

## Insurance And Benefits

The Equal Employment Opportunity Commission implements those parts of the Americans with Disabilities Act that prohibit discrimination in employer-provided health insurance. An employer may not deny an individual with a disability equal access to insurance, or require such an individual to have terms and conditions of insurance different than those of employees without disabilities.

The ADA does not require employers to provide health insurance. However, if an employer chooses to offer health insurance to employees, the ADA requirements apply.

### What Is The Interim Enforcement Guidance?

On June 8, 1993, the EEOC issued Interim Enforcement Guidance on the Application of the ADA to Disability-Based Provisions of Employer-Provided Health Insurance. This document identified four basic ADA requirements in the area of health insurance:

1. Disability-based insurance distinctions are permitted only if the employer-provided health insurance plan is bona fide, and if the distinctions are not being used as a subterfuge for purposes of evading the Act.
2. Decisions regarding employment of an individual may not be motivated by concerns about the impact of the individual's disability on the employer's health plan.
3. Employees with disabilities must be accorded equal access to whatever health insurance the employer provides to employees without disabilities.
4. An employer cannot make an employment decision about any person based on concerns about health-plan costs because of the disability of someone with whom that person has a relationship.

### What Is a Disability-Based Distinction?

Health-related insurance distinctions based on disability may violate the ADA. A term or provision is "disability-based" if it singles out a particular disability (e.g., AIDS, schizophrenia), a discrete group of disabilities (e.g., cancer, kidney diseases), or disability in general (e.g., non-coverage of all conditions that substantially limit a major life activity).

### May Employers Refuse To Hire If Their Insurance Premiums Would Increase?

An employer may not refuse to hire an otherwise qualified individual with a disability (or a nondisabled person who is associated with a disabled person) because the company's health insurance premium would increase.

### What About Self-Insured Private Employers?

The ADA does not affect the pension and welfare benefit provisions of the Employment Retirement Income Security Act (ERISA). This means that the ADA has no impact on the exemption from state insurance laws that ERISA provides to private employers who offer bona fide self-insurance plans (ERISA does not cover public employers.)

A self-insured plan must be bona fide in that it exists, pays benefits, and its terms have been accurately communicated to covered employees. Self-insured plans must comply with the ADA.

### What If An Employer Contracts For Insurance Benefits?

An employer will be liable for any discrimination resulting from a contract/agreement with an insurance company, health maintenance organization (HMO), third-party administrator (TPA), stop-loss carrier, or other organization that provides or administers a health insurance plan on behalf of employees.

### Are Limitations In Coverage Allowed?

While an employer must provide people with disabilities equal access to the health insurance coverage provided to all employees, the employer may offer a policy that has limitations in coverage. Limitations in the number of treatments and/or exclusions from coverage that are not "disability-based," including pre-existing conditions, are permissible under the EEOC regulations. For example, an employer may offer a health plan that provides fewer benefits for the treatment of "mental and nervous disorders" than is provided for the treatment of physical conditions. Other plans may limit the number of x-rays or dollar amounts on prescription drugs.

These broad distinctions that apply to the treatment of a multitude of dissimilar conditions and that constrain individuals both with and without disabilities, are not distinctions based on disability. Although such distinctions may have a greater impact on certain individuals with disabilities, they do not intentionally discriminate on the basis of disability and do not violate the ADA.

### What About Pre-Existing Clauses?

Blanket pre-existing-condition clauses that exclude from coverage a condition that predates entering into the policy may not be used to deny an employee unrelated coverage. For example, an employee with an emotional disability may not be denied coverage for a broken leg. Universal limits or exclusions from coverage of all experimental drugs or of all "elective surgery" are likewise not insurance distinctions based on a disability. If the clause is applied equally to all insured employees, it does not violate the ADA. Pre-existing-condition clauses in an employer's health insurance plan

may adversely affect people with disabilities, but such clauses are permissible if an employer is not using them as a means of avoiding the ADA.

#### What If The Insurance Plan Offered Began Prior To ADA?

The ADA does not provide a "safe harbor" for health-insurance plans adopted prior to its July 26, 1990 enactment. Challenged disability-based terms and provisions of both pre-and post-ADA health insurance plans will be scrutinized by the EEOC under the same subterfuge standards.

#### Does The ADA Affect The Application Of Actuarial Principles?

The ADA does not limit health and life insurance plans based on underwriting risks or classifying risks. An employer that treats individuals with disabilities differently under an insurance or benefit plan because the people who are disabled represent increased risks or costs is not in violation of the ADA if the employer treats the disabilities in the same manner as other conditions of the same risks/costs. Fair, unbiased application of actuarial principles in providing benefits is allowable under the ADA. The burden of proof rests with employers, since they have access to the risk assessment, actuarial, and claims data relied upon in adopting a disability-based distinction.

#### What About Coverage Of Dependents?

The coverage of an employee's dependents under an employer-provided health insurance plan is a benefit available to the employee by virtue of employment. Insurance terms, provisions, and conditions concerning dependent coverage are subject to the same ADA standards, including the application of disability-based distinctions.

#### Does The ADA Require Dependent Coverage To Be Identical To The Employee's Coverage?

The ADA does not require that the coverage offered dependents be the same in scope as the coverage accorded to employees. For example, it would not violate the ADA for a health insurance plan to cover prescription drugs for employees, but not to include such coverage for the employees' dependents. Nor does the ADA require that dependents be granted the same level of benefits as those granted to the employee. For example, it would not violate the ADA if a health insurance plan had a \$100,000 benefit cap for employees, but only a \$50,000 benefit cap for an employee's dependents.

#### Does The ADA Restrict Testing For Illegal Drug Use?

The ADA specifically permits testing for illegal drug use. Drug tests are not regarded as medical examinations for employment purposes. Companies may elect to apply these tests to applicants or employees. The ADA specifically acknowledges that certain occupations, such as those in the transportation industry, may require such testing to ensure the welfare of the public. The ADA does not recognize a person who actively abuses illegal substances as having a disability. Applicants or employees abusing illegal

drugs are not protected by the ADA on the basis of the drug use. A company may impose penalties on these employees and not be charged with discrimination.

#### Where Can I Obtain Additional Information?

Disability and Business Technical Assistance Centers (DBTACs)  
(800) 949-4232 (VOICE/TTY/TTD), (703) 525-6835 (FAX)

Equal Employment Opportunity Commission  
(800) 669-4000 (VOICE), (800) 669-6820 (TTY/TTD),  
(513) 489-8692 (FAX)

President's Committee on Employment of People with Disabilities  
(202) 376-6200 (VOICE), (202) 376-6205 (TTY/TTD),  
(202) 376-6219 (FAX)

The information in this fact sheet came from the: Ideas to Solve Your ADA Problems, Centers on Education and Work, University of Wisconsin-Madison Alliances To Educate and Employ People with Disabilities, September, 1994; EEOC; and the President's Committee on Employment of People with Disabilities.