

ACCOMMODATING EMPLOYMENT TESTING
TO THE
NEEDS OF INDIVIDUALS WITH DISABILITIES

Revised July 2002

Prepared by:

Cheryl Mahaffey
President
CM Consults
7822 Veragua Drive
Playa Del Rey, CA 90293
(310) 306-2939
<http://www.cmconsults.com>

TABLE OF CONTENTS

INTRODUCTION	1
OVERVIEW	2
Employers Covered by the ADA	2
Definition of "Qualified Individual with Disability"	2
Reasonable Accommodation	3
GUIDELINES FOR DEVELOPING A MODEL POLICY	4
Providing Reasonable Accommodation	4
Providing Test Information	4
Possible Accommodations	4
Requesting Accommodation for Testing	6
Possible Options for "Request for Accommodation" Form	9
Repeat Notification That Test Accommodation May Be Requested	9
Newly Identified Need During Test Administration	9
Retest After Scoring	9
Flexibility	10
Alternative Testing Options	10
ADA INFORMATION AND RESOURCES	11
REFERENCES	14

INTRODUCTION

When congress passed the Americans with Disabilities Act (ADA), there were many questions concerning how these provisions would impact employment testing. Under the ADA, even if a test is job-related and justified by business necessity, employers may need to provide reasonable accommodations.

In 1992, a group of industrial psychologists and testing professionals met to discuss the impact of the Americans with Disabilities Act on employment testing procedures. After discussing legal considerations and technical and practical logistics with regard to implementing the new act, it was determined that it would be useful to the testing community to incorporate the ideas discussed at the conference in a document proposing guidelines for accommodating testing to individuals with disabilities. The document, first published in 1992, has proven to be a useful tool in assisting employers to develop policies and procedures that will be fair and consistent with the statute. The document, reproduced in this booklet, emphasized that it was necessary to evaluate ADA claims on a case-by-case basis considering the individual circumstances and the nature of the individual disability.

In three important cases decided by the Supreme Court on June 22, 1999, this emphasis on the individual has been reaffirmed. These rulings addressed the definition of disability and have given employers additional clarification with regard to the analysis required.

The Court's continued review of ADA cases has substantially narrowed the definition of disability. This booklet updates information on the ADA and provides useful links to governmental resources.

-Cheryl Mahaffey

OVERVIEW

The Americans with Disabilities Act (ADA) may be the most significant Civil Rights legislation to be passed by Congress in 25 years. Enacted in 1990, ADA gives civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, State and local government services, and telecommunications.

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.

Although the Act covers a wide range of employment practices, from recruitment to job assignments, this document focuses on one important aspect of these requirements, the pre-employment testing of qualified individuals with disabilities.

Employers Covered by the ADA

ADA Title I employment provisions apply to private employers, State and local governments, employment agencies, and labor unions. Employers with 25 or more employees were covered as of July 26, 1992. Employers with 15 or more employees were covered two years later, beginning July 26, 1994.

ADA Title II applies to all programs, activities, and services of public entities.

Definition of "Qualified Individual with Disability"

The ADA protects qualified individuals with a disability. A disability is defined under the ADA according to three categories. First, a physical or mental impairment that substantially limits one or more major life activities of the individual. Second, a record of such impairment. Third, being regarded as having such an impairment.

A qualified individual with a disability is a person who meets legitimate skill, experience, education, or other requirements of an employment position that s/he 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 with a disability 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.

Under the ADA even if a pre-employment test is job-related and justified by business necessity, employers may need to provide reasonable accommodation for applicants with disabilities to take a test. These reasonable accommodations will allow the testing process to reflect more accurately a job applicant's skill and ability.

Reasonable Accommodation

The Department of Justice and the EEOC have developed a set of questions and answers regarding the Americans with Disabilities Act. They define a "reasonable accommodation" as:

"Reasonable accommodation is any modification or 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 employees without disabilities."

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 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 (see ADA Information and resources, page 11) that can provide assistance without cost.

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" when considered 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. Undue hardship is determined on a case-by-case basis.

GUIDELINES FOR DEVELOPING A MODEL POLICY

Providing Reasonable Accommodation

These guidelines assume that the testing procedure and method of administration utilized by the employer are job-related and consistent with business necessity. The purpose of these guidelines is to provide employers with decision rules they can use to identify and administer valid selection procedures to individuals with disabilities. This may require providing "reasonable accommodation" to allow the testing process to more accurately reflect an applicant's job skills and abilities. Recognizing that accommodations are most effective when the individual with a disability provides input, the proposed guidelines include giving applicants sufficient information concerning the testing process and procedures to allow them to identify test behaviors which they may have difficulty in performing due to their disabilities. The applicants also suggest accommodations which they feel will "level the playing field," allowing them to complete the testing procedures.

Providing Test Information

It is important that employers provide sufficient information to applicants to allow them to determine if they will require appropriate accommodations. This should be accomplished early in the application process. It is suggested that employers supply test information and notify applicants that test accommodations may be requested. The information must be in sufficient detail to allow applicants to make informed decisions as to their accommodation needs. This information should include what the test requires the person to do, how information is presented, the response format, and time limits.

Possible Accommodations

A variety of possible test accommodations were identified and discussed. These are shown in Table I.

It was recognized that this list is not exhaustive, and that there may be a wide range of additional accommodations which may be suggested by applicants and their physicians.

Table 1
Possible Test Accommodations

Level I Accommodations	Level II and III Accommodations
<ul style="list-style-type: none"> ➤ clipboards ➤ large type ➤ more time for power tests ➤ signer for instructions ➤ magnifier ➤ oversized pencil/writing tool ➤ contrast (ink and paper) ➤ testing site illumination ➤ individual administration ➤ physical environment 	<ul style="list-style-type: none"> ➤ waive tests – all or part of battery ➤ reader or cassette ➤ more time for speeded tests ➤ scribe ➤ Braille ➤ raised type ➤ substitute test ➤ substitute written for oral ➤ computer enhanced ➤ voice synthesizer ➤ simplifying instructions

The primary concern in determining the appropriateness of the accommodation is whether the accommodation compromises the psychometric interpretability of the test with respect to reliability, validity, and norms. For convenience, employers may wish to allocate possible accommodations to three levels based upon the psychometric, administrative, and logistical impact which the accommodation may have on the testing process. Following are suggested definitions for these levels:

Level I Accommodation

- no appreciable psychometric impact
- no appreciable administrative/logistical impact

Level II Accommodation

- requires a professional judgment to determine the degree of psychometric impact
- possible administrative/logistical impact of proposed accommodation must be reviewed on individual basis

Decisions must be made as to whether the proposed accommodation's degree of psychometric or administrative/logistical impact is acceptable. Expert judgment must be used to determine whether the possible degree of impact warrants consideration of alternate test procedures or whether the possible impact is within a range which is deemed acceptable. Even given the assumption that the validity of the modified selection process will be different from that of the original selection process, the critical issue is to determine whether or not the value (meaningfulness and interpretability) of the information obtained will be greater than that obtainable without the test.

Level III Accommodation

- proposed accommodation has significant psychometric and/or administrative/logistical impact, making a decision to administer current test procedures unfeasible

Requesting Accommodation for Testing

An applicant who needs an adjustment or change in the testing process in order to participate because of limitations caused by disability should request such accommodation prior to the testing session.

In order to determine whether such an accommodation is appropriate, documentation of the need for the accommodation is required.

- For Level I accommodation requests, self-documentation may be sufficient.
- For Level II and III accommodation requests, certification of the need for accommodation must be provided by:
 - a licensed professional (in some cases professional qualifications may be required);
 - an approved agency;
 - a company physician; or
 - other qualified company representatives.

Multiple opportunities should be provided for applicants to request such accommodations. These can occur:

- in preapplication conversations
- as part of the application process
- as part of a test information package
- prior to test administration
- during the test session

Test accommodation dialogue should be encouraged and negotiated with the applicant. Every effort should be made to identify or provide desirable accommodations prior to scheduling the testing session. It may be desirable to have the applicant sign off on the proposed accommodation to the testing process.

A suggested Request for Accommodation form, designed to be completed by the individual with the disability and certified by a licensed professional, is shown as Figure 1.

Figure 1
Request for Accommodation Form

REQUEST FOR ACCOMMODATION		
<p>If you have a physical or mental impairment that substantially limits a major life activity, you may be eligible for accommodation in the testing process which will ensure that the tests accurately reflect your skills, knowledges, or abilities. Attempts will be made to provide a reasonable accommodation which will allow you to demonstrate your job-related abilities.</p>		
<p>The information requested below, and any documentation regarding your disability or your need for accommodation in testing, will be considered strictly confidential and will not be shared with any outside source without your express written permission.</p>		
NAME	_____	
	Last Name	First Name
		M. I.
ADDRESS	_____	
	Street	

	City	State
		Zip
TELEPHONE	() _____	
	Area Code	

Accommodation requested for the _____ Examination.

NEED FOR ACCOMMODATION *(To be completed by Applicant.)*

After reviewing sample test items, it has been determined that the following test behaviors cannot be performed by the applicant:

(List all test behaviors which cannot be performed. For example, "Cannot read blue ink on white paper." or "Cannot grasp the regular No. 2 pencil to complete answer sheet.")

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

Figure 1
(Continued)

ACCOMMODATION REQUESTED

The following accommodations are requested in order to provide an accessible test format.

(Be specific in requesting required accommodations. For example, "Test should be copied in high contrast black/white ink." or "Use of magic markers to complete the answer blanks should be allowed.")

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

_____ Applicant's Signature _____ Date

Your request for accommodation in testing must be certified by an appropriate professional (licensed physical, approved agency, etc.).

CERTIFICATION OF NEED FOR ACCOMMODATION *(To be completed by an appropriate professional.)*

This applicant has discussed with me the nature of the test to be administered, and it is my opinion that because of this applicant's disability he/she should be accommodated in the manner described above.

_____ Signed _____ Title
_____ Date _____ License Number
_____ Date Applicant Last Examined _____

Any deliberate falsification on employment application or any document may be cause for termination without notice.

Possible Options for "Request for Accommodation" Form

There are several options an employer might want to consider adding to the form. These are shown below:

Existing Documentation

If *existing documentation* of having the same or similar accommodation provided to the candidate in another test situation has been completed, employers may have candidates submit such documentation instead of completing this form.

Essential Functions of the Job

Some employers may find it desirable to include a review of *essential job functions* at this point in the documentation process. This can be done by having the candidates identify the functions for which they will need accommodation, and then suggesting accommodations which may allow them to perform the essential functions.

Repeat Notification That Test Accommodation May Be Requested

Prior to actual test administration, test administrators should again remind candidates, *"If you have any difficulties in completing this exam and feel you may need an accommodation due to a physical or mental impairment, stop taking the test and notify me immediately."* Individuals can then be scheduled for an accommodation discussion, and decisions can be made concerning the appropriateness of proposed accommodations. Every effort should be made to identify and provide reasonable accommodations prior to testing.

Newly Identified Need During Test Administration

Applicants who did not realize an accommodation would be required until after the testing began should be allowed to leave the testing session and complete the request for accommodation procedures.

Retest After Scoring

Applicants whose tests have been completed and scored may be accommodated after the company's normal retest interval.

Flexibility

Flexibility needs to be built into the testing process so that if during the procedure an individual determines that an accommodation is required, he/she can proceed back into the accommodation request loop. Providing multiple opportunities for a person to request accommodation and enter into a dialogue is highly recommended. For example, if it is determined while discussing essential job functions that there is no initial fit, go on to explore other, more suitable positions.

Alternative Testing Options

If it is determined that it is not feasible to accommodate the existing testing procedure, substitute methods for establishing qualifications should be explored. These could include:

- structured interviews
- work samples
- job trials
- rehabilitation expert's evaluation
- certificates, work histories/references

ADA INFORMATION AND RESOURCES

U.S. Department of Justice

Civil Rights Division
Disability Rights Section
P.O. Box 66738
Washington, DC 20035-6738

The U.S. Department of Justice maintains a web site full of useful information about the Americans with Disabilities Act (www.ada.gov). The web site includes a list (reproduced below for your convenience) of the telephone numbers of Federal agencies that are responsible for providing information to the public about the ADA and organizations that have been funded by the Federal government to provide information through staffed information centers. The agencies and organizations listed are sources for obtaining information about the law's requirements and informal guidance in understanding and complying with the ADA.

For ADA documents and questions:

800-514-0301 (voice)
800-514-0383 (TTY)

www.usdoj.gov/crt/ada/adahom1.htm

U.S. Equal Employment Opportunity Commission

1801 L Street, NW
Washington, DC 20507

For publications:

800-669-3362 (voice)
800-800-3302 (TTY)

For questions:

800-669-4000 (voice)
800-669-6820 (TTY)

www.eeoc.gov

U.S. Department of Transportation

Federal Transit Administration
400 Seventh Street, SW
Washington, DC 20590

ADA Assistance Line for regulations and complaints:

888-446-4511 (voice)

TTY: use relay service

www.fta.dot.gov/office/civ.htm

Federal Communications Commission

1919 M Street, NW
Washington, DC 20554

888-225-5322 (voice)

888-835-5322 (TTY)

www.fcc.gov/cib/dro

U.S. Architectural and Transportation Barriers Compliance Board

1331 F Street, NW, Suite 1000
Washington, DC 20004-1111

800-872-2253 (voice)

800-993-2822 (TTY)

www.access-board.gov

U.S. Department of Labor

Job Accommodation Network

800-526-7234 (voice & TTY)

www.jan.wvu.edu

U.S. Department of Education

Regional Disability and Business Technical Assistance Centers

800-949-4232 (voice & TTY)

www.adata.org

New Freedom Initiative

The New Freedom Initiative includes a number of programs designed to help individual with disabilities become integrated into all aspects of the nation's social and economic life. Access to employment is a critical part of this plan. There are a number of tax incentives and community resources aimed at encouraging businesses with 15 to 100 employees to hire individuals with disabilities. The Equal Employment Opportunity Commission www.eeoc.gov has an information about the initiative and how small business owners can hire and retain qualified individual with disabilities.

REFERENCES

The Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et seq., as amended by the Civil Rights Act of 1991, as passed by Congress November 7, 1991.

The Americans with Disabilities Act of 1990: Your responsibilities as an employer, U.S. Equal Employment Opportunity Commission, EEOC-BK-17-1991.

Loverde, M., McMahon, B., & Morris, G. (in press). Employment Testing and Evaluation. In Hablutzel, N. and McMahon, B. (Eds.), *The Americans with Disabilities Act: Access and Accommodations*. Orlando, FL: PMD Press.

Willingham, W. W., Bennett, R.E., Braun, H., Powers, D.E., Ragosta, M., & Rock, D.A. (1988). *Testing handicapped people*. Sponsored by The College Board, Educational Testing Service, Graduate Record Examinations Board. Needham Heights, MA: Allyn and Bacon.