

## **Employment Facts About The Americans with Disabilities Act**

Title I of the Americans with Disabilities Act (ADA) of 1990 took effect July 26, 1992, and prohibits municipalities from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions and privileges of employment. An individual with a disability is a person who:

- Has a physical or mental impairment that substantially limits one or more major life activities;
- Has a record of such an impairment; or
- Is regarded as having such impairment.

A qualified individual with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question. Examples of reasonable accommodations may include, but are not limited to:

- Making existing facilities used by employees readily accessible to and usable by persons with disabilities;
- Job restructuring, modifying work schedules, reassignment to a vacant position; or
- Acquiring or modifying equipment or devices; adjusting or modifying examinations, training materials, or policies; and providing qualified readers or interpreters.

An employer is required to make an accommodation to the known disability of a qualified applicant or employee if it would not impose an “undue hardship”. Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as the municipality’s size, financial resources and the nature and structure of its operation.

An employer is not required to lower quality or production standards to make an accommodation, nor is an employer obligated to provide personal use items such as glasses or hearing aids.

### **Medical Examinations and Inquiries**

Employers may not ask job applicants about the existence, nature or severity of a disability. Applicants may be asked about their ability to perform specific job functions. Medical examinations may not be required until a job offer is made. However, that job offer may be conditioned upon the results of the medical examination or inquiry, but only if the examination or inquiry is required for all entering employees in the job. Medical examinations or inquiries of employees must be job related and consistent with the employer’s business needs. **OF NOTE:** in accordance with the ADA Amendments Act of 2008, certain conditions will “virtually always” be considered covered disabilities, namely: autism, cancer, cerebral palsy, diabetes, epilepsy, HIV infection, multiple sclerosis, muscular dystrophy, major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder, and schizophrenia.

## **Job Description**

Under the ADA, an employer's written job description is strong evidence of the essential functions of the job, provided that the job description existed before the job was advertised or the applicant was interviewed. Therefore, employers should conduct a thorough job analysis and develop accurate, written job descriptions which identify essential functions for each particular position.

Written job descriptions should contain:

- Prerequisites for each position, including the physical needs, education and experience; and
- Essential and non-essential job functions.

All job descriptions should be reviewed and updated periodically to ensure accuracy.

## **Drug and Alcohol Abuse**

Employees and applicants currently engaged in the illegal use of drugs are not covered by the ADA, when an employer acts on the basis of such use. Tests for illegal drugs are not subject to the ADA's restrictions on medical examinations. Employers may hold illegal drug users and alcoholics to the same performance standards as other employees.

## **Notice Requirements**

Title I of the ADA requires every covered employer to post notices in an accessible format to applicants, employees and members, describing the applicable provisions of the ADA.

## **Filing a Complaint**

Complaints of employment discrimination on the basis of disability, based on actions occurring on or after July 26, 1992, are filed with the U.S. Equal Employment Opportunity Commission. Information on the ADA may be obtained by calling toll free 800-514-0301 or through the Department of Justice website at [www.usdoj.gov/crt/ada](http://www.usdoj.gov/crt/ada). State law has similar requirements to the ADA, and complaints of disability discrimination may also be filed with the Massachusetts Commission Against Discrimination.

A person discriminated against on the basis of the disability is entitled to a remedy that will place him/her in the position he/she would have been in if the discrimination had never occurred, such as entitlement to hiring, promotion, reinstatement, back pay or other remuneration, or reasonable accommodation including reassignment. The person may also be entitled to damages in order to compensate for future pecuniary losses, mental anguish and inconvenience. Punitive damages and attorney's fees may be available as well if the employer acted with malice or reckless indifference.