

The Americans with Disabilities Act: A Brief Primer on the ADA

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by Aaron Goldstein

Like Canada, the United States has federal legislation protecting employees with disabilities. While Canada has the Canadian Charter of Rights and Freedoms and the Canadian Human Rights Act, the United States has the Americans with Disabilities Act (“ADA”). While both Canadian and U.S. laws protect disabled employees from discrimination, the ADA has very specific procedures and requirements for accommodating employees with disabilities that even sophisticated U.S. employers frequently get wrong. Below is a discussion of several key concepts under the ADA that employers in the United States should know about.

An employer has a duty to provide an employee with a “disability” with “reasonable accommodations” that will allow the employee to perform the “essential functions” of his or her job. The definition of each of these terms is essential to complying with the ADA.

While the definition of a “disability” is complex, a rule of thumb is that a disability is any condition that interferes with a person’s life, except for the most minor interference. Basically, if an employee has any sort of health condition and either asks for help or the employer is put on notice that the employee needs help, the employer’s duty to accommodate is triggered. When in doubt, it’s a disability.

An “essential function” is one where the reason the position exists is to perform the function. This can be tricky to define in edge cases; however, some easy examples are a data entry specialist’s ability to enter data into a spreadsheet, a manual laborer’s ability to lift a minimum amount of weight, or a receptionist’s ability to communicate with people visiting the employer’s premises. Examples of non-essential functions include a receptionist’s ability to lift heavy objects or a secretary’s ability to do data entry. These are abilities that are nice to have, but are not central to the job.

Accurate and detailed job descriptions are important for defining a job’s essential functions. If a certain ability or function is not listed in an employee’s job description, it is much harder for the employer to claim that function is essential. Just because a function

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is described as essential in a job description does not mean that a court will agree, however. Employers must make sure that functions described as essential are in fact essential.

A “reasonable accommodation” is an accommodation that allows an employee to perform his or her essential functions, and which does not pose an undue burden on the employer. What constitutes an undue burden depends upon the size and financial resources of the employer. A small company might not be required to buy an expensive piece of speech-to-text software to allow an employee who cannot type to work on a computer, but a large company with significant resources might be required to do so. Similarly, a large employer might be required to give an employee recovering from surgery several months of unpaid leave with job protection, while a small employer might be allowed to hire a replacement sooner if the small employer cannot function without someone in the role.

Employers determine what accommodations to provide through the “interactive process.” When an employer is put on notice that an employee has a disability and may require an accommodation, the employer is obligated to start a dialogue with the employee and the employee’s healthcare provider regarding what accommodations, if any, would allow the employee to perform his or her essential job functions.

Much of the art of ADA compliance lies in appropriately communicating with employees and their healthcare providers through the interactive process. Employers cannot simply tell the employee what accommodations they are willing to make upfront on a “take it or leave it” basis. Rather, employers must engage in a back-and-forth dialogue with the employee and his or her healthcare provider and at least consider accommodations suggested by the healthcare provider. Employers should never reject any but the most outrageous accommodation requests out of hand.

An employer’s duty to accommodate under the ADA is one of the most difficult aspects of employment law in the United States. Even sophisticated employers can run into trouble, and employer’s new to U.S. law should line up outside legal support in advance to help them navigate.