



ADA: Frequently Asked Questions

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](https://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

The University of Tennessee
Municipal Technical Advisory Service
1610 University Avenue
Knoxville, TN 37921-6741
865-974-0411 phone
865-974-0423 fax
www.mtas.tennessee.edu

Table of Contents

ADA: Frequently Asked Questions	3
---------------------------------------	---

ADA: Frequently Asked Questions

Reference Number: MTAS-1076

Q1: Are individuals who engage in illegal drugs protected by ADA?

Individuals who currently engage in the use of illegal drugs are not protected by the ADA when an action is taken on the basis of their current illegal use of drugs. Individuals who currently use illegal drugs are not individuals with disabilities protected under the act when an employer takes action because of their continued use of drugs. This includes people who use prescription drugs illegally as well as those who use illegal drugs. However, people who have been rehabilitated and do not currently use drugs, or who are in the process of completing a rehabilitation program may be protected by the ADA.

Q2: Are Homosexuals or Bi-sexuals protected by ADA?

The act states that homosexuality and bisexuality are not impairments and therefore are not disabilities under the ADA. In addition, the act specifically excludes a number of behavior disorders from the definition of "individual with a disability." However, if homosexual or bi-sexual employees ask for an accommodation under ADA they should be treated the same as any other employee.

Q3: Are temporary conditions covered under ADA?

How long impairment lasts is a factor to be considered, however, it does not by itself determine whether a person has a disability under the ADA. The basic question is whether an impairment "substantially limits" one or more major life activities. This question is answered by looking at the extent, duration, and impact of the impairment. Temporary, non-chronic impairments that do not last for a long time and have little or no long-term impact usually are not disabilities.

According to <http://askjan.org> [1] "The six-month "transitory" part of the "transitory and minor" exception to "regarded as" coverage does not apply to the "actual disability" prong or the "record of" prong. The effects of an impairment lasting or expected to last fewer than six months can be substantially limiting within the meaning of this section. For example, if an individual has a back impairment that results in a 20-pound lifting restriction that lasts for several months, he is substantially limited in the major life activity of lifting, and therefore covered under the first prong of the definition of disability. At the same time, "the duration of an impairment is one factor that is relevant in determining whether the impairment substantially limits a major life activity. Impairments that last only for a short period of time are typically not covered, although they may be covered if sufficiently severe."

Q4: Does the ADAAA apply to discriminatory acts that occurred prior to January 1, 2009?

No. The ADAAA does not apply retroactively. For example, the ADAAA would not apply to a situation in which an employer allegedly failed to hire, terminated, or denied a reasonable accommodation to someone with a disability in December 2008, even if the person did not file a charge with the EEOC until after January 1, 2009. The original ADA definition of disability would be applied to such a charge. However, the ADAAA would apply to denials of reasonable accommodation where a request was made (or an earlier request was renewed) or to other alleged discriminatory acts that occurred on or after January 1, 2009. (Source: EEOC)

Q5: Do I need a special recordkeeping process for ADA information?

Although the ADA and GINA have different exceptions to confidentiality, employers may keep genetic information in the same confidential file as medical information subject to ADA.

Q6: Who is a "qualified individual with a disability?"

A qualified individual with a disability is a person who meets legitimate skill, experience, education, or other requirements of an employment position that he holds or seeks, and who can perform the essential functions of the position with or without reasonable accommodation. Requiring the ability to perform "essential" functions assures that an individual with a disability will not be considered unqualified simply because of inability to perform marginal or incidental job functions. If the individual is qualified to perform essential job functions except for limitations caused by a disability, the employer must consider whether the individual could perform these functions with a reasonable accommodation. If a written job description has been prepared in advance of advertising or interviewing applicants for a job, this will be considered as evidence, although not conclusive evidence, of the essential functions of the job. (Source: www.ada.gov [2])

Q7. What limitations does the ADA impose on medical examinations and inquiries about disability?

An employer may not ask or require a job applicant to take a medical examination before making a job offer. It cannot make any pre-employment inquiry about a disability or the nature or severity of a disability. An employer may, however, ask questions about the ability to perform specific job functions and may, with certain limitations, ask an individual with a disability to describe or demonstrate how he would perform these functions. An employer may condition a job offer on the satisfactory result of a post-offer medical examination or medical inquiry if this is required of all entering employees in the same job category. A post-offer examination or inquiry does not have to be job-related and consistent with business necessity.

However, if an individual is not hired because a post-offer medical examination or inquiry reveals a disability, the reason(s) for not hiring must be job-related and consistent with business necessity. The employer also must show that no reasonable accommodation was available that would enable the individual to perform the essential job functions, or that accommodation would impose an undue hardship. A post-offer medical examination may disqualify an individual if the employer can demonstrate that the individual would pose a "direct threat" in the workplace (i.e., a significant risk of

substantial harm to the health or safety of the individual or others) that cannot be eliminated or reduced below the direct threat level through reasonable accommodation. Such a disqualification is job-related and consistent with business necessity. A post-offer medical examination may not disqualify an individual with a disability who is currently able to perform essential job functions because of speculation that the disability may cause a risk of future injury.

After a person starts work, a medical examination or inquiry of an employee must be job-related and consistent with business necessity. Employers may conduct employee medical examinations where there is evidence of a job performance or safety problem, examinations required by other Federal laws, examinations to determine current fitness to perform a particular job, and voluntary examinations that are part of employee health programs. Information from all medical examinations and inquiries must be kept apart from general personnel files as a separate, confidential medical record, available only under limited conditions. Tests for illegal use of drugs are not medical examinations under the ADA and are not subject to the restrictions of such examinations. (Source: www.ada.gov [2])

Q8: Does the ADA require employers to develop written job descriptions?

No. The ADA does not require employers to develop or maintain job descriptions. However, a written job description that is prepared before advertising or interviewing applicants for a job will be considered as evidence along with other relevant factors. If an employer uses job descriptions, they should be reviewed to make sure they accurately reflect the actual functions of a job. A job description will be most helpful if it focuses on the results or outcome of a job function, not solely on the way it customarily is performed. A reasonable accommodation may enable a person with a disability to accomplish a job function in a manner that is different from the way an employee who is not disabled may accomplish the same function in a manner that is different from the way an employee who is not disabled may accomplish the same function. Note: MTAS recommends that you have job descriptions on file for each position.

Q9. Is testing for the illegal use of drugs permissible under the ADA?

Yes. A test for the illegal use of drugs is not considered a medical examination under the ADA; therefore, employers may conduct such testing of applicants or employees and make employment decisions based on the results. The ADA does not encourage, prohibit, or authorize drug tests. If the results of a drug test reveal the presence of a lawfully prescribed drug or other medical information, such information must be treated as a confidential medical record. (Source: www.ada.gov [2])

Q10. How does the ADA affect workers' compensation programs?

Only injured workers who meet the ADA's definition of an "individual with a disability" will be considered disabled under the ADA, regardless of whether they satisfy criteria for receiving benefits under workers' compensation or other disability laws. A worker also must be "qualified" (with or without reasonable accommodation) to be protected by the ADA. Work-related injuries do not always cause physical or mental impairments severe enough to "substantially limit" a major life activity. Also, many on-the-job injuries cause temporary impairments that heal within a short period of time with little or no long-term or permanent impact. Therefore, many injured workers who qualify for benefits under workers' compensation or other disability benefits laws may not be protected by the ADA. An employer must consider work-related injuries on a case-by-case basis to know if a worker is protected by the ADA.

An employer may not inquire into an applicant's workers' compensation history before making a conditional offer of employment. After making a conditional job offer, an employer may inquire about a person's workers compensation history in a medical inquiry or examination that is required of all applicants in the same job category. However, even after a conditional offer has been made, an employer cannot require a potential employee to have a medical examination because a response to a medical inquiry (as opposed to results from a medical examination) shows a previous on-the-job injury unless all applicants in the same job category are required to have an examination. Also, an employer may not base an employment decision on the speculation that an applicant may cause increased workers' compensation costs in the future. However, an employer may refuse to hire, or may discharge an individual who is not currently able to perform a job without posing a significant risk of substantial harm to the health or safety of the individual or others, if the risk cannot be eliminated or reduced by reasonable accommodation.

An employer may refuse to hire or may fire a person who knowingly provides a false answer to a lawful post-offer inquiry about his condition or worker's compensation history. An employer also may submit medical information and records concerning employees and applicants (obtained after a conditional job offer) to state workers' compensation offices and "second injury" funds without violating ADA confidentiality requirements. (Source: www.ada.gov [2])

Links:

[1] <http://askjan.org>

[2] <http://www.ada.gov>

DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.

Source URL (retrieved on 05/12/2021 - 4:36am): <https://www.mtas.tennessee.edu/reference/ada-frequently-asked-questions>



Municipal Technical Advisory Service
INSTITUTE *for* PUBLIC SERVICE