Recognizing and Using the Employer’s Tools in ADA Title 1

AzSHRM
Arizona Society for Healthcare Risk Management

Casa Grande, Arizona
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Title I of the Amended Americans with Disabilities Act is blind to the source of impairment.
Learning Objectives

1. Recognize the Title I tools provided to employers and case managers for resolution of difficult cases

2. Understand the interplay between essential functions, medical restriction, and reasonable accommodation

3. Remove the mystery of the hiring, stay-at-work and return-to-work process under Title I
The Title I Tools

1. Recognize the Title I tools provided to employers and case managers for resolution of difficult cases
   
   A. Qualified Individual
   B. Essential Functions
   C. Medical Examination
   D. Reasonable Accommodation
Qualified Individual

The term "qualified individual" means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.


Definitions, (8) Qualified Individual
Qualified Individual

“...can perform the essential functions of the employment position that such individual holds or desires...”
Qualified Individual

“...can perform the essential functions of the employment position that such individual holds or desires...”
Essential Functions
Essential Functions

The “essential functions” of a job are not the physical or cognitive demands of the job; they are the tasks which must be accomplished to justify the job’s existence.
Essential Functions

• **Confer** with **supervisory personnel, owners, contractors, and design professionals** to discuss and resolve matters such as work procedures, complaints, and construction problems.

• **Evaluate** **construction methods** and determine cost-effectiveness of plans, using computers.

• **Inspect and review** **projects** to monitor compliance with building and safety codes, and other regulations.
Essential Functions

• **Interpret and explain** plans and contract terms to administrative staff, workers, and clients, representing the owner or developer.

• **Investigate damage, accidents, or delays** at construction sites, to ensure that proper procedures are being carried out.
Marginal Functions

- May **requisition** supplies or materials to complete construction projects.

- May **direct acquisition** of land for construction projects.

- May **apply green building strategies** to reduce energy costs or minimize carbon output or other sources of harm to the environment.
Physical Demands

- Stand
- Walk
- Sit
- Lift
- Carry
- Push
- Pull
- Climb
- Reach
- Handle
- Finger
- Talk
- Hear
- Near Acuity
- Far Acuity
- Accommodation
- Exposure to Weather
- Noise
# Cognitive Demands

<table>
<thead>
<tr>
<th>Cognitive Domain</th>
<th>Level</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>Reason Development</td>
<td>5</td>
<td>Apply commonsense understanding to carry out instructions</td>
</tr>
<tr>
<td>Math Development</td>
<td>5</td>
<td>Add, subtract, multiply, divide</td>
</tr>
<tr>
<td>Language Development</td>
<td>4</td>
<td>Reading, writing, speaking</td>
</tr>
<tr>
<td>Specific Vocational Prep</td>
<td>7</td>
<td>Over 2 years up to and including 4 years</td>
</tr>
<tr>
<td>General Learning Ability</td>
<td>2</td>
<td>The ability to “catch-on”</td>
</tr>
<tr>
<td>Verbal Aptitude</td>
<td>3</td>
<td>Understand words and use them effectively</td>
</tr>
<tr>
<td>Numerical Aptitude</td>
<td>2</td>
<td>Perform arithmetic operations</td>
</tr>
<tr>
<td>Spatial Aptitude</td>
<td>2</td>
<td>Think visually of geometric forms</td>
</tr>
<tr>
<td>P Form Perception</td>
<td>3</td>
<td>Perceive pertinent detail in objects</td>
</tr>
<tr>
<td>Q Clerical Perception</td>
<td>3</td>
<td>Perceive pertinent detail in verbal or tabular materials</td>
</tr>
<tr>
<td>K Motor Coordination</td>
<td>4</td>
<td>Coordinate eyes, hands or fingers rapidly and accurately</td>
</tr>
<tr>
<td>Finger Dexterity</td>
<td>4</td>
<td>Move fingers rapidly and to manipulate small objects</td>
</tr>
<tr>
<td>M Manual Dexterity</td>
<td>4</td>
<td>Move hands easily and skillfully</td>
</tr>
</tbody>
</table>
Medical Examinations
“Medical Examinations” Query Safe Ability
# Medical Examination Nomenclature

<table>
<thead>
<tr>
<th>Phrase in the Law</th>
<th>Phrase as Commonly Used</th>
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</thead>
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<tr>
<td>Pre-Employment</td>
<td>Application Stage</td>
</tr>
<tr>
<td>Employment Entrance Exam</td>
<td>Post-Offer Employment Test</td>
</tr>
<tr>
<td>Examination and Inquiry</td>
<td>Functional Capacity Evaluation</td>
</tr>
</tbody>
</table>
Medical Examination – Application Phase

- Applicant
- Conditional Employee
- Incumbent Employee
- Absent Employee

Reasonable Accommodation, LLC
An individual’s medical condition and medical history are privileged information.
An individual’s family medical history is strictly *off-limits* to his employer.
Personal and Family Medical History

Relevant Cases

*EEOC v. Dura Automotive Systems*; Civil Action No. 1:09-cv-00059
*EEOC v. Western Trading Co., Inc.*; Case #10-cv-02387-MJM-MJW
*EEOC v. Dillard's, Inc., et al*; Case No. 08-CV-1780
*EEOC v. Fabricut, Inc.*; Civil Case No.: 13-CV-248-CVE-PJC

*EEOC v. All Star Seed dba Eight Star Commodities, Green Touch Fertilizer, and Allstar Seed Company; La Valle Sabbia, Inc. dba Eight Star Equipment and Eight Star Logistics; and Abatti dba Abatti Companies*; Case No. CV13-07196 JAK (AJWx)
Medical Examination – Employee

Diagram:
- Applicant
- Employee
- Conditional Employee
- Incumbent Employee
- Absent Employee

Flowchart showing relationships between these roles.
Medical Examination – Employee

Hiring

- Conditional Employee
- Incumbent Employee
- Absent Employee
Employment Entrance Examination (aka Post-Offer Test)

Relevant Cases

EEOC v. Dial Corporation, Nos. 05-4183, 05-4311
EEOC v. American Tool & Mold, Inc., Case No. 8:12-cv-2772
EEOC v. Pace Solano, Civil Action No. CV 12-01823 MCE-DAD
EEOC v. Famous Chicken of Shreveport, LLC, Case No. 6:13-CV-644
Medical Examination – Employee

Retention

Conditional Employee
Incumbent Employee
Absent Employee
Stay-at-Work Examinations

Relevant Cases

Paul James v. Goodyear Tire and Rubber Company, (No. 08-6332)

EEOC v. E.I. DU PONT DE NEMOURS & CO, dba DuPont Specialty Chemicals, No. 05-30712

White v. County of Los Angeles (2014), 170 Cal.Rptr.3d 472
Medical Examination – Employee

Return-to-Work

- Conditional Employee
- Incumbent Employee
- Absent Employee
Return-to-Work Examination

Relevant Cases

*Indergard v Georgia-Pacific*, No. 08-35278


Temporary alternative duty to facility being at work versus a permanent accommodation
Reasonable Accommodation
Reasonable Accommodation
An Important Tip

One Person – One Job – One Accommodation
Reasonable Accommodation

- Applicant
- Employee
  - Conditional Employee
  - Incumbent Employee
  - Absent Employee
Reasonable Accommodation

1. Application
2. Conditional Employee
3. Incumbent Employee
4. Absent Employee
Learning Objectives

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2. Understand the interplay between essential functions, medical restriction, and reasonable accommodation

3. Remove the mystery of the hiring, stay-at-work and return-to-work process under Title I
An Emerging Accommodated SAW Decision Model

If there is uncertainty about safe abilities, physician or employer refers for a SAW functional capacity evaluation (FCE).

Using an Essential Function Job Analysis and the FCE, mismatches between the demonstrated safe abilities and the physical demands of the Essential Functions of the job are identified.

The resultant match between the worker’s current physical abilities and the job’s accommodated essential functions allow an informed return-to-work decision.

Mismatches are resolved through real-time Reasonable Accommodation exploration.

The employer continues the interactive conversation with the worker throughout the employment cycle.
An Emerging Accommodated RTW Decision Model

Physician sets safe medical restrictions based on his/her medical knowledge of the worker → If there is uncertainty about safe abilities, or if there is concern about compliance issues, physician refers for a RTW functional capacity evaluation (FCE) → Using an Essential Function Job Analysis and the FCE, mismatches between the demonstrated safe abilities and the physical demands of the Essential Functions of the job are identified

The resultant match between the worker’s current physical abilities and the job’s accommodated essential functions allow an informed return-to-work decision → Mismatches are resolved through real-time Reasonable Accommodation exploration

The employer continues the interactive process with the worker through-out the employment cycle
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