

EMPLOYING PEOPLE WITH IDD: WHAT YOU NEED TO KNOW

People with intellectual and developmental differences (IDDs) are often reliable, hardworking employees who can contribute to your team, but many employers are uncertain about what hiring a person with an IDD might mean for their business. Here are the answers to some common questions you may have about employing people with IDDs.

IMPORTANT LAWS

What are IDDs and who is qualified under the definition?

Qualified individuals with an intellectual and developmental disability are defined as a person whose “intellectual functioning level (IQ) is below 70-75, has significant limitations in adaptive skill areas as expressed in conceptual, social and practical skills, and the disability originated before the age of 18.”

What are the federal laws?

The Americans with Disabilities Act (ADA) prohibits discrimination against qualified individuals with disabilities by private employers with 15 or more employees as well as federal, state and local government employers.

What are the laws in the state of Florida?

For public employers in Florida, under Florida Statute 413.08 section 5, employment can't be refused based on a disability alone, unless it has been proven that the disability “prevents satisfactory performance of the work involved.”

INTERVIEW + HIRING PROCESS

What can you ask during an interview?

An employer should be prepared to ask questions related to the position's essential tasks. You cannot ask about the applicant's medical condition, but you may ask questions like:

- Can you read?
- Can you put things in alphabetical order?
- Can you place items in numerical order?

You can also ask an applicant to demonstrate or describe how they would be able to perform a specific job function.

If the applicant tells you they have a medical condition, you can then inquire if they will need any accommodations and what type. You can't ask if they need an accommodation unless the information is volunteered or it is visually obvious that they have a disability.

What can you ask a new hire?

Once a job offer is made, you can ask questions about the new employee's health if the same questions are asked of every new hire. You may also ask for documentation from a health professional answering questions designed to assess



the new hire's ability to safely perform the job's functions. You may not withdraw a job offer based on the applicant's IDD if the applicant can perform the essential functions of the job with or without a reasonable accommodation.

INSURANCE RATES

Will my insurance rates go up?

A popular misconception is that if you hire an employee with an IDD, your insurance rates will increase. However, according to the U.S. Equal Employment Opportunity Commission, studies have shown that hiring a person with an IDD won't lead to higher insurance rates or more workers' compensation claims.

DISABILITY DISCUSSIONS

What can you ask an employee?

Generally, an employer may ask disability-related questions or require an employee to have a medical examination when the employer knows about an employee's medical condition, has observed performance problems, and reasonably believes that the problems are related to a medical condition. An employer may also ask for medical information if they have received reliable information from someone else, like a family member or coworker, who indicates that the employee may have a medical condition that is causing performance problems. However, most of the time job performance is unrelated to a medical condition and should be handled according to company policy.

You may ask an employee about their disability if you have a reasonable belief that the employee will be unable to safely perform the essential functions of the job because of the disability. You can also ask questions to the extent the information is necessary. For instance, you may ask for:

- documentation to support an employee's request for an accommodation
- verification of an employee's use of sick leave related to the disability if all employees are required to submit a doctor's note
- approval of employee participation in a voluntary wellness program

REASONABLE ACCOMMODATIONS

What is a reasonable accommodation?

A reasonable accommodation is assistance or changes to a position or workplace that will enable an employee to do the job despite a disability. This will vary depending on the needs of the individual.

If you are interviewing a person with an IDD for a position, you may need to provide an accommodation like:

- providing someone to read or interpret the application materials
- demonstrating, rather than describing, what the job requires
- modifying tests, training materials or policy manuals
- replacing a written test with an expanded interview

According to the U.S. Equal Employment Opportunity Commission, a reasonable accommodation for an employee may include:

- reallocating non-essential tasks to another employee
- training on how to do the job, including having the trainer
 - give instructions at a slower pace
 - provide additional time to complete training
 - separate tasks into sequential steps
 - use charts, pictures or color-coding
- providing a tape recorder for instructions/reminders
- using detailed schedules for completing tasks
- assigning or accommodating a job coach who can
 - assist the employee in learning how to do the job
 - provide monitoring, training, assessment and support
 - help develop a healthy working relationship between management and the employee
 - assist the parties in determining what reasonable accommodation is needed
- modifying the employee's work schedule
- acquiring or modifying equipment or devices
- moving the employee's work station

These are only examples of potential accommodations. Since every person is different, a new employee may need a different accommodation that helps them perform the essential functions of the job.

How does an employee request an accommodation?

A request for an accommodation may come from the employee, but it could also come from a family member, friend or health professional. If the employee or someone else doesn't request a reasonable accommodation but you feel they need one, you have a legal obligation to initiate a conversation.

Do you have to grant every request for an accommodation?

You don't have to grant every request for an accommodation if doing so will be an undue hardship. A request would be considered an undue hardship if it requires you to:

- provide an accommodation that will result in significant difficulty or expense
- remove an essential job function
- tolerate performance that doesn't meet standards
- excuse violations of conduct rules that are job-related and consistent with business necessity (and is applied consistently to all employees)

If there are multiple options for the accommodation, the employee's preference should be considered first. If the preferred accommodation is too difficult or expensive, an easier or less expensive option may be considered if it is effective in meeting the employee's needs.

Do you have to provide more than one accommodation?

You may need to provide more than one reasonable accommodation. Each accommodation request should be considered separately to determine if it would be effective and if it would place an undue hardship on the business.

TERMINATING EMPLOYMENT

Can you fire someone with an IDD if it isn't working out?

If you interview or hire someone with an IDD, just like any other employee, you will be able to evaluate their job performance to determine whether they are a good fit for your business. Florida is an "at-will" employment state, which means that you or your employee may terminate employment at any time without advanced notice. As long as the termination isn't specifically due to protected characteristics like sex, age or disability, it is legal.

Another prominent consideration is safety. To terminate employment on the grounds of safety, an individual must pose a direct threat, which is defined as a significant risk of substantial harm to the individual or others that can't be eliminated or reduced through a reasonable accommodation.

What do you need to consider when terminating employment?

When deciding to terminate an employee with an IDD, an employer must consider:

- the employee's present ability to safely perform the job
- the duration of the risk
- the nature and severity of the potential harm
- the likelihood that the potential harm will occur
- the imminence of the potential harm

Ultimately, the decision must be made based on whether the risk can be reduced with a reasonable accommodation. If it can be, the employer must offer that as a solution before termination.

COMPANY POLICY**What can you disclose to other employees?**

Employers are generally not allowed to disclose medical information about an applicant or employee with a few exceptions. This includes not being able to disclose whether an employee has received a reasonable accommodation.

Exceptions include:

- supervisors who need to provide the accommodation
- first aid or safety personnel if the employee would need emergency treatment or assistance
- individuals investigating ADA or similar state/local law compliance
- where required for workers' compensation or insurance purposes

Do you need to train your employees?

It's a good practice to provide general training for all employees regarding reasonable accommodations, even if

you don't currently employ a person with an IDD. You can use direct training sessions or an employee handbook, but being proactive can avoid misunderstandings later if you need to provide a reasonable accommodation for another employee.

Do you need to have a separate policy for employees with an IDD?

You don't need to establish a separate policy for individuals with IDDs. You should have one company policy that is applied equally and fairly to all company employees regarding behavior, procedures, etc.

What are some good resources for more information?

You can reference ConnectABLEJax.com for a list of local agencies that are working to connect employers with new employees with an IDD.

Another good resource is the U.S. Equal Employment Opportunity Commission, which discusses the ADA in depth and provides examples of most of these topics. For a detailed list of reasonable accommodations, visit the Job Accommodations Network. (<http://askjan.org/media/intcog.html>)

Links:

- https://www.tn.gov/assets/entities/didd/attachments/Office_of_Civil_Rights-ADA_Intellectual_Disabilities.pdf
- https://www.eeoc.gov/laws/types/intellectual_disabilities.cfm
- <https://adata.org/faq-page/people-disabilities#t7n1206>
- http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0413/Sections/0413.08.html