Accommodations for Hiring and Work

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Toolkit Introduction

Welcome
This toolkit provides crucial information and essential resources about the Americans with Disabilities Act (ADA). We hope this toolkit helps small employers navigate the ADA and accommodate employees with disabilities.

Background
• Small businesses are the backbone of America
• What do small employers need to know about the ADA?
• How can we help?
Lessons Learned

- Require additional guidance on implementing the ADA
- Family metaphor very common
- Information about process to ensure efficient and effective response to accommodation requests
- Concerns and questions reflected a desire to promote disability awareness.

Lessons Learned

Employers’ concerns reflected a desire to...

- avoid workplace retaliation,
- develop a standard accommodation procedure
- gain knowledge about the type and the cost of accommodation
- evaluate the impact of accommodations on employees who request the accommodation, other employees without disabilities, and the organization
- increase HR personnel’s understanding of disability and accommodation.
- Building a systematic information gathering process for accommodations

Ten ADA Pitfalls

1. A narrow view of disability
2. Uneven application of policy
3. Essential vs marginal
4. Assuming you know
5. Accommodation fails
6. Mishandling medical information
7. Terminating too quickly
8. Making decisions based on assumptions
9. Lack of communication
10. Failure to build community.
Employment discrimination and people with disabilities

A look back...

Prior to the passage of the Rehabilitation Act
- No recourse for discrimination against PWD
- Lack of access and jobs was an “inevitable consequence” of disability

What changed?

- Legislation that recognized PWD as a legitimate minority
- Protection against discrimination
- Shift of “blame” from individual to environment
Not there yet...

Where are we now?
Employees with Disabilities are:
• More likely to start in entry level positions
• Stay in lower paying positions
• Have fewer opportunities for career advancement
• Are paid less

More Bad News...
Employees with disabilities report...
• Less favorable attitudes and experience including perceptions of fairness,
• Less organizational support,
• Less fit with job and co-workers,
• Lower quality of relationships with managers,
• Less empowerment, and
• Less engagement

Schur, Kruse, & Beuke, 2005; Yin, Stewart, & Wang, 2014
And a little more...

Employees with Disabilities experience...

- poorer relationships with their supervisors (Colella & Varma, 2001)
- poorer job attitudes (Schur, Kruse, Blasi, & Blanck, 2009)
- unfair treatment in the performance evaluation process (Ren, Paetzold, & Colella, 2008) and
- more difficulty in obtaining development opportunities (Schur et al., 2009).

Trends in EEOC Charge Data: Across all EEOC Categories*

<table>
<thead>
<tr>
<th>Category</th>
<th>2005</th>
<th>2012</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total #</td>
<td>75,428</td>
<td>99,412</td>
<td>76,418</td>
</tr>
<tr>
<td>Race %</td>
<td>35.5</td>
<td>33.7</td>
<td>32.2</td>
</tr>
<tr>
<td>Gender %</td>
<td>30.6</td>
<td>30.5</td>
<td>33.3</td>
</tr>
<tr>
<td>National origin %</td>
<td>10.7</td>
<td>10.9</td>
<td>9.3</td>
</tr>
<tr>
<td>Religion %</td>
<td>3.1</td>
<td>3.8</td>
<td>3.7</td>
</tr>
<tr>
<td>Color %</td>
<td>1.4</td>
<td>2.7</td>
<td>4.1</td>
</tr>
<tr>
<td>Retaliation %</td>
<td>29.5</td>
<td>38.1</td>
<td>51.6</td>
</tr>
<tr>
<td>Age %</td>
<td>22.0</td>
<td>23.0</td>
<td>22.1</td>
</tr>
<tr>
<td>Disability %</td>
<td>19.7</td>
<td>26.5</td>
<td>32.2</td>
</tr>
</tbody>
</table>

Equal Pay
- 1.3
- 1.1
- 1.4

Note: Charges can be brought under more than one category


Employment Discrimination Charges Filed with (EEOC) or (FEPA)
Most Common Issues on ADA Charges filed in U.S.: 2012-2014

<table>
<thead>
<tr>
<th>Rank</th>
<th>Charge</th>
<th>% of all charges</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Discharge</td>
<td>58.9%</td>
</tr>
<tr>
<td>2</td>
<td>Accommodation</td>
<td>35%</td>
</tr>
<tr>
<td>3</td>
<td>Terms/Conditions</td>
<td>20.6%</td>
</tr>
<tr>
<td>4</td>
<td>Harassment</td>
<td>16.8%</td>
</tr>
<tr>
<td>5</td>
<td>Discipline</td>
<td>11.6%</td>
</tr>
<tr>
<td>6</td>
<td>Hiring</td>
<td>5.6%</td>
</tr>
<tr>
<td>7</td>
<td>Constructive Discharge</td>
<td>4.2%</td>
</tr>
</tbody>
</table>

Source: Calculations by W. Erickson, Cornell University, Yang-Tan Institute on Employment and Disability Institute, using data available here at: http://www.disabilitystatistics.org/eeoc/tableau.cfm?report=1
Development of this table was supported by Healthcare data from CAREER (Occupational Health and Disability) funded by the National Institute on Disability, Independent Living, and Rehabilitation Research to Cornell University.
Employment Rights and Responsibilities
Title I of the ADA

The ADA is a Double-Sided Coin

Rights

Responsibilities

Title I of the ADA

- Anti-discrimination law enforced by EEOC
- Remove barriers to equal employment opportunities
- Access based on merit
  - No quota’s
  - Affirmative action requirements
Employment Practices Covered?

- application
- promotion
- testing
- medical examinations
- hiring
- layoff/recall
- assignments
- termination
- evaluation
- compensation
- disciplinary actions
- leave
- training
- benefits

Important to know...The ADA

- Non-discrimination law
- Limits scope of questions about disability
- Provide accommodations

Who is Protected?

Qualified Individuals with Disabilities
Essential Question

What is a disability?

Legal Definition of Disability

A person with a disability is an individual who:
• has a physical or mental impairment that substantially limits one or more of his/her major life activities;
• has a record of such an impairment; or
• is regarded as having such an impairment.

What does this definition tell us?
• You can’t always see disability.
• It’s not just people with a current disability.

What it doesn’t tell us...
• What a substantial limitation is...
• How we get to regarded as...
Contextualizing Disability

Medical diagnosis isn’t the Holy Grail
It’s important to understand...
- the functional implications of disability
- Impact of those functional implications on the essential functions

Learn more at
https://smallbusinessatwork.org/tool/5/playbook
Application Process

Hiring and Accommodation

- Accommodations that allow a candidate to be considered for a job opening
- An employer cannot refuse to consider an applicant because they require an accommodation.
- Undue hardship applies, but it must meet the undue burden threshold.

Examples

- Accessible interview materials
- Readers or interpreters
- Accessible locations
- Allowing or providing equipment or devices
- Adjusting or modifying application policies and procedures.
Keeping it Legal

• Prior to making a job offer, avoid questions that would force the applicant to reveal a disability
• After a job offer but before work starts, collect limited information that you get from all candidates.

Accessible Hiring Practices

• You have a right to an accommodation
• Hold recruiting and hiring functions in accessible locations
• Ensure online job announcements, postings, and all other hiring and recruiting information is accessible.

Hiring

Recruiting and hiring people with disabilities

Learn more at https://smallbusinessatwork.org/tool/6/playbook
Reasonable Accommodation

The Basics...

What is 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.

And Equal Employment Opportunities?

The opportunity to attain the same level of performance or to enjoy equal benefits and privileges of employment

29 C.F.R. § 1630.2(o)(1)(i-iii) (1997)

Availability of Accommodations

- During the application process
- Performing the essential functions of the position
- Enjoyment of equal benefits and privileges of employment

Accommodation Basics

- Must be an effective accommodation
- Must only reduce employment-related barriers
- Personal devices not required
- Individuals covered solely under the “regarded as” prong NOT entitled to accommodations
- Employer not prevented from providing extra accommodations
Reasonable...

• Making modifications to increase facility accessibility
• Job restructuring
• Flexible scheduling
• Acquiring new equipment
• Providing qualified readers and interpreters
• Modification of application and testing procedures and training materials

Generally NOT Reasonable...

• Eliminating essential job functions
• Lowering production standards applied to all employees
• Providing personal use items
• Changing an employee’s supervisor
• Excusing violation of uniformly applied conduct rules
• Undue hardship

The Accommodation Process
Disclosure

The interactive process starts with disclosure.
“Because of X medical condition or disability, I’m having trouble with Y job duty”

Who do I tell?

• Employers can play an important role
• Significant training and information outreach needed to inform supervisors and the workplace more generally about disability and creating an inclusive climate

Disclosure: Yes or No?

I feel really tired today, I think my allergies are kicking in...
Disclosure: Yes or No?

I feel really tired today, I think my allergies are kicking in...

NO

Disclosure: Yes or No?

I'm sorry I had to leave the meeting earlier. I had some problems with my insulin...

NO

Disclosure: Yes or No?

I'm sorry I had to leave the meeting earlier. I had some problems with my insulin...

YES
Interactive Discussion: What do you need to know?

- What part of your job are you having difficulty with because of your disability, medical or pregnancy-related condition?
- Why are these tasks difficult for you? (What is the functional limitation that makes the task difficult?)
- Do you have any recommendations for potential solutions?

Goal of the Interactive Process

To identify an effective solution to the barrier to completion of an essential function

Document the process

Document all related interactions
- Requests
- Follow up requests
- Actions
- In-action
- Discussions with managers, medical personnel, the employee.
Documentation of Disability

- Use when the need for accommodations is not obvious.
- Purpose is to verify the need for accommodation.
- Many medical professionals can supply necessary documentation
- Have someone other than the manager collect the medical information.

What do I tell people about accommodations?

- Disability information is confidential
- Tell co-workers about the change to their work

Think about it...Confidentiality

Hello all: Stacy got an accommodation so that she can come in late to work. That means I’m going to have to assign extra morning shifts to everyone else in the department. I just wanted to give you a heads up. Best, Manager.

Is this OK?
Think about it...Confidentiality

Hello all: Stacy got an accommodation so that she can come in late to work. That means I’m going to have to assign extra morning shifts to everyone else in the department. I just wanted to give you a heads up. Best, Manager.

Is this OK? NO

Instead...

• Establish a culture of accommodation
• Assure other know that accommodations allow people to be their best at work
• Brainstorm how to equalize contribution when accommodation is “troublesome” to co-workers.

Step-by-step for employers

1. Identify job functions
2. Get the word out
3. Create accommodation process
4. Consider CAP
5. Train managers
6. Track and manage
When an employee makes a request...

1. Acknowledge and confirm
2. Follow-up
3. Do your homework
4. Make a choice
5. Communicate
6. Coordinate
7. Monitor and tweak
8. Stay in touch

Accommodations at Work

The goal is to create workplace practices and systems for disability inclusiveness that are both compliant and a value-add for the business.

Some Resources

Enforcement Guidance: Reasonable Accommodation and Undue Hardship
Talking to Managers about Disability: Communication Tools
JAN: Practical Guide to Reasonable Accommodation
SHRM: How to handle an employee’s request for an ADA Accommodation
Visit the Toolkit...

Questions?

Disclaimer

Information, materials, and/or technical assistance are intended solely as informal guidance, and are neither a determination of your legal rights or responsibilities under the ADA, nor binding on any agency with enforcement responsibility under the ADA.

The Northeast and Mid-Atlantic ADA Centers are authorized by the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR) to provide information, materials, and technical assistance to individuals and entities that are covered by the ADA. The contents of this presentation were developed under a grant from NIDILRR, grant number 90DP0088-01-00. NIDILRR is a Center within the Administration for Community Living (ACL), Department of Health and Human Services (HHS). The contents of this presentation do not necessarily represent the policy of NIDILRR, ACL, HHS, and you should not assume endorsement by the Federal Government.
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Session Evaluation

Your feedback is important to us

You will receive an email following the session with a link to the on-line evaluation

Next Session:
Tuesday, November 17, 2020

The ADA, Playgrounds and a School District in Iowa:
A Case Study

Registration available at: www.ada-audio.org