


**THE ADA & THE HIRING,
RETAINING, AND ADVANCING OF
EMPLOYEES WITH DISABILITIES
WILL BEGIN AT 1 PM.**

Velissa R. Chapa
Legal Counsel to Aaron Demerson
Commissioner Representing Employers
Texas Workforce Commission



“We are different, but we share the same human spirit. Perhaps it is human nature that we adapt and survive.”

- Stephen Hawking



FACTS

- **1 in 4 people have a disability**
- **The unemployment rate for individuals with disabilities is more than double that of individuals with no disabilities (BLS)**
- **Over 565,000 Texas employers and 2.6 million small businesses in the state**
- **Most accommodations avg \$500 or less**

PRESENTATION ROADMAP

- **Breakdown of the Americans With Disabilities Act (ADA), with FAQs**
- **Best Practices on the Hiring, Retention, and Advancement of Employees with Disabilities**
- **Live Q&A**

AMERICANS WITH DISABILITIES ACT (ADA)

- **2020 marks the 30-year anniversary of the
ADA**
 - **Signed into law on July 26, 1990**

ADA BASICS

- Employers must reasonably accommodate employees/applicants with disabilities
 - The disability does not need to be the result of a job-related injury
- “Reasonable accommodation” is anything the employer can change about the job without causing an undue hardship for the business

WHAT IS THE ADA?

“The Americans with Disabilities Act (ADA) prohibits employers from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment.”

***Texas Workforce Commission Civil Rights Division Fact Sheet**



WHO IS A “QUALIFIED INDIVIDUAL?”

- A qualified individual is someone who can perform the essential functions of the job with or without reasonable accommodation.

- Qualified individuals include applicants *and* employees.

- Consider:

- Does the individual meet the prerequisites?
- Can the individual perform the essential functions of the job?
 - If yes → qualified



WHAT CONSTITUTES A DISABILITY?

An individual with a disability is a person who:

- Has a physical or mental impairment that substantially limits one or more major life activities;
- Has a record of impairment; *or*
- Is regarded as having an impairment

MAJOR LIFE ACTIVITIES

- **Major life activities may include “caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.”**
- **Compare the individual’s ability to perform the job with those who have similar training, skills, and abilities.**

WHEN IS THE ADA “ACTIVATED”?

A: From the moment you send out the job application.

- There are no “magic words” for requesting an accommodation**
- There is no specific document that must be filled out to make the request “official”**

WHAT IS REASONABLE ACCOMMODATION?

Three categories of RA:

1) modifications or adjustments to a job application process;

2) modifications or adjustments to the work environment;

3) modifications or adjustments that enable the employee to enjoy equal benefits and privileges to employment

REASONABLE ACCOMMODATION

Examples:

- **Teleworking;**
- **Making existing facilities accessible;**
- **Job restructuring;**
- **Part-time or modified work schedules;**
- **Acquiring or modifying equipment;**
- **Changing tests, training materials, or policies;**
- **Providing qualified readers or interpreters**

REASONABLE ACCOMMODATION & COVID-19

- **Q: Are employees with preexisting mental illness or disorders entitled to additional reasonable accommodation if their condition has been exacerbated by the COVID-19 pandemic?**
- **A: Yes.**

THE INTERACTIVE PROCESS & THE ADA

The interactive process is mandatory and crucial in determining how absences or restrictions will affect business operations.

The process allows employers to:

- Identify barriers to job performance
- Explore options for accommodation
- Show good-faith effort in trying to accommodate
- Determine if an undue hardship exists



WHAT IS UNDUE HARDSHIP?

- “Undue Hardship” means significant difficulty or expense and is measured on a case-by-case basis.
- Includes financial difficulty, accommodations that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature or operation of the business.
- Think of all reasonable alternatives. Be creative!

ADA MYTHS

Myth #1: Employees with a disability lose ADA protection if they fail to disclose the disability until after they have been hired.



ADA MYTHS

Myth #2: ADA protection only applies to physical disabilities





Cheerful picnics on sunny days are simply part of Pooh Bear's ways.

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THERMOS
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ADA MYTHS

Myth #3: Accommodations are too costly.

- **Job Accommodation Network (JAN):**
 - **58% of accommodations are free**
 - **Remainder cost \$500.**
- **Tax incentives**
 - **Disabled Access Credit**
 - **Work Opportunity Tax Credit**
 - **Architectural Barrier Removal Tax Deduction**
 - **For More Information:** <https://www.irs.gov/businesses/small-businesses-self-employed/tax-benefits-for-businesses-who-have-employees-with-disabilities>

DIRECT BENEFITS OF ACCOMMODATIONS

- **Retained a valued employee: 89%**
- **Increased the employees' productivity: 70%**
- **Eliminated costs associated with training a new employee: 59%**
- **Increased the employee's attendance: 55%**
- **Increased diversity of the company: 40%**
- **Saved workers' compensation or other insurance costs: 36%**
- **Hired a qualified person with a disability: 15%**
- **Promoted an employee: 10%**

• **Source:** <https://askjan.org/topics/costs.cfm>

INDIRECT BENEFITS OF ACCOMMODATIONS

- **Improved interactions with co-workers: 63%**
- **Increased overall company morale: 61%**
- **Increased overall company productivity: 55%**
- **Increased safety: 46%**
- **Improved interactions with customers: 44%**
- **Increased overall company attendance: 41%**
- **Increased profitability: 29%**
- **Increased customer base: 18%**

• Source: <https://askjan.org/topics/costs.cfm>

REASONABLE ACCOMMODATION STRATEGIES DURING COVID-19

- **Job Accommodation Network** (<https://askjan.org/>) ← FREE RESOURCE!
 - **Accommodation Strategies for Returning to Work During The COVID-19 Pandemic:**
 - <https://askjan.org/blogs/jan/2020/08/accommodation-strategies-for-returning-to-work-during-the-covid-19-pandemic.cfm>
- **Employer Assistance and Resource Network on Disability Inclusion (EARN)** ← FREE RESOURCE!
 - For employers seeking to recruit, hire, retain, and advance qualified employees with disabilities
 - <https://askearn.org/>

HIRING, RETENTION, & ADVANCEMENT

Q: What are some basic things I can do to get started?

- **Address Diversity, Equity, & Inclusion in Company Mission Statement**
- **Implement Policies**
 - **Harassment and Disrespect Toward Others:**
https://www.twc.texas.gov/news/eftc/harassment_disrespect.html
 - **Grievance Procedure**
- **Ensure job applications, job interviews, and recruitment materials fully accessible**
 - **Partnership on Employment and Accessible Technology (PEAT):**
<https://www.dol.gov/agencies/odep/resources/peat>
- **Consider & eliminate potential barriers**
- **Review EEOC Guide:** <https://www.eeoc.gov/laws/guidance/recruiting-hiring-retaining-and-promoting-people-disabilities>

HIRING, RETENTION, & ADVANCEMENT

Q: What are some best practices for retention?

- **Designate an Inclusion Council**
- **Conduct DE&I Training:** <https://askearn.org/training-center/>
- **Reasonably Accommodate**
- **GO ALL IN**
 - **Identify and eliminate biases**
 - **Practice cultural humility**

BE INCLUSIVE

**Diversity is having a seat at the table.
Inclusion is feeling welcome at that table.**

National Organization on Disability:

<https://www.nod.org/services/tracker-2/>

PROMOTION & ADVANCEMENT

- **Focus on the skills**
- **“Diversity by numbers” is not enough**
- **Train management**

TAP INTO EXISTING RESOURCES

- **TWC's Vocational Rehabilitation Services**
- **EEOC Guide on Recruiting, Hiring, Retaining, and Promoting People with Disabilities**
- **U.S. Department of Labor's Office of Disability Employment Policy**
- **EARN on Disability Inclusion**
- **Corporation for National & Community Service**
- **Americans with Disabilities Act National Network**
- **CareerOneStop**

THANK YOU FOR YOUR ATTENTION!

Questions?

TWC Employer Hotline: (800) 832-9394

Email: Employerinfo@twc.state.tx.us