# Table of Contents

Introduction ................................................................................................................. 3

COVID-19 Health and Safety Policies and Plans, Including Telework ............... 3

Retraining Workers for the Post-Pandemic Economy ........................................... 4

Accessibility of Websites, Online Systems, Mobile Apps and Other Forms of Information and Communication Technology ........................................... 5

The Gig Economy ....................................................................................................... 6

Artificial Intelligence ................................................................................................. 7

Voluntary Affirmative Action ..................................................................................... 8

Centralized Accommodation Programs ................................................................. 8

Personal Assistance Services .................................................................................... 9
INTRODUCTION
July 26, 2021 marked the 31st anniversary of the Americans with Disabilities Act (ADA). Title I of the ADA ensures that employers adopt policies that are inclusive of, and afford equal employment opportunities to, qualified applicants and employees with disabilities. Disability-inclusive policies are consistent with the following principles:

- **Individualization**—basing policies and practices on facts, objective evidence, and science rather than fear, ignorance, labels, prejudice or myths about the limitations of people with disabilities.
- **Effective and meaningful opportunity**—providing reasonable accommodations absent undue hardship.
- **Inclusion**—placing and providing services and supports in the most integrated setting possible.
- **Methods of administration**—using strategies that support, rather than obstruct, effective and meaningful opportunity and inclusion.

The ADA anniversary is an opportunity to celebrate the advances that people with disabilities have made over the last 31 years. Of particular importance is that disability is now recognized as a natural and normal aspect of the human experience that in no way diminishes a person’s right to fully participate in all aspects of society, including employment. ADA Month also offers the chance to celebrate efforts by the business community to adopt disability-inclusive policies and to transform these policies into practice.

In addition, the ADA anniversary is a good time for businesses to renew their commitment to ensuring company policies and practices are inclusive of people with disabilities. It is also an opportunity to explore emerging ADA implementation issues, including:

- COVID-19 health and safety policies and plans, including the use of telework;
- Retraining workers to fit the needs of the post-pandemic economy (as known as “reskilling” or “upskilling”);
- Accessibility of websites, online systems, mobile apps and other forms of information and communication technology (ICT);
- Considerations related to the “gig economy;”
- Artificial intelligence;
- Voluntary affirmative action;
- Centralized accommodation programs; and
- Personal assistance services (PAS).

This brief includes links to EARN resources and those developed by the Job Accommodation Network (JAN), the Partnership on Employment & Accessible Technology (PEAT), the State Exchange on Employment & Disability (SEED), as well as other organizations.

COVID-19 HEALTH AND SAFETY POLICIES AND PLANS, INCLUDING TELEWORK
In the wake of the COVID-19 pandemic, federal, state and local policymakers are issuing post-pandemic guidance, and businesses are developing reopening plans based on that guidance. These policies and plans include management strategies, preventive measures to reduce the transmission of the COVID-19 virus (e.g., vaccinating, screening, testing, face coverings and personal protective equipment), and strategies to protect workers against discrimination.
While it is important that employers ensure that these programs and plans are consistent with the guidance provided by federal, state and local entities, it is critical that they are inclusive of individuals with disabilities as well. Disability-inclusive post-pandemic policies and plans include references to guidance adopted by the Equal Employment Opportunity Commission (EEOC), the Department of Labor's Occupational Safety and Health Administration (OSHA) and the Centers for Disease Control and Prevention (CDC). Disability-inclusive policies and plans also consider how the ADA (including the reasonable accommodation and confidentiality provisions) applies to particular situations such as telework, use of personal protective equipment, face coverings, vaccinations and training of managers and supervisors.

**COVID Health and Safety Policies and Plans Resources**

- EARN Publication: Disability-Inclusive COVID-19 Workplace Health and Safety Plans
- EARN Publication: COVID-19 and Job Applicants and Employees with Disabilities: Emerging Practices to Employ and Protect Workers
- EARN Webpage: COVID-19 Workplace Resources and Tools
- EARN Webinar: Getting Ahead of the Curve: Ensuring Safe, Healthy and Inclusive Workplaces During the COVID-19 Recovery
- EARN Publication: Adopting an Integrated Telework Policy for Employees With and Without Disabilities
- JAN Accommodation and Compliance: Coronavirus Disease 2019 (COVID-19)
- JAN Accommodation and Compliance: Telework
- The Council of State Governments & SEED Report: Disability-Inclusive Telework for States: State Approaches to Increasing Access and Inclusion
- PEAT Telework and Accessibility Toolkit

**RETRAINING WORKERS FOR THE POST-PANDEMIC ECONOMY**

The post-pandemic economy will need to address workforce trends that were already in progress prior to the pandemic, as well as those that have developed or increased due to it. These trends include use of remote work, automation (using machines to do work previously done by humans) and digitization (converting information into computer-readable formats). In the wake of the pandemic, these developments have impacted changes in industries, occupations and job-related tasks, including the elimination of some jobs.

These changes, now heightened by the pandemic, mean that employers need a workforce of life-long learners who are continuously developing skills, including critical thinking, communication, problem-solving and emotional intelligence.

To minimize the negative impact of these trends on people with disabilities and others, employers, in collaboration with public workforce systems, will need to teach employees new skills. This may mean additional skills needed to better perform a current role (known as “upskilling”) or an entirely new set of skills to prepare someone for a different role (known as “reskilling”). Consistent with the ADA, these efforts must be disability-inclusive. That means that they must take into consideration the needs of people with disabilities at the initial design stages and provide reasonable accommodations at the implementation stages.
Regular retraining of workers will contribute to a culture of continuous learning. By actively managing their workforce and developing operations that they can change and adapt quickly, employers can better position themselves to achieve their mission and goals effectively and efficiently.

**Retraining Resources**

- The Council of State Governments Report: [The Future of the Workplace: Approaches to Increasing Access and Inclusion](#)
- U.S. Office of Personnel Management [Reskilling Toolkit](#)

**ACCESSIBILITY OF WEBSITES, ONLINE SYSTEMS, MOBILE APPS AND OTHER FORMS OF INFORMATION AND COMMUNICATION TECHNOLOGY**

In today's workplace, information and communication technology (ICT) is one of the central drivers of productivity and success for all workers. But when ICT is not accessible to everyone, it prevents equal access to information and becomes a barrier to employment. Inaccessible ICT can limit opportunities for people with disabilities to get hired or to succeed at work because they cannot access basic workplace tools to perform their job duties. On the flip side, when all of the technology an organization uses is accessible to and usable by all, including people with disabilities, it can optimize success and productivity on the individual and organizational level.

When talking about ICT, “accessibility” and “usability” mean tools that can be used successfully by people with a wide range of abilities and disabilities. When technology is accessible and usable, each user is able to interact with it in ways that work best for them. Accessible technology is either directly accessible, whereby it is usable without additional assistive technology (AT), or it is compatible with AT. For example, a mobile smartphone with a built-in screen reader is directly accessible, whereas a website that can be navigated effectively by people with visual impairments using a screen reader is AT-compatible.

Broadly, areas where employers may need to address technology accessibility and usability include:

- Web-based intranet and internet information and applications
- Email and other electronic correspondence
- Software applications and operating systems, including customer management software, project management tools, and HR management systems
- Telecommunications products
- Video and multimedia products
- Desktop and portable computers
- Self-contained, closed products, such as calculators, copy machines and printers
- Online job applications
Accessible ICT Resources

- EARN Webinar: Digital Accessibility: Driving Disability Inclusion in the Workplace
- EARN Webinar Learning Guide
- EARN and PEAT Fact Sheet: 10 Tips for an Accessible Website
- PEAT Publication: Why Accessible Technology Matters
- PEAT Webpage: Digital Accessibility
- PEAT Article: How is the Department of Justice Addressing Website and ICT Accessibility?
- PEAT Webpage: How to Implement Website/ICT Accessibility Policies

THE GIG ECONOMY

The “gig economy” refers to situations where companies hire workers for specific short-term projects or “gigs,” either on a temporary or part-time basis or as independent contractors. Gig economy workers complete tasks on a project-by-project or client-by-client basis, often by sharing and selling goods and services on web-based platforms or apps. Examples of gig economy workers include Uber and Lyft drivers, workers who are placed through temporary agencies, for-hire workers using platforms or apps like Fiverr or Task Rabbit, and freelance workers such as writers, photographers, consultants, artists or journalists.

The design of online platforms or apps is of critical importance when it comes to how workers, customers and companies interact in the gig economy. Since the “vendors” in the gig economy are individuals, the platforms are the marketplace, and therefore need to be accessible to and usable by vendors and customers with disabilities. Making these systems accessible to everyone, including people with disabilities, ensures that everyone has equal access to the goods and services provided through these apps.

Another significant issue relating to the gig economy in the context of labor and employment law is worker classification, meaning whether gig economy workers qualify as employees or independent contractors. Companies that use contractors, freelancers or temporary workers need to make sure workers are properly classified. This is important because individuals considered employees are covered by Title I of the ADA, whereas independent contractors are not. The EEOC, Department of Labor, Internal Revenue Service (IRS), states and courts have adopted or are considering adopting a variety of factors to determine if an individual is an employee or an independent contractor.

Gig Economy Resources

- PEAT Article: Universal Access to the Gig Economy for People with Disabilities
ARTIFICIAL INTELLIGENCE

The use of artificial intelligence (AI) in the workplace is becoming increasingly common, including using technology to screen applicants, streamline the application process, provide on-the-job training, disseminate information to employees and enable workers to become more productive. The term “artificial intelligence” encompasses techniques used to teach computers to learn, reason, perceive, infer, communicate and make decisions similar to or better than humans, such as visual perception, speech recognition, decision-making and translation between languages.

While the use of AI is expanding, the equity, diversity and inclusion movement is also growing, based on evidence that a more diverse and inclusive workforce results in a more effective and innovative company. The combination of the increased use of AI and the diversity and inclusion movement is causing employers to recognize that if they are not careful, it is possible that using AI may actually hurt rather than help efforts to recruit, hire, retain and advance people with disabilities.

Discrimination in the screening process may occur for many reasons, including:

- Systematic bias can occur if data used to train an AI model contains human decisions that are biased, and the bias is then passed on to the learned model.
- Lack of representation in data sets can also cause bias. AI methods may be inaccurate or simply not work for some individuals because their appearance, speech or other behaviors are outside the AI’s training data (outliers).
- Bias can occur when skills, aptitudes or other factors are not directly measured, and other data are used instead.

In contrast to concerns raised by the use of AI during the screening process, employers are recognizing the numerous AI applications now available that can make the workplace more accessible to and usable by all workers (a concept known as “universal design”). In particular, AI applications are being used as reasonable accommodations to enable workers with disabilities to perform the essential functions of their jobs more effectively.

AI Resources:

- [EARN Policy Brief: Use of Artificial Intelligence to Facilitate Employment Opportunities for People with Disabilities](#)
- [EARN Checklist for Employers: Facilitating the Hiring of People with Disabilities Through the Use of eRecruiting Screening Systems, Including AI](#)
- [PEAT Podcast: Protecting People with Disabilities Against Discrimination with AI in Employment](#)
- [PEAT Podcast: How Artificial Intelligence Creates Discrimination in HR and Recruiting](#)
- [PEAT Podcast: Making Artificial Intelligence Inclusive for Hiring and HR](#)
VOLUNTARY AFFIRMATIVE ACTION

Today, more and more businesses across the U.S. are recognizing the value of a workforce inclusive of people with disabilities, and taking steps to bring them on board. Personnel responsible for recruitment and hiring are using a variety of innovative and proactive practices to help in this regard, including adoption of voluntary affirmative action programs that are designed to benefit individuals with disabilities (whether known or voluntarily disclosed).

Creating a voluntary affirmative action program to recruit and hire individuals with disabilities does not need to be complicated. Under Title I of ADA and other disability rights laws, pre-employment questions related to disability status are generally prohibited to protect applicants from discrimination. However, this protection does not preclude employers from proactively recruiting and hiring individuals with disabilities. The ADA and other disability rights laws are meant to encourage and support practices that benefit individuals with disabilities.

Also, the ADA, by its terms, only protects individuals with disabilities from discrimination—it does not protect individuals without disabilities. Thus, an employer would not be violating the ADA by requiring that applicants for a particular position have a disability, or adopting a recruitment initiative focused on people with disabilities.

If the employer invites applicants to voluntarily self-identify in connection with providing affirmative action, the employer must do the following:

1 | State clearly on any written questionnaire or state clearly orally (if no written questionnaire is used) that the information requested is used solely in connection with its affirmative action obligations or efforts.

2 | State clearly that the information is being requested on a voluntary basis, that the information will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with the ADA.

3 | To ensure that the self-identification information is kept confidential, the information must be on a form that is kept separate from the application.

Voluntary Affirmative Action Resources

- EARN Publication: Taking Disability Into Account: Proactive Recruitment and Hiring Practices
- JAN Consultants’ Corner: Affirmative Action and Disability: What Can Employers Ask?

CENTRALIZED ACCOMMODATION PROGRAMS

Creating a culture where applicants and employees feel comfortable requesting accommodations needed to perform the essential functions of their job usually leads to positive experiences for all employees, including employees with disabilities. While companies are required by Title I of the ADA to provide reasonable accommodations (absent undue hardship), easy access to accommodations for both applicants and employees also demonstrates an organization’s commitment to equity, diversity and inclusion. Key to fostering a disability-inclusive workplace is the adoption of straightforward policies and processes for providing effective and cost-efficient reasonable accommodations.
A best practice in this regard is the establishment of a centralized accommodation program (CAP), which can:

- Streamline the accommodation process by consolidating subject matter expertise necessary to assess, evaluate and implement effective and meaningful accommodations.
- Ensure funding streams for some or all accommodations at a level removed from the department or unit in which the individual is working, thus removing department-level disincentives to provide accommodations.

With top leadership buy-in and stakeholder input from multiple channels, it is possible to develop a successful CAP that is tailored to the organization’s structure. A CAP may serve a consultative role with accommodation funding decisions across business lines, or it may be a single office for negotiating and funding accommodations. Choosing a model that works best for an organization depends on its size, scope and internal processes.

**CAP Resources**

- [EARN Publication: Increasing Disability Inclusion: Centralized Accommodation Programs as a Best Practice](#)
- [EARN Publication: Centralized Accommodation Programs in Practice](#)

**PERSONAL ASSISTANCE SERVICES**

Under Title I of the ADA, employers are required to provide certain job-related services and supports to individuals with disabilities as reasonable accommodations, if doing so would enable them to apply for a job, perform essential job functions or enjoy the benefits and privileges of employment (absent undue hardship). However, provision of personal assistance services (PAS) that are needed on the job, such as assistance in eating, toileting and dressing, is not considered a reasonable accommodation under Title I of the ADA or as a matter of nondiscrimination under other federal civil rights laws.

On January 17, 2017, the EEOC updated the regulations implementing Section 501 of the Rehabilitation (nondiscrimination and affirmative action by federal agencies) to mandate the provision of PAS as a form of affirmative action. A number of private companies have chosen to adopt similar policies.

**PAS Resources**

- [JAN Accommodation and Compliance: Personal Assistance Services (PAS) in the Workplace](#)
- [EEOC Questions and Answers: Federal Agencies’ Obligation to Provide Personal Assistance Services Under Section 501 of the Rehabilitation Act](#)

The anniversary of the ADA is a time to celebrate, reflect and re-examine efforts to make the workplace inclusive of all people, including individuals with disabilities. It is also an opportunity to recommit to removing barriers to accessibility (both physical and virtual) and providing reasonable accommodations, and to look ahead to the future. During ADA anniversary month, and throughout the year, it is important that employers remember that achieving diversity, equity, inclusion and accessibility is a journey that requires leadership, management by objectives and ongoing awareness.