

SUPERVISOR'S GUIDE TO TITLE I OF THE AMERICANS WITH DISABILITIES ACT

In 1990 the President of the United States signed into law the Americans with Disabilities Act (ADA) mandating the elimination of discrimination against individuals with disabilities. Since that time, thousands of complaints have been filed against employers alleging discrimination. As a result, many supervisors are concerned about their liability under the ADA and are unsure of their obligations as employers and the rights of their employees. The ADA is a civil rights law that gives persons with disabilities the same rights as others. The law does not provide for preferential treatment of persons with disabilities. Instead, it is intended to provide an "equal playing field" in employment, programs, services and activities of state and local government; access to public accommodations, transportation, and telecommunications.

This handbook will provide basic guidance to supervisors regarding their obligations under the ADA. The topics covered are based upon the law, federal regulations, and the questions and concerns most frequently asked the State ADA Compliance Office.

Included is practical guidance on methods for addressing commonly occurring ADA issues such as what to do when an employee requests a "reasonable accommodation," and how to get information on assistive technology devices, to name a few. This guide will not provide answers for all ADA questions. Unanswered questions can be addressed to your agency ADA Coordinator or the State ADA Compliance Office.

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The ADA presents a challenge to employers, because it requires them to provide equal opportunities to people who, with or without a reasonable accommodation, are qualified (i.e. have the skill, experience and education) to work for the organization. It requires employers to treat individuals with disabilities the same as any other employee. Employers must consider applicants and employees with disabilities on the basis of what they can do, not what they can not do. Employees with disabilities may need accommodations. It is important for employers to learn how to address employees' needs in an interactive dialog, free of stereotyping and misconceptions.

It is the intent of the ADA that the work place be as diverse as our society. For years we have been taught to define individuals by what they have lost, not what they have. It's time to change our paradigms. It is time to treat individuals with disabilities as individuals first.

THE BASIC LAW

Under the ADA it is unlawful to discriminate against people with disabilities in any employment practice. Employment practices include, but are not limited to, the following:

- Recruitment
- Hiring
- Compensation
- Dismissal
- Promotion
- Job assignments
- Training
- Leave
- Layoff
- Benefits
- Any terms, conditions or privileges for employment

DEFINITION OF DISABILITY

Under the ADA, a person with a disability is defined as:

1. A person with a physical or mental impairment that substantially limits one or more major life activities; or
2. A person with a record of such a physical or mental impairment; or
3. A person who is regarded as having such an impairment

Qualifying disabilities include prolonged or permanent impairments that limit major life activities such as walking, speaking, breathing, hearing, seeing, performing manual tasks, caring for oneself, learning, working, sitting, standing, lifting, and mental and emotional processes such as thinking, concentrating and interacting with others.

It is not possible to provide a comprehensive list of all the specific conditions and diseases that constitute physical or mental impairments. Additionally, for an impairment to be considered a disability, it must substantially limit some form of major life activity. Whether an individual has a disability should be assessed without regard to the availability of mitigating measures, such as medication.

QUALIFIED INDIVIDUAL WITH A DISABILITY

To be protected under the ADA, a person must not only be an individual with a disability, but must also be qualified. The term “qualified individual with a disability” means an individual with a disability who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position, and who, with or without reasonable accommodation, can perform the essential functions of the position.

Inclusion of the term “qualified” underscores the employer’s prerogative to choose and maintain qualified workers. An employer is not required to hire or retain a person who is not qualified to perform a job.

An individual with a disability must be qualified to perform the essential functions of the job with or without reasonable accommodations, in order to be protected by the ADA. This means the applicant or employee must:

- Be “otherwise qualified” in order to satisfy the employer’s job requirements for education background, employment experience, skills, licenses, and any other qualification standards that are job-related; and
- Be able to perform those tasks that are essential to the job, with or without reasonable accommodation

The ADA does not interfere with an employer’s right to hire the best-qualified applicant. The ADA simply prohibits discriminating against a qualified applicant or employee because of his/her disability.

If an individual with a disability is the most qualified applicant and is able to perform the essential functions of the job with a reasonable accommodation, it is unlawful for an employer to refuse to hire the individual because the employer does not want to provide the accommodation.

FILLING A JOB VACANCY

An employer must comply with the ADA in the hiring process. The hiring includes advertising, recruitment, job application, procedures, interviewing, and, ultimately, hiring the person best qualified for the position.

Before proceeding with the hiring process, the employer should first determine the essential functions of the job.

ESSENTIAL FUNCTIONS

Essential job functions are the most important duties or tasks of the position. Marginal functions are the duties of a job that can be performed by someone else or may not have to be performed at all. These functions should be described in the position description (PDQ) for the job. If the PDQ for the position does not accurately describe the essential and marginal job duties, it should be updated prior to interviewing for the position.

A job function may be considered essential for any of several reasons, including but not limited to the following:

1. The function may be essential because the because the reason the position exists is to perform that function;

An individual is hired to drive a truck; therefore driving a truck is an essential job function.

2. The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed;

A small hospital may have one or two people performing critical tests. The ability to perform these tests, is therefore, an essential function of the job, because the function cannot be assigned to other employees.

3. The function may be highly specialized so an individual in the position is hired for his or her expertise or ability to perform the particular function.

The position of film colorist at a film lab requires an individual to operate complex, specialized film coloring machinery. Operation of this machinery is an essential function.

Other Examples:

A clerical employee may be assigned to drive to the post office every after noon but the majority of the employee's duties is typing filing and answering the phone. In this case typing, filing and answering the phone are "essential functions" of the position. Travel to the post office is not, if it can be assigned to someone else or be accomplished in some other manner. The term "essential function" does not include task unrelated to the primary purpose for which the position exists.

A person hired as a truck driver is expected to fill in for the receptionist an hour each day. Under the ADA an individual with a speech impairment would not be required to perform this task. Driving the truck would be considered the essential function of the position. Filling in as a receptionist is considered a "marginal" task, and as an accommodation can be assigned to another employee.

Once the essential functions of the job have been identified, it is appropriate to interview applicants.

COMPLIANCE WITH THE ADA DURING THE INTERVIEWING PROCESS

Reasonable Accommodations and the Interview

When applicants are notified of interviews, inform them accommodations for persons with disabilities will be provided as part of the interview process and, if one is needed, they should give notice, prior to the interview, of the type of accommodation needed. For example, if the office is not accessible to persons who use wheelchairs, the interview site must be moved to an accessible location.

Test and demonstrations During the Interview Process

Employers may wish to test applicants or ask for demonstrations as part of the interview process. The employer, after telling applicants what the hiring process involves, may ask the applicants whether they will need a reasonable accommodation for the process.

Questions an Applicant May Be Asked

Interview questions must focus on the essential functions of the job. An employer cannot ask questions likely to elicit information about a disability.

An employer may ask the following types of questions:

1. Whether an applicant can meet the employer's attendance requirements.

The employer may state its attendance requirements and ask whether the applicant can meet them. An employer may also ask about an applicant's attendance record in his/her last job. Questions designed to detect whether the applicant abused his/her leave are also permissible.

At the pre-offer stage, an employer may not ask how many days the applicant was sick.

2. Questions regarding an applicant's certifications and licenses.

The employer may ask, at the pre-offer stage, if the applicant has certifications or licenses required for any job duties. The employer may also ask if the applicant intends to get a particular job related license or certification or why s/he does not have it already.

3. Questions about the applicant's arrest or conviction record.

Because such questions are not likely to elicit information about an applicant's disability, they are allowable.

4. Questions regarding an applicant's current illegal use of drugs.
5. Whether the applicant has ever performed this type of work before. The employer may ask for specific examples.
6. After describing the performance standards, the employer may ask the applicant if s/he can meet the standards with or without an accommodation only if all applicants are asked.
7. Questions regarding the applicants education and experience
8. When an employer reasonably believes an applicant's known disability will interfere with performance of a job-related function, the employer may ask that applicant to explain or demonstrate how essential job functions will be performed, with or without an

accommodation. The employer may not ask an applicant to explain or demonstrate how s/he will perform marginal functions of the job unless all applicants are asked to do so.

Questions an Applicant May Not Be Asked

Under the ADA, an employer may not ask about the existence, nature or severity of a disability

An employer may not ask the following type questions:

1. Whether an applicant will need reasonable accommodation to perform the functions of the job.

Generally, an employer may not ask questions in an interview about whether an applicant will need reasonable accommodations for a job. This is not allowed because such questions are likely to elicit whether the applicant has a disability.

However, if an employer reasonably believes an applicant will need reasonable accommodations to perform the functions of the job, the employer may ask the applicant certain limited questions. Specifically, whether the applicant needs reasonable accommodation and what type would be needed to perform the functions of the job. The employer can ask these questions only in the following situations.

- a. The employer reasonably believes the applicant will need reasonable accommodation.
- b. The employer reasonably believes the applicant will need reasonable accommodation because of hidden disability the applicant has voluntarily disclosed to the employer.
- c. An applicant has voluntarily disclosed to the employer s/he needs reasonable accommodation to perform the job.

2. Where an applicant can perform the major life activities such as standing, lifting, walking,

Such questions are almost always disability related injuries or workers' compensation history. These questions relate directly to the severity of an applicant's impairments. As such, these questions are likely to elicit information about disability.

1. Questions regarding an applicant's workers' compensation history

An employer may not ask applicants about job-related injuries or workers' compensation history. These questions relate directly to the severity of an applicant's impairments. As such, these questions are likely to elicit information about disability.

2. Questions about an applicant's lawful drug use.

Questions regarding current or prior lawful drug use are likely to elicit information about disability and, therefore, are impermissible at the pre-offer stage.

NOTE: An employer may ask applicants about their lawful drug use if the employer is administering a test for illegal use of drugs. If an applicant tests positive for illegal drug use, the employer may validate the test results by asking about lawful drug use or possible explanations for the positive result other than the illegal use of drugs.

3. An employer may not ask an applicant if s/he has ever been hospitalized or if s/he has ever been hospitalized or if s/he has ever been treated by a psychiatrist or psychologist

4. Questions regarding how much sick leave the applicant used in the last twelve months.

When unsure about questions that may or may not be asked during an interview, contact the department or division ADA Coordinator or Human Resource Manager.

Questions Asked to Third Parties

An employer may not ask a third party any questions it could not directly ask the applicant. Therefore, an employer may not ask a previous employer, a service that provides information regarding workers' compensation claims, a state agency, a personal reference or an applicant's friends or family about the applicant's disability, sick leave usage, illnesses or worker's compensation claims.

The employer can ask about the employee's ability to perform essential functions, including the ability to meet performance standards. It is also permissible to ask about the applicant's record of punctuality and attendance, as long as sick leave or health issues are not implied in the question.

Medical Examinations

A "medical examination" is a procedure or test that seeks information about an individual's physical or mental impairments or health.

At the pre-offer stage, an employer cannot require examinations that seek information about physical or mental impairments or health.

THE POST-OFFER STAGE

After giving a job offer to an applicant, an employer may ask disability-related questions and perform medical examinations. The job offer may be conditioned on the results of post-offer disability related questions or medical examinations.

At the post-offer stage, an employer may ask about an individual's workers' compensation history, prior sick leave usage, illnesses, diseases, impairments, and general physical and mental health. Disability-related questions and medical examinations at the post-offer stage do not have

to be related to the job. However, if an individual is screened out because of disability, the employer must show the exclusionary criterion is job-related and consistent with business necessity.

If an employer asks post-offer, disability-related questions or requires post-offer medical examinations, it must make sure it follows the following procedures:

1. All entering employees in the same job category must be subjected to the examination / inquiry, regardless of disability; and
2. Medical information obtained must be kept confidential

At the post-offer stage, an employer may ask all individuals whether they need reasonable accommodation to perform the job. If, at the post-offer stage, someone requests a reasonable accommodation and the need for the accommodation and the need for the accommodation is not obvious, the employer may require documentation of the individual's disability and entitlement to reasonable accommodation.

REASONABLE ACCOMMODATIONS

The ADA requires the employer to make reasonable accommodations for job applicants and employees with disabilities. Reasonable accommodations must be made for applicants if necessary for the applicant to participate in the hiring process. For example, the employer may need to provide an examination in an accessible format. If an accommodation will enable an employee to perform the essential functions of the job, it must be provided.

Accommodations may include, but are not limited to the following examples:

- A part-time or flexible work schedule;
- Changing equipment or devices used in the work;
- Removal of architectural barriers, such as widening the doors to rest rooms or offices, making them accessible to employees who use wheelchairs;
- Provision of qualified readers to an employee with a vision impairment, or interpreters for deaf employees;
- Reassigning non-essential duties to another employee;
- Reassignment to a vacant position

An employer will not be required to provide a reasonable accommodation to an employee if it is an undue hardship.

Whether provision of an accommodation constitutes an undue hardship is determined on a case-by-case basis. Factors to consider in making the determination are the nature and cost of the accommodation, the overall financial resources of the employer and whether it would fundamentally alter the nature of the job.

The financial resources of the State of Alaska are so large, provision of reasonable accommodations will be considered an undue hardship because of cost only in extremely rare instances.

DIRECT THREAT

An employer may require that an individual not pose a direct threat to the health and safety of himself or herself or other persons in the workplace. The employer must, however, meet very specific and stringent requirements under the ADA to establish that a direct threat exists. "Direct threat" means 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. Such a job requirement must apply to all applicants or employees and not just to individuals with disabilities.

A legitimate finding of direct threat is an individual with a contagious disease, such as hepatitis, for a food preparation position, the essential functions of which include handling and serving food, where no accommodation exists that could prevent transmission to others.

POSITION DESCRIPTION (PDQ's) AND ESSENTIAL FUNCTIONS

The ability of an individual with a disability to perform the essential functions of a position is a key element of title I of the ADA. An essential function means those tasks or functions that are fundamental to the position, as distinguished from marginal functions. In determining whether a function is essential or not, consider whether removing it would fundamentally change the job.

Often jobs are a mixture of many duties, designed and evolving over the years, based upon organizational needs. Usually there is a specific purpose for a position's existence: federal or state law may mandate its functions, or it may provide technical or clerical support to others performing mandated functions. The actual "design" of a position is based upon a number of factors including job location, staffing needs, existing job classifications and budget considerations.

Many positions exist to perform a certain function. Other functions may be added to the position because it is convenient to do so, such as going to the post office, acting as a fill-in receptionist or speaking at conferences. These tasks or duties are marginal functions, and may be distributed in a variety of ways among existing staff or not performed at all.

Many supervisors and employees have difficulty in distinguishing essential from marginal job functions because they consider the "job" as every duty. When an employee has been performing the same group of tasks for years often each task or function is perceived as essential.

When separating essential and marginal functions, first determine what is the most important service or product provided by this position. Next, look at each task and determine which ones will not fundamentally change the job if removed.

To assist the State of Alaska in compliance with the ADA, it is important to update all position descriptions on a regular basis. List essential and non-essential duties, and rate the importance of each task. Non-essential, or marginal tasks can be assigned to another employee as a reasonable accommodation for an individual with a disability. If an employee has a disability and can still perform the essential functions of the position with a reasonable accommodation, it must be provided.

For example, in many professional positions, report writing and preparation of correspondence is considered an essential function. The assumption is made that the ability to use

a word processing program is an essential function. However, the required “product,” the report or correspondence, may be accomplished without the cause of a word processing program. In such a case, providing the employee with a Dictaphone or voice-activated computer may be a reasonable accommodation.

REQUESTS FOR REASONABLE ACCOMMODATIONS

Employees often worry that a request for a reasonable accommodation will displease the supervisor, either because of cost or inconvenience. It is the employer’s obligation, under the law, to provide accommodations. Employees must be informed of their right to request an accommodation. Notice to the employee must include the procedure required, including identification of the proper forms to be completed. A reasonable accommodation should never be thought of as preferential treatment.

It is best to take a methodical approach to addressing requests for reasonable accommodation. The following guidelines may be helpful to both employees and supervisors.

1. The employee completes the form “Request for Reasonable Accommodation and submits it to his or her supervisor. Note, if the employer is aware of an employee’s need for an accommodation, the employer can suggest the employee request an accommodation, assist the employee in completing the form, or complete the form for the employee. This form can be obtained from the Division/Department ADA Coordinator or the personnel office.

Once a qualified individual with a disability has requested a reasonable accommodation, the employer must make a reasonable effort to determine the appropriate accommodation.

2. If not obvious, the supervisor can request verification the employee has a qualifying disability. The supervisor can require the employee to submit documentation from his/her physician or other medical professional concerning the existence and extent of the disability. If the supervisor believes a second opinion will provide an additional perspective on the disability, the supervisor may send the employee to a physician of the State’s choice. The second opinion is at the State’s expense.

Prior to requesting a second medical opinion, the supervisor must discuss it with his/her agency ADA Coordinator.

3. Within five days of receipt of the request, the supervisor must discuss the request with the employee. When it is not clear what the appropriate accommodation is, then the employer should conduct an informal, interactive process with the employee. The discussion should include the following steps:
 - a. An analysis of the particular job involved and a determination of its purpose and essential functions.
 - b. Consultation with the employee to determine the precise job-related limitations imposed by the individual’s disability and how those limitations can be overcome with a reasonable accommodation.

- c. Identify potential accommodations and assess the effectiveness each will have in enabling the employees to perform the essential functions of the job.
 - d. Give primary consideration to the preference of the individual. Select and implement the accommodation most appropriate.
 - e. Identify the type of equipment needed as an accommodation and a supplier. Assistive Technologies of Alaska and the JOB Accommodation Network can assist in making this assessment. The supervisor should move as quickly as possible to obtain approval for the equipment and determine a time line for its arrival. If the employee cannot perform the essential job functions without the equipment, the discussion should include plans for the employee's daily activities during the waiting period.
1. Time is of the essence. When an employee has to wait for months for an accommodation request to receive approval, the employee may feel the agency is not acting in good faith and discriminating on the basis of the employee's disability. Always discuss time lines for obtaining the accommodation with the employee and follow up with the employee on any unexpected delays.

DENYING A REQUEST FOR AN ACCOMMODATION

There are many reasons an employer may decide it is not appropriate to approve a request for an accommodation.

1. The employee does not have a qualifying disability. A qualifying disability must substantially limit a major life activity.
 - a. A temporary impairment, such as a broken arm, is not significant enough to be considered a qualifying disability, taking into account its duration and the extent to which it actually limits a major life activity.
 - b. The employee is unable to provide requested documentation from a medical professional that demonstrates s/he has a qualifying disability. The employer may require the employee to see a physician for the purpose of verification of a disability.
1. The requested accommodation will not enable the employee to perform the essential functions of the job.
2. The requested accommodation will cause the employer undue hardship. Undue hardship means an action requiring significant difficulty or expense; one that is unduly costly, extensive, substantial, disruptive or that will fundamentally alter the nature of the employment.

If the final determination is to deny a request for accommodation, a record of the request with the decision maker's comments, justification and response must be preserved.

AN EMPLOYEE'S RESPONSIBILITY UNDER THE ADA

When an employee has a disability that limits his or her ability to perform the essential functions of the job, it is the employee's responsibility to disclose the disability to his/her employer. The employer is not obligated to accommodate an unknown disability. If the employer is aware of an employee's disability and suspects s/he needs an accommodation to perform the essential functions of the job, the employer must offer one if it will enable the employee to perform the essential functions of the job.

The existence of a disability does not mean employee does not have to meet performance or attendance standards. Employees with disabilities must meet the same performance standards as others doing the same kind of work.

AN EMPLOYEE'S RESPONSIBILITY FOR ASSURING EQUAL ACCESS TO OTHER CONDITIONS OF EMPLOYMENT

Employees with disabilities have the right to the same terms, conditions, and privileges of employment as afforded non-disabled employees. Employees have a right to equal access to things such as:

- Training opportunities and conferences even if they require special assistance to take advantage of those opportunities;
- Break rooms, office picnics, employer provided health clubs, and parties;
- Promotional opportunities; and
- Employee travel

It is the employer's duty to ensure employees with disabilities are included in all office activities, are included in all office activities, are given an equal opportunity to compete for promotions, are able to travel, attend meetings and seminars and are provided with the same terms, conditions and privileges of employment as non-disabled employees.

WHEN AN EMPLOYEE WITH A PERFORMANCE PROBLEM NOTIFIES THE EMPLOYER SHE/HE HAS A DISABILITY

An employer is protected under the ADA at the moment his/her disability is disclosed or known to the employer. If an employee is experiencing performance problems as a result of the disability, the employer is required to provide the employee with a reasonable accommodation.

The Equal Employment Opportunity Commission (EEOC) states employers may hold all employees to the same performance and conduct standards. EEOC gives further guidance which states employers need not waive discipline imposed for conduct related to a disability of which the employer was not aware.

Though the duty to accommodate is usually triggered by a request from the employee, it is permissible for an employer to discuss the possibility of a reasonable accommodation with an employee, if the employee is having difficulty performing his/her job. Additionally, if an employee with a known disability is having difficulty performing his/her job, an employer should inquire whether the employee is in need of an accommodation.

WHEN THE ACCOMMODATION PROVIDED AN EMPLOYEE DOES NOT IMPROVE PERFORMANCE

The ADA protects “qualified” employees with disabilities. Therefore, an employee with a disability must be able to perform the essential functions of the job with or without an accommodation. If the employee is unable to perform the essential functions of the job with an accommodation, the employee is no longer “qualified” for that particular position. The employer may consider transferring the employee to an open position for which the employee is qualified as an accommodation. If an open position is not available, the performance difficulties may be addressed as a performance problem, consistent with department policies and collective bargaining agreements.

WHEN PERFORMANCE PROBLEMS REMAIN BECAUSE THE WRONG ACCOMMODATION WAS PROVIDED

At times, a disability may be difficult to accommodate because it is not well understood or because neither the employee nor the employer know what equipment, modification or accommodation will enable the employee to perform the essential functions of the job. Unfortunately, physicians are not trained to understand the effect of a disability on work performance and may not know the kind of accommodation needed.

The Division of Vocational Rehabilitation has evaluators and counselors who understand the relationship of the disability to work performance issues. Assistive Technologies of Alaska can provide information about assistive technology as reasonable accommodations and potential sources for obtaining technology. There are many agencies that can provide information on how to accommodate a specific disability. These include the Job Accommodation Network (JAN), the Disability Law Center of Alaska, and any of the independent living centers in the state. Services provided by these agencies are free.

INDIVIDUALS WHO ILLEGALLY USE DRUGS

The ADA excludes a person who is currently illegally using drugs from the definition of disability, if the illegal use of drugs is the reason for the discrimination. If an individual who uses drugs illegally also has another disability, and the employee is being discriminated against based on the other disability, the employee is still protected by the ADA.

The ADA does protect individuals who have overcome addiction to illegal drugs. This includes a person who has successfully completed a drug rehabilitation program or has otherwise been successfully rehabilitated and is no longer using illegal drugs; a person who is participating in

a drug rehabilitation program and is no longer using illegal drugs; or a person who is erroneously regarded as using illegal drugs.

EMPLOYEES WITH ALCOHOLISM

People with alcoholism are not subject to the exclusion from the definition of disability even if they are currently using alcohol. Alcoholics are individuals with disabilities subject to the protections of the ADA. However, as with other persons with disabilities, they must be qualified for the position. Employees with alcoholism can be held to the same standards for job performance and behavior as are non-disabled employees, even if unsatisfactory performance or behavior is related to alcohol consumption

Employees with alcoholism are entitled to receive a reasonable accommodation. Reasonable accommodations could include leave for alcohol rehabilitation and/or attendance at Alcoholics Anonymous meetings.

COMPLAINTS OF DISCRIMINATION UNDER THE ADA

Administrative Complaints

Job applicants and employees who believe they have received discriminatory treatment and their rights, under the ADA, have been violated can file complaints with any number of administrative agencies or in court. An employer may not retaliate against applicants or employees who file complaints alleging discrimination.

Individuals who feel they have been discriminated against may file complaints with any of the following agencies within the designated time frames:

- The ADA Coordinator in the agency where the alleged discriminatory action took place. The complaint must be filed within 90 days of the date of harm. This is an informal process.
- The Office of Equal Employment Opportunity in the Office of the Governor. The complaint must be filed within 90 days of the alleged discriminatory action.
- The labor union representing the employee. The deadline for filing a complaint is dependent upon the provisions of the employee's collective bargaining agreement.
- The Alaska State Commission for Human Rights. The complaint must be filed within 300 days of the date of harm.
- The Equal Employment Opportunity Commission, Department of Justice. The complaint must be filed within 300 days of the alleged discriminatory practice.

Investigation of Informal ADA Complaints

All informal complaints alleging violations of the ADA should be investigated promptly and thoroughly by the agency's Human Resource Manager should provide oversight. Before a formal investigation is started, supervisors should take this opportunity to ascertain if the job applicant or employee was treated fairly.

After an informal complaint is received, the following steps should be taken to investigate the allegations:

1. Determine the individual's reason for filing the complaint and ascertain if it is an ADA issue
2. Determine whether the applicant or employee has an impairment that affects a major life activity. Medical documentation can be requested from both an applicant and an employee.
3. Determine whether the applicant or employee is "qualified" under the ADA.
4. Verify the allegations contained in the complaint occurred. Documentation from the complainant can be requested, and involved parties can be interviewed.
5. Meet with the complainant so s/he has an opportunity to be heard. If the complaint has merit, take the necessary action to resolve the issue.

CONCLUSION

It is the responsibility of every state employee to free the workplace from prejudice and discrimination. To make this happen, awareness of disability issues and knowledge of the law are essential. Department ADA Coordinators can arrange for special ADA training workshops and provide both supervisors and employees with handbooks and technical assistance on the ADA. The State ADA Compliance Office has a library of training videos and other materials available for loan to supervisors and employees. Additionally, the state ADA Compliance Office will assist any state agency with issues arising under Title I or Title II of the ADA.