Meeting the Challenge, Inc.

is a private, disability consulting firm
which operates the

DBTAC Rocky Mountain ADA Center
National network of 10 regional ADA Centers:

- Technical assistance
- Education and training
- Materials dissemination
- Information and referral

Funded by the National Institute on Disability and Rehabilitation Research under the U.S. Department of Education
1-800-949-4232

www.adainformation.org

Sign up for our newsletter!
Information, materials, and/or technical assistance are intended solely as informal guidance, and are neither a determination of your legal rights or responsibilities under the ADA, nor binding on any agency with enforcement responsibility under the ADA.
We’re NOT the ADA police!

• We are NOT the enforcement agency
• We are NOT attorneys
• We are NOT able to advocate or get directly involved in specific situations
• All calls to us are confidential.
ADA = Civil Rights
• The ADA is NOT about special privileges
• The ADA is NOT about providing services
• The ADA has nothing to do with Social Security Disability
• The ADA has nothing to do with medical insurance disputes
• There is no money involved with the ADA
The ADA is about preventing discrimination!
Not the only disability law out there!

- Rehabilitation Act (504) – federal programs and programs that receive federal funding
- Architectural Barriers Act – accessibility in federal buildings
- Fair Housing Act – long term housing
- IDEA – educational programs in public schools
- Air Carrier Access Act – airlines
- HIPPA – privacy of medical records
And there are state and local laws related to disability.
What does the ADA cover?
ADA titles

- Title I – Employment
- Title II – State and local government (including public transit and post-secondary education)
- Title III – Private businesses (aka public accommodations)
- Title IV – Telecommunications
- Title V – Miscellaneous
Exclusions

• Religious organizations (except in employment, when other state laws apply, or when space is rented by a non-religious entity)
• Native American tribal entities
• Private membership clubs
Each part of the ADA must be applied on an individualized, fact-specific, case-by-case basis.
Our favorite answer to every ADA question:

It depends!
Definition of Disability

- ADA Amendments Act which went into effect January 1, 2009 has clarified the definition.
- The medical diagnosis doesn’t matter.
- The focus is on the functional limitation of an individual.
A disability is:

1. A physical or mental impairment that substantially limits a major life activity
2. A record of such an impairment
3. Being regarded as having an impairment.
• major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working

• a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions
Not covered under the ADA

- Current use of illegal drugs
- Any illegal activities
- Sexual preferences or dysfunctions
- Kleptomania, pyromania, compulsive gambling
- Temporary impairments
General Non-discrimination

• Equal opportunity, **NOT** special privileges
• Qualified person with a disability meets the essential eligibility requirements with or without modifications
• Eligibility criteria that screen out or tend to screen out people with disabilities are not allowed
• Integration
• Reasonable modifications to policies, practices and procedures
• Effective communication
• Service animals
Title I - Employment

• Covers employers with 15+ employees and all state and local government employers
• Covers all employment practices including the recruitment and application process, interviewing, hiring, job assignment, discharge, layoff and recall, leave, promotion, compensation, training, benefits, and privileges
• Hire, promote, fire the most deserving person. The ADA is not affirmative action.
• Prohibits harassment and hostile work environment
Qualified Individual with a Disability

• The ADA protects qualified individuals with disabilities who can perform the essential functions of the job with or without accommodation

• A qualified individual satisfies the requisite skill, experience, education, license, certificate, and other job related requirements

• Same standards for performance and conduct apply

• The ADA also protects employees who have a relationship or an association with a person with a disability
Considerations to determine essential functions:

– The position exists to perform this function
– Included in a written job description
– The amount of time spent performing function
– The number of employees available to perform function
– Actual work experience of current or past employees in the position
– The consequences of not performing a function
– Tasks should be analyzed with regard to the results or outcome, not the manner in which they are performed
– Employer cannot refuse to hire an applicant because their disability prevents them from performing duties that are not essential to the job.
Reasonable Accommodations

Reasonable accommodations are modifications, changes, or adjustments to a job, employment practice, or work environment that allow a person with a disability to participate in the job application process, to perform the essential functions of their job, or to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities.
Possible Reasonable Accommodations

• Individualize for each employee
• Remove physical barriers
• Sign language interpreters/exchange of written notes
• Computer adaptations for people who are blind or low vision (screen reader, magnification software)
• Alternative computer access (e.g. voice recognition software)
• Flexible schedule
More Reasonable Accommodations

- Allow service animal
- Desk in quiet, distraction free area
- Providing a reader
- Telephone headset or amplifier
- Allowing consistent break times
- Use of stool to sit on
- As a last resort, reassignment to a vacant position for which the individual is qualified
Limitations (aka: Defenses)

• Fundamental alteration – fundamentally alter the nature of the service, program, activity or business operation
• Undue hardship – significant difficulty, expense, or disruption
• Direct threat – significant risk of substantial harm. Cannot be based on assumptions, stereotypes or generalizations. Must be based on valid medical analyses and/or other objective evidence.
Limitations

• Employers are not required to provide personal devices, such as wheelchairs, scooters, hearing aids, or eyeglasses, or personal services, such as personal attendant care.

• Employers are not required to eliminate an essential function.
To develop accommodation ideas that will work:

- Employee might be able to obtain ideas from doctor, physical therapist, occupational therapist, or speech therapist

- Call the following resources which offer assistance to individuals with disabilities regarding employment:
Employment Resources

- Job Accommodation Network – provides assistance in determining appropriate reasonable accommodations
  
  http://askjan.org
  
  800-526-7234

- Assistive Technology Partners – provides assistance in determining the best assistive technology solutions
  
  http://www.ucdenver.edu/academics/colleges/medicalschool/Programs/atp/Pages/AssistiveTechnologyPartners.aspx
  
  800-255-3477
Employment Resources

• DVR (Division of Vocational Rehabilitation) - provides assistance in developing and acquiring reasonable accommodations for clients
  
  http://www.cdhs.state.co.us/DVR/dvr_locations.htm
  
  303-866-4150

• Independent Living Centers – provide employment counseling and advocacy services to people with disabilities

Accommodation Process

• Process must be initiated by the employee
• Employee may have to provide documentation if need is not obvious
• Employee should be involved in process of identifying an effective accommodation
• Employer pays the cost of the accommodation unless it’s an undue hardship
• Tax credits and deductions available to offset the cost
• Accommodation requests should be handled by the HR department. They are trained in the ADA and trained to respond to requests for reasonable accommodations.

• Supervisors may not be trained in the ADA so should not be the main strategy for responding to accommodation requests. They should be included in the process, but they should not direct the process.
Disclosure Considerations

• Employees and applicants are not required to disclose if they are not requesting a reasonable accommodation. However, they must disclose if they request a reasonable accommodation.

• Applicants may want to disclose if they are applying for a Federal agency or other agency that has an affirmative action policy.
Disclosure Considerations

• Applicants may choose to disclose if the job relates to their experiences as a person with a disability.
• Don’t go overboard! Applicants don’t have to tell employers everything.
• Focus on abilities and skills, not disability.
Disability Inquiries and Medical Exams

Pre-offer:

• Employer cannot ask applicant if they have a disability

• Cannot ask about the nature or severity of an obvious disability

• Cannot require a medical examination at the pre-offer stage
Disability Inquiries and Medical Exams

Pre-offer:

• Employer can ask an applicant if they can perform the essential functions of the job with or without accommodation

• Can ask applicant to describe or demonstrate how they would perform the essential functions of the job
Disability Inquiries and Medical Exams

Post-offer:

• After a job offer, an employer can condition the offer on passing a required medical examination, but only if all entering employees for that job category have to take an examination.

• Employer cannot reject applicant because of information about disability revealed in exam unless the reasons for rejection are job-related and consistent with business necessity.
Disability Inquiries and Medical Exams

During employment:

• Employer cannot ask employee about disability and cannot require to take a medical exam unless job-related and consistent with business necessity

• Can offer voluntary medical examinations as part of an employee health program
Confidentiality

• Medical information and information obtained about a disability either through an accommodation request or a medical examination must be kept confidential and maintained in separate files.
Enforcement of the ADA

- A complaint must be filed for enforcement to occur.
- It is a lengthy process and is not an immediate fix.
- A discrimination complaint must be filed within 180 days of the date of discrimination.
Self-advocacy is critical!
Title I enforcement agency

- Equal Employment Opportunity Commission (EEOC)

http://www.eeoc.gov

Denver Field Office
303 E. 17th Avenue, Suite 410
Denver, Colorado 80203
1-800-669-4000
State enforcement agency

Colorado state enforcement agency:

- Colorado Civil Rights Division (FEPA)
  1560 Broadway, Suite 1050
  Denver, Colorado 80202
  303-894-2997 or 800-262-4845 in state
  [http://www.dora.state.co.us/civil-rights/complaint_process_intake_packets/complaint_process.htm](http://www.dora.state.co.us/civil-rights/complaint_process_intake_packets/complaint_process.htm)
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