Thank you for reading the HR Advisor Newsletter. This month we cover the key terms employers need to understand from the Americans with Disabilities Act, state voting leave, and significant updates to the rules about leave under the Families First Coronavirus Response Act.

Key Definitions to Help You Understand the ADA

If you hadn't engaged with the Americans with Disabilities Act (ADA) before the pandemic, you probably have by now. The ADA comes up a lot these days, both with respect to confidentiality of medical information (like employee temperatures) as well as with reasonable accommodation for those who are at high risk for a serious case of COVID-19. In this article we'll tackle some of the key terms in the ADA that every employer should be comfortable with.

First, though, let's cover the basics. The ADA is a federal law that prohibits discrimination against applicants and employees with disabilities and requires that employers provide them with reasonable accommodations under certain circumstances. The law applies to all private employers with 15 or more employees, but many states have similar disability laws that take effect at lower employee counts. Most state disability discrimination laws are similar to the ADA, so even if

you're a very small employer, this article may include useful information.

The original language of the law has been around for roughly three decades. Nevertheless, there's a lot of confusion about what the law requires and what its terms entail. A big reason for this confusion is the language of the law itself; the ADA has nebulous concepts, such as *undue hardship* and *reasonable accommodation*. Words like undue and reasonable are by their nature open to some interpretation, which is not exactly a comfort to employers.

Fortunately, while there's no getting completely around the inherent ambiguity of the ADA, employers can feel more confident in their application of the law by reviewing and understanding its most important concepts, so below we'll look at four key terms worth knowing.

Disability
Let's start with the term *disability*. According to the ADA, a person with a disability is someone who has a physical or mental impairment that substantially limits one or more major life activities, someone who has a history or record of such an impairment, or someone who is regarded as having such an impairment.

While the law does not have a list of impairments that are covered, it does identify some major life activities that could be limited by a disability. These include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Major life activities also include major bodily functions (e.g., the immune system, digestive functions). In short, the definition of disability under the ADA is broad.

The most often misunderstood part of this definition is the phrase "regarded as disabled." This phrase becomes important if the employer takes *any adverse action* because they believe a disability may exist. For example, if a hiring manager removes a candidate from consideration (adverse action) because the manager believed, rightly or wrongly, that the candidate has social anxiety, then the manager has illegally discriminated against the candidate because they regarded the candidate as disabled. In this situation, the candidate — even if they did not have social anxiety — would have a claim under the ADA.

Reasonable Accommodation
Employers also encounter the ADA when an applicant or employee asks for a *reasonable accommodation*. According to the Equal Employment

Opportunity Commission (EEOC), a reasonable accommodation is “any change in the workplace or the way things are customarily done that provides an equal employment opportunity to an individual with a disability.” Reasonable accommodations “can cover most things that enable an individual to apply for a job, perform a job, or have equal access to the workplace and employee benefits such as kitchens, parking lots, and office events.”

Common types of accommodations include modifying work schedules, altering the way job duties are done, eliminating a non-essential job duty (like asking the receptionist to stack the monthly 100 lb paper delivery in the storage room), granting additional breaks, providing accessible parking, and providing materials in alternative formats (e.g., Braille, large print). During the pandemic, working from home is an oft-requested accommodation that will almost always be reasonable for employees who do most of their work at a computer.

Not every requested accommodation will be reasonable, however. For one, employers are not required to remove an essential job function (the receptionist can still be expected to answer the phone). Employers also aren’t required to provide items for personal use, like wheelchairs or hearing aids.

If an accommodation is made, it’s important to evaluate its effectiveness. An accommodation set up today might not work well for the employee or the company two years from now. It’s okay to reassess later whether an accommodation remains reasonable given changed circumstances.

Undue Hardship

Under the ADA, an employer is required to provide reasonable accommodations as long as doing so does not create an *undue hardship* on the organization. According to the EEOC, an undue hardship is a significant difficulty or expense. The cost of an accommodation could be an undue burden on the employer, but so could an accommodation’s duration, expansiveness, or disruption.

An accommodation that would fundamentally alter the nature or operation of the business would be an undue hardship, even if the cost was negligible. But if cost alone is the basis for claiming that an accommodation is unreasonable, employers should remember that the standard is “significant expense.” The federal regulations instruct employers to consider the size of the organization and affected facility, their overall financial resources, and any tax credits, deductions, or outside funding available. Whether an accommodation would cause an

undue hardship is something employers must assess on a case-by-case basis.

Interactive Process

If an employee requests an accommodation, such as working from home during the pandemic or taking an unpaid leave if their job doesn't lend itself to telework, the employer should engage in an *interactive process* to determine if that request is reasonable. The EEOC describes the interactive process this way: the employee and the employer "communicate with each other about the request, the precise nature of the problem that is generating the request, how a disability is prompting a need for an accommodation, and alternative accommodations that may be effective in meeting an individual's needs."

Basically, the interactive process is an ongoing conversation with an employee who has indicated that they need an adjustment or change at work related to a physical or mental issue. They may specifically request a reasonable accommodation under the ADA, but expressing their needs in "plain English" is acceptable as well. Then, together, the employer and the employee determine what can be done to accommodate the employee so that the essential functions of the job get done and the employee is able to enjoy the equal benefits and privileges of employment.

Keeping these core concepts in mind can make accommodation requests easier and smoother. If you'd like to learn more about the Americans with Disabilities Act, search **ADA** on the HR Support Center. We have guides, 2-Minute HRs, and other articles on this important law.

Content Spotlight

Voting Leave Laws

With the election just around the corner, do you know if your business needs to comply with any voting leave laws? Most states require that employers provide at least a few hours off to vote, and many of those require that the time off be paid. A few states also require that employers post notice about voting leave rights a certain number of days before an election. Come to the HR Support Center to check on your state's laws and ensure you've got a plan to be compliant on Election Day. Just type your state name and "voting leave" into the search bar.

News Brief

Department of Labor Revises FFCRA Rules

In response to a court ruling in early August that invalidated certain regulations by the U.S. Department of Labor (DOL) related to leave under the Families First Coronavirus Response Act (FFCRA), the DOL has released revised regulations, which took effect September 16. The changes, or lack of changes, are outlined below.

Definition of Health Care Provider
The definition of health care provider, for purposes of whom an employer can deny leave to, is revised to include physicians and others who make medical diagnoses (the same as under traditional FMLA); employees who provide diagnostic services, preventive services, treatment services, or other services necessary for patient care; and employees who provide services that, if not provided, would adversely affect patient care.

This definition is narrower than in the previous rule. For example, nurse assistants and laboratory technicians who process test results are considered health care providers, but IT workers at a hospital and medical billers are not.

Documentation Prior to Leave
Employers may require that employees provide documentation to support their need for leave as soon as practicable.

The former rule said that employers could require documentation before the leave started, which isn't always practical.

Leave During a Furlough or Business Closure
Emergency Paid Sick Leave (EPSL) and Emergency FMLA (EFMLA) are still available **only if** an employer has work available for them during the time that they need the leave.

This is the same rule as before; the DOL just explained its reasoning.

Approval for Intermittent Leave for Childcare
Employees still must get approval from their employer to use intermittent leave. However, the DOL has made it clear that leave is **not** considered

intermittent if a school or daycare is closed on certain days or half days. For example, if the employee's child's school has a hybrid schedule with in-person classes on Tuesdays and Thursdays, but remote learning on Mondays, Wednesdays, and Fridays, then the employee would need leave on Mondays, Wednesdays, and Fridays, with each day being a separate leave event. In other words, the employee is not requesting intermittent leave in this scenario, so they do not need their employer's consent.

This is the same rule as before; the DOL just explained its reasoning and clarified some aspects of the rule.

Our HR Pros are ready to help

Have any questions about this communication?
Our team of HR Professionals is ready to help you.

Over the phone at:	Online via your	Available 8am to 8pm
(877) 880-4772	HR Support Center	EST

Contact Us

Paylocity Corporation

1400 American Lane
Schaumburg, IL 60173

Phone: 888-873-8205
Email: service@paylocity.com
Visit us online

You are receiving this newsletter as a service of your HR Support Center.
If you do not wish to receive this newsletter, please click here.

Our COVID-19 Resources Page contains sample communications to employees, telecommuting resources, and links to various federal resources including the CDC and OSHA, as well as state and local resources where available. We recommend checking this page regularly for guidance.