# Office of Human Resources

## *1704 Americans with Disabilities Act (ADA)*

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**Georgia Department of Human Services**
**Human Resources Policy #1704**

Americans with Disabilities Act (ADA)

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**References:**
The Americans With Disabilities Act of 1990, as amended by the Americans With Disabilities Act of 2008
Vocational Rehabilitation Act of 1973, Section 504 (29 USC 206[D])
U.S. Equal Employment Opportunity Commission 915.002
Rules of the State Personnel Board 478-1-28 — Voluntary Separations for Classified Employees

The Department of Human Services (DHS) and its employees are subject to the provisions of the Americans With Disabilities Act (ADA) prohibiting unlawful discrimination against qualified individuals with disabilities. Specifically, Title II of the ADA prohibits discrimination in job application procedures, hiring, advancement, discharge, compensation, job training, and other terms, conditions, and privileges of employment in state government.

In accordance with the requirements of Title II of the ADA, DHS will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities.

The ADA makes it unlawful to discriminate in all employment practices such as:

a. Recruitment
b. Pay
c. Hiring
d. Firing
e. Promotion
f. Job assignments
g. Training
h. Leave
i. Lay-off
j. Benefits
k. All other employment related activities.

The Department of Human Services does not discriminate on the basis of disability in its hiring or employment practices and complies with all regulations promulgated by the U.S. Equal Employment Opportunity Commission under Title I of the ADA.

The Department of Human Services will generally, upon request, provide appropriate aids and ser-

vices leading to effective communication for qualified persons with disabilities so they can participate equally in Department of Human Services programs, services, and activities.

# Section A: Definitions

1. The term “disability” with respect to an individual means:
    a. A physical or mental impairment that substantially limits one or more major life activities of such individual.
    b. A record of such an impairment; or
    c. Being regarded as having such an impairment.
2. Major life activities include but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.
3. Qualified individual is an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. Consideration shall be given to the employer’s judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.
4. Reasonable accommodations may include:
    a. Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
    b. Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.
5. Undue hardship in general, means an action requiring significant difficulty or expense, when considered in light of the factors set forth below.
    a. Factors to be considered in determining whether an accommodation would impose an undue hardship on a covered entity include:
        I. The nature and cost of the accommodation needed under this chapter.
        II. The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility.
        III. The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and
        IV. The type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

6. Essential functions of the job refers to those job activities that are determined by the employer to be essential or core to performing the job; these functions cannot be modified.

> **NOTE** The examples provided in the above terms are not meant to be all-inclusive and should not be construed as such. They are not the only conditions that are considered to be disabilities, impairments or reasonable accommodations covered by the ADA.

# Section B: Reasonable Accommodation

1. An applicant or employee must inform the Department of Human Services of a need for an adjustment or change concerning some aspect of the application process, the job, or a benefit of employment for a reason related to a disability. An individual need not have a particular accommodation in mind before making a request. An applicant or employee may request a reasonable accommodation at any time, orally or in writing.
    a. A family member, health professional, or other representative may request an accommodation on behalf of an employee or applicant.
    b. A request does not have to include any special words, such as "reasonable accommodation," or "disability". A request is any communication in which an individual ask or states a need for the Department of Human Services to provide, adjust, or change something at work for a reason related to a medical condition
2. Reasonable accommodation is available to qualified applicants and employees with disabilities. Reasonable accommodations must be provided to qualified employees regardless of whether they work part- time or full-time or are considered "probationary." Generally, the individual with a disability must inform the employer that an accommodation is needed. There are a number of possible reasonable accommodations that an employer may have to provide in connection with modifications to the work environment or adjustments in how and when a job is performed. These include:
    a. Making existing facilities accessible.
    b. Job restructuring.
    c. Part-time or modified work schedules.
    d. Acquiring or modifying equipment.
    e. Changing tests, training materials, or policies.
    f. Providing qualified readers or interpreters; and
    g. Reassignment to a vacant position.
3. A modification or adjustment is "reasonable" if it "seems reasonable on its face, i.e., ordinarily or in the run of cases;" this means it is "reasonable" if it appears to be "feasible" or "plausible."
    a. A reasonable accommodation also must be effective in meeting the needs of the individual.
        I. A reasonable accommodation enables the individual to perform the essential functions of the position.

II. A reasonable accommodation enables an applicant with a disability to have an equal opportunity to participate in the application process and to be considered for a job.

III. A reasonable accommodation allows an employee with a disability an equal opportunity to enjoy the benefits and privileges of employment that employees without disabilities enjoy.

4. If a manager or supervisor directly receives a reasonable accommodation request, that individual should forward the request immediately to their assigned Human Resources Specialist (HRS) within 2 business days, if practicable.

    a. While the assigned HRS will handle all requests for reasonable accommodations, supervisors, managers, and office directors will be consulted about specific requests to ensure that any accommodation meets the individual's disability related needs and enables the individual to perform the essential functions of the position.

5. While an individual with a disability may request a change due to a medical condition, this request does not necessarily mean that the employer is required to provide the change. A request for reasonable accommodation is the first step in an informal, interactive process between the individual and the employer. In some instances, before addressing the merits of the accommodation request, the employer needs to determine if the individual's medical condition meets the ADA definition of "disability," a prerequisite for the individual to be entitled to a reasonable accommodation.

# Section C: Reasonable Accommodation Interactive Process

1. The interactive process refers to an information gathering approach used by an employer with the employee to evaluate a request for accommodation. It is intended to be a flexible approach that centers on the communication between an employer and the individual requesting reasonable accommodation but may (and often does) involve obtaining relevant information from a supervisor and an individual's health care provider.

    a. Upon receipt of an oral or written request for reasonable accommodation. DHS engages in a discussion with the requestor and other relevant individuals (e.g., a supervisor, or the requestor's health care provider) to collect the necessary information to make an informed decision about whether the requestor is covered as an individual with a disability. If so, what reasonable accommodation(s) will effectively eliminate the barrier identified by the requestor and permit an equal opportunity to apply for a job, to perform a job or to gain access to the workplace, or to enjoy access to the benefits and privileges of employment.

2. Individuals may request accommodations in conversation or may use any other mode of communication. An employer may choose to write a memorandum or letter confirming the individual's request. Alternatively, an employer may ask the individual to fill out a form or submit the request in written form, but the employer cannot ignore the initial request. An employer also may request reasonable documentation that the individual has an ADA disability and needs a reasonable accommodation.

    a. DHS may need to consult with other personnel (e.g., an employee's supervisor, Information Technology staff) or outside sources to obtain information necessary for making a determi-

nation about the request.

3. After a request for accommodation has been made, DHS will begin the interactive process to determine what, if any, accommodation should be provided. This means that the individual requesting the accommodation and DHS must communicate with each other about the precise nature of the problem that is generating the request, how a disability is prompting a need for an accommodation, and alternative accommodations that may be effective in meeting an individual's needs.
4. DHS will contact the applicant or employee as soon as practicable, to begin discussing the accommodation request. When the disability and/or the need for accommodation is not obvious, DHS may ask the individual for reasonable documentation about their disability and functional limitations.
5. DHS may seek only medical information that is sufficient to explain the nature of the disability, the individual's need for reasonable accommodation, and how the requested accommodation will assist the individual to apply for a job, perform the essential functions of a job, or enjoy the benefits and privileges of the workplace. DHS may give the individual a list of questions for the health care provider or other appropriate professional to answer. If sufficient medical information is not provided by the individual, DHS may ask the requester to sign a limited release permitting DHS to contact the provider for additional information.
    a. DHS may determine whether medical information is needed and, if so, may request such information from the requestor and/or the appropriate health professional (for example, a doctor, psychologist, clinical social worker, physical therapist, or rehabilitation counselor).
    b. If the initial information provided by the health professional or volunteered by the requestor is insufficient for DHS to determine whether the individual has a "disability" and/or that an accommodation is needed, DHS will explain what additional information is needed and why.
    c. Refusal to provide information requested by the Human Resources Specialist, may result in a decision not to provide reasonable accommodation to the requestor.
6. Decisions regarding a request for reasonable accommodation will be communicated to an applicant or employee.
    a. If DHS grants a request for accommodation, the Human Resources Specialist will contact the requestor and discuss implementation of the accommodation.
    b. If a decision to provide an accommodation other than the one specifically requested, is still considered a decision to grant an accommodation. The Human Resources Specialist will explain both the reasons for the denial of the individual's specific requested accommodation, and why DHS believes that the chosen accommodation will be effective.
    c. If the request is approved but the accommodation cannot be provided immediately, the Human Resource Specialist will specify why there is a delay, including any extenuating circumstances that justify the delay, and when DHS expects to provide the accommodation(s) granted. If an accommodation cannot be provided immediately, the Human Resources Specialist will also discuss with the employee whether an interim accommodation can be provided.
    d. If DHS denies a request for accommodation, the Human Resources Specialist will clearly explain the specific reasons for the denial.

e. If there is a reason to deny the specific reasonable accommodation requested (e.g., the accommodation poses an undue hardship or is not required by the Rehabilitation Act), the Human Resources Specialist will explore with the individual whether another accommodation would be possible. The fact that one accommodation proves ineffective or would cause undue hardship does not necessarily mean that this would be true of another accommodation. Similarly, if an employee requests removal of an essential function or some other action that is not required by law, the Human Resources Specialist will explore whether there is a reasonable accommodation that will meet the employee's needs.

f. If the Human Resources Specialist offers an accommodation other than the one requested, but the alternative accommodation is not accepted, the Human Resources Specialist will record the individual's rejection of the alternative accommodation.

# Section D: Review of Reasonable Accommodation Request

1. Requests for reasonable accommodation will be reviewed based on a careful assessment of the following:
   a. organizational needs,
   b. available resources,
   c. the impact of disabilities on essential functions of employees' positions, and
   d. relevant medical information concerning disabilities to be accommodated.
2. If disabilities or medical conditions are apparent, employees may be placed in modified work environments, given modified duties, or be temporarily reassigned during the review period, if such accommodations are possible without undue hardship.
3. Human Resources Specialist along with the employee's supervisor and leadership should make determinations within fifteen (15) workdays of receiving requests for reasonable accommodation.
4. Reasonable accommodation requests that are denied on the basis of undue hardship must include detailed documentation of accommodations considered and reasons for denial.
5. Written approval from the Office of Human Resources (OHR) Director or their designee must be received prior to implementing reasonable accommodations resulting in a change in employment status, a change in the terms and conditions of employment, or a change in the essential functions of a position. Examples include, but are not limited to:
   a. temporary or permanent reassignments,
   b. significant modification of work schedules or environments, or
   c. changes in work duties and responsibilities.

# Section E: Temporary and Modified Duty Assignments

1. Temporary and modified duty assignments may be determined appropriate to reasonably accommodate disabilities.
    a. Temporary and modified duty assignments can be made for up to sixty (60) calendar days. Management has the option of extending assignments for up to ten (10) calendar days beyond the 60-calendar day limit if the additional time is needed to make work-related arrangements for employees.
    b. Prior to returning to regular duty, the employee must provide a medical statement from their attending health care provider releasing the employee to perform the essential functions of the position, with or without reasonable accommodation.
2. If an employee is unable to return to work and perform the essential functions of the position, with or without reasonable accommodation, at the end of a temporary and modified duty assignment, family and medical leave or other leave with or without pay may be requested and considered.

# Section F: Permanent Reassignments

Permanent reassignments may be determined appropriate to reasonably accommodate disabilities. Employees may be permanently reassigned to positions within the same job, to positions in a different job on the same paygrade, or to positions in a different job on a lower paygrade.

1. Within Current Job - Employees may be permanently reassigned to vacant or soon to be vacant positions within the same job. Positions available for reassignments are not to be limited to positions within the same work area but can include all positions at the work location in that job.
2. Different Job/Same Paygrade - Permanent reassignment to vacant or soon to be vacant positions in a different job on the same paygrade are to be handled as follows:
    a. When a position vacancy has not been advertised, an employee may be permanently reassigned following a careful review of the employee's qualifications for performing the essential functions of the position, work performance, and organizational needs. Such reassignment must have prior written approval from the OHR Director or their designee.
    b. When a position vacancy has been advertised, it is generally not permissible to interrupt the selection process and non-competitively reassign an employee to the position as a reasonable accommodation. Situations in which non-competitive reassignment is being considered must first be discussed with OHR.
3. Voluntary Demotion - Permanent reassignment to a lower job as reasonable accommodation will be handled in accordance with the provisions of DHS Human Resources Policy #1101 regarding voluntary demotions.

# Section G: Separation from Employment

1. Employees may be separated from employment based on inability to perform assigned duties when:
    a. There is no reasonable accommodation that can be made in the current position without incurring an undue hardship on the organization; and,
    b. There is no other position in the same job (vacant or soon to be vacant) for which the employee qualifies, and into which the employee can be reassigned or is willing to accept reassignment; and,
    c. There is no position in a different job on the same paygrade (vacant or soon to be vacant) for which the employee qualifies, and into which the employee can be reassigned or is willing to accept reassignment; and,
    d. There is no position in a lower job (vacant or soon to be vacant) for which the employee qualifies, and into which the employee can be demoted or is willing to accept demotion; and,
    e. Additional leave options have been considered and are either determined not to be available, or cannot be approved without undue hardship.
2. Classified employees who are absent from work as indicated below can be separated from employment in accordance with the Rules of the State Personnel Board. Separations for these reasons are considered voluntary separations.
    a. Absent from work for five (5) consecutive workdays or equivalent without proper authorization.
    b. Failure to return to work at the expiration of an approved leave of absence.
    c. Absent from work for five (5) consecutive workdays or equivalent after all sick and annual leave is used.
3. This policy does not restrict the authority of management to discipline or separate employees based on failure to meet standards of performance or conduct, or failure to follow procedures for reporting and approval of absences.
4. The OHR – Compliance Management Section should be contacted for assistance prior to separating employees as indicated in this policy.

For additional information or assistance, please contact your local Human Resource Office, or email DHS-Policies@dhs.ga.gov.

# 1704 A1 Procedure for Handling Americans with Disabilities Act (ADA) Medical Information

# Section A: ADA Requirements Overview

1. The ADA does not limit the nature or extent of post-job-offer medical examinations and inquiries. It does, however, place very strict limitations on the use of information resulting from such examinations and inquiries. These limitations apply also to information resulting from examinations or inquiries made of employees.
2. The Equal Employment Opportunity Commission cites the following language in its Technical Assistance Manual for the Americans with Disabilities Act:

   "… All information obtained from post-offer medical examinations and inquiries must be collected and maintained on separate forms, in separate medical files and must be treated as a confidential medical record. Therefore, the employer should not place any medical-related material in an employee's personnel file. The employer should take steps to guarantee the security of the employee's medical information…"

# Section B: Medical Document Definition

1. For purposes of this procedure, a medical document is any document that provides any level of detail concerning a general or specific disability or medical condition. While not exhaustive, examples of such forms or documents include:
   a. Employee Statement of Health
   b. Long/Short Term Disability Benefit Claim Forms
   c. Employee Health Expense Reports
   d. Health Benefit Plan Disability Certification
   e. Physician's Service Reports
   f. Evidence of Insurability
   g. Doctor's statements related to employee absences (sick leave approval)
   h. Doctor's release (return to work) statements
   i. Infectious Disease Reports
   j. Incident Reports (where there is an identified work-related injury)
   k. Workers' Compensation Forms
   l. Family and Medical Leave material containing medical information

# Section C: Confidentiality and Access to Medical Information

1. Compliance with the ADA requires that medical (disability related) information be handled in a confidential manner. To ensure compliance, the following restrictions apply to accessing and retaining medical information:
    a. Supervisors and managers are not to create and/or retain any employee medical information as defined by these procedures. This would include, for example, information detailing an employee absence based on a medical condition or request for an accommodation.
    b. Supervisors and managers may maintain summary logs or other documents necessary to record employee attendance or performance, even if such information is related to a disability. The document cannot, however, identify generally or specifically the nature of the disability or illness.

       **Example:** An employee calls the unit supervisor and volunteers the information that the chemotherapy treatment they received the previous day has them feeling nauseous and they are requesting sick leave for the day. It is permissible for the supervisor to note in the employee's productivity file the request for sick leave, date, time of call, etc. No reference, however, is to be made to the chemotherapy or the disease if this document is to be retained by the supervisor.
2. Medical information folders will be centrally retained with the Office of Human Resources (OHR) at 2 Peachtree to ensure the required restricted access.
3. Any request by a supervisor or manager to review an employee's official personnel file will not include the medical information folder. Unless otherwise authorized, no request for access to or information from an employee's official personnel file will include the associated medical information folder except as provided for by this procedure.
4. Human Resources staff will be informed of the critical need to strictly adhere to this procedure.
5. The environment where these records are retained are secured in a locked file cabinet. This restricts access to all but those designated to handle these confidential records.
6. Supervisors and managers will be informed of the location and person(s) with access to this information.

# Section D: Employee and Applicant Medical Documentation

1. While the medical record provisions of the ADA, apply only to those applicants and employees who satisfy its definition of persons with disabilities. For purposes of continuity, all DHS employee and applicant medical information will be handled as follows:
2. All medical information currently residing in supervisor productivity files, or other files not created for the purpose of complying with these procedures, must be removed and immediately sent to OHR at 2 Peachtree to be retained in a separate file.
3. No other copies of the medical information will be retained in any other folder at the agency.

Exceptions may be permissible in instances where authorized confidential files are maintained as a result of litigation, workers' compensation matters, or Federal or State enforcement agency investigations. Other exceptions permitted are files created as a result of complaints filed under the Unlawful Discrimination Complaint Procedure, Classified and Unclassified Employee Compliant Procedures, or DHS administrative investigations or reviews. Additional exceptions may be permitted by the DHS Office of Human Resources on a case-by-case basis.

4. The separately created medical information folder may be filed in any of the following three ways:
    a. The folder may be placed within the employee's official personnel file. (Under this option the medical folder is still to be considered a separate file and is not available for access except as provided by this procedure).
    b. The folder may be placed alongside the employee's official personnel file.
    c. The folder may be retained in a separate area than that of the employee's official personnel file.

## Section E: Other Considerations

1. The provisions of this procedure extend to official employee records requested from any archive. In handling these archive records, a separate medical folder need not be created. However, it will be necessary to carefully review the contents of the folder and remove any medical information before releasing the folder to anyone not authorized to access the medical information.
2. Government officials investigating compliance with the ADA and other Federal and State laws prohibiting discrimination on the basis of disability or handicap should be provided relevant information on request. Other Federal laws and regulations also may require disclosure of relevant medical information.
3. Relevant information may be provided to State workers' compensation offices or "second injury" funds, in accordance with State workers' compensation laws.
4. This procedure does not prohibit, when appropriate, first aid and safety personnel from being informed if a given disability might require emergency treatment or if any specific procedures are needed in the case of fire or other evacuations.

For additional information or assistance, please contact your local Human Resource Office, or email DHS-Policies@dhs.ga.gov.

# 1704 A2 Americans with Disabilities Act (ADA) Frequently Asked Questions

1. **What practices and activities are covered by the employment nondiscrimination requirements?**

   The ADA prohibits discrimination in all employment practices, including job application procedures, hiring, firing, advancement, compensation, training, and other terms, conditions, and privileges of employment. It applies to recruitment, advertising, tenure, layoff, leave, fringe benefits, and all other employment related activities.

2. **Who is a "qualified individual with a disability?"**

   A qualified individual with a disability is a person who meets legitimate skill, experience, education, or other requirements of an employment position that he or she holds or seeks, and who can perform the "essential functions" of the position with or without reasonable accommodation. Requiring the ability to perform "essential" functions assures that an individual will not be considered unqualified simply because of inability to perform marginal or incidental job functions. If the individual is qualified to perform essential job functions except for limitations caused by a disability, the employer must consider whether the individual could perform these functions with a reasonable accommodation. If a written job description has been prepared in advance of advertising or interviewing applicants for a job, this will be considered as evidence, although not necessarily conclusive evidence, of the essential functions of the job.

3. **What is "reasonable accommodation?"**

   Reasonable accommodation is a modification or an adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to participate in the application process or to perform essential job functions. Reasonable accommodation also includes adjustments to assure that a qualified individual with a disability has rights and privileges in employment equal to those of nondisabled employees.

4. **What kinds of actions are required to reasonably accommodate applicants and employees?**

   Examples of reasonable accommodation include making existing facilities used by employees readily accessible to and usable by an individual with a disability; restructuring a job; modifying work schedules; acquiring or modifying equipment; providing qualified readers or interpreters; or appropriately modifying examinations, training, or other programs. Reasonable accommodation also may include reassigning a current employee to a vacant position for which the individual is qualified, if the person becomes disabled and is unable to do the original job.

5. **What are the limitations on the obligation to make a reasonable accommodation?**

   The disabled individual requiring the accommodation must be otherwise qualified, and the disability must be known to the employer. In addition, an employer is not required to make an accommodation if it would impose an "undue hardship" on the operation of the employer’s business. "Undue hardship" is defined as "an action requiring significant difficulty or expense" considering in light of a number of factors. These factors include the nature and cost of the

accommodation in relation to the size, resources, nature, and structure of the employer's operation. Where the facility making the accommodation is part of a larger entity, the structure and overall resources of the larger organization would be considered, as well as the financial and administrative relationship of the facility to the larger organization. In general, a larger employer would be expected to make accommodations requiring greater effort or expense than would be required of a smaller employer.

6. **Can an employer refuse to hire an applicant or fire a current employee who is illegally using drugs?**

   Yes. Individuals who currently engage in the illegal use of drugs are specifically excluded from the definition of a "qualified individual with a disability" protected by the ADA when an action is taken on the basis of their drug use.

7. **Is testing for illegal drugs permissible under the ADA?**

   Yes. A test for illegal drugs is not considered a medical examination under the ADA; therefore, employers may conduct such testing of applicants or employees and make employment decisions based on the results.

8. **Are alcoholics covered by the ADA?**

   Yes. While a current illegal user of drugs is not protected by the ADA if an employer acts on the basis of such use, a person who currently uses alcohol is not automatically denied protection. An alcoholic is a person with a disability and is protected by the ADA if s/he is qualified to perform the essential functions of the job. An employer may be required to provide an accommodation to an alcoholic. However, an employer can discipline, discharge or deny employment to an alcoholic whose use of alcohol adversely affects job performance or
   conduct. An employer also may prohibit the use of alcohol in the workplace and can require that employees not be under the influence of alcohol.

9. **Are people with AIDS covered by the ADA?**

   Yes. The legislative history indicates that Congress intended the ADA to protect persons with AIDS and HIV disease from discrimination.

10. **How are the employment provisions enforced?**

    The employment provisions of title I of the ADA are enforced under the same procedures applicable to race, sex, national origin, and religious discrimination under title VII of the Civil Rights Act of 1964. Complaints regarding actions that occur on or after July 26, 1992, may be filed with the Equal Employment Opportunity Commission or designated State human rights agencies.

11. **When is an employer required to make a reasonable accommodation?**

    An employer is only required to accommodate a "known" disability of a qualified applicant or employee. The requirement generally will be triggered by a request from an individual with a disability, who frequently will be able to suggest an appropriate accommodation. Accommodations must be made on an individual basis, because the nature and extent of a disabling condition and the requirements of a job will vary in each case. If the individual does not request an

accommodation, the employer is not obligated to provide one except where an individual's known disability impairs his/her ability to know of, or effectively communicate a need for, an accommodation that is obvious to the employer. If a person with a disability requests, but cannot suggest, an appropriate accommodation, the employer and the individual should work together to identify one. There are also many public and private resources that can provide assistance without cost.

12. **Can an employer maintain existing production/performance standards for an employee with a disability?**

    An employer can hold employees with disabilities to the same standards of production/performance as other similarly situated employees without disabilities for performing essential job functions, with or without reasonable accommodation. An employer also can hold employees with disabilities to the same standards of production/performance as other employees regarding marginal functions unless the disability affects the person's ability to perform those marginal functions. If the ability to perform marginal functions is affected by the disability, the employer must provide some type of reasonable accommodation such as job restructuring but may not exclude an individual with a disability who is satisfactorily performing a job's essential functions.

13. **Can an employer establish specific attendance and leave policies?**

    An employer can establish attendance and leave policies that are uniformly applied to all employees, regardless of disability, but may not refuse leave needed by an employee with a disability if other employees get such leave. An employer also may be required to make adjustments in leave policy as a reasonable accommodation. The employer is not obligated to provide additional paid leave, but accommodations may include leave flexibility and unpaid leave.

    A uniformly applied leave policy does not violate the ADA because it has a more severe effect on an individual because of his/her disability. However, if an individual with a disability requests a modification of such a policy as a reasonable accommodation, an employer may be required to provide it, unless it would impose an undue hardship.

14. **How does the ADA affect workers' compensation programs?**

    Only injured workers who meet the ADA's definition of an "individual with a disability" will be considered disabled under the ADA, regardless of whether they satisfy criteria for receiving benefits under workers' compensation or other disability laws. A worker also must be "qualified" (with or without reasonable accommodation) to be protected by the ADA. Although not all work-related injuries cause physical or mental impairments that "substantially limit" a major life activity, many on-the-job injuries may now constitute disabilities under the ADAAA's broadened definition of "disability."

15. **How can I find out whether my situation falls under the ADA or just find out more information?**

    Visit ada.gov, where you can read the actual regulations, find answers to frequently asked questions, and find other resources.