Improving Access

ADA Issues for Search Committees

A Legal Compliance Online Training Module

Developed by Training & Development Services in collaboration with the Human Resources ADA Office. Reviewed and approved by the Office of General Counsel.

Updated: January 2009
This information is intended to be accurate as of the date created and may not reflect changes in the law since that time. This information also may not apply to all situations and is not intended to serve as legal advice or to create an attorney-client relationship between the parties. Individuals who have questions about the information included in this memorandum should contact their legal counsel.
Course Contents

• Objectives
• Part 1 - Review of ADA
  – Disability defined
  – Covered Employment Practices
  – Prohibitions and Unlawful Practices
• Part 2 - Employment Protections
  – Definition of a “qualified” individual
  – Sample Reasonable Accommodations
  – Definition of an “undue” hardship
• Part 3 - Accommodation Requirements
  – Requesting an Accommodation
  – Responding to an Accommodation Request
  – Confidentiality
• Part 4 - ADA and UA’s Recruitment and Hiring Procedures
  – Job Determination
  – Preparing for the Interview
  – During the Interview
  – After the Interview
• Part 5 - Contact Information and Resources
Objectives

Upon completion of this training, the participant will

☑ Have an awareness of ADA requirements pertaining to the recruitment and hiring process
☑ Be able to define a “disability” per ADA guidelines
☑ Have an understanding of acceptable and unacceptable interview questions
☑ Be able to define a “qualified” individual per ADA guidelines
☑ Know who to contact if an applicant requests an accommodation before, during, and after the recruitment process
PART 1 - Review of the Americans with Disabilities Act
Review of ADA

The Americans With Disabilities Act (ADA) is a federal law that covers employment, public services/transportation, public accommodations, telecommunications, and related areas.

The ADA gives civil rights protections to individuals with disabilities and guarantees equal opportunity for individuals with disabilities in the above mentioned areas.
Section 504 of the Rehabilitation Act of 1973 prohibits federal fund recipients from discriminating based on an individual’s disability.

A disability is defined as:

- A physical or mental impairment that substantially limits a major life activity; OR
- A record of a substantially limiting impairment (e.g. history of cancer); OR
- Regarded as having a substantially limiting impairment (e.g. speaks slowly so misimpression of retardation, cosmetic issues)
Covered Employment Practices

- Recruitment
- Hiring
- Promotion
- Training
- Lay-offs
- Pay

- Firing
- Job assignments
- Leave of Absences
- Benefits
- All other employment related activities
The ADA prohibits an employer from retaliating against an employee for asserting his/her rights under the ADA.

The ADA also makes it unlawful to discriminate against an applicant or employee, whether disabled or not, because of the individual’s family, business, social, or other relationships with an individual with a disability.
What does ADA *not* do?

The ADA does *not* interfere with the right to hire the best *qualified* applicant, nor does it impose affirmative action obligations.
PART 2 - Employment Protections
Employment Protections Under ADA

• The ADA provides civil rights protections to individuals with disabilities.

• **Qualified** employees must be afforded the same opportunities to succeed.

• **Reasonable accommodations** must be made to allow individuals to participate equally, unless it would impose an **undue hardship** on UA.
Who is a Qualified Individual?

- Meets skill, experience, and education requirements of the position held or desired
- Can perform the essential functions of the job with or without reasonable accommodation
What are Reasonable Accommodations?

Reasonable Accommodations may include:

• Acquiring or modifying equipment or devices
• Job restructuring
• Part-time or modified work schedules
• Reassignment to vacant positions
• Adjusting examinations, training materials, or policies
• Providing readers and interpreters
• Making the workplace readily accessible and usable by people with disabilities
What is an **Undue Hardship**?

- An action requiring significant difficulty or expense when compared to employer’s size, financial resources and structure of operation.

- It is a violation of the ADA to fail to provide reasonable accommodation to the known physical or mental limitations of a qualified individual with a disability, unless to do so would impose an undue hardship on the operation of your business.
If undue hardship...

• The employer must try to identify another accommodation that will not pose such a hardship.*

• The employer must provide the applicant or employee an opportunity to provide the accommodation or pay for the portion of the accommodation that constitutes the undue hardship.

* The ADA Coordinator and Human Resources will work with the supervisor and applicant or employee to help identify a mutually satisfactory accommodation.
PART 3 - Accommodations
Requesting an Accommodation

• It is the responsibility of the applicant or employee to inform the employer if an accommodation is wanted.

• An applicant or employee can request an accommodation at any stage of employment.
  
    • Application Process
    • Interview Process
    • Hiring Process
    • Ongoing Employment

• Applicants and employees can request the accommodation either verbally or in writing.

• UA’s accommodation request form can be obtained at http://www.uakron.edu/hr/AccommodationRequestForms.doc
Responding to Accommodation Requests

• Employers must provide reasonable accommodations (changes to job duties or work environment) so qualified applicants or employees may:
  – Apply for jobs
  – Perform essential functions of job
  – Enjoy equal benefits and privileges of employment

• Employers may ask for medical documentation describing the nature, severity, and duration of the impairment; the limitations caused, and how the accommodation relates to the limitations.
Note on Accommodations & Job Descriptions

• It is important to keep in mind that a “reasonable accommodation” may enable a person with a disability to accomplish a job function in a manner that is different from the way an employee who is not disabled may accomplish the same function.

• If an employer uses job descriptions, they should be reviewed to make sure they accurately reflect the actual functions of a job.

• Job descriptions are most helpful when they focus on the results or outcome of a job function, and NOT solely on the way the job is customarily performed.

*See PART 4 for more information on UA’s use of job descriptions in the employment process.
Confidentiality

- **The ADA contains strict confidentiality requirements.** Medical information revealed by an applicant or employee during the recruitment/hiring process must be kept confidential.

- ADA’s confidentiality requirements protect both information voluntarily revealed as well as information revealed in response to an employer’s written or oral questions or during a medical examination.

- **Exceptions:**
  An employer may share medical information with other decision-makers involved in the hiring process (i.e. health and safety personnel, employee insurance administrators, government officials investigating compliance with ADA, etc.) Information shared should only be used to may make employment decisions consistent with the ADA.
PART 4 - A Closer Look at the ADA & UA's Recruitment and Hiring Procedures
Job Determination

Before the search process begins...

- Identify minimum requirements needed to recruit “qualified” applicants to fill the position (i.e. essential functions, education, physical requirements, working conditions, licenses/certifications, etc.)

- The immediate supervisor or other designated individual will need to review an official Classification Specification (non-faculty positions) or Position Description to identify the minimum requirements needed.
What factors should be considered when determining Essential Functions?

• Whether the reason the position exists is to perform that function,
• The number of other employees available to perform the function or among whom the performance of the function can be distributed, **AND**
• The degree of expertise or skill required to perform the function
Search Plan, Advertising/Prescreening

Note: Information obtained from the Classification Specification or Position Description should be used during the search process to:

- Specify “minimum” job requirements on Search Plan
- Create Job Advertisements
- Develop a list of interview questions
- Screen initial group of job applicants to determine who meets the definition of a “qualified” applicant
- Develop an applicant pool for the first round of interviews
Prior to the interview, the search committee should:

- Review the essential functions of the job as specified on the Search Plan.
- Review the Employment Interview Guidelines which list lawful and unlawful interview questions.
- Develop a list of interview questions that are based on essential job functions and excludes any biases or prohibited questions.
- Be aware of interview locations for ADA compliance reasons.
- Contact the ADA Coordinator x6462 for assistance with making accommodations for any applicant requests.
- Review the *ADA at UA for Employees* online training module as a refresher course on the do’s and don’ts of communicating with individuals with disabilities.
Important!

Before a job offer is made….

You cannot:
• Ask applicant whether he/she is disabled or about the nature or severity of the disability
• Require applicant to take a medical examination before making the offer
• Request disability-related information from a previous employer, family member, or other source

You can:
• Ask applicant about ability to perform job-related functions (if not phrased in terms of disability)
• Ask applicant to describe or demonstrate how he/she will perform job-related functions
After a job offer is made…

You *can*:

- Require that an applicant take a medical examination if everyone must take one
- Condition the job offer on results of the medical examination*

* Consult with HR before deciding not to hire an applicant due to a disability; other conditions must be met by UA.
Prohibited Interview Questions

During the job interview, you cannot ask:

• Have you ever been hospitalized?
• Have you ever been treated for a mental disorder?
• How many days were you absent last year due to illness?
• Do you have any known physical disabilities?
• Are you taking any medications?
• Have you ever been treated for alcoholism or drug addiction?
• Do you have any physical or mental impairments that would affect your job performance?
• Have you ever filed a workers’ compensation claim?
Acceptable Interview Questions

During the job interview, you can ask:

• Do you have the ability to perform ... [discuss job function that directly relates to essential duty outlined in Search Plan]

• Describe or demonstrate how you will perform the following job-related functions: [job functions should be based on duties previously specified in the Search Plan]

• Click here for additional information on conducting interviews.
PART 5 - Contact Information & Resources
• ADA Coordinator (330) 972-6462
  – Employee accommodations and coordination of UA programs, policies, training, and procedures relating to compliance and the promotion of opportunities for persons with disabilities

• AA/EEO Office (330) 972-7300
  – Complaints of discrimination (330) 972-5770

• Office of Accessibility (330) 972-5770
  – Student accommodation and classroom instruction issues

• Physical Facilities Operation Center (330) 972-6340
  – Improving accessibility of existing structures

• Campus Planning (330) 972-7347
  – Design of new, accessible buildings
Resources

- ADA at UA for Employees (online training module)  
  http://www.uakron.edu/hr/hrtraining/

- Employment Interview Guidelines

- The Americans with Disabilities Act: Your Responsibilities as an Employer, EEOC-BK-17

- Job Applicants and the Americans with Disabilities Act  
  http://www.eeoc.gov/facts/jobapplicant.html

- Additional ADA information presented in this power point was adapted using information from the ADA Compliance Manual by Thompson Group, Inc. 2002
To learn more about other online training topics, visit our Online Training Modules web page:
http://www.uakron.edu/hr/hrtraining/Online_Trainings/Online_trainings.php

Learning, Development and Communication Services is located in the Administrative Services Building.

Mail Code:  +4732
E-mail:  hrtraining@uakron.edu
Phone:  (330) 972-7783
Fax:  (330) 972-5187
Training Catalog:  www.uakron.edu/hr/hrtraining
Online Registration:  www.uakron.edu/seminars
If this is your first time viewing this online training module and you would like to have it officially documented that you have completed this training, print a copy of the Online Training Participation Acknowledgement Form located at:

http://www.uakron.edu/hr/hrtraining/docs/ADAforSearchCommitteesParticipationForm.doc

Sign and then forward the form through campus mail to +4732
Course Evaluation

• How helpful was this training? Tell us how we can make this training module more useful to you and others. To obtain an evaluation form, visit http://www.uakron.edu/hr/hrtraining/docs/ADASearchCommitteesEvaluationForm.doc

• Thank you for your participation!

• We look forward to seeing you in future classroom trainings!

We are here for you!