

The Americans With Disabilities Act and Your Business

One of the most significant federal laws of the last 20 years is the Americans With Disabilities Act of 1990. This law's purpose is to provide full economic opportunity to disabled individuals without discrimination. It forbids employers from discriminating against them on the basis of their disabilities. The law has had a major impact on employers' practices in job application procedures, hiring, job placement, compensation, promotions, terminations, and other areas. It has also been the source of much litigation against employers. The Equal Employment Opportunity Commission reported that it received nearly 140,000 ADA-related complaints in one seven-year period.

Some employers have worried about the ADA's apparent effects on hiring and placement of workers. The law appeared to prohibit them from evaluating workers' physical limitations when deciding their fitness for jobs. Some employers interpreted it to mean that they had to change a particular job to fit a disabled applicant. However, the law exempts an employer from having to do this if placing the person in the position would pose a "direct threat" to himself or other workers. A direct threat is "a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation." Because of this provision, employers have not had to



make unreasonable job modifications for disabled workers.

In addition, an employer has a variety of hiring and placement procedures available under the law. For example, the employer may still test for drug use. The ADA does not protect a worker's use of illegal drugs, and the employer may deny or terminate employment for their use. Also, an employer is within its rights to ask about an individual's abilities. It can require a medical

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examination of an individual so long as it does so for all applicants for similar jobs. If the person cannot perform the essential functions of the job, the employer does not have to hire him. The employer may also ask an applicant to perform a job demonstration. This technique provides a simulated environment where the applicant can show how he would do a job. It can be useful when applicants have obvious disabilities that appear to interfere with safe and efficient job performance.

Regardless of how an employer conducts its personnel practices, it is always vulnerable to claims of discrimination under the ADA. To protect themselves against financial loss from such claims, employers should consider purchasing employment practices liability insurance (EPLI). This insurance covers an organization's liability for "wrongful acts," including discrimination. Most policies define discrimination as including violations of federal, state and



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local laws that give protected status to certain individuals. Because of these provisions, EPLI policies should cover employers for damages they must pay as the result of violations of the ADA. In addition, the policy will pay the costs of defending the organization against the claim, even if the claim is groundless.

EPLI policies cover claims made during the policy period, but only if the alleged wrongful act occurred on or after a specific date, known as the "retroactive date." For example, a policy written for the period January 1, 2008 to January 1, 2009 and with a retroactive date of January 1, 2004 will cover a claim made on November 1, 2008 for an act that happened on July 1, 2006. It will not cover a claim made on the same date for an act that happened on July 1, 2003. There is no standard EPLI policy, so the policies will vary by company.

Modern employment laws like the ADA can easily trip up even a well-meaning employer. All organizations should consider buying an EPLI policy.



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