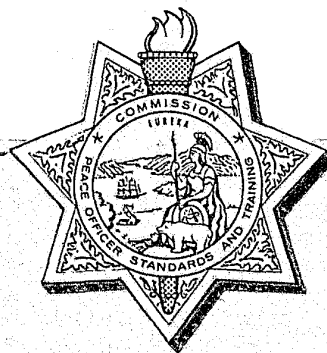


THE AMERICANS WITH DISABILITIES ACT OF 1990:

QUESTIONS AND ANSWERS

137731



**THE COMMISSION
ON PEACE OFFICER STANDARDS AND TRAINING**

STATE OF CALIFORNIA

U.S. Department of Justice
National Institute of Justice

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THE AMERICANS WITH DISABILITIES

ACT OF 1990:

QUESTIONS AND ANSWERS

May, 1992

The Commission
on Peace Officer Standards and Training

State of California

NCJRS

AUG 8 1992

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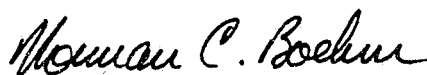
Executive Director
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PREFACE

The employment provisions of the recently passed federal Americans with Disabilities Act (ADA) will have an impact on virtually all employers throughout the country, including law enforcement agencies. Current examination and very likely modification of certain personnel practices will be necessary to ensure that students, applicants and employees with disabilities are not unnecessarily prevented from gainful employment opportunities.

This document, *The Americans with Disabilities Act of 1990: Questions and Answers*, was developed in response to numerous requests for information and clarification on the impact of the ADA on the employment practices of law enforcement agencies and related organizations. We hope that the concrete guidance herein assists those organizations in their examination of current personnel practices to ensure full compliance by the implementation date of July 26, 1992. We have made every attempt to provide the most accurate information possible, not only by careful review of the Act and attendant regulations, but also by consulting attorneys and other persons knowledgeable about the likely implications of the ADA. Nevertheless, absent any case law, uncertainties exist concerning the proper interpretation of various provisions of the Act. We therefore, encourage you to consult with your legal advisors as you contemplate changes in your personnel practices.

POST invites and welcomes requests for additional information. Included in the text are the names, locations and phone numbers of several organizations (including POST) that can be contacted for further inquiries and assistance.



NORMAN C. BOEHM
Executive Director

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THE AMERICANS WITH DISABILITIES ACT OF 1990

Introduction

The Americans With Disabilities Act (ADA) was signed into law by President Bush on July 26, 1990. The ADA has five "titles" (i.e., sections) which together prohibit discrimination against qualified persons with disabilities in the areas of employment, public services and transportation, public accommodations, and telecommunication services. The focus of this informational paper is on Title I - Employment; however, Title II - State and Local Government Operations - will be discussed where appropriate.

History

In 1973, the federal Rehabilitation Act of 1973 was enacted to promote and expand employment opportunities for handicapped individuals in both the public and private sectors (29 USC 711). Two sections of the Rehabilitation Act are especially significant: **section 503**, which prohibits employers with federal contracts and subcontracts greater than \$2500 from discriminating against handicapped individuals, and requires that contractors take affirmative action to employ and promote in employment qualified handicapped individuals; and **section 504**, which applies to recipients of federal financial assistance, and prohibits discrimination against qualified handicapped individuals by any program or activity receiving federal financial assistance (regardless of whether that assistance is to provide employment).

Since only federal contractors or those who receive federal financial assistance are subject to the Rehabilitation Act, most states have enacted statutes that prohibit private and non-federal government employers from discriminating against applicants and employees due to a handicap. In California, the 1982 Fair Employment and Housing Act (FEHA) prohibits employers of five or more from discriminating on the basis of physical handicap.

The general intent of Title I of the ADA is to extend coverage of the 1973 Rehabilitation Act to private employers and those without federal government ties. The Equal Employment Opportunity Commission (EEOC) has the responsibility for implementing the ADA. On July 26, 1991, the EEOC issued their final regulations, as well as interpretive guidance to further explain those regulations.

The EEOC regulations prohibit employers from discriminating on the basis of a disability against a qualified individual with a disability in any aspect of employment, including:

- application
- **testing**
- **hiring**
- assignment
- evaluation
- disciplinary action
- **training**
- contractual relationships
- promotion
- medical examinations
- layoff/recall
- termination
- compensation
- leave
- benefits

It should be noted, however, that neither the ADA nor the EEOC regulations require preferences favoring disabled individuals, or any sort of employment quota system. Nor does the ADA relieve disabled employees and applicants from being required to have the ability to perform essential job functions. However, it does require that employers take certain affirmative measures to accommodate disabled individuals who, apart from their disabilities, are otherwise qualified for employment.

QUESTIONS AND ANSWERS

I. Timing and Extent of Coverage

1. When does the ADA become effective?

Title I: July 26, 1992 for employers of 25 or more
 July 26, 1994 for employers of 15 or more

Some understandable confusion exists regarding the effective date for Title I. Since Title II of the ADA (State and Local Government Services) went into effect on January 26, 1992, many public employers have assumed that all aspects of the ADA are applicable to state and local agencies as of that date. However, with regard to employment issues, Title II now places all state and local agencies under the auspices of section 504 of the Rehabilitation Act, regardless of whether the agency receives federal assistance. In addition, all educational institutions that receive federal funding are also covered by Title II of the ADA.

There appear to be two primary differences between the federal Rehabilitation Act and existing California handicap discrimination laws: (1) the Rehabilitation Act protects the employment rights of those with *mental* as well as physical disabilities; (2) the Rehabilitation Act bans *all* pre-employment medical inquiries. Both of these provisions are discussed below.

2. Who is covered by the ADA?

As indicated above, all employers (public or private) of 25 or more employees are covered by the ADA as of July, 1992; employers of 15-24 will be covered as of July, 1994. In addition, educational institutions (e.g., community college affiliated training

academics) are also covered by Title II of the ADA, regardless of whether their students are already employed or nonaffiliated.

3. Who is protected by the ADA?

The ADA prohibits discrimination against all "**qualified individuals with disabilities**" as well as individuals regarded as or having a record of being disabled. Individuals who are discriminated against because of an association or relationship with an individual with a disability are also protected.

4. What does the ADA consider a "disability"?

A disability is defined as a "*physical or mental impairment that **substantially limits** one or more **major life activities**.*" Each of these terms will be further defined:

a. Physical or Mental Impairments include (but are not limited to):

(1) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs; respiratory (including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(2) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The list of physiological disorders is virtually identical to that included in California regulations; however, current state law does not cover individuals with mental disabilities.

Employers should determine whether an impairment exists without regard to mitigating measures such as available medications or prosthetic devices. For example, epilepsy generally constitutes an impairment, even if medication completely controls any symptoms.

b. Major Life Activities are those basic functions that the average person can perform with little or no difficulty. They include:

- | | |
|---------------------------|----------------------|
| • walking | • seeing |
| • speaking | • hearing |
| • breathing | • learning |
| • performing manual tasks | • caring for oneself |
| | • working |

c. Substantially Limits. To be substantially limiting, an impairment must either prevent or restrict the condition, manner, or duration with which an individual can perform a

major life activity, as compared to an average person in the general population. To determine whether an impairment is substantially limiting, the EEOC will evaluate the nature and severity of the impairment, the duration or expected duration of the impairment, and the actual or expected long-term impact of the impairment.

5. What conditions are NOT protected under the ADA?

- a. Temporary, nonchronic impairments/conditions of short duration, and with little or no permanent impact (e.g., broken limbs, sprained joints, concussions, influenza, obesity, and pregnancy);
- b. Physical characteristics, such as eye and hair color, left-handedness, height, weight or muscle tone that are not within "normal" range (and not the result of a physiological disorder), predisposition to illness or disease;
- c. Personality traits, such as poor judgment and quick temper (that are unrelated to any mental or psychological disorder);
- d. Sexual behavior disorders such as homosexuality, bisexuality, transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders;
- e. Compulsive gambling, kleptomania, and pyromania;
- f. Socioeconomic conditions such as poverty, lack of education, or a prison record;
- g. Advanced age (but medical conditions commonly associated with age, such as hearing loss and arthritis, are covered);
- h. Psychoactive substance use disorders resulting from the current illegal use of drugs (drug and alcohol use will be addressed later).

6. Would a medical disqualification from the peace officer selection process constitute, in and of itself, a substantial limitation in the major life activity of working?

The answer is not entirely clear. The inability to perform a single job does not constitute a substantial limitation on the major life activity of working; rather, an individual must be significantly restricted in the ability to perform either a "class of jobs" or a "broad range of job" in various classes (as compared to the average person having comparable training, skills, and abilities).

To determine whether an individual's ability to work is substantially limited, the EEOC will consider: (1) the geographical area to which the individual has reasonable access;

(2) the job from which the individual has been disqualified, as well as the number and types of job using similar training, knowledge, skills and abilities within that geographical area; and (3) the number and type of other jobs not using similar training, knowledge, skills, and abilities from which the individual is also disqualified.

According to the EEOC, an individual who has a back condition that prevents performance of any heavy labor job would be considered substantially limited in the major life activity of working because he cannot perform the class of jobs in heavy labor that use similar training, knowledge, skills or abilities. On the other hand, a commercial airline pilot who has a minor vision impairment, or a baseball pitcher who cannot throw a baseball because of a bad elbow are not substantially limited in the major life activity of working, because they are only unable to perform a particular specialized job. The pilot's minor vision impairment does not prevent him or her from becoming a commercial airline copilot or a pilot for a courier service; the pitcher's bad elbow does not prevent him from performing a broad range of jobs in various classes that do not rely on the ability to throw a baseball.

Given this ambiguity, it would seem prudent to assume that all individuals are protected under the ADA if they have been restricted or disqualified from police work due to a physical or mental impairment, regardless of the condition (notwithstanding the types of unprotected conditions listed in answer #5).

7. Who is a "qualified individual with a disability?"

To be considered otherwise "qualified," an individual with a disability must satisfy the requisite skill, experience, and education requirements of the job in question and be able to perform the essential functions of the job (with or without reasonable accommodation).

Determining whether someone is qualified (and therefore protected under the ADA) is a two-step process. First the employer must determine whether the individual satisfied the prerequisites for the position, such as education, experience, training, skills, licenses, certificates, or other job-related requirements. If the answer is yes, then it must be determined whether the individual can perform the essential functions of the job (with or without reasonable accommodation).

8. Would "stress" be considered a protected condition under the ADA?

"Stress" and "depression" are conditions that may or may not be considered impairments, depending on whether these conditions result from a documented physiological or mental disorder. For example, a person suffering from general "stress" because of job or personal life pressures would not be considered to have an impairment. However, if this person is diagnosed by a psychiatrist or psychologist as having an identifiable stress disorder, s/he would have an impairment that may be a disability.

II. Essential Job Functions

9. What are "essential job functions?"

Essential job functions are those job duties that are fundamental to the employment position, as opposed to marginal. Factors to consider in determining if a function is essential include:

- whether the reason the position exists is to perform that function;
- the number of other employees available to perform the function or among whom the performance of the function can be distributed; and
- the degree of expertise or skill required to perform the function.

10. What criteria can be used to identify the essential job functions?

As evidence of whether a particular function is essential, the EEOC will consider:

- a. **The employer's judgment;** however, judgment should not serve as the sole basis for determining which job functions are essential.
- b. **Written job descriptions,** while not mandated by the ADA, will be considered another important piece of evidence regarding essential job functions. These descriptions should be prepared before interviewing or advertising for the job. The descriptions should be reflective of what actually happens on the job, and should be updated periodically to maintain their currency. It should also be noted that descriptions can include marginal as well as essential job functions; however the nonessential functions should be identified as such.
- c. **The amount of time spent on the job to perform the function.**
- d. **The consequences of not requiring the incumbent to perform the function.** For peace officers, this is generally a far more important job factor than the amount of time spent performing the job, given infrequent but vital job duties such as subduing combative subjects.
- e. **The terms of a collective bargaining agreement.**
- f. **The work experience of past and current incumbents.**
- g. **Other relevant factors, such as the nature of the work operation or the organizational structure.** For example, if the organization is structured such that every employee is required, on a rotating basis, to perform a variety of job functions, all the functions may be considered to be essential for the job, rather than the function that any one employee performs at a particular time.

11. What techniques should be used to identify the essential job functions?

There are a variety of job analytic techniques that can be used to identify essential job functions, including supervisory or incumbent checklists, diaries/logs, subject-matter expert panels, etc. The employer's personnel staff can help in this regard.

A job analysis that merely identifies a list of general characteristics necessary to perform a job, such as "strength," "endurance," or "intelligence," without linking these characteristics to specific job tasks, is not sufficient. Moreover, the analysis should focus on the purpose of the job function and the result to be accomplished (rather than on the manner in which the function is presently performed) to provide latitude for individuals with disabilities to accomplish those functions in different ways.

The appendices include lists of job functions derived from state-wide job analyses performed by POST. These job functions are serving as the job-analytic basis for the current revision of POST's "Medical Screening Manual for California Law Enforcement." Employers should review these lists for local applicability before adopting the functions as essential for their operation.

12. Is an employer permitted to change essential job functions, once established?

Yes. It is the employer's right to establish (and re-establish) what a job is and what functions are required to perform it.

III. Drug and Alcohol Use

13. Is it permissible to disqualify peace officer applicants if they are found to have a history of illegal drug use, even if they are not currently engaging in such drug use?

Generally yes. All employers have the right to seek reasonable assurances that no illegal use of drugs is occurring or has occurred recently enough so that continuing use is a real, ongoing problem. In addition, law enforcement agencies can also impose a qualification standard that excludes those with a *history* of illegal use of drugs, *if* it can show that the standard is job-related and consistent with business necessity. For example, a law enforcement agency could argue that such an illegal history would undermine the credibility of the officer as a witness for the prosecution in a criminal case.

It should also be noted that those who are not illegally using drugs, but who are erroneously perceived as being addicts or as currently using drugs illegally, are also protected by the ADA.

14. Is alcoholism considered a disability under the ADA?

Yes, and as such an individual cannot be discriminated against in employment on the basis of past or current alcoholism. However, an employer may hold an employee who is an alcoholic to the same qualification standards for employment or job performance and

behavior that applies to other employers, even if any unsatisfactory performance or behavior is related to the alcoholism of the individual. Furthermore, an employer can restrict the employment rights of an individual if he or she is a "direct threat" to the health and safety of him/herself or others (see Section XI).

15. Can an applicant be questioned regarding, or tested for, illegal drug or alcohol use?

Prior to a conditional job offer, an employer may ask whether an applicant drinks alcohol or whether s/he is currently using drugs illegally. However, the applicant may not be asked if he or she is a drug addict or alcoholic, nor can any inquiry be made regarding history of drug or alcohol rehabilitation program participation.

Testing for illegal use of drugs is allowed at any point in the selection process. However, tests to determine either the presence of alcohol or the use of prescribed drugs would be considered a medical examination, and can therefore only be required after a conditional job offer is made.

IV. Reasonable Accommodation

16. What is a "reasonable accommodation?"

A reasonable accommodation is any change or adjustment to a job or work environment that permits a qualified applicant or employee with a disability to participate in the job application process, to perform the essential functions of a job, or to enjoy the benefits and privileges of employment equal to nondisabled employees.

Many types of accommodation discussed in the law and regulations, such as providing readers or interpreters, or making physical changes to the workplace (e.g., building ramps), have limited if any applicability to peace officer positions. However, there are other forms of reasonable accommodation that may be considered for peace officer applicants or employees, including:

- job restructuring (i.e., redistributing nonessential functions and/or modifying essential functions);
- part-time or modified work schedules;
- reassignment to vacant positions;
- adjusting or modifying examinations, training materials or policies;
- acquisition or modification of equipment and devices.

17. How (and when) should the employer determine if an accommodation is needed?

The employer is responsible for notifying applicants and employees of its obligation to provide accommodations for otherwise qualified applicants with disabilities. It is then the responsibility of the individual with the disability to inform the employer that an accommodation is needed.

It is incumbent upon the "covered entity" (either the employer or training institution) to ensure that applicants, employees and students are aware of their right to reasonable accommodation. This information should include a description of the testing, training, and/or job demands, so that individuals have an adequate basis upon which to determine their need for accommodation.

An employer or trainer is not obligated to accommodate a student or applicant who, although adequately informed in advance of the right to reasonable accommodation, delays his/her accommodation request until the time of testing or training.

18. How should the type of accommodation needed be determined?

Decisions regarding the choice of reasonable accommodation should be made on a case-by-case basis, since the nature and extent of a disabling condition, as well as job requirements, vary. The EEOC suggests an individualized, one-on-one decision making process involving the employer and the disabled individual, which would include identifying the essential job functions found limiting by the individual, exploring possible ways which would enable the individual to perform those functions, and making the ultimate decision based on the preference of the individual and the overall appropriateness to both employer and employee.

19. Is the employer obligated to provide a reasonable accommodation if it is not aware of an individual's physical or mental impairment?

No. An employer's obligation to provide reasonable accommodation applies only to known physical or mental limitations. However, the applicant or employee is not obligated to inform the employer of a disability that is obvious (e.g., use of wheelchair). Furthermore, the employer should request this information early on in the application and/or employment process.

20. Is the employee or applicant required to provide any proof of his/her stated disability, or must the employer take the person at their word?

If the disability is not obvious (e.g., dyslexia), an employer may require the individual to provide documentation of the need for accommodation. However, at the pre-offer stage, the employer should only request documentation related to the need for and type of accommodation necessary, rather than detailed information related to the nature and extent of the disability (see Section IX: Pre-Employment Inquiries).

21. What if an applicant or employee refuses to accept the accommodation offered by the employer?

An employer cannot require an individual to accept an accommodation. However, if an individual refuses an accommodation and is therefore unable to perform the essential job functions, then that individual is no longer protected under the ADA.

22. If a training academy provides a disabled student with a reasonable accommodation during testing or training, can this information be included in the individual's training records for inspection by current/prospective employers?

Yes, as long as the current or prospective employer does not have access to this information until after a conditional job offer is made to the individual.

It should be noted, however, that it is prohibited to disseminate information about a disabled individual's accommodations to other students, applicants, employees or anyone else who has no job-related need for this information.

23. What if an employer determines that an individual is abusing the accommodation privileges afforded to him or her during the selection or training process; for example, if s/he requested and received an accommodation during training (e.g., basic academy), but once placed on the job, s/he no longer requests an accommodation for comparable tasks involving similar demands?

If an employer believes that the applicant deliberately misrepresented his/her accommodation needs, it has the lawful right to withdraw the job offer for reasons of dishonesty or integrity, since this decision is not based on disability.

V. Reasonable Accommodation Options

24. What is "job restructuring?"

Job restructuring involves reallocating or redistributing *marginal* (i.e., nonessential) job functions. For example, if a security guard's primary duty is to inspect ID cards, an employer would not be required to provide a blind guard with a sighted assistant to check the cards, since that assistant would then be performing an essential function. However, if two job positions both require employees to perform the same marginal functions, an employer may then be required to restructure those positions so that the disabled employee performs all of those marginal functions s/he can, while the nondisabled employee performs the remaining marginal functions.

Although an employer is not required to reallocate essential job functions, job restructuring can also involve altering when and how an essential function is to be performed. For example, an essential function that is usually performed in the early morning might be rescheduled to be performed later in the day, if an individual's disability makes it impossible for him/her to perform this function in the morning, and this would not cause an undue hardship to the employer.

25. When must reassigning an employee with a disability to another job as a reasonable accommodation be considered?

In general, only when an accommodation is not possible in the employee's present job, or when an accommodation in the present job would cause an undue hardship.

26. If an applicant is unable to perform the essential job demands, with or without reasonable accommodation, is it necessary to consider reassigning him or her to another, vacant position?

No. Reassignment only applies to employees - not to applicants. Furthermore, it is not necessary to create a position or to bump another employee in order to create a vacancy.

27. Must an employee with a disability be reassigned to a vacant position, regardless of their qualification for that job?

No. An employee must be able to perform the essential job functions of the position to be considered for reassignment.

28. If an employee is reassigned to a vacant position at a lower pay grade, must his/her previous salary be maintained?

No. While an effort should be made to identify an accommodation that would enable the employee to remain in the current position, or to locate a vacant equivalent position for which the individual is qualified, an employer is not required to maintain a reassigned employee at a salary of the higher graded position if it does not compensate employees in the reassigned position at that level. Similarly, an employer is not required to promote an individual as an accommodation.

29. If the terms of a collective bargaining agreement require that vacant positions be filled by seniority only, could this be used to defend against claims that reasonable accommodation was not provided?

The EEOC guidance indicates that the terms of a collective bargaining agreement may be relevant in determining whether an accommodation would pose an undue hardship on an employer's business. However, the extent to which collective bargaining agreements should be considered when they conflict with ADA requirements appears to be in good part left open to resolution on a case-by-case basis.

30. Does the ADA require the permanent placement of injured employees in light duty positions?

First, the ADA does not require an employer to create a light duty position unless the "heavy duty" tasks an injured worker can no longer perform are marginal job functions which can be reallocated to co-workers as part of the reasonable accommodation of job-restructuring. Creating a job that involves totally different, essential job tasks is not required by the ADA.

If an employer has a vacant light duty position for which the injured worker is qualified, it might be a reasonable accommodation to reassign the worker to that position. However, if the position was created and actually used as a temporary job, a reassignment to that position need only be for a temporary period.

31. Must an employer grant additional leave to a disabled individual as an accommodation?

While an employer may establish attendance and leave policies that are uniformly applied to all employees, adjustments in that leave policy may be required as a reasonable accommodation. The employer is not obligated to provide additional paid leave, but required accommodations may include leave flexibility and unpaid leave (except if it results in an undue hardship to the employer).

Although employees who have an association or relationship with a disabled individual are also protected under the ADA, an employer is not required to grant unpaid leave to an employee in order to take care of someone with a disability.

VI. Undue Hardship

32. Is the employer obligated to offer reasonable accommodation, regardless of cost or difficulty?

No. An employer is not required to undergo *undue hardship* to accommodate someone. "Undue hardship" refers to any accommodation that would be unduly costly, extensive, substantial, or disruptive or that would fundamentally alter the nature or operation of a business.

33. How should the decision as to whether an accommodation would result in an undue hardship be determined?

There is no precise formula for making this determination; however, the following factors should be considered:

- (1) the nature and net cost of the accommodation;
- (2) the overall financial resources of the facility or operation;
- (3) the number of persons employed at the facility or operation;
- (4) the effect on expenses and resources;
- (5) the type of operation of the entity;
- (6) the composition, structure and functions of the work force;
- (7) the geographic separateness;
- (8) the impact the accommodation would have on the operation of the facility, including the ability of other employees to perform their duties.

34. If two types of accommodation exist that would allow an individual to perform the job, and one option is considerably more expensive but also preferred by the individual, is the employer obligated to provide the more expensive accommodation?

No. Although primary consideration should be given to the preference of the individual involved, employers need not provide the "best" accommodation possible, but rather only one which is sufficient to meet the job-related needs of the disabled individual.

35. Are there other limits, in addition to undue hardship, as to what the employer is obligated to provide in the way of reasonable accommodation?

Yes. They include:

(1) Only accommodations that reduce barriers to employment related to the person's disability need be considered. For example, it is not necessary to comply with a request from an employee with a bad back to confine his/her working hours to the day shift if time of day does not impact on his/her disability, even though this change would make him/her happier.

(2) An employer is not required to provide an accommodation that is primarily for personal use. Therefore, eyeglasses, hearing aids, aspirin or other devices used both on and off the job are the responsibility of the individual.

36. Can an employer consider the salary of the employee in determining whether or not an accommodation constitutes an undue hardship?

No. An accommodation must be analyzed in light of the overall resources of the *business* and not on a relative comparable basis to the value of the position. Therefore, an employer must apply the same analysis for a disabled individual hired to perform a \$10,000 job as for an individual hired for a \$100,000 position.

37. If the only reasonable accommodation available would have a negative impact on the morale of other employees, would this be considered "undue hardship?"

No. An undue hardship defense based solely on a negative impact on fellow employee morale will not prevail.

38. Can an employee be asked to pay for part of a reasonable accommodation that would otherwise constitute an undue hardship for the employer?

Yes. In fact, employers *must allow* -- but may not require -- a disabled individual to pay the portion of the cost that constitutes an undue hardship. However, prior to making this type of arrangement, the employer should explore the possibility of funding from an outside source, such as a state vocational rehabilitation agency, or through federal, state or local tax deductions or credits.

VII. Selection Procedures and Qualification Standards

39. What is meant by "job-related" and "consistent with business necessity?"

A job-related qualification standard, test, or other selection criterion is one that is a legitimate measure or qualification for the specific job it is being used for. For example,

the ability to fire a rifle is not job-related if the peace officer(s) in that particular job do not actually use that weapon.

To be a "business necessity," a qualification standard must be related to the essential functions of the job, and as such must serve the goals and objectives of the organization. Note that a qualification standard could be job-related but not of business necessity if it measures the ability of individuals to perform marginal job functions.

The ADA does not require that all qualification standards or selection criteria apply only to essential functions of a job. All aspects of the job (essential and marginal) may be evaluated and employers may continue to select people who can perform all job functions. However, the ADA does prohibit job discrimination of disabled individuals based on their inability to perform marginal job functions, if their performance problem is due to their disability.

40. If there are several qualified applicants for a job, does the ADA require that the applicant with a disability be hired?

No. The more qualified applicant may be hired. The ADA is only intended to make it unlawful to discriminate against a qualified individual with a disability on the basis of disability.

41. Are all selection procedures, criteria and qualification standards that have the effect of disqualifying individuals with disabilities unlawful under the ADA?

No. Tests, standards, and other selection criteria that have a disparate impact on disabled individuals (i.e., that screen out or tend to screen out disabled individuals) are lawful if they can be shown to be job-related and consistent with business necessity.

42. So as long as a selection test can be shown to be job-related and consistent with business necessity (i.e., related to an essential function of the job), it is acceptable under the ADA?

Not necessarily. Even a test that is job-related and consistent with business necessity is unlawful if it has a disparate impact *and* there exists a reasonable alternative selection procedure which would not have a disparate impact. Therefore, it may be unlawful to require an applicant who has dyslexia to take a written test of job knowledge, no matter how carefully the test was validated. Instead, an alternative examination mode, such as an oral test, should be administered to that individual.

43. What if a selection test *unintentionally* screens out an individual with a disability - is it still unlawful?

Yes. However, a selection test that screens out disabled individuals for reasons *unrelated* to the disability does not violate the ADA, as long as the test is job-related and consistent with business necessity. For example, if an individual with epilepsy happens to

fail a reading and writing test, he could not claim employment discrimination under the ADA (unless, possibly, he argued that he experienced a seizure during the exam itself).

44. Can a disabled individual be required to meet performance standards involving marginal job functions?

Yes. An employer can hold employees with disabilities to the same standards of production/performance as other employees regarding marginal job functions unless the disability affects the ability to perform these marginal functions. If the disability does affect the performance of marginal functions, then reasonable accommodation options must be considered (per the discussion above).

45. Should alternative test formats be offered to all applicants with disabilities, regardless of the type of test?

No. First, alternative test formats need only be considered for individuals who have a disability affecting their sensory, manual, or speaking skills. Second, an alternative test format need not be considered if the purpose of the test is to measure those types of skills. For example, an applicant with dyslexia can be required to take a written test if the ability to read is the skill the test is designed to measure.

It should be noted, however, that even when the purpose and method of testing are consistent, it may still be unlawful not to offer accommodations. For example, dyslexic applicants may need to be given more time to complete a reading and writing test, unless it can be shown that the existing time limits are job-related and consistent with business necessity.

VIII. Training Contracts

46. If an employer contracts with another firm or institution to develop and implement a training course, and that course has a disparate impact on certain employees/applicants with disabilities, is the employer liable under the ADA?

Yes. An employer may not do through a contractual or other relationship what it is prohibited from doing directly.

IX. Pre-Employment Inquiries

47. What kinds of questions can and cannot be asked at the pre-offer stage?

Prior to making a conditional job offer, applicants may not be asked any questions regarding their disability, nor any questions about their workers' compensation history. This means that employers cannot ask applicants about the presence or absence of any medical condition, the need for prescription drugs or any other regimen to control their condition(s), nor any questions about the nature, severity, duration, etc., of a disability.

Employers are permitted, however, to ask applicants questions about their ability to perform job-related functions (essential and marginal), as long as these questions are not phrased in terms of the disability. For example, applicants may be asked if they have a driver's license (if driving is part of the job), but may not be asked whether they have a visual disability. Applicants may also be asked, at the pre-offer stage, to explain or demonstrate how they would be able to perform job-related functions.

48. Can the applicant be questioned at the pre-offer stage about his/her ability to show up for work because of a medical condition, if questions about the details of the condition are avoided?

The applicant cannot be asked if s/he will need or request leave for medical treatment or for other reasons related to a disability. However, the employer can state the attendance requirements of the job, including regular work hours, leave policies, and any special attendance needs of the job, and ask if the applicant can meet them (provided that the requirements actually are applied to incumbents).

At the pre-offer stage, the employer can obtain information about previous work attendance records, but questions should not refer to illness or disability. If an applicant has had a poor attendance record on a previous job, s/he may wish to provide an explanation that includes information related to a disability, but the employer should not ask whether a poor attendance record was due to illness, accident, or disability.

49. How does the prohibition against pre-offer medical inquiries impact the peace officer selection process?

- a. **Minimum Qualifications (age, citizenship, education, etc.):** No discernable changes resulting from ADA.
- b. **Reading/Writing Ability:** No changes would appear to be needed, except to ensure that the time limit (as well as the content of the test itself) is job-related and consistent with business necessity.

There is no one correct, established method for identifying the job-relatedness and business necessity of time limits; rather, results based on one or more of a variety of analytic techniques may provide persuasive evidence regarding the actual reading and writing demands of the job. Some of these techniques could include determining the average number of reports written per shift; identifying performance problems encountered by those who have reading and/or writing difficulties, or other ways of demonstrating the need for peace officers to be able to read and produce written material within specific time constraints.

- c. **Other Written Tests:** As with all selection measures, written tests should have demonstrated job-relatedness. In addition, applicants should be asked in advance whether they require a reasonable accommodation in order to take the test (e.g., alternative test format). An employer may request that

documentation of the need for the accommodation accompany the request. Applicants should not be asked specific questions about the nature of the disability.

Choosing the appropriate form of accommodation should be an individualized process based on the needs of the individual and the demands of the exam (see Section V: Reasonable Accommodation).

- d. **Fingerprint and Record Check:** No discernable changes resulting from the ADA.
- e. **Physical Agility Tests:** The EEOC has determined that physical agility tests are not medical exams, and so may be given at any point in the selection process. However, the tests must be given to all applicants, regardless of disability. In addition, if the test screens out individuals with disabilities, it must be demonstrated that it is job-related and consistent with business necessity, and that satisfactory performance on the test cannot be achieved with reasonable accommodation.

If an applicant or student (employed or nonaffiliated) is given a physical agility test at the pre-offer stage, only very limited medical screening is allowable in order to assure that the test will not harm the applicant. The employer can request that applicants (and/or their physicians) respond to a very restricted inquiry which describes the physical demands of the test and asks: "Can this person safely perform this test?" It is also permissible to ask if an individual requires a reasonable accommodation in order to safely perform the test.

- f. **Interview:** No discernable changes resulting from the ADA, except that any questions regarding an applicant's disability should be avoided at the pre-offer stage.
- g. **Drug Testing:** Since the use of illegal drugs is not protected by the ADA, drug testing can be performed at any point in the selection process. However, inquiries about history of illegal drug (or alcohol) use are prohibited prior to a conditional job offer (see Section III: Drug and Alcohol Use).
- h. **Psychological Screening:** The ADA's impact on when psychological screening can be performed is unclear. The EEOC regulations indicate that if the purpose of the screening is to assess mental *traits* (e.g., quick temper), the assessment can be performed at any point in the process, since traits are not considered disabilities and are therefore not covered under the ADA. However, if the psychological screening in question assesses mental *disabilities* (e.g., psychosis, depression), then it should be administered post-offer, since individuals with these conditions are protected under the ADA.

California law (Government Code 1031[f]) stipulates that all peace officers must be free from any *emotional* or *mental condition* which might adversely affect the exercise of their job duties. POST regulations require that peace officer applicants be judged free from job-relevant *psychopathology*, and that a minimum of two psychological tests be used, one normed in such a manner as to identify patterns of *abnormal* behavior, the other oriented toward assessing relevant dimensions of normal behavior for purposes of determining psychological suitability.

It could be argued that, at a minimum, the test whose purpose is to detect abnormal, pathological behavior (often the Minnesota Multiphasic Personality Inventory [MMPI]) should be delayed until a conditional job offer is made. However, others argue that, in actual practice, even this test is used to provide psychological information related to behavioral traits rather than pathology.

Other factors that would appear to argue in favor of conducting psychological screening after a conditional offer of employment are: (1) certain psychological tests, including the almost universally used MMPI, contain questions which *appear*, on their face, to constitute medical inquiries (even though not used for this purpose); and (2) there is a reasonable likelihood, in at least some instances, that the clinical interview (which is required under POST Commission Procedure C-2 if the psychological test results are inconclusive or suggest disqualification) will include inquiries of a medical nature (e.g., psychiatric history).

In consideration of all these factors, POST recommends that the psychological screening process be conducted after a conditional offer of employment. However, in doing so, POST recognizes that cogent arguments have been made that are counter to this recommendation (see, for example, Flanagan, C.L., "The ADA and Police Psychology," The Police Chief, December, 1991; and Arnold, D.W. and Thiemann, A.J., "To Test or Not to Test: The Status of Psychological Testing Under the ADA," Criminal Justice Digest, Vol. 11, No. 2, February, 1992.).

Regardless of when conducted, all disqualification decisions due to the presence of a mental disability must be shown to be job-related and consistent with business necessity. In addition, some consideration of ways to accommodate mentally disabled applicants is required by the ADA.

- i. **Background Investigations:** If the background investigation is conducted after a conditional job offer is made (as is typically the case), there are no limitations as to the focus of the investigation. However, if conducted prior to a conditional job offer, the investigator may not ask questions or otherwise probe areas related to physical or mental disabilities. Moreover, at the pre-offer stage, the investigator should not pursue this line of questioning, even if a contact person volunteers medical information.

While questions about current illegal drug use (as well as drug testing) are acceptable at any point in the law enforcement selection process, inquiries into an individual's history of illegal drug use, as well as questions related to past or current alcoholism, should also not be asked prior to making a conditional job offer (see Section III: Drug and Alcohol Use).

There is nothing in the current POST Personal History Questionnaire (1990) that violates the ADA per se. However, should the questionnaire be administered pre-offer, applicants should be informed that none of the items are intended to elicit information concerning either medical or psychological conditions.

At the pre-offer stage, previous employers or other sources may not be asked about an applicant's:

- disability
- illness
- workers' compensation history
- any other questions that the employer itself may not ask of the applicant.

Previous employers may be asked about:

- job functions and tasks performed by the applicant
- the quality and quantity of work performed
- how job functions were performed
- attendance record
- other job-related issues that do not relate to the disability

- j. **Medical Screening:** This type of examination must be delayed until a conditional offer of employment has been made. Completion of a medical history form that lists a number of potentially disabling impairments and asks the individual to check any of the impairments he or she may have must also be delayed until the post-offer stage.

In summary, the ADA requires that all medical inquiries be delayed until after a conditional job offer is made. Moreover, it may be necessary to delay the conduct of the psychological screening process, and at least some parts of the background investigation, in order to avoid violating the pre-offer medical inquiry prohibition.

50. Now that so many parts of the peace officer selection process are being delayed until a conditional job offer is made, how can law enforcement agencies be required to provide immediate positions to all those who pass these post-offer criteria?

Given the unpredictable numbers of applicants who will be screened out by these post-offer selection criteria (e.g., medical examinations, certain background inquiries, and possibly psychological examinations), a hiring agency could not be expected to offer *immediate* placements of all candidates who satisfy these remaining requirements. Instead, the conditional job offer may serve to notify individuals that they have been placed in a *pool* of qualified applicants, pending successful completion of the remaining selection criteria and the availability of positions in the organization. In addition, it is perfectly acceptable for an employer to disqualify or give a low ranking to an applicant at the post-offer stage due to reasons unrelated to his/her medical or mental condition.

It is imperative that the conditional job offer give candidates a precise, realistic understanding of both the remaining parts of the selection and placement process, as well as estimates on how long it may take to be placed on the job should they meet these remaining eligibility requirements. Legal review of the written conditional job offer is strongly encouraged to ensure that it is in compliance with the ADA, as well as other pertinent local, state and federal laws.

X. Pre-Employment Medical Examinations

51. Are there limits on the conduct of the medical screening examination, as long as it is performed post-offer?

Yes. They include:

- a. All applicants for a given job must be subjected to the same examination.
- b. The medical examiner can ask any questions or perform any exam s/he sees fit; however, disqualifications resulting from the exam must be job-related and consistent with business necessity (and show that no reasonable accommodation exists to enable the individual to perform the essential functions of the job).
- c. Information obtained during the course of the exam must be treated as confidential (see question #56).

52. If all applicants must be subjected to the same medical examination, does this mean that referrals to specialists and other, more in-depth probes into an individual's medical condition are prohibited?

The ADA does not require that the scope of medical examinations be identical. An employer may give follow-up tests or examinations where an examination indicates that further information is needed.

53. How should decisions resulting from the medical examination be made?

Consistent with existing California regulations, decisions regarding an applicant's medical fitness for the job must be based on *individualized assessment* rather than on uniform application of categorical criteria. That is, a physician's evaluation of a candidate should factor in information from the physical examination, record review, personal history information, etc. The physician must also be supplied with an adequate description of the essential job functions so that s/he can assess the ability of the candidate to safely perform these duties, given what was revealed during the examination. Armed with this information, the physician should then make a determination as to whether the candidate can perform the essential job functions, and can do so in a manner that will not pose a "direct threat" to the individual or others (see Section XI).

Physicians should also identify any restrictions or accommodations that would allow a disabled candidate to perform the essential job functions. The responsible agency administrator should then evaluate the agency's ability to reasonably accommodate the candidate by allowing him/her to work within these restrictions. For example, if the physician indicates that the individual should be restricted from working on either the swing or graveyard shifts, the administrator must determine if permitting this restriction would result in an "undue hardship" for the agency (see Section VI: Undue Hardship).

XI. Direct Threat

54. What constitutes a "direct threat?"

The EEOC regulations define direct threat as a "significant risk of substantial harm" to the health or safety of the individual or others that cannot be reduced by reasonable accommodation. Determining whether an individual poses this level of risk must be made on a case-by-case basis. First, the employer must identify the specific risk(s) posed by the individual. For individuals with mental or emotional disabilities, specific behavior(s) that would pose the threat must be identified. For individuals with physical disabilities, the specific aspect of the disability (e.g., bouts of incapacitation) must be identified.

Unfortunately, no specific or concrete guidance has been provided regarding what constitutes a "significant risk of substantial harm." However, the following factors should be considered:

- a. The duration of the risk;
- b. The nature and severity of potential harm;
- c. The likelihood the potential harm will occur; and
- d. The imminence of the potential harm (future risk concerns are not allowed).

Consideration of these factors should be based on valid medical analysis and/or other objective evidence, rather than on stereotypic or patronizing assumptions, or generalized fears about the effect of the employment environment on the individual.

Note: According to the EEOC regulations, direct threat involves risk to others and oneself; however, the ADA itself only cites risk to others as a basis for establishing this affirmative defense. It is therefore advisable to focus on risk to others (vs. self) in decisions concerning health and safety threats posed by an individual protected by the ADA.

XII. Medical Examinations of Employees

55. Are medical examinations of incumbents permitted under the ADA?

Yes, if there is a legitimate need to determine whether an employee is still able to perform the essential functions of the job. A medical examination or inquiry is also permitted when an employee wishes to return to work after an injury or illness, if it is job-related and consistent with business necessity. Periodic physicals to determine fitness for duty or other medical monitoring are permitted as long as they too are job-related and consistent with business necessity.

The ADA also permits *voluntary* medical examinations, conducted as part of an employee health program. These programs can include screening for high blood pressure, weight control counseling, and cancer detection. It should be noted that the records that are developed as part of these programs must be maintained in a confidential manner.

56. What is required in terms of maintaining the confidentiality of medical records?

All medical information collected on applicants or employees must be maintained on separate forms and kept in separate medical files. The records must be treated as confidential, except that:

- (A) Supervisors and managers may be informed regarding necessary restrictions on the employee's work and duties and necessary accommodations;
- (B) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and
- (C) Government officials investigating compliance with the ADA must be provided relevant information.

XIII. State vs. Federal Regulations

57. What happens if a provision in the ADA differs from that stipulated in the California Fair Employment and Housing Act? Which law should prevail?

Whichever law provides the most protection to individuals with disabilities.

XIV. Insurance

58. Can an employer refuse a job to a disabled person because the employer's insurance plan does not cover that particular person's disability or because of an anticipated increase in insurance costs?

No. This would be a specific violation of Section 501(c), Title V, of the ADA.

59. Can insurance companies or employers deny health insurance coverage to an individual based solely on the person's diagnosis or disability?

No. Employers may not deny health insurance coverage *completely* to an individual based on the person's diagnosis or disability. For example, while it is permissible for an employer to offer insurance policies that limit coverage for certain procedures or treatments, e.g., only a specific number of blood transfusions per year, a hemophiliac who exceeds his or her treatment limit may not be denied coverage for other conditions, such as a broken leg or for heart surgery, because of the existence of hemophilia. Limitations may be placed on reimbursements for procedures or types of drugs (e.g., a limit on the number of x-rays or non-covered or experimental drugs or procedures), but those limitations must apply to persons with or without disabilities.

60. Can insurance companies or employers limit certain kinds of coverage based on classification or risk which impact insurance coverage of individuals with disabilities?

Yes. However, any termination or limitation's in a disabled individual's insurance benefits must be based on sound actuarial principles or related to actual or reasonable anticipated experience. Employers may continue to offer policies that contain preexisting condition exclusions, even though such exclusions may adversely affect people with disabilities, so long as they are not used to subterfuge the ADA. Similarly, an insurer may deny coverage for an existing condition for a time, however the coverage may not be denied for illnesses unrelated to the preexisting condition.

XV. Enforcement

61. What are the penalties for noncompliance with Title I?

The penalties for violations of Title I of the ADA are derived from the Civil Rights Act of 1991. They include injunctive relief (i.e., ending the discrimination), affirmative relief (i.e., hiring the individual), attorney's and expert witness fees, and compensatory damages (for emotional pain, suffering, inconvenience, mental anguish, and loss of future earnings). Punitive damages are also available, but not in suits brought against federal, state, or local government agencies.

The compensatory damages that may be awarded to any one complainant are limited by dollar ceilings based upon the number of persons employed by the employer, as follows:

\$ 50,000 for employers of 15-100;
\$100,000 for employers of 101-200;
\$200,000 for employers of 201-500;
\$300,000 for employers of 501 or more.

It should be noted, however, that the existing California law provides for compensatory damages without any dollar ceiling.

XVI. Posting Requirements

62. Does the ADA require that an employer post a notice explaining its requirements?

Yes. The ADA requires that an employer post a notice in an accessible format to applicants, employees and members of labor organizations, describing the provisions of the Act. The EEOC will provide employers with a poster summarizing these and other federal legal requirements for nondiscrimination. The EEOC will also provide guidance on making this information available on accessible formats for people with disabilities.

XVII. Resource Information

For copies of regulations, technical assistance manuals, etc:

U.S. Equal Employment Opportunity Commission
Office of Communications and Legislative Affairs
1801 L. Street, N.W.
Washington, D.C. 20507
(202) 663-4900

For ADA questions, contact either the EEOC Washington D.C. office: (800) 669-EEOC or (800) 232-4999

Department of Justice
Office of the Americans with Disabilities Act
Civil Rights Division
P.O. Box 66118
Washington, D.C. 20035-6118
(202) 514-0381/514-0383

Job Accommodation Network (JAN) - (800) 526-7234

The POST consultant responsible for ADA issues is:

Shelley Weiss Spilberg, Ph.D.
1601 Alhambra Blvd.
Sacramento, CA 95816
(916) 739-3882

XVIII. References & Resources

ADA Law, Regulations, and Technical Assistance

The Americans With Disabilities Act; 42 U.S.C. Section 12101.

Equal Employment Opportunity Commission, Equal Employment Opportunity for Individuals With Disabilities; Final Rule, 29 CFR Part 1630; Federal Register, Vol. 56, No. 144, July 26, 1991, pp. 35726-35756.

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Snyder, D. A., The Americans with Disabilities Act, Labor Relations Information System, 1991, Portland, OR.

Thornton, E.M., and Scuro, J.E., "The Americans With Disabilities Act," Law and Order, March, 1992, vol. 40. no. 3, pp 59-63.

Vaughn, C. R., "IACP's Response to the Americans with Disabilities Act," The Police Chief, December, 1991, p. 6.

APPENDICES:

PEACE OFFICER

JOB DUTIES

APPENDIX A

PEACE OFFICER DUTIES AND TASK GROUPS

The peace officer duties and tasks listed below were identified in a statewide job analysis conducted by POST in 1979. Also shown are the average importance ratings that were assigned to the tasks in each task group by job experts (5=critical; 4=very important; 3=important; 2=of some importance; 1= of little importance). The tasks displayed were selected due to their pertinence to the employment of individuals with disabilities.

I. PHYSICAL PERFORMANCE DUTIES

RESTRAINING/SUBDUING - involves restraining and/or subduing individuals by means of baton techniques, locks, grips or holds, or restraining devices, such as handcuffs (3.9)

Examples:

- Handcuff suspects or prisoners
- Subdue attacking or resisting persons using locks, grips or holds - Use baton to subdue attacking or resisting persons
- Use restraining devices other than handcuffs (e.g., leg irons, straps)

PHYSICAL PERFORMANCE - involves physical activity such as lifting, carrying or dragging heavy, climbing or jumping over obstacles, running, etc. (3.1)

Examples:

- Pursue fleeing suspects on foot
- Lift/carry heaving objects (e.g., disabled person or equipment)
- Pull oneself up over obstacles
- Climb up to elevated surfaces (e.g., roof)
- Jump or climb over obstacles (e.g., walls)
- Balance oneself on uneven or narrow surfaces
- Use bodily force to gain entrance through barriers (e.g, locked doors)

WEAPONS HANDLING (including use of interior body armor) (4.2)

Examples:

- Draw firearm
- Fire handgun at person
- Fire rifle at person
- Fire shotgun at person
- Clean and service weapons
- Fire automatic weapons such as machine gun or machine pistol

II. PATROL AND INVESTIGATION DUTIES

ARREST AND DETAIN - involves arresting persons (with and without an arrest warrant) and guarding prisoners (3.5)

Examples:

- Arrest persons with and without warrants
- Take into custody persons arrested by citizens
- Guard prisoners/inmates detained at facility other than jail (e.g., hospital)

FIRST AID (4.2)

Examples:

- Administer CPR and mouth-to-mouth resuscitation
- Administer other first aid techniques
- Operate resuscitator
- Control bleeding (e.g., apply direct pressure)

SURVEILLANCE - tasks that require careful observation such as while following suspicious vehicles, patrolling physically hazardous locations, operating observation posts, etc. (includes use of binoculars, photographic equipment, etc. (2.9)

Examples:

- Follow suspicious vehicles (e.g., suspect, suspicious person, operator under influence)
- Organize or participate in formal or informal surveillance of individuals or locations
- Operate assigned observation post to apprehend criminal suspect (e.g., stakeout)

- Monitor driver and pedestrian observance of traffic control devices from stationary position
- Clock speed/visually estimate speed of vehicles

DECISION MAKING - involves analysis, evaluation, inquiry, etc., in order to make proper determinations (e.g., priority of required actions) (3.3)

Examples:

- Survey and evaluate accident scenes and incidents to determine priority of required actions
- Evaluate crime scenes to determine investigative procedures to follow and assistance necessary
- Analyze and compare cases for similarity of modus operandi

REVIEW AND RECALL OF INFORMATION - involves the review and study of information for later recall such as regarding wanted persons and vehicles (3.3)

Examples:

- Review information to maintain a current knowledge of known criminals and criminal activity in area
- Review rap sheets and M.O.'s of suspects
- Identify from memory wanted vehicles or persons
- Review reports and notes to prepare for testimony at hearings and trials

CHEMICAL, DRUG, AND ALCOHOL TESTING - involves physically or chemically testing for sobriety and/or presence of controlled substances (3.4)

Examples:

- Administer physical roadside sobriety and "breathalyzer" tests - Use chemical test kits (e.g., Valtox, Narco-Ban to test for controlled substances
- Arrange for obtaining blood or urine samples for sobriety tests

FINGERPRINTING/IDENTIFICATION (2.9)

Examples:

- Dust and lift latent fingerprints
- Make fingerprint comparisons
- Fingerprint prisoners and other persons

INSPECTING PROPERTY AND PERSONS - involves examining, searching, checking and inspecting buildings, people, vehicles, objects, etc.- includes use of flashlights, spotlights and strolometers to measure distances (3.1)

Examples:

- Examine injured/wounded persons
- Examine dead bodies for wounds and injuries to determine nature and cause of death
- Examine unlocked businesses and dwellings for signs of illegal entry
- Examine suspicious or potentially dangerous objects (e.g., suspicious packages, downed high tension wires)
- Physically examine abandoned vehicles

SEARCHING - involves search of buildings, persons, vehicles, etc., and the search for missing, wanted, or lost persons, evidence, etc. (3.6)

Examples:

- Pat search suspects
- Physically search properties and vehicles for contraband, criminal activity, wanted subject, or evidence
- Search, collect, and examine evidence from accident and crime scenes
- Search buildings, properties, and vehicles to locate bombs and/or explosives

LINEUPS - organizing and conducting lineups and photo lineups (3.2)

SECURE AND PROTECT PROPERTY - involves making secure and protecting such things as accidents scenes, vehicles, homes and property (includes use of extinguisher) (3.5)

Examples:

- Protect accident or crime scene
- Preserve evidence and personal property

III. TRAFFIC/MOTOR VEHICLE DUTIES

EMERGENCY DRIVING - involves high speed driving in all types of situations such as on the open road, in congested areas, to transport injured persons, etc. (3.5)

Examples:

- Engage in high speed pursuit driving on open road or in congested areas
- Respond as back-up unit on crimes in progress
- Transport injured persons

TRAFFIC CONTROL - involves directing traffic using hand signals, flashlights, radar units, illuminated batons, flares, traffic cones, or other barriers (2.9)

IV. ORAL COMMUNICATION DUTIES

ORAL COMMUNICATIONS - involves conferring, advising, coordinating, interviewing, directing, or conducting other verbal interactions with others (3.2)

Examples:

- Confer with suspects, victims, witnesses, probation officers, other officers, attorneys, physicians, etc.
- Give verbal assistance, counsel, advice explanations, etc., to victims, complainants, offenders, parents juveniles, inmates, etc.
- Coordinate and take charge of situations by directing citizens, other officers, other public service personnel, etc.
- Gather information by interviewing suspicious persons, complainants, witnesses, victims, prisoners, etc.
- Conduct public relations activities such as making presentations to community groups, working with public agencies, delivering death and emergency messages, etc.

MEDIATING - involves mediating confrontations with hostile or potentially hostile people and mediating interpersonal disputes (3.5)

Examples:

- Mediate family and civil disputes
- Control hostile groups (e.g., demonstrators, rioters, bar patrons)

USING RADIO/TELEPHONE - involves communication devices such as patrol car radio, handpack, base station radio, telephone (3.4)

Examples:

- Transmit messages over police radio (e.g., patrol car radio, handpack, or base station radio)
- Request back-up assistance in potentially hazardous or emergency situations
- Receive incoming calls from the public

V. WRITTEN COMMUNICATION DUTIES

PAPERWORK - generating, processing, and maintenance of written information (includes use of typewriters, photocopiers, and other office machines (3.0)

Examples:

- Process custody paperwork (e.g., prisoners' logs, rosters, etc.)
- Book evidence and personal property
- Prepare, file, retrieve, and maintain documents and record systems
- Review writs, bail bonds, warrants, and civil process paper for completeness and accuracy

READING - statutes, legal transcripts, reports, interoffice memos, teletype messages and training materials (3.0)

WRITING AND DIAGRAMMING - forms, citations, reports, and depicting crime/accident scenes in schematic form (3.1)

Examples:

- Sketch accident and crime scenes
- Estimate vehicle speed using physical evidence and mathematical formulas or graphs
- Write reports consisting of several short descriptive phrases
- Record and communicate descriptions of persons
- Summarize in writing statements of witness, complainants, etc.

APPENDIX B

PEACE OFFICER PHYSICAL JOB DEMANDS

In 1985, POST performed a peace officer job-task analysis that focused on the physical demands of the job. In this study, over 1600 patrol officers across California maintained "activity logs" for eight weeks, during which time they detailed the nature, severity, and consequences of each job-related physical activity in which they engaged.

Once verified for local applicability, this information may assist physicians and others involved in making employment decisions regarding the medical and physical suitability of individuals to withstand the demands and physical rigors of peace officer duties.

I. GENERAL FINDINGS

1. Of the over 16,000 physical incidents recorded, over 80% were "critical" insofar as they would have very likely resulted in at least one of the following consequences if performed incorrectly:
 - (1) Failure to make an arrest, complete a search, render aid, or provide another type of required service/duty;
 - (2) Failure to apprehend subject(s);
 - (3) Loss or damage to property;
 - (4) Loss of life or injury to self/others.
2. Approximately 16,500 physical incidents were collected. This translates into a physical incident rate per officer of 18 per year [12 (80%) of which would be considered critical].

II. SPECIFIC PHYSICAL ACTIVITIES/DEMANDS

The most frequently identified physical activities are described below.

1. Running

Distance: median and mode - 50 yards; maximum - 500+ yards;

Speed required in almost all (89%) of cases;

Obstacles encountered 60% of time - most commonly:

- fences and walls
- shrubs
- vehicles;

Most often performed in conjunction with encountering resistant subjects and/or jumping, climbing.

2. Resisting Combative Subjects

Most common physical peace officer activity (50% of instances);

Weight of resisters: mean - 165 lbs, mode - 180 lbs; max - over 220 lbs. (avg. height - 6 ft.);

Number of resisters: 1 (92%) to 3 (2%);

62% of resisters on drugs/alcohol.

Common resistances offered:

Pulling away

Wrestling

Hitting/kicking

Running away

Passive resistance

Pushing/shoving

Common actions taken by officer:

Grasping and moving

Takedown wrestling

Wrist, head or arm locks

Pushing/shoving

Dragging/pulling

Handcuffing

One-third performed without assistance;

10% of these activities performed without assistance and after running (avg. - 200 yds., max - over 400 yds.);

20% of these activities lasted in excess of 2 minutes.

3. Balancing

Width of surfaces: mode - 6", mean - 11 1/4";
Distance moved: mean - 31', mode - 6', max. - over 10';
Distance from ground: avg. - 6', max - over 10';
Types of surfaces: Block walls
Mountains/hillsides
Fence tops
Roofs
Ledges
Garbage cans;

80% of balancing performed in conjunction with climbing.

4. Climbing

Object Climbed	Height			Avg. Distance Run in Conjunction with Climb*
	Mean	Mode	Max.	
Fences/walls	7'	6'	16'	230 yds.
Ladders	20'	20'	35'	120 yds.
Stairs (flights)	2	1-2	5	"
Embankments	36'	10'	75'	"

Speed required in 33% of instances

*Running required in conjunction with climbing in approx. 1/3 of instances

5. Moving Nonresistant Persons or Objects (Includes motions such as dragging, pulling, lifting, carrying and supporting)

a. **Moving persons**

Weight: mean - 170 lbs., mode - 180 lbs, max. - over 250 lbs;
Distance: avg.- 40 ft., mode - 10 ft., max. - over 100 ft.;
94% of persons moved were conscious;
68% of persons moved were intoxicated;
Speed required in 40% of instances;
Performed without assistance at least 30% of time;
Persons lying down 85% of instances;
Movement of persons most commonly required lifting under arms,
around trunk, or by both arms.

b. Dragging/pulling objects

Weight (unassisted) mean - 60 lbs, mode - 20 lbs.; max - over 100 lbs.;

Weight (assisted) mean - 780 lbs, mode - 150-200 lbs., max - 1000 lbs.;

Distance: mean - 27 ft., mode - 6 ft., max - over 35 ft.;

Performed without assistance 80% of instances;

Speed required in 60% of instances.

c. Lifting/carrying objects

Weight: avg. - 40 lbs, max - over 100 lbs.;

Items: boxes, lumber, furniture, sand bags, tire wheels;

Performed without assistance 85% of time;

Lifted from ground (70%), waist height (22%), shoulder (6%) and above head (2%).

d. Pushing objects

Most common object pushed: vehicles;

Weight: mean - 3000 lbs, mode - 2000 lbs., max - over 5000 lbs.;

Distance: mean - 58 ft., mode - 50 ft., max - over 150 ft.;

Performed with assistance over 60% of time;

Speed required 50% of time.

6. Jumping/Hurdling/Vaulting

Most common object jumped: fences and walls

Direction	Distances		
	Mean	Mode	Max.
Up	39"	36"	72"
Down	51"	72"	96"
Across	35"	36"	60"
Over	36"	24"	72"
Vaulted	56"	72"	72"

Speed required 90% of time;

Performed 66% of time while moving forward, 33% from stationary position;

Performed most commonly in conjunction with running and climbing.