

BASICS OF THE AMERICAN'S WITH DISABILITIES ACT

Choroideremia Research
Foundation
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Presenter:
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Introduction



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Admitted to Practice in Delaware, New Jersey, and Pennsylvania since 1996

Also Admitted in Federal Courts in DE, NJ, and the Eastern District of PA, U.S. Third Circuit Court of Appeals, United States Supreme Court

Practice Areas include Labor and Employment Law, Construction Law

Certified by the Delaware Superior Court as a Mediator and as an Arbitrator

Basic Elements

Passed in 1990, Amended in 2008

Covers employers with 15 or more employees

Delaware statute covers employers with 4 or more employees

Private and public employees have 300 days from the last date of harm to file a Charge of Discrimination

Discrimination

The ADA, as Amended, prohibits discrimination against an employee or applicant who is a qualified individual with a disability

Also covered are individuals with a history of a disability or individuals whom the employer believes to have a physical or mental impairment that is not transitory (lasting less than 6 months) or minor

Employers are required to provide reasonable accommodation to employees or job applicants so long as the accommodation does not pose an undue hardship

Discrimination is also prohibited based upon ones relationship with a person with a disability (i.e. spouse, child, etc.)

What is covered?

All aspects of employment

Hiring, firing, pay, job assignments, promotions, layoffs, training, fringe benefits, and any other term of condition of employment

It is illegal to harass an employee or job applicant

Harassment is illegal when it is so frequent and severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision

A harasser can be a supervisor (not necessarily the employee's), a co-workers, or a non-employee (i.e. customer, client, vendor, etc.)

Reasonable Accommodation

Any change in the work environment to help a person with a disability apply for or perform a job, or enjoy the benefits and privileges of employment

Examples: wheelchair access, reader or interpreter, modified work environment, ergonomic chair or equipment

An undue hardship occurs where an accommodation would be too difficult or expensive (factors: employer size, financial resources, needs of the business)

Exact accommodation requested not required, employer may choose less costly options

Definition of Disability

To be protected an individual must qualify for the job and have a disability as defined by law

Disability: a physical or mental condition that substantially limits a major life activity (i.e. walking, talking, seeing, hearing, learning, or the operation of a major bodily function

Includes a history of such a condition (cancer in remission)

Includes being subject to an adverse employment action and is believed to have a physical or mental impairment

Employers may not ask disability-related questions or require a medical exam prior to making a job offer

Employers may not ask if an applicant has a disability or about the nature of an obvious disability

Employers may ask applicants whether they can perform the job and how, with or without a reasonable accommodation

Post-Offer Questions

After an offer is made the employer can condition the offer on the applicant answering disability-related questions or passing a medical exam, but only if all new employees in the same job have to do so

Once hired and starting to work an employer may only ask an employee disability-related questions or require a medical exam if documentation is needed to support a requested accommodation or if the employer believes that the employee cannot perform the job successfully or safely

Medical records must be kept in a secure location

Federal: Equal Employment Opportunity Commission
www.eeoc.gov Philadelphia Region

Phone: 1-800-669-4000 / 267-589-9700

Email: PDOContact@eeoc.gov

Fax: 215-440-2606

TTY: 1-800-669-6820

ASL Video Phone: 844-234-5122

State: Department of Labor, Office of Anti-Discrimination

labor.delaware.gov

(302) 761-8200

*Thank you for
your time*