

# AMERICANS WITH DISABILITIES ACT GUIDE

INTRODUCTION	NOTES
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History and Purpose of ADA

On July 26<sup>th</sup> 1990 The Americans with Disabilities Act was signed into law by President George Bush. It was historic legislation. It accomplished two things. One, it created a federal blanket covering what was then a patchwork of state, federal and local laws that protected individuals with disabilities. Two, it declared that individuals with disabilities had a right to be integrated into every aspect of our society.

The Americans with Disabilities Act is an extensive and complex piece of legislation. Even today, eight years since its signing, the courts are still addressing such basic concepts as who is an Individual with a Disability, and what are employer’s obligations to reasonably accommodate such a person. With significant court decisions still being made monthly, the Americans with Disabilities Act is best thought of as a work in progress. Because of this, this guide does not recommend specific reasonable accommodations or compliance options. Instead the guide gives categories and examples of situations where ADA issues are raised, and where further action on the part of state agencies may be called for.

The element of the ADA that brings about the most criticism (and praise) is chiefly that it is non-specific about what actions are required to comply. It is useful to perceive the ADA as a guide to a process of evaluation which, when applied to an individual, can help an organization to come up with a compliant solution given the uniqueness of each person with a disability and the uniqueness of each organization’s circumstances and resources.

The Americans with Disabilities Act differs from other “civil rights” legislation in that most civil rights law exists to insure that every member of a protected class is treated no differently than any other

person in similar circumstances. However, persons with disabilities are by their very definition different from their non-disabled counterparts. They have a physical or mental impairment that significantly limits a major life activity.

This raises the sometimes-perplexing question “How do we guarantee the same treatment to persons who really are different?” We do not provide special parking spaces for everyone. We do not provide sign language interpreters for everyone. We do not allow everyone to bring their dog to work with them. The ADA seeks to achieve a goal that is more complex (and enigmatic) than simply mandating the same treatment for everyone. It tries to achieve the laudable goal of fairness by recognizing the differences in needs and abilities of persons with disabilities.

It is by this structured process of evaluation that nondiscrimination and accommodation is achieved. Each agency in the State of Georgia has policies and procedures, and people responsible for working through this evaluation process. If there is a weak link in ADA compliance, it is not in the execution of this process but rather in the recognition that a situation exists that needs to be evaluated and considered. Accommodations can only be made when the need for the accommodation is recognized.

Recently many agencies in the State of Georgia have adopted a Return-to-Work program for injured and ill employees. The program uses short-term Transitional Employment assignments designed to assist these employees with their healing and recovery. This program has generated many questions about the role of Transitional Employment and its relationship to the ADA concept of Reasonable Accommodation. This guide was therefore developed to clarify the significant differences between Transitional Employment and Reasonable Accommodation.

### Purpose of Guide

The purpose of this guide is to help managers, supervisors, and others within the government of the State of Georgia identify issues that may develop involving persons with disabilities. The centerpiece of this guide is a matrix that will help identify situations to which ADA attention should be given.

The primary focus of this guide is on Title I, the employment provisions of the ADA and to a lesser extent Title II which covers public service provisions. The five titles of the ADA are summarized very briefly below.

**Title I:** Covers employment provisions prohibiting discrimination in any terms or conditions of employment for a "qualified individual with a disability" and requires provision of "reasonable accommodation" unless it would pose an undue hardship.

**Title II:** Requires programs, activities, and services of state and local governments to be accessible and available to persons with disabilities. It also requires that government-provided public transportation be accessible to persons with disabilities.

**Title III:** Covers public accommodations (provided by private entities) for persons with disabilities.

**Title IV:** Covers telecommunications, and requires common carriers to provide telecommunication relay services to hearing and speech-impaired individuals.

**Title V:** Covers miscellaneous provisions, including the prohibition against retaliation against or coercion of an individual who seeks to enforce his or her own or another's rights under the ADA.

### Types of Prohibited Discrimination

What follows is a summary of some of the more common forms of prohibited discrimination under the ADA. Title I prohibits discrimination in all terms and conditions of employment. The State of Georgia, as one of the largest employers in the State, is covered by the ADA.

### Title I

#### **Hiring**

This category deals with recruitment, testing, and selection. For the State of Georgia some of the key issues are:

- Accessibility of job opening announcements (including different formats) written and verbal, access to the interview office, etc.
- Testing and qualification determinations, including alternative reasonable accommodations of testing methods when appropriate for persons with disabilities.
- Interviewing. Knowledge of appropriate and prohibited

application form and interview questions, and accommodation within the interview setting such as providing sign language interpreters etc.

- Job offers, including post offer pre-start medical examinations, and applicant initiated requests for reasonable accommodations.
- Standards and procedures for possible withdrawal of the job offer based on the medical examination or the organization's inability to reasonably accommodate the applicant.

**Summary:** The key is to try and create a hiring environment where individuals with disabilities can be given a fair and equitable chance of being evaluated, interviewed and hired. Take all requests for accommodations in the interview and hiring process seriously. Never refuse an applicant's request for an accommodation in the hiring process without first evaluating whether they are individuals with disabilities and whether their request for an accommodation is valid. An EEO officer of your agency should actively review any refusal to provide a reasonable accommodation.

### **Employment.**

This category includes aspects of all terms and conditions of employment. Some key issues for the State of Georgia are:

- Nondiscrimination: "Qualified individual with disabilities" may not be discriminated against because of their disability. This includes everything from wrongful termination to creating a hostile work environment, promotions, training, advancement, transfers, assignments, etc.
- Reasonable accommodations: This includes the State of Georgia making accommodations for a "qualified individual with a disability" to allow that person to perform the essential functions of his or her job, and to do so without significant risk of substantial harm to the health or safety of the individual or others.
- Employment benefits offered by the State of Georgia should be nondiscriminatory for persons with disabilities.

- All other terms and conditions of employment.

**Summary:** In order to comply with this section, procedures for the identification of persons with disabilities and for determining reasonable accommodation alternatives should be developed and followed by each agency. Because of the current emphasis on bringing injured and ill workers back in transitional employment, a system for identifying current employees who become individuals with disabilities needs to be incorporated into general ADA compliance.

## Title II

### **Public Services, Activities, and Programs.**

Title II requires that services, activities, and programs provided by state and local governments to the public be accessible to persons with disabilities. It also includes a provision for accessibility to government provided public transportation. This guide will not address public transportation since it is an entire, specialized field in and of itself. Nor will this guide deal with public education provisions since more laws than just the ADA address them. Agencies involved in public transportation and/or education should consult their internal resources for guidance.

### **Physical Accessibility.**

One of the most complex problems for the State of Georgia is making buildings and offices of state government accessible to the public with disabilities. This includes everything from physical accessibility, doors, ramps, drinking fountains, and rest rooms to TDD, Braille, sign language interpreters, animal helpers etc. Full accessibility will take a long time. Therefore it is important that when individuals with disabilities are in need of services, activities, and programs that are not currently accessible, specific solutions be provided to them until full accessibility can be achieved.

### **Program Accessibility.**

Accessibility is more than “getting into” a building. The ADA requires that all services, activities, and programs provided by the State of Georgia be accessible to individuals with disabilities. This could include programs from employment-related services, job service, police and fire, JTPA, informational and referral services, courts, prisons,

recreational and educational programs and facilities, etc.

Physical accessibility often requires modification of existing structures. Program accessibility often requires a modification of existing procedures and attitudes. Language, etiquette customer service, communication and problem solving skills go a long way in even a physically inaccessible environment to deliver services to individuals with disabilities in the State of Georgia.

### Titles III and IV

These titles, covering public accommodations (provided by private entities) and telecommunications will not be addressed by this guide.

### Title V

This title covers a variety of miscellaneous provisions. Most important of these provisions is that which prohibits retaliation against or coercion of an individual who seeks to enforce or enjoy his or her own, or another's rights under the ADA.

## **Summary of ADA Charges**

Attached as Addendum #5 is a list, generated by the EEOC, of the most common reasons for the filing of ADA complaints. While we do not have a similar list developed only for those suits filed against public entities, it can be anticipated that many of the same patterns will apply.

As can be seen, ADA complaints are currently being filed most commonly after some form of discharge or termination has occurred. Failure to reasonably accommodate charges are also common. It is important to understand that reasonable accommodation is not necessarily the same as Transitional Employment provided by the State of Georgia's return-to-work program. Reasonable accommodation is an adjustment or modification made for an individual on a permanent or temporary basis, as necessary, when an individual's permanent limitations result in that person being considered an "individual with disability" under the ADA. Transitional Employment assignments, by contrast, are always temporary in nature, and are provided to individuals who are in the process of recovering from injuries or illnesses (whether occupational or non-occupational in nature).

# AMERICANS WITH DISABILITIES ACT GUIDE

## A Word About Disability Status under ADA

The ADA protects an individual with a “disability” if that person is “qualified” for a job with or without a reasonable accommodation. Disability is defined in three ways under the ADA. It includes an individual who actually has an impairment which substantially limits life activities such as walking, seeing, hearing, performing manual tasks and working in a class of jobs or a broad range of jobs. Secondly, the ADA protects an individual who has recovered in whole or in part from a disability in the past but who is discriminated against because of the record of a past disability, e.g., prior hospitalization in a mental institution. Lastly, the ADA protects persons who are regarded by the agency personnel as having a disability even if the person does not actually have one. Examples of being perceived as having a disability include a person who a supervisor believes is more limited because of a medical condition (e.g., high blood pressure) than the person actually is. Another example would be a person who is rumored to have AIDS even though the person actually is not infected with the HIV virus.

This Guide focuses on reasonable accommodation for persons who actually have or may have a disability as a result of a medical impairment which currently imposes significant functional limitations. Be aware, however, that overreacting to a history of disability or perceived disability also may create significant ADA liability.

## ADA MATRIX

What follows is a series of matrices outlining some situations that may potentially give rise to ADA responsibilities/liabilities. However, this list is not exhaustive; there are frequently unforeseen variables both in terms of disabilities and potential accommodations. This understood, these matrices should help managers and supervisors (as well as others with ADA responsibilities) recognize potential ADA situations, and to seek qualified assistance before making decisions. To support these matrices, there are addenda which provide the reader with additional background. It is recommended that these addenda be reviewed and kept attached to the matrix.

**Caution! This Guide, the attached matrices, and addenda are intended only to help the State of Georgia identify situations in which there may be ADA responsibilities and/or liabilities. These materials, by their very nature, cannot be considered complete or all encompassing, and by no means constitute legal advice. We strongly recommend that appropriate Agency personnel, such as EEO officers and/or legal counsel, be contacted, and agency policies and procedures be reviewed, before taking any significant personnel actions.**

# ADA MATRIX

## THE APPLICATION / HIRING PROCESS

*(review hiring practices addendum)*

Situation	What to Consider	Most Common Requests	What to Do
<b>Requests for accommodation in the application procedure</b>	How an application is filled out is less important than that it <u>is</u> filled out	<ul style="list-style-type: none"> <li>● Assistance with filling out the application.</li> <li>● Application in different formats (ex: large type).</li> <li>● Taking the application home to fill out.</li> <li>● Having a space free from distractions to complete the application.</li> </ul>	<p>Politely discuss the need for the accommodation with the applicant.</p> <p><i>Consult with agency EEO officer.</i></p> <p>Call J.A.N. (Job Accommodation Network: 1-800-JAN-7234) if necessary for ideas or resources</p>
<b>Requests for accommodations in pre-employment testing</b>	<p>How a test is taken may be less important than the skills and abilities measured by the test.</p> <p>Each test measures two things. One, the skills that the test is intended to measure and two, the ability to take a test. When a person's disability would cause the test to inaccurately measure what the test is intended to measure, then an accommodation may be needed.</p>	<ul style="list-style-type: none"> <li>● Additional time to complete the test.</li> <li>● Different testing format such as oral rather than written</li> <li>● Assistance with taking the test such as someone writing down answers.</li> <li>● A place to take the test free from distractions</li> <li>● Taking the test at a later time.</li> </ul>	<p>Politely discuss the need for the accommodation with the applicant.</p> <p><i>Consult with agency EEO officer.</i></p> <p>Consult with agency training department for alternative testing methods.</p> <p><i>Call J.A.N. (Job Accommodation Network: 1-800-JAN-7234) if necessary for ideas or resources.</i></p>
<b>Requests for accommodation in recruitment or announcement procedures</b>	If persons with disabilities cannot determine when a position is open or recruited for, the availability of accommodations in the application process becomes almost a moot issue.	<ul style="list-style-type: none"> <li>● TDD access to employment hot lines.</li> <li>● Different formats for announcements such as large print or computer disks.</li> <li>● Access to areas of job announcements.</li> </ul>	<p>Politely discuss the need for the accommodation with the applicant</p> <p><i>Consult with agency EEO officer.</i></p> <p>Consult with agency training department about recruiting processes or announcement formats.</p>

# ADA MATRIX

## INTERVIEWING

*(review hiring practices addendum)*

Situation	What to Consider	Most Common Requests	What to Do
<p><b>Requests for accommodations in the interview process.</b></p>	<p>Information obtained from the interview process is more important than the method of the interview.</p> <p>A standard interview may not be the best way to evaluate an applicant with a disability.</p>	<ul style="list-style-type: none"> <li>● Sign language or other interpreters.</li> <li>● Different interview formats such as writing questions or answers.</li> <li>● More time in the interview.</li> <li>● A place to hold the interview free from distractions</li> <li>● Access to the interview area.</li> </ul>	<p>Politely discuss the need for the accommodation with the applicant. Ask the applicant about ideas for facilitating the interview.</p> <p><i>Review "Hiring process addendum".</i></p> <p>Consult with agency EEO officer.</p> <p><i>Obtain Language, etiquette and sensitivity training in how to interview persons with disabilities.</i></p>
<p><b>Notice of a need for reasonable accommodation for a job.</b></p>	<p>An applicant can request a reasonable accommodation for a job during the interview procedure.</p>	<ul style="list-style-type: none"> <li>● Flexible schedules.</li> <li>● Modification or acquisition of equipment.</li> <li>● Changes in work procedures.</li> <li>● Work restrictions.</li> </ul>	<p>Politely discuss the need for the accommodation with the applicant.</p> <p><i>Determine which essential functions the accommodation is needed for.</i></p> <p>Consult with agency EEO officer.</p> <p><i>Contact J.A.N. (Job Accommodation Network: 1-800-JAN-7234)</i></p> <p><i>Document the applicants' notice of disability or request for accommodation.</i></p>

## ADA MATRIX

Situation	What to Consider	Most Common Requests	What to Do
<p><b>The disability is brought up by the applicant in the interview.</b></p>	<p>Sometimes an applicant will bring up their disability and are not sure what reasonable accommodation is needed</p> <p>Often the applicant will have the best answer to their reasonable accommodation needs.</p>	<ul style="list-style-type: none"> <li>● A list of the essential and marginal functions of the job.</li> <li>● Being able to visit the work site and view or experience the job.</li> </ul>	<p>Politely discuss the need for the accommodation with the applicant.</p> <p><i>Document the applicants notice of disability or request for accommodation.</i></p> <p>Record all applicants' suggestions for the accommodation.</p> <p><i>Contact agency EEO officer.</i></p> <p><i>Contact J.A.N. (Job Accommodation Network: 1-800-JAN-7234).</i></p>
<p><b>Applicant has a visible disability or reveals a non-obvious disability which might affect the applicant's ability to perform the job or to perform it safely.</b></p>	<p>The applicant may be asked to demonstrate how he or she would do the job or do it safely. However, the applicant may not be asked about a need for reasonable accommodation unless the applicant requests one or indicates an accommodation would be necessary.</p>		<p>Note what the applicant says about how he or she would perform the job and/or document the result of demonstration. Note if the applicant indicates a need for accommodation to perform a demonstration or do the job.</p> <p>Determine whether an accommodation would be appropriate by consulting with EEO official.</p> <p>Consult with agency EEO officer or other appropriate agency officials prior to taking any personnel action.</p>

# ADA MATRIX

## TRANSITIONAL EMPLOYMENT

*(review transitional employment addendum)*

Situation	What to Consider	Most Common Requests	What to Do
<p><b>A worker is unable to get a full work release before the transitional employment plan is finished.</b></p>	<p>If the worker is still progressing, an extension of the plan may be appropriate.</p>	<ul style="list-style-type: none"> <li>● Revision of the transitional employment plan</li> <li>● Extension of the transitional employment plan.</li> <li>● Suspension of the plan pending further recovery and medical treatment.</li> </ul>	<p>Review situation with the local transitional employment team; consider options including plan revision extension or suspension.</p> <p><i>Review current medical prognosis (following agency guidelines for medical confidentiality).</i></p> <p><i>Contact agency EEO officer.</i></p>
<p><b>A worker does not qualify for a transitional employment plan because of a permanent limitation.</b></p>	<p>Workers with permanent or long lasting limitations may be individuals with disabilities under the ADA.</p> <p>The agency's ADA responsibilities do not begin when the worker has reached maximum medical improvement. They begin when the agency is aware of the permanent limitation.</p> <p>Transitional employment is not a substitute or replacement for reasonable accommodation.</p>	<ul style="list-style-type: none"> <li>● Reasonable accommodation in the worker's regular job.</li> <li>● Transfer to a suitable vacant position as a form of reasonable accommodation.</li> <li>● Vocational rehabilitation services.</li> </ul>	<p>Determine if the workers impairment makes him or her "an individual with a disability".</p> <p><i>Determine if the worker can resume his or her regular job with or without a reasonable Accommodation.</i></p> <p>Contact agency EEO officer to initiate reasonable accommodation process.</p> <p><i>Contact DOAS about a vocational rehabilitation referral.</i></p> <p>.</p> <p>.</p>
<p><b>It is determined that a worker in a transitional employment plan will have permanent limitations which will keep him or her from returning to their job.</b></p>	<p>Transitional employment is not a substitute for reasonable accommodation.</p> <p>Workers with permanent or long lasting limitations may be individuals with disabilities under the ADA.</p> <p>Knowledge of the workers limitations may constitute notice of disability.</p>	<ul style="list-style-type: none"> <li>● Reasonable accommodation in the worker's regular job.</li> <li>● Transfer to a suitable vacant position as a form of reasonable accommodation.</li> <li>● Vocational rehabilitation services.</li> </ul>	<p>Determine if the worker can resume his or her regular job with or without a reasonable accommodation.</p> <p><i>Contact agency EEO officer to initiate the reasonable accommodation process.</i></p> <p>Contact DOAS about a vocational rehabilitation referral.</p>

# ADA MATRIX

## REASONABLE ACCOMMODATION

*(review reasonable accommodation addendum)*

Situation	What to Consider	Most Common Requests	What to Do
<p><b>An employee makes a formal request for a reasonable accommodation</b></p>	<p>This must not be ignored. A formal request is the start of the ADA accommodation process.</p>	<ul style="list-style-type: none"> <li>● Flexible schedules.</li> <li>● Modification or acquisition of equipment.</li> <li>● Access.</li> <li>● Changes in policy.</li> <li>● Additional time off.</li> <li>● Time to rest during work hours.</li> <li>● Work restrictions.</li> </ul>	<p>Discuss the need for the accommodation with the employee.</p> <p><i>Ask employee for any suggestions or ideas he or she might have about an accommodation.</i></p> <p>Contact agency EEO officer to initiate the reasonable accommodation process.</p>
<p><b>An employee complains that they are having a hard time doing their regular job because of a disability or medical condition.</b></p>	<p>While this is not a formal request it can be considered notice that the agency has knowledge of a disability and the need for an accommodation.</p>	<ul style="list-style-type: none"> <li>● Requests here are usually non-specific.</li> </ul>	<p>Discuss the nature of the problem with the employee. Determine what parts of the job are affected by the disability.</p> <p><i>Remember to ask employee for any suggestions or ideas he or she might have about a reasonable accommodation.</i></p> <p>Contact agency EEO officer to initiate an evaluation of the situation.</p>
<p><b>An employee is not specific about a disability but requests time off or a change in the job structure or schedule.</b></p>	<p>This can be a statement such as “ ever since my operation this job has gotten harder and harder.”</p>	<ul style="list-style-type: none"> <li>● Requests here are usually non-specific.</li> <li>● The most common request is for time off.</li> <li>● Consider any request for time off or a modified work schedule because of a medical condition to be a potential request for Family and Medical Leave.</li> </ul>	<p>Discuss the problem with the employee.</p> <p><i>Do anything for the employee that you would do for any employee.</i></p> <p>If there is still a problem notify the agency EEO officer.</p>

## ADA MATRIX

Situation	What to Consider	Most Common Requests	What to Do
<p><b>Employee is being given time off from work to consider whether to resign voluntarily or to agree to conform behavior and performance to agency standards. The employee returns with a doctor's note indicating performance and behavior problems are caused by a mental disability. No specific accommodation is requested.</b></p>			<p>The ADA does not require forgiving misconduct or poor performance as a reasonable accommodation. The issue here is whether the employee, in spite of the mental disability, has the capacity to conform behavior and job performance to agency standards.</p> <p>Consult with the employee regarding possible accommodation to meet job and behavior standards. If the employee gives permission, consider contacting the employee's doctor regarding the accommodation issue. If no accommodation is requested/suggested, permit employee to return to work with the understanding that future poor conduct or performance will result in discipline.</p>
<p><b>Employee requests reduced productivity standard as an accommodation.</b></p>			<p>The ADA does not require lowering production standards as an accommodation. Consider reassigning the employee to another position if the employee cannot meet productivity standards in current position because of a disability.</p> <p>Consult agency EEO officer.</p>
<p><b>Employee indicates he or she cannot work overtime or rotating shifts.</b></p>			<p>Consider whether overtime or rotating shifts are an essential function. A "no overtime" restriction may be a request for leave under the Family and Medical Leave Act (FMLA). Consult appropriate human resources personnel</p>

## ADA MATRIX

Situation	What to Consider	Most Common Requests	What to Do
			regarding FMLA issue and consult EEO official regarding ADA accommodation issue.
<p><b>The agency can not reasonably accommodate an employee with a disability in his or her regular job.</b></p>	<p>When there is no reasonable accommodation available for the regular job, the ADA considers a reassignment to a vacant position for which the employee is qualified a form of reasonable accommodation.</p> <p>This assignment should be a lateral or if no vacant lateral move is available a demotion; a promotion is not required by the ADA.</p> <p>The job has to be currently available (vacant).</p>	<p>Reassignment to a vacant position.</p>	<p>Check your agency's policy on reassignment to vacant positions as a form of reasonable accommodation.</p> <p>Notify your EEO officer of the employee's request.</p>

# ADA MATRIX

## PROGRAM, ACTIVITY AND SERVICE ACCESS

Situation	What to Consider	Most Common Requests	What to Do
<p><b>A person with a disability informs you that they do not have adequate access to some state program, activity or service.</b></p>	<p>The first consideration is to somehow make the needed program, activity or service available to the person who is reporting the problem.</p> <p>The second consideration is to evaluate and solve the access issue for the agency.</p>	<ul style="list-style-type: none"> <li>● Building access.</li> <li>● Parking.</li> <li>● Rest rooms.</li> <li>● TDD or telecommunication access.</li> <li>● Sign language interpreters.</li> <li>● Alternative to waiting or standing in line.</li> <li>● Offering information in different formats.</li> </ul>	<p>Politely discuss the person's problem directly with that person and see if you can work out a short-term solution for that person to get them the help he or she needs.</p> <p><i>Report the problem or complaint to the proper authority in your agency.</i></p> <p><b>Remember</b>, the best way to cause a formal complaint is to make no attempt to help the person and declare that ADA issues are not your responsibility</p> <p><i>Whenever possible explain that you will bring the issue to the agency's attention, however until something can be done about it at that level, you should, of course, work with that persons needs today.</i></p> <p>If no solution can be worked out that day, follow up with the person about any action taken or referral made.</p>

# ADA MATRIX

## MISCELLANEOUS SITUATIONS

Situation	What to Consider	Most Common Requests	What to Do
<b>An employee with a disability requests additional leave after their authorized leave has been used.</b>	The ADA includes additional leave of absence as a form of reasonable accommodation. Check to see whether Family and Medical Leave requirements have been complied with.	Additional time off.	Comply with any unfulfilled FMLA requirements. Also, treat this as any other request for reasonable accommodation and refer to your agency's EEO officer.
<b>An employee requests that one or more of their duties be waived as a result of their injury or illness.</b>	The ADA states that essential functions need not be waived or excused as a reasonable accommodation. It also states that marginal functions can be waived or excused.	Waiving of marginal duties of the job.	Try to determine whether the duties in question are essential or marginal in nature.  Contact the agency EEO officer before taking any action.

## HIRING PRACTICES

The Americans with Disabilities Act covers employment provisions prohibiting discrimination in any terms or conditions of employment for a "qualified individual with a disability." This includes the entire hiring process from recruitment, announcements of openings, access to the application procedure, testing, the interview and the selection process. The following considerations and questions are by no means exhaustive, but are meant to give an overview of some of the issues for managers and supervisors.

### **I. ACCESS TO RECRUITING.**

Is there proper access to notices of openings and the application process? If there is a telephone hotline for openings, is there a TDD line so that persons who are deaf or hearing impaired can use it? If there are written announcements, are there other formats for the written information such as it being on disk or large print or tape? Are the facilities used for picking up the application accessible? Is staff trained to render assistance to individuals with disabilities who are having trouble accessing the process?

### **II. THE APPLICATION.**

Is the agencies application procedure flexible? Are applications available in different formats? Will the agency provide assistance in filling out an application? Will the agency allow an attendant or aid to fill out an application for individuals with disabilities? Will the agency allow an application to be taken home to be filled out? Will the agency provide secluded or low distractive environments in which to fill out the application?

### **III. PRE-EMPLOYMENT TESTING.**

Some jobs require a pre-employment test to verify that applicant has a measurable minimum skill level. It should be kept in mind that each test measures two things. One, the skills that the test is intended to measure and two, the ability to take a test. When a person's disability would cause the test to inaccurately measure the work-related skills which were intended to be measured, then an accommodation may be needed. An example of this would be a test to measure accuracy of simple addition problems. If the test is timed, a person with cerebral palsy might be very accurate, but fail the test because of their difficulty in recording their answers rapidly. In this case the agency must ask is the "time" part of the test an essential function that needs to be measured (e.g. test of typing speed for a secretary) or is the accuracy the most important. Giving individuals with disabilities more time to complete the test may be the best way to measure their skill level.

If no accommodation will allow the person with a disability to be accurately measured, are there alternative ways to determine or verify skills and competency? An examination of work history or training might be appropriate.

If (when on the job) the applicant would have a reasonable accommodation to perform the essential functions of the job, but does not have the same accommodation to take the test, then the test may not be a valid measure of his or her ability to perform the job. Take all requests for accommodations in the testing process seriously.

#### **IV. THE INTERVIEW.**

The interview area must be accessible. Requests for sign language interpreters or alternate interview formats, such as writing questions/answers back and forth (for a hearing or speech disability), should be taken seriously and should not ever be refused without checking with agency guidelines and management staff.

Questions or inquiries about the person's disability should be avoided. Questions about a need for reasonable accommodation should be avoided unless the interviewer has had specific ADA interview training. The ADA prohibits an employer from asking:

- General medical inquires as to the existence, nature or extent of an applicants disability before a job offer has been made.
- About medical history or conduct a medical examination of an applicant who has been offered a job unless all applicants in that job category are asked the same medical history or are required to undergo medical examination.

Employers cannot make employment decisions based on information about an applicant's disability that is not relevant to the job and necessary for business. The employer must consider reasonable accommodation if the results of a medical examination indicate that an applicant will be unable to safely perform essential job functions.

Employers must keep information about an employee's disability confidential from other employees, releasing the information on a "need to know" basis that is narrowly defined by the ADA. This includes informing managers and supervisors about work restrictions or reasonable accommodations.

Sometimes an applicant has a visible disability or reveals a non-obvious disability which might affect the applicant's ability to perform the job or to perform it safely.

An interviewer may ask an applicant to describe or demonstrate how the job would be performed. Note what the applicant says about how he or she would perform the job. Note if the applicant indicates a need for accommodation to perform a demonstration or do the job. Determine whether an accommodation would be appropriate. Consult with agency EEO officer or other appropriate agency officials prior to taking any personnel action.

## TRANSITIONAL EMPLOYMENT

Transitional employment is the providing of temporary alternative duties for an injured or ill employee when those duties will be helpful to that employee's recovery. It is the foundation of the State of Georgia's "Return-to-Work program".

It is important to avoid any confusion between transitional employment and reasonable accommodation. Please review **TRANSITIONAL EMPLOYMENT & REASONABLE ACCOMMODATION CONTRASTED (ADDENDUM #4)**.

There are several situations which can arise in transitional employment where there can be potential ADA issues. Two of the situations follow below:

- 1. It becomes apparent that an employee (who may or may not already be in a Transitional Employment plan) will not sufficiently recover to resume his or her regular job without permanent restrictions.**

At this point all we know is that the employee will have some long lasting or permanent limitations. For the employee to be considered an Individual with a Disability under the ADA, the extent of the impairment and resulting limitations must be evaluated, as well as whether he or she could resume their regular duties with or without a reasonable accommodation.

Agencies should interpret this situation as a possible ADA reasonable accommodation issue and engage in an evaluative process to determine if the injured or ill worker is an "Individual with a Disability" under the ADA and could be accommodated.

Waiting for the employee to formally make a reasonable accommodation request is not advised, since the fact that he or she can not benefit from Transitional Employment may represent knowledge on the part of the agency of that employee's condition, and his or her possible need for a reasonable accommodation.

- 2. The employee's expected recovery is projected to be long term, exceeding Transitional Employment time limits specified in agency guidelines.**

Remember under the ADA, you must consider not only the nature, severity, and duration of an impairment but also the nature, severity, and duration of the individual's functional limitations to determine disability status.

It is advised that the agency EEO officer be notified of any employee who appears to have a limitation with a recovery forecast of six or more months in length

## REASONABLE ACCOMMODATION

Reasonable accommodation under the ADA is any change or adjustment to a job or work environment that permits a qualified applicant or employee with a disability to participate in the job application process, to perform the essential functions of a job, to eliminate a significant risk of harm to health or safety, or to enjoy the benefits and privileges or employment equal to those enjoyed by employees without disabilities. A request for reasonable accommodation can occur at any time---before, during or after a job interview, after a conditional offer of employment is made, once an employee has begun working, or upon a disabled worker returning to work. Reasonable accommodation may include the examples summarized in Table 3 (EEOC, 1991).

**TABLE 3**  
**EXAMPLES OF REASONABLE ACCOMMODATION**

- ADJUSTING OR MODIFYING EXAMINATIONS, TRAINING MATERIALS OR POLICIES;
- ACQUIRING OR MODIFYING EQUIPMENT OR DEVICES;
- JOB RESTRUCTURING;
- PART-TIME OR MODIFIED WORK SCHEDULES;
- REASSIGNMENT TO A VACANT POSITION;
- PROVIDING READERS OR INTERPRETERS; AND,
- MAKING THE WORKPLACE READILY ACCESSIBLE TO AND USABLE BY PEOPLE WITH DISABILITIES.

Employers are obligated to provide a reasonable accommodation; if the accommodation is needed because of a disability and does not pose an undue hardship, for an otherwise "qualified individual with a disability" in three aspects of employment:

**1. The job application process: to enable the applicant to be considered for the position.**

For example, an applicant who is visually impaired may need a reader to complete an employment application; a person who is deaf or hearing impaired may need an interpreter for the interview; an applicant with a learning disability may need a modification or waiver of a skill test if the test would not be an accurate measure of his or her skills.

**2. The work environment or the manner in which the job is customarily performed may need to be changed to enable the "qualified individual with a disability" to perform the essential functions of the job or to do so safely.**

Examples include: providing a large screen computer with screen magnification for someone who is visually impaired; allowing a flexible schedule for someone who is taking medication; providing an adjustable chair for someone with severe back problems.

**3. The modification of policies or procedures to enable employees with disabilities to enjoy equal benefits and privileges of employment as are enjoyed by employees without disabilities.**

Examples include: physically altering an inaccessible employee cafeteria or restroom; providing accommodation in teaching or testing protocols for employee training; ensuring accessibility to company-sponsored events such as parties, picnics, or company –sponsored team sports.

An employer is entitled to adequate medical documentation of disability and of the medical necessity for the accommodation requested. However, the reasonable accommodation process is very complicated and is always made on a case by case basis. Managers and supervisors should be able to recognize when an ADA issue occurs in the workplace and help that employee by making the appropriate notifications and referrals to trained agency personnel.

## TRANSITIONAL EMPLOYMENT & REASONABLE ACCOMMODATION CONTRASTED

Characteristics	Reasonable Accommodation	Transitional Employment	Things to consider
<b>Qualifications</b>	The employee must be an <b>individual with a disability" under the ADA.</b>	The worker can be <b>any employee</b> who has a medical condition, which is expected to improve by providing transitional employment duties.	The vast majority of employees who are in transitional employment are not "individuals with a disability" under the ADA.
<b>Obligations</b>	The State of Georgia is <b>obligated</b> to provide reasonable accommodation to its qualified employees with disabilities unless the reasonable accommodation represents an "undue hardship to the agency.	Transitional employment is a <b>voluntary</b> program for state agencies. It is offered to assist employees to recover sufficiently to return to full-unrestricted duty.	Transitional employment is a temporary process designed to facilitate the recovery process. Reasonable accommodation is a long term or permanent change in the employee's job.
<b>Time frame</b>	Reasonable accommodation is by its definition a change in employees' job duties or methods which may be permanent or temporary.	Transitional employment is by its definition <b>temporary</b> , lasting until the transitional employment assignments no longer are helping the employee to recover.	Keeping an employee indefinitely in a transitional employment plan can create ADA liabilities if the plan is interpreted as a permanent reasonable accommodation.
<b>Creation of new jobs or duties</b>	Reasonable accommodation does not require agencies to create new jobs for an "individual with a disability"	Transitional employment often uses the short-term creation of jobs or duties to expedite the healing process.	Agencies should seek a legal opinion before making a temporary assignment into a permanent one.
<b>Overlap</b>	There is no reason that an "individual with a disability" can not participate in a transitional employment plan if the plan can help them to resume their duties with or without a reasonable accommodation.	Employees in transitional employment plans only qualify for reasonable accommodation if they meet the definition of an individual with a disability" under the ADA.	Some injured or ill workers will be considered Individuals with a Disability under ADA guidelines from the start. Some will graduate to that status with time. Any employee who will not be able to resume full, regular duty should be evaluated under ADA guidelines.

Addendum Five

**ADA CHARGE DATA**

*ADA Violations Most Often Cited	FY 1992		FY 1993		FY 1994		FY 1995		FY 1996		FY 1997		CUMULATIVE TOTAL 7/26/92 – 9/30/97	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%
Discharge	18	41.8	7,487	49.8	9,688	51.4	10,538	53.2	9,676	53.7	9,728	53.7	49,728	53.3
Failure to Provide Reasonable Accommodation	222	22.2	3,438	22.8	5,134	27.2	5,947	30.1	5,759	32.0	5,819	32.1	27,667	29.1
Harassment	89	8.9	1,503	10.0	2,091	11.1	2,505	12.7	2,559	14.2	2,663	14.7	12,078	12.7
Hiring	168	16.8	1,921	12.7	1,781	9.4	1,736	8.8	1,507	8.4	1,430	7.9	8,864	9.3
Discipline	64	6.4	1,103	7.3	1,375	7.3	1,673	8.5	1,482	8.2	1,611	8.9	7,658	8.1
Layoff	32	3.2	793	5.3	1,025	5.4	824	4.2	741	4.1	652	3.6	4,232	4.5
Promotion	28	2.8	546	3.6	753	4.0	796	4.0	718	4.0	720	4.0	3,740	3.9
Benefits	37	3.7	540	3.6	757	4.0	858	4.3	621	3.4	644	3.6	3,605	3.8
Wages	29	2.9	538	3.6	636	3.4	723	3.7	579	3.2	684	3.8	3,337	3.5
Rehire	45	4.5	576	3.8	669	3.5	622	3.1	545	3.0	574	3.2	3,151	3.3
Suspension	34	3.4	302	2.0	448	2.4	445	2.2	384	2.1	455	2.5	2,176	2.3

(This list adds up to more than 100% because individuals can allege multiple violations. Percentages are rounded off.)

Data compiled by the Office of Research, Information and Planning from EEOC's Charge Data System – National Data Base. 4/17/98

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**Americans with Disabilities Act of 1990 (ADA) Charges**  
**EEOC FY 1992 – FY 1997**

	FY 1992 <sup>1</sup>	FY 1993 <sup>2</sup>	FY 1994	FY 1995	FY 1996	FY 1997	CUMULATIVE TOTAL 7/26/92 – 9/30/97
RECEIPTS	1,048	15,274	18,859	19,798	18,046	18,108	91,133
RESOLUTIONS	88	4,502	12,523	18,900	23,451	24,200	83,664
RESOLUTIONS BY TYPE							
SETTLEMENTS	11	422	733	811	770	1,000	3,747
WITHDRAWALS W/BENEFITS	12.5%	9.4%	5.9%	4.3%	3.3%	4.1%	4.5%
ADMINISTRATIVE CLOSURES	7	591	1,126	1,222	1,151	888	4,985
NO REASONABLE CAUSE	8.0%	13.1%	9.0%	6.5%	4.9%	3.7%	6.0%
REASONABLE CAUSE	62	1,941	5,570	7,998	7,927	7,336	30,834
SUCCESSFUL CONCILIATIONS	70.5%	43.1%	44.5%	42.3%	33.8%	30.3%	36.9%
UNSUCCESSFUL CONCILIATIONS	7	1,442	4,734	8,395	13,012	13,916	41,506
MERIT RESOLUTIONS	8.0%	32.0%	37.8%	44.4%	55.5%	57.5%	49.6%
MONETARY BENEFITS (Millions)	1	106	360	474	591	1,060	2,592
	1.1%	2.4%	2.9%	2.5%	2.5%	4.4%	3.1%
	0	32	122	138	240	385	917
	0.0%	0.7%	1.0%	0.7%	1.0%	1.6%	1.1%
	1	74	238	336	351	675	1,675
	1.1%	1.6%	1.9%	1.8%	1.5%	2.8%	2.0%
	19	1,119	2,219	2,507	2,512	2,948	11,324
	21.6%	24.9%	17.7%	13.3%	10.7%	12.2%	13.5%
	\$0.2	\$15.9	\$32.6	\$38.7	\$38.7	\$36.1	\$162

Data compiled by the Office of Research, Information and Planning from EEOC's Charge Data System – quarterly reconciled Data Summary Reports.

\* The total of individual percentages may not always sum to 100% due to rounding.

1 EEOC began enforcing Title I of the ADA on July 26, 1992

2 FY 1993 represents the first full year EEOC enforced Title 1 of the ADA.

4/17/98

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**Cumulative ADA Charge Data**  
**For the July 26, 1992 – September 30, 1997**  
**Reporting Period**

**Total ADA charges received during reporting period: 91,133**

Impairments Most Often Cited	FY 1992		FY 1993		FY 1994		FY 1995		FY 1996		FY 1997		CUMULATIVE TOTAL 7/26/92 – 9/30/97	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%
Back Impairments	208	20.8	3,021	20.0	3,666	19.4	3,463	17.5	2,896	16.1	2,700	14.9	16,496	17.4
Emotional/ Psychiatric Impairments	91	9.1	1,496	9.9	2,342	12.4	2,609	13.2	2,701	15.0	2,789	15.3	12,736	13.4
Neurological Impairments	156	15.6	2,108	14.0	2,060	10.9	2,007	10.1	1,875	10.4	1,798	9.9	10,432	11.0
Extremities	53	5.3	628	4.2	1,750	9.3	2,136	10.8	2,008	11.1	1,922	10.6	8,950	9.4
Heart Impairments	46	4.6	781	5.2	812	4.3	734	3.7	635	3.5	670	3.7	3,833	4.0
Diabetes	52	5.2	525	3.5	661	3.5	688	3.5	675	3.7	671	3.7	3,412	3.6
Substance Abuse	50	3.5	571	3.8	629	3.3	702	3.6	498	2.8	421	2.3	2,958	3.2
Hearing Impairments	48	4.8	481	3.2	563	3.0	538	2.7	463	2.6	500	2.8	2,717	2.9
Blood Disorders	24	2.4	391	2.6	485	2.5	546	2.8	438	2.4	498	2.8	2,491	2.7
HIV (Subcategory of Blood Disorders)	13	1.3	298	2.0	326	1.7	353	1.8	287	1.6	323	1.8	1,663	1.8
Vision Impairments	48	4.8	482	3.2	506	2.7	455	2.3	421	2.3	425	2.3	2,449	2.6
Cancer	30	3.0	402	2.7	457	2.4	419	2.1	399	2.2	447	2.5	2,247	2.4
Asthma	18	1.8	278	1.8	315	1.7	343	1.7	314	1.7	274	1.5	1,626	1.7

(This is not a complete list; therefore, percentages do not add up to 100%. Percentage are rounded off.)

## DEFINITIONS OF TERMS

**Administrative Closure** – Charge closed for administrative reasons, which include: failure to locate charging party, charging party failed to respond to EEOC communications, charging party refused to accept full relief, closed due to the outcome of related litigation which establishes a precedent that makes further processing of the charge futile, charging party requests withdrawal of a charge without receiving benefits of having resolved the issue, no statutory jurisdiction.

**Merit Resolutions** – Charges with outcomes favorable to charging parties and/or charges with meritorious allegations. These include negotiated settlements, withdrawals with benefits, successful conciliations, and unsuccessful conciliations.

**No Reasonable Cause** – EEOC’s determination of no reasonable cause to believe that discrimination occurred based upon evidence obtained in investigation. The charging party may request a review of a no-cause finding by EEOC Headquarters officials and may exercise the right to bring private court action.

**Reasonable Cause** – EEOC’s determination of reasonable cause to believe that discrimination occurred based upon evidence obtained in investigation. Reasonable cause determinations are generally followed by efforts to conciliate the discriminatory issues which gave rise to the initial charge. NOTE: Some reasonable cause findings are resolved through negotiated settlements, withdrawals with benefits, and other types of resolutions, which are not characterized as either successful or unsuccessful conciliations.

**Settlements (Negotiated)** – Charges settled with benefits to the charging party as warranted by evidence of record. In such cases, EEOC and/or a FEPA is a party to the settlement agreement between the charging party and the respondent (an employer, union, or other entity covered by EEOC-enforced statutes).

**Successful Conciliation** – Charge with reasonable cause determination closed after successful conciliation. Successful conciliations result in substantial relief to the charging party and all others adversely affected by the discrimination.

**Unsuccessful Conciliation** – Charge with reasonable cause determination closed after efforts to conciliate the charge are unsuccessful. Pursuant to Commission policy, the field office will close the charge and review it for litigation consideration. NOTE: Because “reasonable cause” has been found, this is considered a merit resolution.

**Withdrawal with Benefits** – Charge is withdrawn by charging party upon receipt of desired benefits. The withdrawal may take place after a settlement or after the respondent grants the appropriate benefit to the charging party.