



Understanding the Americans with Disabilities Act (ADA) and Americans with Disabilities Act Amendments Act (ADAAA)

Presented by:

GL Solutions, Incorporated
December 11, 2020



Hello everyone. Thank you for logging into this ADA/ADAAA training provided to you by GL Solutions, Inc. for Trademasters, Inc.. This training is a supervisor and manager training for Trademasters, Inc.

Understanding the Americans with Disabilities Act(ADA) and Americans with Disabilities Act Amendments Act(ADAAA)



What are the Objectives of this Training?



In this training we will cover certain objective requirements that help maintain compliance regulations for Trademasters, Inc. with all federal, local, and state governments.

Understanding the Americans with Disabilities Act (ADA) and Americans with Disabilities Act Amendments Act (ADAAA)



- Provide information to the Supervisors and Managers of Trademasters, Inc.
- Increase knowledge and awareness of the Americans with Disabilities Acts (ADA) and Americans with Disabilities Act Amendments Act (ADAAA) laws.
- Help Trademasters and its Supervisors and Managers maintain compliance with federal, state, and local employment laws.
- You will acquire the knowledge and skills necessary to successfully pass a follow-up assessment to this training course to determine mastery of the subject matter.



The goal that you should achieve after leaving this training is:

1. Information about what is ADA/ADAAA?
2. Awareness about the Americans with Disabilities Acts for ADA and the Americans with Disabilities Act Amendments Act laws and regulations and how you as a supervisor and manager can help Trademasters, Inc. maintain and keep compliance with all federal, state, and local regulations when it comes to these amendment acts.



ADA and ADAAA

What is it and who is protected?

- The Americans with Disabilities Act Amendments Act (ADA) of 1990 is a civil rights law that was passed by Congress and signed into law by President George H.W. Bush on July 26, 1990.
- The ADA of 1990 prohibits employer discrimination against applicants and employees with disabilities in areas of their public lives to include: the workplace, state and local government services, educational facilities, transportation, and all public and private places that are open to the general public." (Adata.org, 2019)
- This law was created to afford individuals with disabilities the same opportunities and liberties as those individuals without disabilities.
- It gives protections to individuals under the same protected-classes on "the basis of race, color, sex, national origin, age, and religion." (Adata.org, 2019).



The ADA or Americans with Disabilities Act is a civil rights law. It was passed by Congress and signed into said law by President George H.W. Bush in 1990.

Basically, the ADA prohibits any employer at any level whether it is federal, state, or local to discriminate against any applicant or active employee who may have a disability in areas of public lives to include: workplace, government services, education facilities, transportation, etc. This law was created for individuals with a disability to have the same rights when it comes to earning a living and finding a job and opportunities as individuals without disabilities. It protects qualified individuals under the same types of protected classes such as race, color, sex, citizenship, origin, heritage, age, religion, etc.

ADA and ADAAA What is it and who is protected?



- In 2008, the Americans with Disabilities Act Amendments Act(ADAAA) was passed into law and its effective date was January 1, 2009.
- The ADAAA was created as an amendment to the ADA to better define the term, "disability."
- These new changes to the term, "disability," are reflected in the ADA's Title I ("employment practices of private employers with 15 or more employees, state and local governments, employment agencies, labor unions, agents of the employer and joint management labor committees); Title II (programs and activities of state and local government entities); and Title III (private entities that are considered places of public accommodation)." (Adata.org, 2019).
- It gives protections to individuals under the same protected-classes on "the basis of race, color, sex, national origin, age, and religion." (Adata.org, 2019).



Now that we have defined ADA. Now what is ADAAA? The ADAAA is the Americans with Disabilities Act Amendments Act. This act was passed into law in 2008 to be effective in 2009. The ADAAA or Americans with Disabilities Act Amendments Act was put into place to better define the term "disability." In the late 1990's, an employee sued the employer because of a claim made by the employee that the employer discriminated against him/her because of a disability. The case went to the Supreme Court. It was ruled that the current ADA didn't include certain individuals' disabilities. The ADAAA was enacted in an attempt to amend the ADA in order to expand the definition of disability. The new changes to the term "disability" reflected that in Titles I, II, and III. Employment practices of private employers with +15 employees is a requirement. The ADA only required private employers with +25 or more employees to be enforceable. It narrowed down the number to 15. It also included state and local governments. The ADA only included federal governments. The ADAAA included state and local governments. They also included employment agencies. They are not private employers, but they are now considered part of the group of employers who would need to enforce ADA and ADAAA policies.

In Title II, they included programs and activities of state and local entities . The ADA did not specify that individuals could not be discriminated against if they participated in a type of activity such as physical therapy for example.

In Title III, any type of public entity that performs at a place of public accommodations (i.e., park or a road), is required to enforce ADA/ADAAA regulations.

Provides same types of protection for employees on the basis of race, color, sex, national origin/heritage, age, religion, etc.



What are the ADA/ADAAA Discriminators?

It is unlawful for an employee to discriminate against an individual in all employment practices.

- ▶ If an individual is qualified to perform the duties of the job, the ADA protects the individual from discrimination on the basis of the disability. (EEOC.gov, 2019).
- ▶ Per ADA protections, "it is unlawful to discriminate in all employment practices to include: recruitment, firing, hiring, training, job assignments, promotions, pay, benefits, layoffs, leave, and all other employment related activities" (EEOC.gov, 2019).
- ▶ Job discrimination against those with disabilities is deemed illegal when displayed by "private employers, state and local governments, employment agencies, labor organizations, and labor-management committees." (EEOC.gov, 2019).

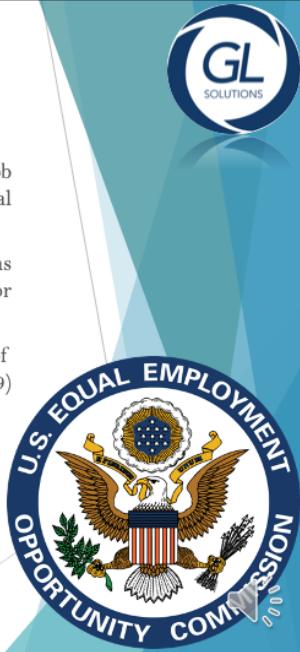


What is the ADA? What is ADAAA?

It is a national, civil rights law that protects against discrimination. It makes it unlawful for any employer at any level to discriminate against individuals that have a disability, could have a disability, might develop a disability, or cares for individuals with a disability. All of these individuals mentioned are protected not only in employment practices such as applications and the capacity of their job. They are protected against firing, training, job assignments, promotions, pay, benefits, lay offs depending upon the circumstances, and any other employment-related services and activities.

The ADA/ADAAA and the EEOC

- ▶ The Equal Employment Opportunity Commission (EEOC) enforces job discrimination as part of the ADA by “all employers to include state and local employers with 25 or more employers after July 26, 1992.” (EEOC.gov, 2019).
- ▶ The Equal Employment Opportunity Commission also enforces job discrimination as part of the ADA by “all employers to include state and local employers with 15 or more employers after July 26, 1994.” (EEOC.gov, 2019).
- ▶ The Equal Employment Opportunity Commission laws still apply during the time of pandemics, such as the most recent Coronavirus 2019(also known as COVID-19) pandemic.



Who is in charge of ensuring that these rules and regulations are being adhered to?

A group of agencies work in conjunction with each other to make sure that these rules and regulations at the federal, state, and local are being enforced.

The EEOC or The Equal Employment Opportunity Commission, main enforcer, is to enforce discrimination is not happening to any individual under any employer including state and local with +25 employees after 1992 and with +15 after 1994. Employer have to enforce and create an ADA and ADAAA policy that meets compliance regulations at all levels.

The ADA/ADAAA and the DOJ



The Department of Justice (DOJ) enforces another part of the ADA that prohibits discrimination in state and local government programs and activities including discrimination by all state and local governments, regardless of the number of employees after January 26, 1992.



The Department of Justice's (DOJ's) job is not to enforce the ADA, but to coordinate efforts with the Equal Employment Opportunity Commission (EEOC) to conduct a thorough investigation of any claims of discrimination that are made. Should the EEOC find that the employer is liable, the DOJ becomes involved to ensure that:

- a) The situation does not occur again
- b) If anything is owed to the employee occurs, and/or
- c) Possible amendment needed to the laws to be able to include more protections

Who and what is covered under ADA/ADAAA?



- ▶ “An individual is covered under ADA, if he/she has a disability and is qualified to perform the duties of the job.”
- ▶ “An individual is covered under ADA, if he/she has a physical or mental impairment that substantially affects a major life activity.”
- ▶ “An individual is also protected under ADA, if he/she has a history of a disability or if an employer “believes” that there is a disability (even if it is not diagnosed at the present time)” (EOC.gov, 2019).



What does ADA and ADAAA actually state?

The basic language of the ADA and ADAAA states that individuals are protected under this law if they are protected under these laws if they are:

- a) Disabled and are qualified to perform the duties of the job
- b) Have a physical or mental impairment that substantially affects a major life activity
- c) Individual that has a history of a disability- even if it is not visible or present at the time of employment/application.

Job duties

Management will need to meet with Human Resources(HR) personnel to clearly define job descriptions and duties(be able to move from Point A to Point B).

For example, an individual in a wheelchair has the ability to transport him/herself from Point A to B.

It is very important to list the basic job duties of all jobs.

What are considered major life activities? It includes seeing, talking, brushing your teeth, walking, etc. If the individual being considered for an opportunity can perform the major life activity no matter how long it may take for it to be performed, the individual is still qualified to perform the job.

Perhaps someone was diagnosed or sometimes misdiagnosed with a disability is still protected because of this reason. If it is perceived that someone has a disability, they are still protected.

What Departments Must Enforce ADA/ADAAA Rules and Regulations?



- ▶ The Federal enforcement of the ADA civil rights law is governed by the EEOC and the DOJ. This prevents unnecessary duplication of investigative and enforcement activities conducted by the agencies.
- ▶ There are some governmental and private employers that protected by nondiscrimination and affirmative action requirements under the Rehabilitation Act of 1973; which involves The Rehabilitation Act of 1973(Rehab Act) that “prohibits discrimination on the basis of disability in programs conducted by federal agencies, in programs receiving federal financial assistance, in federal employment and in the employment practices of federal contractors.” (Askearn.org, 2019).
- ▶ The standards for determining employment discrimination under the Rehab Act are the same as those used in Title I of the ADA; it protects “qualified individuals with disabilities.”
- ▶ “Qualified” means the person satisfies the job-related requirements of the position he or she holds (or is applying for) and can perform its essential functions, with or without a reasonable accommodation. (Askearn.org, 2019).



What are the rules and who enforces the rules? The EEOC is in charge of enforcing the rules. The DOJ works with the EEOC to ensure that any investigations needing to happen takes place. The reason is that the EEOC is the only agency that is able to enforce an employer to be accountable for any workplace violations. This helps to avoid any breakdown in communication of agencies.

This act and law of the ADAAA encompasses the rehabilitation act of 1973. Employers are not allowed to discriminate against employees, and it is illegal to do so. An individual cannot be discriminated against because they are participating in a program to help them cope with a disability. An employer cannot disqualify a candidate based upon a disability. For example, if a candidate arrives to an interview and needs a sign language interpreter and one is not available, the interview would need to be rescheduled in order to locate a sign language interpreter that can be present for the rescheduled interview with the prospective candidate.

What does a qualified individual mean? It means that it is any individual that satisfies all or most of the job related requirements of a position that they hold, would like to hold, and they can perform the essential functions with or without reasonable accommodations(i.e., moving from Point A to Point B, transporting a box from Point A to Point B).

Who does ADA/ADAAA protect?



- ▶ “Qualified individuals” with disabilities and individuals who have relationships/associations with an individual with a disability are protected.
- ▶ “Qualified individuals” are those with a disability who meet legitimate skill, experience, education, or other requirements of an employment position that he/she holds or seeks and who can perform the “essential functions” of the position with or without reasonable accommodation.” (EEOC.gov, 2019).



Qualified individuals are individuals who are disabled or associated with an individual who is disabled(i.e. caring for a disabled individual). Caring for a disabled individual does not need to be for an immediate family member(i.e. legal guardianship of a disabled cousin whose mother passed away). The employer must comply with this and provide reasonable accommodations for the employee to care for the disabled family member. Qualified individuals are those with a disability with a legitimate skill, experience, education, or other requirements of any employment position that he/she currently holds, wishes to have, and be able to perform the basic job description with or without a reasonable accommodation. If an individual can meet the basic job requirements, he/she can perform the job regardless of the disability. Technology has afforded employers with the means to assist employees with disabilities to perform the duties of a job.

How can an Employer Exhibit Good Judgement?



- ▶ An employer may not inquire on an application or in an interview if the individual is disable or to the extent of the disability.
- ▶ An employer does have the authority to inquire or ask if the individual can perform specific job tasks and if there is any need for an accommodation to be utilized. (EOC.gov, 2019).



How can an employer ensure that good judgment is being met while following the guidelines of ADA/ADAAA? There are 2 big “No No’s” that employers must remember. An employer must not ask an individual if he/she is disabled nor can an employer inquire to the extent of a disability. The employer can ask if the individual will require a reasonable accommodation to perform the duties of the job and what type of accommodation that is needed. These 2 questions are acceptable to ask an individual.



The Trademasters ADA/ADAAA Policy

- ▶ Trademasters will comply with all federal, state and local laws concerning the employment of persons with disabilities and will act in accordance with the regulations and guidance issued by the EEOC.
- ▶ Trademasters will not discriminate against qualified applicants and employees with disabilities during the following stages:
 - Application
 - Hiring
 - Advancement
 - Discharge
 - Compensation
 - Training
- ▶ Trademasters will provide all qualified applicants and employees reasonable accommodations, without creating an undue hardship or causing a direct threat to workplace safety.
- ▶ All accommodation requests must be made directly through Trademasters' HR Department.
- ▶ Individuals who are currently using illegal drugs are excluded from coverage under the ADA/ADAAA policy of Trademasters.



Trademasters will comply with all federal, state, and local laws concerning employment of persons with disabilities according to the laws and regulations of the ADA and ADAAA enforced by the EEOC.

Trademasters will not discriminate against qualified applicants and employees with disabilities during the job application, hiring processes, opportunities for advancement, discharge, wages and compensation, and training opportunities. Trademasters will provide reasonable accommodations. The responsibility of a manager/supervisor is to contact the Human Resources(H.R.) dept., Carolin at Trademasters, to best determine if an employee will need a reasonable accommodation to perform the duties of his/her job(i.e. The role of the HR dept. is to determine if an employee who hurt his/her back and is injured may require a reasonable accommodation to perform the duties of the job). Any individual using illegal drugs cannot claim protection under the ADA/ADAAA policy at Trademasters

What is my role as a Supervisor/Manager of Trademasters?



Remember, you are a representative of Trademasters!

- ▶ Familiarize yourself with your team:
 - ▶ Observe your team and notice when someone is acting or behaving out of character.
 - ▶ If a team member is disabled, familiarize yourself with that disability.
- ▶ Don't take matters into your own hands, reach out to HR and apprise them of the situation.



As a manager/supervisor, you are a representative of Trademasters. It is important for Trademasters managers/supervisors to get to know your employees. Your job is to assess when something is not quite right with your employees (i.e. a usually happy, go-lucky employee walks by 2 days in a row, doesn't speak, her attire has changed, and she begins to work). You can ask the employee if she is okay after observing these sudden changes. It is also important to document what has occurred. You may then follow up with the HR dept. to inform of this new change in the employee's behavior.