

Accommodations for Hiring and Work

Wendy Strobel Gower
Project Director

1.800.949.4232
northeastada@cornell.edu



1

Small Business at Work Toolkit

Helping small businesses leverage the talents of people with disabilities.

Welcome

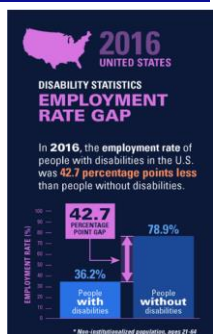
This toolkit provides curated information and essential resources about how (and why!) small businesses can successfully hire and retain employees with disabilities. You'll find easy-to-understand, practical advice, along with expert guidance on following Title I of the Americans with Disabilities Act (ADA). Instead of searching the web for whatever article may appear first, we hope you'll come back here often to explore the eight tools in this toolkit.

[Read the full introduction](#) [Read the study behind this site](#)

2

Background

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



3



3

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.

4

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

5

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.

6

Employment discrimination and people with disabilities

7

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



8

What changed?

- Legislation that recognized PWD as a legitimate minority
- Protection against discrimination
- Shift of “blame” from individual to environment



9

Not there yet...



Cornell University

10



ada National Network
Information, Guidance and Training on the
Americans with Disabilities Act

10

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

Schar, Kruse, & Blomck, 2005;
Yin, Shanzwitz, & Megra, 2014



Cornell University

11



ada National Network
Information, Guidance and Training on the
Americans with Disabilities Act

11

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

Nishii & Bruyère, 2014; U.S. Office of Personnel Management, 2014b



Cornell University

12



ada National Network
Information, Guidance and Training on the
Americans with Disabilities Act

12

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).



Cornell University

13



13

Trends in EEOC Charge Data: Across all EEOC Categories*

Category	2005	2012	2018
Total #	75,428	99,412	76,418
Race %	35.5	33.7	32.2
Gender %	30.6	30.5	32.3
National origin %	10.7	10.9	9.3
Religion %	3.1	3.8	3.7
Color %	1.4	2.7	4.1
Retaliation %	29.5	38.1	51.6
Age %	22.0	23.0	22.1
Disability %	19.7	26.5	32.2
Equal Pay	1.3	1.1	1.4

Note: Charges can be brought under more than one category
 *EEOC (2012) EEOC Charge Statistics FY 1997 – 2018. Accessed at <https://www.eeoc.gov/eeoc/statistics/enforcement/charges.cfm>



Cornell University

14



14

Employment Discrimination Charges Filed with (EEOC) or (FEPA)

Most Common Issues on ADA Charges filed in U.S.: 2012-2014

Rank	Charge	% of all charges
1	Discharge	58.9%
2	Accommodation	35%
3	Terms/Conditions	20.6%
4	Harassment	16.8%
5	Discipline	11.6%
6	Hiring	5.6%
7	Constructive Discharge	4.2%

Source: Calculations by W. Erickson, Cornell University, Yang-Tan Institute on Employment and Disability Institute, using data available here at: <http://www.disabilitystatistics.org/assess/ebureau.cfm?reports=1>. Development of this table was supported by Northeast ADA Center (90DP0088) funded by the National Institute on Disability, Independent Living, and Rehabilitation Research to Cornell University.



Cornell University

15



15

Employment Rights and Responsibilities

Title I of the ADA

Cornell University 16

ada National Network
Information, Guidance and Training on the
Americans with Disabilities Act

16

The ADA is a Double-Sided Coin

Cornell University 17

ada National Network
Information, Guidance and Training on the
Americans with Disabilities Act

17

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

Cornell University 18

ada National Network
Information, Guidance and Training on the
Americans with Disabilities Act

18

Employment Practices Covered?

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

19

Important to know...The ADA

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



20

Who is Protected?

Qualified Individuals
with Disabilities



21

Essential Question

What is a disability?



22

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.

23

What does this definition tell us?

- You can't always see disability.
- Its not just people with a current disability.

What it doesn't tell us...

- What a substantial limitation is...
- How we get to regarded as...



24

Contextualizing Disability

What is a disability?

Small Companies and the ADA

I just read that the Americans with Disabilities Act applies to small companies. But, no one here uses a wheelchair or is blind...



The employment provisions of the Americans with Disabilities Act (ADA) apply to all businesses with fifteen or more employees.

Disability Under the ADA

Actually, 20% of the American population has a disability. Many disabilities you can't even see. Conditions like hearing impairments, depression and cancer may be disabilities under the ADA.

Under the ADA, if an employee has an ongoing or serious medical/health condition that affects how their body works or the way they do their job, they might have a disability.

Covered Employees

These could all be disabilities under the ADA!!

Huh... Tom has a slipped disc, Silvia has low vision, and Mateo deals with anxiety...

In order to benefit from the protections of the ADA, an employee must disclose they have a disability to their employer.

25

Contextualizing Disability

Medical diagnosis isn't the Holy Grail

Its important to understand...

- the functional implications of disability
- Impact of those functional implications on the essential functions

26

5

The ADA

The Americans with Disabilities Act (ADA) in a small business

Learn more at

<https://smallbusinessatwork.org/tool/5/playbook>

27

Application Process

28

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.

29

Examples

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



30

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.



31

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.



32

6



Hiring

Recruiting and hiring people with disabilities


Learn more at

<https://smallbusinessatwork.org/tool/6/playbook>

33

Reasonable Accommodation

Cornell University 34

 National Network
Information, Guidance and Training on the
Americans with Disabilities Act

34

The Basics...

Cornell University 35

 National Network
Information, Guidance and Training on the
Americans with Disabilities Act


35

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**

29 C.F.R. pt. 1630 app. § 1630.2(o) (1997)

Cornell University 36

 National Network
Information, Guidance and Training on the
Americans with Disabilities Act

36

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)

37

Availability of Accommodations

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

38

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

39

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

40

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

41

The Accommodation Process

42

Disclosure

The interactive process starts with disclosure.

“Because of X medical condition or disability, I’m having trouble with Y job duty”



43

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

44

Disclosure: Yes or No?

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



45

Disclosure: Yes or No?

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

NO



46

Disclosure: Yes or No?

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



47

Disclosure: Yes or No?

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

YES



48

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?

49

Goal of the Interactive Process

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



50

Document the process

Document all related interactions

- Requests
- Follow up requests
- Actions
- In-action
- Discussions with managers, medical personnel, the employee.



51

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.

52

What do I tell people about accommodations?

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



53

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?

54

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**

55

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.



56

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



57

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



58

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



59

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](#)

60

Visit the Toolkit...



Small Business at Work Toolkit
Helping small businesses leverage the talents of people with disabilities

Welcome

This toolkit provides curated information and essential resources about how (and why!) small businesses can successfully hire and retain employees with disabilities. You'll find easy-to-understand, practical advice, along with expert guidance on following Title I of the Americans with Disabilities Act (ADA). Instead of searching the web for whatever article may appear first, we hope you'll come back here often to explore the eight tools in this toolkit.

[Read the full introduction](#) [Read the study behind this kit](#)


Cornell University


61

Questions?






Cornell University


62

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.


Cornell University


63

Northeast ADA Center

K. Lisa Yang and Hock E. Tan
Institute on Employment and Disability
Cornell University
Dolgen Hall Room 201
Ithaca, New York 14853-3901

Toll-Free : 800.949.4232 (NY, NJ, PR, USVI)

Telephone 607.255.6686
Fax 607.255.2763
TTY 607.255.6686
Email northeastada@cornell.edu
Web <http://www.northeastada.org/>

The contents of this presentation were developed under a grant from the National Institute on Disability, Independent Living, and Rehabilitation Research (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.



Cornell University



National Network
Information, Guidance and Training on the
Americans with Disabilities Act

64

ada Audio Conference Series

Session Evaluation

Your feedback is important to us

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



National Network
Information, Guidance and Training on the
Americans with Disabilities Act

65

ada Audio Conference Series

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

66
