

The Americans with Disabilities Act

What is the Americans with Disabilities Act?

The Americans with Disabilities Act (ADA) is a civil rights law protecting qualified individuals with disabilities from employment discrimination and giving them access to public services, public accommodations, public transportation, commercial facilities, and telecommunications. In general, it covers all employers who have 15 or more employees (including certain part-time employees) working for them for 20 or more calendar weeks in the current or preceding calendar year.

What Does the ADA Require?

The **public accommodations provisions of the law** require the removal of architectural and structural barriers that limit access to disabled individuals from places of public access where doing so is readily achievable, meaning easily accomplished and able to be carried out without much difficulty or expense. Factors to be considered in determining whether barrier removal is readily achievable include the nature and cost of the barrier removal, the overall financial resources of the institution, and the number of people employed.

The United States Department of Justice suggests that the institutions rank priorities for achieving accessibility in the following order:

- entrances, including providing signage for designated parking, passenger loading zones, curb cuts, and widening entrances and ramping steps;
- location of services, including, for example, moving services to ground floors when lacking elevators;
- public restroom accessibility/features; and
- other accessibility measures.

The ADA's employment provisions prohibit discriminating against qualified individuals with disabilities in the recruiting, application, and hiring processes, as well as in the terms and conditions of employment, including promotion and training opportunities. Discrimination includes, but is not limited to, limiting, segregating, classifying, or treating a job applicant or employee in a way that adversely affects job opportunities or status because of the individual's disability.

The ADA requires covered entities to provide "reasonable accommodations" to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee unless the entity can demonstrate that the accommodations would impose an undue hardship.

Employers are not only prohibited from outright, blatant discrimination against employees with disabilities but also from using practices that have the effect of discriminating; for example, qualification standards, employment tests, or selection criteria that tend to screen out individuals with disabilities, unless the standard is "job related".

The law requires employers to engage in an interactive process, in good faith, with an employee to consider and make reasonable accommodations to the known physical or mental limitations of a qualified individual with a disability, unless doing so would impose an undue hardship on the employer. Additionally, under certain circumstances, applicants for jobs may also require reasonable accommodations in the application process.

Who is a Disabled Individual Under the ADA?

Definition

A **disabled** individual, under the ADA, is a person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment. “Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. A major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.”

Additionally, an individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that (s)he has been subjected to an action prohibited under the ADA because of an actual or perceived physical or mental impairment if the impairment limits or is perceived to limit a major life activity. However, transitory and minor impairments are excluded from this coverage. An impairment with an actual or expected duration of six (6) months or less is considered to be a transitory impairment.

Who is "Qualified" Under the ADA?

Definition

A **qualified individual with a disability** is one who has a disability, within the meaning of the ADA, who satisfies the requisite skills, experience, education, and licensing requirements, and who, with **or** without a reasonable accommodation, can perform the essential functions of the job.

What is a Reasonable Accommodation?

Definition

A **reasonable accommodation** is any change in the work environment or the manner in which a job is usually performed that enables an individual with a disability to enjoy equal employment opportunities. It includes modifications or adjustments to processes, job positions, worksite accessibility, work schedules, or equipment which allow an applicant to apply for a job or an employee to perform the essential functions of the job.

M-DCPS Procedures for ADA Eligibility Determination and Accommodations

All worksite administrators are required to:

- Post in visible areas the Discrimination/Harassment and ADA School District Functions and Responsibilities posters (see Appendix B);
- Refer employees seeking assistance or appearing to need assistance under the ADA to Ms. Carmen Molina, Chairperson of the ADA District Consultative Committee, at 305 995-7116;
- Provide appropriate information to facilitate the Committee's assessment of the merits of the request. This may entail, but is not limited to, providing technical assistance to determine essential functions of a job; attending Committee meeting(s); providing job performance information, and other relevant information;
- Maintain confidentiality of medical records submitted to the site administrator; and
- Refer any complaints from employees alleging that the school district is not meeting its obligations under the employment and/or accessibility requirement provisions of the ADA to the Office of Civil Rights Compliance at 305 995-1580.

The determination of eligibility under the ADA, as well as the review of requests for accommodation from employees and job applicants has been delegated to the ADA District Consultative Committee. Please **refrain** from granting accommodations to employees at your site before they are deemed eligible by the Committee. This Committee meets monthly. It is comprised of a core group of District personnel representing the School Board Attorney's Office, Division of Facilities ADA Compliance, Office of Human Capital Management, Office of Civil Rights Compliance, Office of Retirement, Leave, and Reemployment Assistance, Office of Risk and Benefits Management, Region Offices, Office of Professional Standards, Employee Assistance Program, and a Board-approved medical consultant. Additionally, other individuals from the District or outside agencies are requested to provide assistance or expertise as necessary, based upon the need for information required by the particular case(s) under review.

The Committee's process involves the following steps:

- Identification of the employee seeking accommodation through the following types of referrals to the Chairperson of the Committee:
 - Employee self-referral;
 - Referral by a collective bargaining unit representative; and
 - Referral by a District level support office (e.g., Workers' Compensation, Civil Rights Compliance, Employee Assistance Program, worksite administrator, etc.).
- Employee completes the Employee Self-Referral Form and provides a Release of Medical Information Form and requested medical documentation.
- If necessary, a conference will be scheduled, to include the Chairperson of the Committee, the employee, and the site administrator or designee.

- The Committee meets to accomplish the following possible actions:
 - Review of the employee's request for accommodation(s);
 - Review of the findings of the on-site consultative conference;
 - Review of the medical and other appropriate support documentation;
 - Determination of the employee's eligibility as a "qualified individual with a disability";
 - Determination regarding the requested accommodation; and
 - Recommendation for closing the case or further follow-up by the Chairperson of the Committee.

Job Application and Interview Do's and Don'ts

According to the United States Equal Employment Opportunity Commission (EEOC), the following are examples of questions that **CANNOT** be asked on a job application or during a job interview:

- Have you ever had or been treated for a medical condition or disease?
- Please list any conditions or diseases for which you have been treated in the past three years.
- Have you ever been hospitalized? If so, for what condition?
- Have you ever been treated by a psychiatrist or psychologist? If so, for what condition?
- Have you ever been treated for any mental condition?
- Is there a health-related reason why you may not be able to perform the job for which you are applying?
- Have you had a major illness in the last five years?
- How many days were you absent from work because of illness last year?
- Do you have any physical defects which preclude you from performing certain kinds of work? If yes, describe such defects and specific work limitations.
- Do you have any disabilities or impairments which may affect your performance in the position for which you are applying?
- Are you married?
- Are you planning to have children?

- Are you taking prescribed drugs?
- Have you ever been treated for drug addiction or alcoholism?
- Have you ever **filed** for worker's compensation?

Pre-employment questions that **CAN** be asked are the following:

- Can you meet the requirements of our attendance policy?
- Can you perform the tasks of this position with or without accommodations?
- Describe or demonstrate how you would perform this function, with or without an accommodation. (Such a question can be asked of an applicant who has a known disability that might prevent her/him from performing a job function. However, if the disability would not interfere with a job function, the person could only be asked to demonstrate job performance if all other candidates are also asked to do so).

Interviewing Applicants with Specific Disabilities

Interviewing people with disabilities is generally the same as interviewing people without disabilities. The focus of the interview should be on the applicant's qualifications and competencies, including experience and skills for doing the job. At times, employers may be at a loss when interviewing someone with a disability. The following are some basic guidelines for keeping a job interview focused on the applicant's qualifications.

When interviewing an applicant, who uses a wheelchair:

- Keep accessibility in mind. If a chair poses a barrier to the wheelchair user, move it aside.
- Don't hold or lean on the wheelchair.
- Don't assume that the individual wants to be pushed; always ask first.
- Maintain eye contact and eye level with the applicant.
- Don't be embarrassed to use such phrases as, "Let's walk over to the other office."

When interviewing applicants, who are blind or have vision impairments:

- Immediately identify yourself and others in the room or have the individuals introduce themselves. This will assist the applicant with orientation to the room and its occupants.
- Tell the applicant when someone is leaving the room.
- Use verbal cues; be descriptive in giving directions.
- Verbalize chair location or place the person's hand on the back of the chair, but **do not** place the person in the chair.

- Speak directly to the applicant using a normal tone of voice.
- Don't be embarrassed to use such phrases as, "Do you see what I mean?"
- Keep doors either open or closed, a half-open door is a serious hazard.
- Never touch or distract a service guide dog.
- Be prepared to read aloud information that is written or ask the person if (s)he could use the services of a trained reader.

When interviewing an applicant, who is deaf or hard of hearing:

- You may need to use a physical signal to attract the applicant's attention before starting a conversation.
- If the applicant is lip reading, enunciate clearly and keep your mouth clear of obstructions.
- Don't shout. Speak directly to the applicant using a normal tone of voice.
- If you cannot understand what the applicant is telling you, ask the applicant to repeat the sentence.
- Not all people who are deaf or hard of hearing know or use sign language. Do not assume they need interpreters.
- If using a sign language or oral interpreter, always face and speak directly to the applicant, not the interpreter. Speak clearly and keep your hands away from your face.

Accessibility Requirements

The thrust of the ADA regarding facilities is to provide a working environment that is readily accessible and "user friendly" to people with disabilities. New facilities being designed and constructed today can readily incorporate such features. However, it is a more complicated proposition to retrofit existing buildings.

A survey of a facility can be made as part of an overall assessment, or as an independent assessment that focuses solely on ADA compliance. Elements that are routinely considered in such a survey include, but are not limited to:

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| √ <i>Means</i> of egress | √ Counters |
| √ Parking | √ Drinking fountains |
| √ <i>Alarms</i> /life safety | √ Signage |
| √ <i>Curb</i> ramps | √ <i>Public</i> telephones |
| √ Entrances | √ <i>Tables</i> and seating |

√ *Ramps* and stairs

√ *Elevators* and platform lifts

√ *Restrooms*, including toilet stalls, toilets, urinals, sinks, and mirrors

√ *Assembly/Work areas*

√ *Doors* and door hardware

√ *Bathrooms*, including bathtubs, shower stall, tub/shower seats and grab bars

Modifying the work environment is a traditional form of making a reasonable modification. It entails examining the worksite to meet the needs of a qualified individual with a disability. Alterations of the site can include the following:

- removing architectural barriers, for example, installing a ramp or modifying a bathroom;
- rearranging files or shelves for accessibility to people in wheelchairs;
- placing tactile labels on shelves and controls so that visually-impaired individuals can identify them;
- relocating meetings to an accessible site; or
- rearranging parking to allow a disabled person to park at the entrance closest to her or his worksite.

The above list is far from exclusive. Additionally, the employer should approach proposed modifications from the perspective of allowing disabled employees to function independently, affording them dignity and respect in their worksite.

In many cases, modifications to the worksite do not require costly purchases or alterations; a common-sense approach being the best method.

For Example: If an employee in a wheelchair cannot use the standard desk given to staff at a worksite, it might be possible to elevate the desk (e.g., using blocks) to a height that allows access to the wheelchair, rather than purchasing a specially constructed desk.

Disabled employees themselves are often the best sources of ideas for cost-effective modifications, and their requests are always fully considered by the members of the Committee.

The M-DCPS Division of Facilities ADA Compliance was established by Board action on January 19, 1994. The purpose of the Division is to support the District by surveying all Board-owned/leased facilities for ADA compliance and to identify necessary changes to make **programs accessible** to disabled individuals, with minimal physical changes to existing facilities. The Division supports the Office of School Facilities in its remodeling and renovation projects to achieve the incorporation of ADA requirements into projects during the planning/design phase or through change orders, as appropriate.

All questions, concerns, and complaints covering accessibility under the ADA, including scope of work, interpretation, and implementation, must be addressed to Mr. Auguste Nicoleau, Executive Director, Division of Facilities ADA Compliance, at 305-995-4650.

Compliance Provisions

All District and school site administrators are responsible for the compliance of their school, department, division, or bureau with the requirements of the ADA. It is recognized that discrimination or harassment complaints based on a disability may arise from actual or perceived situations.

For complaints to be resolved in an expeditious, orderly, and equitable manner, School Board Policy 1362.02 (Administrators), 3362.02 (Instructional Staff), and 4362.02 (Non-Instructional Staff), Anti-Discrimination/Harassment Complaint Procedure (Appendix A), establishes appropriate procedures to ensure nondiscrimination in employment. Any individual, who after discussing the allegations with the worksite administrators, as appropriate, feels that her/his complaint is not satisfactorily resolved, may file a complaint with the Office of Civil Rights Compliance at 305 995-1580.