The Americans with Disabilities Act (ADA)

What is the Americans with Disabilities Act?

42 U.S. Code § 12102

The Americans with Disabilities Act (ADA) became law in 1990. The ADA is a civil rights law that prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public. The purpose of the law is to make sure that people with disabilities have the same rights and opportunities as everyone else.

Title I (Employment) of the ADA

42 U.S. Code § 12101-12117

This title is designed to help people with disabilities access the same employment opportunities and benefits available to people without disabilities. Employers must provide reasonable accommodations to qualified applicants or employees. A 'reasonable accommodation' is a change that accommodates employees with disability without causing the employer "undue hardship" (too much difficulty or expense).

This portion of the law is regulated and enforced by the U.S. Equal Employment Opportunity Commission. Employers with 15 or more employees must comply with this law. The regulations for Title I define disability, establish guidelines for the reasonable accommodation process, address medical examinations and inquiries, and define "direct threat" when there is significant risk of substantial harm to the health or safety of the individual employee with a disability or others.

What is reasonable accommodation?

42 U.S. Code § 12111, (9)

Reasonable accommodation is any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to participate in the application process or to perform essential job functions. Reasonable accommodation also includes adjustments to assure that a qualified individual with a disability has rights and privileges in employment equal to those of employees without disabilities.

What is a disability under the ADA?

42 U.S. Code § 12102, (3)

As defined by the ADA, a disability is a physical or mental impairment that substantially limits a major life activity such as walking, seeing, hearing, speaking**,** learning, breathing, caring for oneself, performing manual tasks, or working. The ADA covers those who have a disability; those

who have a record of having a disability; and those who are regarded as having a disability, whether or not they actually have one.

What impairments would generally not meet the definitions of disability?

42 U.S. Code § 12102, (4)(A)

Minor, nonchronic conditions of short duration, such as a sprain or the flu, generally would not be covered.

Who is a qualified individual with a disability?

42 U.S. Code § 12111, (8)

A qualified individual with a disability is a person with a disability who meets legitimate skill, experience, education, or other requirements of an employment position that s/he holds or seeks, and who can perform the *essential function*s of the position with or without reasonable accommodation. Requiring the ability to perform "essential" functions assures that an individual with a disability will not be considered unqualified simply because of an inability to perform marginal or incidental job functions. If the individual is qualified to perform essential job functions except for limitations caused by a disability, the employer must consider whether the individual could perform these functions with a reasonable accommodation.

Is a qualified individual with a disability protected from employment discrimination?

42 U.S. Code § 12112, (a)

Employment discrimination is prohibited against “qualified individuals with disabilities.” This includes applicants for employment and employees. Under the ADA, the Judiciary, as an employer, cannot discriminate against qualified individuals with disabilities on the basis of disability in regard to job application procedures, hiring, advancement or discharge, compensation, job training, or other terms, conditions, and privileges of employment

What is the Judiciary’s Policy on the ADA and employment discrimination?

The Judiciary’s *Policy on Americans with Disabilities Act* prohibits discrimination against qualified people with disabilities in regard to any employment practices or terms, conditions, and privileges of employment. This prohibition covers all aspects of the employment process, including, but not limited to:

- recruitment
- application
- testing
- hiring
- assignments
- evaluation

- disciplinary action
- training and development
- promotion
- demotion
- transfer
- reclassification
- medical examination
- layoff/recall
- termination
- compensation
- use of leave
- benefits

Who do I Contact to discuss an ADA accommodation?

28 C.F.R. pt. 35, § 35.107(a) (2005)

An applicant for employment should contact the recruiter or a Judiciary Human Resources associate.

An employee should contact their Administrative Head, the local ADA Field Coordinator (http://mdcourts.gov/hr/ada/adacoordinators.pdf), or the ADA Officer located in the Judiciary Human Resources Department.

How do I make a request for an Accommodation?

APPLICANT
An applicant, or a representative acting on behalf of an applicant, can request an accommodation either verbally or in writing. Verbal accommodation requests should be processed with the same expediency as a written request. An applicant may request an accommodation through the recruiter or a Judiciary Human Resources Department associate. An accommodation for the interview process shall be granted by and paid for by the hiring entity. An initial response to a request for accommodation shall be provided within 10 business days of receipt of the formal request.

EMPLOYEE
An employee may request an accommodation either verbally or in writing. Verbal accommodation requests should be processed with the same expediency as a written request. Once an accommodation is requested, the ADA Field Coordinator/Administrative Head will have the employee complete an accommodation request form (see link below) to be submitted to their designated ADA Field Coordinator/Administrative Head. An initial response to a Request for Accommodation shall be provided within 10 business days of receipt of the formal request. (http://mdcourts.gov/hr/adaforms/jhrd201requestforaccommodation.pdf)

May an employer tell other employees that an individual is receiving a reasonable accommodation when employees ask questions about a coworker with a disability?

42 U.S.C. § 12112(d)(3)(B)

No. An employer may not disclose that an employee is receiving a reasonable accommodation because this usually amounts to a disclosure that the individual has a disability. The ADA specifically prohibits the disclosure of medical information except in certain limited situations, which do not include disclosure to coworkers.

An employer may respond to a question from an employee about why a coworker is receiving what is perceived as "different" or "special" treatment by emphasizing its policy of assisting any employee who encounters difficulties in the workplace. The employer also may find it helpful to point out that many of the workplace issues encountered by employees are personal, and that, in these circumstances, it is the employer's policy to respect employee privacy. An employer may be able to make this point effectively by reassuring the employee asking the question that his/her privacy would similarly be respected if s/he found it necessary to ask the employer for some kind of workplace change for personal reasons.

As long as there is no coercion by an employer, an employee with a disability may voluntarily choose to disclose to coworkers his/her disability and/or the fact that s/he is receiving a reasonable accommodation.