

A REFERENCE GUIDE FOR
STATE OF VERMONT PERSONNEL OFFICERS
and HIRING OFFICIALS

**PEOPLE WITH DISABILITIES,
EMPLOYMENT
and the
WORKPLACE**

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Edition: 2004

Available in Alternative Formats: Braille, large print, and text disk

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***Disclaimer:** The information presented here does not establish State of Vermont policy, nor is it offered as a form of legal reference or advice. State of Vermont policies may be found in statute, Rules and Regulations for Personnel Administration, and State of Vermont Personnel Policies. State employees who seek further information about the topics covered here may approach either agency/department personnel representatives, or the Department of Personnel. State employees who seek advice might contact the V.S.E.A., if applicable, an enforcement agency such as the Vermont Human Rights Commission, or a private attorney.*

INTRODUCTION

With State Government's increasing need for qualified and dedicated employees, hiring officials and human resources staff cannot afford to overlook the talented pool of employees, both current and potential, with disabilities. State Government's managers and supervisors need to work to retain current staff. A 2003 survey of State employees indicates that nearly 20% have a disability. Given Vermont's 2000 Census demographic that 18% of the general population has one or more disabilities, and retention efforts must be oriented to include individuals with disabilities.

The resource guide is intended to serve as a reference for State Government's hiring officials and human resources staff to provide background information about how to behave when dealing with individuals with disabilities and how to prevent disability discrimination. Awareness of these issues and appropriate behavior when interacting with an individual with a disability tend to reduce or eliminate discrimination based on disability and foster a healthy work environment. The ultimate goal is to enable the State Government to recruit the talented and dedicated employees needed to fulfil the State's mission, including the current and potential employees who are challenged by a disability.

This guide covers the following topics and areas:

- Communications: Using Respectful Language
- Confidentiality: Medical Examination
- Interviewing and the ADA
- Reasonable Accommodations
- Legal Definition of Disability
- Examples of Disability Types
- The American's with Disabilities Act (ADA)
- How to Access Additional Resources

Discrimination against individuals with disabilities is illegal and can result in significant adverse impacts for State Government and for you personally.

COMMUNICATIONS

Elements of communication fall into two groups – using respectful language and using appropriate communication strategies.

USING RESPECTFUL LANGUAGE

The way we think about things is reflected in our language. To speak respectfully is to reflect respectful thinking. Many of us have become accustomed to discipline-specific jargon, shorthand language, and slang that are accepted in our professional circles, but disrespectful to others. This language seems to make our jobs easier and it makes us part of a group using similar language. What we don't often realize is that this language also separates us from other people. It is important that we pay attention to how we speak about individuals with disabilities in our community because it gives us some insight into how we are thinking. Changing our language also gives us an opportunity to change our thinking.

The Power of Language

The words or expressions we use when referring to persons with disabilities are very subtle and might seem unimportant. However, as noted by a researcher in this field, “when one considers that language is a primary means of communicating attitudes, thoughts, and feelings ... the elimination of words and expressions that stereotype becomes an essential part of creating an inclusive environment” (Froschl, M., Colon, L., Rubin, E., & Sprung, B.(1984), Including all of us; An early childhood curriculum about disability. New York; Educational Equity Concepts, Inc).

“Person First ” Language

Using “person first” language demonstrates respect for people with disabilities by referring first to the individual and to an individual's disability only when necessary. This philosophy demonstrates respect by emphasizing the person first, rather than the disability, and by distinguishing the person from the disability.

To keep the “person first” philosophy in perspective, consider how you might introduce one of your friends who does not have a disability. You would use that person's name first and then perhaps tell where he or she lives, works, and so forth. Why should it be any different for someone who has a disability? It shouldn't. Everyone is made up of many attributes and most people do not want to be identified by any one characteristic. While a disability may create challenges or the need for information or assistance, it does not define a person's entire existence. A disability should be represented in its proper perspective. If the disability is totally irrelevant, reference to it should be omitted entirely. For example, saying, “I read a bedtime story to my daughter” is more appropriate, rather than saying “I read a bedtime story to my blind daughter.” In this case there is no reason to point out the daughter's disability. This may be true for most situations. Think about it before you make a reference to a person's disability and, if you decide it is appropriate, use “person first” language.

It 's The “Person First” –Then The Disability (only when needed)

Do Say

Child with a disability
 Person with cerebral palsy
 Person who has...
 without speech, nonverbal
 developmental delay
 emotional disorder, or mental illness
 psychiatric disability
 Person who is Deaf or hard of hearing
 uses a wheelchair
 Person with developmental disability
 with Down syndrome
 has a learning disability
 non-disabled
 has a physical disability
 congenital disability
 condition
 seizures
 mobility impaired
 medically involved, or chronically ill
 paralyzed
 has hemiplegia
 has quadriplegia
 has paraplegia
 of short stature

Don 't Say ...

disabled or handicapped child
 palsied, or CP, or spastic
 afflicted, suffers from, victim
 mute or dumb
 slow
 crazy or insane
 insane
 deaf and dumb
 confined to a wheelchair
 retarded
 Mongoloid
 is learning disabled
 normal, healthy
 crippled
 birth defect
 disease (unless it is a disease)
 fits
 lame
 sickly
 invalid or paralytic
 hemiplegic
 quadriplegic
 paraplegic
 dwarf or midget

Words to Avoid

Avoid words that have negative or judgmental connotation. Words such as these fail to demonstrate respect and do not recognize the person 's strengths and abilities. Avoid using words such as these:

Afflicted	Confined	Disease
Crippled	Drain or burden	Uplifting
Stricken	Inspirational	Poor
Suffers from	Unfortunate	Victim

Portrayal

People with disabilities should “be portrayed as actively going about the business of living as other people do, not as passive victims, tragic figures, or super-heroes” (Hadley & Brodwin, 1988).

Avoid grouping people with disabilities into categories such as “the handicapped” or the “disabled people.” Use language that reflects the idea that children/adults with disabilities are individuals and not a group with generalized traits.

COMMUNICATION STRATEGIES

When interacting with individuals with disabilities it is helpful if you are aware of some simple communications techniques. The most effective way to learn how to interact and accommodate a person with a disability is to simply ask that person and when an accommodation is needed is to work with the individual to explore potential alternative.

The Division of Vocational Rehabilitation has materials designed to educate employers, staff members who are involved in supporting people with disabilities. Topics covered include respectful language, types of disabilities, job matching, communication strategies depending on the disability, the Americans with Disabilities Act, and making the workplace welcoming and accessible. For more information visit www.disabilities-online.com, contact Vermont *VocRehab*, or contact one of the many support groups or national disability organizations that represent a specific disability group.

The information below is adapted from "A Model for Accessibility" developed by the Center for Disability Studies, University of Hawaii, Manoa, 2003.

What do I do when a person with a disability joins my work unit or comes for State services?

- Do not be afraid to make a mistake when meeting someone with a disability. Try following the suggestions below and imagine how you would react if you were in a similar situation. Keep in mind that a person who has a disability is a person and, like anyone, is entitled to the dignity, consideration, respect and rights you expect for yourself.
- Place the person before the disability out of respect for individual uniqueness. Say "person with a disability" rather than "disabled person."
- Avoid referring to a person by the disability that person has, e.g., "an epileptic." A person is not a condition. Rather, he or she is "a person who has epilepsy."
- A person is not "bound" or "confined" to a wheelchair. He or she uses the wheelchair to increase mobility and to enhance freedom. It is more accurate to say, "person who uses a wheelchair" or "wheelchair user."
- Treat adults as adults. Address a person with a disability by his or her first name only when extending the same familiarity to all others present. (Never patronize a person by patting him or her on the head or shoulder.)
- Relax. If you don't know what to do, allow the person who has a disability to help put you at ease.
- If you offer assistance, wait until the offer is accepted. Then listen for or ask for instructions. Respect the person's right to indicate the kind of help needed. Do not be offended if your help is not accepted, and you need not insist. Some people may well be able to help themselves.

- Speak directly to the person with the disability. Even if the individual with a disability is accompanied by a friend or family member, remember that your conversation is with that person, not the friend or family member.
- Be considerate of the extra time it may take for a person with a disability to get things said or done.
- Keep a clipboard handy at the service counter for an individual unable to reach or to use the counter when signing papers.
- Know where accessible services are located. Learn where the accessible restrooms, dressing rooms, drinking fountains, and telephones, including TTYs and telephones with amplification, are located.

The following are some suggestions on how to interact with individuals who have specific disabilities:

HEARING DISABILITIES

- Ask people how they prefer to communicate.
- To get the attention of a person with a hearing impairment, lightly touch the individual or wave your hand. Look directly at the person and speak clearly, slowly and expressively to establish whether or not the person can read your lips. Not all people who are deaf or hard of hearing can lip-read. For those who do lip-read, be sensitive to their needs by positioning yourself facing them and the light source. Keep your hands or other objects away from your mouth when speaking.
- Use a normal tone of voice unless you are asked to raise your voice. Shouting or exaggerating your words will be of no help.
- If you cannot understand what is said, ask the person to repeat it or write it down. Do not act as if you understand unless you do.
- If the person cannot lip-read, you can try communicating by writing notes. However, an individual who is deaf may not be proficient in written English because American Sign Language (ASL), rather than English, may be the person's native language.
- If a person who is deaf is using an interpreter, always speak directly to the person, not the interpreter.

SPEECH DISABILITIES

- If you have trouble understanding a person's speech, do not be afraid to ask the person to repeat what the person is saying even three or four times. It is better for the person to know that you do not understand rather than making an error or doing the wrong thing. If you still cannot communicate, try using paper and pen or asking the person to spell the message. Communication is your goal.
- Speech disabilities do not imply limited intelligence. A person with a speech impairment does have things to say worth understanding.

- Do not simplify your own speech or raise your voice. Remember that the person can hear and understand you.

PHYSICAL DISABILITIES

- Shake hands when it is appropriate. A person with limited hand use or who uses a prosthesis can usually shake hands.
- Don't lean or hang on to a person's wheelchair. This is similar to leaning or hanging on a person and is generally considered annoying. The chair is part of the personal body space of the person who uses it. Stand next to the person's wheelchair rather than lean or hold on to it.
- Ask if the person needs assistance. If yes, let the person know when you are ready to start pushing his or her chair. Don't go too fast. Be aware of the distance between the chair and other people. It is embarrassing for you and the person to "clip" strangers. When negotiating up or down steps, ramps, or curbs, ask the person how he or she would like to proceed.
- Try to position yourself at eye level. When speaking for more than a few minutes to a person using a wheelchair, try to find a seat for yourself so the two of you are at eye level.
- Ask for permission before moving someone's cane, crutches, or walker.

COGNITIVE DISABILITIES

This disability includes individuals with mental retardation, mental illness, head injuries, learning disabilities, strokes, and other people who may experience difficulty processing information. Interact with the person who has a cognitive disability as a person first.

- If you are not being understood, adjust your method of communicating by using concrete rather than abstract terms. Use direct words and/or gestures, easy diagrams, or demonstrations. For example, demonstrating how to use a key card to open the door. Allow time for the information to be fully understood.
- Present your information in a clear, concise, concrete and simple manner. Sometimes supplementary forms of visual communication (such as gestures, diagrams or demonstrations) are helpful.
- When necessary, repeat information using different wording or a different communication approach. Allow time for the information to be fully understood.
- Allow time for people who may respond slowly. Remember that a slow response or lack of response does not necessarily mean the individual is not aware of you or what you said. Allow time for an individual with a developmental disability to respond in their own manner.
- When offering help, wait until your offer is accepted before doing anything.
- Do not assume a person can read well. Some people may not read at all.

VISUAL DISABILITIES

- Identify yourself and let the person know you are speaking to them by gently touching their arm. If you leave the individual's immediate vicinity, notify the individual so they will not be embarrassed by talking to empty space.
- Speak directly facing the person. Your voice will orient the individual. Your natural speaking tone is sufficient. Blindness is not deafness.
- When giving directions, be as specific as possible and describe obstacles in the path of travel. Use clock cues: "The desk is at 6 o'clock."
- When offering assistance as a guide, offer your arm and say, "Would you like to take my left (or right) arm?" then allow the individual to decline or accept. Directions should correspond to the way the person is facing. The movements of your arm will let the person know what to expect. Never grasp or pull the person.
- When leading an individual through a narrow space such as an aisle, place the arm he or she is holding behind your back as a signal to walk directly behind you and give verbal instructions to this effect.
- When guiding an individual through a doorway, inform the person about whether the door opens in or out and to the right or to the left.
- Before ascending or descending a step or stairs, come to a complete stop, inform the individual regarding the direction of the stairs (up or down) and approximately how many steps there are. If a handrail is available, inform the person of its location. Individuals with visual impairments can use escalators, but may prefer using elevators. Ask the individual which option he or she prefers and whether assistance is necessary.
- When showing individuals to a chair, place his or her hand on the back. They will not require further assistance in seating.
- Individuals and their service animals cannot be prohibited from entering the public area of any public facility. If an individual is using a service animal, the animal's attention should not be diverted, and it is important not to speak to or pet the service animal.
- It is not necessary to avoid using common words like "look" or "see" when assisting an individual who is blind or visually impaired.
- When making change, count the bills separately and identify each denomination as you hand them back to the person. This is not necessary with coins since they are known by touch.
- Staff may offer to read the printed information to the person if the person is alone or with other people who are unable to read. If Braille format is available, offer it to the person, but do not be surprised if the person would rather have the printed information read aloud. Many people who are blind do not read Braille.

ENVIRONMENTAL ILLNESS (EI) or MULTIPLE CHEMICAL SENSITIVITY (MCS)

Environmental Illness (EI), or Multiple Chemical Sensitivity (MCS) Syndrome, is an immune system disorder, which involves severe reactions to many everyday chemicals and products. A person with EI has a systemic physical reaction to petrochemicals, formaldehyde and coal-tar

derivatives present in auto exhaust, synthetic fabrics, artificial fragrances, cleaning products, fresh paint, new building materials, pesticides, cigarette smoke, (as well as the chemical residue it leaves on clothing and hair). Many people with EI also develop allergies to dust, pollen, animal dander, molds and/or entire food groups as the immune system struggles to cope with the stress of chemical overload.

The following are some suggestions to show consideration for people who have EI:

- Use unscented personal care products and unscented laundry preparations.
- Do not wear perfumes or scents to an EI accessible event. A person with severe EI may not be able to enter most buildings or attend public functions, since a person with EI needs to reduce his or her exposure to harmful substances. In order to make an event accessible to people with EI, all attendees should be reminded not to wear perfumes or scented products. Scented products include: soap, shampoo, hair conditioner, hair mousse, lotion, cosmetics, essential oil, deodorant, laundry detergent, fabric softener/antistatic laundry additives (e.g., “Bounce”), hairspray, lip balm, analgesic balm, mothballs, and insect repellent.
- Realize that a mild fragrance can constitute a toxic exposure for a person with EI. EI reactions commonly include migraine headaches, fatigue, muscle weakness, gastrointestinal disturbances, arthritic pain, cerebral or behavioral symptoms such as confusion, forgetfulness, agitation and mood swings, and more familiar allergic symptoms like asthma and hives. Exact sensitivities vary from person to person, and reactions vary in intensity and duration, usually lasting from a few hours to several days. Individual tolerance levels on a given day may be influenced by variables such as humidity, air pollution, stress, and cumulative exposure loads.

CONFIDENTIALITY: MEDICAL EXAMINATIONS OR QUESTIONS ABOUT AN INDIVIDUAL'S DISABILITY

Section below adapted from the U.S. Equal Employment Opportunity Commission, "The ADA: Your Responsibilities as an Employer" <http://www.eeoc.gov/facts/ada17.html>.

Can I Require Medical Examinations or Ask Questions About an Individual's Disability?

It is unlawful to:

- ask an applicant whether she is disabled or about the nature or severity of a disability, or
- to require the applicant to take a medical examination before making a job offer.

You can ask an applicant questions about ability to perform job-related functions, as long as the questions are not phrased in terms of a disability. You can also ask an applicant to describe or to demonstrate how, with or without reasonable accommodation; the applicant will perform job-related functions. After a job offer is made and prior to the commencement of employment duties, you may require that an applicant take a medical examination *if everyone who will be working in the job category must also take the examination*. You may condition the job offer on the results of the medical examination. However, if an individual is not hired because a medical examination reveals the existence of a disability, you must be able to show that the reasons for exclusion are job-related and necessary for conduct of your business. You also must be able to show that there was no reasonable accommodation that would have made it possible for the individual to perform the essential job functions. **Before instituting physical examinations for any class of jobs, State of Vermont managers must consult with the Department of Personnel.**

Once you have hired an applicant, you cannot require a medical examination or ask an employee questions about disability unless you can show that these requirements are job related and necessary for the conduct of your business. The results of all medical examinations or information from inquiries about a disability must be kept confidential, and maintained in separate medical files.

You may provide medical information required by State workers' compensation laws to the agencies that administer such laws.

Other Rules That Apply: Disability-related information should be shared only on a limited basis within the State government community. It may be shared only when there is a compelling reason for the individual from the institution seeking information regarding some specific aspect of this confidential information. **For example, a manager may share the information with an attorney who represents the employing department or with officials from the Department of Personnel who are asked to advise the manager or personnel officer.**

Interviewing and the ADA

This section is taken from "A Guide to Interviewing and Reference Checking," produced by the Department of Personnel. www.vermontpersonnel.org

Employers can make the following inquiries or statements during job interviews:

- State the physical requirements of the job, hours of work, travel requirements, and other job responsibilities and ask candidates if they will be able to meet these requirements.
- Ask about an applicant's non-medical qualifications and skills, such as education and work history.
- Ask applicants to demonstrate how they would perform job tasks.

For all job candidates, it is recommended that you describe the essential job functions (i.e., job tasks that are "fundamental" and must be performed to accomplish the job) and ask the applicant if he or she can perform the functions. Provide the applicant with a list of essential functions before the interview or describe them during the interview. Ask the applicant "Can you perform these tasks?"

For example: *The person in this Customer Service Clerk position must respond to questions and inquiries from clients both in-person and on the phone. The job also requires filing alphabetically hand-written and typed documents, operating standard office equipment, such as a computer terminal, copier, and fax machine, and moving boxes weighing up to 50 pounds short distances on a daily basis. Can you perform these tasks? (Can you perform these tasks with or without a reasonable accommodation?)*

Pre-employment inquiries CANNOT be made regarding the nature or extent of an applicant's disability:

- **Do not** ask the applicant about any visible physical characteristics, i.e., scars, burns, missing limbs.
- **Do not** ask if the applicant is in good health.
- **Do not** ask if an applicant has ever had an emotional illness or has consulted a psychologist or psychiatrist.
- **Do not** ask if an applicant has ever had a drug or drinking problem.
- **Do not** ask an applicant if anyone in his/her family or any acquaintance has an illness or injury or history of illness.
- **Do not** ask if an applicant has ever filed for or collected workers' compensation insurance.

Once a conditional offer of employment is made, disability-related questions can be asked and medical examinations can be required, provided this is done for all entering employees in that job category. If the question or the medical examination screens out an individual due to a disability, an employer would have to show that the rejection was "job-related and consistent with business necessity."

When employers could "reasonably believe" that an applicant will need reasonable accommodation to perform the functions of the job, limited questions, such as whether the applicant needs reasonable accommodation and what type of reasonable accommodation, can be asked. These questions can be asked where:

- Due to an obvious disability an employer reasonably believes an applicant will need reasonable accommodation.
- An applicant has voluntarily disclosed a hidden disability.
- An applicant has voluntarily disclosed the need for reasonable accommodation to perform the job.

REASONABLE ACCOMMODATIONS

The law requires employers, in the right circumstances, to make reasonable accommodation for the special needs of an applicant or employee with a disability. With regard to employees, a reasonable accommodation is any modification or adjustment to the work environment, or to the manner or circumstances under which the position held is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position, or that enable an employee with a disability to enjoy equal benefits and privileges of employment as they are enjoyed by other similarly situated employees without disabilities. In the application context, a reasonable accommodation is any modification or adjustment to a job application process that enables a qualified applicant with a disability to be considered for the position the person desires, including the modifications or adjustments they would need to perform the essential functions if hired.

What are Essential Job Functions?

A worker's primary duties constitute essential job functions. A function is considered essential if:

- The position exists to perform the function.
- There are a limited number of workers that can perform the function or among whom the function can be distributed.
- The function is highly specialized and the person is hired for their special expertise to perform it.

What are Reasonable Accommodations?

Reasonable accommodations are changes to the job, changes to the way a worker performs the job, or changes to the work environment. A reasonable accommodation enables qualified people with disabilities to perform essential job functions.

Reasonable accommodations can be:

- Restructuring a facility
- Restructuring of the job
- Modifying work schedules
- Installing new equipment
- Providing qualified readers and interpreters
- Modifying an application and exam procedure and/or training materials
- Flexible personal leave policies.

Reasonable accommodations **DO NOT** include:

- Eliminating a primary job responsibility
- Lowering standards that other workers must meet
- Providing a personal use item, such as prosthetics or wheelchairs.
- Anything considered an undue hardship to the employer
- Excusing uniformly a rule of conduct that is job-related and consistent with business necessity.

Examples of Disability Types

Disability is as unique a human characteristic as hair color or personality type. The degree to which a disability impacts a person's life ranges from slight to significant. In some instances, a person's disability is invisible, in other instances, a person may have more than one disability. As a result, creating a list on the types of disabilities is difficult. Nonetheless, we want to give you some idea of the wide range of disabilities.

AIDS/HIV: AIDS stands for "Acquired Immune Deficiency Syndrome." AIDS is caused by the Human Immunodeficiency Virus (HIV). AIDS is the final and most serious stage of the HIV disease, in which signs and symptoms of severe immune deficiency develop.

Blind/Visual Impairment: Blind refers to a total loss of vision. Visual impairment indicates partial sight.

Chemical Sensitivity: A reaction to environmental chemicals like cleaning supplies, smoke and/or perfumes.

Congenital Disability: A physical impairment existing since birth.

Deaf/Hearing Impairment: Deaf refers to total loss of hearing. Hearing impairment refers to partial hearing loss ranging from slight to severe.

Development Disability: Any mental or physical disability that develops or occurs before a person's 22nd birthday that continues indefinitely and in some instances substantially limits self-care, language, learning, mobility, self-direction, independent living or economic self-sufficiency.

Epilepsy: Term for various disorders marked by electrical disturbances of the central nervous system and typically manifested by seizures, which are involuntary muscle contractions.

Learning Disabilities: A disability affecting spoken or written language.

Mental Illness/Mental Disability: A psychiatric disability caused by a biological, physiological or psychological disorder or a chemical disorder of the brain.

Mental Retardation/Cognitive Disability: Condition causing significantly below-average intellectual functioning.

Motor Disability: Includes multiple sclerosis, muscular dystrophy, Lou Gehrig's disease (amyotrophic lateral sclerosis, ALS), cerebral palsy. A group of conditions resulting from damage to the central nervous system.

Paralysis/Spinal Cord Injury: Hemiplegia affects full or partial paralysis of one side of the body caused by brain damage as a result of disease, trauma or stroke. Paraplegia is a paralysis of the lower half of the body. It involved partial or total loss of function of both legs. Quadriplegia is a paralysis of the body that involves total or partial loss of function in a person's arms and legs.

Speech Impairment: Limited or difficult-to-understand speech patterns.

For more information on types of disabilities, visit www.disabilities-online.com, contact Vermont *VocRehab*, or contact one of the many support groups or national disability organizations that represent a specific disability group.

LEGAL DEFINITIONS OF DISABILITIES

This section examines the legal definitions of disability. There is more than one legal definition of disability established under federal and state law. Some laws specify that a person's disability must meet or pass a certain threshold to qualify under that law.

Below are examples of how different laws define disability.

Americans' with Disabilities Act (ADA)

- a physical or mental impairment that substantially limits one or more of the major life activities of such individual
- a record of such impairment; or
- being regarded as having such an impairment.

Social Security Administration

A person must be unable to do any kind of substantial gainful work because of a physical or mental impairment (or a combination of impairments), which is expected to last at least twelve (12) months, or to end in death.

Rehabilitation Act of 1973

A physical or mental impairment, which for such an individual constitutes or results in a substantial impediment to employment; and can benefit in terms of an employment outcome from vocational rehabilitation services.

Workforce Investment Act (WIA)

Under the Workforce Investment Act regulations, people with disabilities are defined using the ADA definition.

Vermont Statutes Annotated

[TITLE EIGHTEEN. Health](#)

[PART 8. MENTAL HEALTH](#)

[CHAPTER 204A. Developmental **Disabilities Act**](#)

[SUBCHAPTER 1. Services to People with Developmental **Disabilities** and Their Families](#)

§ 8722 Definitions

(2) "Developmental **disability**" means a severe, chronic **disability** of a person that is manifested before the person reaches the age of 18 and results in:

(A) mental retardation, autism or pervasive developmental disorder; and

(B) deficits in adaptive behavior at least two standard deviations below the mean for a normative comparison group.

[TITLE THIRTY-THREE. Human Services](#)

[PART 1. ADMINISTRATION](#)

[CHAPTER 5. Aging and **Disabilities Programs**](#)

§ 502 Definitions

(6) "Persons with **disabilities**" mean individual **Vermonters** who have functional limitations by virtue of physical or psychological conditions.

TITLE EIGHTEEN. Health
PART 8. MENTAL HEALTH
CHAPTER 215. Guardianship Services For People With Developmental **Disabilities**
§ 9302 Definitions

As used in this chapter:

- (1) "Person with developmental **disabilities**" means:
- (A) a person with a severe, chronic **disability** that must arise before the person reaches the age of 18, and results in:
- (i) mental retardation, autism, or pervasive developmental disorder; and
 - (ii) deficits in adaptive behavior at least two standard deviations below the mean for a normative comparative comparison group; or
- (B) a person with a developmental **disability** who was receiving services on July 1, 1996.

TITLE TWENTY-THREE. Motor Vehicles
ARTICLE 1. General Provisions
§ 304a Special registration plates and placards for people with disabilities

- (a) The following **definitions** shall apply to this section:
- (1) "Ambulatory **disability**" means an impairment which prevents or impedes walking. A person shall be considered to have an ambulatory **disability** if he or she is a person who:
- (A) cannot walk 200 feet without stopping to rest; or
 - (B) cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device; or
 - (C) is restricted by lung disease to such an extent that the person's forced (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than 60 mm/hg on room air at rest; or
 - (D) uses portable oxygen; or
 - (E) has a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards set by the American Heart Association; or
 - (F) is severely limited in his or her ability to walk due to an arthritic, neurological or orthopedic condition.
- (2) "Blind" means the visual impairment of an individual whose central visual acuity does not exceed 20/200 in the better eye with corrective lenses or whose visual acuity, if better than 20/200 , is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

TITLE THIRTY-THREE. Human Services
PART 5. PROGRAMS AND SERVICES FOR VULNERABLE ADULTS
CHAPTER 77. Vermont Adaptive Equipment Revolving Fund
§ 7701 Definitions

As used in this chapter:

(5) "Person with **disabilities**" means a person who has a **disability** which affects a major life activity such as mobility, communication or self-care who has a history of that **disability** or is regarded as having a **disability**.

TITLE TWENTY-ONE. Labor
CHAPTER 5. Employment Practices
SUBCHAPTER 7. Employment of People with Disabilities
§ 497c Disability awareness month

The month of October is designated as "**Disability** Awareness Month."-- 1963, No. 200, § 4, eff. June 29, 1963; amended 1991, No. 168 (Adj. Sess.), § 5.

Collective Bargaining Agreements

Non-Management Bargaining Unit

Article 5 No Discrimination or Harassment & Affirmative Action

Supervisory Bargaining Unit

Article 5 No Discrimination or Harassment & Affirmative Action

Article 19 Vacancies and Promotion

Corrections Bargaining Unit

Article 5 No Discrimination or Harassment & Affirmative Action

State Police Bargaining Unit

Article 5 No Discrimination or Harassment & Affirmative Action

State Personnel Policies & Procedures

Policy 2: Rules and Regulations

Chapter 3 Statement of Policy

Discrimination

Policy 3: Affirmative Action and Equal Employment

3.0 Equal Employment Opportunity/Affirmative Action

3.2 Reasonable Accommodation

3.3 Discrimination Complaints

THE AMERICANS' WITH DISABILITIES ACT (ADA)

The Americans with Disabilities Act (ADA)(42 U.S.C. § 12101, et seq.) is a federal civil rights law that protects individuals from employment discrimination (as well as other forms of discrimination) based upon disability in much the same way that other federal laws protect individuals from employment discrimination on the basis of race, color, sex, national origin, age, and religion. The U.S. Supreme Court has ruled that the states are immune from suit by individuals for damages to enforce the ADA, however, the State of Vermont continues to follow the law. Although an individual cannot sue for damages, the law still applies to the states and could be enforced by the federal government, or an individual could seek injunctive relief. In addition, the standards established under the ADA frequently are followed by Vermont courts when interpreting the Vermont Fair Employment Practices Act (21 V.S.A. § 495, et seq.), which also prohibits discrimination based upon disability.

The ADA covers a wide range of individuals with disabilities. An individual is considered to have a disability if he or she 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. The ADA also prohibits discrimination against employees based on their relation to or association with individuals with known disabilities.

The ADA is divided into five (5) parts:

Title I: Employment Regulations

Title I bans employers from discriminating on the basis of disability. It applies to employers of fifteen (15) or more employees. Under this title, employers must:

- Provide protections during application, hiring, discharge, promotion, job training and other conditions of employment;
- Make “reasonable accommodations.” A reasonable accommodation may include job restructuring and/or work site modification (See JAN at <http://www.jan.wvu.edu>);
- Ensure advancement and wage equity, and other considerations; and
- Post notices about the Act.

This title also requires employers to make decisions about new applicants and current employees based on an individual’s abilities, not disability labels.

Title II: Public Services Operated by State and Local Governments

Title II requires that state and local governments perform a self-evaluation and put together a transition plan that ensures access and reasonable accommodations to public services, programs and activities as well as public transportation systems.

In addition, new facilities, equipment, rail/bus/commuter facilities and services must be readily available and accessible to people with disabilities. It also requires state and local governments to provide comparable para-transit hours to people who cannot use existing fixed route systems.

Title III: Public Accommodations and Services Operated by Private Entities

Title III requires private entities that provide public services remove physical barriers, where readily achievable. It applies to all sizes of businesses, regardless of the number of employees. It mandates that all new construction and building modifications be accessible, unless it is for a non-public activity of a private club or religious organization.

The ADA defines a public entity as a place that serves food or drink, provides lodging, education, entertainment, exhibits, recreation, fitness programs, or other public services. This includes public gathering places, grocers, bakeries, retail stores, gas stations, day care, social service centers, medical offices and facilities, banks, hotels, libraries, museums, parks, privately owned public transportation systems, schools and just about every other private business or program that offers a service to the public.

TITLE IV: Telecommunications Relay Services for Individuals with Hearing and Speech-Impaired Disabilities

Title IV covers telephone communications. Phone companies must provide 24-hour relay service for people with hearing and speech impairments. Businesses that offer telephone services to the general public must also provide it to people who use devices known as teletypewriters, TTYs, or TDDs. In addition, it requires that if federal money pays for public service announcements, the announcements must be closed-captioned for people who are deaf or hard of hearing.

In Vermont, TTY relay services can be accessed by dialing 711.

TITLE V: Miscellaneous Provisions

Title V is a catch-all section that addresses seven (7) other areas for people with disabilities including:

- Broader protection where the current law is stronger than ADA
- A prohibition against state immunity
- The development of minimum accessibility design requirements
- ADA technical assistance programs
- An accessibility study of the National Wildlife Preserve system
- Amendments to the Rehabilitation Act of 1973; and
- The limits of the ADA.

ALL STATE AND LOCAL GOVERNMENTS FALL UNDER THE ADA, REGARDLESS OF SIZE.

ADA Questions and Answers

The following questions and answers are from an EEOC fact sheet on the employment title of the Americans With Disabilities Act. The Commission is charged with enforcing the statute's employment provisions after they become effective

Q. What employers are covered by the ADA, and when is the coverage effective?

A. The employment provisions of title I of the ADA apply to private employers, State and local governments, employment agencies, and labor unions. Employers with 25 or more employees were covered starting July 26, 1992, when title I went into effect. Employers with 15 or more employees were covered two years later, beginning July 26, 1994.

Q. What practices and activities are covered by the employment nondiscrimination requirements?

A. The 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.

Q. Who is protected against employment discrimination?

A. Employment discrimination is prohibited against "qualified individuals with disabilities." Persons discriminated against because they have a known association or relationship with a disabled individual also are protected. The ADA defines an "individual with a disability" as 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.

The first part of the definition makes clear that the ADA applies to persons who have substantial, as distinct from minor, impairments, and that these must be impairments that limit major life activities such as seeing, hearing, speaking, walking, breathing, performing manual tasks, learning, caring for oneself, and working. An individual with epilepsy, paralysis, a substantial hearing or visual impairment, mental retardation, or a learning disability would be covered, but an individual with a minor, nonchronic condition of short duration, such as a sprain, infection, or broken limb, generally would not be covered.

The second part of the definition would include, for example, a person with a history of cancer that is currently in remission or a person with a history of mental illness.

The third part of the definition protects individuals who are regarded and treated as though they have a substantially limiting disability, even though they may not have such an impairment. For example, this provision would protect a severely disfigured qualified individual from being denied employment because an employer feared the "negative reactions" of others.

Q. Who is a "qualified individual with a disability?"

A. A qualified individual with a disability is a person who meets legitimate skill, experience, education, or other requirements of an employment position that he or she

holds or seeks, and who can perform the "essential functions" of the position with or without reasonable accommodation. Requiring the ability to perform "essential" functions assures that an individual will not be considered unqualified simply because of inability to perform marginal or incidental job functions. If the individual is qualified to perform essential job functions except for limitations caused by a disability, the employer must consider whether the individual could perform these functions with a reasonable accommodation. If a written job description has been prepared in advance of advertising or interviewing applicants for a job, this will be considered as evidence, although not necessarily conclusive evidence, of the essential functions of the job.

Q. Does an employer have to give preference to a qualified applicant with a disability over other applicants?

A. No. An employer is free to select the most qualified applicant available and to make decisions based on reasons unrelated to the existence or consequence of a disability. For example, if two persons apply for a job opening as a typist, one a person with a disability who accurately types 50 words per minute, the other a person without a disability who accurately types 75 words per minute, the employer may hire the applicant with the higher typing speed, if typing speed is needed for successful performance of the job.

Q. What is "reasonable accommodation?"

A. Reasonable accommodation is a modification or an adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to participate in the application process or to perform essential job functions. Reasonable accommodation also includes adjustments to assure that a qualified individual with a disability has rights and privileges in employment equal to those of nondisabled employees.

Q. What kinds of actions are required to reasonably accommodate applicants and employees?

A. Examples of reasonable accommodation include making existing facilities used by employees readily accessible to and usable by an individual with a disability; restructuring a job; modifying work schedules; acquiring or modifying equipment; providing qualified readers or interpreters; or appropriately modifying examinations, training, or other programs. Reasonable accommodation also may include reassigning a current employee to a vacant position for which the individual is qualified, if the person becomes disabled and is unable to do the original job. However, there is no obligation to find a position for an applicant who is not qualified for the position sought. Employers are not required to lower quality or quantity standards in order to make an accommodation, nor are they obligated to provide personal use items such as glasses or hearing aids.

The decision as to the appropriate accommodation must be based on the particular facts of each case. In selecting the particular type of reasonable accommodation to provide, the principal test is that of effectiveness, i.e., whether the accommodation will enable the person with a disability to do the job in question.

Q. Must employers be familiar with the many diverse types of disabilities to know whether or how to make a reasonable accommodation?

A. No. An employer is required to accommodate only a "known" disability of a qualified applicant or employee. The requirement generally will be triggered by a request from an individual with a disability, who frequently can suggest an appropriate accommodation.

Accommodations must be made on an individual basis, because the nature and extent of a disabling condition and the requirements of the job will vary in each case. If the individual does not request an accommodation, the employer is not obligated to provide one. If a disabled person requests, but cannot suggest, an appropriate accommodation, the employer and the individual should work together to identify one. There are also many public and private resources that can provide assistance without cost.

Q. What are the limitations on the obligation to make a reasonable accommodation?

A. The disabled individual requiring the accommodation must be otherwise qualified, and the disability must be known to the employer. In addition, an employer is not required to make an accommodation if it would impose an "undue hardship" on the operation of the employer's business. "Undue hardship" is defined as "an action requiring significant difficulty or expense" when considered in light of a number of factors. These factors include the nature and cost of the accommodation in relation to the size, resources, nature, and structure of the employer's operation. Where the facility making the accommodation is part of a larger entity, the structure and overall resources of the larger organization would be considered, as well as the financial and administrative relationship of the facility to the larger organization. In general, a larger employer would be expected to make accommodations requiring greater effort or expense than would be required of a smaller employer.

Q. Must an employer modify existing facilities to make them accessible?

A. An employer may be required to modify facilities to enable an individual to perform essential job functions and to have equal opportunity to participate in other employment-related activities. For example, if an employee lounge is located in a place inaccessible to a person using a wheelchair, the lounge might be modified or relocated, or comparable facilities might be provided in a location that would enable the individual to take a break with co-workers.

Q. May an employer inquire as to whether a prospective employee is disabled?

A. An employer may not make a pre-employment inquiry on an application form or in an interview as to whether, or to what extent, an individual is disabled. The employer may ask a job applicant whether he or she can perform particular job functions. If the applicant has a disability known to the employer, the employer may ask how he or she can perform job functions that the employer considers difficult or impossible to perform because of the disability, and whether an accommodation would be needed. A job offer may be conditioned on the results of a medical examination, provided that the examination is required for all entering employees in the same job category regardless of disability, and that information obtained is handled according to confidentiality requirements specified in the Act. After an employee enters on duty, all medical examinations and inquiries must be job related and necessary for the conduct of the employer's business. These provisions of the law are intended to prevent the employer from basing hiring and employment decisions on unfounded assumptions about the effects of a disability.

Q. Does the ADA take safety issues into account?

A. Yes. The ADA expressly permits employers to establish qualification standards that will exclude individuals who pose a direct threat -- i.e., a significant risk of substantial harm -- to the health or safety of the individual or of others, if that risk cannot be lowered to an acceptable level by reasonable accommodation. However, an employer may not

simply assume that a threat exists; the employer must establish through objective, medically supportable methods that there is genuine risk that substantial harm could occur in the workplace. By requiring employers to make individualized judgments based on reliable medical or other objective evidence rather than on generalizations, ignorance, fear, patronizing attitudes, or stereotypes, the ADA recognizes the need to balance the interests of people with disabilities against the legitimate interests of employers in maintaining a safe workplace.

Q. Can an employer refuse to hire an applicant or fire a current employee who is illegally using drugs?

A. Yes. Individuals who currently engage in the illegal use of drugs are specifically excluded from the definition of a "qualified individual with a disability" protected by the ADA when an action is taken on the basis of their drug use.

Q. Is testing for illegal drugs permissible under the ADA?

A. Yes. A test for illegal drugs is not considered a medical examination under the ADA; therefore, employers may conduct such testing of applicants or employees and make employment decisions based on the results. The ADA does not encourage, prohibit, or authorize drug tests. **(However, Vermont law covers drug testing. Contact Department of Personnel for more information.)**

Q. Are people with AIDS covered by the ADA?

A. Yes. The legislative history indicates that Congress intended the ADA to protect persons with AIDS and HIV disease from discrimination.

Q. How does the ADA recognize public health concerns?

A. No provision in the ADA is intended to supplant the role of public health authorities in protecting the community from legitimate health threats. The ADA recognizes the need to strike a balance between the right of a disabled person to be free from discrimination based on unfounded fear and the right of the public to be protected.

Q. What is discrimination based on "relationship or association?"

A. The ADA prohibits discrimination based on relationship or association in order to protect individuals from actions based on unfounded assumptions that their relationship to a person with a disability would affect their job performance, and from actions caused by bias or misinformation concerning certain disabilities. For example, this provision would protect a person with a disabled spouse from being denied employment because of an employer's unfounded assumption that the applicant would use excessive leave to care for the spouse. It also would protect an individual who does volunteer work for people with AIDS from a discriminatory employment action motivated by that relationship or association.

RESOURCES

Vermont State Government Resources

[Attorney General's Office – Civil Rights Division](http://www.state.vt.us/atg) — www.state.vt.us/atg

[Vermont Human Rights Commission](http://www.hrc.state.vt.us) — www.hrc.state.vt.us

[Vermont Commission on Women](http://www.women.state.vt.us) — www.women.state.vt.us

[Vermont Labor Relations Board](http://www.state.vt.us/vlrb/) — www.state.vt.us/vlrb/

[The Department of Personnel](http://www.vermontpersonnel.org) — www.vermontpersonnel.org

[Workforce Equity & Diversity](http://www.vermontpersonnel.org/employee/workforcediversity.cfm) — www.vermontpersonnel.org/employee/workforcediversity.cfm

[Governor's Workforce Equity & Diversity Council](http://www.vermontpersonnel.org/employee/workforcediversity_governor.cfm) —
www.vermontpersonnel.org/employee/workforcediversity_governor.cfm

(State) [Job Applicant Center](http://www.vtstatejobs.info) — www.vtstatejobs.info

[The Department of Aging and Disabilities](http://www.dad.state.vt.us) — www.dad.state.vt.us

[Vocational Rehabilitation Division Resource List](http://www.vocrehabvermont.org) — www.vocrehabvermont.org

[Vermont Division for the Blind & Visually Impaired](http://www.dad.state.vt.us/dbvi/) — www.dad.state.vt.us/dbvi/

[Department of Developmental and Mental Health Services](http://www.state.vt.us/dmh/) — www.state.vt.us/dmh/

[The Department of Employment & Training](http://www.det.state.vt.us) — www.det.state.vt.us

Federal Government Resources

[U.S. Department of Labor](http://www.dol.gov) — www.dol.gov

[U.S. Department of Justice](http://www.doj.gov) — www.doj.gov

[Equal Employment Opportunity Commission](http://www.eeoc.gov) — www.eeoc.gov

[Disability Info -The New Freedom Initiative's Outline Resource for American with Disabilities](http://www.disabilityinfo.gov)
— www.disabilityinfo.gov

Vermont Community

[The Vermont Association of Business, Industry and Rehabilitation\(VABIR\)](http://www.vabir.org) — www.vabir.org

[The Vermont Center for Independent Living](http://www.vcil.org) — www.vcil.org

Other External Resources

[Adaptive Environments Center, Inc.](http://www.adaptenv.org) — www.adaptenv.org

[New England ADA & Technical Assistance](http://www.newenglanada.org) — www.newenglanada.org

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