

Americans with Disabilities Act (ADA) Key Points

Need to Know

If an employee with restrictions can perform essential functions of the pre-injury job, with or without accommodations, employers are required to provide these accommodations. Reasonable accommodations must be made for employees until it is an undue hardship on the employer.

For companies covered by ADA, there may be serious implications when an employee is capable of returning to work but the employer does not have a transitional duty program, if they are otherwise unable to accommodate the injured employee. A resource for **disability accommodation** information is the Office of Disability Employment Policy (ODEP).

Keep the following key points in mind:

- The ADA as amended is a law forbidding discrimination in any aspect of employment including hiring, firing, job assignments, layoffs, promotions, pay, training, and any other term or condition of employment. Federal employees and applicants are covered by the Rehabilitation Act of 1973 instead of the ADA; however, the protections are essentially the same.
- Disability discrimination occurs when an employer treats a “qualified individual with a disability” (QIWD) unfavorably because they have a disability, **or a history of a disability** (such as epilepsy) which is controlled, **or** because they are **believed to have a physical or mental impairment**.
- As soon as the employer has enough information to know the employee will never be able to return to the original job, the employee becomes a QIWD. However, it is not in the employer’s best interest to wait for this official determination as the injured worker’s condition, either stable or still evolving, may fall under the definition of an ADA disability. At the time of injury a referral to HR and a discussion, **referred to as the “interactive process”** regarding reasonable accommodations must occur.
- Employers are **required to provide reasonable accommodation** to any employee or applicant with a disability unless doing so would cause “undue hardship” such as significant difficulty or expense taking into consideration the size and resources of the company.
- Covered employers should **not have a black-and-white policy** on the maximum length of leave available to injured employees. The length of time a transitional duty assignment lasts is determined by the nature of the injury. There should be no ceiling since employers must be willing to consider a longer period to accommodate the employee’s disability. Extensions of leave can be considered an accommodation. How long the leave is extended is a case-by-case decision. Employers are not required to grant indefinite leave. That is, the employee must at least be able to supply a range of dates for their return. As additional leave extensions are requested, an employer must consider whether these extensions are an undue hardship; eventually extending the leave may be too difficult.
- In written transitional duty job offers, make sure to say it is a “temporary” assignment to help the employee get better sooner and return to the original job. If the employee refuses a legitimate transitional duty offer, his or her ability to win an ADA case is severely compromised if a case is filed.
- Use **ADA-compliant job descriptions** listing what physical activities (essential functions) must be done to complete the work according to normal productivity standards. Incorporate safety factors into the job description by doing a **job safety analysis (JSA)** for each job. Include whether the job **must be performed on site since** ADA accommodations can include work from home.
- **If more than one accommodation works**, the employer may select which one to offer; it does not need to be the one the employee prefers.