

JAIL BULLETIN

NUMBER 104

JANUARY 1994

The Jail Bulletin is a monthly feature of the Crime Commission Update. The Bulletin may be used as a supplement to your jail in-service training program if officers study the material and complete the attached "open book" quiz. The Bulletin and quiz may be reproduced for use by your staff. We welcome any jail training material you would like to contribute to the Bulletin.

AMERICANS WITH DISABILITIES ACT: AN OVERVIEW PART I

The following article, borrowed from the Detention Reporter, contains excerpts from a National Institute of Justice Report by Paul N. Rubin.

OTHERWISE QUALIFIED INDIVIDUALS WITH DISABILITIES

Having a disability does not automatically entitle someone to protection under the ADA. The ADA is not a guaranteed-jobs law requiring criminal justice agencies to hire persons with disabilities. Nor is it an affirmative action law requiring that preference be given to persons with disabilities over those who are not disabled. Under the ADA, employers are still entitled to hire the most qualified candidate for the job.

The ADA does not safeguard a person with a disability unless the person is also otherwise qualified for the position. In evaluating whether a person with a disability is qualified for a job, two questions should be answered:

- (1) Does this person meet the initial job requirements, such as work experience, education, skills, certificates, or licenses?
- (2) If so, can the person perform the essential functions of the job, with or without reasonable accommodation?

Defining initial job requirements. In answering the first question, care must be taken to make sure that the specifications for the position are job-related and consistent with business necessity. For example, law enforcement agencies would most likely be permitted to require applicants and employees to have a driver's license, inasmuch as operating a patrol car is an essential part of police work in most jurisdictions. On the other hand, driving a car may not be an essential part of the job of a corrections officer or administrative or clerical employees, and therefore, might not be appropriately included as a requirement for these positions.

Note that the purpose of the law is to integrate persons with disabilities into the work force. It is impermissible to attempt to subvert the intent of the ADA by imposing qualifications and job requirements that are not job-related or only relate to marginal functions of the job.

Persons with disabilities who meet the specified job requirements are not considered qualified unless they can also perform the essential functions of the job with or without a reasonable accommodation. Making this determination also requires answering two questions:

- (1) Are the functions truly essential or are they marginal?
- (2) Can these essential functions be performed with or without a reasonable accommodation?

Identifying essential job function. This involves determining whether employees in the position actually are required to perform the function and, if so, whether or not removing the function would fundamentally alter the job.

If the employer rarely requires a specific task, then it may not be appropriate to list the task as an essential job function. In that case, the employer would need to demonstrate that, although the function is rarely performed, to eliminate it would be to fundamentally alter the nature of the job. For example, even if 99 percent of police officers rarely make forcible arrests, departments may establish this as an essential function of the job by showing that the consequences would be significant if a police officer were not able to do so.

Answers will vary not only from job to job, but from department to department as well. The size and location of the agency may play a role in this assessment. Here are reasons offered by the EEOC as to why a job function may be essential:

- ! The position exists to perform the function.

- ! There are a limited number of other employees available to perform the function, or among whom the function can be distributed.

! A function is highly specialized, and the person in the position is hired for special expertise or abilities to perform it.

What factors may be used in determining essential functions of a particular job?

! The employer's judgment (while the employer may not be second guessed, other factors will also be regarded)

! A written job description prepared before advertising or interviewing for a job (this is not required under the ADA, but it is a good idea to have one that accurately reflects the true nature of the job and is created in advance of the screening and selection process).

! The amount of time spent performing the function (the example of the forcible arrest, used above, might apply to this factor).

! The consequences of not requiring the person to perform this function (the above example of the police officer might apply here).

! The terms of a collective bargaining agreement.

! The work experience of people who have performed the job in the past and work experience of people who currently perform similar jobs. (It is a good idea to talk with employees who have performed the job in the past as well as those who are doing the job now. Do not presume to know what a job involves; ask the people who are doing it.)

! other relevant factors (this can include the kind of services provided by the employer or the organizational structure of the agency).

The principle is that job requirements should not have the practical effects of imposing a blanket exclusion of a particular disability or class of persons.

Information in this issue of the Jail Bulletin was obtained from the November 1993 issue of the Detention Reporter. The Detention Reporter is available from CRS, Inc. (207)725-9090. The original "National Institute of Justice Report", The Americans With Disabilities Act: An Overview, by Paul N. Rubin, may be ordered from: NIJ National Criminal Justice Reference, 1-800-732-3277.

QUIZ

Nebraska Jail Standards require that jail staff receive eighteen (18) hours of inservice training each year. The Jail Bulletin may be used to supplement inservice training if an officer studies the bulletin, completes the quiz, and this process is documented by the jail administrator for review during annual jail inspections.

JANUARY 1994

NUMBER 104

**SUBJECT: Americans With Disabilities Act:
An Overview**

NAME:

DATE

1 ADA requires that preference be given to persons with disabilities over those who are not disabled.
True False

2. When evaluating whether a person with a disability is qualified for a job, what two questions should be answered?

- Does the person have transportation?
- Does the person meet the initial job requirements?
- Does the person have a friend or relative working in the Department?
- Can the person perform the essential functions of the job?

3. Identifying essential job function involves determining whether employees in the position actually are required to perform the function and, if so, whether or not removing the function would fundamentally alter the job.
True False

4. Job requirements should not have the practical effect of imposing a blanket exclusion of a particular disability or class of persons.
True False

CREDIT: One half hour credit for jail inservice training requirement

QUIZ

Nebraska Jail Standards require that jail staff receive eighteen (18) hours of inservice training each year. The Jail Bulletin may be used to supplement inservice training if an officer studies the bulletin, completes the quiz, and this process is documented by the jail administrator for review during annual jail inspections.

JANUARY 1994

NUMBER 104

**SUBJECT: Americans With Disabilities Act:
An Overview**

NAME:

DATE

1 ADA requires that preference be given to persons with disabilities over those who are not disabled.
True False

2. When evaluating whether a person with a disability is qualified for a job, what two questions should be answered?

- Does the person have transportation?
- Does the person meet the initial job requirements?
- Does the person have a friend or relative working in the Department?
- Can the person perform the essential functions of the job?

3. Identifying essential job function involves determining whether employees in the position actually are required to perform the function and, if so, whether or not removing the function would fundamentally alter the job.

True False

4. Job requirements should not have the practical effect of imposing a blanket exclusion of a particular disability or class of persons.

True False

CREDIT: One half hour credit for jail inservice training requirement

ANSWER SHEET SHOULD BE RETAINED BY JAIL ADMINISTRATOR.