



North Carolina
Department of Environment
and Natural Resources

REFERENCE MATERIALS

Section: Office of Equal Employment Opportunity **Number:**

Subject: Americans with Disabilities Act of 1990 (ADA), Title I

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THE AMERICANS WITH DISABILITIES ACT OF 1990 TITLE I

I. BASIC REQUIREMENTS OF EMPLOYERS

- A. Must provide an equal opportunity for an individual with a disability to participate in the job application process and to be considered for a job.
- B. May not make direct pre-employment inquiries regarding a disability but may ask questions about the ability to perform specific job functions.
- C. Must not require pre-employment offer medical examinations, but may condition a job offer on the results of a post-offer medical examination, if all entering employees in the same job category are required to take the examination.
- D. A test that screens out or tends to screen out a person with a disability must be job-related and consistent with business necessity.
- E. Tests must reflect the skills and aptitudes of an individual rather than impaired sensory, manual, or speaking skills, unless these are job-related skills the test is designed to measure.
- F. Must not discriminate against qualified individuals with disabilities in any employment related activity or benefit. Examples of discrimination prohibited by ADA include but are not limited to:
 - 1. Limiting duties of an employee based on a presumption of what is best for an individual with such a disability, or on a presumption about the abilities of an individual with such a disability.

2. Establishing a separate track of job promotion or progression for employees with disabilities based on an assumption of different interests or different abilities on the part of employees with disabilities.
3. Assigning employees with disabilities to one particular office or installation or requiring employees with disabilities to use segregated break areas, lunchrooms, or lounges.
4. Denying employment to an applicant or employee with a disability based on generalized fears about the safety of an individual with such a disability, or based on generalized assumptions about the absenteeism rate of an individual with such a disability.
5. Denying equal access to health insurance (policies do not have to be changed) or any other benefit of employment.
6. Entering into contractual relationship that subjects a qualified applicant or employee to discrimination.
7. Denying employment to an employee because of that individual's association with someone who has a disability.
8. Not making reasonable accommodations for the known disability of an applicant or employee.

II. DEFINITION OF TERMS

A. Individual with a disability

1. Has a physical or mental impairment which substantially limits one or more of that person's major life activities;
2. Has a record of such an impairment; or
3. Is regarded as having an impairment.

B. Qualified individual with a disability

1. Satisfies the prerequisites for the position in question
 - a. Education
 - b. Experience
 - c. Skills
 - d. Licenses/Certificates
2. Can perform the essential functions of the position held or desired, with or without reasonable accommodations.

C. Essential Functions

1. The fundamental job duties of the employment position the individual with a disability holds or desires.
2. A function that meets other criteria, including but not limited to the following:
 - a. The position exists to perform that function;
 - b. There are a limited number of employees available among whom the performance of that function can be distributed; and/or
 - c. The function is highly specialized so that the incumbent in the position is hired for his/her expertise or ability to perform the particular function.

D. Reasonable accommodation

1. Modifications or adjustments to a job application process that enables a qualified applicant with a disability to be considered for the position desired;
2. Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enables a qualified individual with a disability to perform the essential functions of that position; or
3. Modification or adjustments that enable an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by the employees without disabilities.

E. Job-Related (test, criteria, etc.)

1. A legitimate measure of a qualification for the specific job for which it is used, and which
2. Measures more than qualifications for a class of jobs.

F. Consistent with Business Necessity

1. Relates to the essential functions of the job in question.
2. Business necessity does not include marginal functions.

III. ESSENTIAL FUNCTIONS

A. Evidence

1. The employer's judgement as to which functions are essential;

2. Written job descriptions prepared before advertising or interviewing applicants for the job;
3. The amount of time spent on the job performing the function;
4. The consequences of not requiring the incumbent to perform the function;
5. The work experience of past incumbents in the job; and/or
6. The current work experience of incumbents in similar jobs.

B. Questions to determine essential functions

1. Must the function be done?
2. Did the previous incumbent perform this function?
3. Are other employees available to perform the function?
4. If the function is removed from the job, will the job be fundamentally changed?
5. Is special education, training, expertise, or judgment required to perform the function?
6. Do persons doing similar work in other work settings perform the function?
7. How many hours per day/week are spent performing the function?

IV. QUALIFICATION STANDARDS

A. Evidence of qualification may include:

1. Job descriptions written before advertising a position;
2. A review of the actual work currently performed by an individual on the job.

B. Standards that screen out or tend to screen out persons with disabilities:

1. Must be job-related and consistent with business necessity.
2. Job-relatedness and business necessity do not relieve the employer from providing reasonable accommodations.

C. Direct threat to health or safety in the workplace as a basis of rejection requires:

1. Evidence of a significant risk of substantial harm
2. The specific risk must be identified;
3. Risk must be current, not one that is speculative or remote;

4. Assessment of risk must be based on objective medical or reduced below the level of a direct threat y reasonable accommodations.
5. Even if a significant risk of substantial harm exists, the employer must consider whether the risk can be eliminated or reduced below the level of a direct threat by reasonable accommodations.

D. Drug/Alcohol use

1. Active abusers of illegal drugs or alcohol are not considered persons with disabilities under ADA, and employers are not prohibited from making pre-employment offer inquiries about current use of alcohol or illegal drugs.
2. Persons who have successfully completed a supervised drug or alcohol treatment or rehabilitation program and no longer abuse these substances are considered person with disabilities under ADA. Employers may not inquire whether an applicant is an alcoholic, drug addict, or has participated in a drug or alcohol treatment/rehabilitation program.
3. Drug tests are not considered medical examinations under ADA and are not prohibited.

V. REASONABLE ACCOMMODATION PROCEDURES

A. Accommodation process

1. Analyze the particular job involved and determine its purpose and essential functions;
2. Consult with the individual who has the disability to ascertain the precise related limitation imposed by the individual's disability and how these limitations could be overcome with a reasonable accommodation;
3. In consultation with the individual to be accommodated, identify potential accommodations a assess the effectiveness each would have in enabling the individual to per form the essential functions of the position; and
4. Consider the preference of the individual to be accommodated and select and implement the accommodation that is most appropriate for both the employee and the employer.

B. Examples of reasonable accommodations

1. Modifications to the work environment
 - (a) Removing architectural barriers.
 - (b) Rearranging supplies, furniture, or equipment for easier access by a person with a physical disability.
 - © Placing tactile labels on shelves or equipment for identification by persons who are blind.
 - (d) Relocating activities to an accessible site.
 - (e) Rearranging parking for employees with mobility impairments.

2. Auxiliary Aids

- (a) Magnification device for a person who is visually impaired.
- (b) Talking computer or braille materials for a person who is blind.
- (c) Amplification device for an individual who is hearing impaired.
- (d) Dictating equipment for an employee who cannot use the hands well enough to write.

3. Job Restructuring

- (a) Reassignment of certain tasks to other employees.
- (b) Elimination of non-essential tasks.
- (c) Reassignment of duties to an accessible site.
- (d) Designing new procedures for performing tasks.

4. Reassignment to a vacant position for which the employee is qualified.

C. Evidence of Undue Hardship

- 1. Net cost of the accommodation (cost in relation to salary will not be considered).
- 2. Resources of the employer.
- 3. Type of operation including structure and functions of the workforce.
- 4. Impact of the accommodation on the operation of the agency.