



## **Americans with Disabilities Act (ADA) HR Considerations**

The ADA is a crucial part of US efforts to protect the rights of its citizens. Smaller nonprofits sometimes have challenges navigating the rules and should ensure they incorporate good practices into their human resource efforts.

The purpose of the ADA is to remove restrictions on the employment of disabled individuals. Your hiring procedures and materials—application forms, interview techniques, examinations and job descriptions—all can leave you vulnerable to ADA liability if you don't understand your obligations. The following suggestions offer guidance on how to identify and address possible problems and may help protect you from ADA liability.

### **Focus Job Ads:**

- Do your job ads and postings refer only to essential job requirements?
- Have you excluded references to nonessential or marginal qualifications?
- Have you included both a phone number and an address to which inquiries can be sent?

### **Accessible Locations:**

- If you will be recruiting off-site—at a college campus, for example—is it accessible to disabled applicants?
- Is your place of employment accessible to physically challenged applicants?

### **Clear Position Descriptions:**

- Are all job descriptions written, clear and unambiguous?
- The essential functions (see below) of the job, with or without a reasonable accommodation, must be clear and specific.

### **Only Job-Related Questions:**

Your application form should ask questions that address only the requirements and functions of the job. Steer clear of questions about an applicant's history of Workers' Compensation claims, hospitalization for illness or treatment by a psychiatrist or psychologist. Keep the interview focused on the job's specific tasks and whether the applicant can perform the essential duties.

### **Reasonable Accommodations for Exams:**

If you use examinations in your hiring process, you don't have to lower the minimum score for disabled applicants. However, you should be prepared to provide reasonable accommodations—for example, a Braille form of the test, a reader or access to the test site for applicants with mobility difficulties.



### **Document Decisions:**

If you need to reject a disabled applicant, make the rejection as clear as possible, and stress that the decision to hire another applicant was based on qualifications and the job's requirements. You may deny employment to an applicant on the basis of a disability only if it prevents the applicant from performing the essential job duties. Use simple, clear language to avoid misinterpretation or confusion. Do not provide more detail than necessary

### **No Discrimination and No Favors:**

If your hiring practices use selection criteria that screen out disabled applicants on the basis of disabilities, they do not comply with the ADA. You are permitted, however, to use criteria that measure an essential job function. You must ensure that you are treating your disabled applicants in the same manner as any other applicant with certain specific capabilities and needs. You are not required to lower your standards to accommodate disabled individuals, but you must be sure that you apply the same criteria to all applicants and employees in a particular job function, regardless of disability.

### **Essential Functions:**

Organizations are often confused about the definition of a position's essential functions under the ADA. A qualified individual with a disability under the ADA means a person who, with or without reasonable accommodation, can perform the essential functions of a particular job. The ADA regulations define essential functions as the fundamental job duties of the employment position the individual with a disability holds or desires. The term does not include the marginal functions of the position. The regulations also provide that evidence of whether a particular function is essential includes, but is not limited to:

- The employer's judgment as to which job functions are essential
- Written job descriptions prepared before advertising or interviewing applicants for the job
- The amount of time spent on the job performing the function
- The work experience of past incumbents
- The current work experience of incumbents in similar jobs

[The ADA, a Primer for Small Business](#) is available from the U.S. Equal Employment Opportunity Commission

*This document was developed with information obtained from the U.S. Equal Employment Opportunity Commission; it is not meant to be legal advice.*