

## TITLE I

### EMPLOYMENT

**1. DISABILITY means**, with respect to an individual:

- A. A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- B. A record of such impairment; or
- C. Being regarded as having such an impairment (even though the individual does not have such an impairment).

If an individual meets any one of these three tests, he or she is considered to be an individual with a disability for purposes of coverage under the ADA.

- 2. MAJOR LIFE ACTIVITIES means** functions such as caring for one's self, performing manual tasks, walking, hearing, seeing, breathing, learning, and working.
- 3. SUBSTANTIALLY LIMITS -** means significantly restricted, more than minor impairments. With respect to 'work it means significantly restricted ability to perform either a class or broad range of jobs. The inability to perform a single, particular job does not constitute a substantial limitation.
- 4. PHYSICAL or MENTAL IMPAIRMENT** means any psychological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense including speech organs, cardiovascular, reproductive, etc. It also means any mental or psychological disorder such as mental retardation, or mental illness, or specific learning disorder, or drug addiction or alcoholism.

Psychological or mental disorder does not include most sexual behavior disorders or gender identity disorders such as exhibitionism, voyeurism, or transsexualism.

Use of drugs

An individual who is currently using illegal drugs is specifically excluded from the definition of a "qualified person with a disability" even if otherwise meeting the definition

**6. ACTIVITIES AND PRACTICES COVERED UNDER TITLE I**  
Discrimination is prohibited in all aspects of employment including:

- |    |   |    |                   |
|----|---|----|-------------------|
| A. | Application procedures<br>(i.e. advertising,<br>recruiting and testing) | D. | promotion         |
|    |   | E. | pay               |
|    |   | F. | training          |
|    |   | G. | seniority         |
| B. | hiring  | H. | layoff and recall |
|    |   | I. | leave             |
| C. | firing  | J. | fringe benefits   |

- 7. QUALIFIED INDIVIDUAL WITH A DISABILITY** means a person who meets legitimate skill, knowledge, experience or education requirements of a position that he/she holds, or seeks to hold, and can perform the essential functions of the position with or without reasonable accommodations.

Note - requiring the ability to perform the essential functions assures that an individual will not be disqualified because he or she is unable to perform incidental or marginal job *functions*.

Determination of whether an individual with a disability is qualified is to be made at the time of the employment decision, and not based on speculation that the employee may become unable in the future.

8. **ESSENTIAL JOB FUNCTIONS** means the *fundamental job* duties of the position the individual with the disability holds or desires. A function may be essential because: it is the reason a position exists (a typist must be able to type), there are a limited number of employees among whom the function can be distributed, or the function is highly specialized.

Some criteria for determining whether a particular function is essential:

- A. The employer's judgement;
  - B. Identification in a job description prepared in advance of advertising or interview;
  - C. The amount of time spent on the function; and
  - D. The consequences of not performing the function.
9. **REASONABLE ACCOMMODATION** means any modification to a job or work environment that will allow a qualified applicant or employee with a disability to participate in the application process or to perform the essential job functions.

An accommodation may include restructuring a job, modifying work schedules, providing qualified readers or interpreters, or modifying examinations. It may also mean reassigning a current employee who becomes disabled to a vacant position for which he/she is qualified.

Reasonable accommodation does not mean lowering either quantity or quality standards for essential job elements. For instance where a predetermined job standard stated that a custodian must complete certain tasks within a specific time period, it would be permissible to exclude a disabled person who could perform the tasks but took twice as long.

10. **PERSONAL ASSISTANTS** - The regulations are vague and the extent to which employers are required to accommodate disabled employees by providing personal assistants. All that is stated is that "Providing personal assistants, such as page turners for an employee with no hands or a travel attendant to act as a sighted guide to assist a blind employee on occasional business trips, may also be a reasonable accommodation."
11. **JOB RESTRUCTURING** - Entails "reallocating or redistributing non-essential marginal job functions" or "altering when or how an essential function is to be performed". An employer is not required to reallocate essential functions or to make an accommodation involving the restructuring of a job that would fundamentally alter the requirements of a position.
12. **REASONABLE ACCOMMODATION IS NOT REQUIRED WHEN** it would impose an undue hardship on the operation of the employer's business.
13. **UNDUE HARDSHIP** means an action requiring significant difficulty or expense when considered in relation to the size, resources, nature and structure of the employer's operation.

Criteria that would be used to determine if an accommodation presented an undue hardship would include: the nature and cost of the accommodation; the overall *financial resources* of the City, not just of the department or work group; the impact of the accommodation on the ability of other employees to perform their duties; and the impact on the *organization's ability* to conduct business.

14. **DIRECT THREAT (to applicants, employees or the public)** - The City may require as qualification standard, that an individual not pose a direct threat to the *health or safety* of himself/herself or others. Like any other qualification *standard, such* a standard must apply to all applicants or employees and not just to individuals with disabilities.

If the threat is the result of a disability, the employer must determine whether a reasonable accommodation would either eliminate the risk or reduce it to an acceptable level. If no such accommodation exists, an employer may refuse to hire an applicant or may discharge an employee.

The risk can only be considered when it poses a significant risk, i.e., high probability of substantial harm. All decisions related to determining whether an employee or applicant poses a substantial risk must be made on a case by case basis.

The following factors are to be considered when determining whether or not an employee or applicant poses a direct threat:

- A. Duration of the risk;
- B. Nature and severity of the potential harm;
- C. Likelihood that the potential harm will occur; and
- D. Imminence of the potential harm.

15. **TESTING** - If a test is intended to measure skills, aptitude, or other factors, it must be administered in a way which does not reflect impaired sensory (most typically hearing or vision), manual, or speaking skills.

A test which judges the sensory, manual or speaking skills of an applicant may do so only if that is the purpose of the test and because those skills are relevant to the job.

We have the duty to provide a reasonable accommodation to a *disabled person* in the administration of a test when we know the individual is disabled and the disability involves sensory, manual, or speaking skills. For example, if we know an applicant is blind, we are required to provide a reader or other oral or braille version of the test.

ADA implies that we give notice to all job applicants that tests are required so that if an applicant requires an accommodation, they can give reasonable notice of their specific need.

Physical agility tests are not medical exams.

16. **PRE-EMPLOYMENT EXAMINATION OR INQUIRY** - There are no circumstances under which we may inquire on an application or in an interview whether, or to what extent, an applicant is disabled.

We can only ask if the applicant can perform job functions. If we know the applicant has a disability we can ask how he/she can perform functions with or without accommodations we may consider difficult or impossible because of the disability.

17. ATTENDANCE - An employer cannot ask how often the individual will require leave for treatment or how often they will use leave for treatment or use leave as result of a disability.
18. MEDICAL EXAMINATIONS - Regulations prohibit all medical examinations made prior to a job offer. An employer cannot inquire as to whether an individual has a disability at the pre-offer stage of the selection process, nor can an employer inquire at the pre-offer stage about an applicant's workers' compensation history.

However, the regulations do allow required medical examinations after an employment offer has been made. An employment offer may be made conditional upon the results of a medical examination providing that all entering employees in the same job category are subject to such an examination regardless of disability.