



## >> Disability Discrimination

Like Title VII, the Americans with Disabilities Act of 1990 (42 USC 12101) aims to eradicate discrimination in the workplace. The ADA prohibits discrimination against qualified individuals with a disability in all employment practices. The ADA as amended by the ADA Amendments Act of 2008 (effective January 1, 2009) defines an individual with a disability as a person who has a physical or mental impairment that substantially limits at least one major life activity (including activities such as reading, bending and communicating and/or affects major bodily functions such as digestive, bowel, bladder or neurological functions), has a record of such an impairment or is believed to have such an impairment.

The Act does not interfere with an employer's authority to establish appropriate job qualifications to hire people who can perform jobs effectively and safely, and to hire the best qualified person for a job. The ADA requirements are designed to assure that people with disabilities are not excluded from jobs that they can perform.

As with most protected classes of employees, individuals with disabilities must not be subject to discrimination in any employment practice. This means that:

- > They should have equal access to any employment opportunity available to a similarly situated individual who is not disabled.
- > Employment decisions concerning an employee or applicant should be based on objective factual evidence about the particular individual, not on assumptions or stereotypes about the individual's disability.
- > The qualifications of an individual with a disability may be evaluated on ability to perform all job-related functions, with or without reasonable accommodation. However, an individual may not be excluded from a job because a disability prevents performance of marginal job functions.
- > An employer must provide a reasonable accommodation that will enable an individual with a disability to have an equal opportunity in every aspect of employment, unless a particular accommodation would impose an undue hardship.
- > An employer may not use an employment practice or policy that screens out or tends to screen out an individual with a disability or a class of individuals with disabilities, unless the practice or policy is job related and consistent with business necessity and the individual cannot be accommodated without undue hardship.
- > An employer may not limit, segregate, or classify an individual with a disability in any way that negatively affects the individual in terms of job opportunity and advancement.
- > An individual with a disability should not because of a disability be treated differently than a similarly situated individual in any aspect of employment, except when a reasonable accommodation is needed to provide an equal employment opportunity or when another Federal law or regulation requires different treatment.

There are a number of possible reasonable accommodations that an employer may have to provide in connection with modifications to the work environment or adjustments in how and when a job is performed. These include:

- > making existing facilities accessible;
- > job restructuring;
- > part-time or modified work schedules;
- > acquiring or modifying equipment;
- > changing tests, training materials, or policies;
- > providing qualified readers or interpreters; and
- > reassignment to a vacant position.

One circumstance that may prevent an employer from hiring or promoting an individual with a disability is when that individual poses a direct threat to the health and safety of that individual or others. However, an employer must meet very specific and stringent requirements under the ADA to establish such a direct threat exists.