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THE AMERICANS WITH DISABILITIES ACT:

PREPARING JOB DESCRIPTIONS

By: Matt W. Zeigler, Esq.

The Americans With Disabilities Act (the "ADA") is already in force, beginning January 26, 1992, for the public accommodations title for facilities serving the public. Sales and service establishments operated by private enterprise are now required to make their places of business accessible to the disabled.

So, with the ADA in place and the enforcement date for the Employment Title approaching employers with more than 25 employees on July 26, 1992, what is it that employers can do to get ready for the changes required in their employment practices? The purpose of this Personnel Note is to outline what an employer can do to reasonably prepare itself in the few remaining months before the implementation of the ADA in July, 1992.

Although the ADA is effective for employers with over 25 employees in July of this year, amendments covering many of the same issues were made to the Michigan Handicapper's Civil Rights Act and effective in June of 1990. Many rights of the handicapped employees, granted nationwide under the ADA, have already been in effect for Michigan for over 18 months. It is expected, however, with the media attention surrounding the ADA preceding July of this year, that more individuals with disabilities will exercise their rights under both acts.

The Equal Employment Opportunity Commission, the governmental enforcement wing of the ADA, has recently published a "Technical Assistance Manual" ("TAM") to "help employers ... learn about their obligations and rights under the employment provisions of ... Title I of the ADA". Although the TAM is over 160 in length, it provides useful suggestions for employers facing employment practice changes invoked by the ADA.

The First Step. The first step in determining whether or not an employee/applicant is entitled to protection under the ADA is to ascertain whether or not he or she is a "qualified individual with a disability". The regulations define this as one who:

satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.¹

So, the first question is whether the individual meets the necessary prerequisites for the job, i.e. is "otherwise qualified", with such job specifications as: education, work experience, training, skills, licenses, certificates, or other other job-related requirements, such as good judgment or ability to work

¹ Regulations, §29 CFR Part 1630.

with other people. If a person is unable to demonstrate that he or she is "otherwise qualified" for the job, then the applicant is screened out because of a "job related" requirement that is "consistent with business necessity". The employer, then, meets its burden by showing that the individual If so, then there is no discrimination under the ADA.

The Second Step. The second step is to assess whether the employee/applicant can perform the essential functions of the job with or without reasonable accommodation. This is done in two parts: Part I is to identify the "essential functions of the job"; and, Part II, is to consider whether the persons with a disability can perform these functions, unaided or with a "reasonable accommodation".

Part I: The essential functions of the job.

An employer can prepare itself for the ADA by reviewing those job functions that are the core of the employment position, and compare those functions that are peripheral to the main task of the job. In other words, if a person is advertising for a receptionist, and states that an ability to type is required, and what really happens on the job is that the receptionist only occasionally types, then typing is not considered an essential function of the job.

The regulations consider several types of evidence in determining whether a particular job function is essential: the employer's judgment; a written job description prepared before advertising or interviewing applicant for a job; the amount of time spent performing the function; the consequences of not requiring a person in this job to perform a particular function of the job; the terms of a collective bargaining agreement; the work experience of persons who currently perform the job and those who have performed it in the past; and "other relevant factors" such as rotating workers from one task to another task on a regular basis and the employer makes all of those skills in the work rotation "essential".

Preparing Job Descriptions. What an employer can do now is to prepare the written job descriptions of each job in its operation. Some of the factors that should go into the description follow.

A formal job description is not required under any provision of the ADA to establish the essential functions of a job; however, an employer may wish to request current employees and their supervisors to rate the importance of the general characteristics of the jobs, such as strength, endurance, or the work environment in which the work is performed. The survey may include such things as the frequency which a particular function is performed, the amount of time spent per day on a particular function, and the consequences if a particular function is not performed. If the employees and the employer can effectively focus on the results to be achieved or outcomes of the job, rather than on the process of the job itself, the purposes of the ADA will be achieved.

Some examples of job descriptions² are as follows:

1. A job that requires objects to be moved from one place to another should state this essential function. The analysis may note that the person in the job "lifts 50 pound cartons to a height of 3 or 4 feet and loads them into truck trailers 5 hours daily" but should not identify the "ability to manually lift and load 50 pound cartons" as an essential function unless this is the only method by which the function can be performed without causing under hardship. (Emphasis added.)

² These examples are provided from the Technical Assistance Manual published by the Equal Employment Opportunity Commission.

2. If a job requires mastery of information contained in technical manuals, this essential function would be "ability to learn technical material", rather than "ability to read technical manuals". People with visual and other reading impairments could perform this function ("learning") using other means, such as audiotapes. (Emphasis added.)
3. An essential function of a computer programmer job might be described as "ability to develop programs that accomplish necessary objectives", rather than "ability to manually write programs". Although a person currently performing the job may write these programs by hand, that is not the essential function, because programs can be developed directly on the computer. (Emphasis added.)

Writing a job description that captures the essence of the job rather than some functions that can be performed satisfactorily in some other way acceptable to the employer is the key to successfully managing the job placement for disabled employees/applicants with disabilities under the ADA.

Part II: Reasonable accommodation.

The second part in determining whether an employee/applicant is qualified to perform these identified essential functions is to apprehend any need for an accommodation or the need for a reasonable accommodation. If the individual with a disability is otherwise qualified to perform these functions, then that person should be hired or transferred to that position if no accommodation is required or only a reasonable accommodation is mandated. What is reasonable is to be determined on a "case by case" basis. More next column in two months.