

# Introduction to the November 2025 edition of *Disability Law Compliance Manual*

*Disability Law Compliance Manual*, written by Gary S. Marx, provides guidance needed to help your clients or a company comply with the ADA and minimize litigation, by examining the statutory language, administrative regulations, common liabilities, means of accommodation, and the overlap of ADA with workers' compensation laws and the FMLA.

The November 2025 edition of *Disability Law Compliance Manual* includes updated discussions of cases, statutes, and regulations. Among the materials update in this edition are:

- **§ 1:7. Other impairments:** It is important to emphasize that the impairment does not have to impact the employee's ability to perform their job duties as long as it substantially impairs a major life activity.
- **§ 2:2. Legal obligations:** The Second Circuit has held that a straightforward reading of the ADA confirms that an employee may qualify for a reasonable accommodation even if they can perform the essential functions of their job without the accommodation.
- **§ 2:11. Employers exceeding ADA accommodation requirements:** Generally, absent some change in circumstance, an employer may not rescind an accommodation simply because it is inconvenient or burdensome provided that it was reasonable in the first instance.
- **§ 2:15. When employer is obligated to make reasonable accommodation:** Whether a delay is unreasonable does not lend itself to bright-line rules because it is not possible to say that a delay of any particular duration will invariably be reasonable regardless of the surrounding circumstances.
- **§ 2:27. Undue hardship factors:** The employer must produce at least some modicum of evidence of the asserted hardship, financial or otherwise.
- **§ 3:30. Drug tests:** Post-accident drug testing is considered a medical examination, and, as such, requires the employer to show it is job-related and consistent with business necessity.
- **§ 3:38. Fitness for duty:** Courts have held that the business necessity test for a medical examination request is similar, if not identical, to a justification under the general test for evaluating legitimate, nondiscriminatory reasons under the *McDonnell Douglas* framework.
- **§ 4:3. Nondiscrimination in all employment practices—Meaning of nondiscrimination:** Courts have repeatedly noted that disagreement with an employer over the terms of employment or an accommodation does not amount to harassment.
- **§ 4:29. Retaliation:** Assistance to co-workers in their requests for reasonable accommodation has been held to be protected activity.
- **§ 5:6. Qualification standards and selection criteria—Reasonable accommodation requirement:** An employee who was a direct threat to himself was not a "qualified individual" where the medical evidence was not particularly strong but the severity of the harm caused by risk was significant.
- **§ 8:13. Qualifying reasons for leave—Serious health condition:** A pregnant employee's entitlement to FMLA leave for a condition relating to her pregnancy is not absolute.
- **§ 8:18. Amount of leave—Intermittent leave or reduced leave schedule:** Leave due to a qualifying exigency may be taken on an intermittent or reduced leave schedule basis.
- **§ 8:31. Employee right to reinstatement—Limitations on an employee's right to reinstatement:** If the employer takes an adverse action based on a

good-faith belief that an employee engaged in misconduct, then the employer has acted because of perceived misconduct, not because of protected status or activity.

- **§ 8:35. Protection for employees who request leave or otherwise assert FMLA rights:** The assistance to co-workers in their requests for rights protected by federal law has been held to be protected activity
- **§ 9:4. Definition of “places of public accommodation”:** Title III’s reach is not limited to services occurring on the premises of a public accommodation.
- **§ 10:4. Equality in participation and benefits:** Most courts have held that the burden is on the plaintiff to show that the disability is the cause-in-fact, or “but-for” cause, of the plaintiff’s exclusion.
- **Appendices A1, A2, A3, A6, A7, C2, and C3 have been updated**

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