

Chapter Ten

UNDERSTANDING THE DISABLED

Chapter Objectives

After reading this chapter, you should be able to:

- understand what a disability is.
- explain the myths regarding individuals with disabilities.
- identify what the ADA says about mental impairment.
- describe the cultural differences between various impairments.
- Learn what types of reasonable accommodations should be provided for individuals with disabilities.
- provide tools and tips for addressing numerous disabilities including cancer and HIV.



In 1954, the U.S. Supreme Court ruled that "separate" was not "equal" in the education of African American children. However, it took twenty more years to do the same for children with disabilities. In 1975, the Free Education for All Handicapped Children Act was enacted. It stated that children with disabilities must be taught in "the least restrictive environment possible."¹ Previously these children could only be taught at home or in restrictive separate environments.

But, of course laws don't change people's mindsets right away. In 1990, many children were still being regulated to special "resource rooms" rather than being integrated into regular classrooms. Should having a disability restrict you from the same opportunities as others?

What is a disability?

The most frequently applied framework of disability comes from Nagi (1969). Nagi's concept of disability is that it is the difficulty associated with performing socially expected activities such as work for pay, and this definition explicitly recognizes the interaction of the environment and pathologies/impairments to cause disabilities.² The Americans with Disabilities Act (ADA) rests upon the Nagi framework and recognizes that improvements in the environment (access to public transportation, workplace accommodations, etc.) can reduce disadvantages associated with disability and thus improve the inclusion of all people.

First of all, a disability is a condition of impairment, physical or mental, having an objective aspect that can usually be described by a physician. This physical or mental condition limits a person's activities or functioning.³ Although all people with physical disabilities are not handicapped, there is a tendency for

others to think of them as being handicapped. Disabilities are really just deficiencies but some individuals look down on people who have them.

In addition, a disability is not an interchangeable term for handicap. The term handicapped should only be used when legally specifying life processes or social activities ADVERSELY affect a person's functioning.⁴ A handicap is the cumulative result of obstacles, which a disability interposes between the individual and his/her maximum function level. Also, an individual can be handicapped in certain aspects of functioning and, at the same time, be fully functional in many others. Therefore a person may have a handicap, but is not himself or herself "handicapped." Therefore, we do not use the term handicapped to refer to individuals with disabilities.

But, even with this change in terminology, there are still common myths associated with individuals that have disabilities as described below.

COMMON MYTHS

Myth: Workers with disabilities are not able to perform their jobs.

Fact: When a person applies for a job they should meet the requirements in order to do the job, so if someone who has a disability is hired then they must possess the necessary skills to accomplish the job with or without a reasonable accommodation. A Dupont Corporation study showed that 92 percent of their workers with disabilities were rated average or above average, compared with the 91 percent for the workers who did not have disabilities.⁵

While there are a number of studies that document the credibility of employees with disabilities, none are more extensive than the longitudinal studies done by the E.I. DuPont Company. The DuPont Company did its original study in 1973 and then followed with another in 1981. The 1981 study ("Equal to the Task") covered 2,745 employees with disabilities working for the company that year. In four categories (Safety, Performance of Job Duties, Attendance, and Job Stability/Turnover), employees with disabilities equaled or outdid their non-impaired co-workers.⁶

Furthermore, Robert B. Reich, a U.S. Secretary of Labor, has encouraged management and labor to make the necessary adjustments to train and retrain the most highly motivated people in our country; such adjustments Reich believes would include hiring one of the best-educated and most highly trained minority groups in the United States, persons with disabilities.⁷

Myth: Workers with disabilities are absent from their jobs a lot due to their problems.

Fact: Employees with disabilities are very much aware of the difficulty of finding work and they often work hard to maintain a good record. ITT discovered that the workers with disabilities in their Corinth plant had fewer absences than their co-workers without disabilities, and many other employers site the same outcome.⁸

Myth: Companies will have to spend a fortune to accommodate disabled workers with disabilities.

Fact: The expenditures that most companies would have to make to accommodate workers with disabilities are minimal in comparison to their annual profits. Many smaller companies could receive assistance through the government.⁹

Myth: An on the job accident that, when added to a worker's prior disability, results in permanent total disability will make the company liable for permanent total liability.

Fact: The second injury fund that all states have assumes responsibility of compensation to people with physical disabilities that become totally disabled through industrial accidents allocating to the employer's expense only the single injury sustained at their company.¹⁰

The above facts prove that employing individuals with disabilities causes no "real" hardship to the companies that employ them. Rather these workers often become valuable employees due to their work ethics. Even still, this group has an unemployment rate three times larger than the unemployment rate of non-institutionalized civilians aged 18-64 who do not report a work limiting health problem or disability.¹¹

Despite this outrageous unemployment rate, the following laws have caused gains to be made that improve the quality of life for people with disabilities:

- In 1956, Disability Insurance became a part of the Social Security Act.

- The Rehabilitation Act of 1973 stated that no otherwise qualified individual with a handicap shall solely by reason of his handicap be excluded from participation in any program or activity receiving federal financial assistance. It also established the following: Interagency Committee on Handicapped Employees which annually reviews the adequacy of federal hiring, placement and job advancement of persons with disabilities; Architectural and Transportation Barriers Compliance Board which monitors the construction of new federal buildings and remodeling of old federal buildings to ensure accessibility for those with physical disabilities; Affirmative Action Requirement (recruiting, hiring, rates of pay, apprenticeship, etc.) for those companies doing business with the federal government for more than \$2,500.¹²
- The 1990 American with Disabilities Act (ADA) eliminated discrimination against individuals with disabilities. It permits reasonable accommodation to be made for those with disabilities. It is important to note that in this act they no longer used the term "handicapped worker" but replaced it with individuals with a disability. Title II of this act provides public services for any qualified individual with a disability; Title III includes public accommodations and services operated by private entities whereas Title IV includes telecommunications. The ADA makes it unlawful to discriminate in all employment practices such as¹⁴:
 - recruitment
 - pay
 - hiring
 - firing
 - promotion
 - job assignments
 - training
 - leave
 - lay-off
 - benefits
 - all other employment related activities.

- it prohibits an employer from retaliating against an applicant or employee for asserting his rights under the ADA. The Act also makes it unlawful to discriminate against an applicant or employee, whether disabled or not, because of the individual's family, business, social or other relationship or association with an individual with a disability.

Reasonable Accommodation

The term reasonable accommodation is defined by Title 29 of the Code of Federal Regulations, Part 1630¹⁴:

- (1) Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or
- (2) modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or
- (3) modifications or adjustments that enable an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.

Reasonable accommodation may include but is not limited to: (1) Making existing facilities used by employees ready accessible; and (2) job restructuring.

Reasonable accommodation may also include but is not limited to, making existing facilities used by employees readily accessible to and usable by persons with disabilities, such as: job restructuring; modification of work schedules; providing additional unpaid leaves; reassignment to a vacant position; acquiring or modifying equipment or devices; adjusting or modifying examinations, training materials, or policies; and providing qualified readers or interpreters.¹⁵

An employer is required to make a reasonable accommodation to a qualified individual with a disability unless doing so would impose an undue hardship on the operation of the employer's business. Undue hardship means an action that requires significant expense when considered in relation to factors such as a business' size, financial resources, and the nature and structure of its operation.

Workplace Assistance for Specific Disabilities

Mental Impairment in the Workplace

According to report written by the U.S. Surgeon General, mental impairment can affect any worker at any time in the workplace because an impairment is just a deviation from normal development, structure or function. The report indicated that "one of every two Americans alive today will suffer from a mental illness at some point in their lifetime."¹⁶ But mental illness, unlike a physical illness or ailment has a negative connotation with it. In a *USA Today* article, it indicated that the age group of 15 to 44 has the highest number of people with mental impairments, that is, working teens and adults.¹⁷

When it comes to mental impairment in the workplace, the ADA covers workers with a mental illness as long as their illness meets the definition of a disability. However, there are conditions that are not within the definition of a disability and some are as follows: kleptomania, pyromania, exhibitionism, voyeurism, other sexual behavior disorders, and psychoactive substance use disorders resulting from current illegal drug use; as well as common personality traits like poor judgment, a quick temper, or irritability, so long as the traits are not a symptom of a protected mental impairment.¹⁸

The ADA can provide what is and what is not included as mental impairment, but there are also some general work practices that should be adhered to when working with persons with these conditions. Just like with sexism, racism or any other ism when dealing with persons with a mental impairment avoid generalizations, stereotypes and degrading the individual as this can not only be considered harassment but may prevent the employee from feeling comfortable asking for any necessary accommodation.

Also, if you find there is workplace problems always ask "any" employee if they are able to perform the essential duties of the job.¹⁹ If the employee cannot perform the essential duties of the job then an accommodation may be needed. Any impairment at this time would need to be disclosed and validated by a medical professional, in order for the accommodation to be made. Furthermore, if the employee seems to have a non-work related issue that they want to discuss with management-refer them to the appropriate employee assistance program or professional. Managers are not qualified to heal or discuss any non-work related problems of an employee.

Adults with learning disabilities in the Workplace

Let's start by saying that learning disabilities have nothing to do with intelligence. Learning disabilities are instead complications that impact the brain's capacity to accept, manage, scrutinize, or gather information. Having these types of difficulties can affect "how" a person learns or how quickly they can process information. Children and adults with learning disabilities often learn differently than the mainstream.

So, what does this mean for adults with learning disabilities in the workplace? It means that if work procedures have been created for the mainstream someone with a learning disability may have some difficulty with the process. But, this just means an adjustment needs to be made which is an accommodation. It is important to remember when dealing with these issues in the workplace that where one person has a weakness that person also has an alternating strength. It therefore becomes just a matter of tapping into the strengths and accommodating any resulting weakness that affects the person's ability to earn a living.

Learning disabilities can also be diagnosed by a medical professional and therefore must be taken seriously in the workplace. But even with a medical diagnosis adults with learning disabilities face various issues in the workplace. One such issue is lack of understanding and support. There are also managers or employees who may make negative assumptions about the adults' ability or manner of doing tasks. Both of these issues could affect the person with a learning disabilities capability to be promoted. Also, depending on the type of learning disability this worker has they could be forced into low-paying jobs. All of these instances could create low self esteem for the employee, where really all that was needed was some type of assistive technology, equipment or change in work procedure to support their learning impairment.²⁰

While adults may struggle with their learning disabilities, they should be given the opportunity to excel in the workplace just like any other person. Management must be supportive and provide the necessary accommodation(s).

Hearing Impairment in the Workplace

A hearing impairment or hearing loss is a full or partial decrease in the ability to detect or understand sounds which can be caused by a wide range of

biological and environmental factors, as loss of hearing can happen to any organism that perceives sound.²¹ If there is an insensitivity to sound this is often referred to as a hearing impairment but there are varying degrees of severity.

Hearing loss is therefore categorized by its severity and by the age of onset and this simply means that hearing loss at age 2 as opposed to age 42 will be a difference occurrence.²² There is also an opportunity for the loss to be one sided or on both sides which affects the severity of the loss as well.

What Is the Difference Between a Deaf and a Hard of Hearing Person?

Individuals with hearing impairments are often referred to as deaf or hard of hearing. According to the National Association of the Deaf *"the deaf and hard of hearing community is very diverse, differing greatly on the cause and degree of hearing loss, age at the onset, educational background, communication methods, and how they feel about their hearing loss. How a person "labels" themselves in terms of their hearing loss is personal and may reflect identification with the deaf community or merely how their hearing loss affects their ability to communicate. They can either be deaf (lower case "d") which often means they are unable to hear well enough to rely on their hearing whereas Deaf (capital "D"), or hard of hearing refers to a particular group of people who utilize the American Sign Language (ASL)."*²³

Many people who are Deaf function bilingually and are able to utilize both ASL and the written English language as sign languages do not have written forms.²⁴

Cross Cultural Differences

People who are Deaf often communicate in a visual way. In addition to ASL, rules of behavior include visual strategies for attention-getting such as touching, waving, vibration or light signaling. Eye contact, body language and facial expression are all keys to effective communication. Communication discourse is direct and to the point, and written English may also seem terse and abbreviated by standards of hearing people.

The following are examples of how a person who is D/deaf activities could be misinterpreted by someone who is not familiar with D/deaf culture²⁵:

Example A:

A construction worker who is D/deaf seems angry as he is putting away his tool because he is very noisy and has a stern look on his face. But what this may mean is that he is just not aware of his noise level and that he is concentrating or thinking and not aware of how his facial expression appears to others.

Example B:

You are leaving a classroom and the person in front of you slams the door in your face as you are walking out. However, this individual who is D/deaf did not hear your footsteps behind them and were not aware that someone else was leaving.

Example C:

As the manager, you are giving an employee who is D/deaf work instructions. She frowns and seems disinterested in the instructions. As the manager, you take the nonverbal expressions to mean something negative when merely the employee who is D/deaf is focusing on what is being told and thinking about it intently.

"This 'frown' of concentration is often misinterpreted as disagreement or annoyance, when it is actually a common element of communication in D/deaf culture. Hard of hearing people also commonly frown when listening, an indicator of the enormous amount of energy required to communicate when you have a hearing loss."

Facial expressions in someone who is D/deaf does not always mean what we think it may mean. Also, behaving loudly does not mean the D/deaf person is rude. That is why, when we deal with difference in the workplace--don't make negative assumptions. If you are going to assume, assume the best scenario—that is give the person the benefit of the doubt. You could also, in a polite fashion, ask the "why" so that you have the facts before making the wrong assumption.

Managing Other Workplace Issues

On the Job with Cancer

For most people, work is a healthy part of life. Continuing to work during cancer treatment or returning to work after time has been taken off can make a person feel healthier and more productive. Working may give a person something to focus on besides their illness and can help an employee feel more in control while keeping them connected to people who care about them.²⁶

Whether a person is returning to work after time off or continuing to work during a cancer treatment, these employees likely face some obstacles at their workplace. It is important that the cancer patient address these situations:

Decide who needs to know about the cancer

A cancer patient needs to decide whether they want their co-workers to know about the cancer and, if so, how open will they want to be. There's no right or wrong approach. They may want their supervisor to tell the co-workers about the cancer, or the employee may choose to do it themselves. It is important that the employee does what is comfortable for them and know their options. Actually they may choose not to tell anyone about the cancer if they're a private person. But, for practical reasons, it may make sense for them to tell their supervisor or human resources representative so they can receive reasonable accommodations as needed.²⁷

On the Job with HIV

During the early years of the HIV epidemic, returning to work after diagnosis just didn't happen. Because there were no early detection HIV tests, people were diagnosed only after they presented the gravest of opportunistic infections. People were too sick to work and sadly died soon after diagnosis. Today, early diagnosis and the advent of powerful HIV drugs mean people are living long, healthy and productive lives. After diagnosis, many HIV positive men and women continue to work.²⁸ For those too sick to work when diagnosed, HIV medications will get them back to health and back to work. While going back to work is a positive thing for many people, the workplace and employee must be aware of some things in order to make their return a positive experience.

Does the HIV employee have to inform their employer of their HIV Diagnosis?

Whether or not an employee discloses their HIV status to the employer is entirely up to them. They are under no legal obligation to disclose their HIV status that is

in most cases they don't because HIV is not transmitted by casual contact.²⁹ So they are under no risk to their fellow employees (again in most cases).

Does casual contact with an HIV infected employee put others at risk?

Like every rule, there are some exceptions. For one, if an HIV infected employee works in a job that could expose others to their blood or bodily fluids, there should be some consultation with a local HIV advocacy group to help determine if telling the employer is necessary.³⁰ Some people that say an HIV infected employee has a moral obligation to tell their employer. Again, because casual contact is not a risk factor for transmitting HIV, there is no moral obligation to tell anyone in the workplace.³¹ However, if being HIV infected makes it difficult to perform some expected duties (too fatigued to restock shelves for instance), the employee will need to notify their employer in order to receive reasonable accommodation.

What if the employee needs special accommodations in order to work?

In an article by *Registered Nurse*, Mark Cichocki states that, "in September 1994, Sidney Abbott visited the office of dentist Dr. Randon Bragdon. This routine visit would spark a controversy that would eventually involve the United States Supreme Court. On that day, Dr. Bragdon refused to fill Ms. Abbott's simple cavity because Ms. Abbott admitted to being HIV positive."³² After four years of legal debate, the Supreme Court ruled that The Americans with Disabilities Act (ADA) did include people living with HIV. So, she was discriminated against. The dentist just needed to make a reasonable accommodation such as wearing latex gloves for his protection. Since this case, providers and employers by law have to make reasonable accommodations for their patients and employees, including those living and working with HIV.

The reasonable accommodations that must be made for any other disability must also be made for those with HIV or AIDS. However, the employee must seek the accommodation and of course medical documentation must disclose their HIV status. Once disclosure is made, this information must be kept in strict confidence according to the law.

Nine Facts about HIV Infection and AIDS:

1. AIDS stands for Acquired Immune Deficiency Syndrome, a condition in which the body's immune system is destroyed. While there are treatments that help people survive some of the diseases they get as a result of losing their immunity, there is no cure for AIDS.
2. AIDS is caused by infection with the Human Immunodeficiency Virus, or HIV. Infection with HIV is completely preventable. Prevent HIV infection and you will prevent AIDS.
3. HIV is spread through contact with blood, semen, vaginal fluids, and breast milk. This contact comes primarily through sexual relations and sharing needles when using illegal drugs.
4. When it comes to HIV infection, it doesn't matter who you are, it matters what you do. Make choices that are healthy.
5. HIV is not spread through casual contact. Shaking hands, hugging, sharing rest rooms, equipment, food utensils, and drinking fountains will not transmit HIV.
6. Medical tests detect antibodies to HIV. These antibodies are in the bloodstream, and are an attempt of the immune system to eliminate the virus. Antibodies are generally detectable six to 12 weeks after infection with HIV. When antibodies are present in someone's blood, that person is said to be "HIV-positive."
7. Most HIV-positive people live normal, active lives for years after infection. While everyone who is HIV-positive will not necessarily develop AIDS, many have. For some HIV-positive people, symptoms serious enough to constitute an AIDS diagnosis begin to appear eight to ten years after infection.
8. While many people associate the AIDS epidemic in America with gay men, (and while the first wave of the epidemic primarily centered in the gay community), the epidemic continues to affect all groups. Infections among women and adolescents are increasingly the fastest of all population groups.
9. Assessing and taking responsibility for sexual behavior and educating one's self about HIV and AIDS is key to protection from a HIV infection. When dealing with exposed blood of another ALWAYS have a safety kit available which includes latex gloves and wear them.

HIV/AIDS and the Workplace Law

The following entire section is copied with permission from the *U.S. Department of Justice Civil Rights Division Disability Rights Section Questions and Answers* regarding THE AMERICANS WITH DISABILITIES ACT AND PERSONS WITH HIV/AIDS.³³

Are people with HIV or AIDS protected by the ADA?

Yes. An individual is considered to have a "disability" if he or she has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Persons with HIV disease, both symptomatic and asymptomatic, have physical impairments that substantially limit one or more major life activities and are, therefore, protected by the law.

Persons who are discriminated against because they are regarded as being HIV-positive are also protected. For example, a person who was fired on the basis of a rumor that he had AIDS, even if he did not, would be protected by the law.

Moreover, the ADA protects persons who are discriminated against because they have a known association or relationship with an individual who is HIV-positive. For example, the ADA would protect an HIV-negative woman who was denied a job because her roommate had AIDS.

Does an employer always have to provide a needed reasonable accommodation?

An employer is not required to make an accommodation if it would impose an undue hardship on the operation of the business. An undue hardship is an action that requires "significant difficulty or expense" in relation to the size of the employer, the resources available, and the nature of the operation. Determination as to whether a particular accommodation poses an undue hardship must be made on a case-by-case basis.

Customer or co-worker attitudes are not relevant. The potential loss of customers or co-workers because an employee has HIV/AIDS does not constitute an undue hardship.

An employer is not required to provide an employee's first choice of accommodation. The employer is, however, required to provide an effective accommodation, i.e., an accommodation that meets the individual's needs.

HIV/Aids Reasonable Accommodation Examples

- An HIV-positive accountant required two hours off, bimonthly, for visits to his doctor. He was permitted to take longer lunch breaks and to make up the time by working later on those days.
- A supermarket check-out clerk with AIDS had difficulty standing for long periods of time. Her employer provided her with a stool so that she could sit down at the cash register when necessary.
- A secretary with AIDS needed to take frequent rest breaks during her work day. Her boss allowed her to take as many breaks as she needed throughout the day, so long as she completed her work before going home each evening.
- A machine operator required time off from work during his hospitalization with pneumocystis carinii pneumonia. He had already used up all his sick leave. His employer allowed him to either take leave without pay, or to use his accrued vacation leave.
- An HIV-positive computer programmer suffered bouts of nausea caused by his medication. His employer allowed him to work at home on those days that he found it too difficult to come into the office. His employer provided him with the equipment (computer, modem, fax machine, etc.) necessary for him to work at home.
- An HIV-positive newspaper editor who tired easily from walking began to use an electric scooter to get around. His employer installed a ramp at the entrance to the building in which the editor worked so that the editor could use his scooter at the office.

When is an employer required to make a reasonable accommodation?

An employer is only required to accommodate a "known" disability of a qualified applicant or employee. Thus, it is the employee's responsibility to tell the employer that he or she needs a reasonable accommodation. If the employee does not want to disclose that he or she has HIV or AIDS, it may be sufficient for the employee to say that he or she has an illness or disability covered by the ADA, that the illness or disability causes certain problems with work, and that the employee wants a reasonable accommodation. However, an employer can require medical documentation of the employee's disability and the limitations resulting from that disability.

What if an employer has concerns about an applicant's ability to do the job in the future?

Employers cannot choose not to hire a qualified person now because they fear the worker will become too ill to work in the future. The hiring decision must be based on how well the individual can perform now. In addition, employers cannot decide "not to hire" qualified people with HIV or AIDS because they are afraid of higher medical insurance costs, worker's compensation costs, or absenteeism.

Can an employer consider health and safety when deciding whether to hire an applicant or retain an employee who has HIV/AIDS?

Yes, but only under limited circumstances. The ADA permits employers to establish qualification standards that will exclude individuals who pose a direct threat -- i.e., a significant risk of substantial harm -- to the health or safety of the individual or of others, if that risk cannot be eliminated or reduced below the level of a "direct threat" by reasonable accommodation. However, an employer may not simply assume that a threat exists; the employer must establish through objective, medically supportable methods that there is a significant risk that substantial harm could occur in the workplace. By requiring employers to make individualized judgments based on reliable medical or other objective evidence -- rather than on generalizations, ignorance, fear, patronizing attitudes, or stereotypes -- the ADA recognizes the need to balance the interests of people with disabilities against the legitimate interests of employers in maintaining a safe workplace.

Transmission of HIV will rarely be a legitimate "direct threat" issue. It is medically established that HIV can only be transmitted by sexual contact with an

infected individual, exposure to infected blood or blood products, or perinatal from an infected mother to infant during pregnancy, birth, or breast feeding. HIV cannot be transmitted by casual contact. Thus, there is little possibility that HIV could ever be transmitted in the workplace.

For example:

- A superintendent may believe that there is a risk of employing an individual with HIV disease as a schoolteacher. However, there is little or no likelihood of a direct exchange of body fluids between the teacher and her students, and thus, employing this person would not pose a direct threat.

- A restaurant owner may believe that there is a risk of employing an individual with HIV disease as a cook, waiter or waitress, or dishwasher, because the employee might transmit the disease through the handling of food. However, HIV and AIDS are specifically not included on the Centers for Disease Control and Prevention ("CDC") list of infectious and communicable diseases that are transmitted through the handling of food; thus, there is little or no likelihood that employing persons with HIV/AIDS in food handling positions would pose a risk of transmitting HIV.

- A fire chief may believe that an HIV-infected firefighter may pose a risk to others when performing mouth-to-mouth resuscitation. However, current medical evidence indicates that HIV cannot be transmitted by the exchange of saliva. Thus, there is little or no likelihood that an HIV-infected firefighter would pose a risk to others.

Having HIV or AIDS, however, might impair an individual's ability to perform certain functions of a job, thus causing the individual to pose a direct threat to the health or safety of the individual or others.

For example:

- A worker who operates heavy machinery and who has been suffering from dizzy spells caused by the medication he is taking might pose a direct threat to his or someone else's safety. If no reasonable accommodation is available (e.g., an open position to which the employee could be reassigned), the employer would not violate the ADA by laying the worker off.

- An airline pilot who is experiencing bouts of dementia would pose a direct threat to herself and her passenger's safety. It would not violate the ADA if the airline prohibited her from flying.

As noted above, the direct threat assessment must be an individualized assessment. Any blanket exclusion -- for example, refusing to hire persons with HIV/AIDS because of the attendant health risks -- would probably violate the ADA as a matter of law.

When can an employer inquire into an applicant's or employee's HIV status?

An employer may not ask or require a job applicant to take a medical examination before making a job offer. It cannot make any pre-offer inquiry about a disability or the nature or severity of a disability. An employer may, however, ask questions about the ability to perform specific job functions. Thus, for example, the owner of an outdoor cafe could not ask an individual with KS lesions who was applying for the position of a waiter whether the applicant had AIDS. The owner could, however, ask the applicant whether he can be in the sun for extended periods of time.

An employer may condition a job offer on the satisfactory result of a post-offer medical examination or medical inquiry if this is required of all entering employees in the same job category. However, if an individual is not hired because a post-offer medical examination or inquiry reveals a disability, the reason(s) for not hiring must be job-related and consistent with business necessity. HIV-positive status alone, without some accompanying complication (e.g., dementia, loss of vision, etc.) can almost never be the basis for a refusal to hire after a post-offer medical examination.

After a person starts work, a medical examination or inquiry of an employee must be job-related and consistent with business necessity. Employers may conduct employee medical examinations where there is evidence of a job performance or safety problem, when examinations are required by other Federal laws, when examinations are necessary to determine current "fitness" to perform a particular job, and/or where voluntary examinations are part of employee health programs. For example, an employer could not ask an employee who had lesions on his face or who had recently lost a significant amount of weight, but whose job performance had not changed in any way, whether the employee had AIDS. An employer could, however, require an employee who was experiencing frequent

dizzy spells, and whose work was suffering as a result, to undergo a medical examination.

What obligations does an employer/supervisor have if an employee discloses his or her HIV status?

The ADA requires that medical information be kept confidential. This information must be kept apart from general personnel files as a separate, confidential medical record available only under limited conditions.

What obligations does an employer have to provide health insurance to employees with HIV/AIDS?

The ADA prohibits employers from discriminating on the basis of disability in the provision of health insurance to their employees and/or from entering into contracts with health insurance companies that discriminate on the basis of disability. Insurance distinctions that are not based on disability, however, and that are applied equally to all insured employees, do not discriminate on the basis of disability and do not violate the ADA.

Thus, for example, blanket pre-existing condition clauses that exclude from the coverage of a health insurance plan the treatment of all physical conditions that predate an individual's eligibility for benefits are not distinctions based on disability and do not violate the ADA. A pre-existing condition clause that excluded only the treatment of HIV-related conditions, however, is a disability-based distinction and would likely violate the ADA.

Similarly, a health insurance plan that capped benefits for the treatment of all physical conditions at \$50,000 per year does not make disability-based distinctions and does not violate the ADA. A plan that capped benefits for the treatment of all physical conditions, except AIDS, at \$50,000 per year, and capped the treatment for AIDS-related conditions at \$10,000 per year does distinguish on the basis of disability and probably violates the ADA.

Concluding Thoughts

According to recent studies, the number of employees with disabilities will increase. The current generation of Americans with disabilities is well prepared to be tapped for the job market and able to provide an added solution for the labor shortages that can face American business.

People with disabilities are the nation's largest minority crossing all racial, gender, educational, socioeconomic, and organizational lines. They are also one of few minority groups that any person can join at any time. If you do not currently have a disability, according to researchers in the field you have about a 20% chance of becoming disabled at some point during your work life.

Companies that include people with disabilities in their diversity programs increase their competitive advantage. People with disabilities add to the variety of viewpoints needed to be successful and bring effective solutions to today's business challenges. The American economy is made stronger when all segments of the population are included in the workforce and in the customer base.

End of Chapter Questions

1. What is considered a disability? Is this the same definition for handicapped?
2. What are three myths and the facts that counter the myths surrounding people with disabilities?
3. When is an employer required to make an accommodation?
4. What are four examples of reasonable accommodations that can be made for persons with disabilities?
5. Learning disabilities is a form of mental impairment, what are forms of learning disabilities and why should these individuals be given equal employment opportunities?
6. What are some tips that could be utilized to interview a hard of hearing applicant?
7. Why is it beneficial for an employee with a terminal illness to work and what benefit is this for the workplace?
8. Does an HIV employee have to disclose their status? How does a company handle the confidentiality of a person who has disclosed they have HIV?

9. Does casual contact with an HIV infected employee put others at risk?
10. Can you fire an employee who has HIV or AIDS because your customers have a negative attitude toward their employment, why or why not?

Internet Exercise

Part A: Using the Internet go to www.eeoc.gov then find information on disability discrimination. Go to the "Questions and Answers Series" and chose a topic. Summarize the information you found and how it relates to the chapter information.

End of Chapter Exercise

Complete Parts A, B & C.

Part A: Famous Persons with Disabilities

Directions: Go to www.google.com and type in the five famous person's name below and the word "disability" or type "famous disabled persons" or go to http://www.tampagov.net/dept_Mayor/Mayors_Alliance/famous_persons/ AND in the space following each name indicate the disability of the following "important" people in society.

1. CRUISE TOM, 1962-present has

_____.

2. BELL Alexander Graham, 1847-1922 was

_____.

3. TUBMAN Harriet, 1820-1913 was

_____.

4. ROOSEVELT Franklin Delano, 1882-1945 had _____.

5. WALTERS Barbara, 1931-present has _____.

Part B: Famous Persons with Disabilities

Now answer the following questions:

- (1) How did the above famous person's disability affect their success?
- (2) What does this say about the disabled in the workplace?

Part C: Famous Persons with Disabilities

Directions: Read the following scenario and answer the questions that follow.

Scenario

Let's assume as the manager you know that a worker has missed some days due to his HIV infection. Now he is asking you for a promotion (he has made you aware of his condition/illness). The days he missed occurred over a year ago and since that time he has doubled his production. His disease is not debilitating but the job he is applying for is a high stress position. Please answer the following questions regarding this scenario:

1. Do you recommend him for promotion, why or why not?
2. You know that in this new position he will be working on a team, if you recommend him should you or can you tell the other teammates of his condition?
3. If you decided that this critical issue of contagious disease was worth educating your workplace through training, would you include all contagious diseases or just focus on HIV training?
4. What type of reasonable accommodations would be allowable if ever needed