

The ADA: Essential Functions, Qualification Standards, and Reasonable Accommodation

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The Basics

- A covered entity may not discriminate in employment on the basis of disability.
- To be qualified for a job, a person with a disability (PWD) must be able to perform the **essential functions of a job**, with reasonable accommodation if necessary, up to the covered entity's performance standards.
- If a covered entity uses a **qualification standard (QS)** that screens out a PWD on the basis of disability, it must justify that standard.

Essential Functions v. QS

- **Essential functions** are the core **duties of the job** – that is, the tasks, the outcomes, the results that must be achieved by a person in a particular job.
- **Qualification standards** are the **selection criteria** used by a covered entity to determine **if a person is qualified for the job** – for example, safety requirements, vision or hearing requirements, walking requirements, lifting requirements, or employment tests. (29 C.F.R. § 1630, App.).

Distinguishing Between EF and QS

Covered entities should start by **establishing the essential functions of a position** – i.e., what needs to be **accomplished in the job**. For example:

- **collecting and distributing mail** might be an essential function for a **postal clerk**;
- **clearing a room upon entry** might be an essential function for a **law enforcement officer**; and
- **practicing law** in state and federal court might be an essential function for an **attorney**.

Once the essential functions are established, the covered entity can put into place **qualification standards** designed to ensure that an employee can **perform those essential functions up to the entity's standards**. For example:

- The ability to transport packages **weighing up to 30 lbs** could be a qualification standard for a **postal clerk**;
- **Vision up to a certain level** could be a qualification standard for a **law enforcement officer** expected to clear rooms; and
- An **active legal license** permitting an attorney to appear in state and federal courts could be a qualification standard for an **attorney**.

In general, **deference** is given to covered entities in determining **what the essential functions of a job are** and in setting the **level of performance expected** of all employees.

There is a **strict legal standard** placed on covered entities in **justifying a qualification standard** that screens out people with disabilities on the basis of disability.

Legal Standard for Justifying a QS

Employing a QS that screens out persons with disabilities **violates** the ADA **unless** the covered entity can show that:

- 1) the standard is **job-related** and **consistent with business necessity**; and
- 2) performance cannot be accomplished by **reasonable accommodation**.

TRANSLATION

- There must be a **fit** between the QS employed and the essential function it is **matched with** – i.e., the covered entity must demonstrate that the standard used is “**carefully tailored to measure [an individual’s] actual ability to [perform] the essential function of the job.**” H.R. Rep. 101-485(II) at 36, 1990 U.S.C.C.A.N. 303, 353-5.
- Once the entity proves such a fit, there is a second step in the defense: can such performance be met through a **reasonable accommodation?**

Reasonable accommodation & QS

- A reasonable accommodation may be one that enables the person **to meet the QS itself**-- e.g. using a device that enables the person to lift 30 lbs; and/or
- A reasonable accommodation may be an opportunity for a person to demonstrate that she or he is able **to perform the essential function** of the job despite not meeting the QS itself -- e.g. an ability to safely clear a room even without meeting a particular vision standard.