



Americans with Disabilities Act (ADA)

Loss Control Bulletin

The Americans with Disabilities Act (ADA) applies to employers with 15 or more workers. *Employers are required to provide equal job opportunities to a qualified individual with a disability.* The individual with a disability who can perform the essential functions of a job, cannot be denied that opportunity because of their disability with reasonable accommodations.

Essential functions are fundamental job duties that must be performed either with or without the aid of a reasonable accommodation.

Reasonable accommodation means any change in the work environment or in the way things are customarily done that enables a qualified individual with a disability to apply for and perform the essential functions of a job. This allows the individual the same benefits and privileges of employment, which are equal to those employees who do not have disabilities.

There's no specific regulation that requires employers have written job descriptions but it's in the employer's interest to outline the essential functions to demonstrate the responsibilities are and to assess whether or not an applicant can perform the essential functions of the job.

1. Whether employees in the position are required to perform the function.

Example: A job announcement or job description for a secretary or receptionist may state that typing is a function of the job. If, in fact, the employer has never or seldom required an employee in that position to type, this could not be considered an essential function

2. Whether removing that function would fundamentally change the job

Example 1: A person is hired to proofread documents. The ability to proofread accurately is an essential function because this is the reason that this position exists.

Example 2: A company advertises a position for a "floating" supervisor to substitute when regular supervisors on the day, night and graveyard shifts are absent. The only reason this position exists is to have someone who can work on any of the three shifts in place of an absent supervisor. Therefore, the ability to work at any time of the day is an essential function of the job.

3. Whether a function is highly specialized and the person in the position is hired for special expertise or ability to perform it.

Example: A company wishes to expand its business with Japan. For a new sales position, in addition to sales experience, it requires a person who can communicate fluently in the Japanese language.

Fluent communication in the Japanese language is an essential function of the job.

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- Education
- Work Experience Certificates Licenses
- Training Skills
- Other job-related requirements, such as good judgment or the ability to work with other people.

Review the essential functions with the existing employees and give consideration to include with the job description a job hazard analysis.

Any job descriptions that are being used should be reviewed to make sure that essential job functions are clearly identified. Out-of-date or otherwise inaccurate job descriptions may become factual issues in litigation. It is suggested to have legal counsel assist in the review of all the job descriptions.

This bulletin does not cover all aspects of these rules and regulations.

The guidelines provided in this bulletin are only intended to provide an overview of some of the more important steps that can be taken by management to establish a safe workplace. The guidelines are not considered exhaustive of all measures and controls that can be implemented by management to address all potential loss or injury producing causes. Ultimately it is the responsibility of management to take the necessary steps to provide for employee and customer safety. It is not intended as an offer to write insurance for such conditions or exposures. The liability of Republic Indemnity Company of America and its affiliated insurers is limited to the terms, limits and conditions of the insurance policies underwritten by any of them. © 2022 Republic Indemnity of America, 4500 Park Granada, Suite 300, Calabasas, CA 91302.