

# The Employers' ADA Handbook: Title I Overview

## Learner's Guide

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## Overview

Opportunities for Ohioans with Disabilities (OOD) supports employers in creating workplaces that are diverse and inclusive of employees with disabilities. One main way OOD does this is through providing consultations and trainings on navigating Title I of the Americans with Disabilities Act, known as the ADA. This “Title I Overview” learner’s guide is the first in a five-part series and addresses these topics:

- Summary of the ADA,
- Protected Individuals,
- Covered Entities,
- Employer Requirements, and
- OOD Services for Employers.

**The information included is for educational purposes, is not an exhaustive list, and is not intended as legal advice.**

## Summary of the ADA

**The Americans with Disabilities Act (ADA)** is a civil rights law that makes it unlawful to discriminate against individuals with disabilities in all facets of public life. The ADA includes five titles which address access to these facets of public life, such as work, school, transportation, and public places. The ADA was signed into law on July 26, 1990 by President George H. W. Bush with the purpose of ensuring individuals with disabilities have the same rights and opportunities as all individuals.



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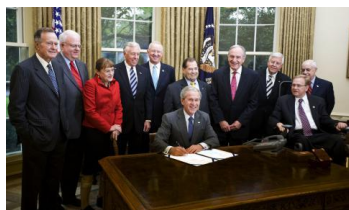
The focus of this learner’s guide is on Title I of the ADA which addresses employment. Title I makes it unlawful to discriminate against individuals with disabilities in all aspects of employment. The purpose of Title I is twofold. First, it ensures individuals with disabilities have access to the same employment opportunities as all individuals. Secondly, it requires employers to provide reasonable accommodations to qualified applicants and employees with disabilities when needed, unless doing so causes an undue hardship.

Title I does not guarantee results or establish quotas for hiring individuals with disabilities. It also does not require covered entities to favor individuals with disabilities over individuals without disabilities.

Title I is regulated and enforced by the Equal Employment Opportunity Commission (EEOC). The EEOC has published several guides to assist employers in following their responsibilities under Title I. Content

from the EEOC guidance informs the information shared in this learner's guide and individual guides are listed in the resources section at the end of this document.

**The Americans with Disabilities Act Amendments Act (ADAAA)** was signed into law in 2008 by President George W. Bush and changed the ADA's definition of disability. This was a result of the U.S. Supreme Court ruling too narrowly when interpreting disability. This narrow interpretation was not aligned with the ADA's intent. The amendment resulted in broader protection from discrimination based on disability.



(White House photo by Joyce N. Boghosian) This file is a work of an employee of the Executive Office of the President of the United States, taken or made as part of that person's official duties. As a work of the U.S. federal government, it is in the public domain.

## Protected Individuals

Overall, the goal of the Americans with Disabilities Act (ADA) is to provide equal access and equal opportunity for individuals with disabilities. Title I protects qualified applicants and employees with disabilities from discrimination in all aspects of employment.

### ADA's Definition of Disability

To receive protection under Title I, an individual must have a disability. The ADA's definition of a disability is a legal definition, not a medical one, and varies from the definition used by other entities and laws. The ADA defines a person with a disability as "...a person who has a physical or mental impairment that substantially limits one or more major life activity." The ADA definition also includes individuals with a record of such an impairment and individuals regarded as having such an impairment. The ADA also prohibits discrimination against a person based on their association with a person with a disability. Thus, this person would be protected under the ADA.

The ADA's definition of a physical impairment is "[A]ny physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine."

The ADA's definition of a mental impairment is "[A]ny mental or psychological disorder, such as (intellectual disabilities), organic brain syndrome, emotional or mental illness, and specific learning disabilities."

Neither the ADA or the EEOC provides an exclusive list of individual diseases, diagnoses, or conditions that qualify as a disability. Instead, the ADA defines disability as a substantial limitation based on a physical or mental impairment, which are defined just above.

The ADA National Network resource "[The Americans with Disabilities Act Questions and Answers](#)" includes a list of conditions which should "easily be concluded" to be a disability. The list includes these examples of conditions: "deafness, blindness, intellectual disability, partially or completely missing limbs, mobility impairments, autism, cancer, cerebral palsy, diabetes, epilepsy, HIV infection, multiple sclerosis, muscular dystrophy, major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive-compulsive disorder, and schizophrenia".

### **Substantially Limits**

The name of a disability, medical condition, or impairment itself is not sufficient to determine whether an individual meets the ADA's definition of disability and has a substantial limitation. To determine a substantial limitation, consider the following:

- The nature and severity of the impairment,
- The length of time the impairment will last or is expected to last, and
- The long-term impact of the impairment or the expected long-term impact.

A substantial limitation does not mean the individual with a disability cannot perform the major life activity or that it is significantly or severely restricted. Determining whether an impairment is substantially limiting is not intended to require an extensive analysis. Instead, it is based on a comparison of the ability of "most people in the general population" and a commonsense approach.

By nature, some disabilities do substantially limit a major life activity. Examples of such disabilities include blindness and deafness. However, other disabilities may create a substantial limitation for some individuals and not others. This determination is unique to each individual and must be determined on a case-by-case analysis. Here is an example provided by the Job Accommodation Network (JAN):

- The condition known as Cerebral Palsy (CP) can restrict the ability to speak, walk, and perform manual tasks.
- An individual experiencing a mild form of CP may have a slight limitation with speaking.
- An individual experiencing a severe form of CP may have a substantial limitation with walking.

### **Major Life Activity**

The ADA definition of disability references the term "major life activity". Major life activities are those daily functions that are important to most individuals and that most individuals in the general population can perform with little or no difficulty. The ADA provides two non-exhaustive lists of examples of major life activities:

Here are examples of major life activities:

- Caring for oneself,
- Performing manual tasks,
- Seeing,
- Hearing,
- Eating,
- Sleeping,
- Walking,

- Standing,
- Sitting,
- Reaching,
- Lifting,
- Bending,
- Speaking,
- Breathing,
- Learning,
- Reading,
- Concentrating,
- Thinking,
- Communicating,
- Interacting with others, and
- Working.

Major life activities include major bodily functions. Here are examples of major life functions:

- Immune system,
- Special sense organs and skin,
- Normal cell growth,
- Digestive system,
- Genitourinary functions,
- Bowel and bladder functions,
- Neurological and brain functions,
- Respiratory, circulatory, and cardiovascular functions,
- Endocrine, hemic, and lymphatic functions, and
- Musculoskeletal, and reproductive functions.

### **Record of a Disability**

The ADA provides protection for individuals with a record of a disability. In this definition, the individual has a history of a disability or has been misdiagnosed or misclassified as having a disability. Here is an example of how an employee may experience discrimination at work based on having a record of a disability:

- An employee with a history of cancer is up for promotion and is denied this opportunity because his manager is concerned if the employee's cancer returns, he will not be able to perform the job's essential functions. The result is discrimination based on the employee's record of having a disability.

### **Regarded as or Treated as an Individual with a Disability**

The ADA provides protection for individuals who are regarded as or treated as an individual with a disability. Being regarded as or treated as an individual with a disability means either:

- An individual has an impairment that does not substantially limit a major life activity but is treated by others as if it does,

- An individual has an impairment that only substantially limits a major life activity because of the attitude others have towards her, or
- An individual does not have an impairment but is regarded as having one by others.

Here are some examples of how an employee may experience discrimination at work based on being regarded as or treated as an individual with a disability:

- An employee has high blood pressure that is well-controlled. The employee has a physically demanding job and can perform the essential functions of his job without substantial limitations. The employer fears the employee may have a heart attack due to performing physically demanding tasks and reassigns the employee to a less physically demanding job.
  - The employer has “perceived” the employee as having a disability.
- An employee works as an assistant manager in a retail store and has a prominent facial scar. The employee applies for the store manager position for which he is qualified. The employee was not given the position and the position was given to a coworker with less experience. The hiring manager chose not to give the position to the employee with the facial scar because he believed customers would be uncomfortable.
  - The hiring manager “perceived and treated” the employee as having a disability.

### **Association Provision**

The ADA protects applicants and employees from being discriminated against based on a known association with an individual with a disability. This provision is intended to prevent employers from discriminatory actions based on misconceptions and stereotypes that are unfounded regarding how an association with an individual with a disability may impact an employee’s participation in work activities.

Here is an example of how the association provision protects an employee from discrimination at work based on an association with an individual with a disability:

- The association provision protects an applicant from being denied employment based on the employer’s assumption that because the applicant’s child has a disability the applicant would be frequently absent from work.

### **Qualified**

An applicant or employee with a disability must be qualified for the job to receive protection under Title I. The ADA defines qualified as “a person 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 functions of the position with or without reasonable accommodation.” Essential functions are the job duties the job was created to perform.

### **Mitigating Measures**

As mentioned previously, the ADAAA broadened the ADA’s definition of disability. In doing so, the topic of mitigating measures was addressed. A mitigating measure is an item or a service an individual with a disability uses to treat or overcome a limitation related to the disability. Here are some examples of mitigating measures:

- Wheelchairs,

- Hearing aids,
- Medication,
- Prosthetic limbs, and
- Therapy.

Items such as ordinary eyeglasses and contact lenses are not considered mitigating measures.

What the ADA changed regarding disability and mitigating measures is when the determination of how limited an individual is due to the disability, mitigating measures are ignored. This means the degree of limitation is considered based on the mitigating measure not being used. An employer may encounter this consideration when verifying whether an employee with a disability meets the ADA's definition of disability when requesting a reasonable accommodation. It is important to note that while the benefit of using a mitigating measure is ignored when determining how limiting the disability is for the employee, when identifying an effective reasonable accommodation, the limitation is assessed with using the mitigating measure. The best practice is to determine the disability exists first, and then determine an effective reasonable accommodation.

Here is an example of considering a mitigating measure:

- An employee has diabetes and takes insulin daily to control this condition and is able to perform his job.
- The employee is protected by the ADA because determining the employee has a disability is without regard to the use of a mitigating measure. The medication is a mitigating measure.
- The employee has a right to reasonable accommodation, if needed. Here are some examples of reasonable accommodations:
  - Flexible schedule to take breaks as needed for medication management, and/or
  - Modified policy to permit food/drink at workstation to take with medication as needed or at scheduled times.

## Covered Entities

Covered entities that must comply with Title I of the ADA include private employers with 15 or more employees, state and local governments, employment agencies, labor unions, agents of the employer, and joint management labor committees. Examples of agents of the employer include managers, supervisors, and outside agencies used for obtaining background checks.

For the sake of the remainder of this learner's guide, covered entities will be referred to as employers who are the intended audience of this information.

## Employer Responsibilities

Title I of the ADA prohibits discrimination based on disability in all aspects of employment. Title I also requires employers to provide reasonable accommodations to qualified applicants and employees with disabilities, unless doing so causes an undue hardship.

In complying with Title I, employers ensure qualified applicants and employees with a disability:

- Have equal opportunity to apply for jobs,

- Have equal opportunity to be hired and perform jobs,
- Have equal opportunity for advancement at work,
- Have equal access to the benefits and privileges of employment, and
- Are not harassed based on disability.

Here are some examples of the various aspects of employment:

- Recruitment,
- Advertising,
- Job application procedures,
- Hiring,
- Training,
- Compensation,
- Benefits,
- Leave,
- Job assignments,
- Advancement,
- Tenure,
- Layoffs,
- Termination,
- Conditions and privileges of employment, and
- All other employment-related activities.

In general, an employer does not know an individual has a disability unless the disability is obvious, or the individual has disclosed the disability to the employer. The choice to disclose a disability is always the decision of the individual with a disability. When an applicant or employee with a disability wishes to request a reasonable accommodation, he or she must disclose the disability. Often applicants and employees with disabilities do not need a reasonable accommodation. But when one is needed and requested, the employer must consider this. A request for a reasonable accommodation can be made at any point during the hiring process and during employment.

A general overview of employment practices to be discussed in this learner's guide includes hiring, reasonable accommodation, undue hardship, confidentiality, performance, conduct, and direct threat. This is intended to be an introductory overview and not a comprehensive description of a covered entity's responsibilities under Title I.

### **Hiring**

The hiring process includes advertising and recruiting for an open position, the application process, the interview, non-medical inquiries and tests, making an offer, and administering disability-related inquiries and medical examinations.

When advertising and recruiting for open positions, it is a best practice to make sure job postings and notices are accessible and that recruitment efforts include sources of candidates with disabilities.

It is important to make efforts to ensure the application process, both online and in-person, are accessible to applicants with disabilities and be prepared to provide reasonable accommodations.



Including a reasonable accommodation statement that is easy to find on the application ensures applicants with disabilities know how to make a request for an accommodation when one is needed.

Title I of the ADA establishes limitations and provides guidance on asking disability-related questions and administering medical examinations during the hiring process and employment. These limitations apply to the pre-offer and post-offer phases of the preemployment process and the employment process and generally include:

- In the pre-offer phase, before a job offer is extended, the employer may not ask disability-related questions or administer medical examinations. This includes application forms, job interviews, background checks, and reference checks.
- In the post-offer phase, after a job offer has been extended and before employment begins, the employer may ask disability-related questions and administer medical examinations, and this must apply to all candidates who receive a job offer for the same job category. The job offer may be conditioned on the results of the questions and examinations. An employer is not permitted to choose not to hire a candidate with a disability based on these results unless the decision is job-related and consistent with business necessity. The employer must consider whether a reasonable accommodation is available to enable the candidate to perform the job's essential functions.
- In the employment phase, generally the employer can no longer ask disability-related questions or administer medical examinations unless it is job-related and consistent with business necessity. These questions and examinations may be administered when an employer has evidence that a medical condition is contributing to low job performance or causing a direct threat.

During the pre-offer phase, the employer may ask the applicant questions about the ability to perform the job's essential functions and may ask all applicants to describe or demonstrate how they would perform these tasks. When an applicant has a known disability (an obvious or disclosed disability) that the employer can reasonably believe may limit the applicant's ability to perform an essential function, the employer may ask the applicant to describe or demonstrate how he would perform an essential function even if other applicants were not asked to do so. For in-depth guidance, please review the Equal Employment Opportunity Commission (EEOC) "[Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations.](#)"

All medical information obtained through the hiring process must be kept confidential, with exceptions. Confidentiality is discussed later in this section of the learner's guide.

For some examples of best practices to make the hiring process accessible and inclusive of applicants with disabilities, view OOD's archived webinar "[Inclusive Hiring: Applicants with Disabilities.](#)"

### **Reasonable Accommodation and Undue Hardship**

As previously discussed, Title I requires employers to provide reasonable accommodations to qualified applicants and employees with disabilities, unless doing so causes an undue hardship. A reasonable accommodation is a change that enables an applicant or employee with a disability to access the hiring process, perform the essential functions of the job, access the work environment, and/or enjoy the benefits of employment. A change may include a modification, an adjustment, or the use of an item or service which overcomes the workplace barrier and enables access to the work-related activity.

The Equal Employment Opportunity Commission (EEOC) organizes reasonable accommodations into these types:

- Accessible environment,
- Job restructure,
- Flexible schedule,
- Equipment and services,
- Modified policies,
- Leave,
- Supervisory methods, and
- Reassignment.

An applicant or employee with a disability is permitted to request an accommodation at any point in the hiring process or during employment. When an employer receives a request, it should act “expeditiously” and promptly begin the interactive process. The interactive process is a collaborative process in which the applicant or employee making the request and the employer work together to identify the need for the accommodation and an effective solution. Determining the effective solution is always considered on a case-by-case basis as each applicant, employee, employer, job, and workplace are unique.

When considering reasonable accommodations, employers are not required to lower standards for quality or productivity. To receive protection under Title I, the employee with a disability must be qualified to perform the job’s essential functions, with or without a reasonable accommodation. An effective reasonable accommodation should eliminate the workplace barrier and enable the employee to meet the job’s quality and productivity expectations.

Employers are not required to provide accommodations that cause an undue hardship. An undue hardship is created when an accommodation is significantly costly or difficult to implement. Undue hardship is determined on a case-by-case basis and in accordance with the criteria provided by the EEOC. Here are some examples of the factors to be considered:

- Nature of the accommodation,
- Cost of the accommodation,
- Employer’ size,
- Employer’s resources,
- Nature and structure of the employer’s operation, and
- Consideration of the larger organization when applicable.

When an effective accommodation is assessed and deemed an undue hardship, identify if another accommodation exists that is both effective and reasonable.

When assessing whether an effective accommodation is too costly, identify the net cost to the employer after considering outside funding sources and eligible tax benefits. After identifying the net cost and determining there are no other affordable accommodation options, the employee with a disability should be provided the option to pay the portion of the accommodation cost that is deemed an undue hardship.

### **Confidentiality**

All medical information obtained through accommodation requests, discussions, inquiries, medical examinations, and documentation obtained through the hiring process must be kept confidential, with exceptions.

The [EEOC guidance](#) indicates that medical information should be kept in separate medical files apart from general personnel files, whether stored in physical filing cabinets or in electronic databases. Medical information may be shared with designated parties under certain circumstances such as:

- Pertinent information may be shared with the employee responsible for handling safety and emergency situations.
- Information specific to the proper implementation and use of a reasonable accommodation may be shared with the supervisor(s) involved.
- Information requested for a compliance investigation or to assess an insurance claim, such as a workers' compensation claim, may be shared.

### **Performance**

All employees performing the same job must be held to the same standards for productivity and quality, including employees with disabilities. An employee with a disability must be able to perform the job's essential functions with or without a reasonable accommodation. An employer is not required to lower or change a job's performance standards as a form of reasonable accommodation. At times, a low performance rating is the first indicator to an employee with a disability that her disability is contributing to her work performance. An employee with a disability may request a reasonable accommodation at any point during employment. When such a request is made in response to a low performance rating, the consequence for the low performance may be applied and the interactive process should begin to identify an effective reasonable accommodation.

### **Conduct**

All employees must be held to the same conduct standards that are job-related and consistent with business necessity, including employees with disabilities. An employee with a disability must be able to meet these conduct standards with or without a reasonable accommodation. An employee with a disability may request a reasonable accommodation at any point during employment. When such a request is made in response to a conduct violation, the consequence for the conduct violation may be applied and the interactive process should begin to identify an effective reasonable accommodation.

### **Direct Threat**

An employer may exclude an applicant or employee with a disability from employment based on safety when the employer can objectively show the applicant or employee poses a direct threat. This standard must be applied consistently to all employees, not just employees with disabilities. A direct threat is defined in EEOC guidance as "a significant risk of substantial harm to the health or safety of the individual or others than cannot be eliminated or reduced by reasonable accommodation." A significant risk is considered a "high" risk, not "just a slightly increased" risk. A determination of direct threat must include:

- An assessment of the employee’s ability to safely perform the job’s essential functions,
- A reasonable medical judgment based on the most recent medical evidence, and/or
- The best objective evidence available.
- A consideration of whether a reasonable accommodation exists to lessen the risk to an acceptable level.

## OOD Services for Employers

Opportunities for Ohioans with Disabilities (OOD) is the state of Ohio agency that empowers Ohioans with disabilities through employment, disability determinations, and independence. OOD continues to expand its offerings to employers by providing educational resources (i.e. Disability Awareness and Etiquette Training), worksite accessibility consultations and trainings, candidate sourcing referrals, and virtual hiring events. OOD does not charge employers for services and takes an employer-focused approach with candidate sourcing efforts and delivery of services. For more information on OOD and services provided to employers, please visit our [website](#).

OOD’s Division of Employer and Innovation Services (EIS) has a team of Business Relations Specialists (BRSs) who work to build employer partnerships to support job placement and retention of individuals with disabilities throughout Ohio. For a listing of each BRS’s coverage area and contact information, go to pages 14-15 of this learner’s guide for an individual listing of each BRS and our graphic service map of counties in Ohio.

OOD’s Division of EIS also offers no-cost worksite accessibility consultations and training for employers. These services are provided statewide by Julie Zeigler Wood, OOD’s Worksite Accessibility Specialist. Services are tailored to the employer and include information on navigating Title I of the Americans with Disabilities Act, identifying general ideas for reasonable accommodations, and providing accessibility guidelines for the physical and digital environments. For more information on worksite accessibility services, please contact [Julie Zeigler Wood](#):

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## Conclusion

Opportunities for Ohioans with Disabilities (OOD) appreciates your interest in identifying solutions and resources to support a workplace that is diverse and inclusive of employees with disabilities. Each employee with a disability, each employer, and each workplace is unique and because of this, the effective strategy to create a work environment that is accessible and inclusive will be unique. We hope the information shared in this learner’s guide and virtual training are helpful in supporting your efforts.

## Resources

### Summary of the ADA

- ADA Basics. “[ADA Basic Building Blocks Course](#)”
- ADA National Network. “[An Overview of the Americans with Disabilities Act](#)”
- ADA National Network. “[The Americans with Disabilities Act Questions and Answers](#)”

- ADA National Network. "[Timeline of the Americans with Disabilities Act](#)"
- Job Accommodation Network. "[The JAN Workplace Accommodation Toolkit](#)"
- U.S. Equal Employment Opportunity Commission. "[Disability Discrimination](#)"

## Protected Individuals

- ADA Basics. "[ADA Basic Building Blocks Course](#)"
- ADA National Network. "[The Americans with Disabilities Act Questions and Answers](#)"
- ADA National Network. "[What are major life activities?](#)"
- ADA National Network. "[What does a 'record of' a disability mean?](#)"
- ADA National Network. "[What does 'regarded as' having a disability mean?](#)"
- ADA National Network. "[What is the definition of disability under the ADA?](#)"
- Job Accommodation Network. "[Much Ado About Mitigating Measures](#)"
- Job Accommodation Network. "[Technical Assistance Manual for Title I of the ADA](#)"
- U.S. Equal Employment Opportunity Commission. "[The ADA: A Primer for Small Business](#)"
- U.S. Equal Employment Opportunity Commission. "[The ADA: Your Responsibilities as an Employer](#)"
- U.S. Equal Employment Opportunity Commission. "[Questions & Answers: Association Provision of the ADA](#)"
- U.S. Equal Employment Opportunity Commission. "[Questions and Answers for Small Businesses: The Final Rule Implementing the ADA Amendments Act of 2008](#)"

## Covered Entities

- ADA National Network. "[The Americans with Disabilities Act Questions and Answers](#)"
- Job Accommodation Network. "[Technical Assistance Manual for Title I of the ADA](#)"
- U.S. Equal Employment Opportunity Commission. "[The ADA: Your Responsibilities as an Employer](#)"

## Employer Requirements

- ADA Basics. "[ADA Basic Building Blocks Course](#)"
- ADA National Network. "[The Americans with Disabilities Act Questions and Answers](#)"
- JAN. "[The JAN Workplace Accommodation Toolkit](#)"
- U.S. Equal Employment Opportunity Commission. "[Applying Performance and Conduct Standards to Employees with Disabilities](#)"
- U.S. Equal Employment Opportunity Commission. "[Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA](#)"
- U.S. Equal Employment Opportunity Commission. "[Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations](#)"
- U.S. Equal Employment Opportunity Commission. "[Enforcement Guidance on the ADA and Psychiatric Disabilities](#)"
- U.S. Equal Employment Opportunity Commission. "[The ADA: A Primer for Small Business](#)"
- U.S. Equal Employment Opportunity Commission. "[The ADA: Your Responsibilities as an Employer](#)"

## OOD Services for Employers

- Opportunities for Ohioans with Disabilities, archived webinar. "[Inclusive Hiring: Applicants with Disabilities](#)"
- Opportunities for Ohioans with Disabilities. "[Information for Employers](#)"

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**BUSINESS RELATIONS SERVICES MAP**

