



The ADA and Internships: Your Responsibilities as Internship and Postdoctoral Agency Directors

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What is the Americans with Disabilities Act?

A comprehensive antidiscrimination law for persons with disabilities, the Americans with Disabilities Act (ADA) extends to virtually all sectors of society and every aspect of daily living including work, leisure, travel, and communications. It provides basic civil rights protection to persons with disabilities comparable to those in force for women and ethnic minorities for the past 25 years. The ADA is built on a foundation of statutory, legal and programmatic experience and modeled after the Civil Rights Act of 1964 and the Rehabilitation Act of 1973.

Signed into law by President Bush on July 26, 1990, the ADA is comprised of five titles: Employment, Public Sector Services, Private Sector Services, Telecommunications, and Miscellaneous Provisions. For purposes of this article, I will focus on Title I as doctoral and postdoctoral internships are likened to employment settings, and therefore must ensure that their employment practices do not discriminate against qualified persons with disabilities in the application and recruitment processes, hiring, advancement, training,

compensation or discharge of an employee, or in any other terms, conditions and privileges of employment.

What is ADA's definition of a "person with a disability"?

Under the ADA, a person with a disability is one with a physical, mental or emotional impairment that substantially limits one or more major life activity such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. In addition to those with visible disabilities, the definition includes people with a range of psychological problems, learning disabilities, or some chronic health impairment like HIV/AIDS, diabetes, epilepsy, cancer and so forth. A person is also considered to have a disability if he/she has a record of a substantially limiting impairment such as cancer or is regarded as having a substantially limiting impairment.

The ADA defines "mental impairment" to include any mental or psychological disorder such as major depression, bipolar disorder, anxiety disorders, schizophrenia, and personality disorders. The current DSM-IV is relevant for identifying these disorders; however, not all conditions listed in the DSM-IV are disabilities or impairments under the ADA. For example, while the DSM-IV covers conditions involving drug abuse, the ADA definition of disability does not include individuals currently engaging in the illegal use of drugs.

Even if a condition is an impairment, it is not automatically a disability under the ADA. To rise to the level of disability, an impairment must substantially limit one or more major life activities of the individual. Jeanne Kincaid, an attorney who specializes in disability law, asserts that in most cases, a careful, case-by-case analysis is necessary to determine whether an impairment is substantially limiting. An individualized approach is necessary because the same types of impairments often vary in severity and often restrict different people to different degrees or in different ways.

Substantial limitation is evaluated in terms of the severity, the duration and impact of the limitation. The individual's ability to perform the major life

activity must be restricted as compared to the ability of an average person to perform the activity. For example, a doctoral student has had major depression for almost one year. He has been intensely sad and socially withdrawn, has developed serious insomnia, and has had severe problems concentrating. This student has an impairment (major depression) that significantly restricts his ability to interact with others, sleep and concentrate. The effects of this impairment are severe and have lasted long enough to be substantially limiting.

Regarding the ability to interact with others, for instance, the EEOC emphasizes that an individual meets the ADA criteria if "due to the impairment s/he is significantly restricted as compared to the average person in the general population. Some unfriendliness with coworkers or director would not, standing alone, be sufficient to establish a substantial limitation. An individual would meet the criterion, however, if his/her relations with others were characterized on a regular basis by severe problems, for example, consistently high levels of hostility, social withdrawal, or failure to communicate when necessary. Persons with schizophrenia are often disabled on this dimension, EEOC explains, until they find an effective medication"

What is meant by "Reasonable Accommodation"?

Reasonable accommodation is a key nondiscrimination requirement of the ADA because of the special nature of discrimination faced by people with disabilities. Many people with disabilities can perform jobs without any need for accommodations. But many others are excluded from positions that they are qualified for because of unnecessary barriers in the workplace and work environment. The ADA recognizes that such barriers may discriminate against qualified people with disabilities just as much as overt exclusionary practices. For this reason, the ADA requires reasonable accommodation as a means of overcoming unnecessary barriers that prevent or restrict opportunities for otherwise qualified individuals with disabilities.

Under the ADA, when an individual with a disability is qualified to perform the essential functions of a job, the supervisor must try to find a reasonable

accommodation that would enable this person to perform these functions. The reasonable accommodation should reduce or eliminate unnecessary barriers between the individual's abilities and the requirements for performing the essential job functions. The EEOC points out that while the law does not compel supervisors to lower standards to accommodate individuals with disabilities, it does require them to make certain "reasonable accommodations." These can include granting extra time off from work or adjusting schedules and assignments to allow for lateness, impaired judgment, or medication regimens attributable directly to the disability.

When an intern in your program decides to request an accommodation, he/she must make it known that an adjustment or change is needed at work for a reason related to a medical condition. The individual requesting the accommodation can do so in plain English and does not have to mention such terms as "reasonable accommodation" or "ADA." When the need for an accommodation is not obvious, you may ask for documentation about the disability and functional limitations. You are entitled to know that the individual has a covered disability for which an accommodation is needed. If insufficient information is initially provided to substantiate an ADA disability, you can require the individual to go to a health care professional for purposes of documentation.

Next, discuss the accommodation face-to-face. Sit down with the individual and perhaps a third party like a rehabilitation counselor or representative from disabled student services, and brainstorm on what accommodations would enable the person to do the job. Draw up a list of accommodation options; the accommodation doesn't have to be the most expensive or sophisticated ... effective.

Who is ultimately responsible to pay for reasonable accommodations? There is no clear-cut response to this and the answer depends in part on how the role and responsibility of the intern, university and internship program are defined. According to guidelines drafted by lawyers for the National Association for Student Personnel Administrators, if a student participates in a for-credit, for-

pay internship, it is suggested that both the school and the internship site work out how the accommodations will be provided.

The obligation to provide a reasonable accommodation to ensure equal access is not meant to place an undue hardship upon you as the employer. The determination of whether a reasonable accommodation is an undue hardship should be made on a case-by-case decision, and based upon the facts of the specific situation, advises Jeannie Kincaid.

According to EEOC guidelines, the following factors should be considered when determining whether an accommodation would cause an undue hardship: 1.) the nature and cost of the accommodation needed; 2.) the overall financial resources of the facility making the accommodation, the number of employees at the facility and the effect on expenses and resources of the facility; 3.) the overall financial resources of the entity covered by the ADA (if the facility involved is part of a larger entity); and 4.) the impact of the accommodation on the operation of the facility that is making the accommodation. This may include the impact on the ability of other employees to perform their duties.

Jeanne Kincaid cautions, however, that just because one way of fulfilling the obligation to provide an accommodation or service may be unduly burdensome, it does not automatically relieve the facility or entity of its obligation to seek out other ways to attempt to meet its obligation. Only if there are no effective accommodations that are not unduly burdensome would the facility be relieved of its obligation. In other words, the ADA requires entities to make a "good faith effort" to provide an effective accommodation.

If the accommodation would be an undue hardship, the program must try to identify another accommodation that would not pose such a hardship. If the undue hardship is caused by cost, the program must consider whether funding for the accommodation is available from an outside source, such as a vocational rehabilitation agency, or if the cost of providing the accommodation can be offset by state or federal tax credits or deductions.

Special Challenges for Internship Directors

Internship directors have a number of obligations when it comes to meeting the requirements of the Americans with Disabilities Act (ADA). However, individuals who want protection under the law also have obligations. For example, what if an intern has the ability to control a disabling condition, but fails to do so? Let's take the example of an intern with diabetes who fails to take insulin shots appropriately and does not monitor his eating habits. If sudden sugar problems cause him to have an accident at work, is he a candidate for discipline? Yes, according to Bruce Griggs, an attorney with the EEOC. "In most cases, employees who are disciplined, discharged, or subject to other adverse employment decisions because they failed to use an accommodation have been told they do not have valid claims under the ADA. The reason is that the employer is taking action based on conduct--not on the disabling condition itself."

In documenting such instances, Griggs recommends using the same procedures for documenting ADA claims in general. "Focus on the conduct at issue, not the disability," he says. "If you are disciplining or discharging for behavior that would cause any employee to be disciplined or discharged, then you are not discriminating under the ADA or treating the employee differently."

What about employees with mental, emotional, or other psychiatric problems that are controlled by medication? "Here, the employer must be careful," Griggs cautions. "It's not required as a part of reasonable accommodation that an employer monitor an employee's medication or the taking of that medication. Since this is not required, the employer must be careful about asking questions related to the medication."

Ideally, you should focus on job behavior alone. But there may be instances where you need to know if a person is taking medication properly--perhaps to determine safety compliance. The key, asserts Griggs, is to ask only those questions that are job-related and consistent with business necessity--and in

most instances you'll want to have the employee bring in doctor certification or information rather than try to sort out the medication situation informally. In other words, if an employee who has a known psychiatric disorder has an outburst in the middle of the day, you would address the outburst as unacceptable behavior--you would not ask if the employee had taken his medication that day.

Recently, two courts have held that police officers who were able to control their diabetes, but failed to--leading to performance problems on the job--were properly fired. Both courts said that the officers were the only ones who could control their sugar levels and that by failing to do so they posed a direct threat to themselves and the public. "The lesson for employers is clear," according to Jeanne Kincaid: "you have to offer employees with disabilities accommodations to help them perform the essential duties of their jobs. However, you are not required to keep the employees on the job if they fail to take medications needed to control their disabilities and pose a danger to themselves or others." [please see Disability, Leave & Absence Reporter number 127, March 1999 for more on these cases].

Please note: The information contained herein is intended to educate readers on various legal aspects of the Americans with Disabilities Act and is not meant to be definitive in all circumstances or relied upon without prior consultation with legal counsel.

Additional Information

For more information on the Americans with Disabilities Act, you may contact the following:

- Job Accommodation Network (<http://janweb.icdi.wvu.edu>)
918 Chestnut Ridge Rd., Suite I
P.O. Box 6080
Morgantown, WV 26506-6080
(800) 526-7234 (voice/TDD) or (800) ADA-WORK (800) 526-2262 (in Canada)

Offers information and free telephone consulting about job accommodations, and maintains a database of accommodations methods, devices and strategies. Assists employers and individuals with disabilities in the use of public programs dealing with disabilities.

- President's Committee on Employment of People with Disabilities

(<https://www.usccr.gov/pubs/crd/federal/pcepd.htm>)

1331 F Street, NW

Washington, DC 20004

(202) 376-6200 (voice)

(202) 376-6205 (TTY)

Provides practical information and technical assistance on employment of people with disabilities. Works with state organizations (President's Committee Partners) to increase employment opportunities for people with disabilities.

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