

# Supervisors and Title I of the ADA: 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 way OOD does this is through providing consultations and training on creating disability-inclusive and accessible workplaces.

This learner's guide is a reference companion to a webinar which addresses the key role supervisors have in navigating the hiring process and supervising employees under Title I of the Americans with Disabilities Act (ADA). Employers often train human resources (HR) professionals on Title I and overlook the importance of training supervisors on their role. This can lead to supervisors being uncomfortable with managing employees with disabilities, feeling unsure of what they can ask or do, and confused about how to handle discussions about reasonable accommodations.

Providing training for supervisors on Title I empowers them to contribute to the success of creating a disability-inclusive workplace, hiring, and employing individuals with disabilities, and adhering to employer responsibilities under Title I.

This learner's guide provides information and best practices to support supervisors and will address these valuable topics:

- Disability-Inclusive Workplace
- Job Qualifications and Essential Functions
- Hiring Process
- Interactive Process
- Reasonable Accommodation
- Common Workplace Situations

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

## Disability-Inclusive Workplace

According to the Centers for Disease Control and Prevention (CDC), one in four adults in the United States have a disability "that impacts major life activities," totaling 61 million Americans. According to the American Psychiatric Association, 19% of adults in the United States, which is nearly one in five Americans, experience some form of mental illness. According to the U.S. Department of Labor's Office of Disability Employment Policy, "it is likely that most employers have at least one employee with a psychiatric disability."

According to studies referenced in the Northeast ADA Center's "The Small Business at Work Toolkit," employees with disabilities perform as well as or better than employees without disabilities and are absent less and stay on the job longer than employees without disabilities. These results demonstrate that hiring and retaining qualified and talented employees with a disability is a good business decision.

Individuals with disabilities can encounter a variety of barriers when competing for or performing jobs they are qualified for. One type of barrier is the attitudes and opinions of hiring professionals which can include unfounded fears, misconceptions, stereotypes, and presumptions about an individual's ability to perform the job and work safely. Another barrier can occur when a new supervisor changes or removes

an existing reasonable accommodation, whether purposely or by accident, which can impact the employee's job performance negatively or result in the unnecessary termination of a qualified employee.

Supervisors can greatly influence an employer's efforts to create a disability-inclusive workplace and the employment success of individuals with disabilities. Employers are encouraged to obtain top-level leadership support that recognizes the importance of the supervisor's role and prioritizes communicating best practices to supervisors on an ongoing basis including when a change in supervisor occurs.

One best practice is to educate supervisors on disability awareness. OOD offers no-cost training for employers on Disability Awareness and Disability Etiquette geared toward making everyone feel more comfortable and included at work. OOD's Disability Etiquette training defines disability, includes practical examples of respectful interactions with people with disabilities, and addresses proper language usage. This training can be customized for a virtual or onsite delivery and an archived version is available for on-demand access. For more information, please visit the links below:

- Contact your Business Relations Specialists to schedule a training via the OOD [website](#).
- Review OOD's "Disability Education Resources" via the OOD [website](#).
- View OOD's "Disability Etiquette" on-demand webinar via the OOD [website](#).

This learner's guide and accompanying webinar offer best practices and guidance to include in training for supervisors to promote employment success for individuals with disabilities and adherence to responsibilities under Title I for employers.

## Job Qualifications and Essential Functions

Before the hiring process begins for an open position, it is a best practice to create the job's qualification standards and essential functions. Supervisors may have a role in establishing these or applying them to hiring decisions and performance evaluations. Because of this, it is important to inform supervisors of general best practices as well as the requirements under Title I to ensure success.

### Qualification Standards

Qualification standards are job requirements intended to measure a person's ability to perform a specific job. The ADA does not prohibit employers from creating qualification standards and does not require a qualification standard to apply only to the job's essential functions. However, when qualification standards are applied to individuals with disabilities, the standards must be "job-related and consistent with business necessity."

- Job-related means a standard applies to a specific job as opposed to a general class of jobs.
- Consistent with business necessity means a standard applies to the essential functions of a specific job.

Employers may consult with supervisors when determining or reviewing qualification standards. Here are examples of qualification standards directly from the Technical Assistance Manual for Title I of the ADA from the Job Accommodation Network's (JAN) [website](#):

- Education,
- Skills,
- Work experience,
- Licenses or certifications,
- Physical and mental abilities,
- Health and safety, and
- Other job-related requirements, such as judgment, ability to work under pressure, or interpersonal skills.

Qualification standards may be obtained in more than one way. Informing supervisors of how qualification standards apply to individuals with disabilities may ensure they are described accurately. Here are some examples:

- A qualification standard may have been previously written as the “ability to take shorthand dictation” because at one time this is how employees performed recording notes during meetings. However, if a current employee is recording notes from meetings by transcribing what is discussed at the meeting from a recorded dictation, then the qualification standard as written is not job-related.
- A qualification standard that requires an employee to have a driver’s license may or may not be discriminatory. For example, an employer should consider whether it is discriminatory to require an employee to have a driver’s license to perform the essential job function of attending meetings in the public. An employee may be able to meet this essential function by attending these meetings in other ways, such as using public transportation or through video conferencing.

## Essential Functions

Essential functions are the basic work tasks and critical duties of a specific job an employee must be able to perform. Title I requires qualified individuals with disabilities to be able to perform the job’s essential functions, with or without a reasonable accommodation. The ADA does not limit employers in determining their jobs and their essential functions.

Employers may consult with supervisors when determining or reviewing essential functions. Informing supervisors of how essential functions apply to individuals with disabilities may ensure they are written accurately. It is important to know work tasks can often be performed in more than one way. To support this, essential functions should be written based on the outcome of the task instead of the customary method used to perform the task. Here are some examples:

- Instead of stating an essential function of the job is to lift and carry 40 pounds, consider stating the essential function is to move and transport 40-pounds boxes filled with supplies 100 feet. It may be possible for an individual with a physical disability to achieve the outcome of the essential function in another way, such as by using a lifting device and a cart on wheels to move and transport the item.

- Instead of stating an essential function is the ability to talk and hear over the phone, consider stating the essential function is to communicate with customers over the phone who are inquiring about products and services to exchange accurate information. It may be possible for an individual with a hearing disability to achieve the outcome of the essential function in another way, such as by using a phone with captioning or a video relay system.

Employers hire qualified individuals to achieve outcomes through performing work tasks. It is a best practice to describe essential functions in terms of what is expected to be achieved, not on the customary way the job has always been performed.

## Hiring Process

Supervisors who are involved in the hiring process have an important role in identifying qualified candidates and adhering to the employer's responsibilities under Title I. Best practices for the hiring process address the definition of disability, the application of qualification standards and essential functions, and the two phases of preemployment.

### Definition of Disability

The definition of disability under the ADA has three parts. The first part defines disability as a person who has "a physical or mental impairment that substantially limits one or more major life activities." The second part defines disability as a person who has "a record of such an impairment". The third part defines disability as a person who "is regarded as having such an impairment."

These definitions are intended to protect individuals with disabilities and individuals who are perceived by others to have a disability from discrimination in employment. This protection is necessary to prevent the discriminatory actions sometimes taken by hiring professionals when they make decisions based on "stereotypes, fears, or misconceptions about disability" and "unsubstantiated concerns about productivity, safety, insurance, liability, attendance, costs of accommodation, accessibility, workers' compensation costs or acceptance by co-workers and customers."

As previously discussed, it is a best practice is to educate supervisors on Disability Awareness. This type of training can make supervisors more aware of any personal biases they have towards individuals with disabilities and help them to feel more comfortable when conducting an interview. Furthermore, this training can help a supervisor to understand that behaviors such as lack of eye contact or a flat affect (lack of emotional expression) can be a characteristic of certain types of disabilities. Each person is unique and how a disability impacts a person will also be unique. Here are two examples:

- An applicant with autism may display decreased eye contact during an interview, but this does not mean the applicant is not interested in the job or engaged with the interviewer.
- An applicant taking a medication to treat a mental health condition may display a flat affect, but this does not mean the applicant is not enthusiastic about the job.

### Qualification Standards

Hiring decisions often include determining if a candidate meets the job's qualification standards before considering whether a candidate is qualified to perform the essential functions of the job. Qualification standards are the prerequisites for the job and are often used to predict a candidate's performance.

When a decision is made to not hire a candidate with a disability who does not meet a qualification standard, the standard must be “job-related and consistent with business necessity.” When a standard that is “job-related and consistent with business necessity” screens out a candidate with a disability, the employer must consider whether a reasonable accommodation exists which enables the candidate to meet the qualification standard. When making decisions about whether candidates are qualified for the job, it is important to train supervisors on the ADA implications associated with qualification standards. Making the wrong decision may result in legal liability for the employer. Here is an example to illustrate this concern:

- A hiring manager is provided with a job description that includes a qualification standard which indicates a lifting requirement of 50 pounds. The hiring manager interviews a candidate who discloses a physical disability that prevents lifting more than 25 pounds. The hiring manager decides the candidate is not qualified for the position.
- If this qualification standard is not “job-related and consistent with business necessity,” it would be unlawful to use the standard to screen out the candidate with a disability.
- If this qualification standard is “job-related and consistent with business necessity,” it would be unlawful to use the standard to screen out the candidate with a disability without considering whether a reasonable accommodation exists to enable the candidate to meet the qualification standard.

It is important to train supervisors to recognize when a qualification standard is or is not “job-related and consistent with business necessity” and when reasonable accommodation must be considered. How to address a known disability during the hiring process is discussed in the Preemployment section of this learner’s guide.

## Essential Functions

Customarily, when a candidate meets the job’s qualification standards, the hiring manager then considers if the candidate is qualified to perform the job’s essential functions. Title I requires employers to determine whether a candidate with a disability is qualified for the job based on the ability to perform the job’s essential functions, with or without a reasonable accommodation. The candidate with a disability does not have to be able to perform the marginal functions of the job because these can be removed or swapped with a coworker as a form of reasonable accommodation. However, an employer does not have to remove an essential function as a form of reasonable accommodation.

When determining whether a candidate with a disability is qualified to perform an essential function, supervisors should be trained to focus their evaluation on the candidate’s ability to achieve the outcome of the work task instead of on the ability to perform the task the way it is customarily done. A reasonable accommodation may enable the candidate to effectively perform the job in another way.

## Preemployment

Once a candidate is identified, the preemployment phase begins which includes interviewing, testing, making an offer, and administering post-offer medical inquiries and examinations. The preemployment process includes the pre-offer phase and the post-offer phase. It is helpful to provide guidance for supervisors on what they can and cannot ask, how to address a known disability, and the role of reasonable accommodations in the hiring process.

### Pre-Offer Phase

Employers are permitted to make inquiries with candidates to assess whether they are qualified for the job and to determine health and safety at work. Title I provides criteria for obtaining this information in the pre-offer and post-offer phases.

In the pre-offer phase, employers may **NOT** ask disability-related questions or administer medical exams. Employers are permitted to ask questions about the candidate's ability to perform the job's essential functions. Train supervisors to focus the interview on the candidate's ability to do the job and not on disability.

In the pre-offer phase, an employer may do the following to evaluate a candidate's qualifications:

- Ask questions about the ability to meet qualification standards.
- Ask questions about the ability to perform job tasks if not phrased in terms of disability:
  - For example, an employer may describe the physical requirements of the job, such as maneuvering 25-pound boxes stacked on skids to a cart 36-inches high and ask the candidate if he or she can perform this task.
- Ask **ALL** candidates to describe or demonstrate how they would perform job tasks, with or without reasonable accommodation.

### Known Disability

When a candidate has a known disability (a disability that is obvious or disclosed by the candidate) and the employer reasonably believes the disability may interfere with or prevent the candidate from performing a job task, the candidate may be asked to describe or demonstrate how this job task would be performed, **even if other candidates are not asked to do so**. For example:

- If a candidate has one arm and a job task includes maneuvering bulky items onto shelves up to six-feet high, the employer could ask the candidate to describe or demonstrate how he or she would perform this function, with or without a reasonable accommodation. Make sure the question is not phrased in terms of disability and is focused on job performance.
- If the candidate states he or she could perform this function with the use of an accommodation, either provide this accommodation for the candidate to demonstrate the job task or allow the candidate to describe how he or she would perform this job task.

If a candidate has a known disability that would **NOT** reasonably interfere with performing a job task, the employer can only ask the candidate to describe and/or demonstrate how he or she would perform this task if **ALL** candidates were asked to do this.

### Post-Offer Phase

In the post-offer phase after a formal job offer had been made, disability-related questions may be asked, and medical exams may be required if this applies to **ALL** candidates receiving a job offer in the same job category. A job offer is permitted to be conditioned based on the results of the questions and/or exams. If these results lead to screening out a candidate due to a disability, the decision must be "job-related and consistent with business necessity." If a candidate is screened out due to safety, the employer must demonstrate "direct threat." In either case, reasonable accommodation must be considered.

### Reasonable Accommodations

Candidates with disabilities may request reasonable accommodations to compete for or perform jobs. Educate supervisors on the types of reasonable accommodations that may be used for the hiring process. Here are some examples:

- Conducting interviews in physical built or virtual environments that are accessible.
- Providing written information in alternative formats, such as large print, braille, or audio.
- Providing a qualified reader to read written materials.
- Providing a qualified scribe to assist with completing forms or taking notes.
- Asking direct questions, rephrasing questions, and giving examples for understanding.
- Providing a sign language interpreter.
- Permitting the use of a service animal. Remember to consider relief areas.
- Allowing a job coach to be present.
- Providing questions to the candidate ahead of time.
- Permitting the use of speech to text technology.
- Allowing the candidate time to process the question before answering.

Inform supervisors that confidentiality rules apply to the disclosure of a disability and a request for a reasonable accommodation. Confidentiality criteria will be discussed later in this learner's guide.

### Interactive Process

Title I of the ADA requires covered employers to provide reasonable accommodations (RA) to qualified applicants and employees with disabilities during the hiring process and employment unless the accommodation causes an undue hardship. The ADA requires employers to engage in an informal process, known as the interactive process, with the applicant or employee making the accommodation request. The interactive process helps both parties to better understand what is needed and how to identify an effective solution. Supervisors have an important role in the interactive process when it comes to recognizing a request, knowing what to do with a request, assisting in identifying, implementing, and monitoring a reasonable accommodation, and adhering to confidentiality guidelines. It is important for supervisors to follow the interactive process to ensure employer's responsibilities are met under Title I and to ensure reasonable accommodations are communicated to new supervisors when necessary to remain effective.

### Request

Research conducted by Cornell University revealed employees with a disability "are at least 60% more likely to disclose their disability to a supervisor than to human resources." Because of this, training is recommended for all supervisors on how to recognize a request for an accommodation and what steps to take when they receive one.

The interactive process begins when an applicant or employee with a disability makes a request for a change or communicates a barrier in the hiring process or at work related to a medical condition or a disability. A request may be made in the individual's preferred form of communication and use plain language. The request is not required to be in writing or reference the ADA, Title I, or the term reasonable accommodation. A request can be made at any point in the hiring process or during



employment. If it is not clear whether a request has been made, ask the applicant or employee to clarify what is needed and why.

When a request is received, the supervisor should be aware of his or her role in the employer's interactive process. This often includes referring the individual making the request to the contact person or department responsible for receiving and facilitating reasonable accommodation requests. This person or department will be unique to each employer.

Examples of what is and what is not a request for an accommodation can be found in guidance from the U.S. Equal Employment Opportunity Commission (EEOC) [website](#) in the section titled "Requesting Reasonable Accommodation."

## Role in the Process

The facilitation of the interactive process customarily occurs within the employer's Human Resources (HR) department. Supervisors can contribute in an important way to the employer's process for identifying, implementing, and monitoring reasonable accommodations.

### Identify Reasonable Accommodation

During the interactive process when the reasonable accommodation is being identified, a supervisor may be asked for input on effective ideas. During this step, the job description may be reviewed for essential functions to assist in identifying what task the reasonable accommodation will enable the employee to perform. This is an example of why it is important to write essential functions based on the outcome of the task instead of on the way the task is customarily performed. Often there is more than one way to perform a task, and so during this phase of the interactive process, it is helpful to be open to new ideas. The EEOC has organized reasonable accommodations into the following types:

- Making the work environment accessible,
- Restructuring a job,
- Permitting a flexible schedule,
- Altering or providing equipment and services,
- Modifying policies, and
- Providing reassignment.

Understanding these types of accommodations helps to build awareness of the many possibilities reasonable accommodations offer. Here are examples of some of these types of reasonable accommodations:

- Provide a visual alarm for a baker who is deaf or hard of hearing to use when baking bread.
- Remove or swap the marginal functions of a job between coworkers.
- Permit a flexible schedule so an employee with anxiety disorder can leave early one day per week to attend a therapy session for eight weeks.
- Provide a stand magnifier to enable an employee with low vision to read printed documents and reference materials.
- Modify a "No Food" policy to permit an employee with diabetes to keep food and drink at her workstation to take with medication as needed.

### Implement Reasonable Accommodation

Once a reasonable accommodation is identified, supervisors have a role in ensuring accommodations are implemented properly. Although supervisors are not permitted to know the confidential information related to the need for the accommodation, they are permitted to know what is necessary to successfully implement the solution. Here are some examples of how supervisors may be involved in implementing a reasonable accommodation:

- When equipment is provided as a form of reasonable accommodation, the supervisor may assist in ensuring the equipment is installed properly and make sure the employee is trained on how to use the equipment.
- When a schedule change or policy modification is provided as a form of reasonable accommodation, the supervisor may assist in ensuring workflow and employee coverage is adequate.
- When outside services are provided as a form of reasonable accommodation, such as for American Sign Language interpretation, the supervisor may assist in ensuring the service is provided on time and effectively.

Supervisors may further support the implementation of a reasonable accommodation by making sure any necessary steps are completed, communicating with subject matter experts involved in the process, and checking to ensure the accommodation is effective.

### Monitor Reasonable Accommodation

Once a reasonable accommodation has been successfully implemented, supervisors have a role in ensuring the accommodation remains effective. Accommodations can stop being effective due to a change in the employee's disability or due to a work-related change with a job, supervisor, equipment, or the workplace. At times, accommodations that once were reasonable may become an undue hardship for the employer. Because of these reasons, it is important to periodically monitor all reasonable accommodations.

It is a best practice for the supervisor to encourage ongoing communication with the employee and to advise the employee that he or she will be checking on the effectiveness of the accommodation periodically. The employee should be advised to inform the supervisor when there are changes or problems with the accommodation and who else to inform, such as a contact in HR.

### New Supervisor

It is important for a new supervisor to be aware of the reasonable accommodations being used by the employees they manage so the accommodations remain effective. There can be times when a change of supervisor has a negative impact on the effectiveness of a reasonable accommodation an employee with a disability is using to perform the job. This may be due to a reasonable accommodation being altered or removed by the new supervisor. Or this can occur when the new supervisor is unaware of a reasonable accommodation because a previous supervisor implemented the accommodation without following the employer's interactive process and thus, the accommodation is not documented. Although this may have worked well in the situation, the interactive process should be followed according to the employer's policy so employees with disabilities have what they need to perform their jobs and to ensure these accommodations remain in place should a change of supervisor occur.

To encourage a successful change from one supervisor to the next, train new supervisors on their responsibilities under Title I and make them aware of the existing reasonable accommodations currently implemented. Also, train existing supervisors on their role in following the employer's interactive process to ensure accommodations are recorded.

## Confidentiality

Supervisors should be made aware of confidentiality rules regarding medical information and reasonable accommodations. In addition, supervisors should be advised on how to properly respond to coworkers that have questions about another coworker's reasonable accommodation.

During the interactive process, all personal and medical information obtained must be kept confidential. This includes information received through accommodation requests, discussions, disability-related inquiries, medical examinations, documentation, implementation, and monitoring for effectiveness. The EEOC indicates medical information must be kept in separate medical files apart from general personnel files, whether stored in physical filing cabinets or in electronic databases. Here are some examples of circumstances when medical information may be shared with designated parties:

- Necessary information may be shared with employees responsible for facilitating reasonable accommodations when handling safety and emergency situations,
- Information specific to the proper implementation and use of a reasonable accommodation may be shared with designated supervisors, and

An employer is not permitted to share unnecessary confidential information. For example, a supervisor may need to know about an accommodation, such as a modification to a break schedule. However, the supervisor is not permitted to know the medical information behind the need for the accommodation.

At times, coworkers may ask their supervisors about the reasonable accommodations they notice a colleague receiving in the workplace. Because the ADA prohibits employers from disclosing an employee's disability, the supervisor is not permitted to tell the coworker the colleague has a disability or is receiving a reasonable accommodation. Instead, what the employer may consider is providing training for supervisors on confidentiality guidelines and how to respond to these types of questions. According to the EEOC guidance, here are examples of how the employer or supervisor may respond:

- Emphasize the employer's policy of assisting any employee who encounters difficulty at work,
- Explain that these types of situations are personal, and it is the employer's policy to follow confidentiality guidelines, and
- Reassure the coworker that his or her privacy would be respected in a similar situation.

## Common Workplace Situations

Supervisors encounter common workplace situations when managing employees and are sometimes unclear on what to do when disability is involved. It is important to inform supervisors of how to navigate situations such as addressing low performance, misconduct, and safety concerns.

## Performance

To be considered qualified under the ADA, an individual with a disability must meet the job's qualification standards that are job-related and consistent with business necessity and be able to

perform the essential functions of the job, with or without reasonable accommodation. Based on this, supervisors may expect all employees, including employees with disabilities, to be qualified to perform the essential functions of the job.

Part of a supervisor's responsibilities is performance management which includes addressing low performance. Low performance should generally be handled the same way with all employees in the same job class. Failing to address low performance puts an employee at a disadvantage to improve performance and request a reasonable accommodation when needed.

An employee's disability often does not impact meeting performance expectations. When disability does contribute to job performance, a low performance review may be the first indication to an employee that their disability is contributing. An employee may choose to disclose a disability during this discussion and may or may not request a reasonable accommodation.

When an employee responds to a low performance rating by disclosing a disability and attributes this to the low performance, clearly communicate the performance expectations and ask the employee in what way the disability is affecting job performance. A best practice is to focus the conversation on the job's performance expectations, the low performance problem, and ways to improve performance, not on the disability.

If the employee does not ask for a reasonable accommodation, the supervisor may ask what they can do to help the employee meet the performance expectations. Because the employee disclosed a disability, the supervisor can ask if the employee is requesting a reasonable accommodation to meet performance expectations. If the employee indicates what would help or would like to explore ideas, the supervisor should refer the employee to the appropriate HR contact to begin the interactive process as they would any request for a reasonable accommodation. If the employee declines help, provide the employee with information of whom to contact if he or she decides to pursue options another time. When an employee responds to a low performance rating by disclosing a disability and requesting a reasonable accommodation, one must be considered, and the interactive process should begin promptly.

Supervisors have asked how to discuss low performance with an employee when the supervisor thinks the employee has a disability which is contributing to the low performance, but the employee has not requested an accommodation. In general, the supervisor should focus his or her discussion on job performance by providing a clear explanation of the performance measure that is not being met and what the performance expectation includes. A best practice is to ask the employee what you can do to help them meet the performance expectation without mentioning disability. Guidance from the EEOC states it is generally preferable that a discussion about disability be initiated by the employee, not the employer, to focus on performance and to prevent unintentionally regarding or treating the employee as an individual with a disability.

When an employee with a disability responds to a low performance rating by disclosing a disability and states this is contributing, the employer is permitted to apply the consequences that apply to any employee with low performance in the same job class. Providing a reasonable accommodation does not require employers to:

- Accept low performance,
- Withhold consequences for low performance,

- Raise a performance rating, or
- Assign a rating that does not reflect actual performance.

## Conduct

Title I of the ADA does not generally prevent an employer from establishing conduct rules and consequences for misconduct. Supervisors may expect all employees, including employees with disabilities, to meet conduct standards. When an employee with a disability violates a conduct rule and the disability is not a contributing factor, the employee may be disciplined with the same consequences that would apply to any employee who violates the same conduct rule. Here are some examples of conduct rules:

- Prohibition on violence,
- Prohibition on stealing,
- Prohibition on destroying property,
- Prohibition on insubordination,
- Prohibition on alcohol or drug use on the job,
- Requirement to treat customers with respect, and
- Requirement to treat coworkers with respect.

Employers are required to provide reasonable accommodations for qualified employees with disabilities, when one is needed, unless doing so causes an undue hardship. Often employees with disabilities do not need reasonable accommodations to meet conduct standards. When an employee's disability contributes to misconduct, a reasonable accommodation may enable the employee to meet the conduct standard effectively.

Because reasonable accommodation is "prospective," this obligation does not require supervisors to excuse past misconduct or withhold consequences for conduct violations when an employee indicates a disability contributed. The conduct rule must be "job-related and consistent with business necessity" and equally applied to all employees.

Determining a conduct rule is "job-related and consistent with business necessity" is based on criteria such as the disability-related symptom causing the misconduct, the frequency of the symptom, the nature of the job, the specific misconduct, and the work environment. This criterion is critical to consider when misconduct is related to an ambiguous rule such as "disruptive behavior" because what is considered unacceptable behavior may be unclear. Here is an example directly from the [EEOC guidance](#) about the same employee with the same disability in three different work situations:

- Steve has Tourette Syndrome, which is characterized by involuntary, rapid, sudden movements or vocalizations that occur repeatedly.
- In the first scenario:
  - Steve works as a teller at a bank and his behaviors have caused several customer complaints and are distracting his coworkers.
  - Because Steve's behavior causes him to not be able to perform the essential function of serving customers and because his behaviors are unduly disruptive to his coworkers, Steve is eventually terminated according to his employer's disciplinary procedures.

- The EEOC states in this example that termination is “permissible” because it is job-related and consistent with business necessity to require tellers “be able to conduct themselves in an appropriate manner when serving customers and refrain from interfering with the ability of coworkers to perform their jobs.”
- In the second scenario:
  - Steve works as a teller at a bank but his behaviors are infrequent and do not interfere with providing customer service and are not disruptive to his coworkers.
  - Now, terminating Steve would be a violation of the ADA because it is not job-related and consistent with business necessity to require Steve refrain from these minor behaviors that do not interfere with his coworkers doing their jobs or with his delivery of “appropriate customer service.”
- In the third scenario:
  - Steve works in a noisy environment and does not interact with customers and does not work near his coworkers. His behaviors do not distract his coworkers.
  - In this scenario, Steve’s behavior is not causing him to be unqualified for his job or to be violating the conduct rule of disruptive behavior.

When an employee with a disability responds to counseling or discipline for misconduct by disclosing a disability and requesting a reasonable accommodation, the supervisor may apply the consequences for the misconduct and must refer the employee to the appropriate contact in HR to begin the interactive process.

## Safety

Under Title I of the ADA, employers may require as a qualification standard that applicants and employees not pose a direct threat in the work environment. A direct threat is defined in the [EEOC guidance](#) as “a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.” A significant risk is considered a high risk, not just a slightly increased risk or a speculative or remote risk.

The direct threat standard must apply to all applicants and employees in a specific job class. If a qualification standard screens out or excludes an individual with a disability, the standard must be job-related and consistent with business necessity and reasonable accommodation must be considered.

The determination of direct threat must be determined through “an individualized assessment of objective and specific evidence about a particular individual’s present ability to perform essential functions” and must not be based on generalized opinions, myths, stereotypes, assumptions, or unfounded fears about a disability. In addition, employers should take caution in applying “blanket” exclusion standards which exclude an entire classification of individuals with a particular disability. Applying this type of standard prevents an individualized assessment from occurring. These standards should be carefully reviewed because in most cases they will not meet the requirements of the ADA.

Here is an example about direct threat and making an assumption from the [EEOC’s Technical Assistance Manual for Title I](#):

- “An employer cannot assume that a person with cerebral palsy who has restricted manual dexterity cannot work in a laboratory because s/he will pose a risk of breaking vessels with

dangerous contents. The abilities or limitations of a particular individual with cerebral palsy must be evaluated.”

Here is an example about direct threat and making a generalization from the [EEOC guidance](#):

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

When direct threat exists, the employer must consider whether a reasonable accommodation exists which can eliminate or reduce the risk to an acceptable level.

Here is an example from the [Job Accommodation Network](#) (JAN):

- “A deaf bus mechanic was denied employment because the transit authority feared that he had a high probability of being injured by buses moving in and out of the garage. It was not clear that there was, in fact, a “high probability” of harm in this case, but the mechanic suggested an effective accommodation that enabled him to perform his job with little or no risk. He worked in a corner of the garage, facing outward, so that he could see moving buses. A co-worker was designated to alert him with a tap on the shoulder if any dangerous situation should arise.”

## Conclusion

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 webinar are helpful in supporting your efforts.

## Resources

### Disability-Inclusive Workplace

- American Psychiatric Association. “[What is Mental Illness?](#)”
- Centers for Disease Control and Prevention. “[CDC: 1 in 4 US adults live with a disability](#)”
- Job Accommodation Network. “[Out with the Old, In with the New...Supervisor](#)”
- Job Accommodation Network. “[Technical Assistance Manual for Title I of the ADA](#)”
- Northeast ADA Center. “[The Small Business at Work Toolkit](#)”
- Opportunities for Ohioans with Disabilities. “[Business Relations Team](#)”
- Opportunities for Ohioans with Disabilities. “[Disability Education Resources](#)”
- Opportunities for Ohioans with Disabilities. “[Disability Etiquette On-Demand Webinar](#)”
- U.S. Department of Labor’s Office of Disability Employment Policy. “[Accommodations for Employees with Psychiatric Disabilities](#)”

### Job Qualifications and Essential Functions

- Job Accommodation Network. “[Job Description Topics](#)”

- Job Accommodation Network. "[Qualification Standards](#)"
- Job Accommodation Network. "[Technical Assistance Manual for Title I of the ADA](#)"
- Opportunities for Ohioans with Disabilities. "[Business Relations Team](#)"
- Opportunities for Ohioans with Disabilities. "[Disability Education Resources](#)"
- Opportunities for Ohioans with Disabilities. "[Disability Etiquette On-Demand Webinar](#)"
- PACE University. "[Americans with Disabilities Act Compliant Words for Job Descriptions](#)"
- U.S. Equal Employment Opportunity Commission. "[The ADA: Your Responsibilities as an Employer](#)"

### Hiring Process

- Job Accommodation Network. "[Technical Assistance Manual for Title I of the ADA](#)"
- Opportunities for Ohioans with Disabilities. "[Inclusive Hiring: Applicants with Disabilities On-Demand Webinar](#)"
- U.S. Equal Employment Opportunity Commission. "[Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations](#)"

### Interactive Process

- Job Accommodation Network. "[Interactive Process](#)"
- Job Accommodation Network. "[Technical Assistance Manual for Title I of the ADA](#)"
- Job Accommodation Network. "[The JAN Workplace Accommodation Toolkit](#)"
- Opportunities for Ohioans with Disabilities. "[Navigating the Reasonable Accommodation Process On-Demand Webinar](#)"
- Opportunities for Ohioans with Disabilities. "[The Employers' ADA Handbook. Session 2: Reasonable Accommodations and Undue Hardship On-Demand Webinar](#)"
- U.S. Equal Employment Opportunity Commission. "[Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA](#)"

### Common Workplace Situations

- Job Accommodation Network. "[Mother May I? Must I? Should I?](#)"
- Job Accommodation Network. "[Out with the Old, In with the New](#)"
- Job Accommodation Network. "[Technical Assistance Manual for Title I of the ADA](#)"
- Job Accommodation Network. "[The JAN Workplace Accommodation Toolkit](#)"
- Opportunities for Ohioans with Disabilities. "[The Employers' ADA Handbook. Session 3: Performance, Conduct, and Safety On-Demand Webinar](#)"
- 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 on the ADA and Psychiatric Disabilities](#)"

### OOD's Business Relations Team – see map on final page

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BUSINESS RELATIONS SERVICES MAP

