



# The Americans with Disabilities Act (ADA)

An overview and resource handbook for employers and HR professionals

unum®



## How to use this handbook

**Consult this guide, and your attorney**

This handbook outlines a conceptual framework to help you appreciate how the Americans with Disabilities Act (ADA) integrates with the way you do business. It is not intended to be a definitive document about issues relating to the ADA, nor does it constitute legal advice. We encourage you to consult your own attorney about your responsibilities under the ADA and other relevant legislation when deciding how to proceed with an applicant or employee who may be disabled.



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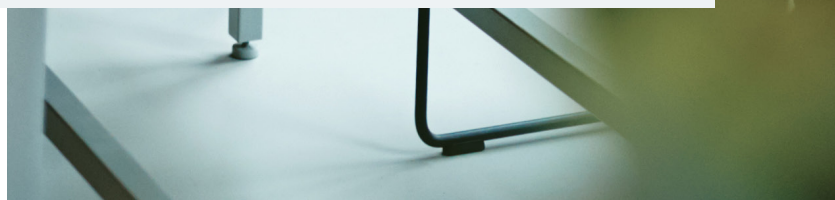
Providing a level playing field for disabled individuals in the employment context not only makes sense, it is the law. The Americans with Disabilities Act protects individuals with physical or mental disabilities from discrimination and requires employers to provide reasonable accommodations that help disabled people gain and keep employment.

In developing the law, Congress explicitly stated that physical and mental disabilities in no way diminish a person's right to fully participate in all aspects of society, but that disabled people are frequently precluded from doing so because of prejudice, antiquated attitudes or societal and institutional barriers.

Through the ADA and its amendments,\* the U.S. Congress not only provided a clear and comprehensive national mandate to eliminate discrimination against individuals

with disabilities, it also endeavored to include the broadest number of people in the law's protections. It designed the law to enhance job opportunities, availability of services and overall quality of life for people with disabilities in the U.S., and to increase the pool of talented and qualified employees available to help businesses compete in the demanding global marketplace.

The ADA contains five sections (or "titles") that cover different topics related to Americans with disabilities. **Title I is the focus of this handbook.** It prohibits employers with 15 or more employees from discriminating against job applicants and employees with disabilities. It covers job application procedures, hiring, promotion, discharge, compensation, training and other aspects of employment. For information on the other four titles, visit [ada.gov](https://www.ada.gov).



# The Americans with Disabilities Act: The basics



## Which employers does the law apply to?

Those with:

- At least **15 employees**...
- **...during 20 weeks in the current OR preceding year.** The weeks don't have to be consecutive.



## Who is protected?

People who have an **impairment** that **substantially limits** one or more **major life activities**

Employees must be **qualified** and able to fulfill the **essential functions** of the job, with or without **accommodations**.



## What actions are illegal?

Discriminating in hiring, firing, promoting, training and compensating disabled employees, including:

- **Inquiring** about disability during the hiring process
- Failing to provide **access** to company facilities, benefits and services
- Failing to offer **reasonable accommodation** that would allow a qualified individual with a disability to perform the job



## Important employer responsibilities

- **Communicating** employee rights under the ADA
- **Protecting confidential** employee information
- Ensuring an **interactive process** to determine reasonable accommodation

## A BRIEF CAUTION TO EMPLOYERS

In addition to the ADA, a number of state civil rights laws also protect disabled individuals from employment discrimination. A few states provide higher levels of protection than the ADA, such as more generous definitions of disability, pregnancy protections and treatment of people in drug rehabilitation programs. The federal Rehabilitation Act of 1973 and Civil Rights Act of 1964 also provide protections for disabled individuals. Work with your own legal counsel to make sure you understand your responsibilities under both state and federal non-discrimination laws.



### Unum: Your benefits partner

As a leading provider of [group disability benefits](#) in the U.S. for 45 years,<sup>2</sup> and an industry leader in [leave and absence management](#), we understand how the complexities of disability laws can challenge even the savviest HR expert. And for many employers, managing applicants and employees appropriately under the many disability laws and concepts can be very difficult.

We have prepared this handbook to help you understand and comply with ADA requirements so that your business will benefit by including people of all abilities. We hope you'll find it to be a helpful reference tool. It's part of our growing library of educational and informational content designed to help you build a stronger workforce, and ultimately, a stronger business. For more resources like this, visit our [HR Trends website](#).



### The cost of noncompliance

Average jury verdict in ADA cases: \$2 million  
1 ADA verdicts ruled in favor of employee: 78%<sup>1</sup>



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# Who is protected under the ADA?

The ADA prohibits discrimination by employers against qualified individuals with disabilities. To be considered qualified, individuals must have all relevant certifications, education and experience and must be able to perform the essential functions of the job they hold or seek, with or without reasonable accommodation. Put another way, employees who cannot do the essential functions of the job — with or without reasonable accommodation — are not protected by the ADA.

## DISABILITY DEFINED

The definition of disability under the ADA differs from the definition of disability in an insurance contract, and generally is broader. The ADA's definition of disability allows an individual to qualify for protection under the law if they:

- Have a disability
- Have a record of a disability or are regarded as having a disability

Let's look at these separately.

### Having a disability

First, a person is protected as disabled if he or she has a **physical or mental impairment** that **substantially limits** one or more **major life activities**. The ADA applies not only to job applicants and employees who currently have disabilities, but equally to current employees who become disabled.

### Having a record of disability

The definition of disability under the ADA may also be satisfied when a person has a **record of having** a disability. This part of the definition prohibits discrimination against people who may have a history of disability, such as cancer survivors. Those with a record of disability have the right to reasonable accommodation.

### Being regarded as having a disability

Additionally, a person may be protected as disabled if he or she is simply **regarded as having** an impairment. This protection was put into place because Congress was seeking to target discrimination based on perceptions or attitudes as well as actual impairments.

A manager who treats an employee differently from other employees because of an actual or perceived impairment may be violating the ADA, even if the employee is not in fact disabled. Employees who claim that they are regarded as disabled often use managers' stray comments to support their claims that they were treated poorly or differently.

That said, individuals with actual or perceived impairments that are minor and transitory (having an actual or expected duration of six months or less) are not considered protected under this "regarded as" definition. And it is clear that employers don't have to provide workplace accommodations to individuals who claim "regarded as" discrimination.



One important thing to remember is that managers must not prohibit a person with a physical or mental condition from doing a job based solely on the manager's beliefs; current medical information is required.

### WHAT IS AN IMPAIRMENT?

Physical impairments can range from neurological or respiratory conditions to cosmetic disfigurements or anatomical losses. Mental impairments include emotional or mental illness and can include certain learning disabilities or other conditions.

### Virtually always disabling conditions

EEOC regulations list impairments that will almost always be considered disabling, although employers

will still need to assess whether a specific individual's impairment is a disability.

These include:

- Deafness
- Blindness
- Intellectual disability
- Missing limbs or mobility impairments requiring the use of a wheelchair
- Autism
- Cancer
- Cerebral palsy
- Diabetes
- Epilepsy
- HIV
- Multiple sclerosis
- Muscular dystrophy
- Major depressive disorder
- Bipolar disorder
- Post-traumatic stress disorder
- Obsessive-compulsive disorder
- Schizophrenia



### Best practices

To avoid discrimination claims, consider training managers to be sensitive about what they say to employees who are or who they may perceive to be disabled.





## Potentially disabling conditions

EEOC has also listed conditions that are potentially disabling. According to this list, people with a wide range of conditions may be considered disabled. While some conditions may not affect a person's ability to work, they may cause them to need time off from work to get treatment or receive other accommodations at work.

These include:

- Heart disease
- Hypertension
- Depression
- Broken bones that do not heal properly
- Carpal tunnel or other cumulative trauma disorders
- Back impairments
- Emotional and mental illness
- Orthopedic, visual, speech and hearing impairments
- Tuberculosis
- HIV infection and AIDS
- Cancer (even if in remission)
- Impairments to operation of major bodily functions, including:
  - Immune system
  - Cell growth
  - Digestive system
  - Bowel
  - Bladder
  - Neurological system
  - Brain
  - Respiratory system
  - Circulatory system
  - Endocrine system
  - Reproductive functions
  - Special sense organs
  - Skin
  - Genitourinary
  - Hemic
  - Lymphatic
  - Musculoskeletal



### WHAT IS A MAJOR LIFE ACTIVITY?

EEOC regulations include a list of major life activities, but Congress specifically indicated that there may be major life activities that are not on the list.

Major life activities include:

- Caring for oneself
- Performing manual tasks
- Seeing
- Hearing
- Eating
- Sleeping
- Walking
- Standing
- Lifting
- Bending
- Speaking
- Breathing
- Learning
- Reading
- Concentrating
- Thinking
- Communicating
- Working
- Sitting
- Reaching
- Interacting with others

### WHAT DOES “SUBSTANTIALLY LIMIT” MEAN?

The EEOC has given employers nine rules of construction to use in determining whether an impairment substantially limits a major life activity:

1. An impairment does not need to prevent or severely or significantly restrict a major life activity to be considered “substantially limiting.” Nonetheless, not every impairment will constitute a disability.

2. Look at whether the impairment substantially limits a major life activity as compared to most people in the general population.
3. Substantial impairment is not the object of focus. No extensive analysis is required. The focus is on whether discrimination occurred.
4. Individualized assessment is necessary, but the standard is much lower than it used to be.
5. Comparison of limitation as compared to most people in the general population will not need scientific analysis.
6. Do not consider corrective measures except eyeglasses or corrective lenses.
7. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
8. Impairment need only limit one major life activity.
9. Impairment can last less than six months.

Multiple impairments that combine to substantially limit one or more major life activities can also be a disability. An example of this would be a person who has a lung impairment and a back impairment which combine to substantially limit the major life activity of walking. This person would be considered disabled even if the lung and back impairments on their own are not disabling.



Also, if a person has an impairment that limits only one major life activity, it is sufficient to qualify that person as disabled. Therefore, if an employee with asthma is substantially limited in the major life activity of breathing, that person is likely to be considered disabled, even if he or she is otherwise unimpaired in other activities such as walking or running.

An employee with an impairment that is episodic or in remission is considered to have a covered impairment if the impairment, when active, substantially limits one or more major life activities. This includes conditions such as epilepsy, hypertension, multiple sclerosis, asthma and diabetes.

When you evaluate whether an impairment substantially limits a major life function, you may not consider mitigating measures such as:

- Medication
- Assistive technology
- Behavioral modifications or accommodations
- Other modifications or measures

An exception is made for ordinary eyeglasses and contact lenses; however, employers may not screen out people who use these unless there is a business necessity.

The only time employers can consider mitigating measures is when they create negative effects. For instance, if the medication or other treatment an individual is taking substantially limits a major life activity (again, including a major bodily function), even if the condition for which he/she is being treated would not otherwise have such an effect, the individual will be considered disabled under the ADA.

In any event, employers must assess whether the individual is substantially limited “as compared to most people in the general population.”



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## Discrimination: What's illegal?

The ADA prohibits discrimination in a broad range of employment activities, including the application and interview process, hiring, promotion, termination, job training, compensation and virtually any other term or condition of employment.

Employers may be held legally responsible for employment discrimination, and could have to pay for both compensatory and punitive damages, if they or their HR professionals:

- Make an inappropriate **inquiry** about disability
- Fail to make **reasonable accommodation** for an otherwise qualified individual with a disability unless the accommodation would create an **undue hardship** for your company
- Take an adverse employment action against an individual because of their disability  
OR
- Fail to hire an otherwise qualified individual with a disability in order to **avoid** making a reasonable accommodation

Under the ADA, employers and HR professionals **may not**:

- Use **pre-employment tests** that reveal the effects of a sensory, manual or speaking-skills impairment unless the tests focus on relevant job skills or aptitudes. Standards or tests that are likely to elicit information about a disability are impermissible. All applicants must be required to take the same tests, without regard to disability, and the tests or job standards cannot be used unless they are job-related and necessary to the business

- Restrict otherwise qualified applicants or employees with disabilities from employment opportunities or job benefits unless no reasonable accommodation can be made to enable them to perform **essential job functions**
- Eliminate a qualified applicant who is **caring for a family member** with a disability simply because of a belief that person will miss more work than an applicant without such a commitment
- Include **provisions or terms in contractual relationships** — such as those with employment agencies, labor unions or employee benefit providers — that result in discrimination against employees with disabilities

In addition, employers may not deny employment to a qualified applicant simply to avoid increased benefit costs associated with insuring a person with a disability. However, companies can continue to offer bona fide employee benefit plans that contain exclusions and limitations based on risk classifications, as long as they are consistent with state law and are not used as a subterfuge for evading the intent of the ADA.

Be aware that employees with disabilities are entitled to participate as fully in workplace activities, including training, as other employees. You may need to provide reasonable accommodation to assist disabled employees to participate on a par with their co-employees.



The employment decisions you and your HR professionals make regarding disabled individuals must be based on the facts available — not presumptions — regarding the capabilities and limitations of applicants and employees who are disabled. You cannot speculate about the employee's ability to do the job in the future.

## THE HIRING PROCESS

Under the ADA, you must include qualified individuals with disabilities in your efforts to fill jobs, whether from within or outside the company. Reasonable accommodations may be required during the application process for an applicant with disabilities. Here is how the ADA specifically affects the hiring process:

- **Access:** Accommodations during the hiring process may be required to assist an applicant in gaining access to the interview locations. You may need to modify architectural barriers or alter the location of the interview as an accommodation.
- **Testing:** If you require tests, they must be given to all applicants for similar positions and measure only skills required for the job. You must also make reasonable accommodations for people with disabilities to take the test, such as providing a reader or audio-taped test for someone with impaired vision.
- **Application and interview:** During the hiring process, you may not ask if the applicant has a disability or about its nature or severity, unless the condition is obvious, like when an applicant wears a brace. However, you can describe the job and ask about the applicant's ability to perform the essential job functions. You may not selectively ask some applicants that you suspect are disabled to demonstrate how they will do the job, but not ask all applicants to undertake a similar demonstration.
- **Decision not to hire:** You do not have to hire an applicant who does not meet job qualifications. For example, if you have a job that requires full-time regular attendance, such as a receptionist job, you do not have to hire an applicant who can only work part time or who can't perform the essential functions of the job.



## Best practices

It's important to develop protocols on interacting with disabled applicants and employees, including the maintenance of medical records — which should always be secured by lock, password or other measures that prevent unauthorized access. If you, like many employers, don't have protocols and are unsure where to start--Unum can help. From consulting and self service administration technology to full-service outsourcing, Unum's ADA solutions are here to provide protection.

## ESSENTIAL JOB FUNCTIONS

It is not discriminatory to decline to hire a disabled person who cannot, with or without accommodation, perform the essential functions of the job. Essential functions are those necessary for accomplishing the job's purpose and are not marginal or peripheral. Basically, essential job functions are what must happen to accomplish the purpose of the job.

These questions can help determine if job functions are essential:

- Must employees in the position **actually perform** the function? For example, if typing is in the job description but you have never required an employee in the position to type, then typing is not an essential job function.
- Would removing the function **fundamentally change** the job? An editor's job would not be the same if proofreading were no longer required.
- Is the function essential because of your company's **size**? A function may not be essential in a large organization, but smaller businesses often need an employee to perform many different functions that are all crucial to the job.
- Did you hire an employee for **a particular expertise**? If so, that specialized task would be an essential job function.



Before offering an applicant a job, you can ask disability related questions only if you are asking for voluntary self identification of disability for affirmative action purposes, or if you are a federal contractor taking affirmative action under the Rehabilitation Act. In these cases, you must inform the applicant that it isn't necessary to answer, and that not answering will have no effect on the employment decision. You must also advise the person that the information will be used only in accordance with the law. Finally, the information must be kept separately from the employment application.



### Best practices

Guard against noncompliance claims — and more easily assess a person's ability to perform a job — by carefully and thoroughly **defining the essential functions** of all jobs within your company, and using these to develop **written job descriptions** for every position.

Job descriptions should be clear, current and specifically state job requirements such as:

- Full-time attendance, strict adherence to a schedule or the ability to work overtime.
- Physical capabilities such as ability to perform prolonged keying or regularly lift more than 20 pounds
- Environmental and “fit” attributes such as predictable, reliable attendance; the ability to interact professionally in an office environment, or the ability to multitask in a fast-paced environment.



## REASONABLE ACCOMMODATION UNDER THE LAW

The ADA requires employers to make reasonable accommodations for otherwise qualified disabled individuals if doing so will allow the employee to perform the essential functions of the job. The law is designed to require employers to remove barriers that prevent qualified applicants and employees with disabilities from performing essential job functions, provided the accommodations don't create an undue hardship on the business.

According to EEOC regulations, reasonable accommodations include:

- Adjustments to the application process so an individual with a disability can be considered for a desired position
- Changes in the work environment or in how a job is performed so an individual with a disability can perform the essential functions of the job
- Modifications that enable an employee with a disability to enjoy the same employment benefits and privileges as other employees

For example, you might need to modify your existing facilities so individuals with disabilities can get access to and use them. You might also need to revise job structures or work schedules, modify equipment or devices, provide qualified readers or interpreters or change your policies, tests or training materials.

For current employees who become disabled during the course of their employment, reasonable accommodation may include things like:

- Restructuring job duties
- Holding a job open for a reasonable period of time while the employee recovers, if it doesn't cause undue hardship for your business ([see "Leave as an accommodation," page 18](#))
- Reassigning a qualified employee to another vacant position
- Modifying an employee's work schedule
- Altering the company's physical layout to provide access
- Providing adaptive equipment



When considering reasonable accommodations, you should keep in mind that they do not have to include:

- Making adjustments or modifications to help a person with daily activities on and off the job, such as prosthetic limbs, wheelchairs, hearing aids, eyeglasses or personal care attendants
- Lowering quality or production standards
- Making accommodations for a person with a disability who is not otherwise qualified for the job
- Hiring or promoting an unqualified individual, regardless of disability
- Hiring or retaining disabled individuals who pose a direct threat to their own safety or health or that of other employees or customers, unless the threat can be eliminated by reasonable accommodation
- Disrupting an established seniority system
- Creating a new job for a disabled individual

The ADA requires an individualized assessment of each accommodation request. Whether a particular accommodation would be considered reasonable in relation to the ADA is directly related to the specifics of the employee's situation, the medical support you are relying on, your accommodation plan and how clearly your business needs are articulated. The employee's needs and desires are identified in **an interactive process**.

## THE INTERACTIVE PROCESS

The interactive process is at the heart of the ADA. The employee must be involved in the dialogue about what accommodation would be effective. Once an employee requests an accommodation, you must communicate with each other, and do so in a way that allows you to exchange information. How you interact must be reasonable under the circumstances and may involve communication in person, by telephone, by email or otherwise.

**You must take the initiative** to find out what the employee's precise limitations are due to their disability and what potential reasonable accommodations could be made that would overcome the limitations. You should undertake a good faith effort to identify reasonable accommodations; interacting expeditiously with your employee is often one part of that process. Although you have the final say in what accommodation you offer, your decision should, at a minimum, consider the preference of the employee. The accommodation need not be the best accommodation available or the accommodation the employee prefers, as long as it is effective.

The ADA encourages sound return-to-work practices for both work-related and non-work-related impairments. Not every employee resuming work activity after illness, surgery or injury will have restrictions on performing some aspect of their job, but some will. It is important for employers in their return-to-work practices to distinguish whether they are providing short-term, temporary job modification (transitional work) or reasonable accommodations for the long term. If you modify job duties for an employee in an attempt to help them through a short-term healing process, it could be difficult to reinstate these duties later unless you've established that expectation from the first.





## The benefits of providing accommodations

According to the Job Accommodation Network (JAN)<sup>3</sup>, employers report that providing reasonable accommodations helps:

- Retain valuable employees
- Improve productivity and morale
- Reduce workers' compensation and training costs
- Improve company diversity

Accommodations don't have to be expensive:

- The median expense for accommodations, according to JAN, was only \$500.
- Affordable accommodations can include such things as an ergonomically correct workstation, a larger screen or fonts for visually impaired employees, or a flexible schedule where appropriate.

## UNDUE HARDSHIP

Undue hardship is a defense against providing an accommodation and refers to any accommodation that causes significant difficulty or expense to you as an employer. A claim of undue hardship must be supported by objective facts and documentation, and can be difficult to prove. To determine whether an accommodation represents an undue hardship for your business, you need to consider:

- The cost of the proposed accommodation, particularly balanced against its projected benefit
- Your company's and business unit's finances
- The number of employees at your facility
- The nature of your operation
- The effect of the accommodation on your company (e.g., impacts to customers, sales, deadlines, other employees)

## REMEDIES UNDER THE LAW

If an applicant or employee with a disability believes discrimination has occurred in the workplace, the following are examples of remedies available to them that could affect your business:

- **An injunction.** A court could order you to provide auxiliary aids or services, modify existing policies, practices or procedures, or make facilities accessible.
- **A restraining order.** A court could forbid you from taking action that may be discriminatory, such as firing an employee instead of making reasonable accommodation.
- **Compensatory and punitive damages.** A court could assess damages to be paid by your company based on the number of employees:

- 15 – 100 employees	<b>\$50,000</b>
- 101 – 200 employees	<b>\$100,000</b>
- 201 – 500 employees	<b>\$200,000</b>
- 501+ employees	<b>\$300,000</b>
- **Court costs, attorney's fees and expert-witness fees.** A court could order your business to reimburse the applicant or employee for these costs and fees, which are often higher than the combined punitive and compensatory damages, and are not subject to any cap.

## Leave as an accommodation

Accommodations in schedules and leaves are some of the most challenging accommodations for employers to make. The purpose of leave as a reasonable accommodation is to allow an employee to recover to be able to return to work. The EEOC has stated that indefinite leaves are not reasonable accommodations. In any event, employers must interact with their employees and offer reasonable accommodation before taking any adverse employment action against employees on leave. Check with your outside counsel to determine what duration of leave is reasonable given your business and policies.

### INTERPLAY BETWEEN THE ADA AND FMLA

One complex and difficult issue for employers is the interplay between the Family and Medical Leave Act (FMLA) and the ADA. Some important things to know:

- The FMLA applies to employers with 50 or more employees.
- Leave provided by the FMLA is for serious health conditions that may or may not qualify as a disability under the ADA.
- Leave under the FMLA is limited to 12 weeks (taken continuously, under a reduced schedule, or intermittently), while ADA leave is only limited by what is reasonable for the employer.
- The time provided by the employer under the FMLA can run concurrently with the time provided as a reasonable accommodation under the ADA.
- Employers should evaluate leave as a reasonable accommodation for employees who request FMLA leave but are either not eligible or have exhausted the leave available to them.

Work with your legal counsel to review your policies to ensure that you are compliant with both the ADA and the FMLA. You should use a consistent process when you are considering employment action involving a disabled employee who has been out on leave.

Visit our [HR Trends](#) website for more leave-management resources, including podcasts, webinars, articles and reports. Visit our [ADA Services](#) page.



### A special note about pregnancy

Pregnancy is not a disability under the ADA, but pregnancy-related impairments like gestational carpal tunnel, diabetes, sciatica or edema may be. In addition to the ADA, employers must consider accommodation responsibilities under the Pregnancy Discrimination Act (PDA), which requires that pregnant employees be treated the same as non-pregnant employees who are similar in their ability or inability to work.

According to EEOC guidance,<sup>4</sup> employers may **not** avoid discrimination findings simply by claiming that accommodating pregnant women is **more expensive or less convenient** than accommodating other similarly abled employees. In addition, employers may open themselves to discrimination claims if their regular employment policies impose a significant burden on pregnant workers to the point that they can be **inferred to be intentionally discriminatory**.

So, if you have a policy of accommodating a large percentage of non-pregnant employees with limitations while denying the same or similar accommodations to a large percentage of pregnant employees, you may find it difficult to counter the argument that you are treating pregnant employees worse than non-pregnant employees.



## Tax credits and other assistance

Your business may be eligible for tax credits that can help ease the financial impact of an accommodation. You may also obtain financial assistance from vocational rehabilitation agencies, or, in undue hardship situations, perhaps from the employee being accommodated. Any assessment of undue hardship, however, must be based only on the net cost to your company, not on the total cost of the accommodation.

A particularly helpful publication produced by the Internal Revenue Service (IRS), in coordination with the U.S. Department of Health and Human Services (HHS), Office on Disability, is “Living and Working with Disabilities: Tax Benefits and Credits.” It can be accessed online in [English](#) and [Spanish](#) or by calling 1-800-829-3676 (voice) or 1-800-829-4059 (TTY/TDD).

Tax credits are constantly shifting; ask your tax advisor for more information about these tax incentives, including the appropriate IRS forms to complete.

## Did you know?

Did you know that Unum can help you keep your employees at work or assist them as they return to work? For example, some Unum Long Term Disability Insurance policies may include the following worksite modification benefit provision (not available in CA):

### HOW CAN UNUM HELP YOUR EMPLOYER IDENTIFY AND PROVIDE WORKSITE MODIFICATION?

A worksite modification might be what is needed to allow you to perform the material and substantial duties of your regular occupation with your employer. One of our designated professionals will assist you and your employer to identify a modification we agree is likely to help you remain at work or return to work. This agreement will be in writing and must be signed by you, your employer and Unum. When this occurs, Unum will reimburse your employer for the cost of the modification, up to the greater of \$1,000, or the equivalent of two months of your monthly benefit. This benefit is available to you on a one-time only basis.

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With this provision in your policy, we not only can help you by assisting your employees in returning to work, but also by helping your employees stay at work.

Some of the accommodations that might be provided under this provision include adaptive equipment such as ergonomic chairs, magnifying screens and split or one-handed keyboards, plus recommendations on how to modify work schedules.

Applicable to policy form C.FP-1, et al.

For NY: The LTD policy provides disability income insurance only. It does NOT provide basic hospital, basic medical or major medical insurance as defined by the New York State Department of Financial Services.

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# Information requirements

The ADA has specific requirements concerning providing information to employees and collecting/protecting their confidential information.

## COMMUNICATING THE FACTS

Every employee must have access to information about his or her rights under the law. If your business is covered under the ADA, you are required to post notices — available from the EEOC — describing the applicable provisions so that applicants, employees and others are aware of their rights.

## PROTECTING CONFIDENTIAL INFORMATION

The ADA has specific rules prohibiting employers from gathering disability-related information, either in the form of medical examinations or disability-related questions.

It also has rules concerning protecting confidential information once it is received. The rules vary according to the point in the hiring or employment process.

**In the hiring process**, before you offer the individual a job, the ADA prohibits all disability-related questions and medical examinations, even if the questions or examinations are related to the job. You can describe the job and ask if the applicant can perform the functions of the job, with or without reasonable accommodation. Avoid asking about whether the applicant has a disability that would prevent them from doing the job. Keep the focus on the applicant's abilities.

**After an offer is made but before employment starts**, you may ask disability-related questions so long as all employees in the job category are asked the same questions or given the same examinations upon entering your company. Your job offer can be conditional on a satisfactory result for all potential employees.

**Once an employee has begun work**, you may ask disability-related questions or require medical examinations only if they are job-related or consistent with business necessity. At this stage, you may also conduct voluntary medical examinations as part of an on-site health and wellness program. Once a person is hired, you may always inquire about the person's ability to perform job-related functions. Again, it is most prudent to focus on abilities, not disabilities.

**Once you have sensitive medical information**, either doctor's notes, notes from the employee describing his or her condition, or examination results, you must maintain that information with the same confidentiality as medical records, and you cannot use the results to discriminate against a qualified individual on the basis of disability. You should keep it in a separate file in a secure location to avoid any unauthorized access.

As always, to ensure that you are meeting all privacy requirements, you should check with your own legal counsel to make sure you understand your obligations under both federal and applicable state privacy laws. Also, work with your legal counsel to keep track of the EEOC rules on how the ADA applies to your wellness program.



## Best practices

It is important to establish a culture of compliance with the ADA. Integrating the spirit and principles of the ADA into your business operations allows your organization to retain valuable resources — employees who develop disabilities — and to attract new talent who may or may not have disabilities. Training your managers on ADA issues is an important step toward compliance.



## Absence management built for today's evolving workforce

Along with ADA services and decades of leave expertise, we also offer a powerful all-in-one solution to streamline your leave and compliance. Unum Total Leave is a digital solution that simplifies corporate, state, and federal leave for HR--while making it easy for employees to plan leaves, receive benefits and return to work smoothly.

## Additional resources

### ADA National Network

Ten federally-funded regional centers providing information, materials, technical assistance and training on the ADA.

1-800-949-4232

[adata.org](http://adata.org)

### Equal Employment Opportunity Commission (EEOC)

Provides information about federal anti-discrimination laws.

1-800-669-4000

[eoc.gov](http://eoc.gov)

[Discrimination law FAQs](#)

### GettingHired.com

A commercial national employment and social networking web-based portal that connects and serves disabled job seekers, employers, advocacy organizations and service providers.

[gettinghired.com](http://gettinghired.com)

### HR Trends website

A Unum resource library for employers, exploring the critical issues facing HR teams today, from leave management to benefits planning and tech innovations. Tap into analysis, commentary and insights from industry experts and national HR thought leaders, and sign up for our free newsletter to stay up to date on the latest HR topics.

[unum.com/employers/hr-trends](http://unum.com/employers/hr-trends)

### Job Accommodation Network (JAN)

JAN is a leading source of free, expert, and confidential guidance on workplace accommodations and disability employment issues.

1-800-526-7234

[askjan.org](http://askjan.org)

[JAN ADA library](#)

\* This handbook incorporates the requirements of the original law, the ADA Amendments Act of 2008, regulatory changes made by the EEOC in 2001 regarding the definition of disability, and regulatory changes concerning wellness programs and pregnancy.

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1 Based on Unum review of all published jury verdicts throughout the U.S. 2012–2017.

2 Employee Benefit Plan Review, Group Accident & Health Surveys 1976-1990, pub. 1977-1991; Gen Re, U.S. Group Disability Market Surveys 1991-2013, pub. 1992-2014; LIMRA, U.S. Group Disability Insurance 2014-2018 Annual Sales and In Force, pub. 2015-2018; LIMRA, U.S. Workplace Disability Insurance Inforce Summary Results 2019-2021, pub. 2020-2022.

3 Job Accommodation Network, Benefits and Costs of Accommodation, 2022.

4 EEOC, Pregnancy Discrimination, accessed Jan. 10, 2023.

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