



# The ADA Act and You

This law applies to both your patients and employees.

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Since 1992, every podiatrist in the United States has been subject to the Americans with Disability Act (ADA) in two ways. The podiatrist must comply with the federal law as both an employer and as a medical provider. It is important that “disability” be defined for purposes of this law. “The term ‘disability’ means, with respect to an individual, a physical or mental impairment that substantially limits one or more major life activities of such individual.” (42 USC § 12102)

For one to be considered physically or mentally impaired under ADA, it must significantly limit one or more major life activities. Such activities include walking, seeing, hearing, breathing, learning, or

speaking. Inability to participate in community activities also applies. As of January 1, 2009, the ADA Amendments Act (ADAAA) significantly expanded the interpretation

## Podiatrist as Employer and the ADA and ADAAA

The ADA and ADAAA provide job protection for a person who can perform the “essential functions of

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of what is a disability. The standard of what is considered a disability is the common-sense standard. This act even provides that a person is still protected as being disabled for terms of this law, even if they have a prosthetic that allows them to walk or a hearing aid that allows them to hear.

a job, with or without “reasonable accommodation”. What does that mean? Someone working for you must—but for her disability—otherwise be able to perform the job. If it requires a degree of some kind, that does not change due to the ADA. If the job requires training, or a cer-

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tain skill, and the person's disability will not allow him/her to perform that job, even with a reasonable accommodation, then that person need not be kept in that job or hired in

at a few examples of "reasonable accommodation" for your employee. Would building a ramp cause undue hardship to you? Probably not. Might installation of computer equipment capable of enlarging her view of documents if she is sight-im-

with the situation.

Next, one must understand what is meant by the term "undue hardship". The type of the accommodation and its cost are factors involved. The ability to pay for the accommodation of the employee is a real factor. The effect of the accommodation on your ability to treat your patients and run your office are factors. Also, the disability could have occurred after you hired the employee or prior to her employment.

Let's look at some examples. Keep in mind that usually no one factor in and of itself will decide what is and what is not allowed.

1) Your employee uses a wheelchair. In order to get from one part of the office to another that is crucial to do her job, it would require the construction of a ramp. Due to the layout of your office, a ramp would require restructuring of a retaining wall that in turn would require your office to be closed for several weeks. You are a solo practitioner paying significant child-support with a limited income. This very well might be considered an example of a reasonable accommodation requiring "undue hardship". Therefore, it might not be required to build. Perhaps an alternate accommodation would work.

2) Your employee is a diabetic with significant neuropathies affecting her hands to the point that she is unable to grip surgical instruments. Medication and physical therapy have not been able to improve her ability to grip. As part of your written job description, the employee must be able to grip various types of surgical equipment to prepare them for the sterilizer. She is unable to do that. The employee sat down with her employer to see if there was some way that would allow her to prepare the surgical instruments for sterilization. The office employs a dozen podiatric assistants with 6 podiatrists. One or more of the other assistants agreed to perform the preparation for instrument sterilization for the disabled employee. Instead, that

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the first place. You, the employer, should have a written job description. This will come in handy when you claim that the person was not hired, or was terminated after acquiring her disability, due to her inability to perform the "essential functions" of the job.

Next, one must consider what a reasonable accommodation is for their employee. If the accommodation would cause "undue hardship" to the employer (you), then the employee is not entitled to that accommodation. This sounds like a lot of nebulous words. Let's look

paired, be considered a reasonable accommodation? Probably. Would some time off for the employee to be rehabilitated to the point that no accommodations are needed be reasonable? Most likely.

It is best that the employer attempts to find an accommodation along with the input of the employee; in this way you can better determine what might work and what would not. Keep written records of these attempts at accommodation. It is evidence you are trying to accommodate your employee's disability as opposed to not wanting to deal

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employee agreed to perform more of her other duties as a podiatric assistant. This was a reasonable accommodation for the circumstances of this practice. The same accommodation might not be tenable for a smaller practice.

3) Your employee was recently involved in a very violent house break-in. She has been diagnosed with PTSD. Despite professional treatment, any time she sees blood, she is terrified. Your podiatry practice involves her visualizing blood several times each day, as many in-office procedures are

tions. An accommodation that is achievable but is unaffordable, or an accommodation that would make one's office unusable for several months during the renovation, may not be required.

If you are treating a blind-deaf patient, you must provide either large print, Braille, a computer screen-reading program, or an audio recording in order to provide information which might include explaining an informed consent form to such a patient. If it does not involve undue hardship, you must widen a doorway so that a wheelchair can fit. Podiatry treatment chairs/examining table, should be ade-

if an employee makes a complaint to the EEOC and the EEOC does nothing or dismisses the complaint, the employee can sue in court. The court would determine if the employee's job has to be restored, and if there are any financial obligations, such as back pay. An employee's legal fees may also be granted.

For patients with disabilities, the patient can either sue or can file a complaint with the U.S. Attorney General. The USAG must investigate and, if warranted, file an action against the podiatry practice. The courts can grant restraining orders and injunctions among other remedies.

In conclusion, like many laws, this one has several important vague terms such as "disability", "reasonable accommodations" and "undue hardship". What is required and what is not required uses a balance between what is needed to accommodate and how much it will cost or disrupt your practice. Additionally, various courts interpret the situations differently. A situation involving disabilities can be very fact specific. It is of importance to keep records of all attempts to accommodate your employees and patients. Any communication with your employee as to how her disability could be accommodated should be documented and saved. It is strongly recommended that a healthcare attorney be consulted in these matters. **PM**

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performed. It is an integral part of your practice and was written in the job description at the time this employee was hired. It is a small practice with no other job for her to do that would not involve frequent exposure to blood. In other words, visual exposure to blood is an essential part of the job. This has not changed since day one. There may not be any means of reasonable accommodation of the employee's PTSD.

### The Patient and the Podiatry Practice under the ADA and ADAAA

Impediments for disabled patients must be removed if they still allow the office to function as a podiatry office. The undue hardship analysis for patients is the same as that for the employee. The size of the practice, the cost of the accommodation and the nature of the accommodation are all considered in the analysis of what is required to do or not to do. Grab bars in a bathroom for patients, a ramp to access the building, a higher or lower chair in one's waiting room are examples of usually readily achievable patient accommoda-

tionately adjustable to accommodate those patients who cannot walk, stand, or otherwise navigate onto or off a non-movable treatment table. Interestingly, in an already existing structure, an elevator may not be required if the disruption to the podiatry office, or its cost to the practice is too high. Again, the size and wealth of the practice are factors in this analysis. Once again, there are no bright red lines about exactly what is required and what is not. If you must, err on the side that the accommodation is required, if possible.

### Penalties and Enforcement

It must be stressed that the courts' interpretation of what constitutes a reasonable accommodation and undue hardship are very case and state-specific. It can also be court-specific. For example, some courts have ruled that a practice's website must be accessible to those with a sight impairment; some courts have not. When in doubt, it is best to interpret what must be done in as liberal a fashion as possible and check with a health law attorney.

As to disabilities and job issues,



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