Two aspects of the Americans with Disabilities Act (ADA) will potentially affect wall and ceiling contractors: the prohibitions against discrimination of "qualified" individuals with disabilities and the requirements for public accommodation. The public accommodation section of the act can potentially enlarge the market for wall and ceiling contractors, since it regulates new and remodeling construction for public access areas.

This article will focus on the prohibitions against discrimination of individuals with disabilities. The act requires planning and record-keeping in order to avoid charges of discrimination. If you’re going to show that you don’t discriminate against people with disabilities, you’ll need to document the physical requirements of your jobs and more.

The Americans with Disabilities Act (ADA) of 1990 will go into effect on July 26, 1992, for all employers of 25 or more employees. It will prohibit discrimination against “qualified” individuals with disabilities. This discrimination could be in job application procedures, hiring, promotion, compensation, training, discharge, or other similar conditions of employment.

Employers will be required to make “reasonable accommodations” to the known physical or mental limitations of an otherwise qualified individual—unless the employer can justify that such an accommodation would impose an “undue hardship.”

An estimated 43 million Americans with about 900 disabilities of all kinds will be granted equal employment opportunity as a result of this law.

Physical exams and accurate job descriptions may be called for under ADA

This article is not intended to summarize and define all aspects of this complicated legislation. Rather, it will focus on critical human resource areas that can be addressed immediately by wall and ceiling contractors to be as ready as possible for July 26, 1992.

Job Descriptions

The first recommended step is to review current job descriptions. Since the new law protects disabled individuals who can perform the “essential functions” of a job with or without reasonable accommodations, the Equal Employment Opportunity Commission (EEOC) will consider job descriptions the primary evidence of an employer’s intent.

This presents a unique challenge for employers, since job descriptions may not currently exit for each position. If they do exist, they are likely to be generic, with no specific reference to “essential functions.”

Determining essential functions requires a detailed analysis of the job’s critical demands, including lifting, pushing, pulling, standing, bending, repetitive motion, etc. Each physical requirement needs to be defined by minimum and maximum weight and frequency of occurrence.

It may be wise to have such detailed analysis conducted by occupational therapists or similar professionals, to ensure the objectivity and accuracy of the essential job functions used in the employment process. If necessary, this will become professionally credible documentation to support an employer in a discrimination suit.

Extending medical services to include such analysis is an alternative...
for employers who maintain a good relationship with a company-chosen physician or clinic for pre-employment physicals, workers’ compensation examinations, light-duty programs, etc. Workers’ compensation insurance carriers may also be able to provide required medical expertise for these analyses.

Without this type of job description, employers will be placed in the precarious position of making employment decisions on candidates with disabilities based on undocumented opinions. This can be an open invitation to EEOC charges of discrimination or an eventual lawsuit.

Physical Exams

A second area that should be considered before July 1992 is the company’s position on physical exams as part of the hiring process. The new regulations will prohibit an employer from asking questions about the existence or severity of a candidate’s disability.

However, the interviewer may ask if the candidate “can lift 40 pounds” or “stand for eight hours,” providing that the job requirements have been objectively defined before the interview and that all candidates have been asked the same question(s).

Companies will be required to change to more disciplined hiring procedures.

If the candidate states that he or she can perform the job requirements and is the most qualified interviewee based on all other criteria, a job offer ordinarily will be made. Companies that now require pre-employment physicals and elect to continue this practice will be required by ADA to schedule all exams only after the job offer has been made and prior to the start of employment.

This employment offer may be conditioned on the examination’s results if all employees in the same job category are subjected to examination and all information obtained is kept confidential and maintained in separate medical files.

Employers who can afford the cost of post-offer physical exams for all or designated jobs are advised to do so. Costs incurred may be more than offset by the subsequent reduction in workers’ comp claims and avoidance of legal issues associated with handicapped discrimination.

Post-offer physicals based on essential job functions also provide the additional benefit of shifting the responsibility for decisions regarding applicants’ capacity to perform these functions to certified occupational physicians, who are clearly more qualified to make such determinations.

It should be clearly understood that
ADA does not require employers to provide physical exams as part of the employment process. Employers who elect to have post-offer physicals, however, should consider other human resource implications.

Companies with “interview today and start tomorrow” mindsets will be required to change to more disciplined hiring procedures based on advance planning, cross-training, temporary help, etc. This will be necessary to avoid the legal issues associated with a new hire who begins employment only to discover that he or she is medically at risk should he or she continue in that position.

Other Considerations

Many human resource professionals also suggest that employers consider the use of formal offer letters for all successful candidates if the offer is contingent on the results of the physical exam. Carefully worded offer letters can provide critical documentation with EEOC and other groups, should a candidate be medically disqualified after the offer has been made.

Additional human resources concerns include these:

--Job applications should be reviewed, to be sure that no questions are asked about physical or mental disabilities.

--Newspaper ads should be monitored, before publication, so there is no mention of physical or mental requirements unless a bona fide occupational requirement can be established.

--New building construction and alteration should be in conformance with the accommodation regulations, to ensure accessibility to the disabled.

--Drug testing policies should be reviewed and clarified, since some state or local laws may consider current drug users as handicapped in spite of the fact that ADA specifically excludes such users.

As previously mentioned, issues of separate medical records from personnel records and strict confidentiality of all medical information should also be addressed prior to July 1992.

Final EEOC regulations and a technical assistance manual, which was due in July, hopefully will clarify remaining questions, such as how ADA will affect employees with disabilities resulting from work-related accidents and how collective bargaining agreements may effect employer attempts to make reasonable accommodations to individuals with disabilities.

The implementation of ADA will pose numerous challenges for all employers, including wall and ceiling contractors. If all these challenges are met by July 26, 1992, the ADA regulations will actually improve the industry’s human resources policies and practices by refining job descriptions, considering the need for job-related physical examinations, and inducing increased attention to non-discriminatory hiring practices.

Most of all, the barriers that will enable all of us to benefit from the skills and talents of individuals with disabilities may be broken down.