



The ADA in Unionized Workplaces: Tips for Front-line Managers

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What is the Americans with Disabilities Act?

The Americans with Disabilities Act (ADA) is the principal civil rights legislation for persons with disabilities. Its purpose is to protect and guarantee access and participation for persons with disabilities in employment, public accommodations, public services, transportation, and telecommunications. Title I of the ADA prohibits discrimination against qualified individuals with disabilities in all terms and conditions of employment (e.g., recruitment, pre-employment screening, hiring, benefits, promotions, layoff and termination). Employers of 15 or more employees are subject to Title I of the ADA, as are labor organizations, employment agencies, and joint labor-management committees.

Under the ADA, an employer may not deny an individual with a disability the opportunity to apply for a job because of a request for a reasonable accommodation during the application process. Nor may an employer deny an employment opportunity to a qualified applicant or employee with a disability because of a request or need for a reasonable accommodation in order to perform the essential functions of the job. The ADA does not stipulate “quotas” for hiring people with disabilities; rather, it protects qualified individuals against discrimination based upon their disability.

The Critical Role of Managers in ADA Compliance and Disability Inclusiveness

Front-line managers play a key role in an organization’s compliance with the ADA and in the successful inclusion of workers with disabilities within work-

place communities. While HR personnel may be familiar with the letter of the law, managers' frequent interaction with employees, their knowledge of essential job tasks, and their awareness of the climate on the work floor make them a critical party to the job accommodation and inclusion processes. Disability-related issues are but one of the many challenging demands on managers' time, however, and the following may be helpful for front-line managers to consider:

- Although some disabilities are visible, such as when someone uses a wheelchair for mobility, others may not be obvious.
- The ADA protects the rights of those with obvious disabilities and those whose disabilities are not visible, as long as such impairment meets the ADA definition of disability (that is, it must be a mental or physical impairment that substantially limits an individual in at least one major life activity, such as breathing, walking, learning, sleeping, or concentrating).
- There are more than 36 million people with disabilities in the U.S., over 19 million of whom are working age.¹ It is likely that you have more people in your workplace with disabilities than you realize.
- As people age, they are more likely to experience disability; the aging workforce means that there will be more people with disabilities in the workplace.
- Under the ADA, any inquiry at the pre-employment stage that would likely require an applicant to disclose a disability is unlawful. Avoid such inquiries as well as any medical examinations before making a bona fide job offer. Employers may, however, inquire about an applicant's ability to perform essential job functions and, within certain limits, may conduct tests to deter-

¹ Erickson, W., Lee, C., von Schrader, S. (2010, March 17). Disability Statistics from the 2008 American Community Survey (ACS). Ithaca, NY: Cornell University Rehabilitation Research and Training Center on Disability Demographics and Statistics (StatsRRTC Retrieved Apr 19, 2011 from www.disabilitystatistics.org

mine if the applicant can perform essential job functions, as long as such questions and tests are not medical in nature and are asked of all applicants. Once hired, employees may be asked to undergo medical testing that is job-related and consistent with business necessity.

In order to address the unique needs of employees with disabilities, on a case-by-case basis, the employer and employee must engage in an interactive process. This process begins as soon as your company's HR office, other company designated accommodations personnel, or you, as the front-line manager, are advised by an individual that he or she requests accommodation for a disability. It is important that you are cognizant of your company's policy on this issue.

What is a Reasonable Accommodation Under the ADA?

A **reasonable accommodation** is any modification or adjustment to a job, an employment practice, or work environment that makes it possible for a qualified individual with a disability to enjoy an equal employment opportunity. The primary purpose of such an accommodation is to enable the individual to perform the essential functions of the job. Some examples of reasonable accommodations include:

- Modifying or adjusting the application process to enable qualified applicants with disabilities to apply;
- Making facilities readily accessible to and usable by persons with disabilities;
- Modifying work schedules;
- Reassigning an individual to a vacant position;
- Reallocating non-essential job functions; and
- Acquiring or modifying equipment or devices.

Employers are not required to create “light duty” positions or to reallocate essential job functions. In addition, no employer is required to provide an accommodation if doing so would create an **undue hardship** for that employer. Whether an accommodation creates an undue hardship is a factual issue based upon factors such as the type of accommodation, its cost, and the size and nature of the employer’s business. Further, pursuant to the National Labor Relations Act (NLRA) contractual agreements with unions must be honored, and it is best practice to include union representation in the accommodation process.

The Accommodation Process

The ADA stipulates that the individual with a disability and the employer engage in an interactive process to determine whether a reasonable accommodation exists. First, the employee must request an accommodation. If the employer has not already done so, it should determine the essential functions of the position at issue. Then the employer and the individual must determine the job-related limitations imposed by the individual’s disability, which may require a discussion and information about the individual’s medical condition and how those limitations could be overcome by a reasonable accommodation. The possible accommodations should be evaluated and an effective accommodation selected. While employee preference should be considered, the employer has the discretion to choose between equally effective reasonable accommodations. Once the accommodation is in place, the employer should periodically check with the employee to determine whether the current accommodation continues to meet that employee’s needs or another type of accommodation is needed.

An employee does not need to provide a full, detailed medical history - just the information that will help in the interactive process

of identifying a reasonable accommodation that will enable them to perform essential job functions. The ADA requires that medical information concerning job applicants and employees be kept confidential and maintained in files separate from personnel records. Managers and others involved in the reasonable accommodation process who have access to medical information have an on-going obligation to maintain the confidentiality of this information.

Conclusion

Employers who understand the ADA and are committed to a diverse workforce that includes qualified individuals with disabilities are in the best position to hire and retain talent from this segment of the population. The willingness and ability to effectively address the needs of both current employees with disabilities and those who may acquire a disability during their employment gives an employer a competitive advantage. Front-line managers play a critical role in the inclusion of persons with disabilities in the workplace and thus are essential in helping to meet the primary goal of the ADA - the full inclusion of individuals with disabilities in workplaces and in society.

Additional Resources

ADA National Network Technical Assistance Hotline

800-949-4232 (voice/TTY)
www.adata.org

American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)

815 16th Street, NW
Washington, DC 20006
(202) 637-5000 (voice)
(202) 637-5058 (fax)
http://www.aflcio.org/issues/jobseconomy/workersrights/disc_disability.cfm

Cornell University ILR School
Disability and HR Tips: The ADA and Collective Bargaining Issues

http://www.ilr.cornell.edu/extension/files/download/Collective_Bargaining.pdf

Cornell University ILR School
Disability and HR Tips: Reasonable Accommodation under the ADA

http://www.ilr.cornell.edu/edi/hr_tips/article_1.cfm?b_id=20&view_all=true

Job Accommodation Network (JAN)

(800)526-7234 (Voice)

(877)781-9403 (TTY)

<http://askjan.org>

US Business Leadership Network (USBLN®)

Phone: (202) 872-6739

www.usbln.org

U.S. Equal Employment Opportunity Commission

800-669-4000 (Voice)

800-800-3302 (TTY)

800-666-EEOC (publications)

<http://www.eeoc.gov>

Disclaimer

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Opinions about the Americans with Disabilities Act (ADA) expressed in this material are those of the authors. Equal Employment Opportunity Commission (EEOC) interpretations of the ADA are reflected in its ADA regulations (29 CFR Part 1630), Technical Assistance Manual for Title I of the Act, and Enforcement Guidance. Copies of the guidance documents are available for viewing and downloading from the EEOC web site at: <http://www.eeoc.gov>

Cornell University is authorized by NIDRR to provide information, materials, and technical assistance to individuals and entities that are covered by the ADA. You should be aware that NIDRR is not responsible for enforcement of the ADA. The 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 Act, nor binding on any agency with enforcement responsibility under the ADA.

About this Brochure

This brochure is one of a series of three Informational brochures on unions and the Americans with Disabilities Act (ADA) edited by LaWanda H. Cook, Ph.D., CRC, Extension Associate with the Northeast ADA Center at Cornell University and Susanne M. Bruyère, Ph.D., CRC, Director, Employment and Disability Institute, ILR School, Cornell University in consultation Elizabeth A. Reiter, J.D.

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The full text of this brochure, and others in this series, can be found at www.northeastada.org.

More information on accessibility and accommodation is available from the ADA National Network at 800.949.4232 (voice/ TTY), www.adata.org.

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