

ADA/ADAAA Overview and Checklist

As employers work to comply with the Americans with Disabilities Act (ADA) and the ADA Amendments Act (ADAAA), they should work closely with their legal counsel to confirm their actions are appropriate. As part of their preparation, the following issues should likely be considered:

- More people are eligible for reasonable accommodations under the ADAAA. Those reasonable accommodations could include such things as telecommuting, working from home, and modified work schedules. Employers must be prepared to document if providing such requested accommodations would be an undue hardship to the employer.¹
- “Regarded as” claims are more common and formidable under the ADAAA. This highlights the importance of documenting the legitimate, nondiscriminatory reasons for employment decisions and the objective factual evidence about jobs, such as essential job functions reflected in current and accurate job descriptions, which formed the basis for evaluating workers.
- Employers should focus on defining the levels of performance and productivity that are required in the essential functions of the job.
- Adequate documentation is very important. Employers should consider designating individuals responsible to review denials of reasonable accommodation requests and training them on ADA and ADAAA standards.
- As regulators continue to determine what is required under the ADAAA, it is likely that employers can count on more scrutiny of the interactive process that they engage in with their employees. Employers need to think beyond the “definition of disability” stage. Instead, employers must focus on the specific employment action, including requests for accommodation and the accommodation process.
- Training of frontline managers and supervisors will aid compliance. Many supervisors withhold from management medical information that employees communicate casually or “confidentially,” believing this is necessary to protect an employee’s privacy interests. Because such information frequently triggers employer obligations to explore reasonable accommodations and/or administer FMLA leave, employers should consider training managers and supervisors on the potential legal significance of employee medical information they may receive and internal procedures for confidentially communicating such information.
- Ensure ADA and other protected absences are not considered in annual performance reviews and/or performance-based promotion or compensation decisions. Even if employers do not discipline employees under leave or no-fault attendance policies, they must guard against attendance or leave being considered in promotion or performance-based compensation decisions. Training of managers and supervisors will help reduce exposure of these claims, as will periodic audits of decisions impacting individuals who are known to have a history of medical absences protected by the ADA, FMLA, or state law.
- Develop written policies that communicate a willingness to consider excusing absences under the ADA and other similar laws. Policies should, on their face, communicate to employees the intent to consider excusing absences on a case-by-case basis as a form of reasonable accommodation under the ADA.
- Ensure internal systems are in place to track the reasons for occasional absences. Compliance with ADA, FMLA, and state law requires a robust record-keeping system. Employers should evaluate whether they have the tools to comply effectively with these increasingly complicated laws.

¹ The EEOC’s guidance on reasonable accommodation and undue hardship can be viewed at <http://www.eeoc.gov/policy/docs/accommodation.html>.

To address the above issues and other needs, the employer’s internal policies, procedures, and checklists that are already being used should be updated based on the most current EEOC guidance. The following summary checklist can help employers move in the proper direction.

SUMMARY CHECKLIST

KEY QUESTIONS	ANSWERS	COMMENTS
Is your human resources staff informed that they may not discriminate based on disability when hiring?		
Is your human resources staff informed of the definition of disability as updated under ADAAA, and do they understand they must interpret it as broadly as possible when in doubt?		
Is there a procedure for a disabled employee to request reasonable accommodations and for these accommodations to be reviewed for undue hardship to the employer?		
Is there a policy for reviewing claims under short- or long-term disability to see if the ADA applies?		
Is there a policy for reviewing claims under workers’ compensation to see if the ADA applies?		
Is there a policy for reviewing claims under the FMLA to see if the ADA applies?		
Is there a policy for reviewing claims under other leaves of absence (i.e., personal leave) to see if the ADA applies?		