



# The Americans with Disabilities Act (ADA) and the “100% rule”

Resources to help navigate this complex issue

The Americans with Disabilities Act (ADA) was signed into law on July 26, 1990. It provides similar protection for Americans with disabilities as outlined in the Civil Rights Act of 1964, which prohibits discrimination based on race, religion, sex, national origin and other characteristics.

The ADA has an additional component that also requires qualifying employers to provide reasonable accommodations to workers with disabling conditions.

The Americans with Disabilities Act (ADA) was signed into law in 1990 as a civil rights regulation for people with disabilities.

Among its various regulations is a requirement that employers with 15 or more employees do not discriminate against people with disabilities when hiring and/or promoting employees, or when offering employee benefits.<sup>1</sup>

In 2008, additional legislation—the Americans with Disabilities Act Amendment Act (ADAAA)—was signed to make it easier for individuals to establish that they have a protected disability under the ADA.

Understanding and adhering to these regulations is essential for employers to provide a welcoming workplace for people with disabilities and avoid litigation and penalties for noncompliance.

## Reasonable accommodation requirement

The ADA and ADAAA define “disability” as:

1. A physical or mental impairment that substantially limits a major life activity;
2. A “record” of having such an impairment; or
3. Being “regarded as” having such an impairment.

Under the original ADA, employers are expected to make “reasonable accommodations” to assist employees with disabling conditions. The law defines a job accommodation as a reasonable adjustment to a job or work environment that makes it possible for an individual with a disability to perform his or her job duties. The ADAAA clarified and expanded the “reasonable accommodation” requirement to allow employees with disabilities to request one or more of the following accommodations:

- **Time away:** Even if they are not eligible for leave under the Family and Medical Leave Act (FMLA).
- **Special equipment:** Or other workplace modifications.
- **Change in job duties:** Such as not working overtime.

Determining whether to provide accommodations involves considering the required job tasks, the functional limitations of the person doing the job, the level of hardship to the employer and other issues. Many accommodations can be made with minimal or no cost. These may include:

- Adjustments to work schedules or job duties.
- Reassignment to vacant positions.
- Acquisition or modification of equipment or devices.
- Appropriate adjustment or modifications of examinations, training materials or policies.
- Facility modifications.

The ADA and ADAAA are employer-directed laws that hold employers accountable for steadfast compliance. The regulations state that it is unlawful for employers to not make reasonable accommodations unless they can prove that it would be an undue hardship.<sup>2</sup>

### Caution against the “100% rule”

Many employers are hesitant to bring workers back on the job until their disabling health condition is fully resolved and the employee is functioning at “100%.” Some companies even require that medical personnel apply this “100% rule” before an employee can be cleared to return to work.

In its May 9, 2016, guidance publication, “Employer-Provided Leave and the Americans with Disabilities Act,” the U.S. Equal Employment Opportunity Commission (EEOC) stated:

“An employer will violate the ADA if it requires an employee with a disability to have no medical restrictions—that is, be ‘100%’ healed or recovered—if the employee can perform his or her job with or without reasonable accommodation unless the employer can show providing the needed accommodations would cause an undue hardship.”

“Similarly, an employer will violate the ADA if it claims an employee with medical restrictions poses a safety risk but it cannot show that the individual is a ‘direct threat.’ Direct threat is the ADA standard for determining whether an employee’s disability poses a ‘significant risk of substantial harm’ to self or to others. If an employee’s disability poses a direct threat, an employer must consider whether reasonable accommodation will eliminate or diminish the direct threat.”

Employers should carefully review this and all future updates from the EEOC to ensure they are compliant with any and all regulations and guidance. To learn more, visit the EEOC website at [www.eeoc.gov/eeoc/publications/ada-leave.cfm](http://www.eeoc.gov/eeoc/publications/ada-leave.cfm).

### Risk exposure

Through levying fines and filing litigation, the federal government has strongly enforced the ADA and ADAAA. In fact, the EEOC’s website states that between 2011 and 2021, it filed more than 600 ADA lawsuits and awarded at least \$124.6 million in settlements. These lawsuits include actions against employers’ failure to provide reasonable accommodation for workers from all market segments.<sup>3</sup>

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Qualified assistance is available to help employers work through the accommodation process, assess the legal issues, and evaluate HR components.

## Help is available

Employers can feel overwhelmed with the various federal, state and local laws they must navigate, including ADA-related assessments to determine what may or may not be an “undue hardship” or a “reasonable accommodation.” The good news is that qualified assistance is available to help employers work through the accommodation process, assess the legal issues, and evaluate HR components.

An entity called Job Accommodation Network (JAN) offers confidential guidance at no cost. JAN is a service provided by the U.S. Department of Labor’s Office of Disability Employment Policy (ODEP) that can be a helpful resource whenever workplace accommodation issues arise. You can learn more at [www.dol.gov/odep/resources/JAN.htm](http://www.dol.gov/odep/resources/JAN.htm) or by calling 1-800-526-7234.

## The benefits of outsourcing

With changing regulations and the ADA and ADAAA’s broad definitions of disability, managing employee absences and accommodations can be a challenge. Many insurance carriers offer services to outsource the management of these requirements. Partnering with experienced ADAAA leave experts can help streamline the process and reduce the risk of noncompliance.

Outsourcing can help:

- Ensure employee leaves are consistently managed and reviewed based on the individual merits of each request.
- Streamline leave tracking and reporting.
- Provide an independent third-party review of requests for time away as an accommodation to verify an absence is warranted and support the employee’s return to work.
- Promote efficiency and reduce absence-related costs.

## Summary

Employers need to understand these regulations to remain compliant with the legislation and to mitigate the potential effects of government enforcement. Professional resources are available to assist employers with compliance issues, including the job-accommodation process, assessment of and preparation for legal issues, and sensitivity to a range of HR issues.

**For more information, talk with an absence-management professional or contact your group benefits representative.**

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<sup>1</sup> Other federal laws bar discrimination on the basis of disability in employment and are either enforced or administered by the Department of Labor. The primary such law is Section 503 of the Rehabilitation Act of 1973, which requires federal contractors and subcontractors with government contracts in excess of \$10,000 to take affirmative action to employ and advance in employment qualified individuals with disabilities.

<sup>2</sup> “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” Code of Federal Regulations, Title 29, Section 1630.9, July 1, 2011, <http://www.gpo.gov/fdsys/pkg/CFR-2011-title29-vol4/xml/CFR-2011-title29-vol4-part1630.xml>.

<sup>3</sup> “EEOC Litigation Statistics, FY 1997 through FY 2021,” U.S. Equal Employment Opportunity Commission, accessed November 9, 2022, <https://www.eeoc.gov/data/eeoc-litigation-statistics-fy-1997-through-fy-2021>.



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