

The Americans with Disabilities Act as it Applies in Georgia

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Purpose of the Americans with Disabilities Act

- Prohibit discrimination
- Ensure equal opportunity for persons with disabilities in
 - Employment (Title I)
 - State and Local Government Services (Title II)
 - Public Accommodations and Commercial Facilities (Title III)

State & Local Gov't – Title II

- Protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by
 - state and local government entities,
 - Any department, agency, special purpose district or instrumentality of a state or local government, and
 - Certain commuter authorities
- Receipt of Federal financial assistance is not required.

State & Local Gov't – Title II

- What qualifies as a public entity under Title II?
 - Operated with public funds?
 - Employees considered government employees?
 - Significant government assistance?
 - Board elected by members, voters, or elected officials?
- Section 504 of the Rehabilitation Act
 - Applies to all programs and activities receiving financial assistance, whether or not a public entity
 - An organization can be covered by either ADA Title II, Section 504, neither, or both

Public Accommodations & Commercial Facilities – Title III

- Commercial facilities
- Private entities that offer educational and occupational examinations, courses, and certifications
- Public accommodations
 - Businesses that are generally open to the public
 - 12 categories

Title III: Making Space Accessible

- Existing Facilities: Removal of Barriers
 - Readily Achievable
 - First priority: get in the front door
- Existing Facilities: Alternatives to Barrier Removal
 - Providing goods and services at the door or outside
 - Home delivery, retrieving inaccessible merchandise, etc.
- New Construction
 - All newly constructed places of public accommodation and commercial facilities must be accessible to individuals with disabilities to the extent that it is not structurally impracticable.

Employment – Title I

- Prohibits discrimination against qualified individuals with disabilities

“Qualified” Individual? Who is Disabled?

- “Disability” – “Physical or mental impairment that substantially limits one or more of the major life activities of such individual”
 - Episodic
 - In remission
 - Temporary
 - Mitigating measures no longer taken into account
 - Need not be central to person’s everyday life
- “Record of”
- “Regarded as”
- “Association”

To Whom Does Title I Apply?

- Private employers with 15 or more employees
 - Companies
 - State and local governments
 - Employment agencies
 - Labor unions
- Individuals
 - Employees
 - Applicants
 - Not independent contractors

When Does Title I Apply?

- Job application procedures
- Hiring & firing
- Advancement, compensation, job training

Disability Exclusions?

- Statutory categories
 - Transvestitism or transsexualism
 - Compulsive gambling
 - Kleptomania
 - Pyromania
- Drug users?
- Alcoholics?

Interactive Process

- Employee/applicant's request for a reasonable accommodation is the first step
- *Do not* seek out the disabled employee and ask if s/he needs an accommodation
- *Do* pay attention to formal and informal, written and verbal, notifications of employee problems that may constitute a request for a reasonable accommodation
 - Medical emergency due to MS, hospitalized, requires time off
 - Out with workers' comp injury, released to work with restrictions

Interactive Process

- Once the disabled employee says s/he can't perform a task and needs an accommodation, ask the employee what s/he proposes
 - Stop performing an essential function = unreasonable. The proposal must be something the company can do to *help the employee perform* the essential function
 - Stop performing a nonessential duty = evaluate restructuring the disabled employee's position
 - Not required to use the employee's preferred accommodation, just *an* accommodation that is reasonable
 - Don't question his/her disability

Reasonable Accommodations

- “Qualified individual with a disability” can perform the essential functions of the position with or without a reasonable accommodation
- Common accommodations
 - Schedule changes
 - Swapping of marginal functions
 - Telecommuting
 - Policy modifications
 - Reassignment to a vacation position for which the individual is qualified
 - Time off for treatment or recuperation

Leave as an Accommodation

- How long is enough? Few weeks? Few months? Years?
 - Amount of additional requested leave
 - Certain/uncertain duration
 - Ways in which absence will create significant operational problems for employer
- Indefinite leave, in many courts, is per se unreasonable
- Don't terminate. Replace.

Applicants

- When are accommodations required during the interview process?
- What is a reasonable accommodation?
- What questions are prohibited?
- What questions are permissive?
- Are medical examinations allowed?

Enforcement and Penalties

- Administrative process
- Private lawsuit
- EEOC lawsuit
- Remedies
 - hiring, reinstatement, promotion
 - compensatory damages (back pay, front pay, restored benefits)
 - reasonable accommodation
 - attorneys' fees
 - punitive damages

Questions?

For More Information:

If you would like more information about the services of Pro Bono Partnership of Atlanta, contact us.

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