

3-15-1995

Practical Tips For Employers For Compliance With The ADA

Patrick L. Clancy

Follow this and additional works at: <https://digitalcommons.pepperdine.edu/naalj>



Part of the [Disability Law Commons](#), [Labor and Employment Law Commons](#), and the [Legislation Commons](#)

Recommended Citation

Patrick L. Clancy, *Practical Tips For Employers For Compliance With The ADA*, 15 J. Nat'l Ass'n Admin. L. Judges. (1995)
available at <https://digitalcommons.pepperdine.edu/naalj/vol15/iss1/7>

This Article is brought to you for free and open access by the Caruso School of Law at Pepperdine Digital Commons. It has been accepted for inclusion in Journal of the National Association of Administrative Law Judiciary by an authorized editor of Pepperdine Digital Commons. For more information, please contact bailey.berry@pepperdine.edu.

Practical Tips For Employers For Compliance With The ADA*
by Patrick L. Clancy, Esquire**

I. Overview Of The ADA – How The ADA Changes The Law

A. Existing Law Protecting The Disabled

1. Rehabilitation Act of 1973
 - a. Under Section 503 of the Rehabilitation Act, government contractors and subcontractors are required to take affirmative action to employ the handicapped.
 - b. Under Section 504 of the Rehabilitation Act, programs receiving federal financial assistance are prohibited from discriminating against the handicapped.
2. State Laws. Most states have enacted laws prohibiting discrimination against disabled individuals in employment. The provisions vary from state to state.

B. Scope Of The ADA

1. The ADA contains five major parts, or titles.
 - Title I: Prohibits discrimination against the disabled in employment
 - Title II: Prohibits state and local governments and agencies from discriminating against the disabled in any public service, including facilities and transportation.
 - Title III: Prohibits any place of public accommodation from denying the disabled the full enjoyment of the goods, services, facilities, privileges, advantages and accommodations provided to others; establishes accessibility for facilities.
 - Title IV: Requires common carriers providing telephone services to provide telecommunications relay services.
 - Title V: General Provisions.

* Adapted from a presentation at the National Association of Administrative Law Judges Conference in Baltimore, Maryland, on October 23, 1994.

** Venable, Baetjer and Howard, One Church Street, Suite 500, Rockville, Maryland 20850, (301) 217-5600

C. Employers Covered By ADA

1. The employment provisions of Title I of the ADA are applicable to employment agencies, unions, state and local governments, Congress, legislative agencies, and employers with 25 or more employees on July 26, 1992.
2. The employment provisions of Title I are applicable to employers with 15 or more employees on July 26, 1994.
3. Public sector employers not already covered by Section 504 of the Federal Rehabilitation Act will be covered by Title II of the ADA, generally effective January 26, 1992, until they become covered by Title I of the ADA (i.e., July 26, 1992, or July 26, 1994, depending on the size of their employee complement), if they have the requisite number of employees for ADA coverage. If they do not, they will continue to be covered by the employment discrimination aspects of Title II.

D. Definition Of Covered Disabilities

1. Basic Definition of a Disability
 - a. A disability is defined under the ADA as a physical or mental impairment which substantially limits one or more major life activities, a record of such impairment, or being regarded as having such impairment.

***EXAMPLE** - a person with a history of heart disease whose condition is cured, controlled or in remission may be considered disabled by virtue of having a record of an impairment.*
 - b. The basic definition is similar to the Rehabilitation Act definition. However, there may be some differences between the exclusions from the definition of disability under the ADA and under the Rehabilitation Act.
 - c. A physical or mental impairment is defined as "any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of [several] body systems...or any mental or psychological disorder..."
 - (i) Whether an individual has an impairment must be a case-by-case determination made "without

regard to mitigating measures such as medicines, or assistive or prosthetic devices.”

- d. “Substantially limits” means unable to perform a major life activity that persons in the general population can perform or significantly restricted as to the condition, manner or duration under which an individual can perform a major life activity.
- e. Major life activities include such things as walking, seeing, breathing, learning, working, caring for oneself, sitting, standing, lifting, reaching, etc.

EXAMPLE - *an individual employed as a receptionist who sustains a back injury restricting her ability to walk, sit, stand, drive or engage in recreational activities likely would be found to be an individual with a disability. On the other hand, a person employed as a general laborer who sustains a back injury but continued an active life, including recreational sports, and who had found a new job, may be not disabled under the ADA.*

EXAMPLE - *a person substantially limited in the activity of working may be considered disabled, but only if she/he is restricted in a class of job or a broad range of jobs. An individual with a back condition preventing them from working in any heavy labor jobs would meet this requirement.*

- 2. “Qualified Person With a Disability” is defined as an individual with a disability who, with or without reasonable accommodation, can perform the “essential functions” of the job in question.

EXAMPLE - *the essential function of a loading dock job may be to move heavy packages to a storage room, as opposed to lifting and carrying the packages.*

- a. In determining essential job functions, consideration shall be given to the employer’s judgment as to what job functions are essential; a written job description prepared before advertising or interviewing applicants for the job and a collective bargaining agreement may be evidence of what are essential functions. Other factors include the amount of time performing the function; the consequences of not performing the function and the work experience of

those persons currently and formerly holding the same position.

EXAMPLE - *an employer may structure its operations so that production is carried out by a team of workers. While each worker performs a different function, each worker rotates among the functions. In such a case, all the functions might be considered essential.*

- b. In determining the "essential" job functions — those which employee must be able to do either unaided or with reasonable accommodations, consider the following issues:

- 1. Is function actually required?
- 2. Would its removal fundamentally alter the position?

- (i) Is the function the reason for the job?

EXAMPLE - *a company seeks a "floating" supervisor to substitute when regular supervisors on a variety of shifts are absent. The position exists solely to have someone to work the different shifts, and the ability to work any time of day is essential.*

- (ii) How many other are available among whom the function might be redistributed?

- (iii) Does the function require a special expertise or skill, which the employer is seeking to obtain with this hire?

- c. In determining whether an individual is qualified, consider whether:

- 1. whether the individual meets basic requirements such as education, work experience, training, skills, licenses or certificates;
- 2. whether the individual can perform the essential functions of the job with or without reasonable accommodation; and
- 3. whether the individual poses a direct threat to the health or safety of the individual or others which cannot be eliminated or reduced to acceptable levels by reasonable accommodation.

EXAMPLE - a highly qualified experienced worker was rejected for a sheet metal job because of a company's policy of excluding persons with epilepsy from the job, due to its belief that those persons could pose a threat to themselves or others. The individual had been seizure-free for six years and evidence indicated that he followed his medication schedule. The company unlawfully discriminated against this individual.

EXAMPLE - a company rejected an applicant who was deaf in one ear for a mechanic position because the company believed his impairment might cause a future workers' compensation claim. His previous work record, however, showed he could perform the job, and the company provided no evidence that he posed a danger to himself or others. The company was found to have unlawfully discriminated.

EXAMPLE - an experienced carpenter was not hired because a single blood pressure reading by a company physician was above the company's standard. However, the individual's doctor provided much lower readings over the course of time and stated that the applicant could safely perform the job. Only a slightly elevated risk was found and only a remote possibility of future injury existed. The company unlawfully discriminated against this individual.

3. Examples of Covered Disabilities. There is no list of covered disabilities as each situation must be answered based on definition set forth above. By way of example, these conditions may be covered disabilities under the ADA:

AIDS and HIV Infections

Alcoholism

Back Problems

Cancer

Cosmetic Disfigurement

Diabetes

Epilepsy

Hearing Problems

Heart Conditions

Hypertension

Polio

Speech Problems

Suicidal Tendencies

Tuberculosis

Vision Problems

4. Examples of Disabilities Not Covered. These conditions will not normally be covered disabilities under the ADA:

Age

Color of Hair or Eyes

Criminal Record

Exhibitionism

Gambling

Homosexuality or Bisexuality

Infected Finger

Kleptomania

"Minor" Impairments

Pedophilia

Pyromania

Sexual Behavior Disorders

Transvestism or Transexualism

Chronic Lateness

Lefthandedness

E. Non-Discrimination Requirements

1. The ADA prohibits discrimination against qualified individuals with disabilities. It also specifically prohibits employers from:
 - a. entering into contracts that have the effect of discrimination against employer's employees;
 - b. using standards, criteria or methods of administration that have the effect of or perpetuate discrimination;

EXAMPLE - an employer who excludes all persons who have epilepsy from jobs requiring the use of dangerous machinery will be required to look at the life experience and work history of an individual who

has epilepsy to determine whether exclusion from a position is warranted in that individual case.

- c. discriminating against non-disabled persons have a relationship or association with a disabled person;
- d. failing to make reasonable accommodations unless the employer can demonstrate undue hardship;
- e. using standards that tend to screen out disabled unless criteria are job-related and consistent with business necessity; and

EXAMPLE - *an employer may ask candidates for certain positions if they have a driver's license if the position may involve driving. Employers should avoid such a requirement if the position does not involve driving. Further, even if the position involves some driving, an employer should not exclude from the position an applicant who does not have a license due to a disability if driving is not an essential function of the job.*

- f. failing to use or administer tests in the most effective manner to ensure that it tests for factor being measured, rather than impairments.

F. Duty to Make Reasonable Accommodations

1. "Reasonable Accommodation" means a modification or adjustment:
 - a. to a job application process that enables a "qualified individual with a disability" to be considered for the job.

EXAMPLE - *an applicant with a visual impairment or one who lacks manual dexterity may need assistance in completing application forms.*

EXAMPLE - *an employee who has a deteriorated disc condition and cannot perform the heavy labor functions of his/her position may be reassigned to a vacant position for which they are qualified that does not involve heavy labor. A collective bargaining agreement that establishes seniority lists for such positions may be a factor in determining whether the transfer would create an undue hardship as discussed below.*

EXAMPLE - a forklift operator is required to lift a 70 pound weight in order to remove and replace the 70 pound battery that powers the forklift. It would be a reasonable accommodation to eliminate this requirement for an otherwise qualified forklift operator who could not lift the weight due to a disability if other employees are available to assist with the battery removal and replacement.

- b. to the work environment or to manner or circumstances under which the position is customarily performed that enables a qualified individual with a disability to perform the essential functions of the job.
- c. that enables a qualified individual with a disability to enjoy the same benefits and privileges of employment enjoyed by similarly situated individuals without disabilities; and

EXAMPLE - employees with disabilities must have equal access to lunchrooms, employee lounges, rest rooms, meeting rooms and other employer-sponsored services, including health programs, transportation and social events.

- d. that does not pose an "undue hardship" on the covered entity's business.
2. Examples of Reasonable Accommodations:
- a. making existing facilities used by employees "readily accessible".
 - b. job restructuring by reallocating or redistributing marginal job functions.
 - c. part time or modified work schedules or reassignment to vacant position.
 - d. acquisition or modification of equipment or devices.
 - e. appropriate adjustment or modification of exams, training materials or policies.
 - f. provision of qualified readers or interpreters.
 - g. other similar accommodations.

EXAMPLE - a position requires an employee to move 50 pound objects from a loading area to a work site. An individual with a back impairment can lift but cannot carry the objects. The employer may be

required to provide a dolly or cart if it would effectively enable the employee to perform the essential function of the job, which is moving the objects to the proper location.

3. Undue Hardship

- a. An action requiring "undue hardship" is one that requires "significant difficulty or expense" when considered in light of:
 - (i) the nature and cost of the accommodation;
 - (ii) "facility/site" (i.e., geographically separate subpart of entity) factors: financial resources, number of employees, effect of accommodation on site expenses and resources; other impact on site operations;
 - (iii) "entity" factors: financial resources; size, composition, structure and functions of workforce; number, type and location of sites/facilities; geographic separateness of sites/facilities; fiscal relationship to sites/facilities; and
 - (iv) the "de minimus" cost test of Title VII does not apply. Inconvenience, disruption, and detriment to other employees can be considered (and collective bargaining agreement may be a factor) – but fear and prejudice of other employees is not a justification for refusing to make an accommodation.

EXAMPLE - *it might "fundamentally alter" the nature of a temporary construction site or be unduly costly to make it physically accessible to an employee using a wheelchair, if the terrain and structures are constantly changing as construction progresses.*

EXAMPLE - *if restructuring a job to accommodate an individual with a disability creates a heavier workload for other employees, this may constitute an undue hardship. However, complaints or negative reactions to reasonable accommodation would not constitute an undue hardship.*

4. Persons Entitled to Accommodations
 - a. Accommodations need only be provided for KNOWN disabilities. In general, it is the responsibility of the individual with a disability to notify employer of the need for accommodation.
 - b. Employers may need to inquire of those with known disabilities who are having job problems whether accommodations could permit them to adequately perform essential functions, however.
 - c. While a person without a disability cannot be discriminated against because of his or her relationship to someone with a disability, there is no requirement that the person without a disability be given reasonable accommodations.
5. When Should Accommodations be Evaluated
 - a. A qualified individual with disability cannot be disqualified because of need for accommodation unless it would impose undue hardship.
 - b. Employers must determine whether an accommodation can be made at the point that the disability is identified, if the individual is equally qualified on other grounds to others being considered for the job.
 - c. Once it is determined that an accommodation can be made, then the choice of the successful applicant from those in pool of applicants must be made without regard to the additional cost or inconvenience posed by the need to accommodate -- the "accommodation" bridge has already been crossed.
6. Kinds of Accommodations
 - a. Employers are not required to change uniformly applied leave policies just because those leave policies may impact more severely on those with certain kinds of disabilities. Such policies include, for example, the number of paid sick leave days provided. But, remember, extra leave may be a reasonable accommodation.
 - b. EEOC interpretative comments say that employer can state attendance requirements and ask whether

- the employee can comply, but cannot ask how much leave he would need or how often.
- c. Employers are not required to provide personal equipment, prosthetic devices, or make adjustments or modifications that are primarily for the personal benefit of the individual with a disability, that is, that assists a disabled individual throughout his or her daily activities.
 - d. There is no need to provide accommodations that are not job-related, i.e., refrigerator that is not provided for others.
 - e. Accommodations may be required in the application process. For example, employers may have to make changes in tests to prevent impact of disabilities on test score where disabilities are not job-related, including allowing more time to take tests.
 - f. Even if selection criteria are consistent with business necessity, employers may have to consider using a less restrictive alternative.
 - g. There must be accommodations to enable access to all benefits of employment including break rooms, rest rooms, etc.
 - h. There cannot be segregation of disabled employees as a result of accommodation.

G. Medical Inquiries and Exams

1. Under the ADA, medical inquiries or examination are generally prohibited, except as provided below.
 - (a) Applicants. Employers may not inquire into nature or extent of disability; may not give pre-employment physical exam except where given after offer, given to all applicants in same job category, and confidentiality requirements are adhered to. Employers may not inquire into an applicant's workers' compensation history before making a conditional offer of employment.

EXAMPLE - *on an application form or during a job interview an employer may not ask whether an individual has any disabilities or impairments that would affect their ability to work, nor may the*

employer ask if the individual had ever filed a workers' compensation claim.

EXAMPLE - *after making a conditional job offer, but before the person starts work, an employee may conduct a medical examination or ask health-related questions, providing that all candidates who receive a conditional job offer in that job category are asked the same questions or are required to submit to the same examination.*

- (b) Employees. Employers may not inquire into nature or extent of disability; may not give physical exam except where shown to be "job related and consistent with business necessity and confidentiality requirements are adhered to.

EXAMPLE - *an employer may require a laborer, whose back impairment affects his/her ability to lift to be examined by an orthopedist, but may not require this employee to submit to an HIV test where the test is not related to the essential functions of the job or the impairment.*

EXAMPLE - *employers may conduct medical examinations required by federal law and state laws, if the state laws are not inconsistent with the ADA.*

- (c) Tests for the current illegal use of drugs are not considered medical examinations prohibited by these rules.
- (d) Confidentiality Requirements. Medical information collected (as permitted above) must be maintained on separate forms and in separate files, except as necessary for:
 - (i) Supervisors and managers who must be informed of work restrictions and accommodations;
 - (ii) First aid and safety personnel, if the disability might require emergency treatment;
 - (iii) Government officials investigating compliance with the ADA;
 - (iv) State workers' compensation offices/second injury funds.

H. ADA Provisions on Drug and Alcohol Testing

1. Current illegal users of drugs are not covered by ADA protections. Illegal use includes the unlawful use of prescription drugs.
2. Former users and recovering users are protected, so long as they are not currently illegally using drugs. However, a former or rehabilitating user may be required to offer evidence that he or she is not a current illegal user.
 - (a) An employer is allowed to seek reassurance that no illegal use of drugs has occurred recently enough to suggest that continuing use is a real and ongoing problem.
 - (b) Former illegal users may be denied jobs on this basis if the employer can show this is a job related standard that is consistent with business necessity.
 - (c) Persons erroneously perceived as being drug addicts or former drug addicts.
 - (d) The ADA permits testing for illegal use of drugs, but does not actively encourage it; the ADA is neutral with respect to drug testing.

I. Integration With Other Laws

1. State Fair Employment Practices Laws. The ADA is not intended to limit remedies of state laws that provide greater or equal protection for disabilities.
2. State Health Laws. The ADA does not preempt these laws to the extent they do not conflict with the ADA.
3. State Smoking Laws. The ADA does not preempt these laws.
4. Insurance Laws. The ADA does not affect, if the laws are not a subterfuge to evade the purpose of the ADA.
5. Federal Rehabilitation Act. The ADA does not imply a lesser standard of protection than the Rehabilitation Act. The ADA amends Rehabilitation Act provisions on exclusion of drug users to parallel ADA provisions.
6. Federal Drug Free Workplace Act. The ADA is not intended to affect this law.
7. Department of Transportation, Nuclear Regulatory Commission and Department of Defense regulations related to drug testing – the ADA is not intended to affect those regulations.

EXAMPLE - *an employee being hired to drive a vehicle in interstate commerce must meet safety requirements established by the U.S. Department of Transportation. Employers must also conform to health and safety requirements of the U.S. Occupational Safety and Health Administration.*

II. Practical Suggestions For Compliance With The Americans With Disabilities Act

A. Preliminary Stage

1. Consider drafting job descriptions to include all "essential functions" of the job.
2. But, do not attempt to characterize "marginal" functions as "essential".
3. Describe jobs in terms of functions required to be performed, rather than physical attributes required.
4. At the Advertising/Recruitment Stage, remove all suggestions of physical or mental requirements from job requests, advertisements and recruitment notices.

B. At the Application Stage

1. Remove all questions pertaining to physical or mental ability from employment applications.
2. Add statements in EEO legend in application regarding discrimination against "qualified individuals with a disability", and statement that reasonable accommodations will be made for disabilities where they would not result in "undue hardship".
3. Make sure required notices are posted in employment office.
4. Consider maintaining copies of job descriptions for vacant jobs in employment office for walk-in applicants.
5. Consider addenda to application listing essential functions of job and asking application whether he would have any problems in performing each one.
6. Eliminate overbroad release of medical information from application form.

C. At the Interview Stage

1. Do not pursue lines of inquiry based on past illnesses, injuries, accidents, hospitalizations, treatments, workers' compensation claims, or medical insurance claims.
2. Do not inquire into medical condition of family members.
3. Do not inquire into problems that applicant foresees in performing job.

D. If Disability Surfaces as the Reason for a Problem in PERFORMING a Job Function

1. Do not reject an applicant based on problems in doing job because of disability without considering reasonable accommodation.
2. If possible, get acknowledgment from applicant that job function is "essential".
3. Seek applicant's help in identifying the barriers he faces in doing job satisfactorily (which work tasks or work environment factors limit individual's effectiveness or prevent performance).
4. Seek applicant's opinion as to whether "reasonable accommodations" could remove the impediment his disability poses to employment. Documentation of the need for accommodations can be sought.
5. Take applicant's suggestions for sources of information as to possible reasonable accommodations.
6. Assess reasonableness of each possible accommodation in terms of listed factors, and its effectiveness, reliability, and whether it can be provided in timely manner.
7. If no proposed accommodations can be made without undue hardship on employer's business, offer applicant opportunity to provide his own accommodation.

E. When Conducting Tests

1. Attempt to ensure that test accurately measures skill being tested for, rather than impaired visual, hearing, sensory or other skills.
2. Seek advice from handicap advocacy groups as to what tests pose problems, and how problem can be eliminated.
3. Seek technical assistance from EEOC as to what is most effective test, or most effective manner of testing.

F. When Seeking REFERENCES

1. Before making a conditional offer of employment, an employer may not ask previous employers or other sources about an applicant's
 - (a) disability;
 - (b) illness;
 - (c) workers' compensation history;
 - (d) or any other questions that the employer may not ask of the applicant himself or herself.
2. A previous employer may be asked about:
 - (a) job functions and tasks performed by the applicant;
 - (b) the quality and quantity of work performed;
 - (c) how job functions were performed;
 - (d) attendance record;
 - (e) other job related issues that do not relate to disability
3. If an applicant has a known disability and has indicated that he/she could perform a job with a reasonable accommodation, a previous employer may be asked about accommodations made by that employer.

G. Four Steps to Determining What is a "Reasonable Accommodation"

1. ANALYZE the job and determine its purpose and essential functions
2. CONSULT with the individual with a disability to ascertain his job-related limitations and how they might be overcome; employers should also consider other sources of technical assistance
3. IDENTIFY potential accommodations and assess their effectiveness; employers should consider whether any possibilities must be eliminated on undue hardship grounds;
4. SELECT the accommodation

H. When MAKING the Selection Decision

1. Consider all applicants who can perform "essential functions" of the job in question, with or without accommodation, i.e., make decision on whether reasonable accommodation can be made BEFORE

making selection decision if need for accommodation is known.

2. Select best qualified from this group without consideration of cost or difficulty of accommodation (that bridge was crossed when accommodation decision was made).

I. When Making the Job Offer

1. Condition offer on results of medical examination and inquiries only if this is required of all conditional employees in the same category.

J. When Giving Physical Examinations

1. Give only after initial job offer made; however, employers can test for current illegal use of drugs beforehand. (But note Technical Assistance Guidelines instruction on pre-employment inquiry as to use of prescription drugs)
2. Distinguish between problems that would result in rejection and medical information needed to establish a baseline for future workers' compensation and OSHA issues.
3. Identify any physical problems that pose a "direct threat" to safety or health of others.
4. Ask doctor for list of functional limitations on ability to do job, rather than physical/mental problems.
5. Keep medical information obtained through inquiries or examinations confidential; disclose only to:
 - a. supervisors and managers where necessary to advise of job restrictions or accommodations;
 - b. first aid personnel, if emergency treatment might be required;
 - c. government officials;
 - d. state workers' compensation offices or second injury funds.

K. When Making the Final Decision, Reconsider These Factors

1. Is an individual with a disability being rejected due to inability to perform essential job function?
2. Have all reasonable accommodations been considered?
3. Has 4-step accommodation analysis been done?

4. Has every step of decision making process been well documented?

L. Drafting Job Descriptions to Meet ADA Standards

1. Keep in mind the following factors:
 - a. "Qualified" means "able to do the essential functions of the job with or without reasonable accommodation";
 - b. a written job description before advertising for or interviewing applicants is evidence as to the job's "essential functions"; a collective bargaining agreement may also be evidence;
 - c. the ADA is not intended to interfere with production standards;
 - d. persons who pose a direct threat to the health or safety of self or others, which cannot be mitigated through reasonable accommodations, are not "qualified";
 - e. selection criteria that screen out or tend to screen out a person or class of persons with a disability must be shown to be job-related and consistent with business necessity;
 - f. although employers cannot make pre-offer inquiries into disabilities, they can describe both essential and marginal job functions and inquire whether the applicant can perform the function.
2. Usage of job descriptions would affect their contents and structure -- i.e., are they used by your company?
 - a. to educate and motivate employees on job functions;
 - b. as a yardstick for performance appraisal;
 - c. as a basis for job evaluation system that assigns wages;
 - d. as a yardstick for discipline;
 - e. as a defense in arbitrations, breach of contract and EEO litigation in addition to ADA litigation.
3. Note these caveats:
 - a. inadvertent omission of an "essential function" would be evidence against the employer;
 - b. delineation of job functions as "marginal" or "nonessential" could cause a host of problems; great

- care is required in determining whether or how to describe the relative importance of job functions;
- c. remember that what is "essential" vs. "marginal" in a given job can possibly change with regard to each vacancy;
- d. absence of job descriptions may create problems when selection criteria are being questioned.

M. SUGGESTED DO'S AND DON'TS FOR DRAFTING JOB DESCRIPTIONS

1. DO's
 - a. do list all functions required, whether marginal or essential;
 - b. where incompleteness is likely to be a problem, consider a more generalized job description that describes responsibilities, rather than functions;
 - c. do include in each job description a "savings clause" providing that duties may change and that the employee is required to perform other duties as assigned;
 - d. do spell out any production standards, whether qualitative or quantitative;
 - e. do spell out, with specificity, any functional requirements that may have physical ramifications -- e.g.
 - ability to lift*
 - ability to work at certain temperature, height, depth, or in an atmosphere containing fumes, etc.*
 - ability to work with small parts*
 - need for quick reaction time*
 - need for depth perception or peripheral vision*
 - ability to wear and use safety gear*
 - ability to communicate on the telephone*
 - f. to enhance credibility of job description, have it verified by incumbents;
 - g. to enhance evidentiary value of job description, consider indicating approximate percentage of time spent or frequency of occurrence of job functions;
 - h. consider a section indicating special skills, experiences, etc., required that are unique to the job;

- i. Keep it UP TO DATE.
- 2. DON'Ts
 - a. don't have written job descriptions unless they are comprehensive and up to date;
 - b. don't list any physical conditions as grounds for exclusion in the job description;
 - c. don't include criteria that screen out the disabled unless certain they are valid.

How The ADA Changes The Law

Scope Of The ADA

- Title I: Prohibits discrimination against the disabled in employment
- Title II: Prohibits state and local governments and agencies from discriminating against the disabled in any public service, including transportation
- Title III: Prohibits any place of public accommodation from denying the disabled the full enjoyment of the goods, services, facilities, privileges, advantages and accommodations provided to others
- Title IV: Requires common carriers providing telephone services to provide telecommunications relay services
- Title V: General provisions

Duty To Make Reasonable Accommodation

Basic Duty

An employer has a duty to make reasonable accommodations unless it would result in an undue hardship.

Qualified Individual With A Disability

"QIWD"

"Qualified Person with a Disability" is defined as an individual with a disability who, with or without reasonable accommodation, can perform the "essential functions" of the job in question.

- (i) whether the individual meets basic requirements;
- (ii) whether the individual can perform the essential functions of the job with or without reasonable accommodation; and
- (iii) whether the individual poses a direct threat to the health or safety of the individual or others.

This determination requires an individualized assessment based upon current conditions and capabilities.

Duty To Make Reasonable Accommodations

"Reasonable Accommodation" means a modification or adjustment:

- to job application process that enables QIWD to be considered for job.
- to work environment or to manner or circumstances under which position is customarily performed that enables QIWD to perform essential functions of job.
- that enables QIWD to enjoy same benefits and privileges of employment enjoyed by similarly situated individuals without disabilities.

THAT DOES NOT IMPOSE AN UNDUE HARDSHIP ON THE COVERED ENTITY'S BUSINESS

Duty To Make Reasonable Accommodations

Examples of Reasonable Accommodations

- making existing facilities used by employees "readily accessible".
- job restructuring.
- part time or modified work schedules.
- reassignment to vacant position.
- acquisition or modification of equipment or devices.
- appropriate adjustment or modification of exams, training materials or policies.
- provision of qualified readers or interpreters.
- other similar accommodations.

Duty To Make Reasonable Accommodations

Four Steps to Determining What is a "Reasonable Accommodation":

1. Analyze the job and determine its purpose and essential functions.
2. Consult with the individual with a disability to ascertain his job-related limitations and how they might be overcome
 - consider sources of technical assistance.
3. Identify potential accommodations and assess their effectiveness

- consider whether any possibilities must be eliminated on undue hardship grounds.
- 4. Select the accommodation
 - while the preference of the individual must be given "primary" consideration, it is not binding; the less expensive or easier to provide accommodation may be selected, so long as it is effective.

Duty To Make Reasonable Accommodations

An action requiring "undue hardship" is one that requires "significant difficulty or expense" when considered in light of:

- nature and cost of accommodation.
- "facility/site (i.e., geographically separate subpart of entity)" factors: financial resources, number of employees, effect of accommodation on site expenses and resources; other impact on site operations.
- "entity" factors: financial resources; size, composition, structure and functions of workforce; number, type and location of sites/facilities; geographic separateness of sites/facilities; fiscal relationship to site/facilities.

REASONABLE ACCOMMODATION

COMPLIANCE KEYS

FLEXIBILITY

COMMUNICATION

CENTRAL REVIEW PROCESS

**NATIONAL ASSOCIATION OF
ADMINISTRATIVE LAW JUDGES**

Reader Survey

Please rank order the type of articles you would like to see in this Journal

- ☐ thought provoking articles on jurisprudence
 - ☐ ethical issues
 - ☐ practical tips on how to conduct a hearing
 - ☐ practical tips on writing decisions
 - ☐ practical tips on how different agencies handle cases
 - ☐ how different states are organized
 - ☐ summaries of key opinions in administrative law
 - ☐ analysis of legislative developments in the states and congress
 - ☐ use of technology
 - ☐ rules of evidence
 - ☐ rules of procedure
 - ☐ compensation
 - ☐ training
-
-

I would be willing to write an article about my experiences and knowledge.

I suggest you contact:

Name: _____

Address: _____

City State Zip: _____

Telephone_ _____

on the topic of: _____

I suggest you reprint the enclosed article (or citation) _____

Does the J.NAALJ publication frequency meet your needs? ☐ Yes ☐ No

If not, what frequency would you prefer? ☐ Three times a Year ☐ Quarterly

Is the current format of J.NAALJ appropriate? ☐ Yes ☐ No

If not, please explain: _____

Is the length of the articles appropriate? ☐ Yes ☐ No

If not, should they be ☐ shorter or ☐ longer?

How would you rate the overall quality of J.NAALJ?

☐ EXCELLENT ☐ GOOD ☐ AVERAGE ☐ FAIR ☐ POOR

Do you share the J.NAALJ with anyone else in your office? ☐ Yes ☐ No

If yes, how many people? _____

Additional Comments:

The NATIONAL ASSOCIATION OF ADMINISTRATIVE LAW JUDGES needs your input to meet our common goal of professionalizing the administrative law judges, administrative hearings officers, our colleagues, our agencies, those attorneys and citizens who come before us for justice.

Please send your ideas, suggestions, and queries to:.

Judge Edward J. Schoenbaum, Editor-in-Chief
Journal of the National Association of Administrative Law Judges
1108 South Grand West
Springfield, Illinois 62704-3553

Please photocopy, fill out and mail

13) Brief Description of job duties: _____

14) Academic degrees with year awarded _____

15) Awards, honors, etc.; Other affiliations (optional) _____

16) Optional and confidential: for use by The Committee on Compensation Of
Administrative Law Judges and Hearing Officers.

Salary (or salary range) for your present position:

\$ _____ per _____

Salary fixed by:	Statute _____	Civil Service Board _____	Appointing Authority _____
	Collective Bargaining _____	Other (Please Explain) _____	

17) _____ I am now a member of this association. (I previously joined NAALJ
or its predecessor, NAAHO.)

18) Signature: _____

Date: _____

Please photocopy, fill out and mail with your check for \$35.00.

EVIDENCE FOR ADMINISTRATIVE LAW JUDGES

May 17, 18, 19, 1995

Illinois State Bar Association - Regional Office
20 South Clark - Suite 900, Chicago, Illinois 60603

Sponsored by the: National Association of Administrative Law Judges, National Conference of Administrative Law Judges - American Bar Association, Illinois Association of Administrative Law Judges, Illinois Government Bar Association, Illinois State Bar Association, American Bar Association - Section of Administrative Law & Regulatory Practice.

Distinguished Faculty include: Professor Michael Graham, of U. of Miami School of Law, Editor, Cleary & Graham *Illinois Evidence*, 6th Edition (1994); Hon. Shirley S. Abrahamson, Justice, Supreme Court of WI; Hon. Suzzane B. Conlon, Judge U.S. District Court; Professor Victor Rosenblum, Northwestern University School of Law; Hon. Alfred Burton, Administrative Law Judge, SSA-OAH, Chicago; Hon. Jody S. Rosenzweig, Chair-elect, National Conference of Administrative Law Judges, Administrative Law Judge, U.S. Dept. of Labor, Boston, MA; Hon. Edward J. Schoenbaum, President National Association of Administrative Law Judges; Springfield, IL.; Hon. Alexander White, Circuit Court of Cook County - Chancery Division

\$100.00 for Administrative Law Judges, and government attorneys, if paid before April 15, 1995. \$125.00 after. \$150.00 for private practitioners before April 15th. \$175.00 after. Fee includes: Wednesday reception, refreshment breaks, Thursday lunch, and all printed materials.

Checks should be made out to: *Illinois Association of Administrative Law Judges* and sent to: Hon. Joseph M. Nunes, Treasurer IAALJ, P.O. Box A3505, Chicago, Illinois 60690-3505.

Accommodations at the Executive Plaza 1 800 621-4005 and the Bismarck Hotel 1 800 643-1500. Both are a short walk from the ISBA. Rates are \$59.00 state government rate, \$90.00 for Federal government employees. When calling for reservations, mention Evidence for Administrative Law Judges and indicate state or federal employment.

The NAALJ is an accredited sponsor recognized by the Missouri Bar Association. This program is pre-approved for 21.3 CLE credits. This program is also pre-approved in Wisconsin for 21 CLE credits. We will assist you in obtaining pre-approved continuing legal education credits for your state if you contact us.

For information contact Honorable Edward J. Schoenbaum, President, National Association of Administrative Law Judges, 1108 South Grand Avenue West, Springfield, Illinois 62704 217-524-7836 FAX 217 524-7824

**National Association of Administrative Law Judges
Officers And Board Of Governors 1994-1995**

Hon. Edward J. Schoenbaum, President
IL Dept. Empl. Security
1108 South Grand West
Springfield, IL 62704
217/524-7836 FAX 524-7824

Hon. John W. Hardwicke,
President-elect
Office of Admin. Hearings
P.O. Box 1247
Brooklandville, MD 21022
410/321-2043 FAX 321-2040

Hon. James W. Deese
KY Board of Parole
P.O. Box 22364
Lexington, KY 40522-2364
502/564-3620

Hon. Kevin E. Johnson, Secretary
Office of Admin. Hearings
100 Washington Sq. Room 1700
Minneapolis, MN 55401-2138
612/341-7640 FAX 341-2665

Hon. Margaret Giovanniello
N.Y. Dept. of Labor
718 1/2 President St.
Brooklyn, NY 11215
718/783-8213 FAX 797-7902

Hon. Willie C. Thompson, Jr.,
Treasurer
VA Employment Comm.
703 E. Main St.
Richmond, VA 23219
804/786-8390 FAX 786-9034

Hon. Joseph L. Hayes
VA Employment Comm.
P.O. Box 1358
Richmond, VA 23211
804/786-7554 FAX 786-9034

Hon. Frank E. Wallemann,
Immediate Past President
MO Comm. on Human Rights
P.O. Box 1129
Jefferson City, MO 65102
314/751-1965 FAX 751-2905

Hon. Willis J. Kollars
U.S. Dept. of Agriculture
TCBY Tower, Suite 730
425 W. Capitol Ave.
Little Rock, AR 72201-3439
501/324-6859 FAX 374-7349

Hon. Charles Bechhoefer
U.S. Nuclear Reg. Comm.
2609 Klinge Road N.W.
Washington, D.C. 20008
301/492-7600 FAX 492-7285

Hon. Sue LaBorde
LA Office of Empl & Training
P.O. Box 2106
Monroe, LA 71207-2106
318/362-5116 FAX 362-3000

Hon. Stanley J. Cygan
IL Dept. Empl. Security
401 S. State Street
Chicago, IL 60605
312/793-6549 FAX 793-1119

Hon. Victor J. Roskopf
MO Dept. of Mental Health
P.O.Box 687
Jefferson City, MO 65101
314/751-8065 FAX 751-8069

National Administrative Law Judge Foundation
1108 South Grand Avenue West
Springfield, Illinois 62704-3353

Address Correction Requested

**DATED MATERIAL!
DELIVER TO:**



NONPROFIT ORG.
U.S. POSTAGE
PAID
SPRINGFIELD IL
PERMIT NO. 874

Change of Address?

Return your corrected address label to:
NAALJ
c/o National Center for State Courts
300 Newport Avenue
Williamsburg, VA 23187-8798
804/253-2000