

American with Disabilities Act

What is the Americans with Disabilities Act (ADA)?

- ADA is a federal law that prohibits private employers and employing entities from discriminating against qualified individuals with disabilities.
- ADA limits an employer's ability to make disability-related inquiries and require medical examinations at three stages of the employment relationship – pre-offer, post-offer, and during employment:
 - Prior to extending a conditional offer of employment, employers may not ask job applicants about the existence, nature, or severity of a disability.
 - Once a conditional offer of employment is made, an employer may ask disability-related and medical questions, but the employer must ask the same questions to all employees in the same job category.
 - After employment begins, an employer may ask disability-related questions and require medical examinations, only if they are job-related and consistent with business necessity.

Can a food establishment make a conditional offer of employment prior to making inquiries about an applicant's medical health status?

- Yes, in order to comply with the ADA and the FDA Food Code, a food establishment must make a conditional job offer to the potential employee before asking medical questions.
- Once a conditional job offer is made, employers may ask medical questions and require medical exams, as long as employers treat all applicants the same for the same type of job. See Form 1 (page 19).

Does the ADA require that employers provide reasonable accommodations to qualified job candidates and employees with disabilities?

- Yes. A reasonable accommodation is a change in the work environment or job task customarily done that enables a person with a disability to enjoy equal employment opportunities.

What should an employer do if an employee who has been excluded due to an illness resulting from a Big 5 pathogen requests a reasonable accommodation under the ADA?

- For most people, having a disease resulting from one of the Big 5 pathogens does not constitute having a disability under the ADA. These diseases are usually short-term.
- If a person does not have an ADA disability, the foodservice employer may follow the Food Code's guidance on exclusions without considering the ADA. However, the employer should not assume that a disease resulting from a Big 5 pathogen is never a disability.
- If an employee requests a reasonable accommodation after being excluded, the employer should question the employee to determine whether he or she is an individual with a disability due to the illness caused by one of the Big 5.
- If the employee has a disability resulting from a Big 5 pathogen, the ADA allows an employer to refuse to assign or continue to assign the employee to a job involving food



handling, as long as the risk of transmitting the disease cannot be eliminated by reasonable accommodation. See <http://www.ada.gov/>.

- If the employee is disabled by one of the foodborne diseases listed in the Food Code, the employer may continue to exclude the employee after the employer determines that:
 - There is no reasonable accommodation would eliminate the risk of transmission of the disease, while at the same time allowing the employee to work in a food-handling job.
 - All possible reasonable accommodations would pose an undue hardship on the employer's business.
 - There is no vacant position not involving food handling for which the employee is qualified and to which the employee can be reassigned.

Should job applicants and employees provide information to their employer that would help to identify whether a fellow employee is suffering from a disease that can be transmitted through food?

- Yes. Reporting information related to health status of other employees is required.
- Once the manager is notified, appropriate action can be taken to prevent the likelihood of the transmission of foodborne illness.
- Under the ADA, the CDC must annually publish a list of infectious and communicable diseases. The list includes pathogens, such as viruses and other microorganisms, often transmitted by food contaminated by infected foodservice employees who handle food. The list also describes the methods by which such diseases are transmitted.
- The ADA has special rules for people in food handling jobs and diseases due to the pathogens on the CDC list, go to http://www.eeoc.gov/facts/restaurant_guide_summary.html.
- The Food Code also requires that employees with symptoms associated with foodborne illnesses must be excluded or restricted from performing certain functions, such as food handling.
- It is very unlikely a person who has not been diagnosed with a disease, and has only one or more of the symptoms listed in the Food Code, has an ADA disability by virtue of these symptoms alone.
- Employers must follow ADPH Environmental communicable disease reporting laws designed to protect public health from individuals who pose a significant risk to the health and safety of others, where that risk cannot be eliminated by reasonable accommodation.

Where is specific information about disabilities and ADA requirements found?

- To find more information about “How to Comply with the Americans with Disabilities Act: A Guide for Restaurants and Other Food Service Employers,” go to http://www.eeoc.gov/facts/restaurant_guide.html.

