

# TWU EMPLOYMENT ADA HIRING GUIDE

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## AMERICAN'S WITH DISABILITIES ACT (ADA)

Texas Woman's University (TWU) cannot discriminate in hiring a "qualified individual with a disability". A "qualified individual with a disability" is defined as a person with a disability who satisfies the posted qualifications for the position and who is able to perform the essential functions of the job with or without reasonable accommodation.

If an applicant requests a reasonable accommodation, and in some cases if the employing department is aware of an applicant's disability and need for an accommodation, the employing department must analyze whether a reasonable accommodation to permit the applicant to perform the job is available that would not pose an undue hardship. TWU cannot refuse to consider requests for reasonable accommodation or reject applicants because they might need a reasonable accommodation.

TWU cannot discriminate in any aspect of the hiring process by refusing to consider qualified individuals with disabilities.

The obligation to make reasonable accommodations extends to the hiring process itself, including applications, and interviews.

There are substantial restrictions on a TWU hiring official's ability to ask questions about an applicant's physical or mental condition prior to an offer of employment. A TWU hiring official may make pre-offer inquiries to determine whether an applicant is qualified to perform essential functions.

Employing departments should insure that the selection criteria they utilize in their hiring processes are not discriminatory. Discrimination on the basis of stereotypes, a speculative risk of future injury, or the possible need for other accommodations in the future, are not allowable under the Americans with Disability Act (ADA).

### **TWU may legitimately refuse to hire any person with a disability who:**

- Lacks the minimum qualifications for the job.
- Is unable to perform the essential functions of the job.
- Requires a reasonable accommodation that would be an undue hardship.
- Would pose a direct threat to the health or safety of the individual or others.
- Fails to meet any other criteria that are job-related and consistent with department necessity.

### ***What Are the Essential Functions of a Job?***

Prior to posting a staff position vacancy, the employing department should review the detailed job description for the position to ensure that it adequately describes the essential functions of the job. An "essential function" is one which the employee hired **MUST** be able to perform with or without reasonable accommodation. The EEOC says that whether a particular function is "essential" is a determination that must be made on a case-by-case basis. Below are the EEOC guidelines for determining essential functions.

- Will employees in the position be required to perform the function? (Be sure to remove any functions from the job description that are no longer performed.)

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- Would removing the function fundamentally change the job?

Reasons why a function **COULD BE** considered essential:

1. The position exists to perform the function.
  - A person is hired to proof read documents. Proofreading, (and the ability to proofread accurately) is an essential function, because this is the reason that the position exists.
  - A position is advertised as a "floating" supervisor to substitute when regular supervisors on other shifts are absent. The only reason this position exists is to have someone who can work on any of the other shifts in place of an absent supervisor. Therefore, the ability to work at any time of day is an essential function of the job.
2. There are a limited number of other employees available to perform the function, or among whom the function can be distributed.
  - We may be required to restructure jobs and redistribute non-essential job duties to other employees as a reasonable accommodation.
  - If a department has a relatively small number of employees for the volume of work to be performed, functions that might not be essential if there were a larger staff may become essential.
3. A function is highly specialized, and the person in the position is hired for special expertise or ability to perform it.
  - A program is established to provide crisis counseling services to Spanish immigrants. For a vacant position, in addition to other applicable experience, it requires a person who can communicate fluently in the Spanish language. Fluent communication in the Spanish language is an essential function of the job.

### ***Types of evidence to be considered in determining whether a job function is essential, according to EEOC:***

- The employer's judgment,
- A written job description prepared before advertising or interviewing applicants for a job.
- The amount of time spent performing the function.
- The consequences of not requiring a person in this job to perform the function.
- The terms of a collective bargaining agreement.
- Work experience of people who have performed the job in the past and work experience of people who currently perform similar jobs.
- Other relevant factors such as:
  - \* Nature of the work operation.
  - \* The employer's organizational structure.

A written job description prepared before a job is advertised or applicants are interviewed will be more credible and given more weight than descriptions prepared after a disabled applicant is rejected.

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If a job description exists that omits particular functions, it could be viewed as evidence that those functions were not essential.

The job description containing essential functions should be shared with each applicant and the question asked, "Are you able to perform these functions, with or without a reasonable accommodation?"

### ***What is a Reasonable Accommodation?***

A reasonable accommodation in employment is a modification or adjustment to a job, the work environment, or usual practices in the workplace that enables a qualified individual with a disability to enjoy an equal opportunity, without imposing an undue hardship on the employer. Examples of reasonable accommodations in employment include:

- modifying facilities, entrances, or work stations
- restructuring a job to transfer non-essential functions that the disabled person cannot perform to other employees
- providing special equipment, modifying equipment, or providing qualified readers and interpreters
- reassigning a current employee who becomes disabled and can no longer perform his or her job to a vacant position for which the individual is qualified

Other points about reasonable accommodation:

- The employer's duty only extends to known physical or mental limitations of an otherwise qualified applicant or employee.
- Generally, the employer is not obligated to provide reasonable accommodation until a request is made, or until disability is made known to employer, as in the case of an obvious physical disability.
- Employers should not automatically assume that an accommodation will be needed and should not provide an accommodation without first consulting with the applicant or employee.
- Employers are not required to provide high-tech accommodations, or the accommodations requested by an applicant, if there is another simpler or less expensive accommodation.
- Employers are not required to provide reasonable accommodations if they impose "undue hardship." An undue hardship is an action that requires "significant difficulty or expense" in relation to the size of the employer, the resources available, and the nature of the operation. Our obligation to provide reasonable accommodations as a public employer may be assumed to be extensive, with the available resources being potentially not only those of the TWU, but of the State of Texas as well.
- Departments should consult with the ADA Officer or his/her designee, in the Office of Human Resources before determining that a reasonable accommodation is not feasible or would create undue hardship, or before rejecting an applicant due to a disability.

### ***Restrictions on Hiring Decisions***

**DO NOT** Refuse to hire an individual because the individual has asked for an accommodation.

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**DO NOT** Refuse to hire or consider an individual for a position merely because that person has a disability or is associated with a person with a disability.

**DO NOT** Refuse to consider or hire a person merely because that person has filed a past workers' compensation claim.

**DO NOT** Refuse to hire a person because you think it might increase insurance or workers' compensation cost or because you think that they may pose a threat to the health and safety of themselves or others. This decision cannot be made based on speculation; it requires the input of the ADA Officer, or his/her designee, in the Office of Human Resources (and other campus resources) to ensure that the decision is defensible.

**YOU MUST** Make or ensure that an individualized analysis is made before an applicant with a disability is rejected because of an inability to perform essential job functions or as a direct threat to the health and safety of the applicant or others. These decisions cannot be made based upon generalizations, stereotypes or assumptions.

**YOU MUST** Contact the ADA Officer, or his/her designee, in the Office of Human Resources for advice and guidance on every individual with a disability who:

- Requests a reasonable accommodation,
- You are considering rejecting because of a physical or mental condition, or,
- You are considering rejecting because of an inability to perform the essential functions of the job.

### ***Guidelines for Interviews***

The following rules apply whether you are interviewing an applicant for employment or an employee for promotion, or are conducting a reference check.

### ***Inquiries You Cannot Make:***

**DO NOT** Ask questions about whether the individual has a current disability or a past disability.

**DO NOT** Ask whether the individual has any serious illness (such as AIDS), back problems, a history of mental illness or any other physical or mental condition.

**DO NOT** Inquire how they became disabled or the prognosis of their disability if the individual has a disability that is obvious to the interviewer (such as an applicant that is missing a limb or uses a wheelchair).

**DO NOT** Ask questions about the nature or severity of the applicant's disability.

**DO NOT** Comment in any way on the individual's physical condition except as earlier described.

**DO NOT** Ask whether the individual wears a hearing aid or needs to wear glasses while on the job.

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**DO NOT** Ask questions about the applicant's past on-the-job injuries.

**DO NOT** Ask about the applicant's medical problems by requesting the applicant to identify if he or she has ever suffered from a list of ailments.

**DO NOT** Ask whether the applicant has ever been treated for any mental condition.

**DO NOT** Ask applicants to list any conditions or diseases for which they have been treated in the past.

**DO NOT** Ask whether the individual has ever been hospitalized, and if so, for what condition.

**DO NOT** Ask whether the individual has ever been treated by a psychiatrist or psychologist and, if so, for what condition.

**DO NOT** Ask whether applicants have had a major illness in prior years, or whether they have any current illnesses.

**DO NOT** Ask whether the applicant has ever been treated for drug addiction or alcoholism.

**DO NOT** Ask how many days the applicant was absent from work last year because of illness.

**DO NOT** Ask whether applicants are taking or have been taking any prescribed drugs.

**DO NOT** Ask whether the applicant has a sexually transmitted disease, such as the HIV virus.

**DO NOT** Ask whether an applicant has ever requested and/or received assistance or assistive devices in performing past jobs.

**DO NOT** Inquire about an applicant's past or current need for or receipt of medical or disability benefits.

**DO NOT** Ask about an applicant's past drug use or alcohol use.

**DO NOT** Ask any questions regarding whether an applicant is or ever has been a drug addict or an alcoholic.

**DO NOT** Ask whether the individual has ever filed a workers' compensation claim.

**DO NOT** Ask whether the individual has ever received an award of workers' compensation benefits.

**DO NOT** Ask whether an individual has ever been found to be disabled.

**DO NOT** Ask whether the individual has a spouse, children, or friends with disabilities.

**DO NOT** Ask about problems the individual has had because of a disability.

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**DO NOT** Ask questions of applicants with disabilities that you do not ask of other applicants, except as described under "Inquiries you must make."

**DO NOT** Ask whether the individual has any disabilities or impairments that may affect performance in the position.

**DO NOT** Ask whether the applicant has any physical defects that preclude the applicant from performing certain kinds of work, or ask the applicant to describe such defects or specific work limitations.

### ***Inquiries You Are Permitted to Make:***

***These are questions you may ask in interviews or during reference checks if they are asked of all persons applying for a particular category of job, regardless of a disability.***

**YOU MAY** Ask whether the individual needs any reasonable accommodations or assistance during the hiring or interviewing process.

**YOU MAY** Ask about the individual's ability to perform essential job functions.

**YOU MAY** Give a copy of the job description to the individual that identifies all essential functions and ask whether the individual is able to perform all of those essential functions with or without a reasonable accommodation.

**YOU MAY** Describe the job and ask whether the individual can perform those functions.

**YOU MAY** State TWU's standards and expectations and ask if the individual can meet those standards.

**YOU MAY** State TWU's policy regarding illegal drugs and alcohol.

**YOU MAY** State TWU's smoking policies.

**YOU MAY** State TWU's and departmental standards for attendance, including the availability of leave for newly-hired employees.

**YOU MAY** State the performance standards and expectations for a particular position.

**YOU MAY** Ask questions about any of the qualifications that TWU requires for the position, including: Education, Experience, Licenses, Training, Basic reading and writing skills, Mathematical skills, and other minimum qualifications set by TWU that do not expressly relate to physical or mental conditions.

**YOU MAY** Ask about the individual's attendance at prior jobs, if the question is limited to days off or number of days late for any reason, and is not limited to days missed due to illness.

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**YOU MAY** Ask whether the individual has ever been involved in an accident on-the-job that injured co-workers or customers.

**YOU MAY** Ask about an individual's accident record, especially accidents involving injury to property (such as traffic accident history for persons who will do driving) if you avoid questions about the individual's own injuries.

**YOU MAY** Ask an individual how he or she could perform tasks, and with what accommodations, if the applicant indicates that he or she can perform the tasks with an accommodation.

***Questions you may ask if the individual has an obvious disability or another disability known to you that you believe may interfere with or prevent the individual from being able to perform the essential functions of the job:***

**YOU MAY** Ask the individual to explain or demonstrate how he or she can perform the essential functions of the job, with or without a reasonable accommodation.

***If an applicant has a known or obvious disability that would not interfere with or prevent performance of the job, you CANNOT ask or require the applicant to demonstrate performance of a job function, unless all applicants for those positions are required to do so.***

### ***Inquiries You **MUST** Make***

***If the individual indicates that he or she has a disability and may require a reasonable accommodation:***

**YOU MUST** Inquire about the types of accommodations the individual believes may be necessary.

**YOU MUST** Make inquiries with the individual, and if necessary, with others, as to the nature and costs of the accommodations that may be necessary.

***If the individual has an obvious disability or a disability known to you that you believe will interfere with the applicant's ability to complete the pre-employment procedures, including pre-employment testing,***

**YOU MUST** Raise that concern with the individual and inquire whether the individual will require any reasonable accommodation during the hiring process.

### ***Sample Questions for Interviewers***

**Q:** Here is a job description for this position. Are you capable of performing each of the job duties on that description?

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**Q:** Our regular work hours are 8:00 to 5:00, but you may be required to work overtime during evenings and weekends, sometimes without much advance notice. Are you able to meet those requirements?

**Q:** New employees are not allowed to use vacation until completion of six months continuous service with the State. New employees get 8 hours sick leave accrual per month, which may be used as needed once earned. Sick leave is only for instances when the employee is actually ill, for doctor's appointments, or if a close family member living with the employee or dependent on the employee for care is ill and requires care. Otherwise, our expectations are that your attendance will regularly be 40 hours per week as scheduled. Can you meet these requirements?

**Q:** Did your prior employer ever criticize your attendance?

**Q:** One of the managers you will be working for does a lot of dictation using a dictaphone. Are you able to understand and transcribe dictation?

**Q:** This position requires receiving phone calls from outside individuals, students, or other employees that call into this office. There may be times when you are the only person available to take messages. Describe how you would perform this function.

**Q:** This position frequently involves receiving incoming correspondence and the review of that correspondence to determine its importance and destination. Describe how you would perform this function.

**Q:** This position involves loading and unloading and delivering supplies for eight hours per day with one hour off for lunch and two fifteen minute breaks. Would you be able to do that?

**Q:** The position requires that you be working out of doors in various weathers: in the heat of summer to mow, edge, and plant; and in winter weather to sand or sweep walkways in case of ice or snow. Would you be able to do this?

**Q:** This position requires the ability to lift and maneuver goods using fork lifts, hand trucks, and stack bed trucks. Individual items may weigh over 50 pounds. Are you capable of performing this function? Describe any related experience.

**Q:** This position will frequently involve climbing up ladders and walking on catwalks to install or service lighting equipment. Are you capable of doing that?

**Q:** One of the key responsibilities of this position will be to provide students with detailed information in response to their questions about course sequences and graduation requirements. Describe how you would perform this function.

**Q:** This position must be able to monitor the entrance doors and screen visitors, some of whom are allowed limited access to unsecured areas, and others who are not allowed access beyond the reception area. Describe how you would perform this function.

**Q:** This position must calculate and post time and attendance records for our entire department. Do you have prior experience performing this function?

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**Q:** This position involves composing memos and letters, and writing informational and instructional materials. Can you tell me about your previous writing experience and provide me with some samples of your writing?