

Georgia Human Resources ADA Update



A Quarterly Newsletter by the
State ADA Coordinator's Office,
Georgia State Financing and Investment Commission

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New EEOC Regulations Implement Congressional Intent to Simplify Definition of Disability

The ADA Amendments Act of 2008 (ADAAA) was enacted on September 25, 2008, and became effective on January 1, 2009. The law made a number of significant changes to the definition of "disability" under the Americans with Disabilities Act (ADA). It also directed the U.S. Equal Employment Opportunity Commission (EEOC) to amend its ADA regulations to reflect the changes made by the ADAAA. The new EEOC regulations were published in the Federal Register on March 25, 2011 at:

- Web: [Regulations to Implement the Equal Employment Provisions of the ADA, as Amended](#)
- [[PDF file – 336 KB, 40 pages](#)]

In enacting the ADAAA, Congress made it easier for an individual seeking protection under the ADA to establish that he or she has a disability within the meaning of the statute. Congress overturned several Supreme Court decisions that Congress believed had interpreted the definition of "disability" too narrowly, resulting in a denial of protection for many individuals with impairments such as cancer, diabetes, and epilepsy. The ADAAA states that the definition of disability should be interpreted in favor of broad coverage of individuals.

Following the language and intent of the ADAAA, the regulations keep the ADA's definition of the term "disability" as a physical or mental impairment that substantially limits one or more major life activities; a record (or past history) of such an impairment; or being regarded as having a disability. But the regulations implement the significant changes that Congress made regarding how those terms should be interpreted.

Congress directed that the primary focus of the ADA is to be on whether discrimination occurred. In keeping with that direction, the determination of disability should not require extensive analysis.

The regulations implement Congress's intent to set forth predictable, consistent, and workable standards by adopting "rules of construction" to use when determining if an individual is substantially limited in performing a major life activity. These rules of construction are derived directly from the statute and legislative history and include the following:

- The term "substantially limits" requires a lower degree of functional limitation than the standard previously applied by the courts. An impairment does not need to prevent or severely or significantly restrict a major life activity in order to be considered "substantially limiting." Nonetheless, not every impairment will constitute a disability.
- The term "substantially limits" is to be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA.
- The determination of whether an impairment substantially limits a major life activity requires an individualized assessment, as was true prior to the ADAAA.
- With one exception ("ordinary eyeglasses or contact lenses"), the determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, such as medication or hearing aids.
- An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

As required by the ADAAA, the regulations also make it easier for individuals to establish coverage under the "regarded as" part of the definition of "disability." As a result of court interpretations, it had become difficult for individuals to establish coverage under the "regarded as" prong. Under the ADAAA, the focus for establishing coverage is on how a person has been treated because of a physical or mental impairment (that is not transitory and minor), rather than on what an employer may have believed about the nature of the person's impairment.

The regulations clarify, however, that an individual must be covered under the first prong ("actual disability") or second prong ("record of disability") in order to qualify for a reasonable accommodation. The regulations clarify that it is generally not necessary to proceed under the first or second prong if an individual is not challenging an employer's failure to provide a reasonable accommodation.

Sources: This article is excerpted and adapted from the [Fact Sheet on the EEOC's Final Regulations Implementing the ADAAA](http://eeoc.gov/laws/regulations/adaaa_fact_sheet.cfm) (http://eeoc.gov/laws/regulations/adaaa_fact_sheet.cfm). The [ADAAA regulations, accompanying Question and Answer documents and a fact sheet](http://eeoc.gov/laws/statutes/adaaa_info.cfm) are available on the EEOC website (http://eeoc.gov/laws/statutes/adaaa_info.cfm).

Revised Regulations by the DOJ which Amend Title II of the ADA

The Department of Justice (DOJ) has amended its regulation implementing Title II (which applies to public entities) and Title III of the Americans with Disabilities Act. The new regulations took effect on March 15, 2011. Three of these changes are of particular interest to Human Resources staff: Service Animals, Wheelchairs and Other Power-Driven Mobility Devices, and Effective Communication.

Service Animals

The final rule defines "service animal" as a dog that has been individually trained to do work or perform tasks for the benefit of an individual with a disability. The rule states that other animals, whether wild or domestic, do not qualify as service animals. Dogs that are not trained to perform tasks that mitigate the effects of a disability, including dogs that are used purely for emotional support, are not service animals. The final rule also clarifies that individuals with mental disabilities who use service animals that are trained to perform a specific task are protected by the ADA. The rule also permits the use of trained miniature horses as alternatives to dogs, subject to certain limitations. To allow flexibility in situations where using a horse would not be appropriate, the final rule does not include miniature horses in the definition of "service animal."

Wheelchairs and Other Power-Driven Mobility Devices

The final rule adopts a two-tiered approach to mobility devices, drawing distinctions between wheelchairs and "other power-driven mobility devices." "Other power-driven mobility devices" include a range of devices not designed for individuals with mobility impairments, such as the Segway® PT, but which are often used by individuals with disabilities as their mobility device of choice. Wheelchairs must be permitted in all areas open to pedestrian use. "Other power-driven mobility devices" must also be permitted to be used unless the covered entity can demonstrate that such use would fundamentally alter its programs, services, or activities, create a direct threat, or create a safety hazard. The rule also lists factors to consider in making this determination. This approach accommodates both the legitimate business interests in the safe operation of a facility and the growing use of the Segway® PT as a mobility device by returning veterans and others who are using the Segway® PT as their mobility aid of choice.

Effective Communication

The rule includes video remote interpreting (VRI) services as a kind of auxiliary aid that may be used to provide effective communication. VRI is an interpreting service that uses video conference technology over dedicated lines or wireless technology offering a high-speed, wide-bandwidth video connection that delivers high-quality video images. To ensure that VRI is effective, the Department has established performance standards for VRI and requires training for users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI system.

Source: This article is excerpted and adapted from the DOJ Fact Sheet: [Highlights of the Final Rule to Amend the Department of Justice's Regulation Implementing Title II of the ADA](http://ada.gov/regs2010/factsheets/title2_factsheet.html) (http://ada.gov/regs2010/factsheets/title2_factsheet.html). A copy of the [final ADA regulations for 2010](http://ada.gov/regs2010/ADAREgs2010.htm) is available online (<http://ada.gov/regs2010/ADAREgs2010.htm>).

Genetic Information Nondiscrimination Act Final Regulations

The U.S. Equal Employment Opportunity Commission (EEOC) has issued final regulations implementing the employment provisions (Title II) of the Genetic Information Nondiscrimination Act of 2008 (GINA). GINA prohibits use of genetic information to make decisions about health insurance and employment, and restricts the acquisition and disclosure of genetic information.

Title II of GINA prohibits employment discrimination based on genetic information, and restricts the acquisition and disclosure of genetic information. Genetic information includes information about an individual's genetic tests and the tests of their family members; family medical history; requests for and receipt of genetic services by an individual or a family member; and genetic information about a fetus carried by an individual or family member or of an embryo legally held by the individual or family member using assisted reproductive technology.

The EEOC website has links to the [final GINA regulations and two question-and-answer \(Q&A\) documents](#).

Source: <http://eoc.gov/laws/types/genetic.cfm>

Conduct Issues and Employees with Disabilities

Employees with disabilities must meet the same standards of conduct that are expected and enforced for all employees, regardless of disability status. However, the conduct standard must be job-related and consistent with business necessity, and other employees must be held to the same standard.

According to the EEOC, certain conduct policies that exist in all workplaces and cover all types of jobs will always meet this standard, such as prohibitions on violence, threats of violence, stealing, or destruction of property. Similarly, employers may prohibit insubordination towards supervisors and managers and also require that employees show respect for, and deal appropriately with, clients and customers. Employers may also:

- prohibit inappropriate behavior between coworkers (*e.g.*, employees may not yell, curse, shove, or make obscene gestures at each other at work);
- prohibit employees from sending inappropriate or offensive e-mails (*e.g.*, those containing profanity or messages that harass or threaten coworkers); using the Internet to access inappropriate websites (*e.g.*, pornographic sites, sites exhibiting crude messages, etc.); and making excessive use of the employer's computers and other equipment for purposes unrelated to work;
- require that employees observe safety and operational rules enacted to protect workers from dangers inherent in certain workplaces (*e.g.*, factories with machinery with accessible moving parts); and
- prohibit drinking or illegal use of drugs in the workplace.

Even when an employee's conduct violation is a result of his/her disability, the employer is not required to excuse the conduct. For instance, if an employee's consistent rudeness or insubordination is caused by a disability, the employee may be terminated or otherwise disciplined if there is no reasonable accommodation that might ameliorate the problem and the employee is not able to moderate the behavior.

In some cases, an employee facing discipline for a conduct violation may choose to reveal, for the first time, that s/he has a disability. The ADA does not mandate exceptions to the codes of conduct for employees with disabilities and revealing the existence of a disability as a contributing cause does not negate the infraction or exempt the employee from the disciplinary consequences. If the violation is cause for termination, the employee may be terminated.

An employee with a known disability may also be terminated if that is the company policy consistently applied for the particular violation. Less serious offenses may also result in imposing the standard consequences —being written up, receiving a warning, explaining remedial steps that must be taken, etc. —as long as the employee with a disability has not been singled out for discipline and all employees violating that standard of conduct receive the same consequences.

However, with regard to employees with known disabilities, employers should use an interactive process to explore whether a reasonable accommodation might avoid conduct infractions in the future. The [Job Accommodation Network \(JAN\)](#) has a series of publications suggesting reasonable accommodations for different disabilities.

Resources for employers on conduct and performance standards include [The Americans with Disabilities Act: Applying Performance and Conduct Standards to Employees with Disabilities](#), The [U.S. Equal Employment Opportunity Commission](#), and [Dealing with Conduct Problems in the Workplace \[Word file\]](#).

Sources: <http://www.eeoc.gov/facts/performance-conduct.html>;
<http://askjan.org/media/employmentconductfact.doc>

Case Law Update

Each issue of this newsletter will provide summaries of relevant court cases affecting State and local government agencies in the Southeast Region.



EEOC v. Eckerd, Civil Action No. 1:10-cv-2816-JEC filed in U.S. District Court for the Northern District of Georgia (Sept. 9, 2010)

Longtime Rite Aid cashier, Fern Strickland, periodically used a stool while stationed behind the counter. Strickland has severe arthritic symptoms in her knees which limited her ability to walk and stand for certain periods, and she had been allowed to use the stool by her employer since 2001. However in January 2009, a new district manager decided to no longer accommodate Strickland's disability because he "did not like the idea" that she used a stool. Strickland was fired several weeks later because the manager refused to accommodate her disability "indefinitely."

The EEOC filed suit against Eckerd after first attempting to reach a voluntary settlement. The agency seeks back pay and compensatory and punitive damages for Strickland, as well as injunctive relief designed to prevent these kinds of violations in the future. EEOC Regional Attorney Robert K. Dawkins stated, "This situation was especially egregious since Ms. Strickland had been successfully accommodated for over seven years before the new manager terminated her. The EEOC is here to vindicate the rights of people victimized by this sort of misconduct." This case was among the first filed by the EEOC under the ADA.



**McCroskey v. UPS,
2010 WL 5437257 (M.D. Ga) (Dec. 22, 2010)**

McCroskey worked at UPS's package center in Carnesville, Georgia from August 28, 1998 until June 2009. He worked primarily as a part-time preloader, and his job was to load packages onto UPS's package cars at the beginning of each day. In 2002 McCroskey expressed an interest in becoming a UPS driver, and obtained a medical examiner's certificate which is required by the U.S. Department of Transportation for drivers of commercial vehicles weighing more than 10,000 lbs.

After McCroskey presented this certificate to UPS, he performed part-time driving duties in addition to his preloader job. However, in 2005, McCroskey's DOT card was not renewed because of his insulin-treated diabetes mellitus, and therefore he was not permitted to drive UPS vehicles over 10,000 lbs. He was also not permitted to attend a training he sought (UPS cover driving school) while he did not have the DOT certificate.

Afterwards UPS created the protocol to allow diabetic employees who can control their diabetes to drive vehicles weighing 10,000 lbs or less while also addressing the DOT- identified safety risks posed by diabetic drivers. Under this protocol, drivers with insulin-treated diabetes mellitus are individually assessed to determine whether they can safely operate UPS vehicles weighing 10,000 lbs or less, and the protocol does not apply to nondriving positions. Under the protocol, McCroskey was evaluated once a quarter by his managers based on a medical expert's evaluation.

On Nov 8, 2005, McCroskey became eligible to apply for an exemption for insulin-treated diabetics from the Secretary of Transportation. McCroskey received a DOT exemption that was effective on October 15, 2007. While he told his managers about the exemption, he did not provide a copy of the exemption to managers until August 2008. When managers received this copy of the exemption, he was medically qualified to drive all UPS vehicles, and UPS gave him the paperwork he needed to complete to become eligible for a full time driver position.

During McCroskey's employment with UPS, several disciplinary actions took place, and in 2009 he was terminated but later reinstated with a final warning after he filed a grievance and agreed to apologize for his behavior. On June 16, 2009, McCroskey and his manager got into a heated dispute where McCroskey was terminated for insubordination. His manager also considered other instances of insubordination, abusive language, and failure to follow instructions. McCroskey sued UPS under the Americans with Disabilities Act for failure to promote him and ultimately terminating him allegedly because of his insulin-treated diabetes. McCroskey contended that UPS's actions constituted discrimination and retaliation under the ADA.

The Court granted summary judgment to UPS, finding insufficient evidence to support McCroskey's substantial limitation, "regarded as" and retaliation arguments. Because McCroskey could "control his diabetes through diet and insulin" and he could eat a variety of foods and lead an active lifestyle, the Court concluded that he did not show he had a disability under the ADA of 1990. Additionally, his "regarded as" claim failed. Although UPS regarded him as unable to fill driver positions requiring the DOT card, this did not show that it considered him unable to perform more than one type of job. Evidence showed that he was not promoted because his DOT exemption was not on file. Additionally, he did not offer sufficient evidence to show that the reasons for his termination were pretext for retaliation.



**Harrison v. Benchmark,
593 F.3d 1206, U.S. Court of Appeals, Eleventh Circuit (Jan. 11, 2010)**

In November 2005, John Harrison was assigned by Aerotek to Benchmark Electronics Huntsville, Inc. (BEHI) as a temporary employee. Harrison was later invited by his supervisor, Don Anthony, to apply for a permanent position. As part of the application process, Harrison submitted to a drug test in May 2006 which came back positive and was awaiting review by the company's Medical Review Officer (MRO). Anthony discovered the results of Harrison's drug test and informed Harrison of the positive results. Harrison responded by noting he takes a prescription medication. Anthony then called the MRO and passed the phone to Harrison, who answered a series of questions about the medication. Harrison told the MRO that he had epilepsy and he took the barbiturates to control it. Anthony remained in the room during Harrison's call with the MRO and heard his responses to the questions. Although Harrison was cleared for hire, Anthony told Aerotek not to return Harrison to BEHI because he had a performance and attitude problem. Harrison was then fired from Aerotek.

On September 26, 2006, Harrison filed a complaint with the EEOC alleging various violations of the ADA. The ADA regulations in effect at that time required that the effect of mitigating measures, such as medication, be considered when determining whether the person was substantially limited in a major life activity and thus qualified as a person with a disability as defined under the ADA. Because his epilepsy was controlled by his medication, the EEOC determined that he did not have an ADA-defined disability, and it did not investigate an improper medical inquiry claim. The EEOC dismissed his claim and gave notice of his right to sue under the ADA.

In May 2007, Harrison filed suit in the United States District Court for the Northern District of Alabama, alleging various violations of the ADA: namely, that (1) BEHI engaged in an improper medical inquiry, (2) he was not hired due to a perceived disability, and (3) he was terminated due to a perceived disability. BEHI responded, arguing that the Eleventh Circuit has not yet recognized a private right of action for the making of an improper medical inquiry and that even if it had, Harrison had failed to plead it. The District Court granted summary judgment in favor of the employer on all claims.

Harrison appealed, and the Eleventh Circuit found that Harrison satisfied the liberal pleading standard to survive summary judgment. Summary judgment is only appropriate when there is no material dispute of fact. However in this case, a reasonable jury could infer that Anthony's presence in the room was an intentional attempt likely to elicit information about a disability in violation of the ADA's prohibition against pre-employment medical inquiries. Although the employer is permitted to ask follow-up questions to ensure the applicant's positive drug test is due to a lawful prescription, a jury could find that these questions exceed the scope of the likely-to-elicited standard, and that the supervisor's presence in the room violated the ADA, especially considering the conflict between the applicant's testimony—that to answer the medical review officer's questions he was forced to disclose the fact and extent of his —epilepsy —and the supervisor's —that he never knew the applicant had the condition.

Additionally, in this decision, the Eleventh Circuit joined a number of other circuits in determining that an applicant has a private right of action under the ADA, irrespective of his or her disability status. This means that regardless of whether the applicant meets the definition of disability under the ADA, they can bring a claim under the ADA under 42 U.S.C. 12112 (d)(2) if an improper medical inquiry takes place. For these reasons, the Eleventh Circuit reversed and remanded the District Court's grant of summary judgment.



**Diaz v. Transatlantic Bank,
367 Fed. Appz. 93 (C.A. 11 (Fla.))(Feb. 24, 2010)**

Luz Diaz was employed by Transatlantic as a bank teller for several years. She took FMLA leave on September 11, 2006, due to a severe knee injury. Transatlantic requested documentation and medical updates concerning Diaz's condition during the period of FMLA leave, and Diaz complied. Her injury prevented her from climbing onto the tall chairs used by bank tellers. Diaz told Transatlantic she was willing to work at other positions that did not requiring her climbing onto these chairs. Diaz's FMLA leave expired Dec 11, 2006, and Transatlantic's policy required medical clearance prior to any employee returning to work from FMLA leave. Diaz submitted a long-term disabilities claim on Dec 4, 2006, and in support of this she attached a statement from her physician which stated that she could return to work in 6-8 weeks and went on to describe the limitations created by her injury. However, Diaz's doctor would not grant medical clearance until she got an MRI that was scheduled for January 3, 2007. As a result, Transatlantic terminated her employment.

Diaz sued Transatlantic Bank for interference and retaliation under the Family and Medical Leave Act of 1993 (FMLA), 29 USCS §§ 2615 and 2617, and discrimination and retaliation under the Americans with Disabilities Act of 1990 (ADA), 42 USC § 12112(a) and 12203(a). The United States District Court for the Southern District of Florida granted summary judgment for the employer on all claims. Diaz appealed and the 11th Circuit affirmed the District Court's decision. The 11th Circuit found that this did not constitute interference with the employee's FMLA rights under § 2615 because, pursuant to 29 USCS §§ 2614 (a)(4), the employer was permitted to require medical clearance for the employee to return to work, and there was no evidence that the Diaz ever provided the employer medical clearance from a doctor that would have allowed her to return to work.

Assuming that the employee established a prima facie case of FMLA retaliation, she did not provide evidence demonstrating that the employer's legitimate, nondiscriminatory reason for dismissing her was a pretext for discrimination. Additionally, Diaz did not show that she was disabled within the meaning of the ADA of 1990 when she was dismissed by the employer. She could not maintain a claim of ADA discrimination if she was not disabled at the time of the alleged discriminatory act. Moreover, assuming that the employee established a prima facie case of ADA retaliation, she did not show that the employer's legitimate, nondiscriminatory reason for firing her was a pretext.



**Salser v. Clarke County School District,
2011 WL 56064 (M.D. Ga.)(Jan. 5, 2011)**

On April 1, 2008, a speech pathologist in Georgia filed a Charge of Discrimination with the U.S. Equal Employment Opportunity Commission (“EEOC”), alleging disability discrimination for failing to provide her with the reasonable accommodations she had requested. The pathologist has rheumatoid arthritis which makes it difficult for her to move. In her EEOC Charge, Salser asserted that: (1) she requested reasonable accommodations for her disability on August 14, 2007, but was denied; (2) the district moved her to a newly constructed school in December 2007 but failed to provide Salser with accommodations suggested by her doctor; and (3) she requested reasonable accommodations for her disability in January 2008 but was denied. When asked to state what the alleged discrimination was based on, Salser checked the boxes labeled “Retaliation” and “Disability.”

Federal law requires that before filing a suit, an individual must first file a complaint of discrimination with the EEOC within 180 days of the alleged discriminatory action. In her EEOC Charge, Salser claimed that the earliest date of discrimination was August 14, 2007, and that the latest date of discrimination was March 28, 2008. However, when Salser later filed suit in the Federal District Court of Middle Georgia, she not only cited the school district’s failure to accommodate her during the 2007-08 school year but she also noted that she had requested reasonable accommodations in the 2004-05, 2005-06 and 2006-07 school years that the school district reportedly “largely ignored.”

Because the speech pathologist filed her EEOC complaint on April 1, 2008, the school district responded that she could only base her suit on employer conduct that occurred in the 180 days before that date and requested dismissal of any claims that accrued more than 180 days before the pathologist filed her EEOC complaint. This meant that she could not pursue an ADA claim based on conduct that occurred prior to October 4, 2007, including the denied requests in the 2004-05, 2005-06, and 2006-07 school years. However, Salser contended that the school district’s ongoing failure to accommodate her disability amounted to a continuing violation and that she could use acts outside the 180-day period to support a hostile work environment claim. The Court disagreed, ruling that the school district’s alleged denial of the pathologist’s requests for reasonable accommodations were discrete acts of discrimination that she needed to challenge separately.

While the court granted partial summary judgment for the school district for all of Salser’s complaints prior to October 4, 2007, the court allowed her remaining claims to proceed. This includes both Salser’s claims for ADA discrimination and failure to accommodate based on acts or omissions that occurred after October 4, 2007 and Salser’s ADA retaliation claims based on acts or omissions that occurred after October 4, 2007.

DOJ/EOC Actions



Justice Department Obtains Comprehensive Agreement Regarding the State of Georgia's Mental Health and Developmental Disability System | [File download](#)

The Justice Department entered into a comprehensive settlement agreement that will resolve a lawsuit the United States brought against the state of Georgia. The lawsuit alleged unlawful segregation of individuals with mental illness and developmental disabilities in the state's psychiatric hospitals in violation of the Americans with Disabilities Act (ADA) and the Supreme Court's landmark decision in *Olmstead v. L.C.* The agreement expands community mental health services so that Georgia can serve individuals with mental illness and developmental disabilities in the most integrated setting appropriate to those individuals' needs.

Frequently Asked Questions

How Could Reasonable Accommodations Help Employees Avoid Conduct Violations?

Like all employees, each employee with a disability brings distinct characteristics, strengths and weaknesses to the workplace. In situations where an employee's disability might contribute to or cause a conduct issue, reasonable accommodations could ameliorate the problem and avoid conduct issues in the future. It is important to note that just because someone has a particular disability does not mean that the employee is necessarily going to have a conduct violation. The reasonable accommodations suggested below were drawn from [Job Accommodation Network \(JAN\) Fact Sheets](#) (<http://askjan.org>).

Mental Health Accommodations

The [National Alliance on Mental Illness \(NAMI\)](#) defines a mental health impairment as a medical condition that disrupts a person's thinking, feeling, mood, ability to relate to others, and daily functioning. Just as diabetes is a disorder of the pancreas, mental illnesses are medical conditions that often result in a diminished capacity for coping with the ordinary demands of life (<http://www.nami.org>).

A mental health disability might cause issues with attendance because of medication side effects or sleep disturbances, stress, co-worker interactions, emotions, and panic attacks. Reasonable accommodations to ameliorate these issues may include:

- Allowing a flexible work environment, *e.g.*, flexible start time, flexible scheduling, modified or flexible break schedule, leave for counseling, or work from home/Flexi-place;
- Encouraging the use of stress management techniques to deal with frustration;
- Allowing telephone calls during work hours to doctors and others for needed support;
- Referral to employee assistance program (EAP); and
- Providing partitions or closed doors to allow for privacy.

Successful techniques for supervisors include providing positive praise and reinforcement, day-to-day guidance and feedback, and developing clear expectations of responsibilities and the consequences of not meeting performance standards.

Additional information about reasonable accommodations for employees with mental health disabilities are provided in the publication: [Accommodation and Compliance Series: Employees with Mental Health Impairments](http://askjan.org/media/Psychiatric.html) (<http://askjan.org/media/Psychiatric.html>). Another resource is [Employing and Accommodating Workers with Psychiatric Disabilities](http://www.ilr.cornell.edu/edi/hr_tips/article_1.cfm?b_id=19) (http://www.ilr.cornell.edu/edi/hr_tips/article_1.cfm?b_id=19).

Autism Spectrum Disorders

Autism Spectrum Disorders (ASDs), also referred to as Pervasive Developmental Disorders (PDDs), are brain-based developmental disabilities that affect a person's ability to communicate, understand language, and relate to others. Estimates from the Centers for Disease Control and Prevention (CDC) indicate that 1.5 million Americans have ASD (Kennedy Krieger Institute, 2005).

Adults with ASD, especially those with high-functioning Autism or with Asperger Syndrome, are able to work successfully in mainstream jobs (NIMH, 2009). Autism spectrum disorders may cause issues in workplace social skills, interactions with coworkers, and effective communication with supervisors. Accommodations for employees with Autism Spectrum Disorders may include:

- Providing a job coach to help the employee understand different social cues or providing a mentor to help employee "learn the ropes";
- Allowing alternative forms of communication between coworkers, such as email, instant messaging, or text messaging;
- Providing detailed day-to-day guidance and feedback;
- Identifying areas of improvement for employee in a fair and consistent manner;
- Providing clear expectations and the consequences of not meeting expectations;
- Providing concrete examples to explain unacceptable behavior and resulting consequences;
- Establishing long term and short term goals for employee;
- Assisting employee in assigning priority to assignments; and
- Allowing employee to bring a support person to performance reviews and disciplinary meetings.

Example: A new hire at a fast-food restaurant has Asperger Syndrome. He completes his job tasks quickly and efficiently then remains idle until someone tells him the next task to perform. The manager complains that the employee "just stands around" and "looks bored." JAN suggested the use of a job coach to help him learn the job, and how to stay occupied during down time.

Additional information about reasonable accommodations for employees with Autism Spectrum Disorders or who have Asperger Syndrome are provided in the publications: [Job Accommodations for People with Autism Spectrum Disorders \[Word file\]](http://askjan.org/media/employmentASDfact.doc) (<http://askjan.org/media/employmentASDfact.doc>) and [Accommodation and Compliance Series: Employees with Asperger Syndrome](http://askjan.org/media/asperger.html) (<http://askjan.org/media/asperger.html>)

Employees with Alcoholism

Although alcoholism is considered by the EEOC to be an impairment, the ADA specifically provides that an employer may prohibit the use of alcohol in the workplace and require that employees not be under the influence of alcohol. Employees with alcoholism who violate such a company policy may be terminated or otherwise disciplined. Furthermore, employees whose alcoholism causes other performance or conduct problems to the extent that they are no longer a "qualified employee" may also be disciplined or discharged. However, an employer may not discipline an employee with alcoholism more severely than it does other employees for the same performance or conduct.

Reasonable accommodations that support employees with alcoholism include allowing paid or unpaid leave for medical treatment and paid or unpaid leave or flexible scheduling to permit the employee to attend AA meetings or medical appointments.

Example: An office manager returning to work after in-patient treatment for alcoholism needed to attend AA meetings. His employer provided him with a schedule that allowed him to perform his job but also attend meetings.

Additional information about job accommodations for employees with alcoholism are: [Accommodation and Compliance Series: Employees with Alcoholism](http://askjan.org/media/alcohol.html) (<http://askjan.org/media/alcohol.html>) and The Cornell University Series on Disability and HR: Tips for Human Resource Professionals publication, [Employing and Accommodating Individuals With Histories Of Alcohol Or Drug Abuse](http://www.ilr.cornell.edu/edi/hr_tips/article_1.cfm?b_id=1) (http://www.ilr.cornell.edu/edi/hr_tips/article_1.cfm?b_id=1).

? How Do I Determine Whether Someone's Disability Poses a Threat?

Under the ADA, an employer may lawfully exclude an individual from employment for safety reasons only if the employer can show that employment of the individual would pose a "direct threat." Employers must apply the "direct threat" standard uniformly and may not use safety concerns to justify exclusion of persons with disabilities when persons without disabilities would not be excluded in similar circumstances.

The EEOC's ADA regulations explain that "direct threat" means "a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation." A "significant" risk is a high, and not just a slightly increased, risk. The determination that an individual poses a "direct threat" must be based on an individualized assessment of the individual's present ability to safely perform the functions of the job, considering a reasonable medical judgment relying on the most current medical knowledge and/or the best available objective evidence. With respect to the employment of individuals with psychiatric disabilities, the employer must identify the specific behavior that would pose a direct threat. An individual does not pose a "direct threat" simply by virtue of having a history of psychiatric disability or being treated for a psychiatric disability.

Does an individual pose a direct threat in operating machinery solely because s/he takes medication that may as a side effect diminish concentration and/or coordination for some people?

No. An individual does not pose a direct threat solely because s/he takes a medication that may diminish coordination or concentration for some people as a side effect. Whether such an individual poses a direct threat must be determined on a case-by-case basis, based on a reasonable medical judgment relying on the most current medical knowledge and/or on the best available objective evidence. Therefore, an employer must determine the nature and severity of this individual's side effects, how those side effects influence his/her ability to safely operate the machinery, and whether s/he has had safety problems in the past when operating the same or similar machinery while taking the medication. If a significant risk of substantial harm exists, then an employer must determine if there is a reasonable accommodation that will reduce or eliminate the risk.

Example: An individual receives an offer for a job in which she will operate an electric saw, conditioned on a post-offer medical examination. In response to questions at this medical examination, the individual discloses her psychiatric disability and states that she takes a medication to control it. This medication is known to sometimes affect coordination and concentration. The company doctor determines that the individual experiences negligible side effects from the medication because she takes a relatively low dosage. She also had an excellent safety record at a previous job, where she operated similar machinery while taking the same medication. This individual does not pose a direct threat.

When can an employer refuse to hire someone based on his/her history of violence or threats of violence?

An employer may refuse to hire someone based on his/her history of violence or threats of violence if it can show that the individual poses a direct threat. A determination of "direct threat" must be based on an individualized assessment of the individual's present ability to safely perform the functions of the job, considering the most current medical knowledge and/or the best available objective evidence. To find that an individual with a psychiatric disability poses a direct threat, the employer must identify the specific behavior on the part of the individual that would pose the direct threat. This includes an assessment of the likelihood and imminence of future violence.

Example: An individual applies for a position with Employer X. When Employer X checks his employment background, she learns that he was terminated two weeks ago by Employer Y, after he told a coworker that he would get a gun and "get his supervisor if he tries anything again." Employer X also learns that these statements followed three months of escalating incidents in which this individual had had several altercations in the workplace, including one in which he had to be restrained from fighting with a coworker. He then revealed his disability to Employer Y. After being given time off for medical treatment, he continued to have trouble controlling his temper and was seen punching the wall outside his supervisor's office. Finally, he made the threat against the supervisor and was terminated. Employer X learns that, since then, he has not received any further medical treatment. Employer X does not hire him, stating that this history indicates that he poses a direct threat.

This individual poses a direct threat as a result of his disability because his recent overt acts and statements (including an attempted fight with a coworker, punching the wall, and making a threatening statement about the supervisor) support the conclusion that he poses a "significant risk of substantial harm." Furthermore, his prior treatment had no effect on his behavior, he had received no subsequent treatment, and only two weeks had elapsed since his termination, all supporting a finding of direct threat.

Source: [EEOC Enforcement Guidance on the Americans with Disabilities Act and Psychiatric Disabilities](http://www.eeoc.gov/policy/docs/psych.html)
(<http://www.eeoc.gov/policy/docs/psych.html>)

Resources and Publications from the ADA Coordinator's Office

The following is a list of publications independently developed by the ADA Coordinator's office or in conjunction with collaborative partners.



Accessibility in State Owned Buildings and Facilities



[PDF](#) | [HTML](#) | September 2009

A Meaningful Opportunity to Participate A Handbook for Georgia Court Officials on Courtroom Accessibility for Individuals with Disabilities



[PDF](#) | December 2004

Best Practices when Interacting with Persons with Disabilities



[PDF](#) | [HTML](#) | September 2009

Finding the Path to Equal Justice A Handbook for Adult Defendants with Intellectual Disabilities and Their Families



[PDF](#) | August 2007

Georgia's Emergency Preparedness for Individuals with Disabilities and Elderly Persons



[PDF](#) | [HTML](#) | September 2009

Opening the Door: Justice for Adult Defendants with Mental Retardation A Handbook for Attorneys Practicing in Georgia



[PDF](#) | August 2007

TIPS Guide for First Responders

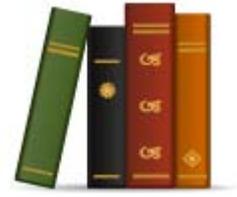


[PDF](#) | [HTML](#) | August 2010

Additional Resources and Publications

Topic Guides on ADA Transportation

Seven Topic Guides — available from the Federal Transit Administration (FTA) — bring together the requirements of the Americans with Disabilities Act and the U.S. Department of Transportation's ADA regulations, FTA determinations, and operational practices that comply with the ADA. Each Topic Guide is available as a webpage (HTML), a PDF file (.pdf), and a plain Text file (.txt).



Topics include:

1. Equipment Maintenance
2. Stop Announcement and Route Identification
3. Eligibility for ADA Paratransit
4. Telephone Hold Time in ADA Paratransit
5. Origin to Destination Service in ADA Paratransit
6. On-Time Performance in ADA Paratransit
7. No-Shows in ADA Paratransit

The Topic Guides are funded by the FTA and developed by the Disability Rights Education & Defense Fund (DREDF) and TranSystems Corporation.

Source: Disability Rights Education & Defense Fund (DREDF) - <http://dredf.org/ADAtg/index.shtml>

TIPS: Service Animals

An updated Technical Information Perspectives & Solutions (TIPS) resource sheet available in Word and Text formats.

Source: Southeast ADA Center - <http://sedbtac.org/ada/training/trainingTemplate.php?ref=FS#h10>

Training Opportunities from the ADA Coordinator's Office

The ADA Coordinator's Office conducts general and customized training on ADA topics for state agencies and other targeted audiences to ensure appropriate familiarity with the Act's requirements applicable to State government utilizing various delivery methods, including:



- Training/Seminars entirely developed and delivered by the Office;
- Training/Seminars delivered by the Office in collaboration with other entities;
- Training/Seminars offered by other entities in which the Office's personnel are trainers/presenters;
- Training/Seminars developed and delivered externally in which the Office coordinates state agency participation;

Trainings provided by our office may be "stand-alone" trainings or part of a larger project or technical support request.

If you have a specific ADA training request please contact our office at (404) 657-7313 or (Phone), (404) 657-9993 (TTY) or gaada@gsfic.ga.gov.

EEOC's New Regulations: Implementing the ADA Amendments Act of 2008

Date: June 28, 2011

Time: 10:00 am -12:00 pm

Location: First floor training room at the Georgia State Financing & Investment Commission (GSFIC), located at 270 Washington Street in downtown Atlanta

Sponsored by the State ADA Coordinator's Office and the Council on Personnel Administration, this two-hour training will provide the latest information on the new ADA regulations, implementation strategies and best practices. This event will bring together state agency personnel administrators and state agency ADA coordinators.

The presenter is Christopher J. Kuczynski, Assistant Legal Counsel, Director of the ADA/GINA Policy Division, United States Equal Employment Opportunity Commission (EEOC). Mr. Kuczynski is one of the key EEOC staff responsible for drafting the new regulations.

RSVP Deadline: June 15, 2011

To RSVP, please contact Barbara Tucker at phone (404) 657-7313 [voice], TTY (404) 657-9993, or <mailto:Barbara.tucker@gsfic.ga.gov>.

If **reasonable accommodation** is needed, please call (404) 657-7313 [voice], TTY (404) 657-9993.

A copy of the flyer for this training is attached to this newsletter.

[Additional information about this training, or a biography on Mr. Kuczynski](#) is available online

(http://ada.georgia.gov/00/article/0,2086,77499621_80308165_171350342,00.html).

Respectful Interaction and Excellent Customer Service for Georgians with Disabilities

The Georgia State ADA Coordinator's Office and the Institute for Human Development and Disability are offering training on "Respectful Interaction and Excellent Customer Service for Georgians with Disabilities." For more information and to schedule training, contact the State ADA Coordinator's Office at phone (404) 657-7313 [voice], TTY (404) 657-9993, or gaada@gsfic.ga.gov.

Orientation to Your Role as an ADA Coordinator

The Georgia State ADA Coordinator's Office will be conducting a training course on Orientation to Your Role as ADA Coordinator for those of you who are newly assigned as your agency's ADA Coordinator, as well as those of you who would like a refresher course.

Cost: \$0 – Free

Dates: September 15, 2011, and December 15, 2011

Time: 9:30 am -12:00 pm

Location: Georgia State Financing & Investment Commission (GSFIC), located at 270 Washington Street in downtown Atlanta

For more information and to register, contact Barbara Tucker at phone (404) 463-5646 [voice], TTY (404) 657-9993, or Barbara.tucker@gsfic.ga.gov.

Additional Training Opportunities

Legal Webinar Series from the ADA National Network by DBTAC

The Legal Webinar Series is designed for individuals who have a working knowledge of the ADA and are familiar with its basic elements. Sessions are intended to support continued learning and focus on the knowledge that has been gained since the implementation of the law in terms of how the federal agencies and the courts are interpreting the law and subsequent regulations. Each session is 90 minutes in length. Sessions are held from 2:00-3:30 p.m. Eastern Time.

- **July 20, 2011 ~ ~ 2:00 P.M. to 3: 30 P. M ET**
Drugs, Alcohol and Conduct Rules Under the ADA (includes legal brief)

Employers and employees frequently express confusion about how the ADA interfaces with issues involving drugs, alcohol and related conduct rules. When are drug testing or fitness-for-duty examinations permissible? Can an employer request medical substantiation of rehabilitation? This webinar will review how these and other issues are addressed in the text of the ADA, federal regulations and guidance, and case decisions across the country.

- **September 21, 2011 ~ ~ 2:00 P.M. to 3: 30 P. M ET**
The Litigation Landscape After the ADAAA

The ADA Amendments Act was passed in September 2008, but it takes some time for these cases to work themselves into the courts and influence the way that the courts interpret the ADA. This session will review cases interpreting the definition of disability under the ADA Amendments Act, and also discuss emerging ADA legal issues in the wake of fewer cases being dismissed for failing to meet the definition of disability. What are the courts now saying about requirements for being qualified or for proving undue hardship or direct threat? Attend this webinar to find out.

Source: <http://ada-audio.org/Webinar/ADALegal/>

Accessible Technology On-line Webinar Series

- **July 12, 2011**
How to Create Accessible Video

Source: <http://ada-audio.org/Webinar/AccessibleTechnology/Schedule/>

ADA Audio Conference Series from the ADA National Network by DBTAC

- **July 21, 2011**
ADA Federal Update: 21st Anniversary of the ADA
- **August 16, 2011**
ADA and Alternative Dispute Resolution/Mediation

Contact for more information:

ADA National Network by DBTAC - Great Lakes ADA Center
Phone: (312) 996-1174 [voice/tty] • Email: gldbtac@uic.edu

Source: <http://ada-audio.org/>

Online Courses from the ADA National Network by DBTAC

ADA Title II Tutorial

A free tutorial on the requirements applicable to State and Local government under Title II of the Americans with Disabilities Act (ADA).

Cost: \$0 – Free

Credit: CEU 0.3; CRCC 2.0

Source: <http://adacourse.org/title2/>

Accommodating People with Cognitive Disabilities in the Workplace Online Workshop

This online workshop provides an enhanced understanding of people with cognitive disabilities, makes sense of the ADA and legal responsibilities related to people with cognitive disabilities, and provides tools that can be applied in the workplace when addressing accommodations for people with cognitive disabilities.

Cost: \$0 - Free (Registration required).

Source: <http://adagreatlakes.org/Presentations/CognitiveDisabilities/slides.asp>

At Your Service: Welcoming Customers with Disabilities

A free, self-paced webcourse for discovering the best practices for effectively working and interacting with people who have disabilities.

Cost: \$0 – Free

Credit: CEU 0.5

Source: <http://wiawebcourse.org>

ADA Employment Webcourse

A free, self-paced webcourse on the employment requirements of the Americans with Disabilities Act, including the important changes made to the ADA by the ADA Amendments Act of 2008.

Cost: \$0 – Free

Credit: CRCC 2.5; HR Certification Institute: 2.5 credit hours for PHR, SPHR, GPHR

Source: <http://ADAEmploymentCourse.org>

Other ADA Online Courses

Job Accommodation Network (JAN) Webcasts Series

JAN Webcasts are available at no cost. Topics include: disability etiquette, assistive technology, management techniques, and the latest on accommodations and the employment provisions of the Americans with Disabilities Act (ADA).

- June 14, 2011. JAN Webcast: Understanding and Accommodating Allergies in the Workplace
- July 12, 2011. JAN Webcast: ADA Update

Source: <http://askjan.org/webcast/index.htm>

Courses from the ILRU

The ILRU (Independent Living Research Utilization) is a national center for information, training, research, and technical assistance in independent living. It is a program of The Institute for Rehabilitation and Research (TIIR), a nationally recognized medical rehabilitation facility for persons with disabilities.

Index Archive of ILRU On-Demand Trainings

- [Developing a Successful Reasonable Accommodation Process \(Part I\)](#) presented by Julie Ballinger, Disability Rights and Issues Consultant, on January 19, 2011
- [Developing a Successful Reasonable Accommodation Process \(Part II\)](#) presented by Julie Ballinger, Disability Rights and Issues Consultant, on January 26, 2011

Sources: <http://www.bcm.edu/ilru/html/training/webcasts/calendar.html>;
<http://www.bcm.edu/ilru/html/training/webcasts/archive/index.html>

Acknowledgment and Disclaimer

The content of the Georgia Human Resources ADA Update was developed by the [DBTAC: Southeast ADA Center](#) under a contract with the Georgia State Financing and Investment Commission. The DBTAC: Southeast ADA Center is a project of the [Burton Blatt Institute \(BBI\) at Syracuse University](#). It is funded under Grant #H133A060094 from the Department of Education, National Institute on Disability and Rehabilitation Research (NIDRR). However, NIDRR is not responsible for ADA enforcement and the contents do not necessarily represent the policy of the Department of Education or NIDRR, and you should not assume endorsement by the Federal government.

Accessibility cannot be guaranteed for external websites. The DBTAC: Southeast ADA Center provides these links as a courtesy and does not endorse, take responsibility, or exercise control of the organization nor vouch for the accuracy of the contents of the destination link. The information, materials, and/or technical assistance are intended solely as informal guidance, and are neither a determination of your legal rights or responsibilities under the ADA, nor binding on any agency with enforcement responsibility under the ADA.



EEOC's New Regulations: Implementing the ADA Amendments Act of 2008

This two-hour training will provide the latest information on the new ADA regulations, implementation strategies and best practices. This event will bring together state agency personnel administrators and state agency ADA coordinators.

Sponsored by:

**GSFIC- State ADA Coordinator's Office and
the Council for State Personnel Administration (CSPA)**

Presented by:

**Christopher J. Kuczynski
Assistant Legal Counsel, Director of the ADA/GINA Policy Division
United States Equal Employment Opportunity Commission**

**Tuesday - June 28th, 2011
10:00 am until 12:00 pm**

**Georgia State Financing and Investment Commission
270 Washington Street, Atlanta, GA 30334
First Floor Training Room**

RSVP Deadline is June 15, 2011

**To RSVP for this event, please email Barbara Tucker at:
Barbara.tucker@gsfic.ga.gov or call at 404-657-7313**

**If you need a reasonable accommodation for this event please call 404-657-7313
or 404-657-9933 (TTY)**