

Hiring and the ADA

by Quenda Behler Story

One of the goals of the Americans With Disabilities Act (ADA) is to help handicapped people who are able to work find mainstream employment. Unfortunately, the ADA is so new that courts are still defining how it applies to various situations. One consequence is that even employers who are conforming correctly may have to pay some huge legal bills to find out that they were right all along.

The ADA applies to every employer with 15 or more employees. But don't assume that if you have less than 15 employees you're off the hook, because many states also have regulations regarding hiring the handicapped.

Broadly stated, the ADA prohibits you from not hiring someone who has a mental or physical handicap if it's possible to reasonably structure the job or the working conditions in a way that allows that person to do the work. The ADA also protects existing employees who become handicapped, as well as those who are denied promotion, training opportunities, or other employment benefits or who are terminated solely because of their handicap.

The ADA does not insist that you must hire a handicapped person no matter what. In many cases, you may decide not to hire a handicapped person for reasons that have nothing to do with his or her handicap — for instance, the applicant may not be able to work the hours required by the job. The situation is more complicated, however, when it is the applicant's handicap that prevents that person from doing the job. If you can create an "accommodation" that will enable the handicapped applicant to do the job, then you cannot refuse employment because of the handicap.

Who Is Handicapped?

Under the ADA, the word "handicapped" means that a person is limited in one or more major life activities, some of which may not be obvious. For example, alcoholism is a medically recognized disease that may fall under the ADA. While you would not be required to hire someone with a current drinking problem, an applicant who is "on the wagon" but who has had a problem with alcoholism in the past is handicapped within the meaning of the ADA. Also, if someone develops a drinking problem while under your employ, that person may be considered to be handicapped.

Reasonable Accommodation?

The ADA protects a handicapped person who could do the job if a "reasonable accommodation" is made. Not every person with a handicap falls under ADA protection: If there is no reasonable way a handicapped person can do the job, then that's the end of it. But whenever the word "reasonable" is used in legislation, it's impossible to say what it means until enough court decisions have accumulated to define the term's meaning. Since the ADA is a relatively new piece of legislation, the necessary rulings do not yet exist.


The federal regulations, however, say that it may be reasonable to require an employer to provide special training, special testing, special equipment, or a modified work schedule, or some combination of these measures, if pursuing the measures would not be an unreasonable burden on the employer. The regs also say that a measure is not reasonable if it requires that an essential element of the job be overlooked.

Examples of reasonable accommodations include clearing a path to a desk to allow wheelchair access, or allowing a

person with a chronic condition to use vacation time for medical visits.

Overlap With Workers Comp

The ADA also includes protections for existing employees. For example, if one of your employees becomes handicapped and you have a vacant position that he or she could fill, you may be obligated to offer the position as part of a reasonable accommodation. This can create problems, however, if you typically offer light-duty positions to employees who are receiving workers comp benefits. More than one employer has put an injured employee into a light-duty position that was intended to be available for temporarily disabled employees only to find that when the employee was determined to be permanently disabled, he or she had an ADA claim to that position. Like the term "reasonable," the definition of a "permanent" disability is still unclear as well. The ADA says that the disability must be permanent, but a permanent disability need not be one that lasts forever. At least one court has identified a less-than-lifetime disability as meeting the criteria of "permanent" disability.

Until the courts decide on more questions like these, proceed cautiously when dealing with a disabled job applicant or employee. Don't automatically assume that a disabled person cannot do the job; instead, see if it's possible to work something out. Remember, too, that not all disabilities are readily apparent. And when you're dealing with injured employees, keep in mind that they may also have ADA rights. 

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