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State of Montana ADA Coordinators
Montana Demographics
People with Disabilities

- 13.9% - all ages
- 1.1% - ages 4 and under
- 4.7% - ages 5 to 15
- 5.9% - ages 16 to 20
- 12.2% - ages 21 to 64
- 25% - ages 65 to 74
- 52.6% - ages 75+
Montanans by Type of Disability

- 2.4% - visual disability
- 4.6% - hearing disability
- 7.1% - ambulatory disability
- 5.1% - cognitive disability
- 2.3% - self-care disability
- 5.2% - independent living
Working-Age Montanans (ages 21 – 64) Employment and Earnings

- Working-Age Montanans with a Disability – 12.2%

- Employment Rate - 36%, compared to 77.5% for those without disabilities

- Full-Time/Full-Year Employment – 21.1%

- Annual Earnings - $36,300, compared to $38,300 for individuals without disabilities

- Annual Household Income - $39,100, compared to $56,200 for individuals without Disabilities
Montana is Aging

“"In 2000, Montana ranked 14th in the nation in percentage of our elderly population to total population. By 2025, just 14 short years away, Montana is projected to rank no less than 5th and could be as high as 3rd in the nation in the percent of those over the age of 65. This means that at least 25% or 1 in 4 people in Montana will be over the age of 65 by the year 2025.”

Montana State Plan on Aging, October 1, 2011, to September 30, 2015
Americans with Disabilities Act (ADA)

- Provides a clear and comprehensive national mandate to eliminate discrimination against individuals with disabilities
Titles Under the ADA

Title I - Employment

Title II - Public Services

Title III - Public Accommodations

Title IV - Telecommunications

Title V - Miscellaneous

National Network
Information, Guidance and Training on the Americans with Disabilities Act by DBTAC
Title I of the ADA

- It is illegal to discriminate against a qualified individual with a disability in any aspect of employment.
- Applies to employers with 15 or more employees and all public entities (state/local governments and schools).
- MT Human Rights Act applies to all employers.
- A qualified individual with a disability is a person who:
  - meets the requisite skill, experience, education, or other requirements of the job and
  - can perform the essential functions of the job with or without a reasonable accommodation.
Essential Function

- Basic job duties an employee must perform

- Job duties are essential if:
  
  - the position exists to perform the function;
  
  - a limited number of employees are available to perform the function; or
  
  - the incumbent requires a high degree of expertise or skill to perform the function.
Unlawful Employment Discrimination

- Illegal to discriminate in any aspect of employment:
  - Recruitment
  - Job Advertisements
  - Testing
  - Hiring & Firing
  - Pay & Compensation
  - Fringe Benefits
  - Promotions
  - Transfers
  - Classification
  - Retirement Plans
  - Layoffs
  - Recalls
  - Use of Facilities
  - Training Programs
  - Disability Leave
  - Other Terms & Conditions of Employment
Definition of a “Disability”

- A physical or mental impairment that substantially limits one or more major life activities;
- a record of such an impairment; or
- being regarded as having such an impairment.
Substantially Limits

- Unable to perform a major life activity as compared to most people in the general population
- Need not prevent or significantly or severely restrict
- Construed broadly in favor of expansive coverage
- Requires an individualized assessment
- Usually will not require scientific, medical, or statistical analysis
- Should not demand extensive analysis
Major Life Activities

- Caring for oneself
- Performing manual tasks
- Seeing
- Hearing
- Eating
- Sleeping
- Walking
- Standing

- Lifting
- Bending
- Speaking
- Breathing
- Learning
- Reading
- Concentrating
- Thinking
- Communicating

- Working
- Sitting
- Reaching
- Interacting with Others
- Communicating
- Working
- Sitting
- Reaching
- Interacting with Others
Major Bodily Functions

- Major life activities include operation of major bodily functions:
  - Immune system
  - Special sense organs
  - Skin
  - Normal cell growth
  - Digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, etc.
Should Easily be Concluded to be Disabilities

- Deafness
- Blindness
- Intellectual Disability
- Partially or Completely Missing Limbs
- Mobility Impairments Requiring a Wheelchair
- Autism
- Cancer
- Cerebral Palsy
- Diabetes
- Epilepsy
- Bipolar Disorder
- Post-Traumatic Stress Disorder
- Obsessive Compulsive Disorder
- HIV Infection
- Multiple Sclerosis
- Muscular Dystrophy
- Major Depressive Disorder
Episodic or in Remission

➢ An impairment that is episodic (such as epilepsy) or in remission (such as cancer) is a disability if it would substantially limit a major life activity when active.

✓ Epilepsy
✓ Hypertension
✓ Asthma
✓ Diabetes
✓ Major Depressive Disorder
✓ Bipolar Disorder
✓ Schizophrenia
Record of

- A history of an impairment that substantially limited one or more major life activities
- Misclassified as having had such an impairment
- May be entitled to reasonable accommodations for limitations resulting from or relating to a past impairment
Regarded as

- Prohibits discrimination because of an actual or perceived physical or mental impairment
- Protects against “unfounded concerns, mistaken beliefs, fears, myths, or prejudice about disabilities
- Does not include impairments that are both transitory (actual or expected duration of less than 6 months) and minor
Reasonable Accommodations

- Logical adjustment to the job or work environment

- Reasonable accommodations:
  - enable qualified individuals with a disabilities to perform the essential functions of the job;
  - enable employees with a disabilities to enjoy benefits and privileges of employment; and
  - promote equal opportunity during the employment process
Reasonable Accommodation Requests

- May be oral or written
  - supervisor or manager
  - ADA coordinator or EEO officer
  - human resource staff member
  - individual involved in the employment process

- Do not have to:
  - come from an employee or applicant;
  - be made at a specific time; or
  - include the words reasonable accommodation or ADA.

JAN Reasonable Accommodation Resources
Interactive Process

➢ Once an employee requests an accommodation, or an employer recognizes the need for an accommodation, the employer has a duty to participate in the interactive process.

➢ Both parties should engage in a dialogue and attempt to identify and agree upon a suitable and effective accommodation.

➢ Employers should respond expeditiously to the request - unnecessary delays can result in a violation of the ADA.
Interactive Process

Step 1: Recognizing an Accommodation Request

Step 2: Gathering Information

Step 3: Exploring Accommodation Options

Step 4: Choosing an Accommodation

Step 5: Implementing the Accommodation

Step 6: Monitoring the Accommodation

SUCCESSFUL ACCOMMODATION

Job Accommodation Network, Interactive Process Document
Questions to Consider

1. What limitations is the employee experiencing?
2. How do these limitations affect the employee and the employee’s job performance?
3. What specific job tasks are problematic as a result of these limitations?
4. What accommodations are available to reduce or eliminate these problems? Are you considering all possible resources?
5. Has the employee been consulted regarding possible accommodations?
6. Would it be useful to meet with the employee after accommodating to evaluate effectiveness of accommodations and determine whether additional accommodations are needed?
7. Do supervisory personnel and employees need training?
Types of Accommodations

- Making existing facilities readily accessible
- Job restructuring
- Part-time or modified work schedules
- Acquiring or modifying equipment
- Modifying exams, training materials, or policies
- Providing qualified readers or interpreters
- Reassignment to a vacant position

Job Accommodation Network (JAN) Study of Employers

- 56% of accommodations cost nothing
- Typical one-time cost of $600 for accommodations requiring a expenditure
Job Accommodation Network
Interactive Process Training

- Provides information for effectively managing workplace accommodations, practical aspects you need to know about workplace accommodations, and making sound accommodation decisions.

- Visit JAN Multi Media Library: http://askjan.org/training/library.htm
- View Interactive Process Module Length: 23 minutes.
- Download accessible transcript.
- Download accessible corresponding handout from JAN's Effective Accommodation Practices Series.
Accommodation Requests

- May be oral or written

- Do not have to:
  - come from an employee or applicant;
  - be made at a specific time; or
  - include the words reasonable accommodation or ADA.

- Employees or representatives may contact:
  - supervisor or manager
  - ADA coordinator or EEO officer
  - human resource staff member or other designated individual
  - individual involved in the employment process

JAN Reasonable Accommodation Resources
Medical Certification

- An employer may ask an individual for reasonable documentation about his or her disability and functional limitations when the disability or need for an accommodation are not obvious.

Resources:
- JAN Document: Medical Inquiry in Response to an Accommodation Request
- EEOC Guidance: Disability-Related Medical Inquiries and Examinations of Employees under the ADA
Confidentiality

- Any information related to a disability must be maintained as a confidential medical record.

- Only shared in limited circumstances with supervisors, managers, first aid, and safety personnel, and government officials investigating compliance with the ADA.
Responding to Questions

- Employers are prohibited from discussing reasonable accommodations with other employees.

- Employers may respond to questions by...
  - Reaffirming policies in place to assist employees having difficulty in the workplace
  - Emphasize that workplace issues are personal and the importance of respecting individual privacy
  - Distributing educational materials (i.e., the ADA, FMLA, etc.)
Medical Exams/Inquiries

- Employers may not ask disability-related questions or conduct medical examinations until they have made a conditional job offer to the applicant.
- "Disability-Related Question" means a question that is likely to elicit information about a disability.

**Stages of Employment**

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<thead>
<tr>
<th>Pre-Offer</th>
<th>Post-Offer</th>
<th>Employment</th>
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<tbody>
<tr>
<td>Employers may ask applicants:</td>
<td>Employers may:</td>
<td>Employers may not:</td>
</tr>
<tr>
<td>✓ about their ability to perform physical requirements of a job;</td>
<td>✓ ask disability-related questions, and</td>
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<tr>
<td>✓ job-related qualifications and skills; and</td>
<td>✓ require medical exams as long as they do it for all employees entering that job category</td>
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<td>✓ to describe or demonstrate how they would perform a job task</td>
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**EEOC Enforcement Guidance:**
Preemployment Disability-Related Questions and Medical Examinations
Recruitment and Hiring

- Job information should be in an accessible location.
- Printed job information should be available in accessible formats if necessary.
- Recruitment activities should be accessible.
- If only a telephone number is provided, a TTY or telecommunications relay number may be included.

EEOC Resource:
Recruiting, Hiring, Retaining, and Promoting People with Disabilities
The ADA Does Not Expect Employers To...

- Hire or keep people who are not qualified
- Bump an employee from a position or create a new position for a person with a disability
- Eliminate or redistribute essential functions
- Lower performance or production standards

EEOC Enforcement Guidance:

- Reasonable Accommodation and Undue Hardship under the ADA
- Applying Performance and Conduct Standards to Employees with Disabilities
The ADA Expects Employers To...

- Hire qualified candidates
- Clearly communicate performance expectations
- Use disciplinary processes fairly and consistently
- Keep records on employee performance and conduct
Undue Hardship

- Significant difficulty or expense
- Focuses on resources and circumstances in relationship to the cost or difficulty of providing the accommodation
- Unduly extensive, substantial, or disruptive, or would fundamentally alter the nature or operations

EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the ADA
Direct Threat to Health and Safety

- Do not have to approve requests that would impose a significant risk of substantial harm
- Decisions must be based on **objective, factual evidence** regarding the individual's present ability to perform essential functions
- Decisions cannot be speculative or based on remote risks
- Must consider whether risk can be eliminated or reduced to an acceptable level

EEOC Enforcement Guidance:
*Reasonable Accommodation and Undue Hardship under the ADA*
Hot Topics

- Alcoholism and the ADA
- Pregnancy and Childbirth
- Excessive Absences (Leave Issues)
- ADA, FMLA, and Work Comp…Oh My!
Disability Etiquette

- Don't make assumptions about what someone can or can't do
- Don't assist without asking
- Avoid terms like disabled, handicapped, crippled, retarded, wheelchair bound
- Speak with participants, not their interpreter
- Use people-first language
- Don't be concerned about using common, every-day phrases
- Ask for clarification if you don't understand what a person with a speech impairment is saying
- Remember, service animals aren't pets
Disability-Related Resources

- U.S. Department of Justice, www.ada.gov
- Rocky Mountain ADA Center, http://www.adainformation.org/
- AskEarn.org http://askearn.org/index.cfm
Federal Tax Incentives

- **Disabled Access Credit**
  - Tax incentives for “eligible small businesses”
  - Recoup up to 50% of “eligible access expenditures” for expenses between $250 and $10,250
  - Maximum credit of $5,000 per year

- **Architectural & Transportation Barrier Removal Deduction**
  - Up to $15,000 for making a facility or public transportation vehicle accessible and useable to people with disabilities

- **Work Opportunity Tax Credit**
  - Reduces an employers’ federal income tax liability as much as:
    - $2,400 for each new adult hire;
    - $1,200 for each new summer youth hire;
    - $4,800 for each new disabled veteran hire; or
    - $9,000 for each new long-term family assistance recipient hired over a two-year period; and
  - Also benefits for hiring unemployed veterans who meet certain criteria