



## Who is Regarded as Having a Disability?

The Americans with Disabilities Act is a federal civil rights law designed to prevent discrimination and enable individuals with disabilities to participate fully in all aspects of society. However, the law protects more than just people who are deaf, people who are blind, or people who use wheelchairs.

### Who Is Protected By ADA?

The ADA applies to **a person who has** a physical or mental impairment that substantially limits one or more major life activities (like sleeping, standing or sitting).

The ADA also protects **a person with a record** of a substantially limiting impairment. For example, a person with a history of cancer that is now in remission may be covered.

Finally, the ADA protects a person **who is regarded** (or treated by an employer) as if s/he has a substantially limiting impairment.



Sometimes, a person may be covered even if s/he has no impairment or has a minor impairment, particularly if the employer acts based on myths, fears, or stereotypes about a person's medical condition.

The U.S. Equal Employment Opportunity Commission (EEOC) recently announced a conciliation agreement reached with Gilroy Foods and its owner, ConAgra Foods, Inc. This resolves complaints filed with the EEOC alleging disability discrimination at an onion and garlic dehydration plant. The federal investigation found that workers were denied hire, in violation of the Americans with Disabilities Act (ADA). Providing compensation of \$993,500 and job offers (estimated value of \$500,000) for thirty-nine workers, this agreement is the largest disability settlement ever for the EEOC in the agricultural industry.

In addition to the monetary benefits and job offers, ConAgra has committed to ADA training for all its management staff and to post notices about the agreement for a year.

## Workers' Compensation Carriers May Request I-9 Forms

The Office of Foreign Assets Control (OFAC) of the US Department of the Treasury administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction.

U.S. individuals and companies may not engage in transactions with sanctioned individuals and countries. These are detailed in a list of Specially Designated Nationals (SDN) For information go to [www.treas.gov/ofac](http://www.treas.gov/ofac).

Insurance companies may not make payments to individuals on the SDN list. To comply with these laws, insurance companies may screen payees against the SDN list. This may affect employers.

If there is a potential match on Workers' Compensation payees, the insurance company may come to the employer and request a copy of an I-9 form. If an employer does not have the I-9 form to furnish to the carrier, delays in payments to injured workers may result.

Additionally, failure to obtain a properly completed I-9 form may put an employer at risk of violating immigration laws and regulations.

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*ADA continued....*

In July 1999, the Teamsters Local 890 led a strike of 750 workers at 800-worker plant in King City. In November 2000, ConAgra bought the facility, and in August 2001, it successfully negotiated with the union to end the two-year strike with a new contract that would recall workers based on seniority.

However, the recall process excluded people who were on leave at the time of the purchase including those out due to work injury or pregnancy. Others were denied jobs due to a history of previous injury or illness, even though they had been doing the work for years and had no restrictions against returning to work.

Most of the thirty-nine workers who were excluded from the recall process had been working at the plant processing garlic and onions for ten to twenty years and some even longer. Primarily Hispanic and mostly female, many of them were in their thirties and forties and married with children.



*For more information on these or other Compliance Issues, contact your **Spetner Associates** Compliance Check specialist at 800-737-4535.*

EEOC Enforcement Supervisor Rich Proulx, who oversaw the investigation and negotiation of this case noted that ConAgra's recall process denied jobs to workers who were on leaves of absence at the time of the purchase and those who had medical records of impairment or illness without properly assessing each worker's qualifications. The workers in this case were regarded as having disabilities and were therefore protected.

Title I of the ADA prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, discharge, advancement, compensation, job training, and other terms and conditions of employment.

*BCIS continued....*

Recently, services formerly provided by the Immigration and Naturalization Service (INS) transitioned into the Department of Homeland Security (DHS) under the Bureau of Citizenship & Immigration Services (BCIS). The services provided include regulation, administration and enforcement of the I-9 process.



In support of the DHS overall mission, the immediate priorities of the new BCIS are to promote national security, continue to eliminate immigration adjudications backlogs, and implement solutions for improving immigration customer services. The BCIS will continue efforts to fundamentally transform and improve the delivery of immigration and citizenship services. For additional information, you may go to [www.bcis.gov](http://www.bcis.gov).

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