

## **THE AMERICANS WITH DISABILITIES ACT**

(As it applies to Employees)

### Introduction

The Americans with Disabilities act of 1990 (ADA) makes it unlawful to discriminate in employment against a qualified individual with a disability.

### **Are You Protected by the ADA?**

If you have a disability and are qualified to do a job, the ADA protects you from job discrimination on the basis of your disability. Under the ADA, you have a disability if you have a physical or mental impairment that substantially limits a major life activity. The ADA also protects you if you have a history of such a disability, or if an employer believes that you have such a disability.

To be protected under the ADA, you must 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, walking, breathing, performing manual tasks, caring for oneself, learning or working.

If you have a disability, you must also be qualified to perform the essential functions or duties of a job, with or without reasonable

accommodation, in order to be protected from job discrimination by the ADA. This means two things. First, you must satisfy the employer's requirements for the job, such as education, employment experience, skills or licenses. Second, you must be able to perform the job on your own or with the help of a reasonable accommodation.

### **What is Reasonable Accommodation?**

Reasonable accommodation is any change or adjustment to a job or work environment that permits a qualified applicant or employee with a disability to participate in the job application process, to perform the essential functions of a job, or to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities.

For example, reasonable accommodation may include: providing or modifying equipment or devices, job restructuring, part-time or modified work schedules, reassignment to a vacant position, adjusting or modifying examinations, training materials, or policies, providing readers and interpreters, and making the workplace readily accessible to and usable by people with disabilities.

An employer is required to provide a reasonable accommodation to a qualified applicant or employee with a disability unless the employer can show that the accommodation would be an undue

hardship – that is, that it would require significant difficulty or expense.

### **What Employment Practices are Covered?**

The ADA makes it unlawful to discriminate in all employment practices such as: recruitment; hiring; job assignments; pay; lay-off; training; promotions; benefits; leave; firing; all other employment related activities.

It is also unlawful for an employer to retaliate against you for asserting your rights under the ADA. The Act also protects you if you are a victim of discrimination because of your family, business, social or other relationship or association with an individual with a disability.

### **Can an Employer Require Medical Examinations or Ask Questions About a Disability?**

If you are applying for a job, an employer cannot ask you if you are disabled or ask about the nature or severity of your disability. An employer can ask if you can perform the duties of the job with or without reasonable accommodation. An employer can also ask you to describe or to demonstrate how, with or without reasonable accommodation, you will perform the duties of the job.

An employer cannot require you to take a medical examination before you are offered a job. Following a job offer, an employer can condition the offer on your passing a required medical examination, but only if all entering employees for that job category have to take the examination. However, an employer cannot reject you because of information about your disability revealed by the medical examination, unless the reasons for rejection are job-related and necessary for the conduct of the employer's business. Nor can the employer refuse to hire you because of your disability if you can perform the essential functions of the job with an accommodation.

Once you have been hired and started work, your employer cannot require that you take a medical examination or ask questions about your disability unless they are related to your job and necessary for the conduct of your employer's business. Your employer may conduct voluntary medical examinations that are part of an employee health program, and may provide medical information required by state workers' compensation laws to the agencies that administer such laws.

The results of all medical examinations must be kept confidential, and maintained in separate medical files.

### **Do Individuals Who Use Drugs Illegally Have Rights Under the ADA?**

Anyone who is currently using drugs illegally is not protected by the ADA and may be denied employment or fired on the basis of such use. The ADA does not prevent employers from testing applicants or employees for current illegal drug use.

#### **Q. Is an employer required to provide reasonable accommodation when I apply for a job?**

**A.** Yes. Applicants, as well as employees are entitled to reasonable accommodation. For example, an employer may be required to provide a sign language interpreter during a job interview for an applicant who is deaf or hearing impaired, unless to do so would impose an undue hardship.

#### **Q. Should I tell my employer that I have a disability?**

**A.** If you think you will need reasonable accommodation in order to participate in the application process or to perform essential job functions, you should inform the employer that an accommodation will be needed. Employers are required to provide reasonable accommodation only for the physical or mental limitations of a qualified individual with a disability of which they are aware. It is the responsibility of the employee to inform the employer that an accommodation is needed.

#### **Q. Do I have to pay for a needed reasonable accommodation?**

**A.** The ADA requires that the employer provide the accommodation unless to do so would impose an undue hardship on the operation of the employer's business. If the cost of providing the needed accommodation would be an undue hardship, the employee must be given the choice of providing the accommodation or paying for the portion of the accommodation that causes the undue hardship.

#### **Q. Can an employer lower my salary or pay me less than other employees doing the same job because I need a reasonable accommodation?**

**A.** No. An employer cannot make up the cost of providing a reasonable accommodation by lowering your salary or paying you less than other employees in similar positions.

#### **Q. Does an employer have to make non-work areas used by employees, such as cafeterias, lounges, or employer-provided transportation accessible to people with disabilities?**

**A.** Yes. The requirement to provide reasonable accommodation covers all services, programs, and non-work facilities provided by the employer. If making an existing facility accessible would be an

undue hardship, the employer must provide a comparable facility that will enable a person with a disability to enjoy benefits and privileges of employment similar to those enjoyed by other employees, unless to do so would be an undue hardship.

**Q. If an employer has several qualified applicants for a job, is the employer required to select a qualified applicant with a disability over other applicants without a disability?**

**A.** No. The ADA does not require that an employer hire an applicant with a disability over other applicants because the person has a disability. The ADA only prohibits discrimination on the basis of disability. It makes it unlawful to refuse to hire a qualified applicant with a disability because he is disabled or because a reasonable accommodation is required to make it possible for this person to perform essential job functions.

**Q. Can an employer refuse to hire me because he believes that it would be unsafe, because of my disability, for me to work with certain machinery required to perform the essential functions of the job?**

**A.** The ADA permits an employer to refuse to hire an individual if he/she poses a direct threat to the health or safety of him/herself or others. A direct threat means a significant risk of substantial harm. The

determination that there is a direct threat must be based on objective, factual evidence regarding an individual's present ability to perform essential functions of a job. The employer must also consider whether a risk can be eliminated or reduced to an acceptable level with a reasonable accommodation.

**Q. Can an employer offer a health insurance policy that excludes coverage for pre-existing conditions?**

**A.** Yes. The ADA does not affect pre-existing condition clauses contained in health insurance policies even though such clauses may adversely affect employees with disabilities more than other employees.

**Q. If the health insurance offered by my employer does not cover all of the medical expenses related to my disabilities does the company have to obtain additional coverage for me?**

**A.** No. The ADA only requires that an employer provide employees with disabilities equal access to whatever health insurance coverage is offered to other employees.

**Q. Are people with AIDS covered by the ADA?**

**A.** Yes. The legislative history indicates that Congress intended the ADA to protect

persons with AIDS and HIV disease from discrimination.

**Q. What Should I Do If I Think I Need A Reasonable Accommodation?**

**A.** Notify the School Board of Brevard County, Florida, Human Resource Services and Labor Relations Department in writing (or orally if you are unable to write) that you are requesting an accommodation for a disability by preparing a "Reasonable Accommodation Request Form" (available from Human Resources Services or your school/department) which specifically includes: your name and social security number; your assigned school or department; your work site address; name of supervisor; description of disability; date that the disability occurred; description of what specific activities the disability prevents you from performing; a list of reasonable accommodations that you feel will allow you to perform your job; and, a list of ALL diagnosing and treating physicians including their names, office addresses and telephone number, and date(s) of visit(s).

**How Do I Get More Information About ADA?**

For **Employees** call: Ms. Susan Standley at School Board of Brevard County, Florida, Compensation and Benefits, 407/633-1000, extension 216.