

JAN

Job Accommodation Network

Practical Solutions • Workplace Success

Accommodation and Compliance Series

Accommodation and Compliance Series: Foreign and Multinational Employers

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Introduction

Many U.S. citizens work for employers operating in foreign countries and of course many foreign companies operate within the United States. The following is a summary of when the ADA applies to foreign employment.

The ADA applies to:

A. U.S. employers with 15 or more employees

1. Conducting business in the U.S.
 - a. U.S. citizen employees – yes
 - b. Foreign employees – yes
2. Conducting business in a foreign country
 - a. U.S. citizen employees – yes, unless the foreign laws defense applies
 - b. Foreign employees – no

B. Foreign employers with 15 or more employees

1. Conducting business in the U.S.
 - a. U.S. citizen employees – yes, when the discrimination occurs within the U.S., absent constraints imposed by treaty or by binding international agreement
 - b. Foreign employees – yes, when the discrimination occurs within the U.S., absent constraints imposed by treaty or by binding international agreement
2. Conducting business in a foreign country
 - a. U.S. citizen employees – no, unless the foreign employer is controlled by an American employer or other covered entity and the foreign defense do not apply
 - b. Foreign employees – no

Situations and Solutions:

The following situations and solutions are real-life examples of accommodations that were made by JAN customers. Because accommodations are made on a case-by-case basis, these examples may not be effective for every workplace but give you an idea about the types of accommodations that are possible.

A Canadian citizen works in the United States as an accountant for a U.S. employer.

He discloses that he has a disability and needs an accommodation. The employer terminates him and he believes it was because he asked for an accommodation. The employee can file a complaint under the ADA because foreign employees working in the United States for U.S. employers are protected under the ADA.

A U.S. citizen working in South Africa as a customer service representative for a large, U.S. employer has a hearing impairment and needs an accommodation.

The employer must consider providing the accommodation because U.S. citizens with disabilities working in a foreign country for a U.S. employer are protected under the ADA.

A foreign company has an office in the New York City. A U.S. citizen working in the New York office has a disability and asks for an accommodation.

A U.S. citizen working in the New York office has a disability and asks for an accommodation. Absent constraints imposed by treaty or by binding international agreement, the company must consider providing the accommodation under the ADA. If the U.S. citizen worked for the same company, but in a foreign office, the employer would not have to consider the accommodation request.

A U.S. company has offices all over the world.

A foreign employee working in Qatar asks for an accommodation under the ADA. The ADA does not protect the employee because foreign employees working in foreign countries for U.S. employers are not covered by U.S. EEO laws.

A Chinese citizen with a disability needs an accommodation.

She works for an employer in Guam, which is a U.S. territory. Assuming the employer has at least 15 employees, it must comply with the ADA because the ADA covers employers in U.S. territories and foreign employees are covered by the ADA when working for covered employers.

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