

## New ADA Regs: What You Need to Know

*If you're like most supervisors, you have been trained on a number of employment laws, but weeks after your training you may not be terribly clear on all the details. You shouldn't feel bad because, frankly, even legal and human resources professionals routinely wrestle with getting their arms around the finer points of some employment laws.*

*As a supervisor, you need to know enough about most employment laws to be able to help HR help you when a situation pops up in your department. That's a big enough challenge when laws remain static. To complicate matters, however, they sometimes change, and new regulations may even be issued. This issue of **Frontline Supervision** will help you get a handle on one such law and its recent changes.*

### ADA Basics

The Americans with Disabilities Act (ADA) became a law in 1990 and was amended in 2008 by the Americans with Disabilities Act Amendments Act (ADAAA). The final regulations of the ADAAA became effective May 24, 2011.

The ADA applies to all private employers with 15 or more employees and to all state and local employers, regardless of the number of employees. It protects qualified individuals – including both employees and job applicants – who have a “disability.” Federal employers are covered by the Rehabilitation Act of 1973, which contains requirements that are very similar to the ADA.

### ADA Requirements

If you're an employer subject to the ADA, the law imposes these requirements:

- ◆ You may not discriminate against individuals on the basis of a disability unless they pose a direct threat to their own or another's safety.
- ◆ You may not discriminate against individuals because of an association with or relationship to a disabled person.

- ◆ You may not retaliate against individuals who: (1) request an accommodation; or (2) oppose or complain about ADA violations.
- ◆ Your organization must provide reasonable accommodations to qualified individuals with a disability unless doing so would cause it an undue hardship.
- ◆ The ADA also has stiff requirements about confidentiality of employee records, medical inquiries, and medical exams.



The fact that applicants or employees are treated differently because of a disability doesn't mean that they have suffered the type of discrimination that is barred by the ADA; they also must have been subjected to an adverse employment action because of their disability. An “adverse action” negatively affects an employee's terms, conditions, or privileges of employment and includes a refusal to hire, a denial of a raise or promotion, a pay cut or demotion, a reassignment to a less desirable position, and termination.

### Tip

- ◆ There's a fine line between offering an accommodation to an employee who needs it and regarding an employee as disabled when he isn't. The best approach is to simply ask the employee if there is anything you can do to assist him in performing his job. If the employee attributes his difficulties to a health condition, then consult with human resources to examine the company's obligations under the ADA or the Family and Medical Leave Act.



## Definition of Disability

Under the ADA, the term “disability” includes the following three categories of protected disabilities:

- ◆ a physical or mental impairment that substantially limits one or more major life activi-

ties of an individual (an actual disability);

- ◆ a record or history of such an impairment; or
- ◆ being regarded as having such an impairment.

In addition, the ADAAA added a provision that an impairment that is episodic or in remission should be considered a disability if it would substantially limit a major life activity when active.

As with other discrimination laws, you must apply your policies uniformly to all employees, not just the ones who are disabled. If you allow policy exceptions in some circumstances, that may be evidence that you violated the ADA by not making an exception for a disabled employee. Also, if you have a no-fault leave policy that gives an allotted number of days off regardless of reason, your company could run into a problem if the policy requires termination when an employee is absent more than the allowed days of leave. This is because a leave of absence beyond your normally allowed leave time could be considered a reasonable accommodation under the ADA.

### ADAAA Details

The ADAAA regulations are long and detailed. Although we can't cover all of them here, we can take a look at a couple of the more important changes:

### Tip

- ◆ It's not necessary for a person to have a physical or mental impairment to meet the definition of “disabled.” If an individual was formerly disabled or you treat her differently because you perceive her as being impaired, she may be entitled to the ADA's protections even if she doesn't have an actual disability.



**Major life activity.** In order for an applicant or employee to have an actual disability under the ADA, the individual's impairment must substantially limit a major life activity. The old standards included activities such as seeing, hearing, talking, and standing, and the new regulations add activities like concentrating, thinking, communicating, and interacting with others. Also, an employee may be disabled if the impairment substantially limits a major bodily function — regardless of whether it substantially limits a traditionally recognized major life activity.

**Regarded as disabled.** Under the ADAAA, an employee can have a “regarded as disabled” claim regardless of whether the perceived impairment is one that would substantially limit a major life activity. Now you need only: (1) perceive the employee as having an impairment; and (2) take a prohibited action against the employee on the basis of that perception.

### Summing Up

On the surface, the requirements seem pretty simple, but the ADA and the ADAAA can get complex pretty quickly. As a supervisor, you may run into a situation with an employee that triggers your awareness of the ADA. When that happens, rather than shouldering the responsibility on your own, make a beeline to your HR department for help with managing the details. They will thank you for it, and you'll be glad you avoided getting stung by some technicality.

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