

## Americans with Disabilities Act

### Fact Sheet

#### Overview

The Americans with Disabilities Act of 1990 (ADA)<sup>1</sup> is a federal law that gives civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local government services, and telecommunications. The prohibition on disability discrimination in employment applies to most private employers and to all state and local government agencies.<sup>2</sup> (See ASTHO *Public Health Agencies as Employers: Obtaining and Using Employee Health Information for Preparedness Planning and Response* for a more detailed analysis of ADA's employment provisions.)

#### What the Law Does

Title I of ADA confers certain rights on individuals regarding disabilities. It makes it unlawful to discriminate in employment against a qualified individual with a disability.<sup>3</sup> Title I also makes it unlawful to discriminate against an individual, whether disabled or not, because of a relationship or association with an individual with a known disability.<sup>4</sup> This means that it is illegal for an employer to discriminate against an employee because his or her spouse is disabled.

To protect job applicants and employees from discrimination, ADA restricts questions that an employer may ask individuals about medical problems or disabilities, and restricts requests for medical examinations.<sup>5</sup> These restrictions affect information that public health agencies and other employers may obtain related to their workforce when preparing for a public health emergency to ensure continuity of operations and effective response. Title II of ADA applies Title I's provisions to state and local governments by making it illegal for state and local governmental agencies to discriminate against individuals based on disability in state and local government programs and activities, including employment.<sup>6</sup>

#### Liability and Enforcement

Under Title I of ADA, individuals who believe they have been discriminated against in employment based on their disability can file a charge with the Equal Employment Opportunity Commission (EEOC). EEOC will investigate and initially attempt to resolve the charge through conciliation. Remedies include hiring, promotion, reinstatement, back pay, and attorney's fees. Reasonable accommodation is also available as a remedy. Individuals may file a lawsuit in federal court only after they receive a "right to sue letter" from EEOC.

The U.S. Department of Justice (DOJ) enforces Title II of ADA. DOJ may file lawsuits in federal court to enforce ADA and may obtain court orders, including compensatory damages and back pay, to remedy discrimination and civil penalties. Because ADA establishes overlapping responsibilities in EEOC and DOJ regarding state and local government employment, EEOC and DOJ coordinate the federal enforcement effort to avoid duplication in investigative and enforcement activities.<sup>7</sup>

#### How the Law Works

ADA provides that no entity covered by the law shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, hiring, advancement, or discharge of employees, employee compensation, job training and other terms, or conditions or privileges of employment.<sup>8</sup> ADA applies to individuals who have a disability or have a relationship or association with someone with a disability.<sup>9</sup>

**Covered Entities** – ADA applies to private employers with 15 or more employees, state and local government employers regardless of the number of employees,<sup>10</sup> and Congress.<sup>11</sup> Section 501 of the Rehabilitation Act provides the same protections for federal employees and applicants for federal employment in the executive branch.

**Qualified Individual** – A qualified individual with a disability is a person who meets legitimate skill, experience, education, or other requirements of an employment position that he or she holds or seeks, and who can perform the essential functions of the position with or without reasonable accommodation.<sup>12</sup>

**Disability** – An individual with a disability is a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such impairment, or a person who is perceived by others as having such impairment.<sup>13</sup> The determination of whether any particular condition is considered a disability is made on a case-by-case basis. Impairments from minor illness, such as the common cold or seasonal influenza, that last only for a short period of time are typically not covered by ADA. Whether pandemic influenza is covered would depend on its severity and duration.<sup>14</sup>

**Restricted Activities** – Employers may not ask about the existence, nature, or severity of a disability, except as follows:

- Before a conditional offer of employment, ADA prohibits disability-related inquiries and medical examination. However, the employer is permitted to ask a job applicant whether they can perform the job and how they would perform the job.<sup>15</sup>
- After a conditional offer of employment, but before an individual begins working, ADA permits disability-related inquiries and medical examinations if all entering employees in the same job category are subject to the same inquiries and examinations regardless of disability.<sup>16</sup> However, if certain criteria are used to screen out an employee or employees with disabilities as a result of such an examination or inquiry, the exclusionary criteria must be job-related and consistent with business necessity, and performance of the essential job functions cannot be accomplished with reasonable accommodation.
- During employment, an employer generally can only ask medical questions or require a medical exam if the employer needs medical documentation to support an employee's request for accommodation or if the employer has reason to

#### Practice Notes

- Appoint a coordinator for workforce planning and continuity who is familiar with employment related laws and human resources policies and procedures.
- Identify information needed to protect workers and provide continuity of operations.
- Determine if the information is covered by laws that affect employees or their privacy, such as ADA, occupational safety and health laws, data practices or privacy laws, or other federal and state laws.
- If covered by ADA, identify information that may be collected for emergency preparedness and response consistent with ADA.
- Protect the confidentiality of identifiable employee information; determine what information may be shared under ADA and with whom.
- Identify and obtain consent required to share information when necessary.

believe an employee would not be able to perform a job successfully or safely because of a medical condition.<sup>17</sup> Generally, the employer must have a reasonable belief, based on objective evidence, that an employee's ability to perform essential job functions will be impaired by a medical condition or an employee will pose a direct threat due to a medical condition.

**Permitted Activities** – Employers are allowed to: obtain health-related information as required to comply with federal workplace safety and health laws, or state and local workplace safety and health laws to the extent that state and local laws are consistent with ADA;<sup>18</sup> ask employees to self-identify whether they will require assistance in the event of an evacuation and, if so, what type of assistance they would need;<sup>19</sup> and survey all employees about potential absences during a pandemic or other emergency (e.g. because of child care, transportation, disability, or other reasons), without requesting the employee to disclose the specific reason.<sup>20</sup>

**Reasonable Accommodation** – ADA requires that employers make reasonable accommodation to the known physical or mental limitations of otherwise qualified individuals with disabilities, unless it results in undue hardship.<sup>21</sup> During a pandemic, reasonable accommodation may include telework, modified work schedules, and infection control strategies.

## How the Law Affects States

As employers, state and local governments must comply with ADA whether or not an emergency exists. ADA prohibits requests for medical examinations or disability-related inquiries absent an exception. An exception exists if an examination or inquiry is shown to be job-related and consistent with business necessity.<sup>22</sup> This means that, generally, an employer may only obtain medical information where the employer reasonably believes an employee will be unable to perform the job or will pose a direct threat to him or herself or others, due to a medical condition. Medical information sought must be limited in scope to only information which is relevant to the inquiry. ADA's provisions limiting employment inquiries apply to all applicants and employees of covered employers, regardless of whether those individuals have disabilities.<sup>23</sup>

## Disclosure of Employee Health Information under ADA

ADA requires that information obtained by an employer about an applicant's or employee's medical condition or history must be collected on separate forms, kept in separate medical files, and be treated as a confidential medical record.<sup>24</sup> Supervisors and managers may be informed regarding necessary restrictions on the employee's work or duties and necessary accommodations. Additionally, first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment or affect the employee's ability to evacuate the workplace during an emergency. Finally, government officials investigating ADA compliance shall be provided with relevant information on request.<sup>25</sup>

During a public health emergency, information regarding an employee's status may be released so long as that information does not disclose confidential medical information about the employee. For example, a public health agency could communicate, for the purpose of service continuity, that an employee is not currently at work and that the employee may be out of the office for several weeks, but the agency cannot disclose information about the nature of an employee's illness or injury. These confidentiality provisions would extend to media requests or other requests for information from outside entities. A public health agency must use care to safeguard the confidentiality of employee health information in order to fully comply with ADA.

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Sources:

- <sup>1</sup> 42 U.S.C. § 12101 *et seq.*
- <sup>2</sup> U.S. Equal Employment Commission. “The ADA: Your Employment Rights as an Individual With a Disability.” Available at <http://www.eeoc.gov/facts/ada18.html>. Accessed 11-16-2012.
- <sup>3</sup> 42 U.S.C. § 12112; 29 C.F.R. § 1630.4.
- <sup>4</sup> 42 U.S.C. § 12112(b)(4).
- <sup>5</sup> 42 U.S.C. § 12112(d).
- <sup>6</sup> 42 U.S.C. § 12132; U.S. Department of Justice. “Americans with Disabilities Act Questions and Answers.” Available at <http://www.ada.gov/q%26aeng02.htm>. Accessed 11-16-2012.
- <sup>7</sup> U.S. Equal Employment Commission. “The ADA: Your Employment Rights as an Individual With a Disability.” Available at <http://www.eeoc.gov/facts/ada18.html>. Accessed November 11-16-2012.
- <sup>8</sup> 42 U.S.C. § 12112; 29 C.F.R. § 1630.4.
- <sup>9</sup> 42 U.S.C. § 12112(b)(4).
- <sup>10</sup> 42 U.S.C. § 12111(2), (5).
- <sup>11</sup> 42 U.S.C. § 12209.
- <sup>12</sup> 42 U.S.C. § 12111(8).
- <sup>13</sup> 42 U.S.C. § 12102(1).
- <sup>14</sup> 29 C.F.R. Appendix to Part 1630. “Interpretive Guidance on Title I of the Americans With Disabilities Act, *Note on Certain Terminology Used.*”
- <sup>15</sup> 42 U.S.C. § 12112(d)(2); 29 C.F.R. § 1630.14(a).
- <sup>16</sup> 42 U.S.C. § 12112(d)(3); 29 C.F.R. § 1630.14(b).
- <sup>17</sup> 42 U.S.C. § 12112(d)(4); 29 C.F.R. § 1630.14(c).
- <sup>18</sup> 29 C.F.R. Part 1630, Appendix to Part 1630—Interpretive Guidance on Title I of the Americans With Disabilities Act, p 42; U.S. Equal Opportunity Commission and U.S. Department of Justice, Americans with Disabilities Act, Questions and Answers. Available at <http://www.ada.gov/q&aeng02.htm>. Accessed 11-16-2012.
- <sup>19</sup> U.S. Equal Employment Opportunity Commission. “Fact Sheet on Obtaining and Using Employee Medical Information as Part of Emergency Evacuation Procedures.” Available at [http://eeoc.gov/facts/evacuation.html#N\\_2](http://eeoc.gov/facts/evacuation.html#N_2). Accessed 11-16-2012.
- <sup>20</sup> U.S. Equal Employment Opportunity Commission. “Pandemic Preparedness in the Workplace and the Americans with Disabilities Act.” Available at [http://www.eeoc.gov/facts/pandemic\\_flu.html](http://www.eeoc.gov/facts/pandemic_flu.html). Accessed 11-16-2012.
- <sup>21</sup> 42 U.S.C. § 12112(b)(5).
- <sup>22</sup> 42 U.S.C. §§ 12112, 12113.
- <sup>23</sup> 42 U.S.C. §§ 12112(d).
- <sup>24</sup> 42 U.S.C. § 12112; 29 C.F.R. § 1630.14(c), (d).
- <sup>25</sup> 42 U.S.C. § 12112(d)(3); 29 C.F.R. § 1630.14(c), (d).

This document was compiled from April–November 2012 and reflects the laws and programs current then. It reflects only portions of the laws relevant to public health emergencies and is not intended to be exhaustive of all relevant legal authority. This resource is for informational purposes only and is not intended as a substitute for professional legal or other advice. The document was funded by CDC Award No. 1U38HM000454 to the Association of State and Territorial Health Officials; Subcontractor Subcontractor University of Michigan School of Public Health, Network for Public Health Law – Mid-States Region.