

EMPIRE COLLEGE SCHOOL OF LAW

ADA FINAL EXAMINATION - SUMMER, 2010
MODEL ANSWERS

These model answers are intended to serve as a guidepost for students in analyzing how they performed on the exam. They are not held out as "perfect" answers, and the students were not required to provide these answers to receive a passing grade. Rather, they are provided to assist the students by illustrating the kinds of responses and analyses called for by the questions.

Professor Richard C. Gould

SHORT ESSAY - MODEL ANSWERS

AMERICANS WITH DISABILITIES ACT (ADA) COURSE EMPIRE COLLEGE SCHOOL OF LAW FINAL EXAMINATION AUGUST, 2010

1. What is the definition of "disability" under the Americans with Disabilities Act (ADA)?
 - 1) a physical or mental impairment that substantially limits one or more of an individual's major life activities;
 - 2) a record of such impairment; or
 - 3) being regarded as having such an impairment.

(Section 12102(2))

2. What is the meaning of a "qualified individual with a disability"?

With respect to Title I / Employment, such term means "an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires". (Section 12111(8)) The person must also fulfill the skill, experience, education and other job-related requisites of the position. (29 CFR 1630.2(m)).

With respect to Title II / State and Local Governments, the term refers to an individual who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the public entity. (Section 12131(2))

3. With respect to a company that has placed a classified ad in a newspaper seeking to hire someone, describe the different points in the process, from first responding to the ad through hiring and commencement of work, in which an individual with a disability would be entitled to a reasonable accommodation. (Note: Due to the general nature of the question, you need not consider any particular disability or specific accommodations; do, however, address the points in the process when such reasonable accommodations might be required to be provided.)

For initial response to an ad, telecommunication aids and services, as needed, to contact prospective employer.

Access to place of interview and/or testing.

Reasonable accommodation for testing process.

Reasonable accommodation in the workplace, once hired, to perform essential functions of the job, as well as those marginal functions required by the employer.

Reasonable accommodation so as to receive full benefits, etc., as provided other employees, and as needed for the particular employee with a disability, so long as no undue hardship on employer.

4. What is a "qualified interpreter", and under what circumstances might a public accommodation be required to provide one?

A qualified interpreter, as referred to in the ADA, is an interpreter who is able to interpret effectively, accurately, and impartially, in terms of both receiving and expressing information using any necessary specialized vocabulary.

A public accommodation may be required to provide one whenever effective communication warrants a qualified interpreter, such as a doctor or lawyer who has a need to communicate with a patient or client in a matter of significance - such as informed consent for heart surgery, or drafting of a will. (Subject to the limitation of undue burden, often financially related.)

5. What is the meaning of "undue hardship", in what context is the term used in the ADA, and how does it differ from the term "undue burden"?

Undue hardship refers to the limitation of an employer to provide a reasonable accommodation to a prospective or existing employee. Generally, refers to an action requiring significant difficulty or expense, when considered in light of the 1) nature and cost of the accommodation; 2) overall financial resources of the facility; 3) overall financial resources of the covered entity; and 4) type of operation of the covered entity. §12111(10).

Undue burden also refers to significant difficulty or expense, but is related to a public accommodation rather than an employer. Auxiliary aids or services are to be provided to an individual with a disability so as not to exclude to deny services, or otherwise treat differently, due to a (physical) barrier or lack of auxiliary aids or services, unless the entity can demonstrate that to do so would fundamentally alter the nature of the goods or services, or be an undue burden. (Factors to be considered are similar to employer's.) §12182(b)(2)(A)(iii).

6. Under the ADA, what is the meaning of "readily achievable", and to what does this standard apply?

This is the standard for barrier removal, and means easily accomplishable and able to be carried out without much difficulty or expense. Several factors are considered in making that determination. (Section 12181(9))

7. What is the difference between an essential function and a marginal function with respect to an employment position?

Essential functions of a job are the fundamental duties of a job, and the ability to perform these functions (with or without a reasonable accommodation) is included as part of the definition of a qualified individual with a disability'. Reasons that a function may be deemed essential include 1) position exists solely for purpose of performing that function (proofreader, eg.); 2) limited number of employees who can perform the job function; or 3) highly specialized function. Evidence that a particular function is essential includes 1) employer's judgment; 2) written job description; 3) amount of time to perform; 4) consequences of not requiring individual to perform (firefighter carrying person from burning building, eg.), etc.

8. What steps must a business which is open to the public take if it is not feasible to remove architectural barriers which prevent a person with a disability from entering that place of business? Provide at least one example.

The business is required to modify its practices or policies in order to provide access to its goods and/or services to the person with a disability. For example, if a grocery store has steps at its only entrance, and it is not readily achievable or even feasible to provide a ramp for vertical access, curbside service or home delivery may be provided. In the case of a service provider such as an attorney or accountant, an alternate meeting site with access may be offered.

9. With respect to employment, compare and contrast the protections afforded a person with a disability under the ADA and the California Fair Employment and Housing Act (FEHA).

10. Describe at least one situation in which a governmental entity would be permitted to not remove barriers, thus denying access to a wheelchair user.

An historical structure, where such removal would alter the essential or inherent architectural design or integrity of the building.

MULTIPLE CHOICE ANSWER SHEET
ADA COURSE
FINAL EXAMINATION
AUGUST, 2010

There are the answers to the ten (10) multiple choice questions.

1. D
2. A
3. C
4. B
5. D
6. B
7. C
8. D
9. C
10. D