

Working with Persons with Disabilities

Title I of The Americans with Disabilities Act

A Guide for State Supervisors and Managers

**Prepared by the Department of Human Rights, Division of Persons
with Disabilities, the Department for the Blind and the Department of
Personnel**

2003

Hiring, Training, Evaluating, and Terminating Employees with Disabilities

Benefits of hiring persons with disabilities:

Myths and Facts

More myths and facts

It is the law

The truth about ADA law

A win-win for both employer and employee

The top 10 reasons to employ persons with disabilities

 **her reasons to employ persons with disabilities...**

(Note to reader: click on areas highlighted in yellow for additional information.)

What are a supervisor's responsibilities when it comes to interviewing, hiring, and retaining persons with disabilities?

First and foremost, do not discriminate against persons with disabilities. What this means is that you are required to provide the same level of employment consideration and supervision for a disabled employee that you would for an able-bodied employee. No more – no less.

State of Iowa management personnel must be proactive with regard to Title I of the Americans with Disabilities Act, and managers and supervisory personnel should have an operational knowledge of the significant aspects of The Americans with Disabilities Act. Concepts and terminology to be knowledgeable of include:

 **Qualified individual with a disability**

 **Essential functions of the job**

 **Reasonable accommodation**
[More about reasonable accommodations](#)

 **Direct threat to the health or safety of self**

 **Direct threat to the health or safety of others**


 **Must offer [medical inquiries](#) and examinations**

 **Must offer and examinations comments continued**

[Case by case basis](#)

 **Negotiated Accommodations**

Other items you need to know concerning Title I of the ADA:

- You cannot discriminate against a qualified person with a disability in any aspect of employment practice.
- You must provide a  **reasonable accommodation** to enable the person with a disability to apply for employment and carry out the essential functions of the job as well as participate in the employment activities and practices of your organization.
- You must consider a reasonable accommodation when it is requested and is appropriate to the situation. This applies to both applicants and employees and should be negotiated with the applicant/employee.
- You should choose the most qualified person for a job.



During the hiring process:

You may have job qualifications that require


- Work experience
- Specific education
- Identified skills
- Certain health or safety standards
- Possession of specific licenses or certifications

- Bona fide physical and mental requirements
- That an individual not pose a threat to the health or safety of others or to the health and safety of themselves

Be sure that your requirements and qualifications do not screen out or tend to screen out an individual with a disability solely on the basis of the disability. So, they need to be:

- -related and consistent with business necessity
-  and more continued on this subject
[More information about job-related issues.](#)
[Guidance on job related and business necessity issues.](#)
- Real and actual measures for the specific job
- They must relate to essential functions of the job

Recruitment of Persons with Disabilities




- You can recruit employees for any job as long as recruitment does not screen out or tend to screen out persons with disabilities.
- You are not required to undertake special activities to recruit persons with disabilities.
- You must provide persons with disabilities equal opportunity to participate in the recruitment process.
-  have the responsibility to ensure that recruitment information is accessible to persons with disabilities.

During the application process

- You can ask about specific experience, skills, and job requirements.
- If a person with a disability requests a reasonable accommodation to apply for a job, you can ask for specific, relevant medical documentation,
- You must not make pre-employment medical inquiries on application forms or require pre-employment information during the selection process.
- You must make applications accessible to persons with disabilities.
- You must provide reasonable accommodation to enable a person with a disability to apply for a job.

During the interviewing process

- You may ask if a person can perform the essential functions of the job with or without a reasonable accommodation.

- You may ask how a person will perform essential job functions.
- You can ask a person to describe or demonstrate how they will perform essential job functions.
- You may ask about specific experience.
- You may ask about other job requirements.
- You may identify attendance needs and ask if an applicant can meet attendance requirements.
-  You have the right to request specific, relevant medical documentation if a person indicates a need for a reasonable accommodation for a job interview.
-  You can ask about marginal job functions.
- You must focus on the ability of the applicant to do the job and not on the disability of the applicant.
-  You must make job application and interview facilities accessible to persons with disabilities.

Basic Guidelines During the Interview

- ***Ask only about ability to do the job.***
- ***You can discuss essential and marginal job functions.***
- ***You cannot ask about the disability.***
- ***You can ask how a person would perform essential job functions.***
- ***You can ask if the applicant can meet attendance expectations.***


Online Resource - Job Accommodations Network, Interview Accommodations - [Link to the Job Accommodation Network](#)
[More resources on interviewing accommodations.](#)

ACCOMMODATION SCENARIOS FOR THE INTERVIEWING PROCESS

- An individual with bilateral carpal tunnel syndrome interviewed for a position with a local hospital. A comprehension test, which was designed to be taken via computer keyboard, was required for all applicants for the position. Because of limitations in typing, the individual could not effectively complete the computer-designed test. As an accommodation, the employer provided the test orally.
- An individual with mild mental retardation was scheduled to interview for a mail room position. The individual was concerned with interviewing successfully and completing the necessary job training if offered the position. A local vocational rehabilitation program provided a job coach to accompany the individual on the job interview. After successfully interviewing for the position, the employer accommodated the individual by allowing the job coach to assist the individual on-site during the initial job training phase.

- An individual who was hard of hearing interviewed for a computer technician position. The individual benefited from amplification and wore a receiver designed to work with an assistive listening device (ALD). The interviewers accommodated the individual throughout the interview process by talking into a microphone designed to work with the ALD.
- An individual with a learning disability had difficulty concentrating on reading passages during testing situations. As an accommodation, the individual was allowed extra time and a private office to take an employment examination.
- An individual who uses a wheelchair applied for a management position. The human resources office was on the second floor of a building with no elevator. Because the office was inaccessible, the interviewers temporarily relocated to the first floor to interview the employee. The employer hired the individual and to make the office accessible, a chair lift and other building modifications were made.
- An individual with macular degeneration (vision impairment) applied for a position as a receptionist. The interviewer enlarged the application forms and increased their contrast with a photocopier. To complete the application forms, the individual was given a hand magnifier.

How to deal appropriately with medical inquiries and examinations:

- You may require physical agility testing, as long as it is job-related and requested of all applicants in that job classification.
- You may require a post-offer medical exam, as long as this is applied uniformly to all employees and the exam is job-related and consistent with business necessity.
- You may offer a job, subject to the results of a post-offer medical exam.
-  You may require drug testing.
- You may refuse to assign or hire an individual with specific communicable diseases in a food handling operation.
- You may refuse to hire a person with a disability that poses a direct threat to the health or safety of others or themselves.

What is a direct threat to health and safety?

- **It is a specific, significant risk of substantial harm.**
- **It is identified by duration, nature and severity of risk and likelihood of harm.**
- **It is a risk documented by medical and factual evidence.**

- **It is a risk not likely to happen.**
 - **It is a risk not eliminated or reduced by reasonable accommodations.**
- You may require periodic medical exams to determine if employees meet standards required by law. Exams must be job-related and consistent with business necessity.
 - You may conduct voluntary medical exams as part of an employee health plan.
 - You can require a current employee to submit to a medical exam, as long as the exam is job-related and necessary for business.
 - You may make medical inquiries regarding workers' compensation history, after making a conditional job offer.
 - You may refuse to hire or may fire a person who knowingly provides a false answer to a lawful post-offer inquiry about his/her condition or workers' compensation history.
 - You cannot ask an applicant about the disability, the nature or severity of a disability, or the duration of the disability or illness.
 - You cannot require a medical exam before making a job offer.
 - You must ensure that medical exams are job-related and necessary for business.
 - You cannot retract a job offer based on the results of the medical exam, unless the results indicate the individual cannot do the job (with or without reasonable accommodation).
 - You must show that a reasonable accommodation was not available, if you refuse to hire a person with a disability as the result of a post offer medical exam.
 - You cannot refuse to hire or retain a person with a disability on the basis of others' or your own stereotypes or fears.
 - You cannot refuse to hire or retain a person on the basis of something that may happen in the distant future, including an increase in workers' compensation costs.
 - You must keep medical information in a confidential file separate from the employee's personnel file.
 - You cannot refuse to hire a person with a disability on the basis of previous workers' compensation claims.
 - You can request medical documentation for reasonable accommodation. The request for information should be specific and relevant to the need for an accommodation. [Link to the PDF formatted version of the IDOP reasonable accommodation form.](#)

Online Resource - Job Accommodations Network, Pre-employment Medical Inquiries - [Link to the Job Accommodation Network](#)

Good Things to Know about the ADA & Workers' Compensation:

- ***Employers may not inquire into an applicant's Workers' Compensation history.***
- ***Employers can require a medical exam as long as the same information is required of all applicants in that category and is not used to discriminate.***

- ***An employer cannot reject an applicant after learning of a Workers' Compensation history based solely on that information.***


Checking references

Again, references are handled the same as any other applicant, meaning you need to confine your questions to:

- The job functions and tasks performed
- The quality and quantity of work
- Time records and other job related issues


Do not ask about illness, sick leave, medical issues or disability. You cannot inquire about workers' compensation claims.

Some things to know about testing job applicants

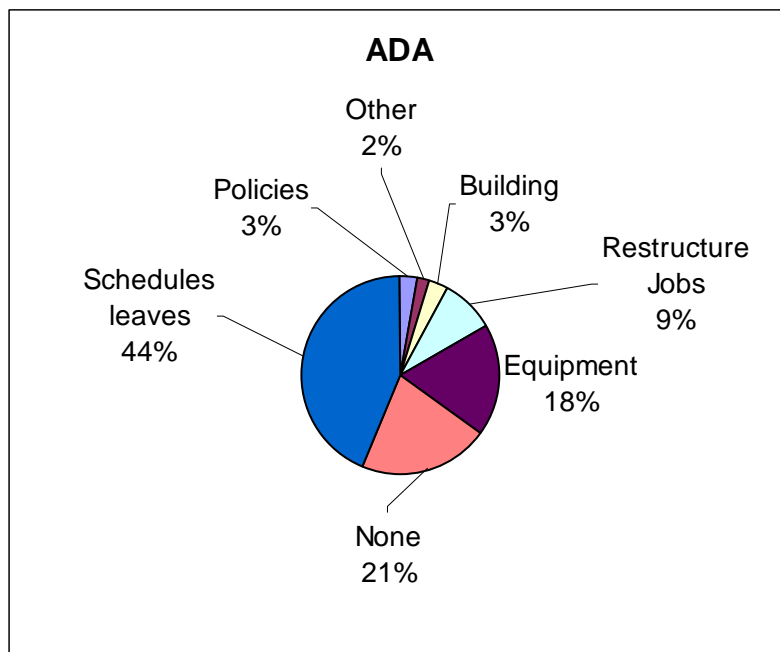
- You do not have to offer a reasonable accommodation in testing, unless requested by a person with a disability. If a reasonable accommodation is requested, you must provide an accommodation that is effective for your potential employee.
- All testing must be accessible to persons with disabilities.
- ur testing must reflect skills and aptitudes rather than impaired skills.
- You must ensure that testing which screens out or tends to screen out persons with disabilities is job-related and consistent with business necessity.


Time to hire, so what's next?

Here are some things to think about....

- The person most qualified should get the job.
- You do not have to give preference to a person with a disability over a more qualified individual.
- If a person with a disability cannot perform the essential functions of the job (with or without accommodation), that person is not qualified for the job.
- You have to consider a person with a disability when that person is qualified for the job.
- You cannot use cost of a reasonable accommodation as a factor in the hiring decision or in the level of starting wage. Due to Federal Law, ites are unable to use undue hardship as a factor to deny a reasonable accommodation.
 - In an Hrhero.com poll of 525 HR professionals, 44 percent modified work schedules or gave leaves of absence; 21 percent made no accommodations; 18 percent acquired or modified equipment; 9 percent restructured jobs; three percent made other accommodations.

See chart below: Iowa HRHero Extra, February, 2003.




- You cannot base a hiring decision on the elimination of a  marginal function of the job to accommodate a person with a disability.
- You cannot use another agency to avoid your ADA hiring responsibilities.
Example: See http://news.findlaw.com/ap_stories/f/1310/4-9-2003/20030409041500_02.html

Great tips for supervisors and hiring authorities:

- Ask the same questions of everyone.
- Concentrate on ability, not disability.
- Make hiring decisions based on the applicant's ability to do the essential functions of the job.
- Be open and flexible.
- Ask yourself if you are making a decision based on the disability.
- Be honest.
- Do not discriminate.

Reasonable accommodations

- Reasonable accommodations cannot be denied based solely on financial resources of an individual, division, bureau, or department.

- You do not have to provide an accommodation to a person with a disability, if the person with a disability does not ask for one.
- You do not have to eliminate essential functions of the job to accommodate a person with a disability.
- You can ask for specific and relevant medical proof to justify the need for an accommodation for a person with a disability.
- You do not have to lower production standards as a reasonable accommodation.
- You can choose any accommodation, as long as it is effective. You do not have to choose the first or most expensive accommodation.
- You do not have to provide an accommodation to an individual with a disability who is not otherwise qualified.
-  You do not have to supply personal use items (such as eyeglasses or wheelchairs) as an accommodation. You do not have to supply paper towels, toilet paper or hygiene products as an accommodation as well.
- You do not have to provide an accommodation, if no disability is known.
- You must consider a reasonable accommodation for a person with a disability when such an accommodation enables the person to carry out the essential functions of the job.

“The duty to provide reasonable accommodation is a fundamental statutory requirement because of the nature of discrimination faced by individuals with disabilities. Although many individuals with disabilities can apply for and perform jobs without any reasonable accommodations, there are workplace barriers that keep others from performing jobs which they could do with some form of accommodation. These barriers may be physical obstacles (such as inaccessible facilities or equipment), or they may be procedures or rules (such as rules concerning when work is performed, when breaks are taken, or how essential or marginal functions are performed). Reasonable accommodation removes workplace barriers for individuals with disabilities.


Reasonable accommodation is available to qualified applicants and employees with disabilities.⁽⁹⁾ Reasonable accommodations must be provided to qualified employees regardless of whether they work part-time or full-time, or are considered "probationary." Generally, the individual with a disability must inform the employer that an accommodation is needed.⁽¹⁰⁾
<http://www.eeoc.gov/docs/accommodation.html#intro>.

More, from the EEOC, on why you must consider reasonable accommodations.

- You must provide reasonable accommodation when requested to enable a person with a disability to participate in the application and interview processes.
- You must provide a reasonable accommodation to enable a person with a disability to participate in employer-sponsored activities.
- You may not force an individual with a disability to accept an accommodation, if that person did not request or need an accommodation.

Online Resource - Job Accommodations Network, Reasonable Accommodations
EEOC website

Good examples of reasonable accommodations:


- Making facilities accessible
- Making written or oral communications accessible
- Changing how or when an essential function is done
- Eliminating marginal job functions
- Restructuring a job
-  assigning an individual to a vacant position
[Read more....](#)
- Providing flexible leave policies
- Modifying work schedules
- Using assistive technology
- Modifying exams, policies, training materials
- Providing qualified readers or interpreters

How do you determine reasonable accommodations?

- It is extremely important that the employer and employee work together to determine an effective accommodation.
- The employee should provide information that is helpful to the employer in determining the type of accommodation that will allow the employee to do the job effectively.
- The employee should be aware that the request for the accommodation allows the employer to ask further questions about the disability.
- All specific, relevant medical information that is obtained to determine the appropriate accommodation must be filed in a separate file from the personnel files.

What do you do if an Employee Requests a Reasonable Accommodation?

- If an employee requests a reasonable accommodation refer to Section 4.66 [sub-section D](#) of the online *Managers and Supervisors Manual*.
- Provide the employee with form [\(CFN 552-0574\)](#) to make the formal request.

Online Resource – Job Accommodations Network,  **af or Hard of Hearing**
Learn more about persons who are deaf and hard of hearing.

Online Resource – Job Accommodations Network, [Service Animals](#)
Learn more about service animals in the workplace.

Job Duties and Essential Job Functions

- Supervisors are not required to establish essential job functions alone. Agencies such as IDOP, DPWD, DSCI, Department for the Blind, and Vocational Rehabilitation Services, are all available to make this task easier towards compliance and equity for both supervisors and employees with disabilities.
- The supervisor and IDOP Personnel Officer can decide together what the essential and marginal functions of the job will be.
- You do not have to eliminate or reassign essential functions of the job to accommodate a person with a disability.
- You do not have to change essential functions of the job.
- You have the responsibility to provide a reasonable accommodation so a person with a disability can apply for and do the essential functions of the job.
- You have the responsibility to eliminate or reassign marginal functions as a reasonable accommodation to a person with a disability.
- It does not include marginal functions or duties performed.
- There are often many ways to produce the same end result.

[Read more facts about how the enforcement agency determines essential job functions.](#)

[A great website to learn more about essential job functions.](#)

[An employee-friendly essential job functions worksheet.](#)

How do you determine essential job functions?

- **Is the function actually being performed?**
- **Would removing the function fundamentally alter the nature of the job?**
- **Does the job exist to perform this function?**
- **How many employees are available to do this function?**
- **Can the function be redistributed to other positions without a problem?**
- **Is the function highly specialized?**
- **What is the amount of time spent doing this function?**
- **What are the terms of collective bargaining?**
- **Have former employees in this job performed this function?**
- **What is the job description?**

- **What are the consequences of an employee in this position not performing this function?**


Definition of Marginal Job Functions:

- **As an analysis of the essential functions of the job is conducted, an employer will also identify functions that are performed but are not essential as defined above. Such duties can be characterized as marginal functions.**
- **In supervising employees with disabilities, it may be necessary to reassign or trade marginal functions among employees within a given work site. This would be done so that one employee would receive the marginal functions that an employee with a disability was not able to perform. In turn, the employee with a disability would normally receive marginal functions which they could perform.**
- **It is important to note that it is not the intent of such restructuring effort to relieve an employee with a disability of his/her work load or to assign undesirable tasks based on disability or a lack of disability.**

A look at “On-The-Job Performance” for Persons with Disabilities

- **The Supervisor and IDOP set performance standards.**
- **All employees are required to meet production standards.**
- **All employees are required to meet performance standards.**
- **All employees are required to meet the same standards of conduct.**
- **You do not have to lower production standards as an accommodation to a person with a disability.**
- **You can hold current users of alcohol or illegal drugs to the same standards of performance and conduct as other employees.**
- **You must convey production and performance standards clearly to employees.**
- **You must provide a reasonable accommodation to an employee with a disability to enable them to meet performance and production standards (when requested by the employee).**
- **You cannot have separate or higher performance standards for persons with disabilities.**

Employee evaluations, important things to acknowledge:

- You must evaluate all employees the same. Evaluations must not be on the basis of stereotypes.
- You must not harass an employee with a disability in an evaluation because of the disability.
- You cannot retaliate against an employee, because of a request for reasonable accommodation or because of the disability.
- You cannot evaluate an employee with a disability on the failure to perform marginal job functions.
-  When requested, you must provide the employee a reasonable accommodation to allow the employee to participate in the evaluation process.
- You must evaluate an employee on performance without regard to the request or need for a reasonable accommodation.

Promotions

- You must not limit, segregate or classify an individual employee with a disability in such a way that negatively affects promotion.
- You must not limit access to promotional opportunities to the exclusion of persons with disabilities.
- You must not have separate progression of promotion for persons with disabilities.
- If you post promotion information, you must ensure that employees with disabilities have access to that information.
- When requested, you must provide a reasonable accommodation to enable an employee to carry out the essential functions of the job to which the employee is promoted. You are encouraged to work *with* the employee in implementing the best accommodation to enable them to carry out the essential functions of the job.

Training opportunities for employees:

- You must ensure that training is accessible to employees with disabilities.
- When requested, you must provide reasonable accommodation to your employees with disabilities to enable them to participate in training.
- You must provide equal opportunity to employees with disabilities to participate in training.

Assignment of work:

- You do not have to reassign essential functions of the job to accommodate an individual with a disability.

- You must consider an employee with a disability for assignments for which the employee is qualified.
- You must provide a reasonable accommodation to an employee with a disability to enable the employee to do the assignments, if this is requested by the employee.

Discipline:

- You must treat all equivalently situated employees similarly.
- You cannot discipline an employee with a disability, due to the elimination of a marginal job function.
- You cannot discipline an employee with a disability, because the employee requests reasonable accommodation.
- You cannot retaliate against an employee because that employee files an ADA complaint against you.

Online Resource – Job Accommodations Network, Supervisor Harassment
<http://www.eeoc.gov/docs/harassment.html>

Termination:

- You cannot terminate an otherwise qualified employee with a disability on the sole basis of disability.
- You cannot terminate an employee with a disability because that employee needs or requests a reasonable accommodation.
- You cannot terminate an employee with a disability because that employee files an ADA complaint against you.

Work environments and activities:

- You have the right to set the work environment for your employees.
- You have the right to ask for specific and relevant medical documentation, if an employee requests an accommodation to participate in employer-sponsored activities, such as out of workplace meetings or weight loss programs.
- You do not have to provide transportation for your employees with disabilities, unless you provide similar transportation to other employees.
- You do not have to provide a reasonable accommodation to an employee with a disability to participate in employee activities (such as training or sponsored social outings like SEHARC), unless the employee with a disability requests an accommodation.
- You must assure employee activities and facilities are accessible to your employees with disabilities.

- You must assure that you provide equal opportunity to your employees with disabilities to participate in employer sponsored social and recreational activities of the job.
- You must provide a reasonable accommodation to employees with disabilities to enable them to participate in employee activities.
- You must not segregate persons with disabilities into separate facilities or offices.
- You must not segregate persons with disabilities in separate common use areas, such as break facilities and lunchrooms.

RESOURCES

If you have questions about information presented in this guide or if you need further information about employees with disabilities, reasonable accommodations or ADA questions, contact:

Iowa Division of Persons with Disabilities
Department of Human Rights
Second Floor, Lucas State Office Building
Des Moines, Iowa 50319
1-515-242-6172 (Voice/TTY)
1-888-219-0471
www.state.ia.us/government/dhr/pd

Deaf Services Commission of Iowa
Department of Human Rights
Second Floor, Lucas State Office Building
Des Moines, Iowa 50319
1-515-281-3164 (Voice/TTY)
www.state.ia.us/dhr/ds

Iowa Department for the Blind
524 4th Street
Des Moines, Iowa 50309-2364
1-515-281-1355 (TTY)
1-800-363-2587 (Voice)
www.blind.state.ia.us

The Iowa Department of Personnel
Grimes Building
East 14th and Grand Avenue
Des Moines, Iowa 50319
(515) 242-6450
<http://www.state.ia.us/government/idop/index.html>

Iowa Client Assistance Program

Division of Persons with Disabilities
Second Floor, Lucas State Office Building
Des Moines, Iowa 50319
1-800-652-4298 (Voice/TTY)
http://www.state.ia.us/dhr/pd/client_assistance/index.html

Iowa Division of Vocational Rehabilitation Services
510 E. 12th St.
Des Moines, Iowa 50316
1-515-281-4211 (Voice/TTY)
1-800-532-1486 (Voice/TTY)
www.dvrs.state.ia.us

Great Plains Regional Disability and
Business Technical Assistance Center
100 Corporate Lake Drive
Columbia, MO 65203
1-800-949-4232 (V/TTY)
www.adaproject.org

Iowa Civil Rights Commission
Grimes State Office Building
400 East Grand
Des Moines, Iowa 50319
1-800-457-4416 (Voice)
www.state.ia.us/government/crc

Iowa Workforce Development Center
1000 E. Grand Avenue
Des Moines, Iowa 50319
1-800-562-4692 (Voice/TTY)
www.iowaworkforce.com

Equal Employment Opportunity Commission
310 W. Wisconsin Avenue, Suite 8000
Milwaukee, Wisconsin 53203
1-800-669-4000 (Voice)
1-414-297-1115 (TTY)
www.eeoc.gov

Job Accommodation Network
918 Chestnut Ridge Road, Suite 1
West Virginia University, PO Box 6080
Morgantown, West Virginia 26506-6080
1-800-526-7234 (Voice/TTY)
www.jan.wvu.edu

