Job Analyses Help You Cope in the ADA Era

The Americans with Disabilities Act of 1990 (ADA) is the single most powerful disability rights law ever passed. It prohibits discrimination on the basis of disability in employment, public services, public accommodation, telecommunications, and transportation. It will change the American workplace when it goes into effect July 26, 1992.

In addition to its other protections, ADA is the most far-reaching employment law since Title VII of the Civil Rights Act. Under ADA, employers must treat employees and applicants in a manner that does not adversely impact the applicant or employee because of disability. Employers must make reasonable accommodation to the known limitations of a qualified applicant or employee unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business. The key to compliance with ADA is determining whether the individual can perform the essential job functions with or without accommodation.

ADA prohibits discrimination in all employment practices, including job application procedures, hiring, firing, advancement, compensation, training, and other terms, conditions, and privileges of employment. It applies to recruitment, advertising, tenure, layoff, leave, fringe benefits, and all other employment-related activities.

Effective July 26, 1992, those employers with 25 or more employees are bound by the requirements of ADA. It will apply to employers with 15 or more employees beginning July 26, 1994.

Who Is Protected?
Any qualified individual with a disability is protected by ADA. Specifically, ADA covers any individual with a disability who, with or without reasonable accommodation, can perform the essential functions of a position held or desired.

Disability is broadly defined and may include as many as 900 disabilities involving approximately 20% of the labor force. For the purposes of ADA, the term disability means:

- Having a mental or physical impairment that substantially limits one or more of the major life activities. Such activities include using one’s hands, vision, hearing, speaking, breathing, and learning.
- Having a record of such impairment.
- Being regarded as having such an impairment.

Disabled individuals include those with:

- Vision impairments;
- Hearing impairments;
- Speech impairments;
- Seizure disorders;
- Orthopedic and neuromuscular disabilities;
- Diseases, such as cancer and heart disease.

Disabled individuals also include recovered or recovering alcoholics and drug abusers.

What Is Reasonable Accommodation?
Reasonable accommodation is any adjustment or modification to the job or work environment that will enable a qualified applicant or employee with a disability to perform the essential job functions. Reasonable accommodations may include:

- Making facilities readily accessible to the disabled;
- Job restructuring;
- Flexible work schedules;
- Modification of equipment used in the workplace;
- Provision of special devices;
- Adjustment of applicant screening examinations and training programs;
- Provision of qualified readers.

An accommodation is not reasonable if it imposes an undue hardship on the operation of the employer’s business.

What Is an Undue Hardship?
An employer is not required to provide an accommodation that will impose an undue hardship on the employer’s business. The term undue hardship is defined as significant difficulty or expense. Undue hardship would result from accommodations that are:

- Unduly costly;
- Extensive, substantial, or disruptive.

Also included are accommodations that would fundamentally alter the nature or operation of the business.

What Are the Essential Functions of a Job?
Essential functions are fundamental job duties. A job function may be considered essential for any of several reasons, including but not limited to the following:

- The position exists to perform this function:
—Only a limited number of employees are available among whom the job function can be distributed;

—The function is highly specialized, so the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

Evidence to support the contention that a function is essential could include:

—The employer’s judgment as to which functions are essential;

—Written job descriptions prepared before advertising or interviewing applicants for the job;

—Time spent performing the function;

—Consequences of not performing the function;

—The terms of a collective bargaining agreement.

Also included is the work experience of incumbents in the same or similar jobs.

What Is the Risk to Employers?

The concepts of reasonable accommodation, undue hardship, and essential functions of the job are key terms of ABA. The clear definition of these terms is necessary to understand the employer’s responsibility under ABA. Unfortunately, the terms are very loosely defined in ADA and the supporting guidelines. As a result, extensive litigation will ensue to define these terms fully.

The U.S. Department of Justice has given notice that it intends to pursue fair, swift and effective enforcement of this legislation. Employers who are prepared to conform with ADA requirements are less likely to have serious litigation concerns.

The Role of the Job Description and Job Analysis

Because of ADA’s requirements, employers are urged to have clear job descriptions in place for each position in the company. Job descriptions in the past have typically been created for employment and compensation purposes. They rarely addressed the “essential functions of the job” and specific physical requirements of a job.

ADA ramifications must not only be considered regarding current employees, but with prospective ones as well. ADA makes one overwhelming message stand out: employers must determine which job functions are “essential” to performing a specific job, and spell out those requirements clearly.

For example, the job description for an office worker may include preparing invoices, inserting them in envelopes, and physically carrying the envelopes to a postage machine and then to a mail center. A person whose mobility depends on a wheelchair might not be able to physically perform such duties in a crowded office without significant accommodation.

For ADA requirements, the primary question would be: Is carrying the material an “essential function” of the position in question? Could another person in the office perform the same job without creating an “undue hardship” on the employer? Can the office be reorganized so that the person does not have to physically carry mail from one point to an-
other? The “essential function” issue must be resolved in all job descriptions in order to clearly adhere to ADA regulations.

The traditional job analysis, often used in vocational rehabilitation, outlines the specific description of a job, including all physical requirements. In a typical workers’ compensation case, the job analysis is then shared with the treating physician to help determine if and when an injured employee can return to work.

A job analysis requires a close look at everything involved in the job, including the amount of walking, sitting, lifting, standing, and all other physical activities required. It’s important to talk with worker’s supervisors and foremen to get a comprehensive understanding of what a job is all about, physically and environmentally.

Asking the right questions, including those about tools and equipment used, and carefully observing someone performing the job help you or a specialist gather all relevant information.

Pre-ADA, job analyses served two primary functions: to help determine when an injured worker could return to work, and to support the company’s position in workers’ compensation cases. Now job analyses will be performed with an eye to “essential function” and physical requirement issues so that employers can comply with ADA requirements as well.

Thus it is recommended that job analyses be performed for each job category, and these analyses should include sections containing the following information: a description of the essential job functions; general physical requirements; environmental conditions; hazard and safety considerations; and a summary of the specific physical requirements essential for that job.

It is also recommended that companies require pre- or post-offer physical exams for new hires (note that these must be non-discriminatory in nature). Detailed job analyses will provide examining physicians with the job-specific information required for their evaluation of the candidate’s ability to perform the essential job functions with or without reasonable accommodations.

**Formal Documentation**

In some companies, a lack of formal documentation thoroughly defining job requirements, especially in labor-intensive industries, has led to problems in the past. In workers’ compensation cases especially, a comparison of the injured worker’s physical capabilities to the job requirements has sometimes been a deciding factor. The advent of ADA makes up-front job analyses, before the employer is in a hiring mode, even more important.

First, such analyses help the employer show that hiring decisions are truly based on job requirements, not the applicant’s physical abilities. They also demonstrate the employer’s willingness to make “reasonable” accommodations and provide a clearly defined basis for determining what these accommodations should be.

With July 26 almost here, many companies would be well advised to make sure their job-analysis process is in place. Not having such an analysis leaves a company vulnerable to ADA sanctions from the Equal Employment Opportunity Commission, as well as private lawsuits.
Just What Is an “Essential Function”?  

ADA does not require employers to hire persons with disabilities, but it does require employers to reexamine their thinking about what functions of a job are truly essential.

ADA includes certain protections for people who have a disability and who are qualified to do a job. The Act defines a qualified individual as someone who, with reasonable accommodation, can perform the essential functions of the job.

Disability discrimination claims under ADA will likely depend on the definition of a position’s “essential functions.” Under the final interpretive ADA regulations, the Equal Employment Opportunity Commission has defined the term as follows:

In general, it means the fundamental job duties of the employment position the individual with a disability holds or desires. The term does not include the position’s marginal functions.

A job function may be considered essential for any of several reasons, including but not limited to the following:

—Because the reason the position exists is to perform that function;
—Because of the limited number of employees available among whom the performance of that job function can be distributed; and/or
—Because the function may be highly specialized, so the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

EEOC’s regulations also list seven factors that should be considered as evidence of whether a particular function is essential to a position:

—The employer’s judgment as to which functions are essential;
—Written job descriptions prepared before advertising or interviewing applicants for the job;
—The amount of time spent on the job performing the function;
—The consequences of not requiring the incumbent to perform the function;
—The terms of a collective bargaining agreement;
—The work experience of past incumbents in the job; and/or
—The current work experience of incumbents in similar jobs.