

Health Benefit Plans and the Americans with Disabilities Act

This brochure is one of a series on human resources practices and workplace accommodations for persons with disabilities edited by Susanne M. Bruyère, Ph.D., CRC, SPHR, Director, Program on Employment and Disability, School of Industrial and Labor Relations – Extension Division, Cornell University. This was written by Gwen Thayer Handelman, Scholar in Residence, Nova Southeastern University, Shepard Broad Law Center, Fort Lauderdale, Florida, in May 1994. She updated the material in July, 2000.

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Cornell University currently serves as the Northeast Disability and Business Technical Assistance Center. Cornell is also conducting employment policy and practices research, examining private and federal sector employer responses to disability civil rights legislation. This research has been funded by the U.S. Department of Education National Institute on Disability and Rehabilitation Research (Grant #H133A70005) and the Presidential Task Force on Employment of Adults with Disabilities.

The full text of this brochure, and others in this series, can be found at: www.ilr.cornell.edu/ped/ada. Research reports relating to employment practices and policies on disability civil rights legislation, are available at: www.ilr.cornell.edu/ped/surveyresults.html

For further information, contact the Program on Employment and Disability, Cornell University, 102 ILR Extension, Ithaca, New York 14853-3901; 607/255-2906 (Voice), 607/255-2891 (TTY), or 607/255-2763 (Fax).

More information is also available from the ADA Technical Assistance Program and Regional Disability and Business Technical Assistance Centers, (800) 949-4232 (voice/TTY), www.adata.org

What is the Americans with Disabilities Act?

The Americans with Disabilities Act of 1990 (ADA) is a civil rights law for individuals who currently have a disability, have a record of disability, or are regarded as having a disability. The ADA protects against disability-based discrimination in employment, governmental and commercial activities, transportation, and telecommunications.

What disabilities are covered by the ADA?

For purposes of the ADA, a disability is a physical or mental impairment—such as a visual, hearing or mobility impairment, HIV disease, or mental retardation—that substantially limits one or more major life activities. The Supreme Court has clarified that an impairment substantially limits the major life activity of working if an individual is unable, or is regarded as being unable, to perform a broad class of jobs. The Supreme Court also has found that reproduction is a major life activity under the ADA. HIV infection is a disability from the onset of infection, (before any symptoms appear).

How does the ADA apply to employment?

Employers covered by the ADA may not discriminate against “a qualified individual with a disability,” -- that is, an individual with a disability who meets the necessary prerequisites for a job and can perform the essential job functions with (or without) reasonable accommodation. ADA Title I applies to employers, including employment agencies, labor unions, and joint labor-management committees -- with at least fifteen employees. Title I prohibits both purposeful discrimination in employment and practices with discriminatory impact related to job application procedures, hiring, advancement, discharge, compensation, training, and to other terms, conditions and privileges of employment. Criteria that have the effect of excluding individuals with disabilities from employment opportunities may not be used unless the criteria are job-related and are justified by business

necessity. Title I also establishes the obligation for a covered entity to reasonably accommodate a qualified individual with a disability, except in the case of undue hardship.

May health benefit costs influence employment decisions?

No. Personnel decisions regarding an individual with a disability may not take account of whether, or to what extent, the individual is or would be covered under a health benefit plan. Employers may not fire or refuse to hire a qualified applicant who has a disability, or who has a dependent with a disability, in order to avoid potential increases in health insurance costs.

Does the ADA apply to Health Benefit Plans?

Yes. In its 1993 Interim Enforcement Guidance, the Equal Employment Opportunity Commission (EEOC) described how the ADA applies to health benefit plans.

First, the ADA requires employers to provide all employees -- with a disability or without a disability -- the same health insurance benefits. Thus, an employer may not participate in a discriminatory contractual or other arrangement with an organization providing fringe benefits to employees. However, eligibility for health benefits need not be extended to employees with disabilities if such benefits are not extended to nondisabled employees in similar circumstances, e.g., part-time employees

What coverage classifications does the ADA permit?

ADA Title V allows bona fide insured or self-insured employee benefit plans to make some health-related distinctions based on risk classifications based on or not inconsistent with state law. However, this “insurance exemption” may not be used as a “subterfuge” to evade the purposes of the ADA. According to the EEOC, health insurance distinctions that are not disability-based do not violate the ADA,

even if they have a disproportionate impact on individuals with disabilities.

Thus, employers, insurers and unions generally may apply insurance distinctions that are uniformly applied to all employees, such as applicable limitations and exclusions. For example, employers may offer health insurance that does not cover pre-existing conditions for a period of time specified in the plan, even if such a pre-existing condition exclusion adversely affects employees with disabilities.

The ADA also generally permits facially neutral limitations such as lifetime coverage caps applied to all employees. Further, a health plan may exclude or limit coverage for specific procedures or treatments if they are not exclusively or nearly exclusively applicable to a particular disability. For example, a plan may limit the number of blood transfusions or x-rays that the plan will pay for, even though this may have an adverse effect on individuals with certain disabilities such as hemophilia. Likewise, a plan may limit or deny coverage for all “experimental” drugs and/or treatments for all “elective surgery,” and it may exclude or provide lower levels of coverage for broad categories of conditions that are not drawn along lines of disability. For example, a plan may have lower reimbursement rates for treatment of “mental or nervous conditions” or for “eye care.”

However, all such provisions are allowable under the ADA only if they meet the requirements of applicable state law and are not used as a subterfuge. Health plan terms also must meet the requirements of other applicable federal laws, such as the Health Insurance Portability and Accountability Act and the Mental Health Parity Act.

What is a “disability-based distinction?”

The EEOC’s enforcement guidance identifies a plan term or provision as disability-based if it singles out a particular disability, a discrete group of disabilities, disability in general (all conditions that substantially limit a major life activity), or a treatment or procedure

used exclusively or nearly exclusively to treat a particular disability.

What justifies a disability-based distinction?

The most reliable way to avoid violating the ADA is to not to single out diseases or conditions considered disabilities under the ADA.

However, if the plan does single-out a disability or disabilities, the EEOC 1993 Enforcement Guidance requires the respondent employer (or employer's insurer, if any), to bear the burden of proof that a disability-based distinction is permitted by (1) showing that the health plan either is a bona fide plan that is consistent with state law or is a bona fide self-funded plan, and (2) proving that the disability-based risk classification is not being used as a subterfuge to evade the purposes of the law. Plan sponsors may use accepted principles of insurance risk classification and current and accurate actuarial data, but not data based on myths, fears, stereotypes or false or outdated assumptions about a disability. Disability-based limitations or exclusions will not be considered to violate the ADA if:

- they are based on legitimate actuarial data, or actual or reasonably anticipated experience, and apply equally to conditions with comparable actuarial data and/or experience; or
- they are necessary because no alternative to a disability-based distinction is available to prevent an "unacceptable" change such as:
 - A drastic increase in premiums, co-payments or deductibles;
 - A drastic alteration in the scope of coverage or level of benefits; or
 - Other changes that would make the plan unavailable to a significant number of other employees, or so unattractive that the employer could not compete in recruiting and maintaining qualified workers due to the superiority of health insurance plans offered by other employers in the community, or so

unattractive as to result in significant adverse selection.

What is a "subterfuge?"

The EEOC and some courts define "subterfuge" as any disability-based disparate treatment that is not based on actuarial data or the employer's actual or reasonably anticipated experience relating to the risk involved. This means that any coverage limits or exclusions based on disability must be justified by sound actuarial data or other legitimate business or insurance justification.

For example, a cap on benefits for AIDS-related illnesses that was substantially lower than for other illnesses would be a disability-based distinction. The lower AIDS cap would violate the ADA unless the disability-based distinction can be justified by actuarial data. Studies demonstrating that the cost of AIDS is comparable to the costs of other commonly covered conditions make it unlikely that this type of disparate treatment could be justified.

A plan also may be found to have used the insurance exemption as a subterfuge if it used an AIDS cap to deter people with AIDS from accepting employment or enrolling in the plan.

A few courts have held that plan practices established prior to the ADA's enactment could not be a subterfuge to evade the purposes of the Act. The EEOC, however, disputes that the ADA provides a "safe harbor" for discriminatory practices that were adopted before the ADA.

How does the ADA apply to dependent coverage?

Disability-based distinctions involving dependent coverage will be analyzed in the same fashion as disability-based distinctions in employee coverage. The ADA, however, does not require that the coverage accorded dependents be the same in scope as the coverage accorded employees. For example, a

\$100,000 benefit cap for employees but only a \$50,000 for dependents, would be permitted.

Resources

EEOC materials are available from the U.S. Equal Employment Opportunity Commission, 1801 L Street, N.W., Washington, D.C. 20507, Technical Assistance --(800) 669-4000 (Voice) and (800) 800-669-6820 (TTY); Publications -- (800) 669-EEOC (Voice) and (800) 669-3302 (TTY). The EEOC also maintains a website (www.eeoc.gov).

ADA Regional Disability and Business Technical Assistance Center Hotline, 800/949-4232 (Voice/TTY).

Disclaimer

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Cornell University is authorized by the National Institute on Disability and Rehabilitation Research (NIDRR) to provide information, materials, and technical assistance to individuals and entities that are covered by the Americans with Disabilities Act (ADA). However, you should be aware that NIDRR is not responsible for enforcement of the ADA. 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 Act, nor binding on any agency with enforcement responsibility under the ADA.

The Equal Employment Opportunity Commission has issued enforcement guidance which provides additional clarification of various elements of the Title I provisions under the ADA.

Copies of the guidance documents are available for viewing and downloading from the EEOC web site at:

<http://www.eeoc.gov>

**Other brochures on the ADA
produced by the Program on
Employment and Disability
Are available on-line at
www.ilr.cornell.edu/ped/ada**