do requests for reasonable accommodation need to be made in writing?

A: No. Employees may request accommodations verbally or by any other method of communication.

Q: Do individuals with disabilities have to request reasonable accommodations at the beginning of their employment?

A: No. Requests for reasonable accommodations can be made at any time during employment.

Q: Are employers permitted to request that an employee provide documentation of need for reasonable accommodation from a healthcare professional?

A: Yes. An employer is entitled to know that an employee has a covered disability for which a reasonable accommodation is needed. Therefore, when the need for reasonable accommodation is not obvious, an employer may ask an employee to provide reasonable documentation about his or her disability and the functional limitations that result from it.

Take, for example, an employee who requests a time-off accommodation because he is "stressed out." The employee's statement is sufficient to put the employer on notice that he is requesting an accommodation, but because the need for an accommodation is not obvious based on this statement

alone, the employer may require a healthcare provider's documentation that the employee has a disability that is within the meaning of the ADA and that the functional limitations associated with the disability require the employee to take time off. A variety of healthcare professionals may provide such documentation.

Q: Are employers required to provide a reasonable accommodation if the employee does not use that term in requesting it?

A: Yes. An employee requesting an accommodation may use "plain English" and need not mention the ADA or use the phrase "reasonable accommodation." For example, an employee's statement that he needs time off because he is "stressed out" is considered sufficient under the ADA to put an employer on notice that the employee is requesting a reasonable accommodation. However, if the employee's need for the accommodation is not obvious, the employer may ask for a healthcare professional's documentation of the disability and the associated functional limitation.

Q: What kinds of confidentiality requirements are specified by the ADA?

A: Employers are required by the ADA to keep in confidence all information concerning their applicants' or employees' medical histories or conditions, including psychiatric disabilities. Employers must maintain such information on separate forms and in separate medical files, apart from normal personnel files.

Q: Are there any exceptions to the ADA's confidentiality requirements?

A: Yes, there are limited exceptions to these requirements: Supervisors and managers may be told about necessary restrictions on the work or duties of an employee with a disability and about necessary accommodations. First aid and safety personnel may be told about the disability if it is possible that the employee might require emergency treatment. Government officials investigating compliance with the ADA must be given relevant information upon their request.

Q: How should an employer respond when employees ask questions about a co-worker who has a disability?

A: ADA confidentiality provisions prohibit any disclosure of medical information in responding to questions about an employee with a disability. Furthermore, an employer is not permitted to tell employees when it is providing a reasonable accommodation for a particular individual, since such disclosure implies that the individual probably has a disability (given that only individuals with disabilities are entitled to reasonable accommodations under the ADA). In responding to co-workers' questions, an employer is permitted to explain that it is acting for legitimate business reasons or in compliance with federal law.

For more information on employee accommodations contact the Job Accommodation Network at 800-526-7234.

ⁱ Psychiatric Disabilities and the Americans With Disabilities Act; Your Questions Answered. The Center for Reintegration, (n/d). Online. Internet. Available <http://www.reintegration.com>.