



**Village of Arlington Heights  
Commission for Citizens with Disabilities**

**Business Information Packet**

**Disability Employment  
Campaign**

**February, 2014**

## Definition

Title I of the Americans with Disabilities Act (ADA) protects qualified individuals with disabilities from employment discrimination. Under the ADA, a person has a disability if he has a physical or mental impairment that substantially limits a major life activity. The ADA also protects individuals who have a record of a substantially limiting impairment, and people who are regarded as having a substantially limiting impairment.

To be protected under the ADA, an individual must have, have a record of, or be regarded as having a substantial, as opposed to a minor, impairment. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing performing manual tasks, walking, caring for oneself, learning or working.

**An individual with a disability must also be qualified to perform the essential functions of the job with or without reasonable accommodation, in order to be protected by the ADA. This means that the applicant or employee must:**

- **satisfy your job requirements for educational background, employment experience, skills, licenses, and any other qualification standards that are job related; and**
- **be able to perform those tasks that are essential to the job, with or without reasonable accommodation.**

**The ADA does not interfere with your right to hire the best qualified applicant. Nor does the ADA impose any affirmative action obligations. The ADA simply prohibits you from discriminating against a qualified applicant or employee because of her disability.**

A person can show that he or she has a disability in one of three ways:

- A person may be disabled if he or she has a physical or mental condition that substantially limits a major life activity (such as walking, talking, seeing, hearing, or learning).
- A person may be disabled if he or she has a history of a disability (such as cancer that is in remission).
- A person may be disabled if he is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if he does not have such an impairment)

Source: Equal Employment Opportunity Commission

### **Reasonable Accommodation**

The law requires an employer to provide reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause significant difficulty or expense for the employer.

A reasonable accommodation is any change in the work environment (or in the way things are usually done) to help a person with a disability apply for a job, perform the duties of a job, or enjoy the benefits and privileges of employment.

Reasonable accommodation might include, for example, making the workplace accessible for wheelchair users or providing a reader or interpreter for someone who is blind or hearing impaired.

Source: Equal Employment Opportunity Commission

## Requesting Reasonable Accommodation

### 1. How must an individual request a reasonable accommodation?

The individual must let the employer know that s/he needs an adjustment or change at work for a reason related to a medical condition. An individual may use "plain English" and need not mention the ADA or use the phrase "reasonable accommodation." Requests for reasonable accommodation do not need to be in writing, though an employer may choose to write a memorandum or letter confirming the request.

### 2. What must an employer do after receiving a request for reasonable accommodation?

When the **disability and/or the need for accommodation is not obvious**, the employer may ask the individual for **reasonable documentation** about his/her disability and functional limitations.

The employer and the individual with a disability should **engage in an informal process** to clarify what the individual needs and identify the appropriate reasonable accommodation. The employer may ask the individual questions that will enable it to make an informed decision about the request. This includes asking what type of reasonable accommodation is needed.

### 3. Must an employer provide the reasonable accommodation that the individual wants?

**The employer may choose among reasonable accommodations as long as the chosen accommodation is effective (i.e., it removes the workplace barrier at issue).** The employer may offer alternative suggestions for reasonable accommodations to remove the workplace barrier in question. If there are two possible reasonable accommodations, and one costs more or is more difficult to provide, the employer may choose the one that is less expensive or easier to provide, as long as it is effective.

### 4. How quickly must an employer respond to a request for reasonable accommodation?

An employer should respond promptly to a request for reasonable accommodation. If the employer and the individual with a disability need to engage in an interactive process, this too should proceed as quickly as possible. Similarly, the employer should act promptly to provide the reasonable accommodation.

## Types of Reasonable Accommodations

There are many different kinds of reasonable accommodations. Below is information on some of them.

5. [Is restructuring a job a reasonable accommodation?](#)  
Yes. This includes: (1) shifting responsibility to other employees for minor job tasks that an employee is unable to perform because of a disability; and (2) altering when and/or how a job task is performed. If an employee is unable to perform a minor job task because of a disability, an employer can require the employee to perform a different minor job function in its place.
6. [Is providing leave necessitated by an employee's disability a form of reasonable accommodation?](#)  
Yes, absent undue hardship, providing **unpaid leave** is a form of reasonable accommodation. However, **an employer does not have to provide more paid leave** than it provides to other employees.
7. [Is a modified or part-time schedule a reasonable accommodation?](#)  
Yes, absent undue hardship. A modified schedule may involve adjusting arrival or departure times, providing periodic breaks, altering when certain job tasks are performed, allowing an employee to use accrued paid leave, or providing additional unpaid leave.
8. [Is it a reasonable accommodation to modify a workplace policy because of an employee's disability?](#)  
Yes. For example, granting an employee time off from work or an adjusted work schedule as a reasonable accommodation may involve modifying leave or attendance procedures or policies. However, reasonable accommodation only requires that the employer modify the policy for an employee with a disability. The employer may continue to apply the policy to all other employees.
9. Does an employer have to **reassign to a vacant position** an employee who can no longer perform his/her job because of a disability?  
Yes, unless the employer can show that it would be an undue hardship.
10. [Does a reasonable accommodation include changing a person's supervisor?](#)  
No. The ADA may, however, require that supervisory methods, such as the method of communicating assignments, be altered as a form of reasonable accommodation.

## Other Reasonable Accommodation Issues

11. Are there certain things that **are not considered reasonable accommodations and are therefore not required?**
  - [An employer does not have to eliminate a primary job responsibility.](#)

- An employer is **not required to lower production standards** that are applied to all employees, though it may have to provide reasonable accommodation to enable an employee with a disability to meet them.
- An employer does not have to provide *personal use items*, such as a prosthetic limb, a wheelchair, eyeglasses, hearing aids, or similar devices.
- An employer never has to excuse a violation of a uniformly applied conduct rule that is job-related and consistent with business necessity. This means, for example, that an employer never has to tolerate or excuse violence, threats of violence, stealing, or destruction of property. An employer may discipline an employee with a disability for engaging in such misconduct if it would impose the same discipline on an employee without a disability.

12. May an employer tell other employees that someone is receiving a reasonable accommodation?

No, because this usually amounts to a disclosure that the individual has a disability. The ADA specifically prohibits the disclosure of medical information except in certain limited situations, which do not include disclosure to coworkers.

An employer may certainly respond to a question from an employee about why a coworker is receiving what is perceived as "different" or "special" treatment by emphasizing its policy of assisting any employee who encounters difficulties in the workplace. The employer also may find it helpful to point out that many of the workplace issues encountered by employees are personal, and that, in these circumstances, it is the employer's policy to respect employee privacy. An employer may be able to make this point effectively by reassuring the employee asking the question that his/her privacy would similarly be respected if s/he found it necessary to ask the employer for some kind of workplace change for personal reasons.

13. May an employer ask whether a reasonable accommodation is needed when an employee with a disability has not asked for one?

If an employer knows that an employee has a disability, it may ask whether s/he needs a reasonable accommodation when it reasonably believes that the employee may need an accommodation. An employer also may ask an employee with a disability who is having performance or conduct problems if s/he needs reasonable accommodation.

### **Undue Hardship: Limits on Providing Reasonable Accommodations**

An employer never has to provide any reasonable accommodation that causes **undue hardship**, meaning significant difficulty or expense. Undue hardship refers not only to financial difficulty, but to reasonable accommodations that are unduly extensive or disruptive, or those that would fundamentally alter the nature or operation of the business.

Every request for reasonable accommodation should be evaluated separately to determine if it would impose an undue hardship, taking into account:

- the nature and cost of the accommodation needed;
- the overall financial resources of the business; the number of persons employed by the business; and the effect on expenses and resources of the business;

- the impact of the accommodation on the business.

If cost is an issue, an employer should determine whether funding is available from an outside source, such as a state rehabilitation agency, to pay for all or part of the accommodation. In addition, the employer should determine whether it is eligible for certain tax credits or deductions to offset the cost of the accommodation. Also, to the extent that a portion of the cost of an accommodation causes undue hardship, the employer should ask the individual with a disability if s/he will pay the difference.

An employer cannot claim undue hardship based on employees' (or customers') fears or prejudices, or because providing a reasonable accommodation might have a negative impact on employee morale. Employers, however, may claim undue hardship where a reasonable accommodation would be **unduly disruptive to other employees' ability to work**.

14. Must an employer modify the work hours of an employee with a disability if doing so would prevent other employees from performing their jobs?

No. If modifying one employee's work hours (or granting leave) would prevent other employees from doing their jobs, then the significant disruption to the operations of the employer constitutes an undue hardship.

15. Can an employer deny a request for leave when an employee cannot provide a fixed date of return?

In some situations, an employee may be able to provide only an **approximate date of return** because treatment and recuperation do not always permit exact timetables. If an employer is able to show that the lack of a fixed return date imposes an undue hardship, then it can deny the leave. Undue hardship could result if the employer can neither plan for the employee's return nor permanently fill the position. In other situations, an employer may be able to be flexible.

Source: Equal Employment Opportunity Commission

## Disability Discrimination

Disability discrimination occurs when an employer or other entity covered by the Americans with Disabilities Act, as amended, or the Rehabilitation Act, as amended, treats a qualified individual with a disability who is an employee or applicant unfavorably because she has a disability.

Disability discrimination also occurs when a covered employer or other entity treats an applicant or employee less favorably because she has a history of a disability (such as cancer that is controlled or in remission) or because she is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if she does not have such an impairment).

The law also protects people from discrimination based on their relationship with a person with a disability (even if they do not themselves have a disability). For example, it is illegal to discriminate against an employee because her husband has a disability.

## **Disability Discrimination & Work Situations**

The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

## **Disability Discrimination & Harassment**

It is illegal to harass an applicant or employee because he has a disability, had a disability in the past, or is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if he does not have such an impairment).

Source: Equal Employment Opportunity Commission

## **Benefits of Hiring People with Disabilities**

### **Marketing**

Customers with disabilities and their families, friends and associates represent a trillion dollar market segment. They, like other market segments, purchase products and services from companies that best meet their needs. A large number of Americans also say they prefer to patronize businesses that hire people with disabilities. Another of the benefits of employing people with disabilities is increasing your opportunity to gain a lasting customer base.

### **CAPITALIZE ON NEW MARKET OPPORTUNITIES**

- Mirror the market to attract a wider customer base.
- Increase your market share.

### **DEVELOP NEW PRODUCTS AND SERVICES**

- Respond to marketplace needs.
- Lead your market.
- Increase profitability.

### **Innovation**

Innovation is key to your business' success. Employees with disabilities bring unique experiences and understanding that transform a workplace and enhance products and services. As part of your team, employees with disabilities help build your business and can lead your company into the future.

### **WORKPLACE INNOVATION**

- Create more efficient and effective business processes.
- Develop and implement management strategies to attract and retain qualified talent.
- Use technology in new ways to increase productivity.

### **PRODUCT AND SERVICE INNOVATION**

- Stimulate new product and service development through disability-inclusive diverse teams.
- Customize products and services to increase profitability.

### **DEFINE THE FUTURE**

- Foster the development of next-generation products and services.

Source: U.S. Department of Labor, Office of Disability Employment Policy

### **Business Image**

Image matters. Businesses that promote inclusiveness enjoy a much larger applicant pool to draw from—including younger members of the workforce who prefer more diverse, innovative environments.

Source: Lengnick-Hall, Mark L.

### **Diverse Experiences**

Employees with disabilities bring unique experiences and perspectives with them to the workplace. Smart businesses have been known to tap into this special know-how to customize products and services, increase profitability and foster innovation.

Source: Employment Assistance and Resource Network

### **More Customers**

The disability community is the third largest market segment, ahead of African Americans, Hispanics and teens. Nearly 30% of US families have a family member with a disability. That's a lot of families—and potential customers—whose needs and interests you'll be accommodating.

Source: U.S. Census Bureau. U.S. Department of Commerce, Economics and Statistics Administration

### **Employee Retention**

Loyalty pays. Replacing an employee can cost over 150% of that employee's annual salary.

Ouch. Here's a tip: as a group, people with disabilities have higher than average retention rates.

Source: Bliss, William G., United Nations

### **No Increase in Health Care Costs**

What about health care costs, you ask? Won't they go up? Not likely. Health, life and disability costs rarely rise in response to hiring people with disabilities.

Source: Lengnick-Hall, Mark L.

### **Productive Employees**

Research shows that employees with disabilities are as on-time, productive and capable as any other type of employee. And the diversity they bring to the workplace spurs innovation and inspires customer loyalty.

Source: Virginia Commonwealth University

## **Tax Incentives for Hiring People with Disabilities**

### **The Disabled Access Credit**

The Disabled Tax Credit (DAC) is available to an "eligible small business" and is equal to 50% of the "eligible access expenditures" that do exceed \$250, but do not exceed \$10,250, for a maximum credit of \$5,000 a year. It is included as part of the General Business Credit and is subject to the rules of current law that limit the amount of General Business Credit that can be used for any taxable year. DAC can be carried forward up to 15 years and back for three years, but not back to a taxable year prior to the date of enactment (1990).

An "eligible small business" is "any person" whose gross receipts did not exceed \$1,000,000 for the preceding taxable year, or who employed not more than 30 full-time employees during the preceding year. A full-time employee is defined as one who is employed at least 30 hours per week for 20 or more calendar weeks in the taxable year. "Eligible access expenditures" are defined as "amounts paid or incurred by an eligible small business for the purpose of enabling small businesses to comply with applicable requirements" of ADA.

Included are expenditures for:

1. Removing architectural, communication, physical or transportation barriers that prevent a business from being accessible to, or usable by, individuals with disabilities;
2. Providing qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;
3. Providing qualified readers, taped texts, and other effective methods of making visually delivered materials available to individuals with visual impairments;
4. Acquiring or modifying equipment or devices for individuals with disabilities; and
5. Providing other similar services, modifications, materials, or equipment.

All expenditures must be "reasonable" and must meet the standards promulgated by the Internal Revenue Service (IRS). Expenses incurred for new construction are not eligible. For the purposes of DAC, disability is defined exactly as in the ADA.

An eligible small business under Section 44 may deduct the difference between the disabled access credit claimed and the disabled access expenditures incurred, up to \$15,000, under Section 190 provided such expenditures are eligible for the Section 190 deduction.

For additional information on the Disabled Access Credit, contact a local IRS office:  
<http://www.irs.gov/businesses> or call (800)829-4933 (V) (800)829-4059 (TTY).

### **Architectural and Transportation Barrier Removal Deduction**

Under Section 190, businesses may choose to deduct up to \$15,000 for making a facility or public transportation vehicle, owned or leased for use in the business, more accessible to and

usable by individuals with disabilities. A facility is all or any part of a building, structure, equipment, road, walk, parking lot, or similar property. A public transportation vehicle is a vehicle such as a bus or railroad car that provides transportation service to the public or to customers. The deduction may not be used for expenses incurred for new construction, for a complete renovation of a facility or public transportation vehicle, or for the normal replacement of depreciable property. In the case of a partnership, the \$15,000 limit applies to the partnership and to each partner. Amounts in excess of the \$15,000 maximum annual deduction can be added to the basis of the property subject to depreciation. In order for expenses to be deductible, accessibility standards established under the Section 190 regulations must be met.

For additional information on Section 190, contact a local IRS office:  
<http://www.irs.gov/businesses> or call (800) 829-4933 (V) (800) 829-4059 (TTY).

### **Vocational Rehabilitation (VR) Program**

The VR Program has a 73-year history of assisting people with disabilities to prepare for and enter the competitive work force. VR is a federal-state program. The Rehabilitation Act of 1973, as amended, authorizes annual funding to state VR agencies so they can achieve the goals of the program.

An on-the-job training program can be set up by VR with an employer for an individual client of VR. VR can share in the payment of the wages for the employee for a limited time on a negotiated schedule. The position must be permanent full time and pay above minimum wage.

VR services vary from state to state, but in general VR can act as a recruiter and consultant for employers, conduct job analyses and provide rehabilitation engineering services for architectural barrier removal and worksite modifications, and conduct awareness training for a company's management and supervisory personnel. For more information, contact your local state vocational rehabilitation agency.

### **Work Opportunity Tax Credit Program**

The WOTC program is a federal tax credit that encourages employers to hire nine targeted groups of job seekers. It reduces employers' federal income tax liability as much as \$2,400 for each new adult hire; \$1,200 for each new summer youth hire; \$4,800 for each new disabled veteran hire; and \$9,000 for each new long-term Temporary Assistance for Needy Families (TANF) recipient hired over a two-year period. The changes created by P.L. 109-432 apply retroactively to individuals who began to work for an employer after December 31, 2005. The changes created by P.L. 110-28 apply retroactively to individuals who began work for an employer after May 25, 2007 and before September 1, 2011. A specific update for veterans

includes an expansion of the category of “certain disabled veterans.” Furthermore, unemployed veterans who meet certain criteria are also part of the targeted groups of the WOTC program (15 SEC. 1221). This applies to veterans hired after December 31, 2008. For additional information, see <http://www.doleta.gov/business/incentives/opptax/> , <http://www.irs.gov/formspubs/article/0,,id=177948,00.html> and the following section in this document on the Vow to Hire Heroes Act of 2011.

Individuals with disabilities can contact their local state-federal VR office to receive a voucher. This is presented to the employer who completes a small portion and then mails it to the nearest local Employment Service Office. That agency will send back to the employer a certificate that validates the tax credit and which the employer uses when filing federal tax forms. Statements from rehabilitation services are allowable, as is mail in documentation.

### **Vow to Hire Heroes Act of 2011**

On November 21, 2011, the WOTC was modified to expand the definition of the veterans’ target group covered. To qualify, the eligible unemployed veteran must begin work on or after November 22, 2011, and before January 1, 2013. To qualify, a veteran must be in *one* of the following categories:

- Have a member of the family receiving Supplemental Nutrition Assistance Program (SNAP) (food stamps) assistance for at least a 3-month period during the 15-month period ending on the hiring date.
- Have been unemployed for a total of at least 4 weeks (does not need to be consecutive), but less than 6 months in the 1-year period ending on the hiring date.
- Be entitled to compensation for a service-connected disability and hired not more than 1 year after being discharged or released from active duty in the U.S. Armed Forces.
- Be entitled to compensation for a service-connected disability and unemployed for a total of at least 6 months (does not need to be consecutive) in the 1-year period ending on the hiring date.

For more information, see <http://www.doleta.gov/business/Incentives/opptax/>

Updated 03/09/2012.

This information above was developed by the Job Accommodation Network, funded by a contract agreement from the U.S. Department of Labor, Office of Disability Employment Policy (DOL079RP20426). The opinions expressed herein do not necessarily reflect the position or policy of the U.S. Department of Labor. Nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Department of Labor.