

# American with Disabilities Act

## *Compliance and Compassion*



July 2018

The Krizner Group

---

---

---

---

---

---

---

---

## Who is an Individual With a Disability?

A physical or mental impairment that substantially limits one or more **major life activity**

A record or **history** of such impairment

Being **regarded** as having such an impairment

Also protected: An individual who has a relationship with an individual with a disability.

(And is not transitory)

---

---

---

---

---

---

---

---

## Major Life Activity

- |                         |               |   |
|-------------------------|---------------|---|
| Caring for oneself      | Standing      | Thinking                                    |
| Performing manual tasks | Lifting       | Communicating                               |
| Seeing                  | Bending       | Working                                     |
| Hearing                 | Speaking      | Operation of a <b>major bodily function</b> |
| Eating                  | Breathing     |   |
| Sleeping                | Learning      |   |
| Walking                 | Reading       |   |
|                         | Concentrating |   |

---

---

---

---

---

---

---

---

## Major Bodily Functions

---

|                    |                        |
|--------------------|------------------------|
| Immune system      | Brain                  |
| Normal cell growth | Respiratory            |
| Digestive          | Circulatory            |
| Bowel              | Endocrine              |
| Bladder            | Reproductive functions |
| Neurological       |                        |

---

---

---

---

---

---

---

---

## Mitigating Measures Don't Negate the Disability

---

Medication  
Medical Supplies  
Medical Equipment  
Prosthetics  
Low-vision Devices (not corrective lenses)  
Hearing Aids/Implantable Devices  
Mobility Devices  
Oxygen Therapy

---

---

---

---

---

---

---

---

## Otherwise Qualified for the Job

---

Essential functions of the job  
Satisfy job requirements:

- ❖ Education
- ❖ Experience
- ❖ Skills
- ❖ Licenses/Certification
- ❖ Mental/Physical/Environmental Factors

---

---

---

---

---

---

---

---

## Essential Functions

### Considerations:

- ❖ Does the position exist to perform that function?
- ❖ How many other employees are available to perform that function?
- ❖ Does the function require specific degree, certificate or license?
- ❖ Does the employee have unique work experience?
- ❖ How much time does the employee spend on the function?
- ❖ What are the consequences of not requiring the function be performed?

---

---

---

---

---

---

---

---

## Reasonable Accommodation

### Any change that permits:

- ❖ Applicant to participate in application process
- ❖ Employee to perform essential functions of job
- ❖ Employee to have same benefits of employment

---

---

---

---

---

---

---

---

## Accommodation

Specifically requested by employee

Employer makes reasonable effort to identify one

Interactive process

Unique to the individual

Effective

---

---

---

---

---

---

---

---

## Undue Hardship

- Cost of the Accommodation
- Size of Employer
- Financial Position of Employer
- Nature of Operations
- Structure of Operations

---

---

---

---

---

---

---

---

## Medical Questions or Exam?

### Applicants

- Don't ask about a disability
- Can't require medical examination/medical assessment before a job offer
- Ask questions about ability to perform job-related functions.

### Post Offer and Before Employment

- Medical exam okay

### Employees

- Mandatory medical exams only if job related

---

---

---

---

---

---

---

---

## Records and Documentation

Medical certification – What are the work-related limitations or restrictions?

Medical File – accommodation requests, health claims, medical examination results, work-related injury and resulting claims and medical information

---

---

---

---

---

---

---

---

## Workplace Dilemma

After being counseled for excessive tardiness, an employee is provided a final warning. It is at this point that says she's having trouble falling asleep at night, but then oversleeping in the morning. She is requesting an altered work schedule of 10:00 to 7:00 rather than from 8:00 to 5:00. Do we have to remove the notes from her file about the previous conversations about her tardiness and can we still provide the final warning?

---

---

---

---

---

---

---

---

## Workplace Dilemma

This employee provides operations support to the Southeast sales team.  
There is no one else within the organization currently providing this support to the Southeast.  
There are three other operations support employees serving other areas – Midwest, Northeast, and West  
Sales team support calls begin at 8:00 in the local time zone.

---

---

---

---

---

---

---

---

## Key Points

Document everything!  
Engage in the interactive process.  
ADA does not require that you lower performance standards—only to make an accommodation to enable the employee to achieve performance standards.  
An employee with a disability is not protected from disciplinary action.  
Enlighten supervisors to be mindful of voluntary accommodations.



---

---

---

---

---

---

---

---