

ESSENTIAL FUNCTIONS: THE ADA GENERAL RULE

The ADA precludes an employer from discriminating against a "qualified person with a disability" who can "perform the essential functions of the job" with or without a reasonable accommodation. A person who is not "qualified to perform the essential functions of the job with or without a reasonable accommodation" need not otherwise be hired, promoted or retained. Thus the ADA does not require employers to make anything other than good business decisions about persons with disabilities.

How do you determine whether or not a person with a disability is 'qualified' for the job? Whether a person with a disability is "qualified" requires a two-step process.

1. Determine whether the individual is "otherwise qualified." Your inquiries at this stage relate to whether or not the person satisfies the prerequisites of the job (e.g., educational background, employment experience, skills, licenses, technical knowledge and other job-related requirements).

2. Determine whether the person can perform the essential functions of the position, with or without reasonable accommodation.

While the ADA does not tell companies what jobs to have and how to define them, it does mandate that a person's ability to do the job be measured by analyzing the ESSENTIAL job functions. All jobs have essential and marginal functions. Employment decisions cannot be based on the person's inability to do a marginal function.

Identifying essential job functions is crucial to:

- a. the development of accurate and objective job descriptions;
- b. developing appropriate interview questions;
- c. determining whether a candidate or employee can perform each function, and with what degree of competence; and,
- d. determining whether or not, and to what extent, specific job accommodations can be made for a particular individual. This section summarizes the process of identifying essential job functions.

STEPS TO CARRYING OUT AN ESSENTIAL FUNCTIONS ANALYSIS

1. IDENTIFY ESSENTIAL JOB FUNCTIONS.

a. ASSESS WHETHER PERFORMANCE OF THE FUNCTION IS ACTUALLY REQUIRED.

Begin by asking yourself why the position exists and what it is you are actually paying the person to do. Break the position down into the individual tasks which make it up. As you look at each of the tasks, ask yourself whether it is a basic, necessary and integral part of the job (essential function) or a peripheral, incidental or minimal part of the job (marginal function). Get input from other people who are currently doing the job or have done it in the past.

b. EXAMINE THE EFFECT OF REMOVING THE FUNCTION FROM THE POSITION.

For example, if the function is removed, will the basic purpose of the job be destroyed or will there be only an occasional inconvenience which perhaps someone else can do? Specifically, requiring a food server to drive to pick up an employee who is late is fundamentally different than requiring someone to drive whose job it is to deliver pizza.

FOUR REASONS WHY REMOVING A FUNCTION COULD FUNDAMENTALLY ALTER THE POSITION:

(1) The reason the position exists is to perform the function. For example, for a person who is hired to dry automobiles after they come through an automatic car wash, wiping the car with a cloth is an essential function. If an individual is hired to file documents, being able to reach the file cabinets is an essential function.

(2) Even if a task is rarely performed, it may be an essential function since removing it from a position might have dire consequences. For example, a firefighter must be able to carry unconscious adults from a burning building.

(3) Removal of the function also might fundamentally alter the position if there are a limited number of employees available among whom that job function can be shared and distributed. This situation may occur because of a small workforce, the fluctuating demands of a business, a seasonal workforce, or the time of day or work shift during which the function is performed. For instance, since there are more people on a day shift in a hospital, a function which may be non-essential during the first shift may be a critical one for a person on the swing shift.

(4) The function is highly specialized. In highly skilled positions, employees are often hired specifically for their expertise. Even if this specialized function is not performed regularly, it may be considered essential to the job. For example, a blaster at a coal mine would require special knowledge of explosives. This specialization would make his work with explosives essential.

c. **CONSIDER FACTORS THE EEOC WILL EXAMINE.**

These will include:

- the current work experience of incumbents of similar jobs;
- your judgment as to which functions are essential;
- information included on the job description;
- the amount of time spent performing the function;
- the consequences of not requiring the employee to perform the function;
- provisions of a collective bargaining agreement; and,
- the work experience of past employees in the job.

d. **ESTABLISH PRODUCTION STANDARDS WHERE APPROPRIATE.**

Every organization is free to establish its own production and performance standards. It is not the intent of the ADA to question an employer's standards or put an employer in the position of having to justify them. If an employer requires its typists to type 76 words per minute, a person who types 65 words per minute is clearly not qualified. If a hotel requires its workers to clean 16 rooms per day, it will not be required to explain why it did not select a 10-room requirement instead. An employer, however, may not intentionally select a particular level of production for the purpose of excluding persons with disabilities. By establishing production standards in advance and including them in the job description, this issue should not arise.

2. **USE JOB DESCRIPTIONS TO SUPPORT AN ASSESSMENT OF ESSENTIAL FUNCTIONS.**

Here are some tips for developing these job descriptions:

Analyze positions carefully and objectively.

Emphasize the accurate preparation and consistent application of your job descriptions. A job description is useless, and might even be dangerous, if it misrepresents the actual requirements of a position.

Review job descriptions regularly since most jobs evolve and change over time.

Consider including a reference to certain qualification standards which go beyond quantitative or qualitative standards of production or service (e.g., maintaining regular attendance, being able to perform the essential functions of the position without posing a direct threat of harm).

Exclude vague or ambiguous items on the job description like "other duties as assigned." If included, these items should be listed as non-essential or marginal functions.

3. DETERMINE THE PERSONS PRESENT ABILITY TO PERFORM ESSENTIAL FUNCTIONS. The determination of a person's abilities to perform essential functions must be based on the person's capabilities at the time of the employment decision, not on speculation of the employee's future capabilities, increased health insurance premiums or workers' compensation costs.