

Dispelling Myths About The Americans With Disabilities Act

The Americans with Disabilities Act (ADA) is a civil rights law that is opening doors to the mainstream of life for the 49 million Americans with disabilities. There are many misconceptions surrounding the ADA. Listed below are the most commonly heard myths and the facts.

Assumption: ADA suits are flooding the courts.

Fact: The ADA has resulted in a surprisingly small number of lawsuits-only about 650 nationwide in five years. That is tiny compared to 6 million businesses, 666,000 public and private employers, and 80,000 units of state and local governments that must comply.

Assumption: The ADA's definition of disability is broad and vague and has resulted in "bizarre and arcane" discrimination claims that are wasting the time of the EEOC and the courts.

Fact: As with any new statute, there is a period during which employers and employees learn about their rights and obligations under the law. While individuals have the right to file charges, not all charges are meritorious. The job of the EEOC investigator is to separate the wheat from the chaff. Further, the flexibility provided by the ADA definition of "disability" means that there will be individuals who bring claims for conditions that do not satisfy the statutory standards, and the claim will be dismissed.

Assumption: The ADA forces business and government to spend lots of money hiring unqualified people with disabilities.

Fact: To be protected by the ADA an individual must be qualified. No unqualified job applicant or employee with a disability can claim employment discrimination under the ADA. Employees or job applicants must meet all the necessary requirements of the job and perform the essential functions of the job with or without reasonable accommodation. No accommodation must be provided if it would result in an undue hardship on the employer.

Assumption: The ADA, along with other laws such as the FMLA and Workers' Compensation, are squeezing out small businesses that cannot afford to hire human resource specialists to advise them regarding the complexities of these laws.

Fact: Truly small businesses, those with fewer than 15 employees, are not covered by the ADA. (The FMLA only applies to employers with 50 or more employees.) For employers who are covered, the ADA provides an undue hardship defense for reasonable accommodations that are unduly costly or burdensome. Smaller employers can more easily establish undue hardship

because they have fewer resources.

Assumption: The ADA is being misused by people alleging mental and neurological impairments.

Fact: The ADA covers individuals with physical or mental impairments that substantially limit major life activities because individuals with such impairments have traditionally been subjected to pervasive employment discrimination. Just as the ADA excludes people with temporary physical problems, so does it exclude people with mild or short-term mental health problems. Neurological impairments are conditions or diseases involving the nervous system, including the brain, spinal cord, ganglia, nerves, and nerve centers. ADA charges indicate that there is significant discrimination against persons with neurological impairments. Psychiatric impairments involve a biological, social, or psychological dysfunction. Individuals with psychiatric disabilities have traditionally been subjected to discrimination, not because they are unable to successfully perform job duties, but because of myths, fears, and stereotypes associated with such impairments.

Assumption: The ADA is rigid and requires businesses to spend lots of money to make their existing facilities accessible.

Fact: The ADA is based on common sense. The law recognizes that altering existing structures is more costly than making new construction accessible. The law only requires that public accommodations (e.g., stores, banks, hotels, and restaurants) remove architectural barriers in existing facilities when it is "readily achievable" (i.e., it can be done "without much difficulty or expense"). Inexpensive, easy steps that can be taken include ramping one step, installing a bathroom grab bar, lowering a paper towel dispenser, rearranging furniture, installing offset hinges to widen a doorway, or painting new lines to create an accessible parking space.

Assumption: ADA requires that sign language interpreters be used in all situations involving persons who are deaf.

Fact: The ADA only requires that effective communication not exclude people with disabilities-which in many situations means providing written materials or exchanging notes. The law does not require any measure that would cause an undue financial or administrative hardship.

Assumption: The ADA requires extensive renovations of all state and local government buildings to make them accessible.

Fact: The ADA requires all government programs, not all government buildings, to be accessible. "Program accessibility" is a very flexible requirement and does not require a local government to do anything that

would result in an undue financial or administrative burden. Local governments have been subject to this requirement for many years under Title 5 of the Rehabilitation Act of 1973. Not every building, nor each part of every building needs to be accessible. Structural modifications are required only when there is no alternative available for providing program access. Let's say a town library has an inaccessible second floor. No elevator is needed if it provides "program accessibility" for persons using wheelchairs by having staff retrieve books.

Assumption: Everyone claims to be covered under the ADA.

Fact: To be protected under the law, a person must have an impairment that substantially limits a major life activity, must have a record of such an impairment, or must be regarded as having such an impairment. While people have the right to file charges, not all charges are meritorious. EEOC investigators are instructed to analyze whether a charging party has an ADA-protected disability. If an individual does not have a substantially limiting impairment (and does not allege "record of" or "regarded as" discrimination), the complaint is dismissed.

The information in this fact sheet came from the following sources: The U.S. Equal Employment Opportunity Commission and the U.S. Justice Department.