

The Americans with Disabilities Act: A Primer for Small Business

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Introduction


Small businesses are an ever-increasing source of jobs, many of which can be filled by individuals with disabilities who are able and want to work. The approximately 25 million small businesses in the nation represent 99.7 percent of all employers, employ more than 50 percent of the private work force, and generate more than half of the nation's gross domestic product.⁽¹⁾ Small businesses also provide 67 percent of all first jobs.

Unfortunately, the unemployment rate of individuals with disabilities remains high. By some estimates, more than 70% of individuals with severe disabilities are not working, even though many of them are willing and able to do so. President Bush's New Freedom Initiative seeks to partner with small businesses to increase the percentage of individuals with disabilities in the workplace.

While the Americans with Disabilities Act (ADA) applies to all businesses with 15 or more employees, this handbook is intended primarily for businesses with 15 to 100 employees and smaller businesses expecting to expand to have at least 15 employees in the near future. It will provide you with an easy-to-read, overview of the basic employment provisions of the ADA as they relate to employees and job applicants.

What is the ADA?

The ADA is a federal civil rights law designed to prevent discrimination and enable individuals with disabilities to participate fully in all aspects of society.

 **Practice tip:** The Equal Employment Opportunity Commission (EEOC) enforces the employment provisions of the ADA. The EEOC is headquartered in Washington, DC and has offices throughout the United States, including Puerto Rico. If you have any questions concerning the EEOC or the ADA, please

- Call the EEOC at 1-800-669-4000/1-800-669-6820 (TTY).
- Check out our website: www.eeoc.gov.
- Contact one of our small business liaisons. You can find out who they are on our web site.

Who is protected by the ADA?

The ADA applies to **a person who has** a physical or mental impairment that substantially limits one or more major life activities (like sitting, standing, or sleeping).

- The ADA covers more than just people who are deaf, people who are blind, or people who use wheelchairs.
- People who have physical conditions such as epilepsy, diabetes, HIV infection or severe forms of arthritis, hypertension, or carpal tunnel syndrome may be individuals with disabilities.
- People with mental impairments such as major depression, bipolar (manic-depressive) disorder, and mental retardation may also be covered.

The ADA also protects **a person with a record** of a substantially limiting impairment.

Example: A person with a history of cancer that is now in remission may be covered.

And the ADA protects **a person who is regarded** (or treated by an employer) as if s/he has a substantially limiting impairment.

- Sometimes, a person may be covered even if s/he has no impairment or has a minor impairment, particularly if the employer acts based on myths, fears, or stereotypes about a person's medical condition.

Example: An employer may not deny a job to someone who has a history of cancer because of a fear that the condition will recur and cause the employee to miss a lot of work.

The ADA only protects **a person who is qualified** for the job s/he has or wants.

- The individual with a disability must meet job-related requirements (for example, education, training, or skills requirements).
- S/he must be able to perform the job's essential functions (i.e., its fundamental duties) with or without a reasonable accommodation.

Practice tip: Employers do not have to hire someone with a disability over a more qualified person without a disability. The goal of the ADA is to provide equal access and opportunities to individuals with disabilities, not to give them an unfair advantage.

What does the ADA require an employer to do?

Employers covered by the ADA have to make sure that people with disabilities:

- have an equal opportunity to apply for jobs and to work in jobs for which they are qualified;
- have an equal opportunity to be promoted once they are working;
- have equal access to benefits and privileges of employment that are offered to other employees, such as employer-provided health insurance or training; and
- are not harassed because of their disability.

Practice tip: Harassing someone because of a disability is just as serious as harassing someone because of race, sex, religion, or national origin. If an employee complains to you that s/he is being harassed because of a disability, respond to the complaint right away by conducting an appropriate investigation and, if necessary, taking action to correct the situation.

As discussed in the sections that follow, the ADA also limits the kinds of medical information that you can get from a job applicant or employee and requires you to provide reasonable accommodations to the known limitations of qualified individuals with disabilities.⁽²⁾

Hiring Do's and Don'ts - Pre-Job Offer

Basic rule: The ADA does not allow you to ask questions about disability or use medical examinations until after you make someone a conditional job offer.

Practice tip: Focus application and interview questions on non-medical job qualifications. An employer may ask a wide range of questions designed to determine an applicant's qualifications for a job.

Examples of what you can ask:

- Whether s/he has the right education, training, and skills for the position.

- Whether s/he can satisfy the job's requirements or essential functions (describe them to the applicant).
- How much time off the applicant took in a previous job (but not why), the reason s/he or she left a previous job, and any past discipline.

Examples of what you can't ask:

- questions about an applicant's physical or mental impairment or how s/he became disabled (for example: questions about why the applicant uses a wheelchair);
- questions about an applicant's use of medication;
- questions about an applicant's prior workers' compensation history.

Where it seems likely that an applicant has a disability that will require a reasonable accommodation, you may ask whether s/he will need one. This is an exception to the usual rule that questions regarding disability and reasonable accommodation should come after making a conditional job offer.

Example: During a job interview, you may ask a blind applicant interviewing for a position that requires working with a computer whether s/he will need a reasonable accommodation, such as special software that will read information on the screen.

Hiring Do's & Don'ts - Post-Job Offer

Basic rule: After making a job offer, you may ask any disability-related questions and conduct medical examinations as long as you do this for everybody in the same job category.

Practice tip: You may withdraw an offer from an applicant with a disability only if it becomes clear that s/he cannot do the essential functions of the job or would pose a direct threat (i.e., a significant risk of substantial harm) to the health or safety of him/herself or others. Be sure to consider whether any reasonable accommodation(s) would enable the individual to perform the job's essential functions and/or would reduce any safety risk the individual might pose.

Examples of what you can do:

- If you want to give a medical examination to someone who has been offered a job that involves heavy labor, you must give the same exam to anyone who is offered the same kind of job.
- You may withdraw an offer of a manufacturing job involving the use of dangerous machinery if you learn during a post-offer medical exam that the applicant has frequent and unpredictable seizures.

Example of what you can't do:

- You can't withdraw an offer to an HIV-positive applicant because you are concerned about customer and client reactions or because you assume that anyone with HIV infection will be unable to work long and stressful hours.

Getting Medical Information from Employees

Once a person with a disability has started working, actual performance, and not the employee's disability, is the best indication of the employee's ability to do the job.

Basic rule: The ADA strictly limits the circumstances under which you may ask questions about disability or require medical examinations of employees. Such questions and exams are only permitted where you have a reasonable belief, based on objective evidence, that a particular employee will be unable to perform essential job functions or will pose a direct threat because of a medical condition.

Sometimes you may have observed the employee's job performance or you may have received reports from others who have seen the employee's behavior. These observations or reports may give you a reasonable belief that the employee's ability to perform essential job functions is impaired by a medical condition or that the employee poses a direct threat because of a medical condition.

Practice tip: If an employee with a disability is having trouble performing essential job functions, or doing so safely, do not immediately assume that the disability is the reason. Poor job performance is often unrelated to a medical condition and, when this is the case, it should be handled in accordance with your existing policies concerning performance (e.g., informal discussions with the employee, verbal or written warnings, or termination where necessary). On the other hand, if you have information that reasonably causes you to conclude that the problem is related to the employee's disability, then medical questions, and perhaps even a medical examination, may be appropriate.

Example: A normally reliable employee who is making frequent mistakes tells you that the medication she has started taking for her lupus makes her lethargic and unable to concentrate. Under these circumstances, you may ask her some questions relating to her medical condition, such as how long the medication can be expected to affect job performance.

Inquiries or exams always allowed: Certain types of inquiries or examinations are always permitted, even if they disclose some medical information. For example, you may:

- Ask all employees to provide a doctor's note to support a request for leave.
- Ask about an employee's medical condition and conduct medical examinations that are required by another federal law.

Confidentiality

Basic rule: With limited exceptions, you must keep confidential any medical information you learn about an applicant or employee. Information can be confidential even if it contains no medical diagnosis or treatment course and even if it is not generated by a health care professional.

Example: An employee's request for a reasonable accommodation would be considered medical information subject to the ADA's confidentiality requirements.

Practice tip: Do not place medical information in regular personnel files. Rather, keep medical information in a separate medical file that is accessible only to designated officials. Medical information stored electronically must be similarly protected (e.g., by storing it on a separate database).

The ADA recognizes that employers may sometimes have to disclose medical information about applicants or employees. Therefore, the law contains certain exceptions to the general rule requiring confidentiality. Information that is otherwise confidential under the ADA may be disclosed:

- to supervisors and managers where they need medical information in order to provide a reasonable accommodation or to meet an employee's work restrictions;
- to first aid and safety personnel if an employee would need emergency treatment or require some other assistance (such as help during an emergency evacuation) because of a medical condition;
- to individuals investigating compliance with the ADA and with similar state and local laws; and
- pursuant to workers' compensation laws (e.g., to a state workers' compensation office in order to evaluate a claim) or for insurance purposes.

Reasonable Accommodation and Undue Hardship

What is reasonable accommodation?

- Reasonable accommodations are adjustments or modifications provided by an employer to enable people with disabilities to enjoy equal employment opportunities.
- Accommodations vary depending upon the needs of the individual applicant or employee. Not all people with disabilities (or even all people with the same disability) will require the same accommodation. For example:
 - A deaf applicant may need a sign language interpreter during the job interview.
 - An employee with diabetes may need regularly scheduled breaks during the workday to eat properly and monitor blood sugar and insulin levels.
 - A blind employee may need someone to read information posted on a bulletin board.
 - An employee with cancer may need leave to have radiation or chemotherapy treatments.

When do I have to provide an accommodation?

- You must provide a reasonable accommodation if a person with a disability needs one in order to apply for a job, perform a job, or enjoy benefits equal to those you offer other employees. You do not have to provide any accommodation that would pose an undue hardship.

What is undue hardship?

- Undue hardship means that providing the reasonable accommodation would result in significant difficulty or expense, based on your resources and the operation of your business.

Practice tip: If providing a particular accommodation would result in undue hardship, consider whether another accommodation exists that would not.

What we've learned - most accommodations are not expensive:

- One-fifth cost nothing.
- More than half of them only cost between \$1 and \$500.
- The median cost is approximately \$240.
- Technological advances continue to reduce the cost of many accommodations.
- Some employees provide their own accommodations in the form of assistive devices or equipment.

Practice tip: To offset the cost of accommodations, you may be able to take advantage of tax credits, such as the Small Business Tax Credit (see Appendix A) and other sources, such as vocational rehabilitation funding.

Regardless of cost, you do not need to provide an accommodation that would pose significant difficulty in terms of the operation of your business.

Example: A store clerk with a disability asks to work part-time as a reasonable accommodation, which would leave part of one shift staffed by one clerk instead of two. This arrangement poses an undue hardship if it causes untimely customer service.

Example: An employee with a disability asks to change her scheduled arrival time from 9:00 a.m. to 10:00 a.m. to attend physical therapy appointments and to stay an hour later. If this accommodation would not affect her ability to complete work in a timely manner or disrupt service to clients or the performance of other workers, it does not pose an undue hardship.

Other Limitations on the Obligation to Provide Reasonable Accommodation:

In addition to actions that would result in undue hardship, you do not have to do any of the following:

- provide an employee with an adjustment or modification that would assist the individual both on and off the job, such as a prosthetic limb, wheelchair, or eyeglasses;
- remove or alter a job's essential functions;

Example: A grocery store bagger develops a disability that makes her unable to lift any item weighing more than five pounds. The store does not have to grant an accommodation removing its fifteen-pound lifting requirement if doing so would remove the main job duty of

placing items into bags and handing filled bags to customers or placing them in grocery carts.

- lower production or performance standards;

Example: A hotel that requires its housekeepers to clean 16 rooms per day does not have to lower this standard for an employee with a disability.


- or excuse violations of conduct rules necessary for the operation of your business.

Example: You do not have to tolerate violence, threats of violence, theft, or destruction of property, even if the employee claims that a disability caused the misconduct.

How does an employee ask for an accommodation?

- An employer generally does not have to provide a reasonable accommodation unless an individual with a disability has asked for one.
- A request can be a statement in "plain English" that an individual needs an adjustment or change in the application process or at work for a reason related to a medical condition. The request does not have to include the terms "ADA" or "reasonable accommodation," and the request does not have to be in writing, although you may ask for something in writing to document the request.
- A family member, friend, health professional, rehabilitation counselor, or other representative also may request a reasonable accommodation on behalf of an individual with a disability.

Example: A doctor's note indicating that an employee can work "with restrictions" is a request for a reasonable accommodation.

 **Practice tip:** Even though you do not have to initiate discussions about the need for a reasonable accommodation, if you believe that a medical condition is causing a performance or conduct problem, you certainly may ask the employee how you can help to solve the problem and even may ask if the employee needs a reasonable accommodation.


What should I do when an employee requests an accommodation?

- Once a reasonable accommodation is requested, you and the individual should discuss his/her needs and identify the appropriate reasonable accommodation. Where more than one accommodation would work, you may choose the one that is less costly or that is easier to provide.
- "Interactive process" is a formal way of saying that you and the employee or applicant should talk about the request for a reasonable accommodation, especially where the need for the accommodation might not be obvious. A

conversation also helps where there may be a question regarding what type of accommodation might best help the individual apply for a job or perform the essential functions of a job.

Can I ask for information about an employee's disability?

- If the need for an accommodation is not obvious, you may ask for documentation describing the individual's disability and why the requested accommodation is needed.
- What you may do:
 - Specify what types of information you are seeking about the disability and needed accommodation.
 - Explain what you will need to know (e.g., the type of impairment the individual has, how the impairment limits a major life activity (like sitting, standing, performing manual tasks, or sleeping)).
 - Request information about how an accommodation would enable the employee to perform job-related tasks.
 - Consider providing the employee's health care professional with a description of the job's essential functions to increase the likelihood that you will get accurate and complete information the first time you ask for it.
- Not enough information?
 - If you don't get sufficient information in response to your initial request for documentation, explain what additional information you need and then allow the individual an opportunity to provide it.
 - Note that there are limitations on the amount of documentation an employer may obtain. For example, you may not ask for an individual's entire medical record or for information about conditions unrelated to the impairment for which accommodation has been requested.

 **Practice tip:** You also may make an accommodation without requesting any documentation at all. You are free to rely instead on an individual's own description of his or her limitations and needs.

Procedures for Providing Reasonable Accommodation

Basic rule: The ADA does not require an employer to have a particular type of procedure in place for providing reasonable accommodations.

 **Practice tips:**

Consider putting procedures for providing reasonable accommodations in writing (though this may not be necessary, particularly if you are a very small employer and have one person designated to receive and process accommodation requests). As an alternative to written procedures, you might include a short statement in an employee handbook indicating that you will provide reasonable accommodations for qualified individuals with disabilities, along with the name and telephone number of the person designated to handle requests. You also may want to indicate on written job applications that you will provide reasonable accommodations for the application process and during employment.

And bear in mind, whether you have written procedures or not:

- Develop time frames within which accommodations generally will be provided, remembering that you must respond promptly to a request.
- Keep lines of communication open, particularly when it will take longer than expected to provide an accommodation or when you need more supporting documentation from the individual.
- Use outside resources to identify and provide reasonable accommodations (see Appendix B).
- Explain your decision - share your reasons with an applicant or employee so that s/he understands why you denied the request.

Types of Reasonable Accommodations

Basic rule: There are many accommodations that enable individuals with disabilities to apply for jobs, be productive workers, and enjoy equal employment opportunities. In general, though, they can be grouped into the following categories.

Practice tip: There are tax incentives available to many small businesses for providing some of the reasonable accommodations described below. (See Appendix A.)

- **Equipment.** Purchasing equipment or modifying existing equipment is a form of reasonable accommodation.

Example: A medical clinic could purchase amplified stethoscopes for use by hearing-impaired nurses, physicians, and other members of the health care staff.
- **Accessible Materials.** You may have to make written materials accessible to an individual with a disability who may not be able to read or understand them. Simple accommodations could include having someone read a list of employee conduct rules to an employee with a visual impairment or providing a simpler explanation of the rules for an employee with a cognitive disability.
- **Changes to the Workplace.** Making changes to your facilities or work areas is a form of reasonable accommodation.

Example: A small retail store could lower a paper cup dispenser near the water fountain and reconfigure store displays so that an employee in a wheelchair can get water and have access to all parts of the store.

- **Job-Restructuring.** Job-restructuring includes shifting responsibility to other employees for minor tasks (or "marginal functions") that an employee is unable to perform because of a disability and altering when and/or how a task is performed.

Example: If moving boxes of files into a storage room is a function that a secretary performs only from time to time, this function could likely be reallocated to other employees if the secretary's severe back impairment makes him unable to perform it.

But: You do not have to remove the essential functions (i.e., fundamental duties) of the job.

Example: Where an employee has to spend a significant amount of time retrieving heavy boxes of merchandise and loading them into customers' cars as part of his job, he probably cannot be relieved of this duty as an accommodation.

Where your workforce is small and all workers must be able to perform a number of different tasks, job restructuring may not be possible.

- **Working at home.** If this accommodation is requested, consider whether any or all of the job's essential functions can be performed from home.
 - Computers, internet access, telephones, and fax machines make it possible to do many kinds of jobs from home at least some of the time.

Example: A telemarketer, proofreader, researcher, or writer may have the type of job that can be performed at least partly at home.

But: Where the work involves use of materials that cannot be replicated at home, direct customer and co-worker access is necessary, or immediate access to documents in the workplace is necessary and cannot be anticipated in advance, working at home likely would present an undue hardship.

- **Modified Work Schedules.** This may involve adjusting arrival or departure time, providing periodic breaks, or altering when certain job tasks are performed.

Example: An accountant for a small employer whose medication for depression causes extreme grogginess in the morning may not be able to begin work at 9:00 a.m., but could work from 10:00 until 6:30 without affecting her ability to complete tasks in a timely manner.

Example: It may be an undue hardship to adjust the arrival time for someone on a construction crew if it would affect the ability of others to begin work.

- **Leave.** Allowing an employee to use accrued paid leave, and providing additional unpaid leave once an employee has exhausted all available leave, is also a form of reasonable accommodation. Leave may be provided for a number of reasons related to a disability: for example, to allow an employee to receive or recover from treatment related to a disability or recover when a condition "flares up."

What to do if someone asks for leave related to a medical condition:

- Determine whether the request is covered by your general leave policy for all employees. If yes, grant the leave according to your policy.
- If an employee requests more leave than would be available under your policy, consider whether additional leave could be provided as a reasonable accommodation, absent undue hardship.

But: Not all requests for leave as a reasonable accommodation must be granted. For example, where a job is highly specialized, so that it will be difficult to find someone to perform it on a temporary basis, and where the employee cannot provide a date of return, granting leave and holding the position open may constitute undue hardship.

Example: If the Executive Chef at a top restaurant requests leave for treatment of her disability but cannot provide a fixed date of return, the restaurant can show undue hardship because of the difficulty of replacing, even temporarily, a chef of this caliber. Moreover, it leaves the restaurant unable to determine how long it must hold open the position or to plan for the chef's absence.

Example: A restaurant food server requests 10 to 14 weeks off for disability-related surgery with the date of return depending on the speed of recuperation. The employer must decide whether granting this amount of leave, and doing so without a fixed date of return, would cause an undue hardship.

- **Policy Modifications.** Modifying a workplace rule because of an employee's disability may be a form of reasonable accommodation.

Example: A retail store that does not allow its cashiers to drink beverages at the checkout and limits them to two 15 minute breaks per day may need to modify one rule or the other to accommodate an employee with a psychiatric disability who needs to drink a beverage once an hour due to dry mouth, a side effect of some psychiatric medications.

- **Modifying Supervisory Methods.** Simple modifications of supervisory methods may include communicating assignments in writing rather than orally for someone whose disability limits concentration or providing

additional day-to-day guidance or feedback. An employer is not required, however, to change someone's supervisor.

- **Job Coaches.** A job coach who assists in training or guiding the performance of a qualified individual with a disability may be a form of reasonable accommodation.

Example: A custodian with mental retardation might have a job coach paid for by an outside agency to initially help, on a full-time basis, the worker learn required tasks and who then, periodically thereafter, returns to help ensure he is performing the job properly.

- **Reassignment.** Reassignment may be necessary where an **employee** can no longer perform his or her job because of a disability.
 - The employee must be qualified for the new position.
 - You do not have to bump another employee, promote an employee with a disability, or create a position for the individual.
 - Reassignment should be to a position that is equal in pay and status to the one held or as close as possible if an equivalent position is not vacant.

Example: After being injured, a construction worker can no longer perform his job duties, even with accommodation, due to a resulting disability. He asks you to reassign him as an accommodation to a vacant, higher-paid construction foreman position for which he is qualified. You do not have to offer this reassignment because it would be a promotion.

Example: The host responsible for escorting diners to their seats at one of three restaurants operated by your business can no longer perform the essential functions of her position because a disability requires her to remain mostly sedentary. However, she is qualified to perform the duties of a vacant cashier position, which has the same salary, at one of your other restaurants. You must offer her a reassignment to the cashier position at the other restaurant as a reasonable accommodation.

But: Reassignment is not available to **applicants**; therefore, you would not have to look for a job for a person with a disability who is not qualified to do the job for which he or she applied, unless you do this for all applicants for other available jobs.

Safety Concerns

Basic rule: The ADA allows you to ask questions related to disability and even require a medical examination of an employee whose medical condition appears to be causing performance or safety problems.

Direct Threat: You also may reject a job applicant with a disability or terminate an employee with a disability for safety reasons if the person poses a direct threat (i.e., a significant risk of substantial harm to self or others). Employers have legitimate

concerns about maintaining a safe workplace for all employees and members of the public and, in some instances, the nature of a particular person's disability may cause an unacceptable risk of harm.

Practice tip: You must be careful not to exclude a qualified person with a disability based on myths, unsubstantiated fears, or stereotypes about that person's ability to safely perform the job.

Examples of what to consider:

- Assess the particular applicant's or employee's present ability to safely perform the essential functions of the job based on objective evidence and reasonable medical judgment.
- Consider the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the imminence of the potential harm.

Examples of what to be careful about:

- The determination cannot be based on **generalizations** about the condition.

Example: You cannot automatically prohibit someone with epilepsy from working around machinery. Some forms of epilepsy are more severe than others or are not well-controlled. On the other hand, some people with epilepsy know when a seizure will occur in time to move away from potentially hazardous situations. Sometimes seizures occur only at night, making the possibility of a seizure on the job remote.

- The determination cannot be based on unfounded fears about the condition.

Example: A restaurant could not deny someone with HIV infection a job handling food based on customers' fears that the condition could be transmitted, since there is no real risk of transmitting HIV through food handling.

Food safety - A special rule: Under the ADA, the Department of Health and Human Services annually issues a list of the infectious or communicable diseases transmitted through the handling of food. (Copies of the list may be obtained from Center for Infectious Diseases, Centers for Disease Control & Prevention, 1600 Clifton Road, N.E., Mailstop C09, Atlanta, GA 30333 (404) 639-2213.)

- If an individual with a disability has one of the infectious or communicable diseases included on the list, an employer can refuse to assign the individual to a job involving food handling.
- If the individual is a current employee, the employer must consider whether the individual can be accommodated, absent undue hardship, by reassignment to a vacant position not involving food handling.

- The harm must be serious and likely to occur, not remote and speculative.

Example: An employer may not reject an applicant who had been treated for major depression but had worked successfully in stressful jobs for several years based on speculation that the stress of the job might trigger a future relapse.

- There must be no reasonable accommodation that would reduce the risk.

Example: A deaf mechanic cannot be denied employment based on the fear that he has a high probability of being injured by vehicles moving in and out of the garage if an accommodation would enable him to perform the job duties with little or no risk, such as allowing him to work in a corner of the garage facing outward so that he can see any moving vehicles.

Drug & Alcohol Use

- Current illegal use of drugs is not protected by the ADA. You do not need to hire or retain someone who is currently engaging in the illegal use of drugs. Tests for the current illegal use of drugs are permitted at any time prior to or during employment.
- While people with alcoholism may be individuals with disabilities, the ADA still allows employers to hold them to the same performance and conduct standards as all other employees, including rules prohibiting drinking on the job.

Example: An employer may fire an employee who is drinking alcohol while on the job if it has a uniformly applied rule prohibiting such conduct.

But: There may be times when you may have to accommodate an employee with alcoholism. For example, an employer may have to modify a rule prohibiting personal phone calls at work for an employee with alcoholism who periodically has to contact his "AA sponsor," if the employee has a need to do so during work hours.

What to do if a charge is filed against your business


Basic rule: A charge means only that someone has alleged that your business discriminated against him/her on a basis that is protected under Federal equal employment opportunity law: race, color, national origin, religion, sex, age, or disability. A charge does not constitute a finding that you did, in fact, discriminate.

What's the process?

- The EEOC will send you a copy of the charge and request a response and supporting documentation. The EEOC may investigate the charge. If it finds reasonable cause to believe that you discriminated against the charging party, it will invite you to conciliate the charge (i.e., the EEOC will offer you a chance to resolve the matter informally). In some cases, where conciliation fails, the EEOC will file a civil court action. If the EEOC finds no discrimination, or if conciliation fails and the EEOC chooses not to file suit, it


will issue a notice of a right to sue, which gives the charging party 90 days to file a civil court action.

- For a detailed description of the process, check out the EEOC website, www.eeoc.gov, and click on the link to "Small Business Information," and then on the link to "When A Charge Is Filed Against My Company."
- The EEOC notice may offer mediation as a method for dealing with the charge even before it investigates the charge. We encourage you to use this process as a less expensive and time-consuming way of resolving an employment dispute.

 **Practice tip:** EEOC's **mediation program is free**. The program is voluntary and all parties must agree to take part. The mediation process also is confidential. Neutral mediators provide employers and charging parties the opportunity to reach mutually agreeable solutions. If the charge filed against your company is eligible for mediation, you will be notified by the EEOC of your opportunity to take part in the mediation process. In the event that mediation does not succeed, the charge is referred for investigation.

- The EEOC notice will caution you that it is unlawful to retaliate against the charging party for filing the charge.

Example: An employee filed a charge against her supervisor alleging disability discrimination, which the employer believed to be without merit. After receiving the charge, the employer told the employee that she would be fired if she filed another meritless charge against it. The employee filed another charge against the employer and she was fired. Even assuming the charges of discrimination were without merit, the employee has a strong claim that the employer unlawfully retaliated against her.

 **Practice tip:** Even if you believe that the charge is frivolous, submit a response to the EEOC and provide the information requested. If the charge was not dismissed by the EEOC when it was received, that means there is some basis for proceeding with further investigation. There are many cases where it is unclear whether discrimination may have occurred and an investigation is necessary. You are encouraged to present any facts that you believe show the allegations are incorrect or do not amount to an ADA violation.⁽³⁾

APPENDIX A FEDERAL TAX INCENTIVES TO ENCOURAGE THE EMPLOYMENT OF PEOPLE WITH DISABILITIES

AND TO PROMOTE THE ACCESSIBILITY OF PUBLIC ACCOMMODATIONS

The Internal Revenue Code includes several provisions aimed at making businesses more accessible to people with disabilities. The following is designed to give you general information about three of the most significant tax incentives. **It is not legal advice.** You should check with your accountant or tax advisor to find out whether you are eligible to take advantage of these incentives or visit the Internal Revenue Service's website, www.irs.gov, for more information. Additionally, consult your accountant or tax advisor about whether there are similar state and local tax incentives.

- **Small Business Tax Credit (Internal Revenue Code Section 44: Disabled Access Credit):** Small businesses with either **\$1,000,000 or less in revenue or 30 or fewer full-time employees** may take a tax credit of up to \$5,000 annually for the cost of providing reasonable accommodations such as sign language interpreters, readers, materials in alternative format (such as Braille or large print), the purchase of adaptive equipment, the modification of existing equipment, or the removal of architectural barriers.
- **Work Opportunity Tax Credit (Internal Revenue Code Section 51):** Employers who hire certain targeted low-income groups, including individuals referred from vocational rehabilitation agencies and individuals receiving Supplemental Security Income (SSI) may be eligible for an annual tax credit of up to **\$2,400** for each qualifying employee who works at least **400 hours** during the tax year. Additionally, a maximum credit of **\$1,200** may be available for each qualifying summer youth employee.
- **Architectural/Transportation Tax Deduction (Internal Revenue Code Section 190: Barrier Removal):** This annual deduction of up to **\$15,000** is available to businesses of any size for the costs of removing barriers for people with disabilities, including the following: providing accessible parking spaces, ramps, and curb cuts; providing wheelchair-accessible telephones, water fountains, and restrooms; making walkways at least 48 inches wide; and making entrances accessible.

APPENDIX B INFORMATION ON REASONABLE ACCOMMODATIONS

Below are a few of the most frequently consulted resources for accommodating qualified individuals with disabilities. Many other resources exist both nationally and locally, such as organizations of and for individuals with particular types of disabilities. Finding one of these organizations in your area may be as simple as consulting your local phone book. Additionally, the federal government has a web site, www.disabilitydirect.gov, which provides links to many federal resources.

Job Accommodation Network (JAN)- provides lists based on specific disabilities as well as links to various other accommodation providers.

P.O. Box 6080

Morgantown, WV 26506-6080

(800) 526-7234 or (304) 293-7184

www.jan.wvu.edu

U.S. Department of Labor

For written materials: (800) 959-3652 (voice); (800) 326-2577 (TTY)

To ask questions: (202) 219-8412

www.dol.gov

ADA Disability and Business Technical Assistance Centers (DBTACs) - 10 federally funded regional centers to provide assistance on all aspects of the ADA.

(800) 949-4232

RESNA Technical Assistance Project - can refer individuals to projects offering technical assistance on technology-related services for individuals with disabilities.

(703) 524-6686 (voice); (703) 524-6639 (TTY)

www.resna.org

Access for All Program on Employment and Disability

School of Industrial and Labor Relations

106 ILR Extension

Ithaca, NY 14853-3901

(607) 255-7727 (voice); (607) 255-2891 (TTY)

ilr_ped@cornell.edu

Business Leadership Network 1331 F Street, N.W.

Washington, D.C. 20004-1107

(202) 376-6200, ext. 35 (voice); (202) 376-6205 (TTY)

dunlap-carol@dol.gov

www.usbln.com

APPENDIX C FINDING QUALIFIED WORKERS WITH DISABILITIES

Many businesses say that they would like to hire qualified individuals with disabilities, but do not know where to find them. The following resources may be able to help. In addition, you may contact organizations of and for individuals with specific disabilities in your area and consult www.disabilitydirect.gov.

RISKON - executive recruitment firm committed to helping people with disabilities find jobs:

15 Central Avenue

Tenafly, NJ 07670

(201) 568-7750

(201) 568-5830 (fax)

www.riskon.com

National Business & Disability Council - provides full range of services to assist businesses successfully integrate people with disabilities into the workplace:

201 I.U. Willets Road

Albertson, NY 11507

(516) 873-9607 or (516) 465-1501

www.business-disability.com
www.abletowork.org
www.ncds.org

Job Accommodation Network (JAN) - provides a variety of resources for employers with employees with disabilities and those seeking to hire employees with disabilities:

P.O. Box 6080

Morgantown, WV 26506-6080

(800) 526-7234 or (304) 293-7184

www.jan.wvu.edu

Employer Assistance Referral Network (EARN) - a national toll-free telephone and electronic information referral service to assist employers in locating and recruiting qualified workers with disabilities. EARN is a service of the U.S. Department of Labor, Office of Disability Employment Policy with additional support provided by the Social Security Administration's Office of Employment Support Programs:

1-866- EARN NOW (327-6669)

www.earnworks.com

FOOTNOTES

1. Source: Small Business Administration, Office of Advocacy, <http://www.sba.gov/advo/>.

2. If you are a federal contractor, you will also have obligations under Section 503 of the Rehabilitation Act. This law prohibits discrimination and requires contractors and subcontractors to take affirmative steps to hire and to promote qualified individuals with disabilities.

For further information on the requirements of Section 503, contact the Office of Federal Contract Compliance Programs (OFCCP) of the U.S. Department of Labor at (202) 693-0100 (Voice) or (800) 326-2577 (TDD), or at www.dol.gov/esa/ofcp_org.htm.

3. The Small Business Regulatory Enforcement Fairness Act allows small businesses to comment about federal agency enforcement actions to an SBA Ombudsman. For information about this process and how to submit a comment, see [Small Business and Agriculture Regulatory Enforcement National Ombudsman](#). It is EEOC policy to ensure that employers are not targeted for enforcement actions as a result of their comments to the SBA Ombudsman.
