

## **Employment Facts about the Americans with Disabilities Act**

Title I of the Americans with Disabilities Act of 1990 took effect July 26, 1992, and prohibits towns from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions and privileges of employment. An individual with a disability is a person who:

- Has a physical or mental impairment that substantially limits one or more major life activity;
- Has a record of such an impairment; or
- Is regarded as having such impairment.

A qualified individual with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question. Reasonable accommodation may include, but is not limited to:

- Making existing facilities used by employees readily accessible to and usable by persons with disabilities;
- Job restructuring, modifying work schedules, reassignment to a vacant position;
- Acquiring or modifying equipment or devices; adjusting or modifying examination, training materials, or policies; and providing qualified readers or interpreters.

An employer is required to make an accommodation to the known disability of the qualified applicant or employee if it would not impose an “undue hardship.” Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as the town’s size, financial resources and the nature and structure of its operation.

An employer is not required to lower quality or production standards to make an accommodation, nor is an employer obligated to provide personal use items such as glasses or hearing aids.

## **Medical Examinations and Inquiries**

Employers may not ask job applicants about the existence, nature or severity of a disability. Applicants may be asked about their ability to perform specific job functions. A job offer may be conditioned upon the results of medical examination or inquiry, but only if the examination or inquiry is required for all entering employees in the job. Medical examinations or inquiries of employees must be job related and consistent with the employer’s business needs.

## **Job Descriptions**

Under the ADA, an employer's written job descriptions is strong evidence of the essential functions of the job provided that the job description existed before the job was advertised or the applicant was interviewed. Therefore, employers should conduct a thorough job analysis and develop accurate, written job descriptions that identify essential functions of each particular position.

Written job descriptions should contain:

1. prerequisites for each position, including the physical needs, education and experience; and
2. essential and non-essential job functions.

All job descriptions should be reviewed and updated periodically to ensure accuracy.

## **Drug and Alcohol Abuse**

Employees and applicants currently engaging in the illegal use of drugs are not covered by the ADA, when an employer acts on the basis of such use. Test for illegal drugs are not subject to the ADA's restrictions on medical examinations. Employers may hold illegal drug users and alcoholics to the same performance standards as other employees.

## **Notice Requirements**

Title I of the ADA requires every covered employer to post notices in an accessible format to applicants, employees and members describing the applicable provisions of the ADA.

## **Filing a Charge**

Charges of employment discrimination on the basis of disability, based on actions occurring on or after July 26, 1992, are filed at any field office the U.S. Equal Employment Opportunity Commission. Information on the ADA may be obtained by calling toll free: 800-514-0301 or through the Department of Justice website: [www.usdoj.gov/crt/ada/adahom1.htm](http://www.usdoj.gov/crt/ada/adahom1.htm).

A person discriminated against on the basis of the disability is entitled to a remedy that will place him or her in the position he or she would have been in if the discrimination had never occurred, such as entitlement to hiring, promotion, reinstatement, back pay or other remuneration, or reasonable accommodation including reassignment. The person may also be entitled to damage in order to compensate for future pecuniary losses, mental anguish and inconvenience. Punitive damages and attorney's fees may be available as well if the town acted with malice or reckless indifference.