

## **ADA Law**

The Americans with Disabilities Act (ADA) is a federal law that was passed in July of 1992. The ADA protects individuals with disabilities and prohibits discrimination in all employment practices. Title I of the ADA provides that no covered entity shall discriminate against a qualified individual with a disability because of the disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment. Since 1992 individual states have passed their own laws further specifying the scope of the ADA law.

Below is a summary of the consulting services available for injured workers, attorneys, or employers, requesting assistance with ADA compliance:

1. **Determine if the Employer is subject to ADA law** - The term employer is defined as a person engaged in an industry affecting commerce who has 15 or more employees. Therefore, the employment section of the ADA, unlike the section on public accommodations, which will be discussed subsequently, is limited in scope to employers with 15 or more employees. If the issue raised under the ADA is employment related, and the threshold issues of meeting the definition of an individual with a disability and involving an employer employing over fifteen individuals are met, the next step is to determine whether the individual is a qualified individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the job.
2. **Determine if the Employee is a Covered Entity** – In determining obligation under ADA, it's important what constitutes a disability. The term "disability" means; a physical or mental impairment that substantially limits one or more of the major life activities of the individual; a record of such an impairment; or being regarded as having such an impairment. In such a case that an individual meets any one of these three tests, he or she is considered an individual with a disability for coverage under the ADA. An "impairment" is any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological, musculo-skeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine, or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. Title I defines a "qualified individual with a disability." Such an individual is "an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such person holds or desires."
3. **Determine Whether Accommodations are Reasonable** - The ADA requires that the employer provide reasonable accommodation unless the accommodation would pose an undue hardship on the operation of the business. "Reasonable

accommodation" is defined in the ADA as including making existing facilities readily accessible to and usable by individuals with disabilities, and job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, adjustment of examinations or training materials or policies, provision of qualified readers or interpreters or other similar accommodations. "Undue hardship" is defined as "an action requiring significant difficulty or expense." Factors to be considered in determining whether an action would create an undue hardship include the nature and cost of the accommodation, the overall financial resources of the facility, the overall financial resources of the covered entity, and the type of operation or operations of the covered entity.

4. **How does ADA Impact Minnesota Hiring Practices Pertaining to Worker's Compensation** - In Minnesota employers may not ask about an applicant's workers' compensation history prior to making a conditional offer of employment. They may not ask the applicant, and they may not ask previous employers or other sources. For example, asking the state special compensation fund whether an applicant is registered as having a pre-existing physical impairment for "second injury" purposes would be illegal. Once the conditional job offer is made, however, an employer may ask about an applicant's workers' compensation history, but only as part of a medical inquiry or examination applicable to and required of all applicants in the same job category.
5. **How does ADA Impact Minnesota Post Employment Practices Pertaining to Worker's Compensation** - An employer may not base an employment decision on the grounds that a person may be a workers' compensation risk. Employers who do not make reasonable accommodations to workers injured on-the-job now face not only the continuation of temporary benefits, higher-tier permanent benefits (dates of injury 1984 to 1995), a lawsuit for damages (dates of injury 1995 to present), but also the possibility of back pay, compensatory and punitive damages, and attorney fees liability under the ADA.

#### Who Benefits and How:

1. **Injured Workers** - benefit from assistance by the Rehabilitation Consultant in seeking and maintaining employment as a covered entity within ADA Law. Vocational counseling and job-seeking skills training on ADA law and how the law pertains to your situation will improve your success in finding and suitable employment.
2. **Attorneys Representing Injured Workers** - benefit from assistance by the Rehabilitation Consultant for your clients to receive evaluations and services to determine whether an ADA violation exists and also assess damages.
3. **Employers** – benefit from assistance by the Rehabilitation Consultant to provide training, guidelines, and procedures to maintain practice of ADA compliance.