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POINT OF VIEW

Craig Pratt

Some Tips for Coping With New ADA Rules

Title I of the Americans With Disabilities Act, which goes into effect on July 26 for employers with 25 or more workers, will require your organization to extend job rights and protections to disabled people.

The ADA significantly expands the definition of a disability used in previous federal and state laws because it includes such conditions as hearing and visual impairments, epilepsy, AIDS and mental/emotional disorders.

The ADA will primarily cover current employees who are or will become (for example, after surgery) disabled as well as all job applicants who claim a disability. It will restrict employers from using certain hiring practices such as pre-employment physical exams and checking previous workers' compensation claims experience.

It will also mandate that employers make "reasonable accommodations" such as modifying work schedules and restructuring jobs, making physical modifications to the office or work area, installing special equipment and providing a reader or interpreter.

Many experts have characterized the ADA as a Trojan horse that contains a host of practical consequences and implementation problems that will only become fully apparent in the years to come. Due to the recently passed Civil Rights Act of 1991, failures to comply with the ADA may result in punitive and compensatory damage awards of up to \$300,000 (plus defense costs), depending upon the size of your business.

Future court and regulatory agency decisions will help us understand the full implications of the ADA, but they will also create havoc for the employers and employees who bring specific cases to their attention.

However, without waiting for such decisions, most employers can meet the requirements of the ADA by learning about the law and applying its principles to their workplaces. The ADA is very complex and will apply differently to every organization, but managers can begin to meet their compliance responsibilities by implementing these three steps:

■ **First**, if you interview and/or make decisions to hire prospective new employees, you should familiarize yourself with the ADA's rules on pre-employment processes. It is a problem, for example, to ask how many times an applicant has been absent from work on a previous job and the reasons for each absence. Questions like this would force an applicant to disclose information about previous or existing illnesses and/or disabilities.

It would be better for you to describe the hours of operation and state your organization's attendance policy to all applicants. Then simply ask if the prospective employee will be able to meet those requirements.

■ **Second**, you should immediately analyze your organization's jobs to develop a detailed understanding of the "essential functions" of each position. Positions

which have the most turnover or the greatest number of workers performing similar duties should be your first priority.

One example might be an outdated job description for a receptionist position that lists greeting visitors, answering telephone lines and typing correspondence as the main duties. In actual practice, the visitor-greeting and telephone-answering duties continue to be important but the typewriter has long since disappeared because other employees now do their own word processing.

In this example, the typing function would probably be classified as "nonessential" and, therefore, it would be discriminatory under the ADA to block an individual from doing the job because he or she could not use a typewriter due to a disability.

■ **Understanding** this notion of "essential functions" will also help you take the third important step in complying with the ADA by allowing your organization to identify and decide on "reasonable accommodations." The ADA places a weighty responsibility on managers to decide which changes are needed to allow a "qualified person with a disability" to perform a position's "essential functions."

For example, someone with a wheelchair may need to have a platform installed to reach a counter area. Other situations will require different accommodations, such as allowing an employee who returns from surgery to change from a full- to a part-time position or excusing an employee from wearing a particular kind of uniform because of an injury.

The ADA also requires managers to solicit an employee's opinion about any changes that he or she might need. You will be permitted to ask for medical certification of the employee's claims should you feel justified in doing so.

Gaining more understanding of the ADA and implementing those three steps will be a good beginning toward complying with this important and complicated new law.



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