

# The Americans with Disabilities Act

**M**uch is being said and written regarding the promise and the changes that will transform our workplace by the year 2000. All predictions indicate that our nation's labor force will contrast sharply in race and gender with those who are currently working or are qualified and looking for work. The pool from which we must draw our talent will change. Indeed, as we get closer to the predictions outlined in the report *Workforce 2000*, we realize that our labor force is changing each day.

We are just eight years from the year 2000, and state and local government organizations are struggling to understand the emerging demographics in our labor force and our communities. *Workforce 2000*, with all its predictions, challenges our ability to manage tremendous change in our approach to doing business and providing services to our citizens. Such issues as managing diversity, the 1991 Civil Rights Act, and the Americans with Disabilities Act require state and local governments and their administrators to look critically within to find ways to anticipate and respond to the needs and wants of members of their publics that have previously received secondary attention at best. Among them are people with disabilities, who must be considered an integral part of that group discussed in *Workforce 2000*.

**Crisis or  
Challenge for  
Workforce  
2000?**

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## **What Is the ADA?**

The American with Disabilities Act (ADA) is a law that has been mandated to eliminate discriminatory treatment of

43 million Americans who have physical or mental disabilities. The act was passed by the U.S. Congress in July of 1990 and signed by President Bush in July of 1991. The strategic application of ADA was patterned after both Title III of the 1964 Civil Rights Act and Title IV of the 1973 Rehabilitation Act.

The enactment of ADA will have a major impact on our labor force. It influences the way most businesses and state and local governments do business. It requires them to rethink how they treat the employees, applicants for employment, constituents, and customers who may have physical or mental disabilities. The act has four major objectives:

- provide a comprehensive national mandate for the elimination of discrimination against individuals with disabilities,
- provide consistent enforceable standards addressing discrimination against individuals with disabilities,
- ensure that the federal government plays a central role in enforcing the standards on behalf of individuals with disabilities, and
- invoke the sweep of congressional authority including the power to enforce the 14th amendment and to regulate commerce, in order to address the major areas of discrimination faced day to day by people with disabilities.

The major goal of the law is to motivate American organizations to provide opportunities for services and employment for citizens and constituents that have historically been isolated, discriminated against, and otherwise precluded from full participation in the work and social activities of our communities.

What does this really mean for the government agencies that must uphold the public trust? State and local governments may not discriminate against people with disabilities. It

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also means that all government facilities and services must be accessible to people with physical or mental disabilities and that these people will be given the same consideration that people without disabilities are given. To make certain that this occurs, it may be necessary to provide the opportunities with "reasonable accommodations." This means physical barriers that impede accessibility must be removed or modified. The concept of reasonable accommodation also suggests that organizations should apply "common sense" principles to determine that the efforts to accommodate those with disabilities are "readily achievable" and do not create an "undue hardship" on the organization.

The test of law will look at any of these changes to determine if they can be made without "substantial difficulty or expense" or if making the changes would place undue hardship on the organization. The terms "reasonable accommodation," undue

hardship, and "readily achievable" may well represent key points that will be tested by litigation over the next few years.

*Managing diversity* encourages us to appreciate people whose values, cultures, and lifestyles differ from ours. The ADA focuses specifically on radically changing the way to provide access and opportunity for people who have physical or mental disabilities. We must focus on change that is aimed at quality performance and productivity by including all eligible and qualified people in our communities.

This article points out some of the major issues that should be considered to comply with the ADA in a timely fashion. The act outlines policies, programs, and practices that will have an impact on housing and accommodations, public transportation, education, medical services, employment, recreation, and other activities. Parallels between the ADA, the 1964 Civil Rights Act, and other federal laws are intentional.

**Impact of the Act**

The Americans with Disabilities Act focuses on eliminating policies and practices that discriminate against Americans who have physical or mental disabilities.

*The Act states, in relevant part, that no covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.*

The ADA is an antidiscriminatory statute that requires individuals with disabilities to be given the same considerations for employment that individuals without disabilities are given. The sections of the act that have the most direct impact for state and local governments are Title II and Title III.

Title II of the ADA focuses on public services, and it applies to state and local governments and public transportation agencies. It requires, in essence, that public transportation agencies that respond to public demand and that manage fixed route schedules must be accessible and usable by people with disabilities. Title II also requires that a paratransit system must be operated to provide responsive services comparable to the services available to the general public. This part is enforced by the Secretary of Transportation. The regulations for this part were issued on April 26, 1991, by the Architectural and Transportation Barriers Compliance Board.

Title III of the ADA focuses on public accommodations. It is concerned with access to facilities and services provided by hotels, restaurants, theaters, stores, service establishments, and private transportation services. Operators of these types of organizations are required to make "readily achievable" modifications of existing facilities to improve physical accessibility to goods and services. These organizations may make goods and services available through alternate means where complying with this part of the act regarding existing facilities is not readily achievable. The guidelines regarding new construction require accessibility regardless of cost or ease of achievement on new buildings or renovated parts of pre-existing buildings.

While the parameters of Title III of the act are broad, this section encourages these organizations to use common sense to identify, anticipate, appreciate, and respond to the needs of people with disabilities.

Some organizations are waiting to see how the ADA is going to affect them based on evolving case law. Those organizations that conduct critical self-evaluations of their programs and practices, however, will stand a better chance of compliance and cost avoidance than those that

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do not take those steps. What should managers consider if they want to conduct a self-evaluation?

### **Organizational Self-Analysis**

As organizations seek to comply with the ADA, it is essential that managers ask some important questions about their organizations and how they do business. Among them are:

- What is the impact of our employment and personnel policies and practices on employees and applicants who may have disabilities?
- How does our organization define "reasonable accommodations"?
- Does our organization have an applicant tracking process that allows us to verify the reasons for not selecting applicants? Is the process documented?

- Are job descriptions and performance standards valid and current, and do they meet the test of the ADA?
- Are the facilities that host the activities of the organization accessible?
- Does our application form contain requests for information that may be discriminatory?
- What provisions does our organization have to accommodate an employee or applicant for employment who may be chemically (alcohol or drug) dependent?
- Are equal employment opportunity notices posted in conspicuous places and provided to accommodate sight-impaired employees, applicants for employment, or individuals that may be visiting our facilities?
- Do employees with disabilities have the opportunity to participate in our organization's planning and advisory groups?
- Are all of our organization's business and social events offered in facilities that are accessible for employees, applicants for employment, guests, or customers?

### **Achieving Compliance**

Several critical operations issues need to be addressed in order to achieve the access and treatment goals important to compliance with ADA. State and local governments must consider the following:

#### **Employment**

- May not discriminate against a person with a disability in hiring or promotion if the person is otherwise qualified for the job.
- Employers can ask about one's ability to perform a job but cannot inquire about disability nor conduct tests that tend to screen out people with disabilities.
- Employers will need to provide "reasonable accommodation" to people with disabilities, including

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- job restructuring and modification of equipment.
  - Employers do not need to provide accommodations that impose an “undue hardship” on business operations.

### **Transportation**

- New public transit buses ordered after August 26, 1990, must be accessible.
- Transit authorities must provide comparable paratransit or other special transportation services to people who cannot use fixed route bus services, unless undue burden would result.
- Existing rail systems must have one accessible car per train by July 26, 1995.
- New rail cars ordered after August 26, 1990, must be accessible.
- New bus and train stations must be accessible.

### **Public Accommodations**

- Private entities such as restaurants, hotels, and retail stores may not discriminate against individuals with disabilities.
- Auxiliary aids and services must be provided to people with vision or hearing impairments or people with other disabilities, unless an undue burden would result.
- Physical barriers in existing facilities must be removed, if removal is readily achievable. If not, alternative methods of providing the services must be offered.
- All new construction and alterations of facilities must be accessible.

### **State and Local Government**

- State and local governments may not discriminate against qualified people with disabilities.
- All government facilities, services, and communications must be accessible consistent with the requirements of section 504 of the Rehabilitation Act of 1973.

### **Public Management**

- Organizations offering telephone service to the general public must offer telephone relay services to people who use telecommunications devices for the deaf (TDDs) or similar devices.

### **Physical Facilities**

- Accessible space and reach. Public area of a business must be within easy reach of people of impaired mobility.
- Clear paths. At least one accessible path must connect all accessible

parts of a public place. This route must link transit, parking, and public streets or sidewalks to the building entrance. The accessible route must coincide with that used by the non-disabled as much as possible.

- Parking. Accessible parking for visitors or employees with disabilities must be on the shortest possible route to an accessible entrance to the building. The number of accessible parking spaces required is based on the total number of spaces available.
- Ramps. A ramp is any part of a path

that has a slope steeper than one foot of rise for each 20 feet of its run. Ramps should have as little slope as possible, and new ramps must be no steeper than 1:12. The greatest allowable rise for any ramp run is 30 inches. Ramps must be at least 36 inches wide and have level landings at least 60 inches long at the top and bottom. Any ramp that has a rise greater than 6 inches or that is longer than 72 inches must have handrails.

- Elevators. New buildings of three or more stories or with 3,000 square feet or more per story must have elevators. They should be automatic and self-leveling. There must be both visible and audible signals when the elevator arrives. Doors may not start closing until at least five seconds from the signal; they must remain open for at least three seconds.
- Doors. At least 50 percent of all public entry ways must be accessible and at least one must be a ground-floor entrance. Revolving doors and turnstiles must not be the sole means of getting through an accessible entrance.
- Drinking fountains. At least one must be usable by people in wheelchairs as well as people with problems bending or stooping.
- Toilet and bathing facilities. Space and clearance must meet requirements to make all facilities accessible.
- Automated teller machines. At least one ATM should have controls within reach ranges for people with disabilities.
- Telephones. At least one phone on each floor of a building must comply with accessibility guidelines.

#### **Reasonable Accommodation**

- This means making existing facilities readily accessible to and usable by individuals with disabilities; job restructuring, part-time or modified work schedules, reassignment

to a vacant position, acquiring or modifying equipment or devices; appropriately adjusting or modifying examinations, training materials, or policies; and providing qualified readers or interpreters; as well as other similar accommodations for individuals.

- The need to make reasonable accommodations for the disabled applies so long as such reasonable accommodations do not impose "undue hardship" on the employer. Undue hardship is not defined by the ADA, but some considerations must be made to determine whether or not a hardship exists. One must consider the nature and cost of the accommodations that would be required, the type of operations in which the employer and the employees are involved, and

the financial resources of the facility or the company.

An organization's focus on complying with the ADA is intensified not only because it is legally, morally, and socially the right thing to do, but because it makes good business sense. We must manage a workforce that understands and appreciates the needs of constituents, and successfully interprets and responds to those needs. It is most logical to provide for and support the best utilization of all employees and prospective employees. The employees win, the organization wins, and the constituents and communities served by the organization win. **DAI**

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