

# Overview of the Americans with Disabilities Act (ADA)



**The Arc of Illinois**  
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# U.S. Equal Employment Opportunity Commission

## *Who is the EEOC?*

The EEOC is the key civil rights agency responsible for enforcing federal laws that prohibit employment discrimination.



[www.eeoc.gov](http://www.eeoc.gov)



# EEOC Vision

Respectful and inclusive workplaces with equal employment opportunity for all

# EEOC Mission

Prevent and remedy unlawful employment discrimination and advance equal opportunity for all in the workplace.



# EEOC: What We Do

- ▶ EEOC has the authority to accept, investigate and litigate charges of discrimination against employers who are covered by the laws we enforce.
- ▶ Our role in an investigation is neutral and fair to accurately assess the allegations in the charge and then make a finding.
  - If we find that discrimination has occurred, we will try to conciliate the charge.
  - If conciliation is not successful, EEOC has authority to file a lawsuit to protect the rights of individuals and the interests of the public; however, EEOC does not file lawsuits in all cases where probable cause of discrimination was found.
- ▶ EEOC provides outreach, education, and formal training about the federal laws it enforces.



# Key Laws Enforced by the EEOC

- ▶ Title VII of the Civil Rights Act of 1964 (Title VII)
- ▶ Pregnancy Discrimination Act of 1978 (PDA)
- ▶ Age Discrimination in Employment Act (ADEA) of 1967
- ▶ Americans with Disabilities Act (ADA) of 1990
- ▶ Equal Pay Act of 1963, as amended (EPA)
- ▶ Genetic Information Nondiscrimination Act of 2009 (GINA)
- ▶ Pregnant Workers Fairness Act of 2023 (PWFA)



# Covered Employers

- ▶ Business/Private Employers with 15 or more employee
  - 20 or more under the ADEA (age discrimination)
- ▶ Educational Institutions
- ▶ Employment Agencies
- ▶ State and Local Governments
- ▶ Labor Organizations
- ▶ Joint Apprenticeship and Training Committees



# Who is Protected?

- ▶ Current employees
  - full-time, part-time, seasonal
- ▶ Temporary employees
- ▶ Former employees
- ▶ Job applicants
- ▶ Volunteers, in some case



***Regardless of citizenship or immigration status***



# Protected Categories (bases)

- ▶ Race
- ▶ Color
- ▶ Sex
  - Pregnancy, childbirth, or related medical conditions
  - Sexual Orientation
  - Gender identity, including transgender status
- ▶ National Origin
- ▶ Religion
- ▶ Age (40 and older)
- ▶ Disability
- ▶ Genetic Information





# Title 1 of The Americans With Disabilities Act (ADA) of 1990



# The ADA: Core Concepts

- ▶ Prohibits discrimination (unfavorable treatment) against qualified individuals with disabilities because of their disability.
- ▶ Prohibits discrimination when it comes to any aspect of employment.
  - e.g., hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.



# The ADA: Core Concepts *cont.*

## ▶ Reasonable Accommodation

- Employers are required to provide a reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause significant difficulty or expense for the employer.

## ▶ Disability-Related Questions, Medical Exams

- Places limits on employers when it comes to asking job applicants or employees to answer disability-related questions, take a medical exam, or identify a disability.



# The ADA: Core Concepts *cont.*

## ▶ Confidentiality

- Information that employers may obtain about employees' disabilities must be treated as confidential.

## ▶ Harassment

- It is illegal to harass an applicant or employee because of their disability or for association with an individual with a disability. Harassment can include offensive remarks about a person's disability.



# The ADA: Core Concepts *cont.*

## ▶ Association Discrimination

- Protects people from discrimination based on their relationship with a person with a disability even if they do not themselves have a disability.

## ▶ Retaliation and Interference

- Job applicants and current and former employees are protected from retaliation for asserting their rights under the ADA and any of the other federal EEO laws enforced by the EEOC.
- Employers may not intimidate, threaten, or otherwise interfere with a job applicant's or current or former employee's exercise of ADA rights.



# What does “qualified” mean?

- ▶ An individual must satisfy the employer’s requirements for the job, such as education, employment experience, skills or licenses, **AND**
- ▶ The individual must be able to perform the essential functions of the job with or without reasonable accommodation.
  - Essential functions are the fundamental job duties that an individual must be able to perform on their own or with the help of a reasonable accommodation.



# Definition of Disability under the ADAAA

- ▶ A physical or mental impairment that substantially limits one or more major life activities (sometimes referred to in the regulations as an "actual disability"), or
- ▶ A record of a physical or mental impairment that substantially limited a major life activity ("record of"), or
- ▶ When a covered entity takes an action prohibited by the ADA because of an actual or perceived impairment that is not both transitory (lasting or expected to last six months or less) and minor.



# List of major life activities is not exhaustive

- ▶ Caring for oneself
- ▶ Performing manual tasks
- ▶ Seeing
- ▶ Hearing
- ▶ Eating
- ▶ Sleeping
- ▶ Walking
- ▶ Standing
- ▶ Sitting
- ▶ Reaching
- ▶ Lifting
- ▶ Bending
- ▶ Speaking
- ▶ Breathing
- ▶ Learning
- ▶ Reading
- ▶ Concentrating
- ▶ Thinking
- ▶ Communicating
- ▶ Interacting with others
- ▶ Working





# Major Bodily Functions

- ▶ Functions of the immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, reproductive.
- ▶ Operations of an individual organ within a body system, such as the operation of kidney, liver, or pancreas



# Impairments That Are Episodic or In Remission

Will be prong one of disabilities if substantially limits a major life activity when active.

- ▶ Episodic: Impairments that may not affect a person 24/7 but which periodically flare up: e.g., epilepsy, hypertension, asthma, diabetes, major depressive disorder, bipolar disorder, schizophrenia.
- ▶ Remission: Cancer is an example of impairment that may be in remission



# “Substantially Limited”

- ▶ To have an "actual" disability (or to have a "record of" a disability) an individual must be (or have been) substantially limited in performing a major life activity as compared to most people in the **general population**.



# Substantially Limited: Rules of Construction

To be used when determining if an individual is substantially limited in performing a major life activity:

- ▶ An impairment need not prevent or severely or significantly limit a major life activity to be considered "substantially limiting." Nonetheless, not every impairment will constitute a disability.
- ▶ The term "substantially limits" should be construed broadly in favor of expansive coverage to the maximum extent permitted by the terms of the ADA.



## Rules of Construction *cont.*

- ▶ The determination of whether an impairment substantially limits a major life activity requires an individualized assessment.
- ▶ In keeping with Congress' direction that the primary focus of the ADA is on whether discrimination occurred, the determination of disability should not require extensive analysis.



# Specific Impairments that are Disabilities

- ▶ Deafness
- ▶ Blindness
- ▶ Intellectual disability
- ▶ Autism
- ▶ Cancer
- ▶ Cerebral palsy
- ▶ Diabetes, epilepsy
- ▶ HIV infection
- ▶ Multiple sclerosis
- ▶ Muscular dystrophy
- ▶ Partially or completely missing limbs
- ▶ Mobility impairments requiring use of a wheelchair
- ▶ Major depressive disorder
- ▶ Bipolar disorder
- ▶ Post-traumatic stress disorder (PTSD)
- ▶ Obsessive-compulsive disorder (OCD)
- ▶ Schizophrenia



# What is reasonable accommodation?

- ▶ 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;
  - perform the essential functions of a job; or
  - enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities.
- ▶ Accommodations vary depending on the needs of the individual with a disability.



# Request for Accommodation

- ▶ No “magic words” needed
- ▶ 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.
- ▶ Request can be in “plain English” and does not have to include the terms “ADA” or “reasonable accommodation”
- ▶ Need not be in writing
- ▶ A family member, friend, health professional, or other representative may request a reasonable accommodation on behalf of an individual with a disability.
- ▶ A request for reasonable accommodation is the first step in an informal, interactive process between the individual and the employer.





# Interactive Process

- ▶ A request for reasonable accommodation is the first step in an **informal, interactive process** (conversation) between the individual and the employer about the request for a reasonable accommodation, especially where the need for the accommodation might not be obvious.
- ▶ Such conversations also helps where there may be a question regarding what type of accommodation might best help the individual apply for a job or perform the essential functions of a job.
- ▶ In some instances, before addressing the merits of the accommodation request, the employer needs to determine if the individual's medical condition meets the ADA definition of "disability," a prerequisite for the individual to be entitled to a reasonable accommodation.



# Possible Reasonable Accommodations

- ▶ Changes and adjustments to enable the application process
- ▶ Making existing facilities accessible
- ▶ Job restructuring
  - Changing when and how essential job functions are performed
  - Reassignment of marginal tasks
- ▶ Part-time or modified work schedules
- ▶ Acquiring or modifying equipment
- ▶ Changing tests, training materials, or policies
- ▶ Providing qualified readers or interpreters
- ▶ Reassignment to a vacant position where reasonable accommodation is not possible in the current job



# What is not reasonable?

An Employer is **not** required to:

- ▶ Lower quality or production standards
- ▶ Eliminate or reallocate essential job functions
- ▶ Create a new position or job
- ▶ Bump an employee from a job
- ▶ Promote the individual with the disability
- ▶ Excuse or forgive past misconduct or poor performance
- ▶ Monitor medications
- ▶ Provide new supervisor
- ▶ Provide personal items, such as a wheelchair or hearing aids



# Undue Hardship

- ▶ An employer must provide a reasonable accommodation to a qualified individual with a disability unless doing so would be an undue hardship.
  - Undue hardship means that the accommodation would be too difficult or too expensive to provide, in light of the employer's size, financial resources, and the needs of the business.
- ▶ Cannot refuse to provide an accommodation just because it involves some cost.



## Undue Hardship *cont.*

- ▶ An employer does not have to provide the accommodation the employee or job applicant wants, as long as it provides an effective reasonable accommodation.
- ▶ If more than one accommodation effectively meets the disability-related needs, the employer may choose which one to provide.



# Typical cost of workplace accommodations

A 2020 survey report prepared by the Job Accommodation Network (JAN) for the Department of Labor's Office of Disability Employment Policy showed that:

- ▶ 56% of workplace accommodations for employees cost absolutely nothing to execute, and
- ▶ the remaining ones typically cost just \$500.



# Disability-Related Questions, Medical Exams

- ▶ Pre-Offer/Pre-Employment:

An employer generally may not ask an applicant whether they need a reasonable accommodation for the job, except when the employer knows that an applicant has a disability.

- ▶ Post-Offer/Pre-Employment:

At this stage the employer may make medical inquiries or require individuals to take medical exams as long as the same inquiries or exams are required of every individual in the same job category.

- ▶ Post-Offer/Post-Employment:

At this stage medical exams and inquiries are allowed only if they are job related and consistent with business necessity.



# Filing a Charge of Discrimination with EEOC

- ▶ Follow the strict time limits for filing: **180/300 days**
- ▶ Use the online **EEOC Public Portal** to submit an inquiry, schedule an appointment, and file a Charge of Discrimination:  
<https://www.eeoc.gov/filing-charge-discrimination>.
- EEOC's Public Portal asks you a few questions to help determine whether EEOC is the right federal agency to handle your complaint involving employment discrimination.





# General Contact Information

- ▶ Telephone: General information about the laws EEOC enforces and filing a charge:
  - 1-800-669-4000 (language interpretation available)
  - 1-800-669-6820 (TTY for Deaf/Hard of Hearing callers only)
  - 1-844-234-5122 (ASL Video Phone for Deaf/Hard of Hearing callers only)
- ▶ Email: [info@eeoc.gov](mailto:info@eeoc.gov) (include your city and state)



# No-Cost EEOC Materials Available Online

- ▶ Visit [www.eeoc.gov](http://www.eeoc.gov) for EEO updates, guidance, Q&As, FAQs, best practices, publications, and more!
- ▶ EEOC YouTube Channel:  
<https://www.youtube.com/@TheEEOC/videos>
- ▶ EEOC Publications & Fact Sheets:
  - View online or download at <https://www.eeoc.gov/eeoc-publications>
  - Materials in languages other than English are available at <https://www.eeoc.gov/languages>



# No-Cost Outreach Presentations to the Public

- ▶ EEOC staff are available on a limited basis to conduct no-cost educational presentations and staff information booths at meetings, conferences, and seminars for:
  - Employer and Worker Groups
  - Professional and Industry Associations
  - Students
  - NGOs, CBOs, non-profits, and other members of the general public
  
- ▶ Schedule a no-cost educational presentation with the Outreach & Education Coordinator (OEC) for your area:  
<https://www.eeoc.gov/eeoc-outreach-program-coordinators>.



# Training Institute: Fee-based training services

- ▶ The EEOC provides formal, in-depth, EEO training on a for-fee basis:
  - Seminars (in-person)
  - Virtual Workshops
  - Tailored, onsite training – delivered directly to your employees
- ▶ Visit the EEOC Training Institute for additional details:  
<https://www.eeoc.gov/training-institute>



Visit [www.eeoc.gov](http://www.eeoc.gov)  
for more information and resources



# Thank You!



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