

THE AMERICANS WITH DISABILITIES ACT (ADA)

The ADA is a federal civil rights law which prohibits discrimination against people with disabilities in employment practices. To be covered by the ADA, a person must have a disability, AND must also be qualified to do the job. An employer is not required to hire or keep a person who is not qualified, nor are they required to give a hiring preference based on disability.

Reasonable accommodation

Reasonable accommodation is a change or adjustment to the work setting, process, or schedule that allows a qualified person with a disability to perform the essential functions of a job, to have equal opportunity to apply for a job, and to enjoy equal benefits and privileges of employment.

Examples of reasonable accommodation

- Making the workplace physically accessible.
- Providing or modifying equipment or devices.
- Modifying training materials or company policies.
- Part-time or modified work schedule.
- Providing a reader or interpreter.
- Reassignment to a vacant position.

Important points about reasonable accommodation:

- The requirement to make a reasonable accommodation is ongoing and may come up any time a person's disability or job changes.
- It is the responsibility of the person with a disability to ask for a reasonable accommodation.
- An employer must provide a reasonable accommodation unless they can show it would put an undue hardship on the business.
- Undue hardship refers to an accommodation that is unduly expensive, disruptive, or that would substantially alter the operation of the business.
- If the cost of an accommodation will cause hardship on the employer, the employee must be given the choice of paying for the portion that causes the undue hardship.
- An employer may request medical documentation to show that the employee has need of the requested accommodation, and to help determine the most effective accommodation options.
- Reasonable accommodation does not include removing essential job functions, creating new jobs, or providing personal need items such as glasses.
- A special tax credit is available to help smaller employers make accommodations. A tax deduction up to \$15,000 per year is available to any business for expenses of removing qualified architectural or transportation barriers. askjan.org/media/tax.html
- Employees have the right to refuse an accommodation. However, if the person cannot perform the essential job functions without the accommodation, they may not be qualified for the job.



The Job Accommodation Network (JAN) provides free, expert, and confidential guidance on workplace accommodations and disability employment issues. JAN helps people with disabilities enhance their employability, and shows employers how to capitalize on their value and talent.

Assistance is available both over the phone and online.

JAN is provided by the U.S. Department of Labor's Office of Disability Employment Policy.

askjan.org

WHEN TO DISCLOSE DISABILITY INFORMATION

Just because potential employers cannot legally discriminate against candidates with disabilities doesn't guarantee they won't. A good disclosure strategy can increase your chances of being treated fairly.

- Don't disclose in your cover letter or resume.
- If you will need accommodations to attend the interview, let the scheduler know what you will need up front.
- Schedule your job interview before you disclose.
- If you have a visible disability, it will be noticed during the interview. The choice to disclose beforehand is yours.

SIF Take Action Tips for Workers with Disabilities

- If you have an invisible disability, disclose AFTER a job offer has been made. This will give you the opportunity to compete for the job based on your skills and abilities.
- If you are certain that your disability will not affect your work performance now or in the future, and you will not have to ask for an accommodation, then disclosure is probably not an issue.

HOW TO DISCLOSE DISABILITY INFORMATION

- Script your disclosure – know what you are going to say ahead of time and rehearse it until it's perfect.
 - When you prepare your script, pay attention to the words you use. Avoid any terms with a negative connotation, like “unpredictable,” “chronic condition,” or “permanently debilitated.”
 - Briefly describe the disability, but do not give a history of your surgeries and hospitalizations. The more you discuss your disability the more important it will become in the interviewer's mind. Try not to open doors to doubts.
 - Like it or not, your goal is to help the employer feel comfortable with your disability. A smile and a pleasant demeanor will go a long way.
 - Focus on telling (or demonstrating) how you can do the job, and what strengths and abilities you can bring to the company.
 - If you'll need any accommodations to perform the job, tell the interviewer exactly what you'll need up front. Be specific—don't create any room for doubt or the employer might overestimate the cost of accommodating you.
 - When appropriate, portray your disability as a strength. You have had to overcome a lot, and your perseverance can be inspiring if you frame it as such.
 - All the employer really want to know is:
 - Will you be there?
 - Can you do the job as well or better than others?
 - Will you be of value to the company?
- Convince them the answer to all three is ABSOLUTELY!

PRE-EMPLOYMENT QUESTIONS (ILLEGAL & LEGAL)

The Americans with Disabilities Act (ADA) does not allow any pre-employment inquiries about a disability. This ensures that qualified people are not screened out before their ability is considered. The employer can get information about your qualifications and medical information if it is necessary for safety and health on the job.

Illegal Interview Questions

- Have you ever had a work-related injury?
- Have you ever received workers' compensation or disability benefits?
- How many sick days did you take last year?
- Do you currently have any health problems?
- How much exercise do you do on a daily basis?
- Are you currently taking drugs or medication?
- Have you ever been hospitalized or had a surgery?
- Have you been treated for any mental condition?
- How much alcohol do you drink on a daily basis?
- Will you require time off for medical appointments?

Legal Interview Questions

The ADA allows employers to ask obviously disabled applicants questions about specific job functions.

- Can you operate a computer?
- Can you drive a company truck?
- Can you arrive at and begin work at 6 a.m.?
- Can you work a typical 40-hour work week?

SIF Take Action Tips for Workers with Disabilities

RESOURCES:

Assistive Technology

MonTECH – Montana’s Technology Related Program for People with Disabilities. This organization helps people find the necessary assistive devices for reasonable accommodation to help them obtain employment.

MonTECH services include:

- Information about assistive technology devices and services.
- An equipment loan/lease program.
- Information about funding sources for assistive technology.
- An equipment demonstration and evaluation center.

Contact MonTECH:

Rural Institute – MonTECH
52 Corbin Hall, Missoula, MT 59812
Telephone: (406) 243-5751 or (877) 243-5511
E-mail: montech@ruralinstitute.umt.edu
Website: montech.ruralinstitute.umt.edu

Additional assistive technology sites:

- State of Montana Blind and Low Vision Services program: dphhs.mt.gov/detd/blvs.aspx
- Montana Telecommunications Access Program (MTAP): dphhs.mt.gov/detd/mtap.aspx

MONTANA VOCATIONAL REHABILITATION SERVICES

Montana Vocational Rehabilitation Services (MVR) helps Montanans with disabilities prepare for, obtain, retain, and advance in the same high-quality jobs and high-demand careers as persons without disabilities.

Q. What services does MVR offer?

- Guidance in selecting a vocational goal
- Assessment of needs to overcome disability impediments in achieving work and independence
- Physical and mental restoration services
- Adaptive equipment (adapted computer, hand driving controls, etc.)
- Education and training materials
- Transportation related to other VR services
- Interpreter services for the deaf
- Reader services for the blind
- Orientation and mobility instruction (visually impaired)
- Services to help students with disabilities transition from school to work
- Job placement services
- Technical assistance for employers
- Any service necessary to get someone to work

Q. What are the eligibility requirements?

- You must have a physical or mental disability that prevents you from getting or keeping a job.
- You must provide proof of disability from a qualified professional (e.g. a licensed doctor or certified psychologist).
- If you have been determined eligible for Social Security because of a disability (SSI, SSDI) and have proof of that, you are presumed to be eligible for MVR services.
- If you don’t have proof of disability, you must tell your counselor how to get such information and sign a release authorizing the counselor to do so.
- Once determined eligible for MVR services, you will meet with a counselor to discuss your plans for work, your education and work experience, and your challenges and needs. You will set specific goals and create a plan of action for getting you to work.

Contact Montana Vocational Rehab:

111 North Last Chance Gulch, Suite 4C
(406) 444-2590 or (877) 296-1197

P.O. Box 4210 – Helena, MT 59604-4210
Website: dphhs.mt.gov/detd/vocrehab