

Americans With Disabilities Act:
Questions & Answers

INTRODUCTION

This Booklet, prepared by the ADA Division of Legal Affairs, is intended to help you understand what you are legally required to do under the provisions of the Americans with Disabilities Act. It is being provided to you free of charge as a benefit of membership in the American Dental Association.

The Americans with Disabilities Act became law on July 26, 1990. The Act has been referred to as a sweeping civil rights law for the disabled. Its stated purpose is to provide a national mandate for the elimination of discrimination against individuals with disabilities. Many important provisions of the Act became effective on January 26, 1992; some provisions go into effect at a later date.

This booklet is not intended to establish a standard of care or industry custom. It also does not reflect Association policy or recommendations.

It is critical to note that **all practicing dentists will be affected by this law**, since dental offices are considered public accommodations under the Act. As such, they must be accessible to persons with disabilities.

This law is different from other discrimination laws in that it does not simply prohibit discrimination. It also imposes certain affirmative duties on businesses, such as a dental office, to take steps necessary to be accessible to disabled persons.

The booklet is structured in a question and answer format for easy reading and reference. Please read it carefully and thoroughly.

These answers represent the Association's best efforts to interpret law. However, the Act certainly will be interpreted in the courts for years to come, and it is possible that some answers may change as a result of case decisions.

This booklet is intended to offer general information and guidance but should not be construed as legal advice and cannot be substituted for the advice of your own legal counsel. You should always seek the advice of your own attorney regarding specific problems or circumstances.

The answers to questions in this booklet have been based on the following sources: The Americans with Disabilities Act, P.L. 101-336; Americans with Disabilities Act Title III Regulations, 28 CFR Part 36, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, U.S. Department of Justice, Office of the Attorney General" and Americans with Disabilities Act Title I Regulations, 29 CFR Part 1630, "Equal Employment Opportunity for Individuals With Disabilities," U.S. Equal Employment Opportunity Commission.

The American Dental Association Division of Legal Affairs is pleased to offer this booklet as one of the many benefits of membership.

AMERICANS WITH DISABILITIES ACT Q&A

FACTS ABOUT THE LAW

1 What is the Americans with Disabilities Act?

The Americans with Disabilities Act is a federal law that prohibits discrimination in access to services and employment against persons who are disabled.

The Americans with Disabilities Act, Public Law 101-336, was enacted on July 26, 1990.

2 What effect will it have on my dental practice?

Under the Act, your private dental office is considered a place of public accommodation. Therefore, as of January 26, 1992, this law requires that you serve persons with disabilities.

WHO IS PROTECTED

3 Who is Considered a person with a disability?

There are three categories of persons who are considered disabled under this law. The categories are:

- 1) A person who has a physical or mental impairment that substantially limits one or more of the major life activities of that person;
- 2) A person who has a record of such an impairment; and
- 3) A person who, while not actually being disabled, is regarded as having such an impairment. (See question 4 below for further explanation)

4 Can you give some examples of disabilities?

The first category is fairly straightforward. For example, individuals who are blind, hearing impaired or confined to a wheelchair are disabled. Persons with AIDS or the human immunodeficiency virus (HIV), cancer, heart disease, diabetes, mental retardation or learning disabilities are also examples of persons who are considered disabled for purposes of the Act.

Examples of persons with a "record of an impairment" include persons with histories of alcoholism or drug abuse, mental or emotional illness, heart disease or cancer who are currently free of disease or impairment and are not limited in major life activities.

Also included in the category of persons with a record of an impairment are individuals who have been misclassified as having a disability when they in fact did not. In other words, persons who have been erroneously assumed to have disabilities and have been treated as though they were disabled are protected from discrimination by the Act. Examples include persons who have been misclassified as having mental retardation or mental illness.

An example of a person regarded as being disabled is an individual who has a significant facial deformity which does not limit major life activities. While the person is not physically or mentally restricted in his or her activities, public reaction to the person's appearance may result in discrimination. Another example is a person rumored to be, but who is not, infected with HIV.

5 Are there any other groups who are covered by this law?

Yes. People who associate with persons with disabilities cannot be discriminated against because of the association. For example, it is illegal under the Act to discriminate against a person who shares a residence with a person who is HIV-positive. Similarly, discrimination against the parent of a disabled child is prohibited.

6 Is having AIDS or being HIV-positive considered a disability?

Under the Act, AIDS is considered a disability. A person who is HIV-positive is also considered disabled, even if he or she has no symptoms of AIDS.

7 Why does the law consider HIV a disability when it is an infectious disease?

The law does not deny that HIV is an infectious disease. Rather, it provides that an infectious disease, such as HIV, also is a disability, solely for purposes of protecting infected individuals from discrimination.

8 What about a person with a broken leg?

A person with a broken bone or other injury, condition or impairment which is expected to be temporary is generally not considered disabled for purposes of the Act. However, the person would be considered disabled if the injury results in long-term limitation on a major life activity (e.g., if a person is unable to walk because a broken bone failed to heal).

9 What about users of alcohol or illegal drugs?

Current use of illegal drugs (e.g., street drugs or the illegal use of prescription drugs) does not constitute a disability under the Act. Public accommodations therefore may deny services to individuals who currently are using illegal drugs. A person need not be under the influence of illegal drugs at the moment services are sought in order to be considered currently using illegal drugs. However, discrimination is prohibited against a person not currently using illegal drugs who has successfully completed a supervised drug rehabilitation program or been otherwise successfully rehabilitated, or is participating in a supervised rehabilitation program, or who is erroneously regarded as engaging in the use of illegal drugs. The law doesn't specifically address how you are to determine whether a patient is or is not currently using illegal drugs.

Refusing to treat a person who is rumored or suspected of being a current user, without objective signs and indications of drug use, could subject you to sanctions for denying services to a person regarded as being disabled. If you decide to

refuse services to a person because of current use of illegal drugs, you should maintain detailed records of the indications of current drug use, because good records may prove essential in defending yourself against a charge of discrimination under the Act.

Under the Act, alcoholics are persons with disabilities and are protected against discrimination. However, you may refuse to service a person who arrives at your office intoxicated if that person poses a direct threat to the health or safety of others. Additionally, non-emergency treatment of a patient under the influence of alcohol or prescription drugs may be postponed if, in your professional judgment, it is in the patient's best interest to do so.

10 What if I don't know that a person has a disability?

You are under no obligation to make accommodations if a disability is not clearly discernable and the person does not inform you that he or she is disabled.

11 What does all of this mean to me in my practice?

Effective January 26, 1992, the Act prohibits you from discriminating against persons with disabilities in providing dental care. You are required to make reasonable modifications to facilitate access to your office by persons with disabilities. Modifications may include rearranging part of your office and changing policies that have the effect of excluding disabled persons from receiving care in your office. For example, an office policy against treating persons who are deaf is prohibited. You may also have to provide at your expense what the law refers to as auxiliary aids and services, when necessary to serve persons with disabilities. Examples of auxiliary aids and services are discussed below, at questions 13, 15 and 20-23.

12 What *must* I do?

You must take steps to ensure that persons with disabilities are not denied services or treated differently because of the absence of auxiliary aids and services, unless it can be shown that taking those steps would result in an "undue burden" or fundamentally alter the nature of the services you provide.

13 What are auxiliary aids?

Qualified interpreters, assistive listening devices, note takers, telephone handset amplifiers, written materials for persons with hearing impairments, qualified readers and telephones compatible with hearing aids are examples of auxiliary aids.

14 What is an undue burden?

It is defined in the law as a "significant difficulty or expense." There is no formula in the law or regulations for determining what constitutes significant difficulty or expense, but several factors should be considered. These factors include the overall size and financial resources of the business, the nature of the business and the nature and cost of the accommodation needed. In situations in which you

must determine whether an auxiliary aid or service will be provided, your records should reflect what is done, what is offered and the rationale for determinations that certain items represent significant difficulty or expense.

15 How do I know whether I must make an accommodation that in my opinion seems like an undue burden?

A minor administrative burden probably is not an undue burden (e.g., rearranging an office schedule; spending extra time communicating with a hearing-impaired patient). However, significant financial expenses are valid evidence of undue burden. Be flexible; find out the actual cost associated with an accommodation (e.g., ramp to replace steps) and document those costs; determine whether less expensive alternatives might work and determine whether those alternatives are feasible.

16 May I continue to ask patients' HIV status on the health history?

Yes. You need to take a complete and accurate health history **in order to provide appropriate care to your patients**, and asking about a patient's HIV status is a valid part of taking that history. You should be aware that **using the information to deny services to persons who have HIV may prompt a charge of discrimination.**

17 Must I treat all disabled persons who come to my office?

The law requires that you treat disabled patients on the same basis as you treat non-disabled patients. If the treatment required by a disabled patient is something you currently perform in your practice, you must treat the disabled patient just as you would a non-disabled patient. However, if the disabled patient requires a procedure for which you would ordinarily refer a non-disabled patient you may legally refer the disabled person as well.

Persons with disabilities are not excused from meeting their responsibilities to you. If a disabled person misses multiple appointments, fails to meet financial responsibilities, disregards your professional opinions or treatment recommendations or does other things that would justify dismissing a non-disabled person from the practice, you may dismiss the disabled patient.

However, dismissing a disabled patient because of a single missed appointment, especially if the patient missed for a reason related to his or her disability, could subject you to charges of discrimination.

18 What if the dental treatment needed by a disabled patient is something I routinely provide in my practice, but the patient needs an additional service, such as parenteral sedation or general anesthesia, and I don't use sedation or general anesthesia in my practice?

Assuming there are no other facts, you may refer the patient to a dentist who provides these services. Before making the referral, however, you should carefully evaluate whether the patient in fact needs this or other additional services, and whether you can provide them. If you do decide to refer the patient you should fully explain the medical necessity for the referral and assure the

patient that you will cooperate with the other practitioner, including providing copies of your records.

19 What if there is a dentist in my town who markets his or her practice to disabled persons and wants referrals of disabled patients. May I refer these patients to that dentist?

Making such a referral can be problematic if it is interpreted as expressing a preference not to treat persons with disabilities. If you do offer the referral, you should make it very clear to the disabled person that you are willing to treat him or her and that the referral is not a refusal to provide services. Let the patient make the choice. **Document the fact that you expressed your willingness to treat the patient. If the person accepts the referral, document that fact.** Certain disabled persons may be offended by the offer of such a referral, so your discussion with the patient and documentation of that discussion are very important.

20 What about deaf or hearing-impaired patients?

The Act requires that you provide care for such patients and that you communicate in such a way that patients can understand what you are telling them. There are a variety of ways in which you may communicate with a deaf or hearing-impaired patient. For example, you may be able to use written notes, pictures or models to discuss the patient's condition and recommended treatment. You may also find your office computer useful in carrying on a conversation with a hearing-impaired person. Some hearing-impaired individuals are very adept at reading lips and prefer to be spoken to. The best approach may be to let the patient indicate what form of communication he or she prefers. The mode of communication preferred by the patient may depend on whether the person was ever able to hear and, if so, whether the person had learned to speak before becoming hearing-impaired.

There may be times when use of a sign language interpreter is appropriate. For example, it may be advisable to use an interpreter when you are providing complex or extensive information in order to obtain informed consent to a procedure that carries significant risk. A sign language interpreter is an example of an auxiliary aid or service.

21 Do I have to pay for a sign language interpreter?

You may not have to hire an interpreter. A member of the patient's family may be able to interpret or there may be a service organization in your community that will provide an interpreter at no cost. The local office of your state rehabilitation services agency or health department may be able to direct you to such an organization. It is important that an interpreter accurately convey what is being said by both doctor and patient.

If no other resource is available and the patient is unable to communicate and understand by any method other than use of a sign language interpreter, you may have to hire an interpreter, unless you can show that it is an undue burden to do

so. Under the Act, you would have to pay the cost of the interpreter and could not pass the cost on to the patient as a supplemental charge or by increasing the fee for the dental treatment to include the cost of the interpreter.

22 Must my office have to TDD (telecommunication device for the deaf)?

No. Your office can communicate with deaf persons by using a relay service. The service operator relays conversations between persons who use a text telephone (TDD) and persons who use a standard telephone. Because relay services permit deaf patients to communicate effectively with your office, you are not required to have a TDD. You do not need any special equipment to use a relay service, and the cost of a call is generally the same as for an ordinary telephone call. Information about the relay service is available from your local telephone company.

23 May I charge disabled patients for auxiliary aids and services I must use because of the patient's disability?

The Act prohibits public accommodations, including dentists, from imposing surcharge on disabled patients, so you must absorb the cost of providing auxiliary aids and services. Examples of items that could not be surcharged to the disabled patient include the cost of installing a ramp leading to the entrance of the dental office and the cost of adding raised lettering to the sign on your office door.

24 What if, because of a patient's disability, a particular treatment takes significantly longer to complete than usual. May I consider the extra time when calculating the fee charged to the disabled person?

The law and regulations do not address this issue. However, they do not specifically prohibit adjustment of professional fees to reflect the work you perform. The law only prohibits charging patients for providing auxiliary aids and services in connection with dental care. Dental treatment is not an auxiliary aid or service.

25 What if the disabled person uses an animal, such as a seeing-eye dog. Does the patient have a right to bring the animal into my office?

The regulations under the Act specifically state that you must permit disabled persons to bring service animals, such as seeing-eye and hearing dogs, into your office. Nothing in the Act requires you to allow service animals into the operator if the patient does not require the service provided by the animal during the time dental procedures are being performed. Public accommodations, including dental offices, are not required to supervise or care for service animals.

26 If I distribute patient information brochures in my office, must I have them available in Braille for blind patients?

No.

27 What if a disabled person disrupts my entire office. Must I treat that person?

If the disabled person poses a direct threat to the health or safety of others, you may refuse to admit that person to your office. "Direct threat" means a significant risk to the health or safety of others that cannot be eliminated by use of auxiliary aids or special procedures. You should consider whether you can treat the person in another setting. A reasonable alternative might be to treat an aggressive patient under general anesthesia in a hospital or ambulatory surgical center with another practitioner managing the anesthesia. If this alternative is not reasonably available, the patient may be referred to a practitioner or facility that is equipped to treat the patient.

The actions of some disabled persons may disrupt the office without posing a direct threat to the health or safety of others. The Act prohibits you from refusing care to such persons. For example, the vocalizations of person afflicted with Tourette Syndrome, which often include profanities, may be disruptive and highly offensive to others, but do not pose a threat to health or safety. Similarly, the presence of a person who is self-abusive because of mental illness is distressing to others, but does not pose a direct threat to their health or safety.

28 May I treat a disruptive but non-threatening disabled patient after hours?

The law does not specifically address this question. However, nothing in the law or the rules under the law prohibits you from offering an after hours appointment to such a patient or the patient's guardian. If the patient insists on being appointed during regular business hours, that is when you probably will have to see him or her.

IMPACT ON OFFICE DESIGN

29 If my office is not physically accessible to people in wheelchairs or with other disabilities, do I have to remodel to make it accessible?

If you continue to occupy your current office after the effective date of the law (January 26, 1992), you do not have to make major changes. You are required only to remove architectural barriers in the space within your control that impede accessibility when removal of those barriers is readily achievable. Readily achievable is defined as easily accomplishable and able to be done without much difficulty or expense. The federal government has declined to provide specific standards it will apply in determining whether removal of a particular barrier is readily achievable. Nor will it state more specific guidance as to your obligations for barrier removal. It stands to reason, however, that more will be expected of a large group practice than a small office or solo practitioner.

Please note that you must remove barriers that impede accessibility in your office. This should be done now. You should not wait until a disabled person seeks services in your office to remove barriers that are readily removable. Examples of barrier removals that may be considered readily achievable for a private dental office include: making curb cuts in sidewalks and entrances:

installing offset hinges to widen doorways replacing doorknobs with lever type openers; and creating designated accessible parking spaces. **Please note that if you rent, rather than own your office, some of the examples listed above would be the responsibility of the building owner, and not you personally.** You and your staff may want to consider doing an "office inspection" to look for areas where you may need to make accommodations.

30 I rent office space. Am I responsible for things like parking spaces, curb cuts and elevator control buttons

You are responsible for removing barriers in your office suite that are readily achievable. If permission of the owner is required to make certain changes (e.g., installing raised letters on your office door, widening doorways or installing grab bars in a washroom), you must request such permission. The owner of the building is responsible for removing barriers in areas of the building under his or her control, such as parking lots, sidewalks, lobbies elevators and public washrooms.

31 Are there any special provisions I should have in the lease for my office space?

Yes. The rules under the Act state that allocation of responsibility for complying with the requirements of the Act may be determined by lease or other contract. Your lease should specify your responsibilities and those of the landlord for complying with the Act.

32 What if I remodel part of my office for purposes not related to accessibility for the disabled?

Under the law, the portion of the office that is remodeled must be made accessible to persons with disabilities. For example, if you remodel your waiting room, you should be sure that doors are sufficiently wide to accommodate wheelchairs, and that signs include raised lettering or Braille in your office, the washroom should be accessible to persons in wheelchairs if feasible. Feasibility is a matter both of structural and financial constraints. The federal government has declined to provide specific guidance for determining feasibility. At minimum, such aids as grab bars and a raised toilet seat should be installed.

When you hire a contractor to do remodeling, be sure that the contract requires the contractor to comply with the Act. The same provision should be in your contract with an architect. Also, be sure to check with building authorities, such as the Building Owners and Managers Association (BOMA). See question 57 for address and telephone number.

Please note that the requirement for an accessible washroom does not mean that you or a member of your office staff must assist disabled persons in using the facility. You are not required to provide disabled individuals with personal assistance not related to dental services.

33 Are there any other requirements that apply to remodeling or renovation?
Yes. There are requirements for making the path to travel to the remodeled or renovated area accessible. If alterations are made which affect the accessibility of the area altered, modifications to provide an accessible path of travel to the altered area must be made, unless the cost of such modifications would be disproportionate to the cost of the alterations (i.e. if the cost of such modifications exceeds 20 percent of the cost of the alteration of the area remodeled or renovated). For example, if you remodel a private office in which you sometimes consult with patients, there would have to be an accessible path of travel from the entrance to your office to the private office, unless the cost of making an accessible path of travel would exceed 20 percent of the cost of remodeling the private office.

34 What if I'm only redecorating?
If you only redecorate, such as painting or wallpapering, you are not required to make structural changes to enhance accessibility. Also, normal maintenance is not considered remodeling.

However, the law prohibits you from doing things that would make your office less accessible. For example, if you recarpet, you should not install high pile carpeting that would make use of a wheelchair or walker more difficult or impossible.

35 What if I put a new roof on my office building?
Re-roofing would not trigger accessibility requirements.

36 What if I build a new office?
If you build a new office for first occupancy after January 26, 1993, the office must meet certain physical accessibility requirements. Be sure contracts with your architect and builder obligate them to comply with all requirements of the Act. Information about these requirements is available from your state or local building department or the American National Standards Institute, 1430 Broadway, New York, NY 10018, and the Building Owners and Managers Association (see question 57 for address and telephone number).

37 My office is in my home. What are my obligations under the Act?
You must meet accessibility requirements only for that portion of the structure used as a dental office. For example, if you build a new home/office for first occupancy after January 26, 1993, the office portion would have to be accessible, which could require the installation of a ramp leading to the office entrance. However, you would not be required to install a ramp leading to the residential part of the building. If you continue to occupy an existing home office, you must remove architectural barriers as discussed in question 29. If you remodel, you must meet the requirements discussed above at questions 32 and 33.

38 What if I move into an office that was being used by someone else as a dental office before I moved in?

Assuming you use the office as is, and do not remodel the space, the Act requires only that you remove architectural barriers when such removal is readily achievable (i.e., able to be done without much difficulty or expense). Simply redecorating, such as painting and wallpapering, is not considered remodeling. If you do remodel or renovate the space, those areas which are altered must be made accessible to the extent feasible, considering structural and financial limitations.

Also, you must meet the requirements to accessibility of the path of travel to the altered area (see question 33 above).

39 It sounds like this could get expensive. Is there any way to get help with the costs of complying with this law?

Upon urging from the American Dental Association and other organizations, Congress enacted a law allowing for certain tax credits for expenses incurred in making alterations to enhance accessibility to public accommodations. Businesses having thirty or fewer full-time employees and annual gross receipts under one million dollars may be eligible for a credit of up to 50 percent of costs of removing architectural, physical and communications barriers which are over \$250 and less than \$10,250. You should consult your tax advisor about these credits. In addition, IRS Publication No. 907, Tax Information for Handicapped and Disabled Individuals, provides information on deductions and credits. You may request this publication and Form 8826, the form to be used to claim these credits, by calling 800/424-FORMS.

CAUTION: There may be consultants and contractors who will try to sell you remodeling and other services and products you do not need. Before signing any contract with such an individual or company, be sure to check whether what you are purchasing is something you are required to have.

STOP: QUESTIONS 40 THROUGH 54 APPLY ONLY TO EMPLOYERS HAVING FIFTEEN OR MORE EMPLOYEES (If you have fewer than fifteen employees, skip to the next section, "Enforcement of the Act," at question 55.)

EMPLOYMENT ISSUES

40 Is this law going to affect hiring and personnel policies in my office?

It might. The employment provisions of the Americans with Disabilities Act apply to employers having fifteen or more employees.

41 Is the effective date for the employment provision also January 26, 1992?

No. The employment provisions became effective on July 26, 1992 for employers with twenty-five or more employees. For employers having fifteen to twenty-four employees, the effective date is July 26, 1994.

42 Do I have to give preference in hiring, retention or promotion to persons with Disabilities?

No.

43 What do the employment provisions require?

Assuming you have fifteen or more employees, the law prohibits you from discriminating against a qualified person with a disability in hiring, promoting or other decisions affecting employment. However, you are not required to give special preference to persons with disabilities. The purpose of the Act is to remove barriers to employment for disabled persons based on prejudice or lack of understanding. It does not require that you hire or promote a disabled person in preference to a better qualified person who is not disabled.

44 What is a qualified person with a disability?

A qualified person with a disability is one who satisfies the requisite skill, experience, education and other job-related requirements of the position and can perform the essential functions of the job, with or without reasonable accommodation. For example, a job-related requirement for a dental hygienist is having a current license. If a disabled person applies for a job as a hygienist in your office and does not have a current license, he or she is not a qualified person with a disability. You need not consider the applicant for the job.

45 What is meant by essential function of the job?

Essential functions means primary job duties that are intrinsic to the employment position, the reason why the position exists.

For example, assume there is a position in your office, the primary duty of which is to type reports, insurance forms and similar documents. The person who holds that job must type approximately seven hours per day to accomplish the job. A disabled person who can type, but only for about two hours per day, would not be able to perform the essential functions of the job.

On the other hand, assume a disabled person applies for a secretarial position which consists primarily of secretarial duties, but the holder of the position in the past has **occasionally** developed radiographs. Even if the disabled person is unable to develop radiographs, he or she probably would be considered qualified if able to perform the essential (secretarial) functions of the job. In this case, developing radiographs in a non-essential function that can be performed by another employee. Another example is an applicant for a chair side assisting position who has an impairment that prevents him or her from moving quickly. If the essential functions of the position include being able quickly to bring materials from other parts of the office to the operatory, including emergency equipment if needed, the applicant would not be able to perform the essential functions of the job. It is important that you have clear, concise, written job descriptions for all the positions in your office.

46 What is a reasonable accommodation of a disabled employee?

A reasonable accommodation is a reasonable modification of the work environment, or a change in the way job duties are performed, that enables a qualified person with a disability to perform the essential functions of the position.

For example, assume a person who uses a wheelchair were to apply for a clerical position in your office. The person meets the qualifications for the job and can perform the essential functions. However, the desk is too low to accommodate a person in a wheelchair. It would be a reasonable accommodation for you to have blocks placed under the legs of the desk to raise it to a sufficient height to accommodate the person. If a doorway would have to be widened to permit the person to reach the work area, you would first have to determine whether it is structurally possible to widen the doorway. If it is possible, you would have to review the cost of widening the doorway to determine whether it would be an undue hardship to make the alteration. (Please see discussion of "under hardship" below, at question 47.)

47 What is an undue hardship?

An undue hardship is an action that would impose significant difficulty or expense. The rules under the law provide that several factors are to be considered in determining undue hardship. Those factors are the nature and cost of the accommodation needed, the nature of the business and the overall financial resources of the business.

The Act does not provide specificity as to what does and does not constitute significant difficulty or expense, so it is impossible to determine at this time how this provision will be interpreted by the courts and government agencies.

Please note that if an accommodation would impose an undue hardship on an employer, the applicant or employee must be permitted to supply or pay for an accommodation, thereby eliminating the undue hardship. For example, a blind person may need a reader in order to perform the essential functions of a job in your office. It may be an undue hardship on your practice to hire two people (the disabled person and someone to serve as a reader) to do one job. However, if the disabled person is able to supply a reader, the undue hardship is eliminated. You could not then deny the disabled person employment on the basis of undue financial burden. If the present configuration of the office provides insufficient space to accommodate an extra person, you would have to determine whether the office could be re-arranged to accommodate the reader, and do so if feasible and not an undue hardship.

48 What if I offer a reasonable accommodation and the employee or applicant refuses to accept it?

You are obligated only to make a reasonable accommodation. A disabled person is not entitled to the exact accommodation he or she prefers. If the alternative offered is reasonable, you have met your obligation under the Act.

49 Must I provide such things as eyeglasses and hearing aids to my employees?

No. You are not required to provide personal items such as eyeglasses, hearing aids, prostheses and the like to employees.

50 What if one of my employees becomes disabled while working for me and can no longer perform the essential functions of his or her job, even with reasonable accommodation?

If there is another job available that the disabled person can perform, the person the person should be offered that job, if at all possible. If there is not a job available that the person can perform, you are not required to continue to employ the person. For instance, assume a dental hygienist becomes visually impaired to the extent that she or he can no longer practice hygiene. There is a position available in your office as an insurance billing clerk. The disabled hygienist could perform the essential functions of this position with the use of a magnifier, a device that is not unduly expensive. You probably would be obligated to offer the clerk position to the disabled hygienist and provide the magnifier at your expense. Providing an employee with a magnifier differs from providing eyeglasses (see question 49), because the magnifier is a specific accommodation that allows the person to perform the essential duties of the job, whereas eyeglasses are a personal item that people use both on and off the job. Assuming that the clerk position pays considerably less than the person made as a hygienist, you are obligated to pay the person only the salary for the clerk position. You are not required to create a new position for a disabled employee, nor are you required to place or maintain the person in a position for which he or she is not qualified.

51 What about smoking? Do I have to accommodate people who smoke?

Smoking is not considered a disability under the law. However, some consequences of smoking, such as lung cancer and emphysema, are disabling conditions and persons afflicted come under the protection of the Act.

52 Does the law require me to give any kind of notice to employees and job applicants?

Yes. The federal Equal Employment Opportunity Commission is revising its poster, "EEO is the Law" to include notice of employee and applicant rights under the Americans with Disabilities Act. Revised posters may be obtained from the EEOC.

53 How do I decide whether I might be violating the Act?

In evaluating any particular action to hire, move or terminate a person who falls within the Act's protection, ask yourself the following questions. What are the essential functions of the job? Is this person qualified to perform the essential job functions? If so, what special accommodations are necessary for this person to do the job? Does providing those accommodations impose an undue hardship? If so, would the disabled person be willing to provide the accommodations at his/her own expense, and would such an option be reasonable and feasible?

54 How am I supposed to know what accommodations an employee might need?

The employee is expected to inform you of his or her needs.

ENFORCEMENT OF THE ACT

55 Who is charged with enforcing the Act?

The public accommodations provision will be enforced by the United States Department of Justice. The employment provisions are under the jurisdiction of the federal Equal Employment Opportunity Commission. In addition, a disabled person who believes he or she is, or is about to be, the victim of discrimination may bring a private civil suit. The person could seek an order requiring a public accommodation to remove barriers, provide auxiliary aids and services, or otherwise comply with the Act. The courts may also award attorneys' fees, costs and monetary damages to a victim of discrimination and assess a civil monetary penalty against a violator. Punitive damages are not available under the Act.

Civil monetary penalties up to \$50,000 for the first violation and up to \$100,000 for subsequent violations may be assessed in an administrative proceeding brought by the U.S. Department of Justice. In addition, a violator may be ordered to provide services that are found to have been wrongly denied.

56 My state has a handicapped discrimination law that has more stringent requirements than the Americans with Disabilities Act. Must I still abide by the state law?

Yes. The federal law does not preempt state laws that are more stringent, so you still are bound by the state law as well as the federal. In Illinois, for instance, employers having one or more employees are subject to the handicapped discrimination provisions of state law regarding employment, whereas the threshold number of employees for purposes of employment under the Americans with Disabilities Act is fifteen.

HELP IS AVAILABLE

57 Where can I get further information and answers to my questions about the Americans with Disabilities Act?

The U.S. Chamber of Commerce has for sale a booklet entitled "What Business Must Know About the Americans with Disabilities Act." Contact the Chamber at

1615 H Street, N.W. Washington, D.C. 20062, or call 800/638-1450 for credit card orders. BOMA, the Building Owners and Managers Association International (1201 New York Ave. N.W., Suite. 300, Washington, D.C. 20050, 202/408-2662) has available information about complying with the building accessibility requirements of the Act.

Organizations such as the Easter Seal Society and architects' groups are possible sources of information. There may be disabled advocacy groups In your community that can help. Also, your state rehabilitation services agency may be helpful.

The U.S. Department of Justice, Office on the Americans with Disabilities Act, has an information line. The telephone number is 202/514-0301 (voice) and 202/514-0381 (TDD). The Department of Justice and Equal Employment Opportunity Commission have jointly published a brochure entitled, "The Americans with disabilities Act Questions and Answers," which you may want to request by calling the information line noted above.

For further information, you may call the American Dental Association, Division of Legal Affairs, at extension 2874

58 Where can I learn more about people with disabilities and their needs and Preferences?

The Easter Seal Society has materials available, including a brochure entitled "Tips for Disability Awareness" and a video tape, which can be requested from your local chapter.

Other organizations providing services to people with disabilities and organizations of disabled individuals may also be able to provide you with information.