



ADA in the Workplace

It can happen without warning. You, or someone you know, is permanently disabled; develops a disabling disease, or suffers from a chronic physical or mental condition. Odds are, you probably know someone like this, and in the past that may have ended a work life.

Under the ADA (Americans with Disabilities Act), disabled workers can remain on the job or be hired for jobs that they can perform with a reasonable accommodation. This is a broad workers' rights law that covers just about any workplace with 15 or more employees. Whenever possible, employers are required to provide either a "reasonable accommodation" that allows disabled workers to perform their jobs at the same level as workers without a disability or transfer them to a vacant job they can perform.

Nearly 1 in 5 Americans has some type of disability, most of which are not readily apparent. Such issues as hearing loss, disease and chronic depression can be as disabling as a bad back or a permanent physical injury.

48.9 million Americans have disabilities
29.5 million are between the work ages of 15 and 64

Under ADA, a person with a disability:

- *has a physical or mental impairment* that substantially limits one or more major life activity. This can either be "apparent," i.e. problems walking, seeing or speaking or "hidden," i.e. hearing loss, HIV/AIDS, epilepsy, diabetes.
- *has a record of such impairment* such as recovery from cancer or mental illness
- *is regarded as having an impairment* that people often mistakenly believe are limiting, i.e. using a hearing aid, scars, w burns or disfigurements or involuntary motions.
- Illegal drug users are excluded. However, ADA does protect people with a drug abuse history who are not currently using drugs. Advanced age is not an impairment; however age related conditions are covered.

A Benefit for Everyone

ADA requires that employers and unions figure out ways to keep disabled workers on the job, or to allow disabled workers to be hired like anyone else. Accommodation can be as simple as allowing a worker to sit down at his/her station by supplying a chair or lowering a work table. Headaches caused by computer glare may be eliminated by the addition of an inexpensive anti-glare screen. In one case, a \$65 electric screwdriver was all that was needed to keep a worker who had developed carpal tunnel syndrome on the job. When everyone began using electric screwdrivers, the company's workers' compensation costs dropped as well.

Information Requests

The ADA requires an employer to treat information concerning an employee's medical history as confidential. At the same time, the employer has a duty under the National Labor Relations Act to provide the union with relevant information in order to better represent the membership. Where a conflict occurs, according to the General Counsel, the Labor Board *balances the union's need for the information against the assertion of confidentiality* and in cases that have come before it, generally has directed the employer and the union to bargain and to accommodate *both* interests.

Typical Questions

Does the ADA provide a license for the employer to unilaterally circumvent negotiated seniority provisions, shift preference or job classifications?

No. If an employee with a disability requests an accommodation that would involve a change in terms or conditions of employment, the employer must comply with the contract, unless a change is *negotiated* with the union.

Working With ADA

Here are some guidelines:

- ADA does not require any form of bumping. Accommodation must be made to keep a worker in their old job or, they must be placed in a *vacant* position.
- ADA is not a license for the employer to violate the contract to the detriment of another employee.
- Inform members about their rights under ADA and encourage them to work with the union if they'll be seeking accommodation from the boss. Don't wait, either. Talk with members who you think might benefit from ADA.

WHAT'S "REASONABLE?"

Keep in mind that a "reasonable accommodation" does not have to be the *best* accommodation. While the "best" solution for a disabled member might be a vacant high-seniority job, an "accommodation" that keeps them in their current job is okay.

Make sure you explore what's possible. Often when people say "a job can't be done that way," what they're really saying is "I've never seen it done." The fact that no one has ever said down at a particular job does not mean that it can't be done by someone who is sitting.

A PROACTIVE APPROACH

The ADA provides a basis to creatively look for reasonable solutions that do not unduly impinge on the rights of anyone. A worker with a disability is not getting something special, but rather is getting an accommodation to enable him or her to counteract obstacles that have prevented them from fully using their talents and abilities. While only those individuals who are qualified and able to perform the essential functions of a job with reasonable accommodations are eligible for ADA's protection, we can play a major role in asserting those rights.

ADA is one of the few laws passed recently that actually benefits workers. If used effectively, we can use ADA to strengthen our shop unity and the role UPSEU plays in the lives of our members.