

Americans with Disabilities Act (ADA)

We often receive questions about how Hogan’s tools and items work within the context of certain laws. Below are answers that explain Hogan’s viewpoint on the ADA (as amended). Hogan intends nothing in this document to serve as legal advice. For more specific applications of these topics, readers should consult their own independent legal counsel. The purpose of this paper is to provide an overview of the steps Hogan takes to support equal employment of individuals with disabilities.

Q. What is the ADA?

- A. The [Americans with Disabilities Act](#) (as amended) (hereafter “ADA”; 1990) is a federal anti-discrimination statute that applies to employers who have at least 15 employees. The ADA (1990) prohibits employment discrimination against “qualified individuals with disabilities.” A “qualified individual” is one “who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires” (ADA, 1990, 42 U.S.C. § 12111 (8)). This means when employers assess employees’ or applicants’ performance or potential performance they must consider how the individual performs with the aid of reasonable accommodations.

Q. How does the ADA define disability?

- A. A “disability” is “(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment . . .” (ADA, 1990, 42 U.S.C. § 12102 (1)). This includes psychological disorders (Regulations to Implement the Equal Employment Provision of the Americans with Disabilities Act, 2011). Part C of this definition means that, even if an individual does not have an actual disability, the law recognizes them as a “qualified individual with a disability” if the employer regards them as having a disability (ADA, 1990).

Q. What is reasonable accommodation?

- A. Employers have a duty to provide reasonable accommodation to individuals with disabilities unless the employer can demonstrate that such accommodation would impose an undue hardship (i.e. “significant difficulty or expense”) (ADA, 1990). However, the ADA (1990) only requires reasonable accommodation if the employer has knowledge of the disability and the individual is not solely qualified under Part C of the disability definition. The knowledge requirement leaves employers to implement accommodations on a case-by-case basis, upon employees’ overt or implied disclosure of disabilities. To bring a claim against an employer for failure to provide a reasonable accommodation, an employee must show that the requested accommodation is effective and reasonable (U.S. Airways, Inc. v. Barnett, 2002). Also, the ADA (1990) merely requires a reasonable accommodation, not necessarily the employee’s accommodation of choice.

Q. Does the ADA ban personality assessments?

- A. The ADA (1990), as amended, prohibits the use of medical examinations in pre-employment, pre-offer selection, unless it is “job-related and consistent with business necessity” (42 U.S.C. § 12112 (d)(4)(A)). Courts have barred clinically-oriented personality assessments as medical examinations because they evaluate mental disorders (Karraker v. Rent-A-Center, Inc., 2005).

The Karraker (2005) court used the Equal Employment Opportunity Commission's (1995) factors to determine whether the measure was a medical evaluation: (1) whether a healthcare professional administered and interpreted the measure, (2) whether test developers designed it to identify a physical or mental health impairment, (3) whether it was invasive, (4) whether it assessed physiological responses, (5) whether it was typical in medical settings, and (6) whether medical tools were used. Normal personality measures that do not assess disorders are not medical examinations (Karraker v. Rent-A-Center, Inc., 2005). In addition, the law prohibits employers from asking applicants about the existence or severity of disabilities before offering the job. Thus, assessments that contain items along these lines may run afoul of the ADA (1990).

Q. How do Hogan's personality assessments comply with the ADA?

A. Hogan constructed its assessments to reflect work-related themes, rather than mental disabilities (e.g., R. Hogan & J. Hogan, 2009). Thus, Hogan's assessments do not contain items with psychopathological or medical content (R. Hogan & J. Hogan, 2001). In addition, Hogan (e.g., R. Hogan & J. Hogan, 2009) wrote its assessment items with an eye toward the ADA (1990), screening out anything reflecting attitudes toward individuals with disabilities or invasive content. Hogan continually monitors, reviews, and updates its items to track the fluid nature of the law. Also, Hogan conducts validation research for clients to ensure its assessments predict the specific requirements of each individual job.

Q. How does Hogan handle reasonable accommodation for assessment takers?

A. Employers must administer testing in the "most effective manner" (42 U.S.C. § 12112 (b)(7)) to applicants or employees with disabilities (ADA, 1990). Hogan supports its clients' efforts to comply with the ADA. For instance, large print assessments are available from customer service (1-800-756-0632 or customerservice@hoganassessments.com). In addition, Hogan's Participant Portal is compatible with screen reading software and complies with the 2010 ADA Standards for Accessible Design (Department of Justice, 2010). Further, Hogan's personality assessments are not timed and allow assessment takers as much time as necessary to complete the assessments. Hogan can also make additional accommodations on a case-by-case basis.

For more information on the ADA, we recommend the following references:

1. Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101, et seq. (2015).
2. Hogan, R., & Hogan, J. (2001). Assessing leadership: A view from the dark side. *International Journal of Selection and Assessment*, 9, 40-51.
3. Hogan, R., & Hogan, J. (2009). *Hogan Development Survey manual*. Tulsa, OK: Hogan Press.
4. Karraker v. Rent-A-Center, Inc., 411 F.3d 831 (7th Cir. 2005).
5. Regulations to Implement the Equal Employment Provision of the Americans with Disabilities Act, 29 C.F.R. §1630 (2011).
6. United States Department of Justice. (2010). *2010 ADA standards for accessible design*. Retrieved from <https://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.pdf>
7. United States Equal Employment Opportunity Commission. (1995). *ADA enforcement guidance: Preemployment disability-related questions and medical examinations* (EEOC Notice No. 915.002). Retrieved from <https://www.eeoc.gov/policy/docs/preemp.html>
8. U.S. Airways, Inc. v. Barnett, 535 U.S. 391 (2002).