

Does the employee have to provide indefinite leave when the employee does not have any idea when s/he can come back to work?

In most cases, the employer does not have to provide indefinite leave as a reasonable accommodation.

What about confidentiality?

Information about disabilities should be divulged on a need-to-know basis only. In most cases, supervisors only need to know an employee is entitled to an accommodation under the ADA and the employee's abilities and limitations. However, sometimes a supervisor may be privy to information on a limited basis because of safety issues. Supervisors should not divulge information concerning a person's disability to anyone who does not have a legitimate reason to know.

As the supervisor/director, can I review the medical documentation?

No! Medical information is strictly confidential under the ADA. Only the Accommodation Specialist in Human Resources Management and the Dean of the Faculties will be allowed to collect and review medical information.

What do supervisors tell the co-workers of the disabled employee?

If an employee asks why another employee is being treated differently, the supervisor should not indicate that the employee has a disability. The supervisors should explain by saying something like "we are acting for legitimate business reasons or in compliance with the law."

What about pre-employment disability related questions and medical examinations?

An employer may not ask disability related questions or conduct medical examinations until after it makes a conditional job offer to the applicant. This ensures an applicant's possible hidden disability is not considered before the employer evaluates an application's non-medical qualifications. Employers can ask about an applicant's ability to perform all job functions.

Once a conditional job offer is made, the employer may ask disability related questions and require medical examinations as long as this is done for all entering employees in that job category.

What is a disability related questions?

Questions that are likely to elicit information about a disability are considered disability related and should not be asked.

May an employer ask whether an applicant can meet the employer's attendance requirements?

Yes. An employer may state its attendance requirements and ask whether an applicant can meet them. An employer also may ask about an applicant's prior attendance record. However, at the pre-offer stage an employer may not ask how many days an applicant was sick. The employer may also not ask about job related injuries or worker's compensation history. These types of questions are likely to elicit information about at disability.

This information was prepared by the Indiana University Office of Affirmative Action.

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Answers to common employment questions Administrators and Supervisors have about the Americans with Disabilities Act at Indiana University.

What is the definition of a disability under the ADA?

Under the ADA, a disability is a physical or mental impairment that substantially limits one or more of the major life activities of such individual. Under this definition, individuals who have a record of such impairment, or are regarded as having such impairment are also included.

What does substantially limiting mean?

To determine if the impairment is substantially limiting three things must be considered: (1) the nature and severity of the impairment; (2) the duration or expected duration of the impairment; and (3) the permanent or long-term impact or expected impact resulting from the impairment.

What is a major life activity?

According to the Equal Employment Opportunity commission, a major life activity includes activities such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

What does regarded as mean?

This definition of disability focuses on the employer's perception of the individual. Some examples might include:

1. The employee might have an impairment that does not substantially limit a major life activity, but the employer treats him/her as having such an impairment. Example: a person with controlled high blood pressure may be restricted by an employer from performing jobs involving strenuous activity.
2. The individual has an impairment that substantially limits major life activities only because of the attitudes of others. Example: a person has a facial disfigurement leading an employer to refuse to hire him/her.
3. An individual without impairment is treated as if s/he has a substantially limiting impairment. Example: an employer refuses to hire someone because s/he thinks the individual AIDS even though s/he does not.

What does having a record of mean?

Record-of cases involve individuals who have a history of, or who have been either classified or wrongly classified as having a disability. Protection under the ADA requires an individual have a record of an impairment that substantially limited a major life activity.

Who is a qualified person with a disability under the ADA?

Determination of an individual's qualifications under the ADA must be made on an individualized case-by-case basis. To be qualified, the individual must (1) satisfy the prerequisites for the position (such as the necessary education, experience, licenses, etc.) and (2) be able to perform the essential functions of the job in question either with or without a reasonable accommodation.

What are essential functions?

Essential function refers to the fundamental job duties of the position in question. A job function is essential if: (1) the position exists to perform that function, (2) performance of the function can be distributed to only a limited number of employees, (3) the incumbent is hired for his/her expertise or ability to perform the function, or (4) the consequences of not performing the function are significant to the employer.

Do short-term disabilities qualify under the ADA?

Generally, the ADA does not protect short-term conditions such as a broken leg that heals normally. However, conditions with long-term impairment where it is simply unclear how long an impairment will last may be protected. Episodic conditions may be covered, such as schizophrenia or bipolar disorder.

What are some examples of a disability under the ADA?

Epilepsy, cancer, muscular dystrophy, visual, speech and hearing impairments, chronic heart disease, diabetes, mental or psychological disorder and organic brain syndrome.

Are Alcoholism, Drug Addition, HIV status, obesity, mental illness and pregnancy considered disabilities under the ADA?

A person with any of the above conditions may qualify under the ADA. Following are issues and concerns surrounding each.

Alcoholism and Drug Addiction: The ADA protects individuals with alcohol and drug addiction problems, not the casual user. Under the ADA, employees are protected if they are in a drug treatment program and/or not currently using drugs illegally. Since alcohol is a legal substance, employees with alcohol problems are protected as long as they are able to perform their jobs and are not in violation of the employer's drug free workplace policies.

HIV or AIDS: Persons with HIV or AIDS are usually considered disabled under the ADA.

Obesity: Weight within the normal range is not an impairment and therefore not a disability under the ADA. However, severe or morbid obesity (twice the normal body weight) has been found to be a disability in some cases.

Mental Illness: Persons with psychiatric disorders such as major depression, bipolar disorder, anxiety disorders, schizophrenia, and personality disorders may be qualified under the ADA.

Pregnancy: Although pregnancy itself is not considered a disability under the ADA, complications and conditions—because of, pregnancy may rise to the level of an impairment that substantially limits a major life activity.

If a person qualifies for disability assistance under Worker's Comp, FMLA, or Social Security, do they automatically qualify under the ADA?

No. The American's with Disabilities Act, Worker's Compensation, Family Medical Leave, and the Social Security Act each has its own qualification requirements. For example, a person may qualify for disability benefits under the Social Security Act but not under the American's with Disabilities Act.

What is a reasonable accommodation under the ADA?

A reasonable accommodation means modifications or adjustments, which allow all applicants and employees full participation in the employment process. These include: (1) adjustments to job applications or testing processes enabling qualified applicants with disabilities full consideration; (2) modifications to the work environment or way a job is customarily performed enabling individuals with a disabilities to perform the essential functions of the position; and (3) modifications which provide employees with disabilities equal employment benefits and privileges as similar non-disabled employees. In addition, reasonable means that the accommodation is (1) effective and (2) would allow the employee to attain an equal level of achievement, opportunity, and participation that a non-disabled individual in the same position would be able to achieve.

Can the employer require documentation that the person requesting an accommodation is disabled?

Yes! In most cases, documentation of disability is required. The information used to document disabilities and determine if a person's qualification under the ADA will be supplied to the Accommodation Specialist in Human Resources Management or the Dean of the Faculties (depending on the status of the individual requesting the accommodations.)

What does the Accommodation Specialist do?

The Accommodation Specialist will determine if the employee is qualified under the ADA. If the employee is qualified, the Accommodations Specialist will: (1) review the essential and marginal functions of the job and the functional limitations of the disability and (2) facilitate a discussion between the employee and the supervisor/dean/department head to determine what accommodation may be reasonable.

Who decides which accommodation is reasonable?

The employer's responsibility is to provide an accommodation that is (1) effective and (2) allows the employee to attain an equal level of achievement, opportunity, and participation that a non-disabled person would be able to achieve. The employer does not necessarily have to provide the most expensive accommodation or the accommodation of the employee's choice, as long as the accommodation satisfies the above conditions.

Does the person with a disability have to maintain the same performance standards as everyone else?

Yes! Persons with disabilities must maintain the same performance standards with or without reasonable accommodation.

Are employees required to request a reasonable accommodation?

There is general agreement that the employer must know about a disability in order to be liable for failing to provide a reasonable accommodation. Hence, in most cases the individual with a disability must request an accommodation. Sometimes a disability may prohibit the employee from requesting an accommodation. In these situations if the employer (supervisor) is aware of the disability and the need for an accommodation is clear, it is the responsibility of the supervisor to pursue consideration of an accommodation.

What exactly does the employee have to say?

The employee does not have to use the magic words, "I would like to request a reasonable accommodations." A request is any notification that an individual needs or might need a job modification because of a disability.

Once I know that the employee is requesting an accommodation, what do I do?

Once a supervisor is aware that a medical condition may be interfering with an employee's ability to perform, s/he must discuss the problem with the employee. If the employee is having a performance problem, discuss the performance problem with the employee and then ask if anything would help him/her improve their performance. If the employee indicates they are having a medical problem keep the discussion focused on work-related performance issues and refer him/her to the appropriate office (the Accommodation Specialist in Human Resources Management or the appropriate staff person in the Dean of Faculties office) to determine if s/he qualifies as disabled under the ADA. If the employee is qualified under the ADA, then the Accommodations Specialist in Human Resources Management of the Dean of the Faculties will work with you and the employee to determine the appropriate accommodation. You may also want to inform the employee of the Employee Assistance Program.

In addition, it is important to document any discussion related to a medical condition you have with an employee and the actions you took to address the issue.

What are the employer's responsibilities if the employee still cannot perform the essential function of the job even with a reasonable accommodation?

If the employee cannot perform the essential function of the job even with a reasonable accommodation they are not qualified for the position. Disabled employees must maintain the same performance levels as all other employees.