

# THE ADA COMPLIANCE MAZE

Understanding ADA Regulations in regards to your employees.

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**E**nsuring company compliance with the myriad of state and federal employment laws is not always the top priority for many businesses. Sometimes employers in the hotel and lodging industry consider themselves fortunate just to be able to hire and retain qualified and dependable workers. But, ignoring company obligations under the non-discrimination laws is a loaded gun waiting to go off, particularly in light of the large damage awards that have been handed down in recent discriminatory hiring and firing cases.

The Americans with Disabilities Act, otherwise known as the ADA, is among the many non-discrimination statutes with which employers with 15 or more workers must comply. The ADA protects qualified individuals with a disability from discrimination in the workplace relating to hiring, promotion, termination and other employment actions. Below are some commonly asked questions of how to ensure compliance with the ADA.

## WHAT TYPES OF QUESTIONS CAN EMPLOYERS ASK DURING THE HIRING PROCESS?

Keep in mind that the ADA does not give disabled applicants or employees "extra" rights of any sort, but simply protects them from adverse job action on account of their physical or mental impairment. Thus, during the hiring process, you should confine your questions to those that are job-related only. For example, you can ask: "This job requires you to push a 100-pound cart of linen 100 feet several times a day, can you perform this task?" "Are you able to start work at 5:00 a.m.?" "Have you had experience handling

cash?" Questions to avoid are those that relate to an applicant's specific physical condition: "Have you ever had a workers' compensation claim before?" "Have you ever been hospitalized?" "Is there any health-related reason you may not be able to perform the job for which you are applying?" "How many days were you absent from work because of illness last year?" "Are you taking any prescribed drugs?" Remember, a good rule of thumb is that all of your questions should be job-related only, and have nothing to do with a person's health or medical history.

## WHAT STEPS SHOULD AN EMPLOYER TAKE TO AVOID DISCRIMINATION LAWSUITS?

Perhaps the most important tool a business owner or manager can use to avoid discrimination lawsuits is to become educated about the law. Every employer should be aware that the ADA exists, that it protects people with disabilities from adverse job action because of their impairment, and, under certain circumstances, an employer must make modifications to the job or workplace to allow a disabled employee to perform the job. If you are faced with what you believe is an ADA issue, it is wise to consult with your attorney for guidance or, in some circumstances, reach out to the Equal Employment Opportunity Commission (EEOC) for information. The EEOC is the federal agency that oversees employer compliance with the various anti-discrimination laws and it maintains a useful Web site at [www.eeoc.gov](http://www.eeoc.gov).

## WHAT IS CONSIDERED "DISABLED" ACCORDING TO THE ADA?

While the ADA sets forth a definition of "disability," the application

of its meaning has been an issue for courts throughout the country since the ADA became law in 1991. Because it has been subject to court interpretation for so many years, whether a particular condition qualifies as an ADA disability varies, and in some circumstances, it varies from state to state. However, there are some absolutes that most employers deal with from time to time. A "disability" is a physical or mental impairment that substantially limits one or more major life activities. For example, people who are blind, deaf, or missing a limb clearly fall within the ADA's definition of "disabled." But, so do people who have dyslexia, cognitive disorders, some mental impairments or psychological challenges. A good rule of thumb is that if an applicant or employee has a condition that calls into question the ability to perform their job, the manager or owner should consider whether this person is entitled to protections under the ADA. Keep in mind as well that the law protects against stereotyping people as disabled. Thus, you cannot treat someone differently in their employment even if you just think or believe they are disabled.

## CAN AN EMPLOYER ASK ABOUT A PERSON'S MEDICAL CONDITION?

The answer to this question falls into three categories: (1) Before a job offer is made, a prospective employer cannot make any inquires related to the applicant's medical condition; (2) After a job offer is made, an employer may condition the offer on the satisfactory result of a medical examination or medical inquiry to determine her ability to perform the job; and (3) After the employee begins work, the em-

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ployer may only make medical inquiries if they are job-related and necessary for the business. For example, if an employee appears unable to perform a necessary physical task, the employer may ask that employee to pass an employer-paid fitness-for-duty examination. The bottom line is that under most circumstances, the less you know about your employees' health and medical conditions the better.

#### WHAT ARE EMPLOYERS REQUIRED TO DO TO ACCOMMODATE DISABLED EMPLOYEES?

Employers are required to "reasonably accommodate" disabled employees unless the accommodation creates an undue hardship on the company. For example, a disabled employee with Carpal Tunnel Syndrome may need a special computer keyboard in order to perform his job, and a manic-depressive may need to have an adjusted work schedule in order to take her medication. However, the employer is not required to do things like create a job for someone or remove a job's essential functions. Nor does the law require an employer to hire an assistant for a disabled employee or to excuse normal performance expectations because of an impairment. The important thing to remember is that each situation will be different for each disabled employee, and should be addressed on a case-by-case basis.

There are literally hundreds of thousands of pages of court cases and EEOC regulations that define and explain the ADA. In addition, many states also have their own separate disability-related statutes. This article merely scratches the surface and is meant to help owners and managers identify "red flags" and issues as they come up. If you are faced with an ADA compliance issue, you should consider seeking the assistance of a qualified attorney or other professional to help guide you through the ADA compliance maze.

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