



# Rights and Responsibilities of Individuals with Disabilities Represented by a Union

December, 2011

## **What is the Americans with Disabilities Act (ADA)?**

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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.

## **Should I Tell My Employer That I Have a Disability?**

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If you have, or think you may have a physical or mental disability or impairment that qualifies for protections under the ADA, you should consider talking with

your union representative or another neutral third party, such as an Employee Assistance Program (EAP) counselor, before speaking with your employer. They can advise you of your employer's accommodation request process. The decision to disclose a disability can be a difficult one. Your union representative or another neutral third party may be able to provide guidance and can be helpful in conversations you may have with your employer about your performance. The disclosure decision is ultimately yours to make. Some things to consider:

- Is your disability or impairment causing performance problems at work that need to be explained?
- Are there changes or accommodations your employer could make that would help you perform better at work?

While non-disclosure is a legally protected choice, *you have an obligation to disclose if you request an accommodation*. Disclosure is the first step in an interactive process between you and your employer to find a way for you to perform the essential functions of your job.

### **What if My Employer Asks for Proof of My Disability?**

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Once you have disclosed your disability, your employer (though not necessarily your supervisor) has the right to request documentation of your condition and how it impacts your job performance. You do not need to provide a full, detailed medical history - just the information that will help your employer work with you to identify a reasonable accommodation that will enable you to perform your essential job functions; consider involving your union representative in this process as accommodation decisions may impact the collective bargaining unit. The process of request-

ing an accommodation may include giving your employer permission to contact medical professionals such as your doctor or therapist. Pursuant to The Health Insurance Portability and Accountability Act (HIPAA) regulations, this information can only be obtained with your informed, written consent.

### **What if My Employer is Threatening to Fire Me Because of My Disability?**

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Even though you cannot legally be fired solely because you have a disability, discharges like this do happen - **contact your union representative immediately**. However, if you have not told your employer of your disability and you are not meeting the performance standards expected of all employees in that job, you may be let go. When there are concerns about job performance, it is important to involve your union representative. Your union can help you work with your employer to deal with concerns about job performance. It may be possible to jointly agree with your union and employer to have an assessment of your situation so that together you can come up with ways to improve your performance (e.g., a modified work schedule so you can attend weekly counseling sessions or technology that would enable you to do essential job functions with a visual or hearing impairment).

If you disclose your disability prior to the final stage of termination for poor job performance the law requires an employer to offer reasonable accommodation to (1) a qualified employee (that is, an employee who can perform the essential job functions with or without reasonable accommodation) (2) with a covered disability (as discussed below, not every "disability" qualifies you for an accommodation, under the law), (3) unless doing so would cause significant difficulty, undue hardship or significant expense for your employer. Similarly, if there is a problem with your conduct (e.g., insubordination, taunting coworkers)

and the appropriate disciplinary action is termination, the ADA would not require further discussion about your disability or request for reasonable accommodation. If you continue to have difficulty performing essential functions of your job with reasonable accommodation for your disability, you may be terminated just as any other employee would be.

If the discipline is something less than termination, your employer may ask about your disability's relevance to the misconduct, or if you think there is an accommodation that could help avoid future misconduct. Your employer may seek appropriate medical documentation to learn if the condition meets the ADA's definition of disability, whether and to what extent the disability is affecting your conduct, and what accommodations may address the problem. Employers cannot refuse to discuss the request or fail to provide reasonable accommodation as a punishment for the conduct problem. If a reasonable accommodation is needed to assist an employee with a disability in controlling his or her behavior and thereby preventing another conduct violation, and the employer refuses to provide one that would not cause undue hardship, then the employer has violated the ADA.

Involving your union representative in each of the situations mentioned in this brief, may help to increase your legal protection.

## **Conclusion**

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Unions are an important resource to the workers they represent. Working with your union can help ensure that your employer meets its obligations under the ADA and the National Labor Relations Act (NLRA). Union representatives can be effective facilitators of alternative dispute resolution (ADR), which can be useful in determining non-confrontational ways to address the individualized accom-

modation needs of workers while maintaining the employee/employer relationship. Unions can be proactive in fostering positive, productive work environments and in furthering the ultimate goal of the ADA – inclusion and appreciation of people with disabilities in the workplace and in society.

## **References**

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Thomason, T., Burton, J. F., & Hyatt, D. E. (Eds.). (1998). *New approaches to disability in the workplace*. Madison, WI: Industrial Relations Research Association.

Keene, D.R. II (December 1997). Collective bargaining and compulsory arbitration of Americans with disabilities act claims. *Labor Law Journal*. 738-748.

## **Additional Resources**

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### **ADA National Network Technical Assistance Hotline**

800-949-4232 (voice/TTY)  
[www.adata.org](http://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](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](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](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](http://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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This material was produced by the Employment and Disability Institute in the Cornell University ILR School, funded by a grant from the National Institute on Disability and Rehabilitation Research (NIDRR) (grant #H133A060088).

Opinions about the Americans with Disabilities Act (ADA) expressed in this material are those of the authors. The Equal Employment Opportunity Commission's 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

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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 with Lee H. Adler, J.D., Elizabeth A. Reiter, J.D, and the staff of Cornell University's Office of Workforce Policy and Labor Relations.

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The full text of this brochure, and others in this series, can be found at: [www.northeastada.org](http://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](http://www.adata.org).

## Contact Information

Northeast ADA Center  
Employment and Disability Institute  
Cornell University  
Dolgen Hall  
Ithaca, New York 14853-3901

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

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