



DEPARTMENT OF ECONOMIC SECURITY

Your Partner For A Stronger Arizona

The Americans with Disabilities Act

Employer/Employee Rights & Responsibilities

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Iowa Client Assistance Program*

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THE AMERICANS WITH DISABILITIES ACT (ADA) OF 1990 AS AMENDED IN 2008

This publication was designed with the belief that the ADA addresses both employers and employees to achieve a viable workforce and productive society. The law was intended to reflect the balance between the employer and the employee with a disability.

This booklet contains information on Title I of the ADA but should not be considered legal advice. Title I is directly related to the employment provisions and amendments of the law. Both employers and employees have responsibilities and rights under the ADA and this booklet addresses the balance of rights and responsibilities under the law.

This law was designed to remove the barriers that prevent qualified persons from enjoying equal employment opportunities solely because of a disability. It demonstrates America recognizing the vitality and abilities of all people to contribute in our society, particularly in the area of employment.

This is civil rights law. It prohibits discrimination against persons with disabilities and encourages the recognition of citizens with disabilities as full participants in American life. It recognizes that these members of the American work force are an excellent resource for employers.

AMERICAN WITH DISABILITES AMENDMENT ACT OF 2008 (ADAAA)

Amendments to the Americans with Disabilities Act (ADA) signed into law on September 25, 2008, clarify and reiterate who is covered by the law's civil rights protections. The "ADA Amendments Act of 2008" revises the definition of "disability" to more broadly encompass impairments that substantially limit a major life activity. The amended language also states that mitigating measures, including assistive devices, auxiliary aids, accommodations, medical therapies and supplies (other than eyeglasses and contact lenses) have no bearing in determining whether a disability qualifies under the law. Changes also clarify coverage of impairments that are episodic or in remission that substantially limit a major life activity when active, such as epilepsy or post-traumatic stress disorder. The amendments take effect January 1, 2009.

DEFINITION OF “A PERSON WITH A DISABILITY”

The ADA uses the definition of a person with a disability as:

- 1) Someone who has a physical or mental impairment that substantially limits a major life activity. This cannot be a temporary impairment.
- 2) Someone who has a past record of a disability or condition. The person may no longer have a difficulty but had a record or history of the disability.
- 3) When an employer takes an action prohibited by the ADA because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity impairment. (“regarded as”)

DEFINITION OF MAJOR LIFE ACTIVITIES (AS AMENDED EFFECTIVE JANUARY 1, 2009)

Major life activities include, but are not limited to:

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, and working; and

The operation of a major bodily function, including functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

The term “substantially limits” is to be construed broadly in favor of expansive coverage to the maximum extent permitted by the ADA. This should be on a case-by-case basis and not consider mitigating measures such as medication, mobility devices and other equipment in your decision making process.

Limitations will be considered as if the condition is active in cases where the disability is episodic or in remission. (to learn more about determining “substantial limitations” go to EEOC.gov)

WHAT ARE MY RIGHTS AND MY RESPONSIBILITIES AS A PERSON WITH A DISABILITY UNDER TITLE I OF THE ADA?

You have both rights and responsibilities in the area of employment. An employer cannot discriminate against you because of your disability, if you are qualified for the job. To be qualified you have to be able to do the essential functions of the job, with or without reasonable accommodation. An employer must provide you a reasonable accommodation to help you carry out the essential functions of the job.

You also have responsibilities. You must be qualified (with or without reasonable accommodation) and you must meet the employment expectations of your employer. You must request any needed accommodations at any time during the application or employment process. It is the balance of rights and responsibilities that makes this law work for all Americans.

WHAT ARE MY RIGHTS AND RESPONSIBILITIES AS AN EMPLOYER UNDER TITLE I OF THE ADA?

The ADA requires employers with fifteen or more employees or public entities (regardless of the size of workforce) to provide qualified individuals with disabilities an equal opportunity to benefit from the full range of employment-related opportunities available to others.

Key company personnel must be aware of policies and practices of the ADA and how it affects their hiring and employment obligations. Managers and supervisory personnel should have a working knowledge of the significant aspects of the ADA. Terms to be knowledgeable of include:

- Qualified individual with a disability
- Essential functions of the job
- Reasonable accommodation
- Undue hardship
- Direct threat to the health or safety of self
- Direct threat to the health or safety of others
- Post offer medical inquiries and examinations
- Case-by-case basis
- Negotiated accommodations

As an employer, you have responsibilities under the ADA. You cannot discriminate against a person with a disability in any aspect of employment practice. You must provide a reasonable accommodation, if requested, to enable the person with a disability to apply for employment and, if qualified, carry out the essential functions of the job as well as participating in employment activities and practices of your company. You must consider 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 employee.

You also have rights. You can set the employment practices for your company. You can choose the most qualified person for a job. You can set the standards and expectations of your company.

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THE HIRING PROCESS

THE AMERICANS WITH DISABILITIES ACT

RIGHTS AND RESPONSIBILITIES

Employer

JOB QUALIFICATIONS

AS AN EMPLOYER, YOU HAVE RIGHTS

- You may have job qualifications.
- You may require work experience.
- You may require education.
- You may require specific skills.
- You may require an employee to meet health or safety standards.
- You may require specific licenses or certifications.
- You may have physical and mental requirements.
- You may have qualification standards that an individual not pose a threat to the health or safety of others or to the health and safety of themselves.

AS AN EMPLOYER, YOU HAVE RESPONSIBILITIES

- You have the responsibility to ensure that your requirements do not screen out or tend to screen out an individual with a disability solely on the basis of the disability.
- You have the responsibility to ensure that any job requirements and qualifications that do screen out or tend to screen out persons with disabilities be job related and consistent with business necessity. This means that the qualification must be real and an actual measure for the specific job, not a general class of jobs. All requirements must relate to essential functions of the job. If it does not relate to essential functions, it is **not consistent with business necessity**.
- A good practice is to define essential functions more specifically, while not required, this practice helps the employer, by targeting applicants that are more qualified for the specifics of the job.
- With the addition of the ADA Amendments Act, employers may be requested to support qualification standards.

JOB QUALIFICATIONS

AS AN APPLICANT WITH A DISABILITY, YOU HAVE RIGHTS

- You have the right to be considered for any job that you are qualified to perform.
- An employer cannot discriminate against you on the basis of your disability, if you can perform the essential functions of the job.
- You have the right as an individual with a disability to request a reasonable accommodation to enable you to apply for and carry out the essential functions of the job.

AS AN APPLICANT WITH A DISABILITY, YOU HAVE RESPONSIBILITIES

- You have the responsibility to meet the minimum qualifications of the job for which you are applying.
- You have the responsibility to be able to perform the essential functions of the job.
- If you need a reasonable accommodation to enable you to apply for or carry out the essential functions of the job, you must tell the employer you need the accommodation.
- If the employer requests medical documentation for the need of an accommodation, you must provide specific, relevant documentation.

EMPLOYER

JOB DUTIES

AS AN EMPLOYER, YOU HAVE RIGHTS

- You determine the essential functions of the job.
- You determine the marginal functions of the job.
- 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 are not required to have a written job description, however it is highly recommended as a best practice. It provides clarity and assists in attracting the most qualified applicants.

AS AN EMPLOYER, YOU HAVE RESPONSIBILITIES

- You have the responsibility to provide a reasonable accommodation, when requested by a qualified person or employee with a disability, that will allow them to equally participate in the interview process, perform essential functions of the job, or participate in employer related activities and/or opportunities.
- You have the responsibility to consider reassignment of marginal functions as a reasonable accommodation, if necessary.

TO DETERMINE ESSENTIAL 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?**

JOB DUTIES

AS AN EMPLOYEE WITH A DISABILITY, YOU HAVE RIGHTS

- You have the right to a reasonable accommodation so that you can apply for and carry out the essential functions of the job.
- You have a right to request the elimination or reassignment of marginal functions of the job as a reasonable accommodation.

AS AN EMPLOYEE WITH A DISABILITY, YOU HAVE RESPONSIBILITIES

- You must request a reasonable accommodation, if you need it to apply for or carry out the essential functions of the job.
- You must provide only specific, relevant medical documentation of your exact need for a reasonable accommodation, if the employer requests it.
- You must be able to do the essential functions of the job, with or without reasonable accommodation.

Job Descriptions:

- **The ADA does not require that an employer have a written job description.**
- **Written job descriptions are considered evidence of essential functions, however.**
- **Job descriptions are helpful to both the employer and employee.**
- **A job description can help determine what, if any, accommodation is needed.**
- **If an employer chooses not to have written job descriptions, an individual should be informed of the essential functions of the job.**

EMPLOYER

RECRUITMENT

AS AN EMPLOYER, YOU HAVE RIGHTS

- 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.

AS AN EMPLOYER, YOU HAVE RESPONSIBILITIES

- You must provide persons with disabilities equal opportunity and access to participate in the recruitment process.
- You have the responsibility to ensure that recruitment information is accessible to persons with disabilities.

APPLICATIONS

AS AN EMPLOYER, YOU HAVE RIGHTS

- You can ask about specific experience, skills, and job requirements.
- You can ask for **specific, relevant** medical documentation, if a person with a disability requests a reasonable accommodation to apply for a job.

AS AN EMPLOYER, YOU HAVE RESPONSIBILITIES

- You cannot ask pre-employment medical inquiries on application forms.
- You must make applications accessible to persons with disabilities.
- You must provide reasonable accommodation, when requested, to enable a person with a disability to apply for a job.

RECRUITMENT

AS AN APPLICANT WITH A DISABILITY, YOU HAVE RIGHTS

- You must be afforded an equal opportunity to participate in the recruitment process.
- You have the right to recruitment information being accessible to you.

AS AN APPLICANT WITH A DISABILITY, YOU HAVE RESPONSIBILITIES

- You have the responsibility to seek out recruitment information and request it in accessible format if needed.

APPLICATIONS

AS AN APPLICANT WITH A DISABILITY, YOU HAVE RIGHTS

- You can request that applications be in an accessible format.
- You can request a reasonable accommodation to apply for the job.
Be aware that this request allows the employer to ask for relevant and specific medical information that would be specific to your accommodation request.

AS AN APPLICANT WITH A DISABILITY, YOU HAVE RESPONSIBILITIES

- You must request the reasonable accommodation you need in order to apply for a job.
- You must provide specific, relevant medical documentation for a reasonable accommodation, if this is requested by an employer.

EMPLOYER

JOB INTERVIEWS

AS AN EMPLOYER, YOU HAVE RIGHTS

- You may ask if a person can perform essential functions of the job.
- 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.
- You can ask about marginal job functions.

AS AN EMPLOYER, YOU HAVE RESPONSIBILITIES

- You must focus on the ability of the applicant to do the job and not on the disability of the applicant.
- You cannot make medical inquiries regarding a person's disability.
- You must make job application and interview facilities accessible to persons with disabilities.
- You must provide a person with reasonable accommodation in a job interview, when a person with a disability requests this. You can require specific, relevant medical documentation.

Interview Guidelines

- **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.**

JOB INTERVIEWS

AS AN APPLICANT WITH A DISABILITY, YOU HAVE RIGHTS

- You have the right to a reasonable accommodation in the interview, if you request one.
- You have the right to discuss your job qualifications and abilities.
- You have the right to ask for a reasonable accommodation to enable you to perform the essential functions of the job.
- An employer cannot ask you information about your disability during a job interview.

AS AN APPLICANT WITH A DISABILITY, YOU HAVE RESPONSIBILITIES

- You have the responsibility to request a reasonable accommodation, if you need it to apply for a job. Be aware that this request allows the employer to ask for further specific, relevant medical information.
- You have the responsibility to request a reasonable accommodation, if you need it during a job interview.
- You have the responsibility to request a reasonable accommodation, if you need it, to carry out the essential functions of the job.
- You have the responsibility to provide specific, relevant medical documentation to an employer, if you are requesting a reasonable accommodation and if the employer requests the information.

Interviewing Tips:

- **Be aware that a request for accommodation allows an employer to seek further relevant information about your disability.**
- **Focus on your ability to do the job, not your disability.**
- **If you need accommodations, be prepared to identify your need.**
- **If you need accommodations, help your employer know the resources available.**

EMPLOYER

MEDICAL INQUIRIES

AS AN EMPLOYER, YOU HAVE RIGHTS

- 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.
- You may refuse to hire a person with a disability that poses a direct threat to the health or safety of themselves.
- You may prohibit illegal use of drugs in the workplace.
- You may prohibit use of alcohol in the workplace.
- 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.

ADA & Workers' Compensation:

- **Employers may not inquire into an applicant's Workers' Compensation history.**
- **After making a conditional offer of employment, an employer may make medical inquiries regarding Workers' Compensation history in medical inquiry or examination, 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.**

EMPLOYER

MEDICAL INQUIRIES CONTINUED

AS AN EMPLOYER, YOU HAVE RESPONSIBILITIES

- 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 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 stereotypes or fear.
- 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 all medical information confidential.
- You must keep medical information in a **separate** 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.

Direct threat to health and safety:

- **A specific, significant risk of substantial harm.**
- **Identify duration, nature and severity of risk and likelihood of harm.**
- **Risk documented by medical and factual evidence.**
- **Risk not speculative or remote.**
- **Risk not eliminated or reduced by reasonable accommodations.**

MEDICAL INQUIRIES

AS AN EMPLOYEE WITH A DISABILITY, YOU HAVE RIGHTS

- An employer cannot ask about your disability before offering you a job unless you introduced the discussion first.
- An employer cannot ask about the nature, the severity or the duration of a disability.
- An employer cannot ask you about workers' compensation history before offering you a job.
- You have the right to medical information being kept confidential.
- You have the right to medical information being kept in a separate file.
- You cannot be required to take a medical exam before an offer of a job is made. The post-offer medical exam must be job related and consistent with the needs of the business.
- You cannot be rejected from a job on the basis of a post-offer medical exam, unless you cannot do the essential functions with or without reasonable accommodation or you pose a direct threat to the health and safety of others or yourself.
- You have the right to a reasonable accommodation, if a post-offer medical exam determines you cannot do the essential functions without accommodation.
- You cannot be rejected from a job based solely on previous workers' compensation claims.

Summary:

- **No pre-offer medical examination or inquiry.**
- **Job offer may be conditional on results of a post-offer medical examination.**
- **Refusal to hire based on a medical examination must be job related and necessary for business.**
- **Employer must show reasonable accommodation was not available or posed an undue hardship or direct threat to health and safety.**
- **Medical information must be kept confidential and in separate files.**
- **Medical information should be specific and relevant to the business necessity.**
- **The employee cannot be required to sign a general waiver.**

EMPLOYEE

MEDICAL INQUIRIES CONTINUED

AS AN EMPLOYEE WITH A DISABILITY, YOU HAVE RESPONSIBILITIES

- An employer may require you to have periodic medical exams to determine if you meet specific job standards required by law.
- You must submit to a post offer medical exam, if the employer requires this of all employees in that job category and it is job related.
- You must provide accurate information in the post offer medical exam.
- An employer can require you to take a physical agility test, as long as the test is job related and requested of all applicants in that job classification.
- An employer can require you to take drug testing.
- An employer can refuse to hire you if a post-offer medical exam shows that you pose a direct threat to the health and safety of others or a direct threat to yourself and no reasonable accommodation will reduce or eliminate that threat.
- An employer can refuse to hire you, if a post offer medical exam shows that you cannot do the essential functions of the job and no reasonable accommodation is available.

ADA and Family Medical Leave Act (FMLA)

- **FMLA is available to individuals who are very sick and unable to work or to those with a spouse or child or parent that is very sick and needs your care. Very sick means requiring hospital care or continuing medical treatment.**
- **FMLA covers individuals who have worked for the same employer for at least 12 months, have worked at least 1,250 hours during that 12 months, and work for a public agency or a company with at least 50 employees (at either the same location or within a 75 mile radius).**
- **If you are qualified, you are entitled to take a total of 12 weeks off work without pay within each one-year period (or with pay if your company provides it) and to keep any health insurance you already had during that 12 weeks.**
- **If you are qualified, you also get your old job back or a job with equal pay, status and benefits, when you return.**
- **Your employer may require medical documentation to determine eligibility for FMLA.**

EMPLOYER

REFERENCE CHECKS

AS AN EMPLOYER, YOU HAVE RIGHTS

- You may ask about job functions and tasks performed.
- You may ask about quality and quantity of work.
- You may ask about time records and other job related issues.

AS AN EMPLOYER, YOU HAVE RESPONSIBILITIES

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

TESTING

AS AN EMPLOYER, YOU HAVE RIGHTS

- You have the right to test to determine job qualifications.
- You are not required to offer a reasonable accommodation in testing, unless requested by a person with a disability.

AS AN EMPLOYER, YOU HAVE RESPONSIBILITIES

- You have the responsibility to make testing accessible to persons with disabilities.
- You have the responsibility to use testing that reflects skills and aptitudes rather than impaired skills.
- You have the responsibility to provide reasonable accommodation in testing when requested by a person with a disability.
- You must ensure that testing which screens out or tends to screen out persons with disabilities is job related and consistent with business necessity.

REFERENCE CHECKS

AS AN APPLICANT WITH A DISABILITY, YOU HAVE RIGHTS

- You have the right that only job related questions will be asked in reference checks.

AS AN APPLICANT WITH A DISABILITY, YOU HAVE RESPONSIBILITIES

- You have the responsibility to provide references when requested.

TESTING

AS AN APPLICANT WITH A DISABILITY, YOU HAVE RIGHTS

- You have the right to have testing made accessible to you.
- You have the right to request a reasonable accommodation to participate in employment testing.
- You have the right to testing that focuses on abilities rather than disabilities.

AS AN APPLICANT WITH A DISABILITY, YOU HAVE RESPONSIBILITIES

- You have the responsibility to request a reasonable accommodation, if you need it, to take employment testing.
- You have the responsibility to provide specific, relevant medical documentation of the need for reasonable accommodation in testing, if the employer requests this information.

EMPLOYER

HIRING

AS AN EMPLOYER, YOU HAVE RIGHTS

- You have the right to choose the most qualified person for 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.

AS AN EMPLOYER, YOU HAVE RESPONSIBILITIES

- You have the responsibility to consider a person with a disability when that person is qualified for the job.
- You cannot consider the relative cost of a reasonable accommodation as a factor in the hiring decision or in the level of starting wage.
- You cannot eliminate a qualified person with a disability solely on the basis of a disability.
- You cannot eliminate a qualified person with a disability on the basis of the cost of an accommodation, unless it poses an undue hardship.
- 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.

Tips for 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.**

EMPLOYEE

HIRING

AS A PERSON WITH A DISABILITY, YOU HAVE RIGHTS

- You have the right to be considered for any job for which you are qualified.
- You have the right to a reasonable accommodation to enable you to carry out the essential functions of the job.
- An employer cannot consider the cost of the reasonable accommodation in the final hiring decision.
- An employer cannot eliminate you from hiring consideration because you ask for a reasonable accommodation.
- An employer cannot eliminate you from hiring consideration because you cannot perform marginal functions of the job.

AS AN EMPLOYEE WITH A DISABILITY, YOU HAVE RESPONSIBILITIES

- You must be qualified for the job for which you are applying.
- You must be able to carry out the essential functions of the job, with or without reasonable accommodation.
- An employer does not have to hire you over a person who is more qualified.

Tips for applicants:

- **Be prepared.**
- **Practice interviewing.**
- **Be honest.**
- **Focus on your abilities and qualifications.**
- **Become familiar with the company where you want to work.**
- **Know what the company products and services are.**
- **Know something about the requirements of the job you are seeking.**
- **Ask for information.**
- **Be interested.**

EMPLOYER

REASONABLE ACCOMMODATION

AS AN EMPLOYER, YOU HAVE RIGHTS

- You do not have to provide an accommodation for a person with a disability if it poses an undue hardship* for you.
- 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 suggest accommodations, but you do not have to research for an 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 that 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 provide accommodation, if no disability is known.

***Undue Hardship:**

- **Definition: “extensive, substantial, disruptive or fundamentally alters the nature or operation of the business”.**
- **Factors determining undue hardship include:**
 1. **nature and cost of the accommodation**
 2. **overall financial resources of the employer**
 3. **overall financial resources of the parent company**
 4. **impact of the accommodation on the operation**

EMPLOYER

REASONABLE ACCOMMODATION CONTINUED

AS AN EMPLOYER, YOU HAVE RESPONSIBILITIES

- 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.
- You must provide reasonable accommodation when requested to enable a person with a disability to participate in the application process.
- You must provide a reasonable accommodation to enable a person with a disability to participate in an interview.
- 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.
- You must be able to document an accommodation causes you undue hardship, if you choose not to provide the accommodation.
- You must consider alternative resources (such as tax incentives) before claiming an accommodation causes undue hardship.
- You can permit an individual to share the cost of an accommodation, if this is an undue hardship. You cannot ask the person to share the cost or pay for the accommodation.

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.**
- **Reassigning an individual to a vacant position.**
- **Providing flexible leave policies.**
- **Modifying work schedules.**
- **Using assistive technology.**
- **Modifying exams, policies, training materials.**
- **Providing qualified readers or interpreters.**

EMPLOYEE

REASONABLE ACCOMMODATION

AS AN EMPLOYEE WITH A DISABILITY, YOU HAVE RIGHTS

- You have the right to a reasonable accommodation that will enable you to apply for a job.
- You have the right to a reasonable accommodation for a job interview.
- You have the right to a reasonable accommodation to help you carry out the essential functions of the job.
- You have a right to a reasonable accommodation that will enable you to participate in employer sponsored activities.
- You have the right to a reasonable accommodation in testing.

AS AN EMPLOYEE WITH A DISABILITY, YOU HAVE RESPONSIBILITIES

- You **must** request the accommodation if you need one.
- You **must** provide specific, relevant medical documentation to your employer about the need for an accommodation, if your employer requests this.
- The employer does not have to provide an accommodation, if it poses an undue hardship.
- You have the responsibility to identify the accommodation you need.
- You have the responsibility to maintain production standards determined by the employer.
- You have the responsibility to carry out all essential functions with or without reasonable accommodation.

About determining reasonable accommodations:

- **The employer and employee should 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.**

ON THE JOB

THE AMERICANS WITH DISABILITIES ACT

RIGHTS AND RESPONSIBILITIES

EMPLOYER

ATTENDANCE AND LEAVE

AS AN EMPLOYER, YOU HAVE RIGHTS

- You have the right to expect regular attendance.
- You have the right to **uniformly** request medical proof for employee absence.
- You have the right to set work schedules that work for your company.
- You have the right to apply your leave and attendance policies consistently to similarly situated employees.
- You have the right to deny an accommodation in scheduling or attendance requested by an employee with a disability, if it poses an undue hardship for you.

AS AN EMPLOYER, YOU HAVE RESPONSIBILITIES

- You must consider modified work schedule as a reasonable accommodation when requested by a person with a disability and when it is not an undue hardship for you.
- You must consider change in scheduling, attendance or leave as a reasonable accommodation, when requested by an employee with a disability, and if the change is not an undue hardship.
- You must treat each employee with a disability on an individual basis when determining a reasonable accommodation.
- You must be able to document that the accommodation requested by a person with a disability poses an undue hardship.

EMPLOYEE

ATTENDANCE AND LEAVE

AS AN EMPLOYEE WITH A DISABILITY, YOU HAVE RIGHTS

- You have the right to request a modification of attendance or leave, if this is a reasonable accommodation and it does not pose an undue hardship for the employer.
- You have the right to request a change in scheduling, if that will enable you to carry out the essential functions of your job and does not pose an undue hardship for your employer.

AS AN EMPLOYEE WITH A DISABILITY, YOU HAVE RESPONSIBILITIES

- You must meet the attendance requirements of your job.
- If you need a change in attendance or leave requirements as a reasonable accommodation, you must request this of your employer.
- You must provide specific, relevant medical documentation to your employer (if the employer requests it) regarding a need for change in attendance, leave or scheduling.

EMPLOYER

PERFORMANCE

AS AN EMPLOYER, YOU HAVE RIGHTS

- You have the right to set performance standards for a job and for your company.
- You have the right to require employees meet production standards.
- You have the right to require employees meet performance standards.
- You have the right to require employees meet standards of conduct.
- You have the right to review and evaluate the performance of your employees.
- 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.

AS AN EMPLOYER, YOU HAVE RESPONSIBILITIES

- 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

PERFORMANCE

AS AN EMPLOYEE WITH A DISABILITY, YOU HAVE RIGHTS

- You have the right to a reasonable accommodation to enable you to meet performance standards of your employer.
- You have the right to a reasonable accommodation to enable you to meet production standards of your employer.
- You have the right to have your performance reviewed and evaluated based on performance.

AS AN EMPLOYEE WITH A DISABILITY, YOU HAVE RESPONSIBILITIES

- You must meet the performance standards established by your employer.
- You must meet the production standards established by your employer.
- You must meet the standards of conduct required by your employer.
- If you need a reasonable accommodation to meet the performance standards, you must request the employer to provide the accommodation.
- If you need a reasonable accommodation to meet production standards, you must request that your employer provide the accommodation.
- You must provide specific, relevant medical documentation of the need for an accommodation, if your employer requests this.

EMPLOYER

COMPENSATION

AS AN EMPLOYER, YOU HAVE RIGHTS

- You can establish the compensation for jobs within your company.
- If an employee with a disability is reassigned to a part time position as a requested reasonable accommodation, you can pay the employee the rate for the part time job.
- If an employee with a disability is assigned to a lower paying position as a requested reasonable accommodation, you can pay the employee the lower rate for that job.

AS AN EMPLOYER, YOU HAVE RESPONSIBILITIES

- You cannot reduce the pay of an employee with a disability because you have had to eliminate marginal job functions as a reasonable accommodation.
- You cannot reduce the pay of an employee with a disability because of the cost of an accommodation.
- You must provide your employees with disabilities with equal compensation of any other similarly situated employee in a job category.

EMPLOYEE

COMPENSATION

AS AN EMPLOYEE WITH A DISABILITY, YOU HAVE RIGHTS

- You have the right to equal compensation of any other similarly situated employee in your job category.
- You cannot have your pay reduced because a marginal job function has been eliminated.
- You cannot have your pay reduced because of the cost of a reasonable accommodation.

AS AN EMPLOYEE WITH A DISABILITY, YOU HAVE RESPONSIBILITIES

- You have the responsibility to meet the expectations of your job.
- You are not required to but you can choose to pay for an accommodation or share the cost of an accommodation.
- If you are reassigned to a part time position as a requested reasonable accommodation, your employer can pay you the rate for the part time job.
- If you are assigned to a lower paying position as a requested reasonable accommodation, your employer can pay you the lower rate for that job.

EMPLOYER

EMPLOYEE EVALUATIONS

AS AN EMPLOYER, YOU HAVE RIGHTS

- You can evaluate employees.
- You can set the standards for evaluation and review of employees.

AS AN EMPLOYER, YOU HAVE RESPONSIBILITIES

- You must evaluate employees uniformly. 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.
- 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.

EMPLOYEE

EMPLOYEE EVALUATIONS

AS AN EMPLOYEE WITH A DISABILITY, YOU HAVE RIGHTS

- You have the right to be evaluated on your ability and not on your disability.
- You have the right to a reasonable accommodation to enable you to participate in an evaluation.
- You have the right to review your evaluation and any other relevant materials in your personnel file.

AS AN EMPLOYEE WITH A DISABILITY, YOU HAVE RESPONSIBILITIES

- You must request a reasonable accommodation, if you need this to participate in the evaluation process.
- You must provide your employer specific and relevant medical documentation of your need for a reasonable accommodation to participate in the evaluation process.

EMPLOYER

PROMOTION

AS AN EMPLOYER, YOU HAVE RIGHTS

- You have the right to promote employees.
- You have the right to develop promotional standards for employees.
- You have the right to establish a career advancement track for employees.

AS AN EMPLOYER, YOU HAVE RESPONSIBILITIES

- 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.
- 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.

EMPLOYEE

PROMOTION

AS AN EMPLOYEE WITH A DISABILITY, YOU HAVE RIGHTS

- You have the right to be considered for promotions for which you are otherwise qualified, without regard to your disability.
- You have the right to participate in advancement programs to enable you to achieve promotion.
- You have the right to a reasonable accommodation to enable you to carry out the essential functions of a job to which you are promoted.
- You have the right to access promotional opportunities within your company, without regard to your disability.
- You have the right to information about promotions in an accessible format.

AS AN EMPLOYEE WITH A DISABILITY, YOU HAVE RESPONSIBILITIES

- You must meet the qualifications of the job for which you seek promotion.
- You must be able to carry out the essential functions of the job, with or without a reasonable accommodation.
- You must request a reasonable accommodation, if you need it to achieve promotion. Be aware that a request for a reasonable accommodation allows the employer to seek further specific, relevant medical information from you.
- You must provide specific and relevant medical documentation of the need for a reasonable accommodation, if your employer requests it.

EMPLOYER

TRAINING

AS AN EMPLOYER, YOU HAVE RIGHTS

- You can decide the training programs you offer employees.
- You can decide the training requirements of the job.

AS AN EMPLOYER, YOU HAVE RESPONSIBILITIES

- You must ensure that training is accessible to employees with disabilities.
- 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.

ASSIGNMENTS

AS AN EMPLOYER, YOU HAVE RIGHTS

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

AS AN EMPLOYER, YOU HAVE RESPONSIBILITIES

- 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.

EMPLOYEE

TRAINING

AS AN EMPLOYEE WITH A DISABILITY, YOU HAVE RIGHTS

- You have the right to equal opportunity to participate in training.
- You have the right to have training in an accessible format.
- You have the right to a reasonable accommodation to participate in training.

AS AN EMPLOYEE WITH A DISABILITY, YOU HAVE RESPONSIBILITIES

- You must request a reasonable accommodation (if you need it) so that you can participate in training.
- You must provide specific, relevant medical documentation of your need for an accommodation, if this is requested by the employer.

ASSIGNMENTS

AS AN EMPLOYEE WITH A DISABILITY, YOU HAVE RIGHTS

- You have the right to be considered for any assignment for which you are qualified.
- You have the right to a reasonable accommodation so that you can carry out an assignment.

AS AN EMPLOYEE WITH A DISABILITY, YOU HAVE RESPONSIBILITIES

- You must request a reasonable accommodation, if you need it.
- You must provide specific, relevant medical documentation to an employer of your need for an accommodation, if requested.

EMPLOYER

DISCIPLINE

AS AN EMPLOYER, YOU HAVE RIGHTS

- You have the right to discipline employees.

AS AN EMPLOYER YOU HAVE RESPONSIBILITIES

- You must treat all equivalently situated employees similarly.
- You cannot discipline an employee with a disability, because of 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.

TERMINATION

AS AN EMPLOYER, YOU HAVE RIGHTS

- You can terminate an employee.

AS AN EMPLOYER, YOU HAVE RESPONSIBILITIES

- 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.

DISCIPLINE

AS AN EMPLOYEE WITH A DISABILITY, YOU HAVE RIGHTS

- You cannot be disciplined because you request accommodation.
- An employer cannot discipline you because a marginal function is eliminated from your job as a reasonable accommodation.
- You cannot be disciplined because you file an ADA complaint.
- You must be treated similarly to other persons in your job category.

AS AN EMPLOYEE WITH A DISABILITY, YOU HAVE RESPONSIBILITIES

- You must meet the expectations of the job and can expect discipline for violation of those expectations.

TERMINATION

AS AN EMPLOYEE WITH A DISABILITY, YOU HAVE RIGHTS

- You have the right to be treated with uniform standards.
- You cannot be terminated solely on the basis of a disability.
- You cannot be terminated because you request or receive an accommodation.
- You cannot be terminated because a marginal function of your job is eliminated.
- You cannot be terminated because you file an ADA complaint.

AS AN EMPLOYEE WITH A DISABILITY, YOU HAVE RESPONSIBILITIES

- You must meet the job standards, qualifications and conduct set by the employer. If you do not or cannot meet expectations for the job with or without reasonable accommodation, you can be terminated.

EMPLOYER

BENEFITS

AS AN EMPLOYER, YOU HAVE RIGHTS

- You can establish the benefit package for your company.
- You can choose the company activities available to employees.
- You can use acceptable risk assessments for the assignment of benefits
- You can have a limit on the amount of benefits, as long as the benefits are uniformly applied to all insured employees.

AS AN EMPLOYER, YOU HAVE RESPONSIBILITIES

- You must offer equivalently situated employees the same benefit coverage.
- You cannot have a separate benefit package or different terms and conditions for employees with disabilities.
- You cannot deny insurance to an individual with a disability because your rate may rise as result of this employee.
- You cannot fire or refuse to hire an employee with a disability, because your health, disability or other insurance rates will rise.
- You cannot fire or refuse to hire a person because the disability of an employee's family member may raise your benefit costs.

EMPLOYEE

BENEFITS

AS AN EMPLOYEE WITH A DISABILITY, YOU HAVE RIGHTS

- You have the right of equal access to all benefits available to employees in your job category.
- You cannot be denied insurance benefits (health, disability, etc.) because your participation increases costs for your employer.
- You cannot be fired or refused hire because your employer's insurance costs go up due to your disability.
- You cannot be fired or denied hire because a family member with a disability increases benefit costs to the employer.
- You cannot be fired or denied hire because your disability is not covered by the employer's current health insurance plan.
- An employer may not look for alternate coverage that denies you access to insurance because of your disability.

AS AN EMPLOYEE WITH A DISABILITY, YOU HAVE RESPONSIBILITIES

- You cannot request a separate benefit package to meet your needs as a person with a disability.

INSURANCE BENEFITS:

- **Other laws address insurance benefits issues such as the Health Insurance Portability and Accountability Act of 1996, the Mental Health Parity Act of 1998, the Medicaid Community-Based Attendant Services and Supports Act of 2003 and the Patient Protection and Affordable Care Act of 2010.**

EMPLOYER

WORK ENVIRONMENT AND ACTIVITIES

AS AN EMPLOYER, YOU HAVE RIGHTS

- You have the right to establish the employee activities of your choice.
- 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.
- 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, unless the employee with a disability requests an accommodation.

AS AN EMPLOYER, YOU HAVE RESPONSIBILITIES

- 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.

EMPLOYEE

WORK ENVIRONMENT AND ACTIVITIES

AS AN EMPLOYEE WITH A DISABILITY, YOU HAVE RIGHTS

- You have the right to participate in employer sponsored activities.
- You have the right to a reasonable accommodation, if you need this to participate in employee activities.
- You have the right to employee activities in an accessible format.
- You have the right to inclusion in the facilities provided to similarly situated employees.
- You have the right to equal opportunity to the social and recreational activities of your job.
- You have the right to use transportation, if this is offered to other employees in your job category.
- You have the right to be free of harassment because of your disability.

AS AN EMPLOYEE WITH A DISABILITY, YOU HAVE RESPONSIBILITIES

- You must inform your employer if you need a reasonable accommodation to participate in employee activities.
- You must provide specific and relevant medical documentation of the need for an accommodation to participate in employee activities, if your employer requests this.
- You have the responsibility to follow accepted procedures to report harassment.

APPENDIX

DISABILITY ETIQUETTE

GENERAL GUIDELINES

Use common sense.
Be polite and considerate
Offer assistance.

Accept the person's answer.

Ask how a person wishes assistance.

Don't shout.
Don't ignore.
Make eye contact.

GUIDELINES FOR SPECIFIC DISABILITIES

Put yourself at eye level with a person who uses a wheelchair.

Talk directly to a person who is deaf, not to the interpreter.

Ask a person whom you cannot understand to repeat.

Give specific instructions to a person who is blind.

When a person who is blind enters, introduce yourself. As you are leaving an area where there are persons who are blind in the group, excuse yourself.

When talking with a person who is hard of hearing, look directly at that person and speak clearly.

It is difficult for persons with hearing loss to distinguish numbers or letters. Numbers and letters often sound alike. Write balances, totals and directions so that the person can also see them.

Be aware of persons with limited walking ability. Be conscious of their standing in line and offer seating.

In customer seating areas, seating for persons using wheelchairs should be interspersed throughout.

DISABILITY ETIQUETTE CONTINUED

CUSTOMER SERVICE SKILLS FOR PERSONS WITH HEARING DIFFICULTY

Speak clearly.
Speak slowly.
Look directly at the person.
Do not look down while talking.
Do not cover your mouth.
Do not have items such as pencils in your mouth when talking.
Write numbers and letters. It is difficult to hear numbers and letters clearly.
Have good lighting.
When using the RELAY system, call 711 and an operator will assist you in communicating with someone with a hearing or speech difficulty.

TELEPHONE SKILLS

Identify your specific reason for calling: be clear about the topic.
Speak clearly.
Repeat numbers and letters carefully, when requested to repeat.
Check out with the person what they understood.
Offer to send information in writing.
When using an interpreter, talk directly to the person calling (not the intermediary).

Equal Opportunity Employer/Program • Under Titles VI and VII of the Civil Rights Act of 1964 (Title VI & VII), and the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Title II of the Genetic Information Nondiscrimination Act (GINA) of 2008; the Department prohibits discrimination in admissions, programs, services, activities, or employment based on race, color, religion, sex, national origin, age, disability, genetics and retaliation. The Department must make a reasonable accommodation to allow a person with a disability to take part in a program, service or activity. For example, this means if necessary, the

The Americans with Disabilities Act – Title I
Employer/Employee Rights and Responsibilities

Department must provide sign language interpreters for people who are deaf, a wheelchair accessible location, or enlarged print materials. It also means that the Department will take any other reasonable action that allows you to take part in and understand a program or activity, including making reasonable changes to an activity. If you believe that you will not be able to understand or take part in a program or activity because of your disability, please let us know of your disability needs in advance if at all possible. To request this document in alternative format or for further information about this policy, call your local RSA office; TTY/TDD Services: 7-1-1. • Free language assistance for DES services is available upon request. • Ayuda gratuita con traducciones relacionadas con los servicios del DES está disponible a solicitud del cliente.