

## **The ADA - Americans with Disabilities Act**

### *What is the intent of the ADA?*

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

### *Does the ADA protect people with severe mental illness?*

The definition of disability in the ADA includes people with mental illness who meet one of these three definitions: "(1) a physical or mental impairment that substantially limits one or more major life activities of an individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment." A mental impairment is defined by the ADA as "any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities."

### **I. Employment (Title I of the ADA)**

#### *Do all employers have to comply with Title I of the ADA?*

Private employers with 15 or more employees, state and local governments, employment agencies, labor organizations, and management committees are all subject to the ADA. The ADA does not apply to the federal government; however, discrimination by the federal government or federally assisted programs is prohibited under Title V of the Rehabilitation Act of 1973.

#### *Who is protected by Title I?*

The ADA prohibits discrimination against "qualified individuals with disabilities" who are individuals with disabilities who meet the skill, experience, education, and other job-related requirements of a position held or desired and who, with or without reasonable accommodation, can perform the essential functions of a job.

***To offer ADA protection, does the employer have to be aware of the disability?***

Yes. Employers are obligated to make reasonable accommodation only if they are aware of a person's disability. Thus, employers do not have to accommodate disabilities that they are unaware of. If an employee with a known disability is having difficulty performing his or her job, an employer may inquire whether the employee is in need of a reasonable accommodation. In addition, if the employer has reason to know that the employee has a disability, they may have an obligation to discuss reasonable accommodation. In general, however, it is the responsibility of the individual with the disability to inform the employer that an accommodation is needed.

***Does the ADA forbid blanket inquiries into your medical and psychiatric history during the hiring process?***

Yes. However, an employer may ask you objective questions that help the employer decide whether you can perform essential duties of a job. An employer may ask you about your ability to meet the physical standards for jobs involving physical labor, your ability to get along with people, or your ability to finish tasks on time and to come to work every day.

***The ADA requires employers who provide "reasonable accommodations" for qualified individuals with disabilities. What are "reasonable accommodations" for people with severe mental illness?***

Examples of reasonable accommodations for people with severe mental illnesses included providing self-paced workloads and flexible hours, modifying job responsibilities, allowing leave (paid or unpaid) during periods of hospitalization or incapacity, assigning a supportive and understanding supervisor, modifying work hours to allow people to attend appointments with their psychiatrist, providing easy access to supervision and supports in the workplace, and providing frequent guidance and feedback about job performance.

***What employment practices are covered?***

All aspects of an employment relationship including recruitment, hiring, job assignments, pay, lay-off, firing, training, promotions, benefits, and leave.

***Are there any exceptions to the requirements of Title I of the ADA?***

Yes. There are two exceptions to the requirements of Title I of the ADA.

First, an employer is not required to provide an accommodation if it will impose an "undue hardship" on the operation of its business such as accommodations that are excessively costly, extensive, substantial, or disruptive, or would fundamentally alter the nature or operation of the business.

Second, an employer may refuse to employ or provide accommodations to an individual who poses a "direct threat" to the health or safety of him/herself or other employees in the workplace. The determination that an individual poses a direct threat to self or others cannot be made simply based on stereotypical generalizations about mental illness, but may be based only on objective evidence from a treatment provider or another credible source that the individual's present condition makes him or her a direct threat to self or others.

***How does one file a complaint under Title I of the ADA?***

An individual who feels that he or she has been discriminated against in employment on the basis of disability can file a charge with the Equal Employment Opportunity Commission (EEOC) ***within 180 days of the alleged discriminatory act.*** (In certain states that have their own laws prohibiting employment discrimination based on disability this time limit may be extended to 300 days, but, as a general principle, the time limit is 180 days). The EEOC is authorized to mediate and negotiate a settlement between the individual who files the complaint and the employer. If this fails to resolve the matter, the EEOC has the option of either filing a lawsuit on behalf of the individual or issuing a "right to sue" letter. After a "right to sue" letter has been issued, the individual may file a lawsuit in a federal district court.

**II. State and Local Governments (Title II of the ADA)**

***How does the ADA apply to state and local governments?***

Title II of the ADA prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services provided by state and local governments.

***What are examples of state and local governmental activities covered under Title II of the ADA?***

A state or local government must eliminate any eligibility criteria for participation in programs, activities, and services that screen out or tend to screen out or discriminate against persons with disabilities, unless it can establish that these requirements are necessary for the provision of the service, program, or activities. For example, a state may not refuse to grant a driver's license to someone merely because of their psychiatric diagnosis, unless the illness or medication taken for the illness interfere with the ability to drive. The ADA also requires that all new buildings constructed by a state or local government be accessible.

***How does one go about filing a complaint under title II of the ADA?***

Private individuals may file a complaint with the U.S. Department of Justice. To find out how this is done, call 1-800-541-0301. Alternatively, individuals may file

lawsuits in a federal district court. Compensatory damages, including damages for pain and suffering may be awarded. Reasonable attorneys' fees may be awarded as well.

### III. Public Accommodations (Title III of the ADA)

#### *What is the purpose of Title III of the ADA?*

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodations by any person who owns, leases, or operates a place of public accommodation.

#### *What are "places of public accommodations"?*

Places of public accommodation include a wide range of entities such as restaurants, hotels, theaters, doctors' offices, pharmacies, retail stores, or museums.

#### *How does one go about filing a complaint under title III of the ADA?*

As with Title II, The U.S. department of justice is responsible for administering Title III of the ADA. An individual who believes he or she has been discriminated against in violation of Title III may either file an administrative complaint with the Department of Justice (1-800-541-0301) or file a private lawsuit in a federal district court.

### IV. ADA Resource Guide

#### *Who can I call if there is evidence of an ADA violation?*

Resource	How to Contact
Private Attorney	
Equal Employment Opportunity Commission (EEOC) <i>for Title I concerns</i>	<a href="http://www.eeoc.gov">www.eeoc.gov</a> 800-669-4000
U.S. Department of Justice <i>for Title II and Title III concerns</i>	<a href="http://www.usdoj.gov">www.usdoj.gov</a> 800-541-0301
Job Accommodation Network	<a href="http://janweb.icdi.wvu.edu">janweb.icdi.wvu.edu</a> 800-526-7234
State Protection & Advocacy Agency	<a href="http://www.ndrn.org">www.ndrn.org</a>
Legal services organization (legal aid) in your area	local phone directory

### V. Additional Sources of Information

- ***A Technical Assistance Manual on the Employment Provision (Title I) of the ADA.*** A resource directory published by the U.S. Equal Employment Opportunities Commission. To order a copy, call 800-669-EEOC or visit [www.eeoc.gov/policy/docs/psych.html](http://www.eeoc.gov/policy/docs/psych.html)
- ***Opening Public Agency Doors: Title II of the Americans with Disabilities Act and People with Mental Illnesses: A Collaborative Approach for Ensuring Equal Access to State Benefit and Service Programs.*** Published by the Bazelon Center for Mental Health Law. To order a copy, call 202-467-5730

*Updated: 1/10/2007*