

Everything You Wanna Know About ADA Employment Requirements



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Disclaimer

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ADA in a Nutshell

- The Americans with Disabilities Act was the first comprehensive law to prohibit discrimination on the basis of disability
- Takes an individualized approach to provide equal access to people with disabilities across various aspects of life



The Five Titles of the ADA

- Title I – Employment
- Title II – State and Local Government Entities
- Title III – Public Accommodations
- Title IV – Telecommunications
- Title V – Miscellaneous

ADA Title I- Scope

- Applies to private entities with fifteen or more employees
- Also applies to all state and local government entities



Title I- Intent

- To prohibit discrimination against qualified individuals on the basis of disability
- To give qualified individuals with disabilities equal access during all phases of employment, including application, hiring, recruiting, interview, benefits, performance evaluations, terminations, etc.



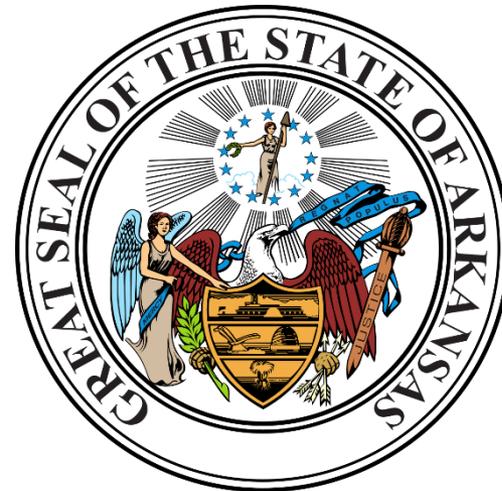
Section 504 of Rehabilitation Act

- Prohibits discrimination on the basis of disability
- Applies to all entities/organizations that receive federal funding



Arkansas Civil Rights Act

- Applies to all private employers with nine or more employees
- Prohibits discrimination on the basis of any sensory, mental or physical impairment



Disability Defined Under the ADA

- Having a physical or mental impairment that substantially limits one or more major life activities; OR
- Having a record of such an impairment; OR
- Being regarded as having such an impairment



ADA Amendments Act ...

Substantially limited



Do not consider effects of mitigating measures (e.g., medication, wheelchair)

Episodic and remitting conditions which when active are substantially limiting, are covered.

ADA Amendments Act ...

Major life activity



Illustrative (non-exhaustive) lists:

Major life activities

Bodily functions

Individual need only be limited in
ONE activity (not multiple)

Non-exhaustive illustrative list*

Major life activity:

- Caring for oneself
- Performing manual tasks
- Seeing
- Hearing
- Eating
- Sleeping
- Walking
- Standing
- Sitting
- Reaching
- Lifting
- Bending
- Speaking
- Breathing
- Learning
- Reading
- Concentrating
- Thinking
- Communicating
- Interacting with others
- Working

*EEOC (2012). *Questions and answers on the final Rule Implementing the ADA AA of 2008*. Accessed at http://www.eeoc.gov/laws/regulations/ada_qa_final_rule.cfm

Major Bodily Functions*

- Immune system
- Normal cell growth
- Digestive
- Bowel/bladder
- Special sense organs and skin
- Respiratory
- Circulatory
- Includes the operation of an individual organ body (e.g., kidney, liver, or pancreas)

EEOC (2011)

ADA AA non-exhaustive list of impairments that should easily be found to be substantially limiting (Should not require further or extensive analysis)*

- Deafness
- Blindness
- Intellectual disability
- Partially or completely missing limbs
- Mobility impairments requiring use of a wheelchair
- Autism
- Cancer
- Cerebral palsy
- Diabetes
- Epilepsy
- HIV infection
- Multiple sclerosis
- Muscular dystrophy
- Major depressive disorder
- Bipolar disorder
- Post-traumatic stress disorder
- Obsessive-compulsive disorder
- Schizophrenia

ADA Amendments Act ...

Record of & Regarded as

“Record of” disability

Essentially the same definitions as “Prong 1”--
having the disability

Changes in “Regarded as”

Covers individuals who have experienced
discrimination because of an impairment
unless the impairment is both transitory and
minor (lasting 6 months or less).

Employer’s not required to provide
accommodation to those who meet definition
of disability under “regarded as”



About hiring (Pre-employment)...



- The hiring process must be made accessible and accommodations must be provided if requested
- No disability inquiry during recruitment, screening or hiring
- No medical inquiries or “indirect” questions about disability
- Many disabilities covered under the ADA are not apparent to others
- The decision to not tell about a disability during hiring is not a “lie.” It is a legally protected right

Now an offer has been made, but employment hasn't yet started...



Some medical inquiry can be made **after** a job-offer has been extended but before employment has started

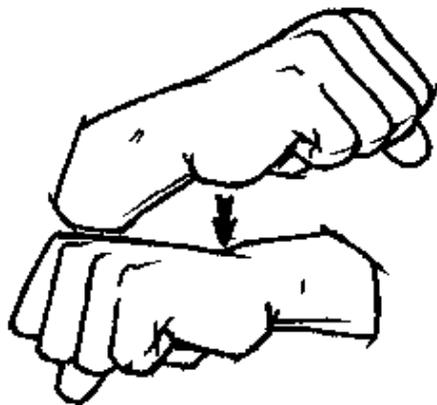
Apply same medical inquiry process to all applicants in a job category (No selective inquiries)

If this inquiry shows that the person has a disability, the job offer can only be withdrawn if:

- The withdrawal is job-related and consistent with business necessity
- No reasonable accommodation can be provided

Work has now started...

About reasonable accommodation



ASL sign for "work"

*"...Any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities."**

- Applies to both hiring and employment
- Must be provided for known disabilities
- Determined through an interactive process
- Medical information can be collected related to the accommodation need and must be kept confidential

*(EEOC: w.eeoc.gov/policy/docs/accommodation.html)

Most employers are already offering accommodations, they just might not know it...

If an employer has ever done anything differently to enable someone to stay in a job and be effective, this employer has provided accommodations



Disclosing a disability during hiring: Options & choices



Why some choose to disclose/discuss:

- When disability is apparent, employer may hesitate to hire if this is not addressed
- When disability is non-apparent, applicant might:
 - Not want any surprises if hired
 - Trust the hiring manager
 - Not want to live “in the closet”

Why some choose not to:

- Fear they won't be hired
- Don't trust the employer
- Don't think it will impact the job
- Believe their disability is a private matter

Reasonable accommodation: The ten things you need to know

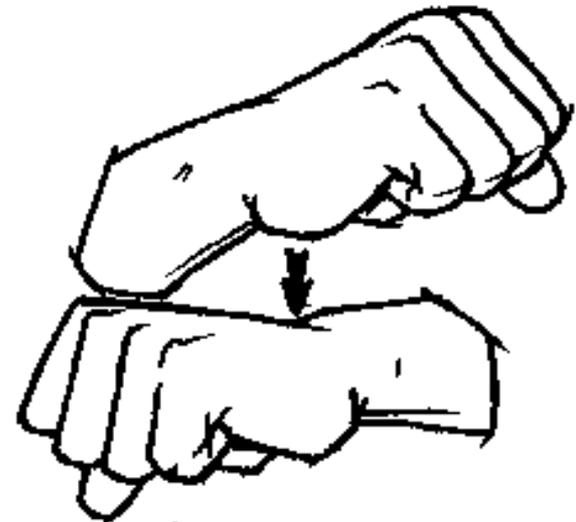
1. What is an accommodation?
2. What are some examples?
3. How much does it really cost?
4. Who can get accommodations?
5. Can accommodation requests be denied?
6. How is an accommodation request triggered?
7. How is an accommodation decided upon?
8. Can medical documentation be collected?
9. Who else can be told?
10. How can we make it work?



1. What is a reasonable accommodation?

*...Any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities**

1. Application process
2. Work environment, facilities or processes/practices
3. Any other employment benefits



ASL sign for "work"

[*Equal Employment Opportunity Commission \(EEOC\)](#)

2. What are some examples?

- Using assistive technologies: Screen readers, JAWS, Audio-text software
- Change in schedule
- Changes in break times
- Work from home
- Using job aids
- Change in work location
- Change in work environment
- Change in equipment
- Elimination or exchange of marginal job tasks
- Re-assignment
- Leave

3. How much does it really cost?

A study of accommodation costs across workplaces and sectors*

- About half (56%) of accommodations cost nothing
- When accommodation did cost, average was \$500
- Appears that accommodation costs are decreasing

Employer is responsible for providing accommodation, tax incentives are available**



[*Job Accommodation Network \(Updated 2011\). Workplace accommodations: Low cost, high impact.](#)

[**See The Job Accommodation Process: Steps to Collaborative Solutions](#)

4. Who can get accommodations?

Applicants, full and part-time employees, seasonal and temporary workers:

- With disabilities covered by the ADA and
- Who can perform the essential functions of the job with or without reasonable accommodations



5. How is the accommodation process triggered?

Process starts when a worker says, “I am having trouble performing my job because of a medical condition or disability”

(This can also come from a third party on individual’s behalf)

- Employee can make the request in plain language
- Employer can have a formal accommodation process that the employee must follow
- Employer must respond to an accommodation request in a timely manner.



6. Can accommodation requests be denied?

Undue hardship

- No set dollar amount
- Relative to the overall funds of the organization
- Disruption of operations—must be significant, legitimate and concrete
- Consider other sources (i.e. tax incentives or equipment donation)

Safety reasons?

- About direct threat

Employer does not have to eliminate essential functions or reduce a performance standard



7. How is an accommodation decided upon?

- The interactive process
- The person him/herself is the best source of information, but employer ultimately decides
- Most expensive accommodation is not always the best

Consider:

- The disability
- The job
- with the environment where the job occurs



Consider the [Job Accommodation Network](#)

8. Can medical documentation be collected?

Employer only has the right to documentation about the disclosed disability.

Documentation must be job related and consistent with business necessity

All medical information must be kept confidential and separate from the employee's work file.



9. Who else can be told?

All medical information must be kept confidential

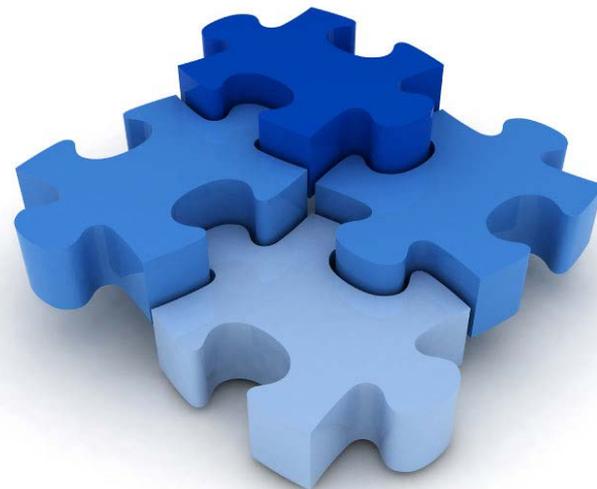
Only co-workers directly impacted by the accommodation can be told that there will be a change, but not why

Communicate that the accommodation is provided according to law – without saying which law – as it would be for any qualified employee and that the company has a strict privacy policy and values the privacy of all its employees.



10. How can we make it work?

- Good faith effort to find an accommodation that works
- Centralized accommodation function
- Anyone who could get an accommodation request needs to know what to do
- Not all accommodations are equal: Leave and re-assignment are last resorts
- Trusting environment in the workplace



Tom Haverford Illustrated



Tom Haverford, an accounts manager for the City of Pawnee Parks and Recreation Department, has long been diagnosed with a learning disability. Now after working for the City for more than two years, he would like to request accommodations.

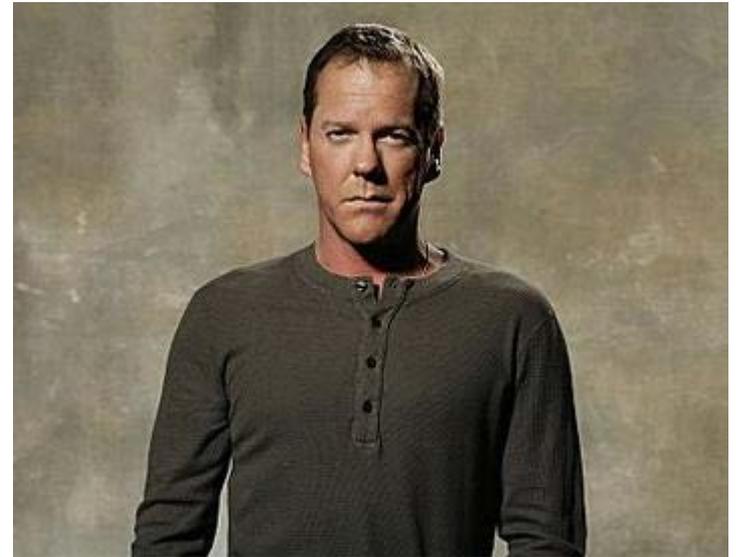
Think About It...



- What documentation is appropriate for his request?
- High school 504 plan from ten years ago?
- A GMAT accommodation letter allowing extended time from six years ago?
- A doctor's letter recommending written instructions and further clarification as accommodations dated six months ago

Jack Bauer Illustrated

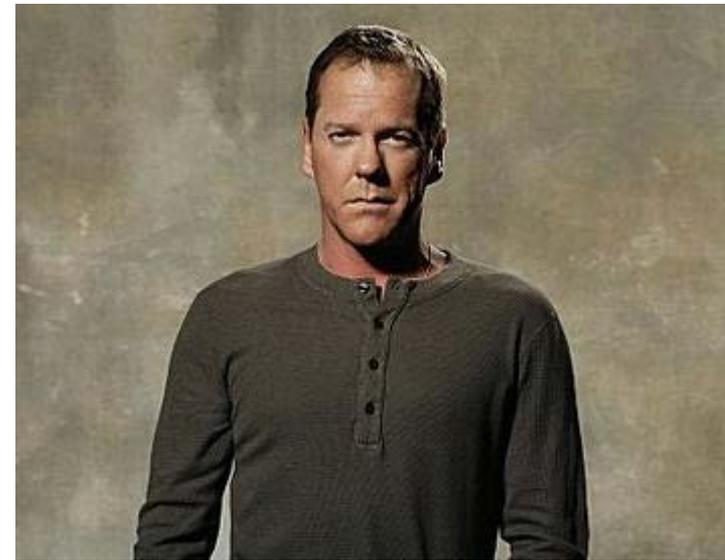
Special Agent Jack Bauer, formerly a member of the FBI's Counter Terrorism Unit (CTU) for a decade, has since retired from the bureau. He is seeking a teaching position in various Master's and Doctorate level criminology programs.



[Jack Bauer from the show 24; courtesy of Wikipedia:
https://en.wikipedia.org/wiki/Jack_Bauer#/media/File:Jack_Bauer.jpg](https://en.wikipedia.org/wiki/Jack_Bauer#/media/File:Jack_Bauer.jpg)

Jack Bauer Illustrated

Jack Bauer has severe PTSD and anxiety after his tenure with the CTU. Sometimes, he is unable to be around large crowds and loud noises. He occasionally has panic attacks in stressful situations. He lands a job with a prominent public university in Washington, D.C.



[Jack Bauer from the show 24; courtesy of Wikipedia:
https://en.wikipedia.org/wiki/Jack_Bauer#/media/File:Jack_Bauer.jpg](https://en.wikipedia.org/wiki/Jack_Bauer#/media/File:Jack_Bauer.jpg)

Think About It...



- What are some accommodations for Jack Bauer as a working Doctorate level professor??
- Remote lectures?
- Office hours by appointment only?
- Extended leave time?

Think About It...



- If university claims accommodations would be an undue burden, how would university prove this?
- Student performance and engagement suffering?
- Costly and inconvenient to schedule adjuncts?
- Position too specialized to fill immediately?

Your thoughts,
concerns and
questions!



Resources

[Equal Employment Opportunity Commission \(EEOC\)](#)

[Job Accommodation Network \(JAN\)](#)

[Disability & Employment Guide from U.S. Dept. of Education](#)



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