

DISABILITY & AGING RIGHTS



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DISCRIMINATION

Qualified Under the Americans with Disabilities Act

People with disabilities, including older Americans who have a physical, sensory, cognitive or mental impairment, are covered by the Americans with Disabilities Act — also known as the ADA. Job applicants and employees are protected under Title I of the ADA. Title I protects people who are “qualified.” This fact sheet will explain what it means to be qualified under the ADA.

Definition of qualified

A qualified person can perform the essential functions of the job, with or without reasonable accommodation.

A qualified person must meet two requirements:

1. The person must have the necessary prerequisites for the job, such as:
 - Education
 - Work experience
 - Training
 - Skills
 - Licenses
 - Certificates
 - Other job-related requirements, such as good judgment or ability to work with other people
2. The person with the disability must be able to perform the essential functions of the job with or without a reasonable accommodation.

What is an essential function?

Courts look at a variety of factors including:

- The job description
- The terms of a collective bargaining agreement
- The employer's judgment
- The amount of time spent on the job performing the function
- The consequences if the person does not perform the function
- The experiences of other people in similar jobs
- There are a limited number of employees who are available to perform the function
- The position exists to perform the function

Job descriptions

The ADA does not require an employer to develop or maintain job descriptions. A written job description that is prepared before advertising or interviewing applicants for a job will be considered as evidence along with other relevant factors. However, the job description will not be given greater weight than other relevant evidence.

A written job description may state that an employee performs a certain essential function. The job description will be evidence that the function is essential, but if people currently performing the job do not perform this function, or perform it very infrequently, a review of the actual work performed will be more relevant evidence than the job description.

Collective bargaining agreements

Where a collective bargaining agreement lists duties to be performed in particular jobs, the terms of the agreement may provide evidence of essential functions. However, like a job description, the agreement would be considered along with other evidence, such as the actual duties performed by people in these jobs.

Employer's judgment

An employer's judgment about which functions are essential is important evidence. However, it appears that Congress did not intend that this should be the only evidence, or that it should be the prevailing evidence. Rather, the employer's judgment is a factor to be considered along with other relevant evidence.



The amount of time spent performing the function

How much time a person spends performing a function is relevant evidence to determine if the function is essential. For example, if an employee spends most of the time operating one machine, this would be evidence that operating this machine was an essential function.

The consequences if the person does not perform the function

Sometimes a function that is performed infrequently may be essential because there will be serious consequences if it is not performed. For example, an airline pilot spends only a few minutes of a flight landing a plane, but landing the plane is an essential function because of the very serious consequences if the pilot could not perform this function.

The experiences of other people in similar jobs

The work experience of previous employees in a job and the experience of current employees in similar jobs provide evidence of actual duties performed. Courts often are interested in the tasks performed by previous employees in a job or current employees in similar jobs to determine whether a function is essential.

The position exists to perform the function

For example:

- Driving is the reason the position of truck driver exists – so driving would be an essential function.
- A person is hired to proofread documents. The ability to proofread accurately is an essential function, because this is the reason the position exists.

Reasonable accommodations can enable people to perform the essential functions of the job

Many people with disabilities are qualified to perform the essential functions of jobs without needing any accommodation. However, if a person with a disability who is otherwise qualified cannot perform an essential job function because of a disability, the employer must consider whether modifications or adjustments would enable the person to perform these functions. Such modifications or adjustments are called “reasonable accommodations.”

In identifying an essential function to determine if a person with a disability is qualified, the employer should focus on the purpose of the function and the result to be accomplished, rather than the way the function is performed. A person with a disability may be qualified to perform the function if a reasonable accommodation would allow this person to perform the job in a different way, and if the accommodation does not impose an undue hardship.

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Although a function may be essential, frequently it is not essential that it be performed in a particular way.

Example: In a job requiring use of a computer, the essential function is the ability to access, input and retrieve information from the computer. It is not “essential” that a person in this job enter information manually, or visually read the information on the computer screen. Adaptive devices or computer software can enable a person without arms or a person with impaired vision to perform the essential functions of the job. ■

For more information:

Facts about the Americans with Disabilities Act – Equal Employment Opportunity Commission Fact Sheet:

www.eeoc.gov/facts/fs-ada.pdf

Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act – Equal Employment Opportunity Commission Enforcement Guidance:

www.eeoc.gov/policy/docs/accommodation.html



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