

Insights, News & Events

THE ADA: A FAR CRY FROM THE ABCS

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Qualified individuals, reasonable accommodations, undue hardship, fundamental alteration – these terms associated with the Americans with Disabilities Act (ADA) are a far cry from the simplicity of the ABCs, and cause much confusion for schools tasked with complying with the statute. But there can be no question that compliance with the ADA is the subject of increased interest to federal and state governmental agencies nationwide, and that more and more individuals are exercising their rights under the ADA, particularly when it comes to seeking reasonable accommodations.

Here are the ABCs of the ADA.

Overview

At its core, the ADA is a federal statute that prohibits discrimination against qualified individuals with a disability. As defined in the statute, the term “disability” is far reaching and generally inclusive. Individuals are considered disabled if they have a present physical or mental impairment that substantially limits one or more major life activities (e.g, walking, talking, working, concentrating, etc.), have a history of such an impairment, or are regarded as having a disability by the school.

Industry Focus

Education

Higher Education

In implementing the statute, the government sought to create a level playing field for disabled employees, students, and applicants. As such, the ADA requires schools to consider a disabled individual's ability to perform essential job or student functions, and to make reasonable accommodations to help them perform those functions as long as the accommodation does not: 1) impose an undue hardship on the school; 2) create or foster a direct threat of harm to the individual or others; or 3) fundamentally alter the school's program.

When And How To Accommodate

A school has a duty to initiate an interactive process with an employee or student to determine if a reasonable accommodation could and should be made available when the individual's disability becomes known or apparent to the school. Often this will occur when the individual advises the school of the disability or seeks an accommodation. But the duty can also be triggered if the school otherwise becomes aware of the condition through a third party or by its own observation.

The interactive process is generally a three-step process. The first step of the process is to determine the essential functions of the position or activity. If the individual is an employee, a detailed and accurate job description will be vital when completing this step.

Once the essential functions have been determined, the second step is to consult with the individual (or parents in the event the individual is a minor student) to ascertain the precise job- or school-related limitations created by the disability. This step will include a discussion regarding how these limitations could be overcome, as well as a request by the school for medical documentation that describes the impairment, how it limits the individual, and recommended accommodations.

Finally, the third step is to determine if a reasonable accommodation can be made and, if so, what that accommodation will be. At this juncture, the school

must ensure that the proposed accommodation does not impose an undue hardship on the school, fundamentally alter its program or create a direct threat to the individual or others. These are situations in which employees and parents can be very sensitive and emotional. Building a positive and trusting relationship with both parents and employees can go a long way toward making the accommodation process easier.

What Is Reasonable?

Though the inquiry as to what is a reasonable accommodation is fact-specific and must be carefully analyzed on a case-by-case basis, there are some examples and categories of conduct that may help you work through your analyses. With respect to employees, courts have found that under some circumstances, providing unpaid leave for treatment or recuperation, adjusting starting or ending times, allowing the employee to work from home, and supplying specialized office equipment were all reasonable accommodations. Conversely, courts have held that eliminating an essential function, lowering production standards, eliminating stress from the work environment, and allowing employee misconduct are not reasonable accommodations.

With respect to students, courts have held that, under some circumstances, allowing a student extra time to complete school work, accommodating class seating preferences, allowing the use of a tape recorder in class, and administering medications are reasonable accommodations. On the other hand, courts have found that lowering academic criteria, providing extensive or long-term one-on-one tutoring, inflating grades, and allowing misconduct are not reasonable accommodations.

Maintaining Confidentiality

When dealing with ADA-covered issues, schools become privy to a vast amount of confidential and sensitive personal information. You may not ask disability-related questions or require physical examinations before making a conditional offer to an

applicant for employment or admission. The only exception to this is if the school is a special-needs school. Special-needs schools may ask prospective students about their disabilities during the enrollment process.

Schools may make disability-related inquiries *after* employment or admission when individuals request an accommodation, either to determine fitness for duties and activities, or when there is objective evidence that the individuals present an imminent direct threat to themselves or others. You should have specific, designated persons at school to handle employee and student accommodation requests. These persons must be trained and kept up to date on the law.

Any medical documentation received must be kept strictly confidential and maintained separate from other employee or student files. Other disability-related information may be disclosed to instructors, supervisors, and others on a need-to-know basis only for accommodation purposes.

The ADA imposes duties and responsibilities upon schools that are very strict. When navigating situations that implicate the ADA, ensure that your school understands all of its legal obligations.

For more information or assistance for your institution's compliance, contact your Fisher Phillips attorney or the author at CPinares-Baez@fisherphillips.com or 954.525.4800.