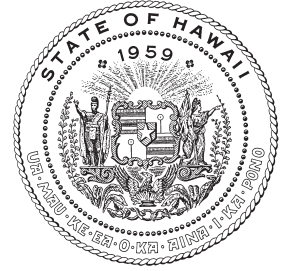


Americans with Disabilities Act - Title I

Employment of Persons with Disabilities

An Overview



Covered Entities

Title I of the Americans with Disabilities Act of 1990 (P.L. 101-336) applies to **covered entities**. Covered entities are private employers, state and local governments, employment agencies, labor unions, and joint labor management committees. Title I covers employers that have 15 or more employees and any **agent** of the employer, including a manager, supervisor, foreman, or other person or entity that acts on behalf of the employer, such as an agency used to conduct background checks on candidates.



Title I covers religious organizations, but they may give employment preference to people of their own religion or religious organization. Title I exempts bona fide private membership clubs that are exempt from taxation under the Internal Revenue Code.

Discrimination Prohibited



Title I prohibits covered entities from discriminating against a **qualified individual with a disability**. A qualified individual with a disability is an **individual with a disability** who meets the skill, experience, education, and other job-related requirements of a position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of a job.

An individual with a disability is a person who 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.

Regulated Employment Practices

Title I prohibits discrimination against individuals with disabilities in regard to any employment practices or terms, conditions, and privileges of employment, including application, testing, hiring, assignments, evaluation, disciplinary action, training, promotion, medical examinations, layoff/recall, termination, compensation, leave, and benefits.



Actions That Constitute Employment Discrimination

Actions that constitute employment discrimination include the following:

- Limiting, segregating, or classifying a job applicant or employee in a way that adversely affects employment opportunities for the individual because of a disability;
- Participating in a contractual or other arrangement or relationship that subjects a qualified applicant or employee with a disability to discrimination;
- Denying employment opportunities to a qualified individual because she/he has a relationship or association with a person with a disability;
- Refusing to make reasonable accommodation to the known physical or mental limitations of a qualified applicant or employee with a disability, unless the accommodation would pose an undue hardship on the covered entity;
- Using qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability, unless they are job-related and necessary for the covered entity;
- Failing to use employment tests in the most effective manner to measure actual abilities; and
- Discriminating against an individual because she/he has opposed an employment practice of a covered entity or filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing to enforce provisions of Title I.



Providing Reasonable Accommodation

A covered entity must make a **reasonable accommodation** to the known physical or mental limitations of a qualified applicant or employee with a disability unless it can show that the accommodation would cause an **undue hardship** on the operation of its business.



A **reasonable accommodation** is any change in the work environment or in the usual way a covered entity does things that results in an equal employment opportunity for an individual with a disability.

Reasonable accommodations include making an existing facility used by employees readily accessible to, and usable by, an individual with a disability; job restructuring; modifying work schedules; 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.



An **undue hardship** is any action that is excessively costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the business. In determining undue hardship, factors for consideration include the nature and cost of the accommodation in relation to the size, the financial resources, the nature and structure of the covered entity's operation, as well as the impact of the accommodation on the specific facility providing the accommodation.

Direct Threat to Health or Safety



A covered entity may require that an individual not pose a **direct threat** to the health or safety of the individual or others. A covered entity can only consider a health or safety risk if it is a significant risk of substantial harm. A covered entity cannot deny an employment opportunity merely because of a slightly increased risk. A covered entity must base an assessment of direct threat strictly on a valid medical analysis and/or other objective evidence, and not on speculation.

If an individual appears to pose a direct threat because of a disability, the covered entity must first try to eliminate or reduce the risk to an acceptable level with reasonable accommodation. If the covered entity cannot find an effective accommodation, it may refuse to hire an applicant or discharge an employee who poses a direct threat.

Pre-employment Inquiries and Medical Examinations

A covered entity may not ask a job applicant about the existence, nature, or severity of a disability, but may ask about their ability to perform specific job functions. A covered entity may not make medical inquiries or conduct a medical examination until after it makes a job offer. A covered entity may condition a job offer on the results of a medical examination or inquiry, but only if it is required for all entering employees in similar jobs. Medical examinations of employees must be job-related and consistent with the covered entity's business needs.



Drug and Alcohol Abuse

Title I allows a covered entity to use drug tests to determine whether applicants or employees are currently using drugs illegally. A covered entity may hold illegal users of drugs and alcoholics to the same performance and conduct standards as other employees.

Title I does not protect individuals with disabilities who currently engage in the illegal use of drugs if a covered entity takes action on the basis of the current illegal use of drugs.



Enforcement

The EEOC enforces compliance with Title I. Remedies required of covered entities found to have discriminated against an applicant or employee with a disability include compensatory and punitive damages, back pay, front pay, restored benefits, attorney's fees, reasonable accommodation, reinstatement, and job offers.



Filing a Complaint

A qualified individual with a disability may file a complaint against a covered entity for violating any of the nondiscrimination provisions of Title I. The EEOC will accept complaints at its Honolulu office.

Equal Employment Opportunity Commission
300 Ala Moana Blvd., Suite 7-127
Honolulu, HI 96813
Phone: 541-3120 (V); 541-3131 (TTY)
(Neighbor island residents call collect.)

By mail:
P.O. Box 50082
Honolulu, HI 96850-0051

An individual must file a complaint of discrimination on the basis of disability with the EEOC within 180 days of the alleged discriminatory act.

ADA Information

Visit the EEOC web site to see the Title I regulations and related guidance at eeoc.gov.



DISABILITY AND COMMUNICATION ACCESS BOARD

919 Ala Moana Blvd., Room 101 • Honolulu, HI 96814
Oahu: (808) 586-8121 (Voice/TTY), (808) 586-8129 (Fax)

Call toll free from:

Maui: 984-2400, ext. 6-8121# (Voice)
Molokai & Lanai: 1(800) 468-4644,
ext. 6-8121# (Voice)

Kauai: 274-3141, ext. 6-8121# (Voice)
Big Island: 974-4000,
ext. 6-8121# (Voice)

E-mail: dcab@doh.hawaii.gov • Web Site: www.hawaii.gov/health/dcab/

