AWCI is interested in working with our members to dispel some misconceptions about what compliance with the Americans with Disabilities Act (ADA) will entail. In the area of employment, for example, concern has been expressed about what, exactly, constitutes “reasonable accommodations” or “undue hardship.” What changes, if any, must employers make in hiring or personnel practices? These concerns must begin to be discussed by business men and women. Following are some of the most common misconceptions about how the ADA will affect employers:

1. ADA will require employers to hire persons with disabilities. ADA does not require employers to hire people with disabilities, but it does require employers to re-examine 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. The phrase essential functions refers to job tasks that are fundamental, not marginal. For example: If a job requires mastery of information contained in technical manuals, the essential function would be “ability to learn technical materials,” rather than “ability to read technical manual.” People with visual and other reading impairments could perform this function using other means, such as audiotapes, braille, or review of material on a computer disk using a computer equipped with a screen reader.

2. Reasonable accommodations will subject me to unreasonable demands. Under ADA, employers do have a responsibility to provide reasonable accommodations to qualified people with disabilities unless it can be proven that to do so would impose undue hardship on the business. Reasonable accommodations include such things as: providing interpreters for people who have hearing impairments, making simple structural changes to the work site to accommodate people who use wheelchairs for mobility, or flexibility in arrival and departure times for people who require special vehicles for transportation and rely on paratransit schedules. If a person with a hearing impairment wants to have an interpreter present during a job interview, for example, it is that person’s responsibility to inform the interviewer that an interpreter will be needed, and it is the interviewer’s responsibility to provide one.

The issue with reasonable accommodation is when and what accommodations are considered reasonable, and these are good and fair questions. Employers are only required to make reasonable accommodations if the disability is known, if the accommodation requested is reasonable, and if the employee’s disability truly exists.

Employers may also suggest that accommodations be made. People who have limited mobility and use wheelchairs may need only minor modifications in the workplace (e.g., raising desks
a couple of inches by inserting blocks under the desk legs to accommodate wheelchairs). If the accommodations require complete remodeling of the location, however, then the employer will have to determine whether the remodeling is affordable or whether it would impose undue hardship on the business.

ADA also specifies that the term reasonable accommodation includes job restructuring, part-time or modified work schedules, and reassignment to vacant positions. Under ADA, an employer may not reduce the number of hours an employee with a disability works because of transportation difficulties, but the concept of reasonable accommodations will dictate that the employee be given consideration for a flexible schedule, as long as that employee maintains the same number of working hours as are required of any worker in that position.

In situations where, because of a disability, an employee is no longer able to perform the essential functions of his/her current job, a transfer to another vacant job for which that person is qualified is also considered a reasonable accommodation. A 55-year-old air traffic controller who experiences a hearing loss and can no longer understand speech through the headset—good hearing being an essential function of this job—would fit into this category. If there is a position available in the same company that requires visual interpretation and reporting and the employee qualifies, then the employer must make every effort to transfer the employee to that vacant position.

3. Complying with the mandates of ADA will force us out of business. The ADA does not purport to set requirements that will result in bankruptcy, closing facilities or outlets, or even a loss of jobs. What it should do is provide a system of checks and balances so that employers and employees can negotiate accommodations that will be in the best interests of both parties.

Undue hardship can have many interpretations under the Americans with Disabilities Act. Indeed, the term will probably be concretely defined only after extensive litigation. When we speak of significant difficulty or significant expense, we must define it individually. Larger, more profitable companies will clearly have more difficulty justifying that the cost of an accommodation constitutes undue hardship than will smaller, newer businesses. Less than half of the persons with disabilities now employed currently need job accommodations requiring expenditures by the employer. Recent studies of job accommodation costs indicate that less than 15% need job accommodations that cost more than $500.

It is essential for the dialogue to begin between businesses and persons with disabilities to allow all persons to work productively and comfortably together. Understanding the employment provisions of the Americans with Disabilities Act will help to begin that process and build a strong foundation for our American labor force. For more information about the Americans with Disabilities Act call the Small Business ADA Hotline at (800)947-4646.