

# AMERICANS WITH DISABILITIES ACT (ADA)

Title I - Employment  
Effective July 26, 1992

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TITLE I of the Americans with Disabilities Act (ADA) prohibits discrimination against qualified individuals with disabilities in the hiring process as well as in terms and conditions of employment as described below. The intent of the Act is to integrate otherwise qualified disabled individuals into the workforce.

**DEFINITIONS**

**Prohibited Discrimination:** Discrimination is prohibited in regard to: recruitment, advertising, and job application procedures; hiring or rehiring, upgrading, promotion, demotion, transfer, layoff and recall, termination, or award of tenure; salary assignment, position description and classification, organizational structure, lines of progression, and seniority lists; leaves of absence, sick leave, or any other leave; fringe benefits; selection and support for training, professional meetings, conferences, and other related activities; social and recreational programs sponsored by the employer; any other term, condition, or privilege of employment.

**Qualified Individual:** The employee or applicant who meets all of the prerequisite qualifications for the position.

**Qualified Individual with a Disability:** An individual with a disability who can perform the essential functions of the position which he/she holds or desires, either with or without reasonable accommodation for the disability.

**Disability:** a) a physical or mental impairment<sup>1</sup> that substantially limits<sup>2</sup> one or more of the major life activities of such individuals; or

b) a record of such an impairment; including work related injuries such as a history of heart disease or work-related back injury, or a record of misclassification, e.g., an individual who was misclassified as learning disabled but was/is not; or

c) being regarded as having such an impairment.<sup>3</sup>

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<sup>1</sup> "Physical or mental impairment" means a physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs (vision, speech, and hearing); respiratory, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine, or any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

<sup>2</sup> Three factors are considered in determining whether a person's impairment substantially limits a major life activity: its nature and severity; how long it will last or is expected to last; its permanent or long-term impact.

<sup>3</sup> "Regarded as having an impairment" means: a) the individual may have an impairment which is not substantially limiting but is treated as if it is; b) the individual may have an impairment which is limiting only because of the attitudes of others towards such impairment; or c) the individual may have no impairment at all but is treated by others as if he/she did.

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Also protected under the Act are certain individuals who are not themselves disabled. That is, it is unlawful to discriminate against a qualified individual because of the known disability of another individual with whom the qualified individual is known to have a family, business social, or other relationship or association. In this case, however, an employer is not required to make any accommodations.

Major Life Activities: This term includes such functions as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

Essential Functions: The fundamental job duties of the employment position the individual with a disability holds or desires.

Reasonable Accommodation means modification(s) or adjustment(s) which can be made, without undue hardship, to allow a Qualified Individual with a Disability to be considered for the position he/she desires and/or to allow that person to enjoy equal employment opportunities. "Accommodation"<sup>4</sup> may be required in:

- a) the job application process
- b) the work environment
- c) the manner or circumstances under which the job is usually performed.

Undue Hardship. Significant difficulty or expense incurred by a covered entity when considered in light of factors such as the nature and net cost of the accommodation, the overall financial resources of the facility, the size of the work force involved, and type of operation.

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<sup>4</sup> Such accommodations may include providing readily accessible and usable facilities; part-time or modified work schedules; reassignment to a vacant position; acquiring/modifying equipment; modifications to examinations, training materials, or policies; providing qualified readers or interpreters; and other similar accommodations.

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**QUESTIONS AND ANSWERS**

**WHO IS COVERED UNDER THE AMERICANS WITH DISABILITIES ACT (ADA)**

1. Q. Does the Act apply to all disabled individuals?  
  
A. No. The Act applies to qualified individuals with a disability. That is, an individual with a disability who can perform the essential functions of the position which he/she holds or desires, either with or without reasonable accommodation for the disability. It does not apply to individuals who are not qualified or who cannot perform the essential functions to the standards which the department has set for the job.
  
2. Q. Which individuals at Rutgers are covered by Title I of the ADA?  
  
A. Although some of the terminology and the benefits discussed herein apply only to regularly appointed full-time staff, the Act applies to all individuals employed by the University - - faculty, staff, casual and student employees, teaching and graduate assistants, coadjutants and part-time lecturers - - regardless of whether they are full time or part time, regularly appointed or temporary, and whether or not they were disabled upon hiring or become disabled after being hired.
  
3. Q. Does the Act apply to individuals who are not yet employed at Rutgers?  
  
A. Yes. The Act applies to external applicants for positions at Rutgers if they are otherwise qualified, that is, if they meet all of the prerequisite qualifications for the position sought.
  
4. Q. Does the Act apply to individuals hired through an agency?  
  
A. Yes, Those agencies must comply with the Act. Departments may not contract to hire employees from employment agencies, temporary agencies, or union hiring halls which are not in compliance.
  
5. Q. Does the Act extend to applicants or employees who are pregnant or who have temporary illnesses or injuries?  
  
A. No. However, because it may be difficult in some circumstances to determine whether an illness or injury is temporary or whether it is, in fact, a disability within the ADA, discuss the question within normal supervisory chain. If further questions arise, call the Office of Harassment Compliance & Equity.

**RESPONSIBILITIES OF HIRING AUTHORITIES AND PERSONNEL OFFICES**

**"Hiring Authority" means the individual or entity with authority to make the hiring decision. "Personnel Offices" mean University Human Resources in New Brunswick, the Personnel Office in Newark, and the Associate Provost in Camden.**

1. Q. What are the responsibilities of Hiring Authorities?  
  
A. To identify the "essential" functions of each job before it is advertised and to make sure that the interviewers/search committees understand what they are; to assure that the same format and questions are asked of all candidates being interviewed; if a candidate with a disability is otherwise the best qualified and seeks an accommodation, to discuss accommodations with the candidate; to assure reasonable accommodation(s). (See below for "Essential Functions;" page 6 for "Interviewing;" and page 9 for "Reasonable Accommodations - Hiring.")
  
2. Q. What are the responsibilities of Personnel Offices?  
  
A. For staff positions, the responsibilities of Personnel Offices are to ensure that reasonable accommodations are provided in the advertising, application, testing, and hiring processes; to assist Hiring Authorities in identifying the "essential functions" of positions; to guide Hiring Authorities in the interview process; to work with Hiring Authorities who seek their assistance in identifying reasonable accommodations.

**ESSENTIAL FUNCTIONS**

**Determining which functions of a position are essential and which are marginal, even for casual and student workers, is of critical importance under the ADA.**

**If the otherwise best qualified disabled individual cannot perform an essential function without an accommodation, a "reasonable" accommodation must be made; if no reasonable accommodation is possible, the department is not required to hire or retain the individual in the position.**

**On the other hand, if the otherwise best qualified disabled individual cannot perform a marginal function, the department is not required to make an accommodation unless it chooses to do so; however, the individual may not be rejected or terminated merely because he/she is unable to perform the nonessential functions of the job.**

1. Q. Must "essential functions" be defined for casual and student employment?  
  
A. Yes. Student employees and casual employees are covered under the ADA.

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2. Q. Who determines the "essential functions" of particular jobs?

A. Faculty and Teaching and Graduate Assistants. The essential functions of faculty positions are established by University Regulation. For general teaching/research faculty the essential functions are teaching, scholarship and service. Consult University Regulation 3.3.18 for the essential functions applicable to other faculty. For Teaching and Graduate Assistants, the department chair, graduate program director or the principal investigator determines the essential functions of assistantships.

Staff, Student, and Casual Employees. The essential functions of staff, student, and casual positions are determined by the appropriate Hiring Authorities, which know best the fundamental job duties required. Upon request, the personnel offices will assist departments with respect to staff positions; the Student Employment Office will assist with respect to student positions.

3. Q. When must "essential functions" be determined?

A. a) When filing a vacant position, they must be determined before posting/advertising/recruiting for it. This is crucial not only for the interviewing/selection process but in guiding the Occupational Health Physician where physical examinations are required for the job title.

b) In addition, if an employee becomes disabled and seeks an accommodation in the current job, the current demands of the position should be reexamined to determine whether functions previously considered "essential" remain so.

4. Q. Is there a formula for determining "essential functions" of a particular job?

A. No. Determining which aspects of a position are of such importance that if they were eliminated the job would no longer exist cannot be accomplished by formula because the essence of university jobs range from purely intellectual performed in relative isolation, to practical problem solving in intense and daily person-to-person interactions, to purely physical.

Hiring Authorities must focus more on WHAT needs to be done rather than the method by which the job is currently being done; too narrow a focus on HOW a job is currently being accomplished may result in rejection of an otherwise qualified candidate.

EXAMPLE: A job has always been performed by carrying files from place to place. An otherwise qualified candidate cannot carry files. Focusing on HOW ("carrying") rather than WHAT needs to be done ("transporting" them from place to place) could result in rejection of an otherwise qualified applicant.

To assist Hiring Authorities in identifying essential functions of staff jobs, the current staff position description format has been modified so as to not only describe the particular responsibilities of the jobs but to capture the essential intangible responsibilities as well. Upon

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request, the personnel offices will assist departments in determining essential functions for staff jobs.

<b>INTERVIEWING/SELECTION PROCESS</b>
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**"Candidate" in this section refers to all applicants, both external and internal, and refers only to candidates who are qualified. "Interviewer" means both individual interviewers and search committees. "Hiring Authority" is the individual/entity with authority to make the hiring decision.**

1. Q. What are the responsibilities of the Hiring Authority?

A. To assure that "essential" functions and marginal aspects of each job are understood by interviewers/search committees; to assure that the same format and questions are asked of all interviewees; if a candidate with a disability requests a reasonable accommodation with respect to the interview process itself, to assure such accommodation; if a candidate with a disability is the best qualified and seeks an accommodation, to discuss that accommodation with the candidate and, if necessary, seek other advice as to how the request might be met. (See pp. 9 and 12 for "Reasonable Accommodations.")

2. Q. What questions may the interviewer ask at interviews?

A. The interviewer may ask all normal interview questions such as experience, previous jobs, special expertise, licenses or credentials, philosophy, what the candidate feels he/she would bring to the job, and so forth - - whatever is appropriate to the particular job.

To ensure that questions are appropriate, interviewers should design a set of questions to determine whether interviewees are qualified and can perform the job. The same questions should be asked of all candidates being interviewed to be sure that applicants with disabilities are not treated differently.

In most cases, an interviewer will find it more effective to begin an interview by giving a copy of the job description to all interviewees and describing all essential aspects of the job. This description should include, where appropriate, aspects of the job which are not specific "duties" but which may, nevertheless, be essential to satisfactory performance of particular jobs. These aspects might be unconventional hours, overtime requirements, shift work, stressful interactions with others including students, isolation, noise, ever-changing priorities. After describing the job, the interviewer may ask whether the interviewee is able to perform the essential functions of the job.

3. Q. May the interviewer ask a candidate about either current or past disabilities or illnesses, e.g., disease, heart trouble, back trouble, mental illness, AIDS, or previous job-related injuries?

A. No. Even if it is a job which requires a physical examination, individuals may not be questioned about disabilities at an interview. Further, the interviewer should not hold a general conversation which would lead a disabled person to feel that he or she must reveal a current or

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past disability or illness. For example, interviewees should not be asked if they will require time off for medical treatment or because of a disability. Nor should they be asked how many days they were absent in a previous job because of illness although they may be asked generally about attendance at a previous job. This is a fine line, to be sure, but an important one.

4. Q. If the candidate has a disability which is obvious to the interviewer, may the interviewer ask questions about the disability?
- A. The interviewer may not ask questions about the disability itself, e.g., how the applicant became disabled, the severity, or the prognosis. After an offer of employment has been extended, a proper inquiry would be whether the individual would need assistance in case of emergency.
5. Q. If the candidate makes a disability known, should the interviewer initiate discussion about what accommodation might be needed?
- A. No. The interviewer should discuss an accommodation only if the candidate says that he/she needs one.
6. Q. If a candidate discloses a disability or has an obvious disability which causes the interviewer to believe that the individual could not, in fact, perform a certain essential function, may the interviewer ask the candidate to describe or demonstrate how he/she would be able to perform that function?
- A. Yes, if the candidate is otherwise among the best qualified. However, asking a candidate who is not among the best qualified to describe or demonstrate how he/she would perform is not appropriate.
7. Q. If a candidate tells the interviewer that he/she needs an accommodation to demonstrate how he/she could perform a particular function, must the accommodation be made?
- A. As with the above question, it depends on whether the candidate is among the best qualified otherwise or not. If the candidate is otherwise one of the best qualified and the accommodation is reasonable, then it should be made.
8. Q. Do disabled candidates who are otherwise qualified have "preference" over other candidates?
- A. Not under the ADA; the hiring authority is free to select the best-qualified candidate.<sup>5</sup>

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<sup>5</sup> However, keep in mind the University's affirmative action policies which require affirmative action in certain situations.

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9. Q. May an applicant who is otherwise the best qualified for the job be rejected because he/she has requested an accommodation to perform one or more of the essential functions of the job?
- A. No, unless the accommodation(s) would be an undue hardship. (See p. 16 for "Undue Hardship.")
10. Q. If others including the public, co-workers, or students are reluctant to work with a particular individual because of his/her disability, may he/she be denied the job on that account?
- A. No. The reluctance of others to work with a qualified individual because of his or her disability is not a legitimate reason to deny employment.
11. Q. If a candidate self-identifies as "disabled" during an interview but does not tell the interviewer what the disability is, may the interviewer ask?
- A. No. But the interviewer may ask whether the candidate is able to perform the essential functions of the job. If the individual is otherwise the best-qualified candidate, and says that he/she could perform the function with a reasonable accommodation, a reasonable accommodation must be provided unless it is an undue hardship.
12. Q. May an interviewer ask a particular employee to undergo a physical examination?
- A. No. Certain identified positions require physical exams. All successful candidates for those positions receive physical exams after a contingent job offer has been made.

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13. Q. If the result of the physical exam is such that the Hiring Authority believes the successful applicant is unable to perform the job, may the contingent job offer be withdrawn?
- A. It depends. First the Hiring Authority must determine whether or not the individual will be able to perform the essential functions of the job with a reasonable accommodation to the condition which caused the rejection.
14. Q. If a candidate is rejected as a result of the physical exam, must he/she be told the specific cause for rejection? (See page 17, "Physical Examinations.")
- A. Yes.
15. Q. If the Hiring Authority knows that the condition of an otherwise qualified disabled person is such that it is likely to become more disabling over time, must the person be hired?
- A. Under most circumstances, yes, if the person is the best qualified and can perform the essential functions of the job currently. If such a question arises, it should be pursued through the normal supervisory chain.

**REASONABLE ACCOMMODATION - HIRING**

**"Reasonable accommodation" must be made so that the otherwise best qualified applicant is able to perform the essential functions of the job. If no "reasonable" accommodation can be made, the individual does not have to be hired.**

**The following questions pertain to employees and students who are applying for positions, as well as to external applicants.** (Also see "Interviewing" on p. 6; "Reasonable Accommodation-On the Job" p. 12; "Types of Accommodation" p. 15 and "Undue Hardship" p. 16.)

1. Q. What is a "reasonable accommodation?"
- A. The Act defines "reasonable accommodation" as modification(s) or adjustment(s) which can be made, without undue hardship, to allow a Qualified Individual with a Disability to be considered for the position he/she desires and/or to allow that person to enjoy equal employment opportunities.

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2. Q. What is "reasonable?"

A. "Reasonable" is fact-specific and depends on many variables, e.g., cost, number of other employees, how work is usually performed, standards of the job. Therefore, when an individual with a disability who is otherwise the best qualified seeks a reasonable accommodation, and the accommodation is necessary, there is a duty to provide one unless providing one would be an undue hardship. (See footnote on p. 2 and "Undue Hardship" on p. 16.)

3. Q. If an accommodation could be made without undue hardship and is not, what are the consequences?

A. Failing to make a reasonable accommodation for an otherwise best qualified individual with a disability is illegal discrimination under the Act. There are substantial penalties and other financial liabilities for such discrimination.

4. Q. May an individual's need for an accommodation enter into a decision regarding employment decisions?

A. No, unless the accommodation would be an undue hardship.

5. Q. Who will make decisions about whether requested accommodations can be made?

A. Each Vice President and Provost will decide where, within his or her areas, the decision-making will lie. The Office of University Harassment Compliance & Equity is available to provide guidance to these individuals.

6. Q. Is it the interviewer's or the Hiring Authority's responsibility to envision possible accommodations when one is requested, or does the disabled person have some responsibility?

A. Ideally the disabled person should suggest an appropriate accommodation; however, if he/she cannot suggest one, it is the employer's responsibility.

7. Q. If a candidate seeks an accommodation and a disability is not obvious, or if the sought-for accommodation does not appear necessary, may proof of a protected disability and the need for accommodation be required prior to undertaking accommodations?

A. Yes. An individual who is otherwise a final candidate may be required to submit proof that there is a disability and that the sought-for accommodation is appropriate and necessary to perform the essential function in question.

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8. Q. If a disabled individual requests an accommodation, and that accommodation is made, may the individual request other accommodations?
- A. Yes. The intent of the Act is to integrate disabled individuals into the workforce. Therefore, if the additional accommodation is reasonable and necessary and if it will not pose an undue hardship, it must be provided.
9. Q. If a candidate says he/she cannot perform a nonessential function, must an accommodation be made to allow the individual to perform that nonessential function?
- A. An accommodation does not have to be made to allow an individual to perform a nonessential function. If the department wishes to make an accommodation so that the individual can perform the nonessential function, it may; otherwise, the function should be transferred to another position, or exchanged for one the individual is able to perform. If a disabled candidate is otherwise the best qualified, he/she may not be rejected merely because he/she cannot perform nonessential functions of the position.
10. Q. May an accommodation be revoked once granted?
- A. Yes, if it is later determined that the accommodation has been unnecessary or is no longer necessary or that it has become an undue hardship.
11. Q. Are there time constraints on a Hiring Authority in making an accommodation?
- A. Accommodations should be made as expeditiously as possible; however, there are no specific time constraints.
12. Q. Should records be maintained with respect to accommodations offered or made?
- A. Yes. Such a record would be helpful to future supervisors of a qualified individual with a disability and may also be helpful to others who need to make accommodations in the future. Supervisors should notify the Office of Harassment Compliance & Equity when an accommodation is made. A form to report an accommodation is available on-line at <http://uhr.rutgers.edu/uhce> under 'disability'.

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**REASONABLE ACCOMMODATION - ON-THE-JOB**

1. Q. Under what circumstance might an accommodation be required once an employee is on the job?  
  
A. An employee may become disabled, or a disability may worsen, causing an employee to seek an accommodation. Or the job site, equipment, or tasks may change such that a disabled employee can no longer perform the job without an accommodation. In these circumstances a reasonable accommodation must be made.
  
2. Q. What is a "reasonable accommodation?"  
  
A. It is a modification(s) or adjustment(s) which can be made, without undue hardship, to allow a qualified employee with a disability to perform the essential functions of his/her position.
  
3. Q. What is "reasonable?"  
  
A. "Reasonable" is fact-specific and depends on many variables, e.g., cost, number of other employees, how work is usually performed, standards of the job. Therefore, if an otherwise qualified employee is disabled and seeks an accommodation, and the accommodation is necessary, there is a duty to provide one unless providing one would be an undue hardship. (See "Undue Hardship" on p. 16)
  
4. Q. If an accommodation could be made without undue hardship and is not, what are the consequences?  
  
A. Failing to make a reasonable accommodation for an otherwise qualified employee with a disability is illegal discrimination under the Act. There are substantial penalties and other financial liabilities for such discrimination.

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5. Q. If an employee becomes disabled and seeks an accommodation, what should the department do?
- A. The department may need to reexamine the position to determine whether functions previously considered "essential" remain so. If they do, then the department must consider an accommodation. Examples of types of accommodations which should be considered for employees which need not be considered for external applicants include rescheduling in a work unit, restructuring of several positions, part-time or modified work schedules, reassignments, modifications to training materials. (See p. 15 for "Types of Accommodations.")
6. Q. Is it the supervisor's responsibility to envision possible accommodations when one is requested, or does the disabled person have some responsibility?
- A. Ideally the disabled person and the supervisor should work together on an appropriate accommodation; however, it is ultimately the employer's responsibility.
7. Q. Who will make decisions about whether requested accommodations can be made?
- A. Each Vice President and Provost will decide where, within his or her areas, the decision-making will lie. The Office of University Harassment Compliance & Equity is available to provide guidance to these individuals.
8. Q. If a supervisor suspects that an employee seeking an accommodation is not disabled, or that a sought-for accommodation is not necessary or appropriate, what should be done?
- A. The individual should be required to provide medical documentation that a disability exists and that the accommodation sought is necessary and will be effective.
9. Q. If an employee seeks an accommodation and a disability is not obvious, may proof of a protected disability be required prior to undertaking accommodations?
- A. Yes.
10. Q. If a supervisor knows that an employee who is requesting an accommodation is not disabled or that the employee does not need the accommodation being sought, what should be done?
- A. Discuss the problem within the normal channels. If the employee is not disabled and/or the accommodation being sought is not needed, no accommodation need be made.

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11. Q. If an employee cannot perform a nonessential function, must an accommodation be made to allow him/her to perform that nonessential function?
- A. An accommodation does not have to be made to allow the employee to perform a nonessential function. If the department wishes to make an accommodation so that the employee can perform the nonessential function, it may; otherwise, the function should be transferred to another position, or exchanged for one the employee is able to perform.
12. Q. If a disabled employee requests an accommodation, and that accommodation is made, may the employee request other accommodations?
- A. Yes. The intent of the Act is to integrate otherwise qualified disabled individuals into the workforce. Therefore, if the additional accommodation is necessary and if it will not pose an undue hardship, it must be provided.
13. Q. May an accommodation be revoked once granted?
- A. Yes, if it is later determined that the accommodation has been unnecessary or it is no longer necessary or is an undue hardship.
14. Q. Are there time constraints when an accommodation is requested?
- A. Accommodations should be made as expeditiously as possible so that the disabled employee is productive; however, there are no specific time constraints.
15. Q. Is the employer responsible for providing personal accommodations such as a hearing aid or a wheelchair?
- A. No.
16. Q. Should records be maintained with respect to accommodations offered or made?
- A. Yes. Such a record would be helpful to future supervisors of employees with a disability and may be helpful to others who need to make accommodations in the future. Supervisors should notify the Office of Harassment Compliance & Equity when an accommodation is made. A form to report an accommodation is available on-line at <http://uhr.rutgers.edu/uhce> under 'disability'.

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**TYPES OF ACCOMMODATIONS**

1. Q. What are some examples of accommodations?  
  
A. Accommodation may include providing readily accessible and usable facilities; acquiring/modifying equipment; providing qualified readers or interpreters; part-time or modified work schedules; restructuring jobs; reassignment to a vacant position; modifications to training materials; and other similar accommodations.
  
2. Q. Might an existing workplace environment have to be modified?  
  
A. Yes if that is required to enable an individual to perform essential job functions and/or to have equal opportunity to participate in other employment-related activities. EXAMPLE of an employment-related activity: If an employee lounge is inaccessible to a disabled employee, the lounge might be modified or comparable facilities might be provided in a location that would enable the individual to eat lunch with co-workers.
  
3. Q. If an accommodation requires a restructuring of several positions or a rescheduling in a work unit, must the other employees be told why their positions or schedules are being changed?  
  
A. Not if the disabled employee does not want to disclose the disability.
  
4. Q. As an accommodation to a disabled employee, must the department change the basic qualifications it believes are necessary for the job?  
  
A. No. But if, for example, a qualified individual with a disability fails a physical exam, and is denied the position on that account, the Hiring Authority may be required to explain to that individual why that particular requirement is job-related for that particular position. (See p. 17 for "Physical Exams.")
  
5. Q. Is the employer responsible for providing personal accommodations such as a hearing aid or wheelchair?  
  
A. No.

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**UNDUE HARDSHIP**

1. Q. What is the definition of "undue hardship" with respect to "reasonable accommodation" under the ADA?  
  
A. An accommodation is an undue hardship if it were to cause significant difficulty or expense in relation to the size of the employer, the resources available, and the nature of the operation. It is always to be determined on a case-by-case basis by considering whether the accommodation would be unduly costly, extensive, substantial, disruptive, or would fundamentally alter the nature or operation of the business.
  
2. Q. May a request for an accommodation be denied because of "undue hardship?"  
  
A. Yes. If an accommodation causes "undue hardship," it is considered unreasonable.
  
3. Q. When do accommodations become unreasonable or an undue hardship?  
  
A. The question cannot be answered in a general way because it depends on many factors: the nature and cost of the accommodation; financial resources of the facility; number of other employees performing the work, the type of operations, and the impact of the accommodation on the operation of the facility including its impact on the ability of other workers to perform their duties and the impact on the facility's ability to do business. Questions about whether an accommodation will be an undue hardship should be pursued through the appropriate channels.
  
4. Q. If an accommodation could be made without undue hardship and is not, what are the consequences?  
  
A. Failing to make a reasonable accommodation for a qualified individual with a disability is illegal discrimination under the Act. There are substantial penalties and other financial liabilities.
  
5. Q. If several employees in a department legitimately need an accommodation, must they all be accommodated?  
  
A. Yes, if it is possible to do so without incurring undue hardship.
  
6. Q. If only one employee can be accommodated without undue hardship, how is the choice made as to which employee will be accommodated?

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- A. It depends. If the situation arises, discuss the problem within the normal supervisory chain, or the dean in matters related to faculty or TA/GA personnel. The Office of Harassment Compliance and Equity is also available to provide guidance.

**INQUIRIES INTO DISABILITIES, PHYSICAL EXAMS, OTHER TESTING**

**Also see p. 6 for "Interviewing/Selection."**

1. Q. If a candidate self-identifies as "disabled" during an interview but does not tell the interviewer what the disability is, may the interviewer ask?  
  
A. No. But the interviewer may ask whether the candidate is able to perform the essential functions of the job.
  
2. Q. May an interviewer ask a particular employee to undergo a physical examination?  
  
A. No. Certain identified positions require physical exams. All successful candidates for those positions receive physical exams after a contingent job offer has been made.
  
3. Q. May individuals be questioned at an interview to determine whether a disability exists?  
  
A. No. Neither an external candidate nor an employee, including a student employee, may be questioned to determine whether a disability exists.

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4. Q. In the case of an obvious disability, may a Hiring Authority or supervisor inquire whether the individual would need assistance in case of an emergency?
- A. Yes. Once an offer of employment has been extended, such an inquiry is proper.
5. Q. May individuals still be required to undergo physical exams?
- A. Yes, under certain circumstances. External candidates and employees may not be required to undergo physical exams for the purpose of determining whether a disability exists. However, the present procedure for physical exams will continue. That is, all successful candidates for certain identified positions will receive physicals only after a contingent job offer has been made, and the information obtained will be kept confidential. Under the Act, the examination may seek only to determine if an external applicant or a currently employed staff member has the ability to perform essential functions of a particular job.
6. Q. Is the testing of food handlers for communicable diseases still permitted?
- A. Yes. The regulations on this subject have been finalized and permit testing food handlers for certain infectious and communicable diseases.
7. Q. If a disabled individual who has been offered a job fails a physical exam and is denied the position on that account, what should happen?
- A. The physician must tell the candidate the cause for rejection, and the Hiring Authority should be prepared to explain to that individual why that particular requirement is job-related for that particular position. (See p. 19 for "Health/Safety.")
8. Q. May pre-employment tests other than physical exams still be given?
- A. Yes, but they must be job-related. Further, if a qualified individual with a disability seeks an accommodation in testing, e.g., special equipment, it must be provided unless such provision would be an undue hardship.

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**HEALTH. SAFETY. RISK**

1. Q. May health and safety be considered in determining whether a disabled individual is otherwise qualified for the job?

A. Yes but only under the following circumstance. Applicants need not be hired and employees need not be continued in a position if doing so would pose a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by a reasonable accommodation.

However, perceptions and unfounded fears of others are not considered in making that determination since the very object of the Act is to overcome myths and perceptions which have kept disabled persons out of the workforce.

2. Q. How is a determination made whether hiring or assigning a Qualified Individual with a Disability to a particular position would pose a significant risk of substantial harm to the individual or to others?

A. It must be made on a case-by-case basis. In the case of a physical disability, identify the aspect of the disability that would pose the direct threat. In the case of mental or emotional disability, identify the specific behavior on the part of the individual that would pose a direct threat.

Then consider the following factors relying on objective, factual evidence, not on perceptions, fears or patronizing attitudes:

- a) the duration of the risk;
- b) the nature and severity of the potential harm;
- c) the likelihood that the potential harm will occur; and
- d) the imminence of the potential harm.

Evidence may include input from the individual; the experience of the individual in other similar positions; and opinions of medical doctors, rehabilitation counselors or physical therapists with expertise in the facts of the case.

3. Q. When there is a substantial risk, how is a determination made whether it can be eliminated by a reasonable accommodation?

A. Reconsider the factors listed in the answer above in light of the accommodation(s) made.

4. Q. If a reasonable accommodation reduces but does not eliminate the risk, how is a determination made whether the reduction in risk is sufficient to hire or assign the individual to the position?

A. Reconsider the factors listed in the answer above in light of the lessened risk.

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5. Q. In the case of an obvious disability, may a Hiring Authority or supervisor inquire whether the individual would need assistance in case of an emergency?
- A. Yes. After an offer of employment has been extended that is a proper inquiry. Further, the department should formulate emergency contingency plans with the individual if the disability impacts the individual's movement.

**APPEAL PROCESS**

1. Q. To whom may an otherwise qualified disabled employee or applicant appeal if he or she believes that the reason for an adverse employment decision is due to his or her disability?
- A. If an individual staff member or applicant for a staff position believes that the reason for an adverse employment action decision is due to his or her disability, the staff member or applicant should contact the Office of Harassment Compliance & Equity to discuss the matter. A complaint process and form (<http://uhr.rutgers.edu/uhce/e-complaint-procedures.html>) are also available on the Office's website.
2. Q. To whom may an otherwise qualified disabled employee or applicant appeal if he or she believes that a reasonable accommodation has not been made which would enable him or her to perform the job?
- A. If an individual staff member or applicant for a staff position believes that a reasonable accommodation has not been made which would enable him or her to perform the job, the staff member or applicant should contact the Office of Harassment Compliance & Equity to discuss the matter. If the individual is still not satisfied, he or she may appeal the decision to deny reasonable accommodation to the Associate Vice President for Human Resources. An appeal stating the reasons for disagreement with the decision must be filed in writing with the Associate Vice President for Human Resources within ten (10) calendar days of the date of the determination by the department. The staff employee or applicant shall send a copy of the appeal to the Office of Harassment Compliance & Equity and the employing unit.

**EMPLOYEE PERFORMANCE**

1. Q. After sought-for accommodations have been made, are employees with disabilities expected to perform the job to the same standards as other employees?
- A. Yes.
2. Q. If an accommodation has been made but the employee with a disability is still not able to perform to standards and seeks an additional reasonable accommodation, must it be made?

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- A. Yes, if it is not an undue hardship.
3. Q. May a disabled employee be disciplined and terminated for poor performance?
- A. Yes, if there is genuine cause for discipline, the supervisor should follow the University's guidelines for progressive discipline as appropriate for the particular employee.
4. Q. Should employees with disabilities be expected to conform to relevant policies and procedures governing their category of employment?
- A. Yes. They are expected to conform to all applicable University policies and procedures.
5. Q. If an employee's poor performance is caused by the use of illegal drugs, may he or she be disciplined or terminated?
- A. Yes. Although recovering drug addicts are considered disabled under the Act, current users of illegal drugs are not protected and may be disciplined or terminated as any other employee.
6. Q. If an employee's poor performance is caused by alcoholism, may he or she be disciplined or terminated?
- A. It depends. A recovering alcoholic is considered disabled under the Act, and the department may be obliged to accommodate him/her by giving leave to enter rehabilitation treatment. However, an employee who is under the influence of alcohol at the worksite is not protected and may be disciplined or terminated.
7. Q. With respect to employees who are eligible for sick leave, may departments question excessive use of sick time and suspected abuse of sick time by disabled employees?
- A. Yes, just as they do with employees who are not disabled. If a department believes that the employee's use of sick time is excessive or abusive, the department may require proof that the disabled employee is unable to work before it authorizes use of sick time.
8. Q. What should be contained in a request for proof of inability to work?
- A. The department must ask the physician to state what duties the employee cannot perform. The department must not ask what the medical condition was which precluded the employee from working.

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9. Q. When employees bring letters from physicians as proof of inability to work, where should they be filed?
- A. An employee's medical information should be kept in a locked file separate from the employee's departmental file.

**COLLECTIVE NEGOTIATIONS**

1. Q. What is the relationship between the ADA and collective negotiations?
- A. Collective negotiations agreements cannot violate the law or have the effect of subjecting an applicant or employee to an activity prohibited by the law. Agreements cannot interfere with the duty of the University to make a reasonable accommodation.

If accommodations are planned which appear to contravene a provision of an agreement, such as transferring a staff employee without posting, contact the Office of Labor Relations and the Office of Harassment Compliance and Equity so that appropriate discussions with the union involved may take place. For questions concerning faculty and Teaching Assistants and Graduate Assistants, contact the Office of Academic Labor Relations.

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