

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 1. ADMINISTRATIVE OPERATIONS
SUBCHAPTER 7. COMPLIANCE WITH THE AMERICANS WITH
DISABILITIES ACT OF 1990**

317:1-7-1. Purpose

The Americans with Disabilities Act of 1990 (ADA) extends the framework of federal civil rights laws to people with disabilities. It became effective January 26, 1992. The Act expressly prohibits discrimination by state or local agencies against individuals with disabilities, regardless of citizenship status or nationality, in employment, public services, public transportation, public accommodations and telecommunications services. The Oklahoma Health Care Authority complies with all applicable sections of the Act. ~~Requirements regarding accessibility to facilities for the disabled in the ADA were adopted from the Architectural Barriers Act of 1968. The ADA is divided into these components:~~

~~(1) **Title I - Employment.** Employers may not discriminate against qualified individuals with disabilities. Employers must reasonably accommodate the disabilities of qualified applicants or employees, including modifying work stations and equipment, unless undue hardship would result.~~

~~(2) **Title II - Public Services.** State and local governments may not discriminate against qualified individuals with disabilities. Newly constructed state and local government buildings, including transit facilities, must be accessible. Alterations to existing state and local government buildings must be done in an accessible manner. New buses and rail vehicles for fixed route systems must be accessible.~~

~~(3) **Title III - Public Accommodations.** Restaurants, hotels, theaters, shopping centers and malls, retail stores, museums, libraries, parks, private schools, day care centers, and other similar places of public accommodation may not discriminate on the basis of disability. Physical barriers in existing public accommodations must be removed if readily achievable. New construction in public accommodations and commercial facilities (non residential facilities affecting commerce) must be accessible.~~

~~(4) **Title IV - Telecommunications.** Telephone companies must provide telecommunications relay services for hearing-impaired and speech-impaired individuals 24 hours per day.~~

317:1-7-2. Definitions

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise.

"Disability" does not include:

~~(A) sexual behavior disorders;~~

~~(B) compulsive gambling, kleptomania or pyromania;~~

- ~~(C) psychoactive substance abuse disorders resulting from current illegal use of drugs; or~~
- ~~(D) homosexuality and bisexuality.~~

~~"Drug" means a controlled substance, as defined in Schedules I through V of Section 202 of the Controlled Substances Act [21 U.S.C. 812].~~

~~"Equal employment opportunity" means an opportunity to enjoy equal benefits and privileges of employment as are available to an average similarly situated employee without a disability.~~

~~"Essential functions" means the fundamental job duties of the employment position the individual with a disability holds or desires. The term does not include the marginal functions of the position.~~

~~"Has a record of such impairment" means the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.~~

~~"Illegal use of drugs" means the use of drugs whose possession or distribution is unlawful under the Controlled Substances Act, as periodically updated by the Food and Drug Administration.~~

~~"Is regarded as having such an impairment" means:~~

- ~~(A) has a physical or mental impairment that does not substantially limit major life activities but is treated by a covered entity as constituting such limitation;~~
- ~~(B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or~~
- ~~(C) has none of the impairments defined herein but is treated by a covered entity as having a substantially limiting impairment.~~

~~"Major life activities" means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.~~

~~"Physical or mental impairment" means:~~

- ~~(A) any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitor urinary, hemie and lymphatic, skin, and endocrine; or~~
- ~~(B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.~~

~~"Qualified individual with a disability" means an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position. For purposes of organizational policy, the Authority differentiates between a qualified person with a disability in the area of employment and a qualified person with a disability in the area of DRS programs. A qualified~~

~~individual with a disability is one who, with or without reasonable accommodation, can perform the essential functions of the position that the individual holds or desires. For the purposes of the ADA, consideration shall be given to the employer's judgement regarding what functions of a job are essential. If an employer has prepared a written job description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.~~

~~"Reasonable accommodation" means:~~

- ~~(A) modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or,~~
- ~~(B) modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or,~~
- ~~(C) modifications or adjustments that enable an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees.~~

~~"Substantially limits" means:~~

- ~~(A) unable to perform a major life activity that the average person in the general population can perform; or,~~
- ~~(B) significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner or duration under which the average person in the general population can perform the same life activity.~~

~~317:1-7-3. The Oklahoma Health Care Authority and the Americans with Disabilities Act~~

~~The Oklahoma Health Care Authority complies with the provisions of the ADA by prohibiting discrimination against individuals with disabilities. This prohibition applies to:~~

- ~~(1) Authority employees and individuals seeking employment. Qualified individuals with disabilities must receive equal consideration in:~~
 - ~~(A) job application procedures;~~
 - ~~(B) hiring advancement and discharge proceedings;~~
 - ~~(C) employee compensation;~~
 - ~~(D) job training; and~~
 - ~~(E) other terms, conditions and privileges of employment.~~
- ~~(2) Authority clients and persons applying for services. Qualified individuals with disabilities must have equal access to all services, programs and activities offered or provided by the Authority.~~
 - ~~(A) The Authority may comply with the Act by making its facility more accessible or by redesigning equipment or communication devices subject to the limitation in OAC~~

~~317:1-7-7.~~

~~(B) More specifically, the Authority may use the following mechanisms to comply with paragraph (2) of this subsection:~~

- ~~(i) Use auxiliary aids or services as designated in 28 C.F.R. §35.104 such as qualified interpreters, notetakers, transcription services, telephone handset amplifiers, telecommunications devices for deaf persons (TDD's), and brailled materials;~~
- ~~(ii) The use of assistive technology in the agency grievance process;~~
- ~~(iii) The availability of the grievance process in an alternate format;~~
- ~~(iv) The acquisition or modification of equipment or devices;~~
- ~~(v) The reassignment of services to accessible buildings, home visits, home hearings, or other ways to make its services more deliverable;~~
- ~~(vi) The use of an advocate, if necessary, to speak for the client; and~~
- ~~(vii) Other services and actions.~~

~~317:1-7-4. Requirement for reasonable accommodation~~

~~All divisions and units within the Oklahoma Health Care Authority are required to make reasonable accommodation to the known physical and mental limitations of otherwise qualified disabled employees, applicants and clients unless it can be demonstrated that the accommodation requested would impose an undue hardship on the operations of the Authority. Employment opportunities may not be denied to qualified disabled individuals if the basis for denial is the need to make reasonable accommodations to that person's physical or mental limitations. An otherwise qualified disabled person who is an applicant or client is not discriminated against because he or she does not meet the eligibility requirements of the program. Reasonable accommodation does not require the creation of new positions or promotion for employees with disabilities. However, reassignment of employees to existing positions may be necessary. Such a reassignment should be at the same grade and salary level and one for which the employee is qualified with or without reasonable accommodation. Once it has been determined that no reasonable accommodation is possible and an employee can not perform his or her job satisfactorily, if a reassignment is not possible and the individual does not desire to apply for disability retirement, the employee may be removed from his or her position for failure to perform if:~~

- ~~(1) there are no positions available for reassignment or placement; or~~
- ~~(2) the employee refuses an offer of reassignment or placement.~~

~~317:1-7-5. Examples of reasonable accommodation~~

~~(a) Examples of reasonable accommodation include, but are not limited to:~~

- ~~(1) making facilities used by employees readily accessible to and usable by persons with disabilities, such as making common areas accessible including entrances, hallways, restrooms, cafeterias and lounges;~~
- ~~(2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment and devices and the provision of readers or interpreters;~~
- ~~(3) for blind and visually impaired employees — rearranging fixtures and supplies, labeling shelves in braille, avoiding clutter in corridors and passageways, use of writing and drawing aids, optical aids such as magnifiers;~~
- ~~(4) for deaf and hard-of-hearing employees — shifting of phone answering responsibilities to other employees, use of amplification devices, use of a co-worker for receiving and transmitting communications that require use of the telephone during office conferences;~~
- ~~(5) for the mentally-retarded employees — breaking down other jobs into smaller, simple components and reassigning simple tasks; or reassigning simpler duties from higher-level employees; and~~
- ~~(6) for the physically less mobile — making architectural and other physical accommodations as needed.~~

~~(b) Each reasonable accommodation for a disabled employee is to be documented and all documents will be maintained in an appropriate manner within the Personnel Department.~~

~~317:1-7-6. Requests for reasonable accommodation~~

~~[Revised 3-01-06]~~

~~(a) An employee who wishes to file a request for reasonable accommodation should do so through a supervisor who will secure the proper forms from the Human Resources Division. An employee who disagrees with the proposed resolution to the request should contact his or her supervisor and mechanisms for resolving the dispute will be instituted through the Human Resources Division. All steps in the process should be documented completely by involved personnel. All requests and records related to the request will be maintained in an appropriate manner by the Human Resources Division. If there is a dispute between the Oklahoma Health Care Authority and an employee regarding reasonable accommodation, the employee may file a complaint with any state or federal agency which has jurisdiction over ADA complaints.~~

~~(b) A client requesting reasonable accommodation should be directed to the Office of the General Counsel, Oklahoma Health Care Authority, Suite 124, 4545 N. Lincoln Blvd., Oklahoma City, OK, 73105, or such address in the future which is the official mailing address of the Authority. The General Counsel will confer with the appropriate Director regarding the client's request for accommodation and notify the client of the resolution.~~

~~317:1-7-6.1. Requests to make services accessible~~

~~[Revised 3-01-06]~~

~~In the case a client or applicant for OHCA is denied a request~~

~~to OHCA to make services more accessible under the Americans with Disabilities Act, the client may appeal the denial to an OHCA Administrative Law Judge under OAC 317:2-1-2(c)(1)(A) or may appeal to the Department of Health and Human Services under 28 C.F.R. §35.190(3) or may seek any other remedy provided under law.~~

317:1-7-7. Undue hardship/undue burden

~~(a) **Employment.** The responsibility of the Authority to provide a reasonable accommodation to a job applicant or an employee is limited to those situations in which it would not be an undue hardship. Undue hardship means an action requiring significant difficulty or expense; one which is unduly, costly, extensive, substantial, disruptive or that will fundamentally alter the nature of the employment. The concept of undue hardship is not limited to financial difficulty, e.g., when an action would fundamentally alter the nature of the employment position. Whether a particular accommodation will be an undue hardship is determined on a case by case basis. Factors to be considered include:~~

- ~~(1) the nature and cost of the accommodation needed or requested;~~
- ~~(2) the overall financial resources of the Authority;~~
- ~~(3) the overall size of the Authority with respect to the number of employees;~~
- ~~(4) the number, type and location of the Authority facilities;~~
- ~~(5) the type of operations of the Authority, including composition, structure and functions of the workforce; and~~
- ~~(6) the impact of the accommodation on the operation of the Authority.~~

~~(b) **Programs.** The Authority is required to make its programs accessible when viewed in their entirety. It is not required to provide program access when it would result in a fundamental alteration in the nature of the program or undue financial or administrative burdens. However, if measures to provide full program access would result in a fundamental alteration or undue burdens, the Authority is still required to provide as much program access as possible without resulting in fundamental alteration or undue burdens. Furthermore, the Authority has the obligation to prove that providing program access would result in a fundamental alteration or undue burden and all funding resources must be considered. The decision that fundamental alteration or undue burdens would result must be made by the Administrator of the Authority. The decision must be documented in a written statement including the reasons for reaching the conclusion that fundamental alteration or undue burdens would result.~~

317:1-7-8. Retaliation or coercion

~~Individuals who exercise their rights under the ADA, or who assist others in exercising their rights, are protected from retaliation or coercion. Prohibited activities include harassment, threats, intimidation, or interference in the~~

~~exercises of rights under the law.~~