

The Americans with Disabilities Act is over 20 years old now but some of the changes to that law that went into effect in January 2009 are now starting to have an impact on insurance policies and rates. Restaurant owners are very vulnerable to claims by employees against them under the ADA and so if you own a restaurant or are thinking of starting one, you should pay particular attention to this law and the recent changes that broaden its scope.

Let's start with a few rules and clarifications. The ADA will apply to you and your relationship with your employees if you have 15 or more employees, either full time or part time. If you have multiple locations for your restaurants, then you have to count all employees at all locations unless you have set up each location under a different business entity. Also, your general liability insurance will provide you with very little help protecting you from an ADA lawsuit by one of your employees. The policy that you need for this type of protection is called an Employment Practices Liability Insurance policy or EPLI for short. In my experience most restaurants do not buy this policy and in fact every single one of them with employees needs one. This is an area of ignorance that can and does wipe out restaurants from time to time. Don't leave your business unprotected here.

The Equal Employment Opportunity Commission or EEOC for short, has been charged with revising its regulations to restore the original intent of the ADA to address the narrow view of the law that the courts have taken over the years. These regulations went into effect in May of 2011. These new regulations will certainly increase the number of claims filed against employers. These claims already jumped 17% in 2010 over 2009 and they will increase even more with these new regulations. The new regulations interpret a disability so broadly now that several defense attorneys have blogged that under this new definition, almost every American can be categorized as having a disability of some type. This creates a new, much riskier world for restaurant owners and you simply must protect yourself.

Let's look at an example. Let's say you have an employee with diabetes. Now, you aren't allowed to ask how long they have had it or how long they have been taking medications for it, even if these questions would seem to flow in the normal course of a conversation with your employee. But now, you are also required to provide reasonable accommodations for this disability. You must provide a place where they can test their blood sugar, you must allow them a break to take medications and you may even be required to provide them with a break time to rest. There are just so many variables that it will be difficult for any employer to cover all of the bases here, even with a full time human relations staff. And most restaurant owners don't have an HR staff.

So how do you protect yourself from an employee driven lawsuit under the ADA? First of all you need to understand the rules and the risks. You must educate yourself and your managers on what they can and cannot ask or say to an employee. You will also want to engage in the interactive process of deciding what steps if any are needed to provide reasonable accommodation for the disability.

If all of this sounds overwhelming, then you are not alone. And you don't have to be. Take the time to understand and then to invest in an EPLI insurance policy. While EPLI can't protect you from the cost of remodeling to take care of the physical accommodation changes that may be required in your case, it can protect you from the legal costs of defending a lawsuit as well as the settlement costs of losing one.

Clinard Insurance Group insures hundreds of restaurants, all across North Carolina and South Carolina and we advise all of our restaurant insurance clients to invest in Employment Practices Liability Insurance. If you have any questions about your restaurant insurance, please call us, toll free, at 877-687-7557 or visit us on the web at www.TheRestaurantInsuranceStore.com.