

The ADA Amendments Act: Use this guide to help you be prepared



The ADA Amendments Act (ADAAA) became effective on January 1, 2009, changing existing legislation to improve protection of individuals with disabilities. The ADAAA impacts employers, job applicants and disabled workers alike. To comply with it, it's important to understand the changes it introduces.

It began with the Americans with Disabilities Act (ADA)

The ADA was signed into law in July 1990. It prohibits certain employers from discriminating against qualified applicants or employees who can perform the essential functions of a job with or without reasonable accommodations. The law was designed to remove barriers over a broad range of life experiences, such as:

- Employment
- Access to public, nonprofit and some private facilities, programs, services and activities
- Transportation
- Communication

ADAAA broadens the definition of the ADA

Title 1 of the ADAAA regulations applies to all private, state and local government employers with 15 or more employees, employment agencies, labor organizations (unions) and joint labor-management committees.

Its changes are designed to make it easier for individuals with disabilities to obtain the ADA's protection by:

- Allowing more individuals to be protected
- Preventing a broader range of discrimination

Who's eligible? To be covered by the ADAAA, a person must be an individual with a disability and be a "qualified" job candidate or employee. More specifically, the person must have the requisite skill, experience, education and other job-related requirements to perform the "essential functions" of the position, with or without reasonable accommodation.

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More individuals may qualify under the ADAAA than the original ADA guidelines.

What does the ADAAA mean for employers?

Employees who weren't considered disabled in the past may now be considered disabled under the ADAAA. For that reason, less time should be spent deciding whether an employee is disabled – and more time devoted to determining if and when an accommodation can be provided. Understand that ADAAA regulations apply to both occupational and non-occupational disabilities.

Reasonable actions you can take to prepare for ADAAA requests:

- Provide equal, fair and consistent human resource practices, from the application/hiring process onward
- Treat all potential job candidates and all employees equally with a formally defined and recorded process; review and update policies, procedures and handbooks regularly
- Treat each ADAAA situation individually by:
 - Establishing an interactive process with the employee to identify specific accommodation needs
 - If a qualifying disability is suspected, try to identify reasonable accommodations even if the employee doesn't formally request them
- Document essential functions of jobs (functional job descriptions)
- Provide ADA refresher training for human resource professionals and management staff
- Keep records of accommodations and requests for accommodation

What's expected of applicants or employees?

As a prospective or already active employee, you should be prepared to:

- Request an accommodation when needed
- Be an active participant in the interactive process with the employer to help identify an appropriate accommodation
- Provide documentation requested by the employer to verify a disability and a need for a reasonable accommodation (if the disability and need for accommodation are not obvious or already known)
- Make suggestions on reasonable accommodations, recognizing that the employer makes the final determination

Accommodation: Any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities.¹

What's a reasonable accommodation?

The ADAAA doesn't change the definition of reasonable accommodation. However, it does clarify that only candidates for employment or current employees with an actual disability or a record of a disability are entitled to accommodations.

The ADAAA requires an *interactive process* to determine if a reasonable accommodation would allow an individual to continue to perform the essential functions of a job.

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It's the employer's responsibility to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment – unless doing so would cause undue hardship.

Some examples:

- Job restructuring
- Flexible scheduling
- Providing qualified readers and interpreters
- Modifications to increase facility accessibility to work and off-site events
- Acquiring new equipment or modifying existing equipment
- Modification of application and testing procedures and training materials
- Reassignment to a vacant position
- Additional leave beyond state and federally mandated accommodation

Examples of actions that aren't considered reasonable accommodations

- Eliminating essential job functions
- Lowering production standards applied to all employees
- Providing personal use items
- Changing an employee's supervisor
- Excusing violation of uniformly applied conduct rules
- Promotion
- Bumping an employee from a job
- Creating another position or job
- Changing a supervisor (as compared to changing supervisory techniques)
- Accommodations considered to pose an undue hardship
- Accommodations that pose a safety threat or significant risk in the workplace

As complex as the ADAAA is, navigate it with care by relying on legal and other resources.

Build ADAAA best practices with help from The Hartford

The Hartford's loss control approach includes job analyses, ergonomic evaluations and RTW program consultation to support employers in their development of an effective ADAAA accommodation process.²

- **Job analysis** – Outdated, incomplete or inaccurate job descriptions hinder the employer's ability to offer job accommodation to disabled workers. A job analysis can identify essential duties and functional requirements of jobs, which can be the foundation of comprehensive functional job descriptions. It can also identify job modifications that employers can use to respond to job accommodation requests.
- **Ergonomic evaluations and workstation assessments** – Identify risk factors and alternative job methods, and recommend safe, efficient ways to perform job tasks. This process can identify job accommodations based on the individual's specific circumstances.
- **Train-the-trainer support** – On-site training with employer representatives to provide the tools necessary for them to independently identify workplace issues and actionable solutions. This training can include suggestions on job modifications, adjustments or alternative practices, which can be the basis for sound and reasonable job accommodations.

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Recommended resources for staying in sync with the ADAAA

The Hartford also recommends these reliable ADAAA sources:

The Job Accommodation Network (JAN). JAN is a service provided by the U.S. Department of Labor's Office of Disability Employment Policy (ODEP). Its mission is to facilitate the employment and retention of workers with disabilities by providing employers, employment providers, people with disabilities, their family members, and other interested parties with information on job accommodations, entrepreneurship and related subjects.

As the leading source of free, expert and confidential guidance on workplace accommodations and disability employment issues, JAN works toward practical solutions that benefit both employer and employee.

JAN offers several ways to obtain confidential, personalized assistance – anytime, anywhere:

- By phone (1-800-526-7234 – Voice and 1-877-781-9403 – TTY)
- Via email (jan@askjan.org)
- Via the Web (AskJan.org)
- On demand
- Through social networks like Facebook, LinkedIn, Twitter and Second Life

The U.S. Equal Employment Opportunity Commission (EEOC). The following EEOC publications, posted on the EEOC website (www.eeoc.gov), are excellent resources covering salient features of the ADAAA:

- Questions and Answers for Small Businesses: http://www.eeoc.gov/laws/regulations/adaaa_qa_small_business.cfm
- “The ADA: A Primer for Small Business”: <http://www.eeoc.gov/eeoc/publications/adahandbook.cfm>
- Fact Sheet on the EEOC's Final Regulations Implementing the ADAAA: http://www1.eeoc.gov//laws/regulations/adaaa_fact_sheet.cfm?renderforprint=1

Bringing knowledge and clarity to your disability issues

When you have questions about complex disability legislation, you can rely on The Hartford to help.

¹ Source: EEOC's Enforcement Guidance on Reasonable Accommodation and Undue Hardship.

² The Hartford is not making any determination on whether an individual has a qualified disability under the ADA or whether a reasonable accommodation has been provided under the ADA. These determinations are the responsibility of the employer.

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