

# ADA 102: What Is Required

**HR SUMMER SCHOOL: BACK-TO-BASICS SERIES**

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**YOUNG CONAWAY STARGATT & TAYLOR, LLP, 1000 West Street, 17th Floor, Wilmington, Delaware 19801**  
**[www.youngconaway.com](http://www.youngconaway.com) [www.DelawareEmploymentLawBlog.com](http://www.DelawareEmploymentLawBlog.com) (302) 571.6600**

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The Americans with Disabilities Act of 1990 (“ADA”), makes it unlawful for an employer to discriminate against a qualified individual with a disability. The ADA also outlaws discrimination against individuals with disabilities in the provision of State and local government services, public accommodations, transportation and telecommunications. This outline is limited to the employment context.

## **THE ADA APPLIES TO ALL “EMPLOYMENT PRACTICES”**

This means that any decision relating to employment must be made without violating the ADA. Some of the most common “employment practices” include:

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|--|--|---|
| <input checked="" type="checkbox"/> Recruiting | <input checked="" type="checkbox"/> Promotion      | <input checked="" type="checkbox"/> Lay off                         |
| <input checked="" type="checkbox"/> Hiring     | <input checked="" type="checkbox"/> Job Assignment | <input checked="" type="checkbox"/> Benefits                        |
| <input checked="" type="checkbox"/> Firing     | <input checked="" type="checkbox"/> Training       | <input checked="" type="checkbox"/> All other job-related practices |
| <input checked="" type="checkbox"/> Pay        | <input checked="" type="checkbox"/> Leave          |   |

## **THE THREE TYPES OF DISCRIMINATION**

### **1. Discrimination in Employment Practices**

Employers may not make employment-related decisions because of a disability.

### **2. Retaliation**

Employers may not retaliate against an applicant or employee for asserting his rights under the ADA.

### **3. Associational Discrimination**

Employers may not discriminate against an applicant or employee because he associates with someone disabled.

## **PRE-EMPLOYMENT INQUIRIES AND MEDICAL EXAMS**

An employer may ask “disability-related questions” and require medical exams only *after* the applicant has been given a conditional job offer.

### **1. Before an Offer Is Given, An Employer May:**

- Ask about the applicant’s ability to perform specific job functions.
- Ask about the applicant’s non-medical qualifications and skills.
- Ask about how the applicant to describe how he would perform job tasks.

## **2. Once a Conditional Offer Is Made, An Employer May:**

- ☑ Ask disability-related questions and require medical exams but *only* if this is done for all entering employees in that job category.

## **3. If the Offer Is Revoked, the Employer Must Show:**

- ☑ That the disability-related reason is job-related and consistent with business necessity; or
- ☑ That the employee poses a “direct threat” of substantial harm to himself or to others and the risk cannot be reduced through a reasonable accommodation.

## **PRE-OFFER DISABILITY-RELATED QUESTIONS**

### **1. What Is a “Disability-Related” Question?**

A “disability-related question” is a question that is *likely to elicit* information about a disability. This includes directly asking an applicant whether he has a particular disability. It also means that an employer cannot ask questions that are closely related to a disability.

### **2. What If the Applicant Has an Obvious Disability?**

If an applicant with no known disability interviews for a job, the employer may not ask whether the applicant will need an accommodation to perform the job.

But when an employer could reasonably believe that an applicant will need reasonable accommodation, the employer may ask the applicant certain limited questions, including whether he needs reasonable accommodation and what type of accommodation would be needed to perform the functions of the job.

#### **This is permissible in three circumstances:**

- ☑ If the applicant voluntarily discloses a hidden disability;
- ☑ The employer reasonably believes an accommodation will be needed because of an obvious disability; or
- ☑ The applicant voluntarily discloses that he needs a reasonable accommodation