



## **AN OVERVIEW OF THE EMPLOYMENT PROTECTIONS OF THE AMERICANS WITH DISABILITIES ACT**

### **A SELF-HELP GUIDE**

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You can get this guide in other forms. Just ask us.

## **Funding**

This guide was paid for by the United States Department of Health and Human Services, Administration on Developmental Disabilities and Community Mental Health Services, and the United States Department of Education, Rehabilitation Services Administration.

## **This Guide Cannot Replace Legal Advice**

This guide gives basic facts to people about their rights and laws that protect them. It is not meant to be legal advice. You may need more facts or legal advice. Contact the Arizona Center for Disability Law or talk to a lawyer in your area.

Federal and state laws can change at any time. To make sure facts in this guide are still correct, contact the Arizona Center for Disability Law. Or talk to a lawyer in your area.

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# **I. Introduction to the Americans with Disabilities Act (ADA) and this Guide**

## **A. What does the ADA cover?**

The ADA (Americans with Disabilities Act), passed by Congress in 1990, gives major civil rights protections to persons with disabilities; it was changed in 2008 to better describe what a disability is. This federal law gives persons with disabilities equal opportunities in employment, public accommodations, public services, transportation, and websites (use of the computer). There are four Titles of the ADA. Each one affects the lives of people with disabilities. The four Titles are:

- **Title I** – protects qualified persons with disabilities in employment matters.
- **Title II** – it is against the law for state and local governments to discriminate in programs and services against persons with disabilities.
- **Title III** – it is against the law to discriminate in the access and enjoyment of public places such as hotels, restaurants, offices, stores, banks, parks, schools, and all recreational areas.
- **Title IV** –communications must be available to persons with disabilities, such as hearing impaired persons.
- **Title V** – it is against the law to threaten, force or retaliate against persons with disabilities or those people who help persons with disabilities to know their rights.

## **B. How Does the Arizona Center for Disability Law Help People with Disabilities?**

If you feel that you have been discriminated against at work or in getting hired; or in access to public services, places, or transportation; or in the use of communications, the Arizona Center for Disability Law (ACDL) can help you. The ACDL can give you information about the ADA and your rights under the ADA. The ACDL is the State of Arizona's protection and advocacy (P&A) system and has a lot of services for people with many different kinds of disabilities. The ACDL provides free information and referral services, self-help guides and, in some cases, legal help to individuals with disabilities throughout Arizona. The ACDL provides help based on certain priorities and whether there is enough staff to help. Since the ACDL receives most of its funding from the Federal government, services often have to be reduced because of funding cuts. We help people to learn how to help themselves.

### **C. This Guide is Not a Substitute for Legal Advice**

The ACDL asks that persons get legal advice to help settle legal disputes relating to discrimination because of a disability. This guide is not meant to be legal advice. It only gives people with disabilities information and examples about employment protections under the ADA.

### **D. Why Does the ADA Include Employment Protections?**

Often, people with disabilities do not have an equal chance to advance in their job or to obtain a job. People with disabilities often face many different kinds of barriers. Some face physical barriers that can make it difficult or impossible to get into and around a workplace or to use equipment at work. Some are treated differently because they have to communicate differently than their co-workers. Others cannot work a strict work schedule because their special needs may require less strict work hours.

In other cases, people may be denied services because of prejudice. These are the barriers in other people's minds: fears, stereotypes, wrong impressions about job performance, safety, tardiness, or not being accepted by co-workers.

Congress passed the ADA to do away with these barriers to equality in employment. The ADA makes it illegal for any employer covered by the ADA to discriminate against applicants and employees with disabilities. The United States Equal Employment Opportunity Commission (EEOC) is the agency that enforces the employment protections of the ADA. People with disabilities also have the right to bring private lawsuits against employers who discriminate against them if they first file a charge of discrimination with the EEOC within the time limits set by the ADA. See the ACDL's guide on our website, "How to Enforce Employment Rights under the ADA," for more information about filing a charge of discrimination.

This guide will provide the reader with a summary of how the ADA applies to many types of employment situations. The list of other guides from the ACDL about employment rights under the ADA include:

- The ADA and the Job Applicant
- The ADA and Reasonable Accommodations
- The ADA and Drug Testing
- How to Enforce Employment Rights Under the ADA

- The ADA and Medical Examinations
- The ADA and Confidentiality of Medical Records
- The ADA and Disability-Related Harassment
- Taking Action – How to File A Charge When You’ve Been Treated Unfairly by an Employer Because You Have a Disability
- How to Ask Your Employer for An Accommodation that You Need
- Have You Been Treated Unfairly at Work?

## **II. When Do the Employment Protections of the ADA Apply?**

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The ADA does not cover everything that may come up between someone applying for a job and an employer or an employee and an employer. For the ADA to apply to a specific employment issue, **each** of the following must be true:

- the employer is a “covered” employer;
- the employee or person applying for a job has a disability as defined by the ADA;
- the employee or person applying for a job is qualified to perform the job; and
- the employer discriminates against a person applying for a job or employee on the basis of his or her disability.

There is more information about each of these requirements in the next four sections (III, IV, V, and VI).

## **III. Which Employers are Covered By the Employment Protections of the ADA?**

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### **A. ADA Applies to Private Employers with 15 or More Employees**

- Includes employment agencies and labor unions.
- Includes a location or facility of a business with less than 15 employees, if the total number of employees for the company in all locations and facilities equals 15 or more.

Other laws may apply to persons with disabilities who are employed by smaller businesses. For more information, contact the ACDL or a private attorney.

## **B. ADA Applies to State and Local Governments**

- Includes all state and local governmental agencies, departments, and groups, no matter how many employees work there. Even though the ADA applies to state employers, the U.S. Supreme Court has held that employees (and persons applying for a job) cannot sue state employers in court for money. Individuals can still file charges of discrimination with the EEOC against their state employer and can still sue to require state employers to take action or stop actions that discriminate. The U.S. Government can still file lawsuits for money damages against state employers under the ADA.
- Examples of state and local employers include: public universities, police and fire departments, public libraries, museums, public parks and recreation providers, and social welfare offices.

## **C. ADA does NOT apply to the Federal Government**

If a person with a disability works or applies for a job with the federal government, a federal agency, or a company owned by the U.S. Government, then the ADA does not apply. But these employees and persons applying for a job are protected under the Rehabilitation Act of 1973, another anti-discrimination law that offers employment protections. For more information about that law, contact the ACDL, an EEO officer of the federal agency, or a private attorney. The ADA does apply to employees of the U.S. Senate.

## **D. Title I (Employment) of the ADA does NOT Apply to Indian Tribes**

Tribes may have their own laws that cover discrimination because of a disability. Some tribes have adopted their own tribal laws or have agreements to go by the same discrimination laws as the federal government that are like the ADA. Contact a tribal legal office for more information about tribal laws or agreements that may apply to you.

## **IV. Who Is Protected by the ADA**

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To be protected by the ADA, a person must either:

- have a disability;
- have a record of having a disability;
- be thought of as having a disability;
- be associated with an individual with a disability; or
- have opposed an act or practice by an employer that violates the ADA.

The term "disability" has a special meaning under the ADA. If a person applying for a job or an employee has a disability as defined by some other program or benefit, such as Social Security or Workers' Compensation, does not mean that she or he has a disability according to the ADA.

## **A. Definition**

Disability under the ADA means:

- a physical or mental impairment that
- substantially limits
- one or more major life activities.

We will discuss each of these bullet points.

### **1. Impairment**

a. Physical impairment is "Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems" and includes:

- neurological
- musculoskeletal
- special sense organs
- cardiovascular
- reproductive
- respiratory (including speech organs)
- digestive
- genito-urinary
- hematic and lymphatic
- skin
- endocrine

For example, persons with AIDS, epilepsy, diabetes, paralysis, cancer, or a bad hearing or visual problem have physical impairments because these affect one of these major body systems under the ADA.

b. Mental Impairment is "Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities." This includes not being able to do things such as "thinking, concentrating and interacting with other people."

For example, persons with mental retardation, severe depression, or dyslexia have a mental impairment because these conditions affect mental or psychological functions.

## **2. Major Life Activities**

Major life activities are the things that people do during the day. Only one major life activity has to be greatly limited to meet this part of the disability definition. Major life activities include, but are not limited to:

- seeing
- hearing
- speaking
- walking
- breathing
- lifting
- maintaining normal social relationships
- standing
- learning
- doing manual tasks
- caring for oneself
- reproduction
- working
- sleeping
- eating
- bending
- concentrating
- thinking
- communicating

The recent changes to the ADA added “major bodily functions” as major life activities. Some examples of a “major bodily function” are the immune system, heart and vein systems, or muscle or skeletal functions.

Because it is more difficult to determine whether the activity of work is greatly limited, first look to see if another major activity is limited. If another major life activity is greatly limited by the physical or mental impairment, the person has a disability. There is no need to also be greatly limited in working.

If no other major life activity except working is affected by the disability, decide if the person is limited in the life activity of working. Generally, to be greatly limited in the major life activity of work means that the individual is not able to perform a wide group or class of jobs rather than a single job. The individual with the disability is compared to an average person with similar experience, education, and skills.

## **3. A Substantial Limitation**

“Substantially limited” is not a difficult standard to meet. A substantial limitation means that a person has more difficulty doing the major life activity than most average people. A person does not need to be unable to do the major life activity at all to have a disability.

To decide if a person is substantially limited in a major life activity, think about:

- how much effort it takes for the person to do the activity

- pain experienced while performing the activity
- how long it takes to do the activity
- the bad effects of treatments or devices the person has to use because of the impairment (for example, if needed medication makes the person dizzy or nauseous).

Some impairments, such as blindness, deafness, diabetes, intellectual disability, and loss of use of legs, will easily meet the “substantially limited” rule. Remember that it is not the name of the impairment that matters, it is the effect(s) the impairment has that is important to whether the impairment is a disability under the ADA.

**EXAMPLE:** Aaron is a person with insulin-dependent diabetes. His diabetes is well-controlled with medication and monitoring by Aaron. He is still a person with a disability because the diabetes substantially limits his body's normal endocrine function.

**EXAMPLE:** Joan has very mild cerebral palsy (CP). The CP only slightly interferes with her speaking. The CP does not have any great impact on other major life activities, such as walking and doing manual tasks. She is probably not an "individual with a disability" under the ADA definition. But she may be protected if she is “regarded as” an individual with a disability. John also has cerebral palsy. But he is not able to walk and uses a wheelchair because of the CP. He also has great difficulty talking and uses a speech device to help him speak. John is an individual with a disability.

## **B. Case-by-Case Decision**

To determine whether a person meets the ADA definition of “disability,” you need to look at all the facts and each situation to see how an impairment limits the person.

For example, to decide if a person with high blood pressure is a person with a disability, you would need to look at how well the blood pressure was controlled, any bad side effects of the medication, limits on any activities because of the high blood pressure, and the effect on the individual's body, such as the heart.

## **C. Four Ways a Person without a Disability May be Protected by the ADA**

Sometimes a person does not have a physical or mental impairment that greatly limits a major life activity but is still protected by the ADA. There are four other ways that a person might be protected from employment discrimination because of a disability. These four ways are the following:

1. **Record of Disability:** A qualified individual who has a record of a disability. A person who has a history of a disability might be discriminated against even though the condition no longer causes a limitation.

**EXAMPLE:** Philip works for a computer software company giving training to people who buy software. Philip's supervisor overhears Philip tell a co-worker that he was once hospitalized for depression. Philip's supervisor demotes him because he is afraid Philip cannot handle the pressure of his job due to the depression. Philip is protected by the ADA even though he does not currently have a disability.

2. **"Regarded As":** A qualified individual who the employer "thinks" has an impairment that is a disability. A person might not actually have a disability, but the employer mistakenly thinks he does have the disability. It is not enough to think of the person as having an impairment. The employer must believe the impairment greatly limits one or more major life activities.

**EXAMPLE:** Joe applies as an electrician with a repair company. The employer thinks that Joe has AIDS. Joe does not have AIDS, but the employer does not hire him even though he is the most qualified. The ADA protects Joe because his employer regards him as disabled, even though he is not.

**EXAMPLE:** Sarah is applying for a teaching job. She is denied the job solely because her son has cancer. The principal fears the insurance rates will increase if her son is covered by Sarah's insurance. The school district violated the ADA.

3. **"By Association":** An individual who is associated with a person with a disability. Sometimes ADA protections are given to persons who are discriminated against in employment because of their relationship with a family member, friend, or co-worker who is an individual with a disability recognized under the ADA.

4. **Retaliation:** An individual who has:

- spoken out against or complained about an act or practice of an employer that violates the ADA;
- made a charge of discrimination under the ADA; or
- testified, assisted, or participated in an investigation or hearing about discrimination under the ADA.

**EXAMPLE:** Carol is a co-worker who is not disabled. She works with Elena who is deaf. Elena was not sent to a training located out of town because the company did not want to pay for a sign language interpreter. Elena files a charge of discrimination with the EEOC. Elena lists Carol as a witness. The investigator from EEOC interviews Carol as part of the investigation. Their employer fires Carol for cooperating with the investigation. Carol is protected by the ADA.

#### **D. Conditions Not Included in the Protections of the ADA**

Whether an individual is protected by the ADA depends on the facts of each case. But Congress has excluded certain conditions or factors from protections under the ADA. These examples follow:

- A person who currently uses illegal drugs is NOT a person with a disability protected by the ADA. However, persons who used illegal drugs in the past but not now are protected by the ADA.
- A person who uses illegal drugs is not protected as a qualified person with a disability when an employer takes any action against the individual because of the drug use. This includes illegal use of drugs, such as marijuana and cocaine and abuse of prescription drugs. However, people who take prescription drugs under the care of a licensed doctor are qualified individuals with a disability.
- The ADA does not prohibit discrimination in employment because of sexual orientation.
- The ADA does not include sexual conditions or disorders as disabilities.
- A person is not protected by the ADA because of some behaviors such as gambling, stealing, or setting fires.
- A person is not disabled under the ADA because of differences in personality, environment, culture, poverty, lack of education or a prison record. These are not disabilities under the ADA.
- A person with a short-term impairment is not disabled. Examples include pregnancy, a broken leg or arm, infection, strained or pulled muscle, concussion, common cold, infection, short temper or poor judgment. Other laws, such as the Family Medical Leave Act (FMLA) may provide protection for some of these problems.
- The ADA does not consider race, gender, religion, nationality, or sexual orientation. Other state and local laws may cover some of these areas.

## V. Being Qualified Under the ADA

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### A. Skills, Experience and Education

A person with a disability must meet the basic qualifications for the job. These qualifications include, but are not limited to, meeting the skill, experience, education, health, safety, physical demands and any other requirements an employer might set for the job.

**EXAMPLE:** *Chris has diabetes. He applies for a nursing position that asks all applicants to have an RN degree. He has an LPN and not an RN degree. Chris is not qualified for this position.*

**EXAMPLE:** *Natalie uses a wheelchair because of her disability. She applies for a position as a science teacher at a high school. She has a degree in education, a current AZ teaching certificate, and experience teaching in another school district. She would be a qualified for the job.*

Although employers can set any job requirements they want to, they may not legally require something that will deny a job or benefit to a person with a disability, unless the requirements are:

- job-related,
- a business necessity, and
- cannot be performed with a reasonable accommodation.

**EXAMPLE:** *In one Supreme Court case, Mr. Kirk was hired as a driver for a grocery store chain. For this job, he had to have a Department of Transportation certificate showing he had 20/40 vision in both eyes. He had an impairment of 20/200 in one eye. He was approved for the DOT vision certificate by mistake. Several years later, the vision exam error was found out. The grocery store fired him because he could not pass the vision test. The Supreme Court sided with the grocery store and said that drivers did have to meet the DOT basic vision standard for that job.*

This case does not pertain to discrimination based on state or local laws and regulations. Job qualifications based on state standards may be challenged by employees under the ADA. If you have questions about a job standard in your state or city, you should seek legal advice.

### B. Ability to Perform the Job With or Without Reasonable Accommodations

Not only must an individual meet the certain qualifications, s/he must also be able to perform the essential functions of the job with or without reasonable accommodation(s).

- “Essential functions” are important and basic job duties that someone in the position must be able to do. See below to determine what the basic functions of a job are:
  - written job descriptions,
  - employer's opinion,
  - duties other people in the same position perform,
  - duties other people did who held the same position,
  - duties other people do in similar positions, and
  - terms of a collective bargaining or union agreement.

**EXAMPLE:** *Linda applies for a position as an office assistant. She can type, file, and perform receptionist duties. She has the education, experience, and skills needed for the job. However, sometimes the office assistant must deliver a report. Linda is unable to drive because of a seizure disorder. Driving, in this case, is probably a “marginal” job duty, and Linda would be qualified because she can perform the basic functions of the job and has the qualifications.*

- “Marginal” functions are tasks that are NOT basic to the position. Often times, they are the duties that are included in a job description as “other duties as assigned.”

A person does not have to be able to perform the essential functions without an accommodation. If a person can perform the essential functions with an accommodation, s/he is still qualified.

A reasonable accommodation is any change to a job, workplace, or the way things usually are done that allows a qualified individual with a disability to enjoy an equal employment opportunity.

Examples of reasonable accommodations include, but are not limited to:

- making changes to buildings and offices so they are usable by people with disabilities;
- restructuring a job by changing marginal job duties with co-workers;
- changing when or how a basic job function is performed;
- offering a part-time or lesser work schedule;
- obtaining adaptive equipment or devices (AT devices);
- changing office policies;
- allowing use of earned paid leave or unpaid leave for treatment related to disability (in the event this issue arises, please be sure to consider any rights you may have under the Family Medical Leave Act (FMLA)); and

- reassignment to a vacant position, if the employee is unable to perform the essential functions of his or her position with or without reasonable accommodation, or if providing the accommodation would pose an undue hardship on the employer.

There may be other reasonable accommodations. This list is as long as the imagination of the worker, the employer, and outside resources. For more information about reasonable accommodations, request the ACDL's guide on the ADA and Reasonable Accommodations.

**EXAMPLE:** *Bettina has a hearing impairment. She works as a cashier at a hardware store. She applies for a promotion as a bookkeeper. She has the needed qualifications and can perform all of the duties in the job description, except answering the phone. The bookkeeper must answer the phones in the office as part of her duties. Bettina would be able to answer the telephone with an amplification device. The device costs about \$70. She is qualified because she can perform all of the duties with a reasonable accommodation.*

### **C. Effect of Applications for Disability Benefits on ADA Claims**

Sometimes an employee with a disability is either terminated, laid off, or placed on unpaid medical leave because of his/her disability. The employee may believe the action violated the ADA. The employee also may decide to apply for disability payments through the Social Security Administration or a disability insurance program to assist him/her financially. These programs usually require that an individual be too disabled to perform his/her previous job or any other gainful work to qualify for the program. To be protected by the ADA, however, an individual must be a qualified individual. This means that s/he must be able to perform the basic functions of his/her job with or without reasonable accommodations.

**EXAMPLE:** *Applying for and receiving Social Security disability benefits does not automatically prevent a recipient from suing an employer for employment discrimination under the ADA. Further, applying for and receiving disability benefits does not mean that the SSDI recipient was unqualified. This is because under the ADA, reasonable accommodations are considered, but under disability programs, such as Social Security, reasonable accommodations are not considered. However, the person who applied for SSDI cannot ignore the statements s/he made to apply for the benefits and must explain how these statements apply to the ADA claim that s/he can perform the essential functions of the job with or without accommodations.*

What this means is that a person who applies for Social Security disability benefits and also files a claim under the ADA has to explain how the two claims can exist together. Such an explanation may be that if the employer had accommodated him/her, the person could have

continued to work. Without an accommodation, s/he cannot work. Keep in mind that, in some cases, there may not be a reasonable explanation, and the ADA claim will fail. Employers may try to use the employee's or the treating physician's statements on benefits applications against the employee as evidence in court to prove that s/he is not qualified for the work. If you are applying for any type of disability benefits, and if you believe that you have been discriminated against by your employer on the basis of disability, you should contact the ACDL or a private attorney in employment law before completing your application for disability benefits.

**EXAMPLE:** *Elena is a receptionist and is blind. She worked for a medium-size architectural firm who had purchased a special phone system that allowed her to use a probe to detect which line was ringing. The company closed when the partners retired. Elena applied to several other companies which refused to hire her because they would not provide the necessary accommodations. She filed for Social Security Disability Insurance. She also filed an ADA claim against one employer who refused to hire her because the company did not want to provide the accommodation. Under the Supreme Court ruling, Elena's ADA claim should not be dismissed because although she admitted in her application that she could not find substantial gainful work with accommodations, Elena could work with accommodations and, thus, is a qualified applicant under the ADA.*

**EXAMPLE:** *Terry worked at a retail store. He developed a serious heart condition and became unable to do his job even with reasonable accommodation. His heart doctor and physician also refused to release him to work. His employer fired him. He applied for Social Security benefits and filed an ADA discrimination claim against his employer for his termination. It is unlikely Terry can offer an explanation that he is qualified under the ADA because of the statements made by him, his physician, and his heart doctor. His ADA claim would likely fail because he will find it difficult to prove he is qualified under the ADA.*

## **VI. Employment Discrimination Because of a Disability**

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If a person is a qualified individual with a disability and works for a covered employer, the ADA prohibits the employer from discriminating because of a disability. The ADA makes job discrimination unlawful in the following areas:

- application procedures
- advertising
- evaluation
- promotion
- testing
- layoff/recall
- other terms, conditions, and privileges of employment
- recruitment
- assignments
- disciplinary actions
- medical examinations
- benefits
- termination
- hiring
- testing
- tenure
- leave
- training
- pay

The ADA requires employers to act upon the needs of an individual rather than acting upon general statements made about the capabilities of persons with disabilities. Some types of actions that are unlawful under the ADA include:

1. Limiting, segregating, or classifying a job applicant or employee in a way that hurts employment opportunities for the applicant or employee because of his or her disability.

**EXAMPLE:** *John is a sales clerk who has depression. He is always passed over for an assistant manager position by the owner because the owner feels that his depression might limit his ability to perform the job, even though John is interested in the position, can do the job, and has worked well in his present job. This action is unlawful since John is interested and qualified to do the job. Thinking that his disability might affect his job performance is discriminatory.*

2. Participating in a contract or other arrangement or relationship that subjects an employer's qualified applicant or employee with a disability to discrimination.

**EXAMPLE:** *A telemarketing firm hires its executives from a personnel agency. The firm has a verbal agreement with the agency to not refer people with disabilities. Jim, a qualified person who is visually impaired, applies for one of the supervisor positions. Jim is not referred because the company knows the computer equipment that Jim would need would increase the company's expenses. This action is unlawful since Jim is not hired because of the agreement between the two businesses.*

3. Denying an employment opportunity to a qualified individual because s/he has a relationship or association with a person with a disability.

**EXAMPLE:** *Dean is a construction worker who applies for a foreman position with a construction company. Dean is qualified for the position but is not hired by the owners because of a negative reaction from other workers if it was found out that his partner was recently diagnosed with AIDS. It is unlawful to refuse to hire Dean solely because of his relationship with a person with a disability. Instead, the construction company could provide awareness and training for its employees regarding a variety of disabilities and its employment requirements under the ADA.*

4. Refusing to make reasonable accommodations for known physical or mental limitations of a qualified applicant or employee with a disability, unless the accommodation would cause an undue hardship on the business.

**EXAMPLE:** Teresa is a waitress who is diagnosed with cancer. She has radiation and chemotherapy treatments. She asks her employer for three weeks of unpaid leave beyond the sick leave she has already used. Even though other workers have offered to work the extra hours when she is gone, the restaurant owner decides not to change its leave policy to allow the waitress to have time off without pay and keep her job while receiving treatment. After Teresa uses up all of her paid leave for her treatments, she is let go because of absenteeism. Not changing the leave policy probably violates the ADA and may also violate the Family Medical Leave Act.

**EXAMPLE:** Alex uses a wheelchair because he has muscular dystrophy. He applies for a position as an aide in a classroom for children with learning disabilities to provide tutoring. The school district requires all aides and tutors to be able to lift 75 pounds. This lifting requirement tends to screen out people with certain disabilities. Although it may be a job function in classes where children are not able to walk and may need some help, it is not required of aides in classes where the children do not need to be lifted. The requirement would probably violate the ADA.

5. Using qualification standards, employment tests, or other selection criteria that screen out or tend to screen out someone with a disability unless they are job-related and necessary for the business.
6. Failing to use employment tests in the most effective manner to measure actual abilities. Tests must reflect the actual skills, knowledge, or other factors being measured and not the impaired sensory, manual, or speaking skills of an employee or applicant with a disability (unless those are the skills the test is to measure).

**EXAMPLE:** Michelle has a mental illness that affects her ability to concentrate. She has to take a pre-employment test in a room with many other people. Because other people come and go during the test period, she is unable to concentrate. She asks to take the test in a quiet room because of her disability, but the company refuses. Michelle does poorly on this test not because of her work skills but because of how the other disruptions affected her ability to take the test. Allowing her to take the test in a quiet room with another person present would have been a better test of her ability to do the job.

7. Discriminating against a person because s/he has opposed an employment practice of the employer or filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing to enforce provisions of the ADA.

**EXAMPLE:** *Joseph is a supervisor of the custodians at his company. He applies for an available electrician position with his company. Although he is a licensed electrician and fully qualified, he is not hired because he filed a grievance with the personnel department on behalf of a co-worker with a disability who did not receive an accommodation after asking for one. The action of not promoting Joseph only because of his past grievance with the company who failed to accommodate a fellow worker is unlawful.*

## VII. Summary

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For the ADA to apply to an individual, s/he must:

1. work for a covered employer;
  - a private employer with 15 or more employees or a public employer with any number of employees
  - most federal applicants and employees are covered by a different civil rights law, the Rehabilitation Act of 1973
2. have a disability;
  - a physical or mental impairment that substantially limits one or more major life activity
  - a history of a disability
  - regarded as having a disability
3. be otherwise qualified for the desired position; and
  - have the skills, education, experience, and licenses necessary for the job; and
  - be able to perform the essential functions of the job with or without reasonable accommodations
4. have been discriminated against on the basis of disability.