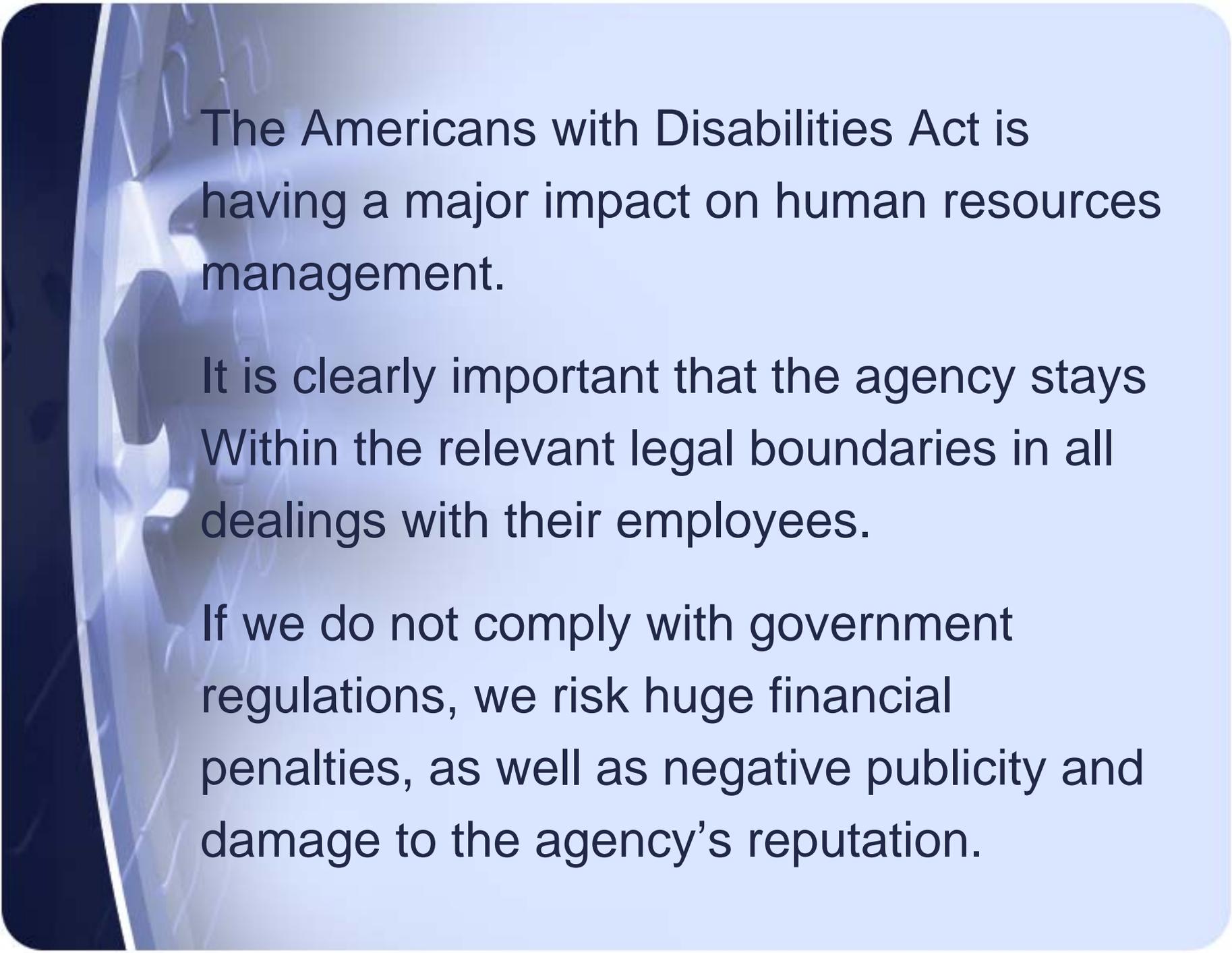


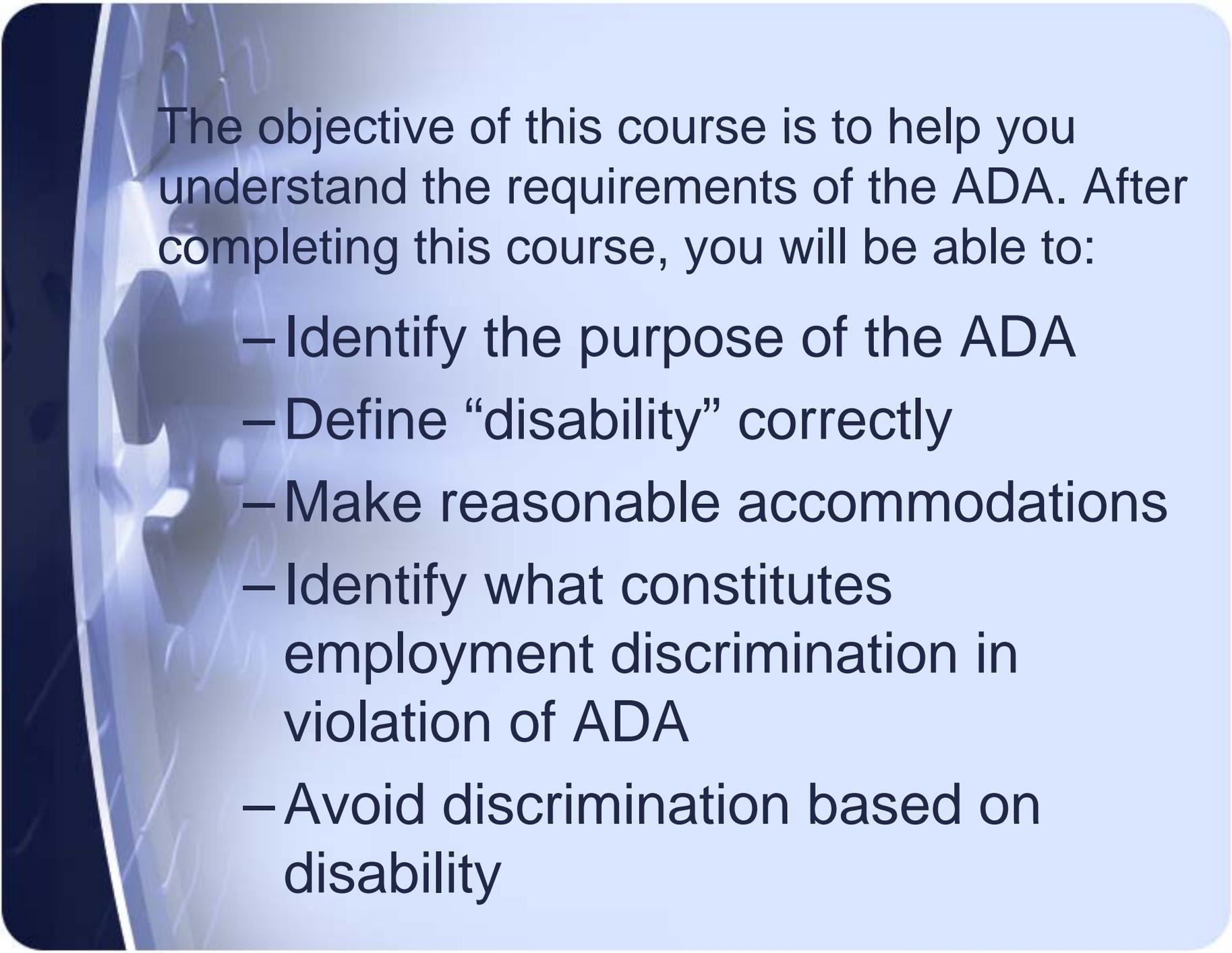
Americans with Disabilities Act



The Americans with Disabilities Act is having a major impact on human resources management.

It is clearly important that the agency stays Within the relevant legal boundaries in all dealings with their employees.

If we do not comply with government regulations, we risk huge financial penalties, as well as negative publicity and damage to the agency's reputation.

A person in a wheelchair is shown from behind, walking down a ramp. The ramp is made of concrete and has a metal handrail on the right side. The person is wearing a dark jacket and light-colored pants. The background is a light blue sky. The overall scene is a photograph of a person using a wheelchair on a ramp, likely at a public building or transit station.

The objective of this course is to help you understand the requirements of the ADA. After completing this course, you will be able to:

- Identify the purpose of the ADA
- Define “disability” correctly
- Make reasonable accommodations
- Identify what constitutes employment discrimination in violation of ADA
- Avoid discrimination based on disability

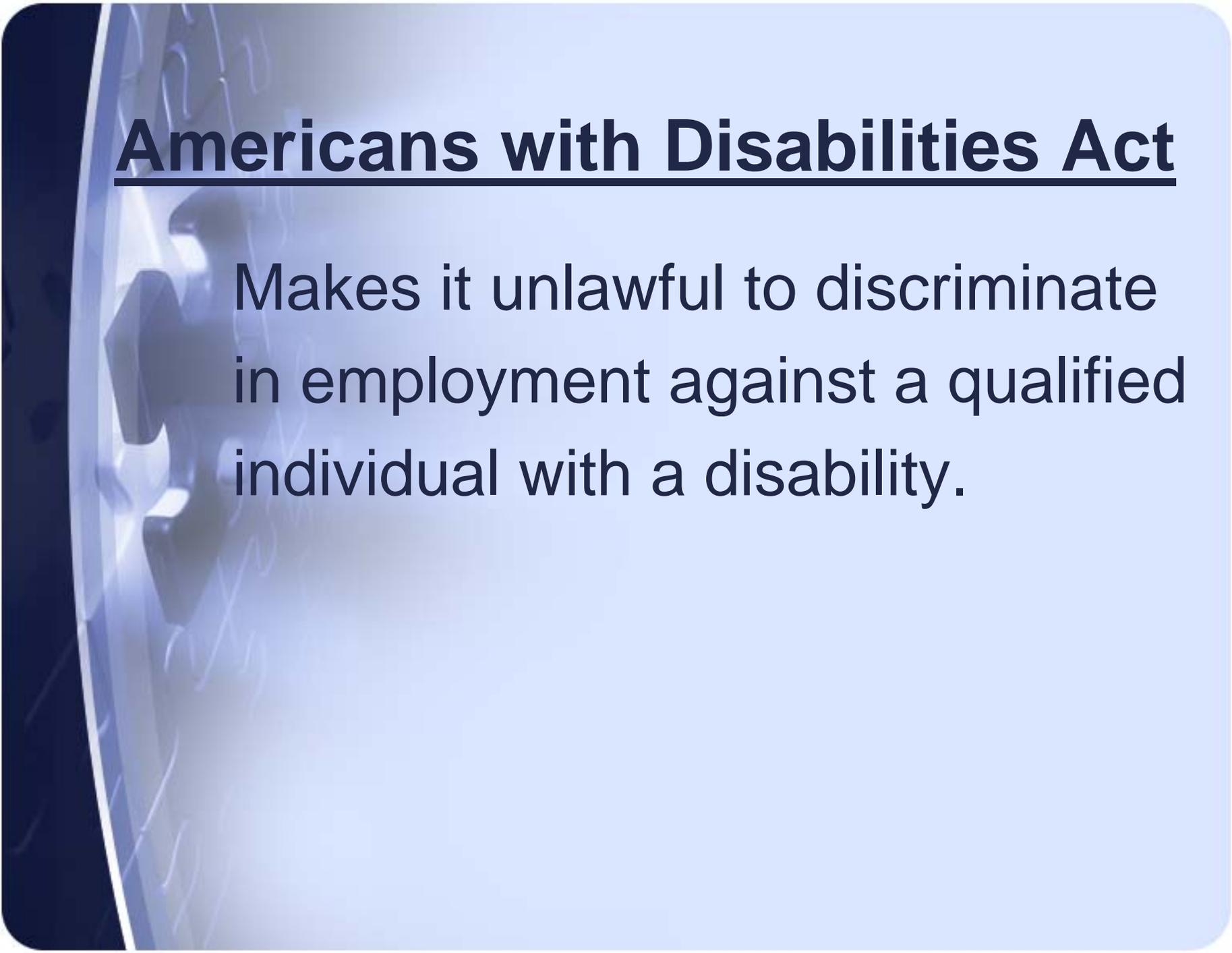
Americans with Disabilities Act





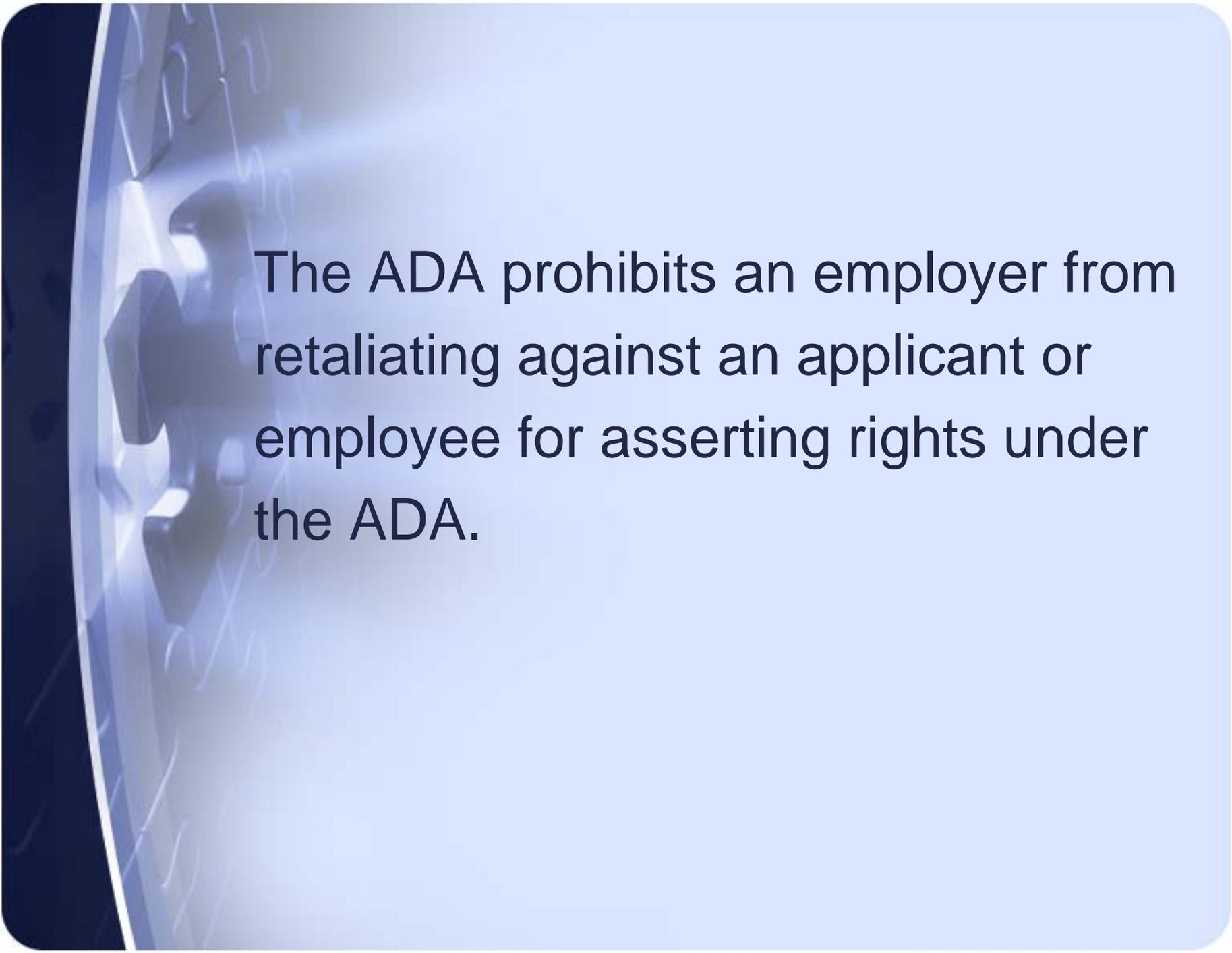
Approximately 43 million Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older.

Individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion and access to lesser services, programs, activities, benefits, jobs, or other opportunities.

A person in a wheelchair is shown from behind, walking up a ramp. The scene is dimly lit, with a strong light source from the left creating a silhouette effect. The background is a light blue gradient.

Americans with Disabilities Act

Makes it unlawful to discriminate in employment against a qualified individual with a disability.

A person in a wheelchair is shown on a ramp, likely at an airport or public building, illustrating the context of the ADA. The person is positioned on the left side of the frame, moving up the ramp. The background is a light blue gradient with a faint, circular pattern of lines, suggesting a globe or a similar abstract design. The text is overlaid on the right side of the image.

The ADA prohibits an employer from retaliating against an applicant or employee for asserting rights under the ADA.



Covered Employment Practices

- Recruitment
- Pay
- Hiring
- Firing
- Promotion
- Job Assignments
- Training
- Leave
- Lay-off
- Benefits
- All other employment related activities

A person in a wheelchair is shown from the side, ascending a ramp. The ramp has a textured surface for traction. The background is a light blue gradient.

Facts about Disabilities and the ADA

- Out of a total U.S. population of about 290 million, approximately 43 million Americans have disabilities. This works out to nearly 1 in 6.
- One of the most important goals of this law is to give equal employment opportunities to qualified individuals with disabilities.

WHY DO WE NEED ADA?

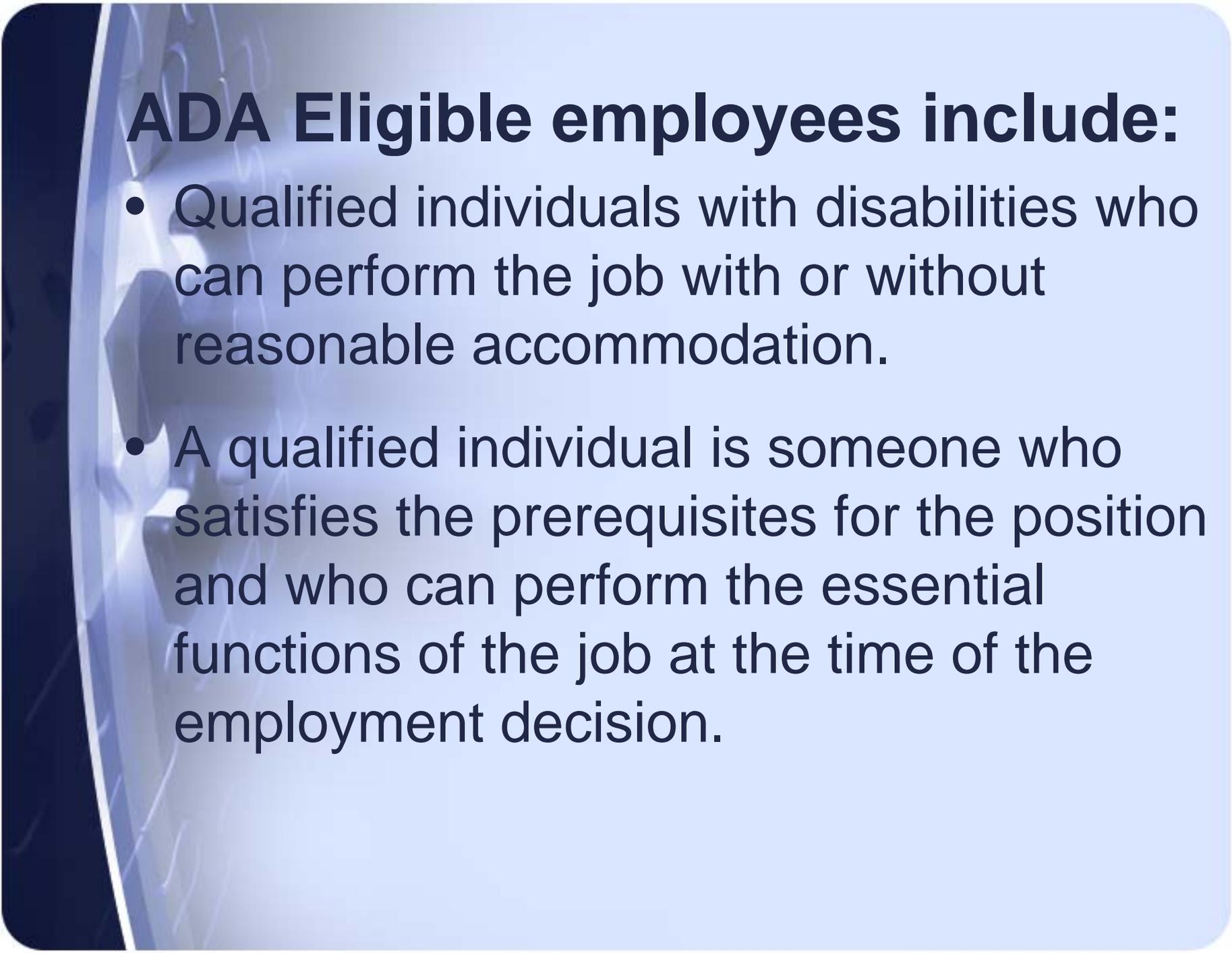


- 1 in 6 Americans have a disability
- 12.2 m Americans are not working because of a disability
- 8.2 m would prefer to work
- 80% of all managers surveyed rated the overall performance of their disabled workers to be good to excellent

A person in a wheelchair is shown from behind, walking up a ramp. The ramp has a textured surface for traction. The background is a light blue gradient.

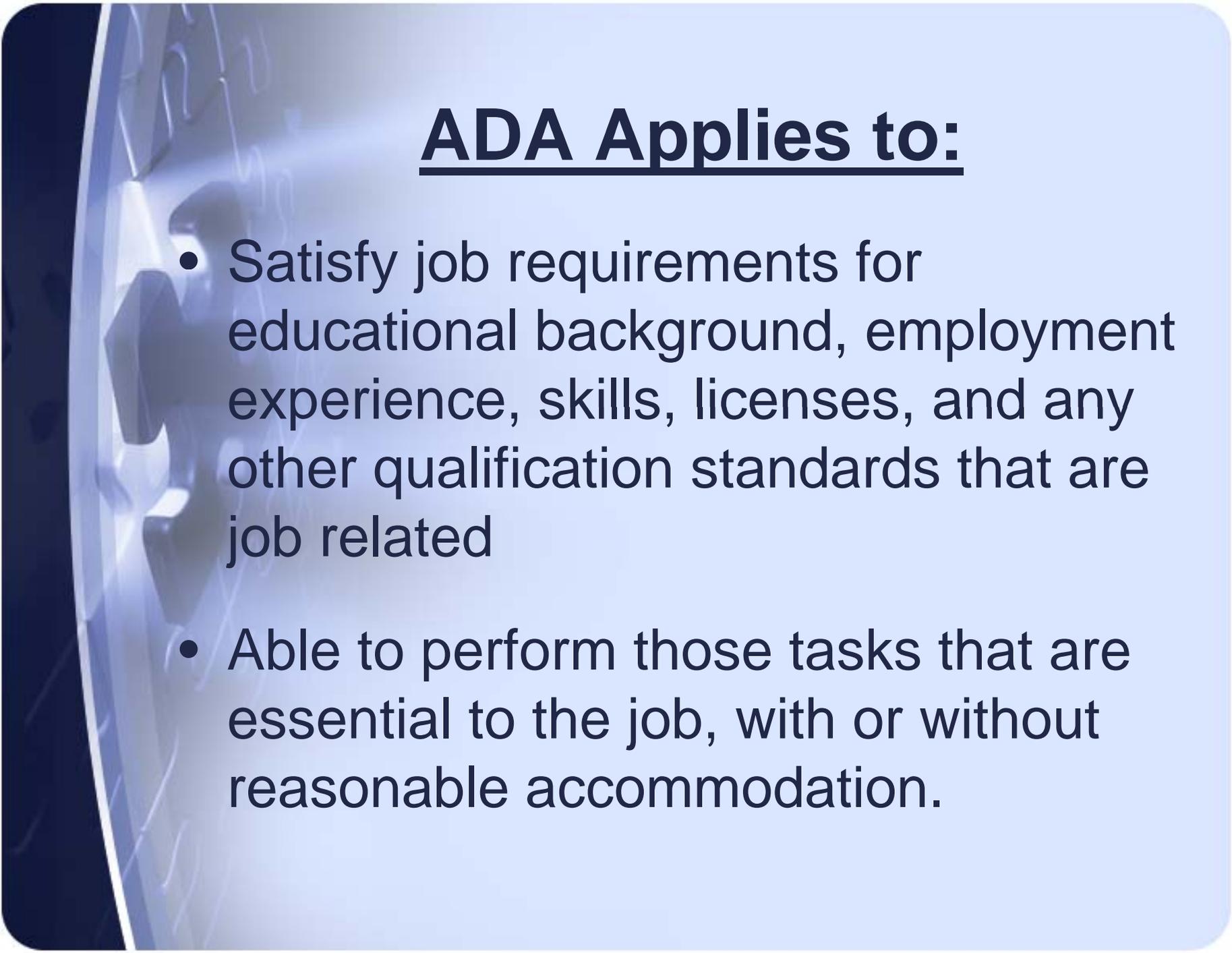
WHY DO WE NEED ADA?

An otherwise qualified person with a disability will not, on the basis of disability, be excluded from participating in, be denied benefits of or otherwise be subjected to discrimination under any program, service, activity or employment opportunity in violation of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, (ADA), as amended, by the Arkansas Department of Health.



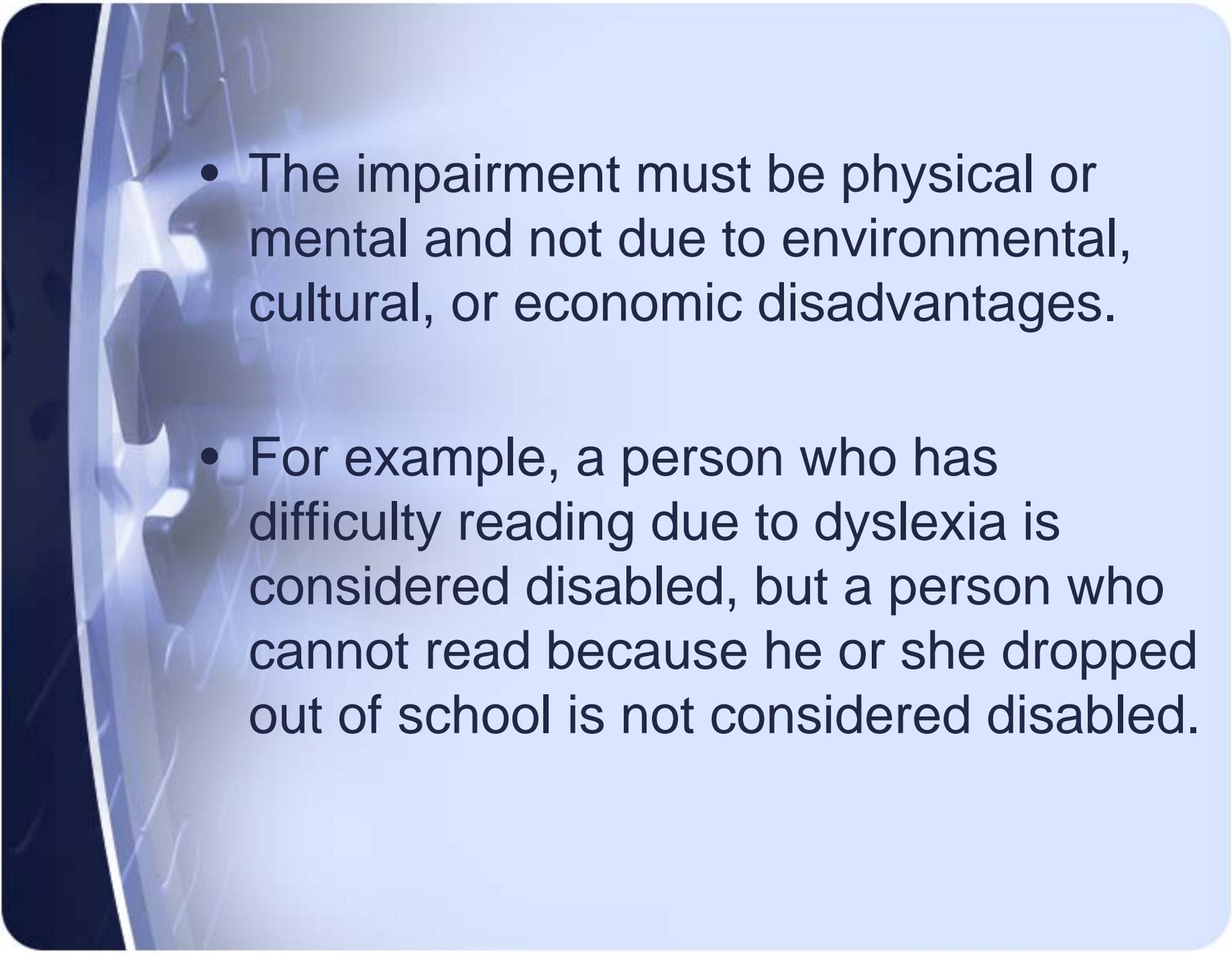
ADA Eligible employees include:

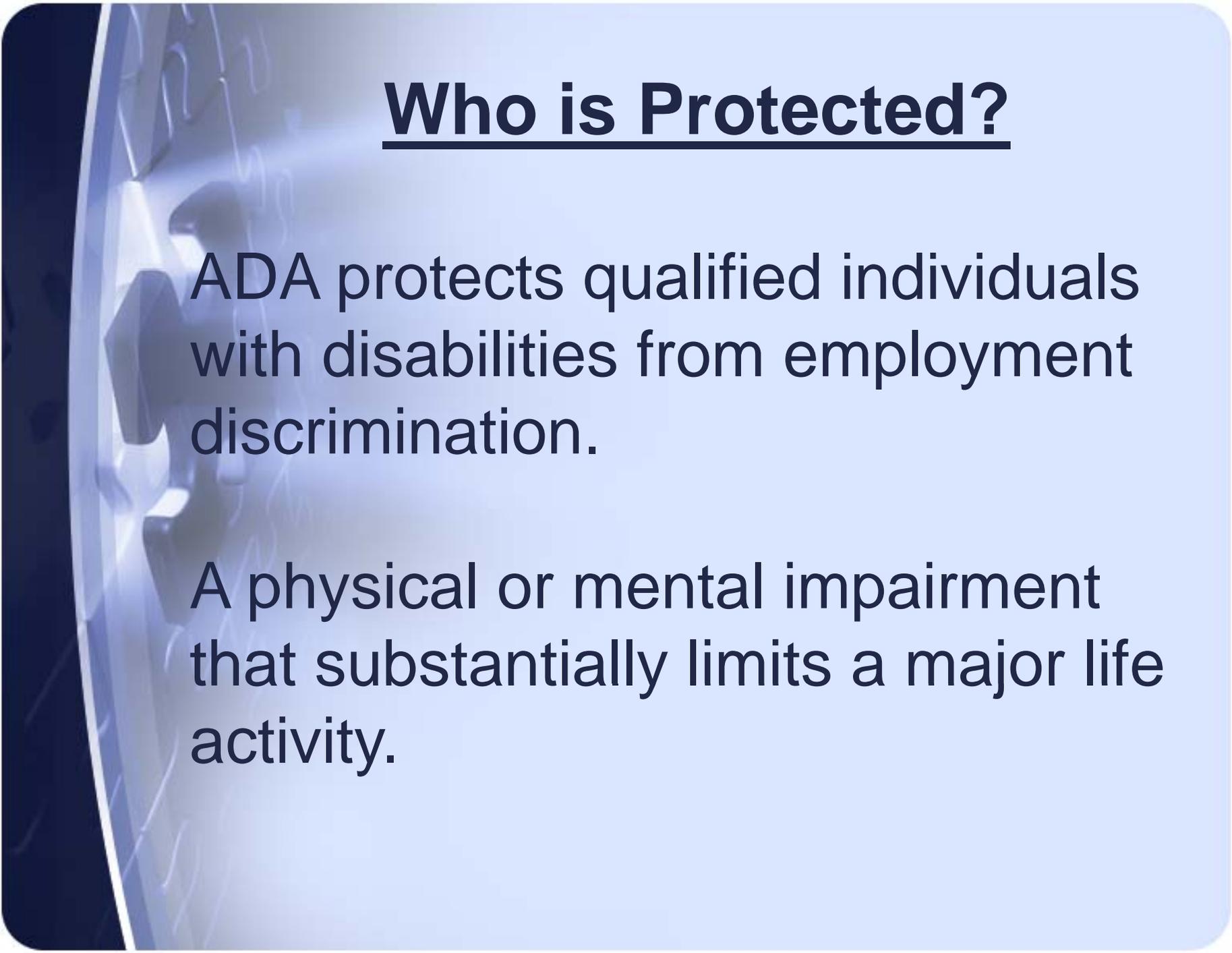
- Qualified individuals with disabilities who can perform the job with or without reasonable accommodation.
- A qualified individual is someone who satisfies the prerequisites for the position and who can perform the essential functions of the job at the time of the employment decision.

A person in a wheelchair is shown from the side, using a ramp to ascend. The person is wearing a dark jacket and a light-colored cap. The ramp is a light-colored, textured surface. The background is a blurred indoor setting with some equipment or furniture. The overall image has a blue tint.

ADA Applies to:

- Satisfy job requirements for educational background, employment experience, skills, licenses, and any other qualification standards that are job related
- Able to perform those tasks that are essential to the job, with or without reasonable accommodation.

- 
- A person in a wheelchair is shown on a ramp, moving upwards. The image is semi-transparent and serves as a background for the text. The person is in the center-left of the frame, and the ramp extends from the bottom left towards the top right. The overall scene is dimly lit, with some highlights on the ramp's surface.
- The impairment must be physical or mental and not due to environmental, cultural, or economic disadvantages.
 - For example, a person who has difficulty reading due to dyslexia is considered disabled, but a person who cannot read because he or she dropped out of school is not considered disabled.

A person in a wheelchair is shown from behind, ascending a ramp. The scene is dimly lit, with a strong light source from the left creating a silhouette effect. The background is a light blue gradient.

Who is Protected?

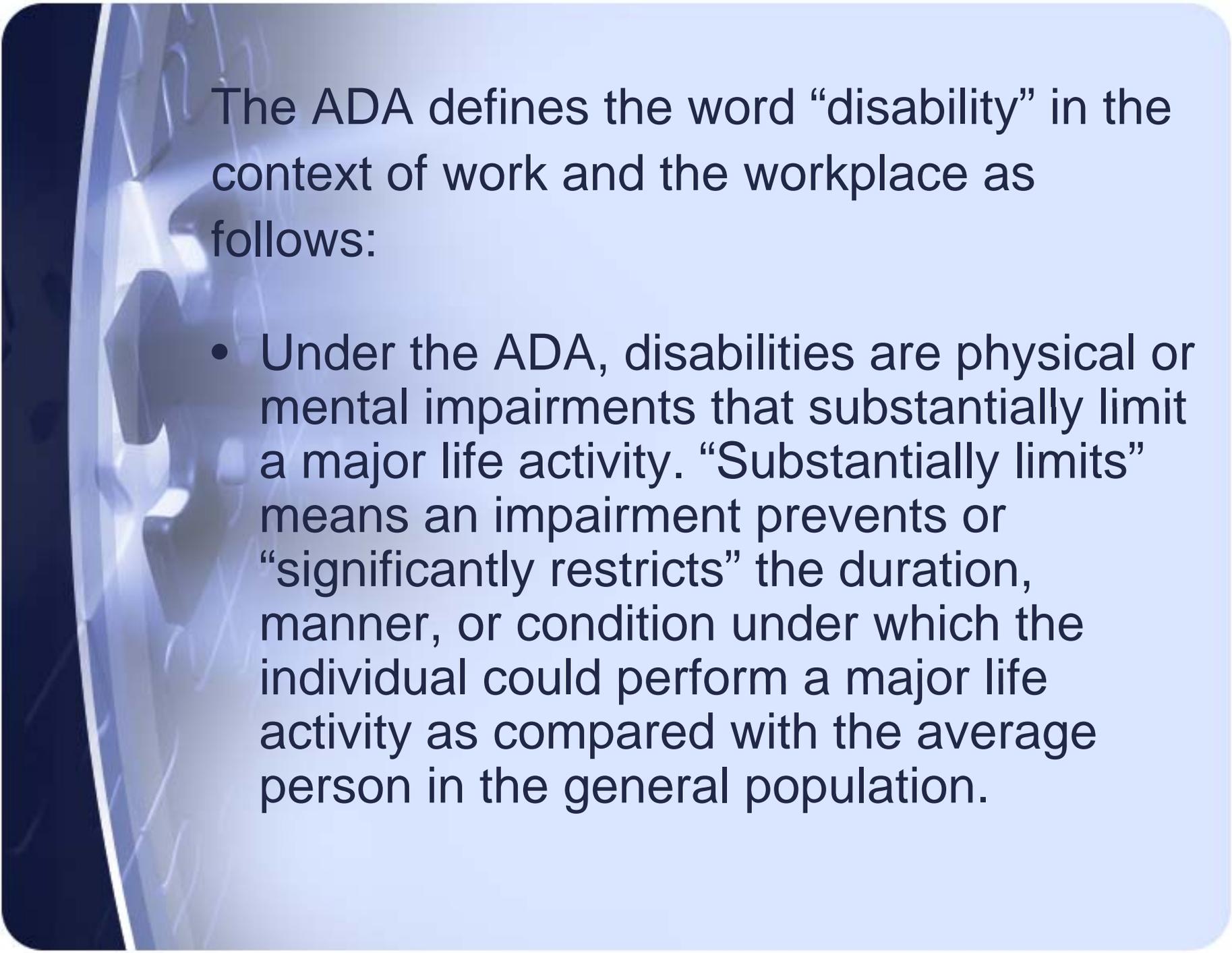
ADA protects qualified individuals with disabilities from employment discrimination.

A physical or mental impairment that substantially limits a major life activity.



Major Life Activities

- Hearing
- Seeing
- Speaking
- Breathing
- Performing manual tasks
- Walking
- Caring for oneself
- Learning
- Working



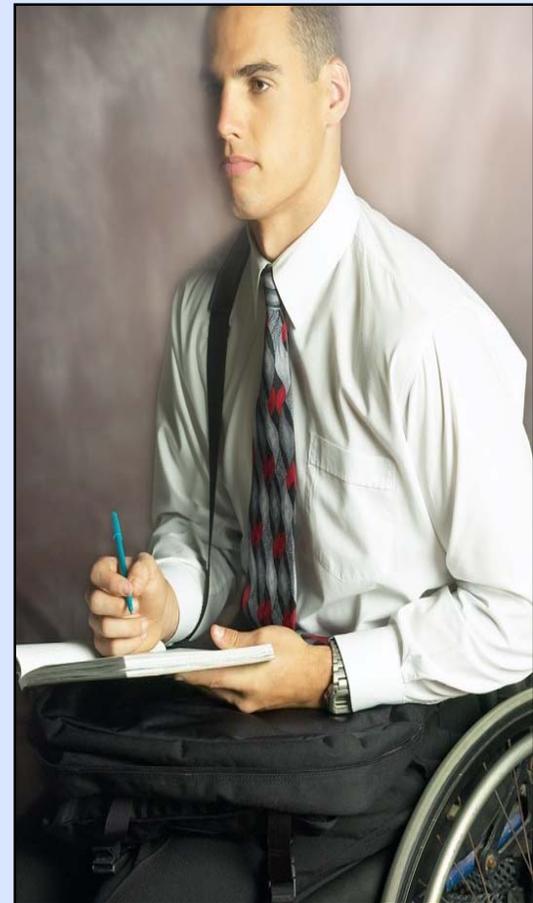
The ADA defines the word “disability” in the context of work and the workplace as follows:

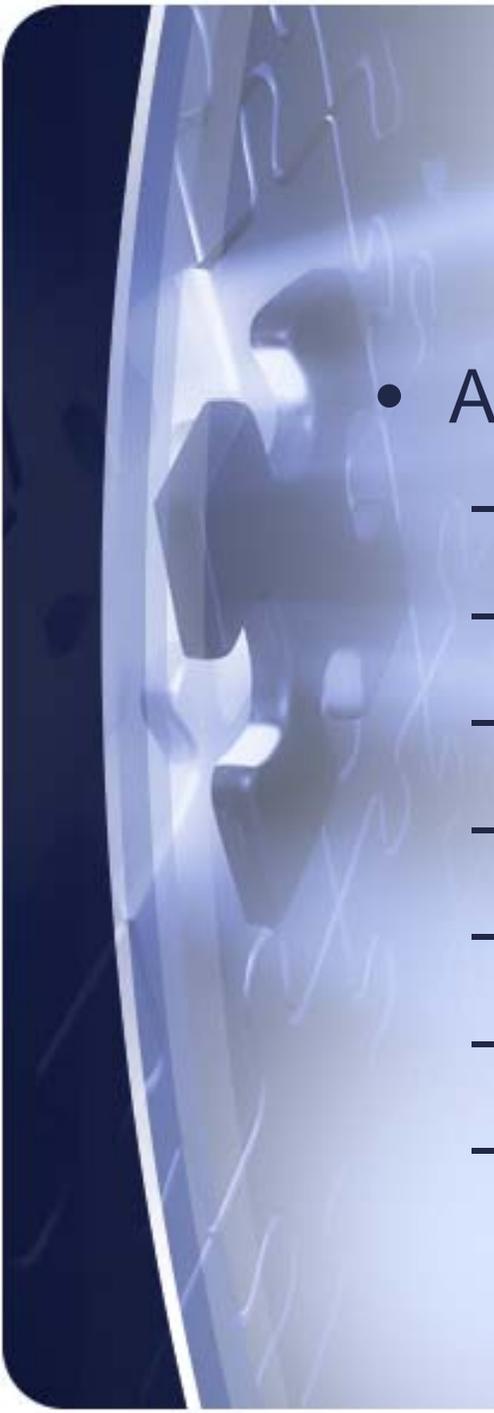
- Under the ADA, disabilities are physical or mental impairments that substantially limit a major life activity. “Substantially limits” means an impairment prevents or “significantly restricts” the duration, manner, or condition under which the individual could perform a major life activity as compared with the average person in the general population.

- 
- “Record of an impairment” includes those who have recovered and those who have been misclassified as having an impairment.
 - “Regarded as having an impairment” occurs when employers treat individuals as being limited or more limited than they are; or when an individual’s impairments become limitations only because of others’ prejudices; or when individuals have no impairment but are treated as having one—for example, when it is feared that someone who had cancer 20 years ago will have a recurrence.

Defining Disability

- Physical or mental impairment that substantially limits one or more of the major life activities
- Record of impairment
- Regarded as having an impairment

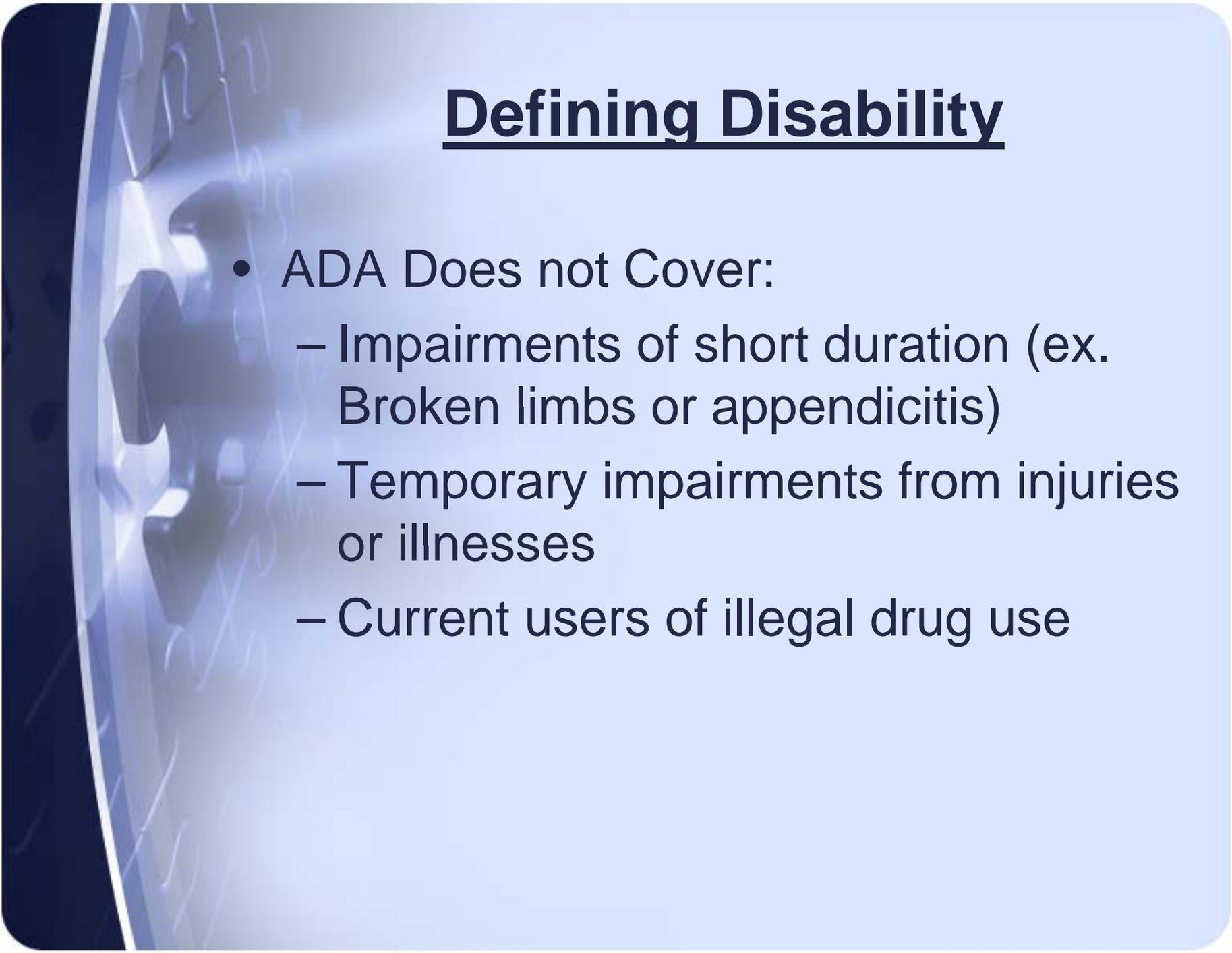


A person in a wheelchair is shown from behind, ascending a ramp. The scene is dimly lit, with a strong light source from the left creating a silhouette effect. The ramp has a textured surface, possibly for safety. The overall mood is one of struggle and overcoming physical challenges.

Defining Disability

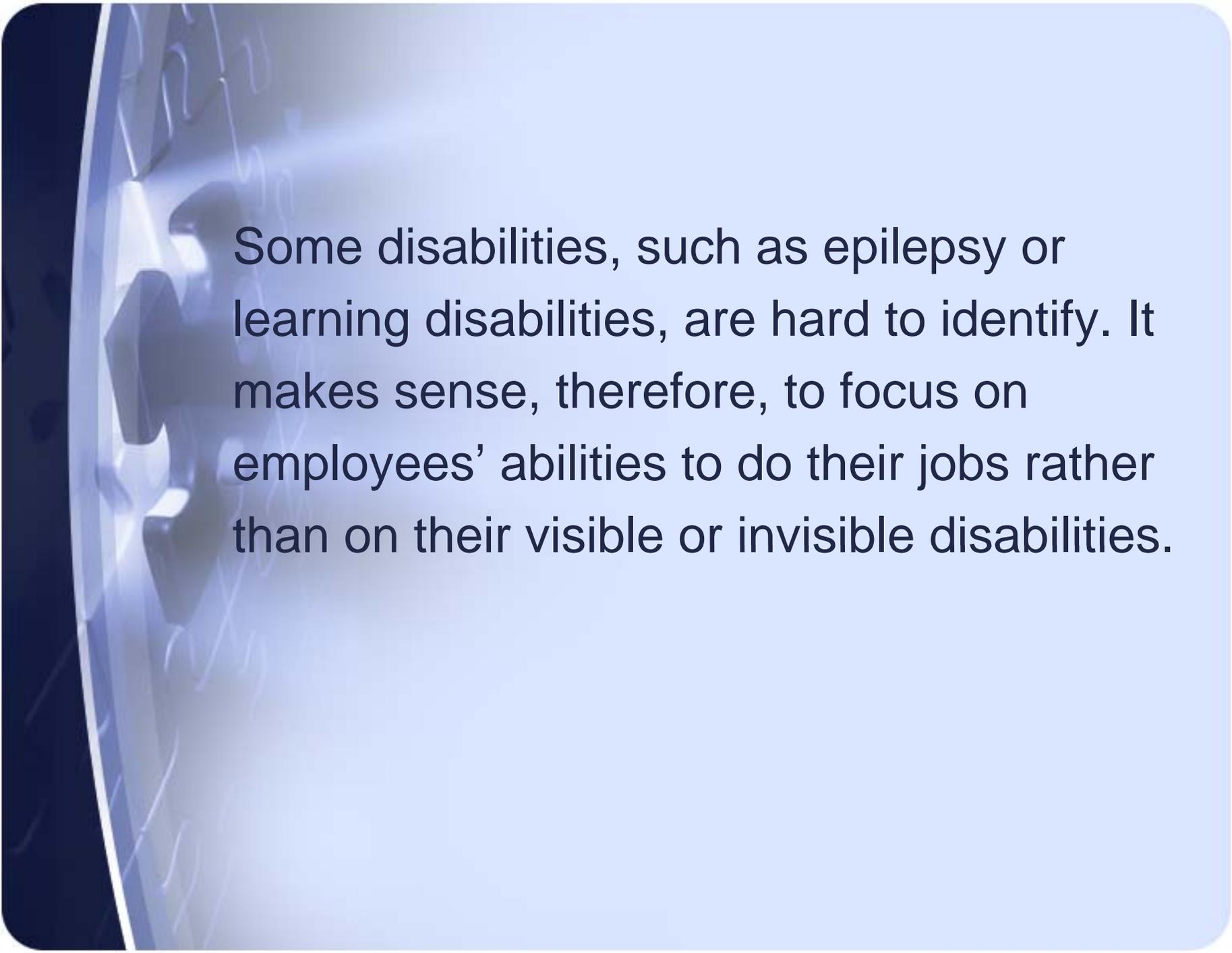
- ADA Covers:
 - AIDS or HIV virus
 - Epilepsy
 - Learning disability
 - Limited or no use of limbs
 - Mental retardation
 - Paralysis
 - Hearing, vision, or speech impairment

- 
- A person in a wheelchair is shown on a ramp, moving upwards. The image is semi-transparent and serves as a background for the text. The person is wearing a dark jacket and a hat, and the wheelchair is a standard manual model. The ramp has a textured surface, possibly for grip.
- Think about your own attitudes toward disabilities.
 - For example, how do you feel toward colleagues who are in remission from cancer or who are recovering alcoholics?
 - How do you interact with employees who are in wheelchairs or who wear hearing aids?

A person in a wheelchair is shown on a ramp, moving upwards. The image is semi-transparent and serves as a background for the slide. The person is in the center-left of the frame, and the ramp extends from the bottom left towards the top right.

Defining Disability

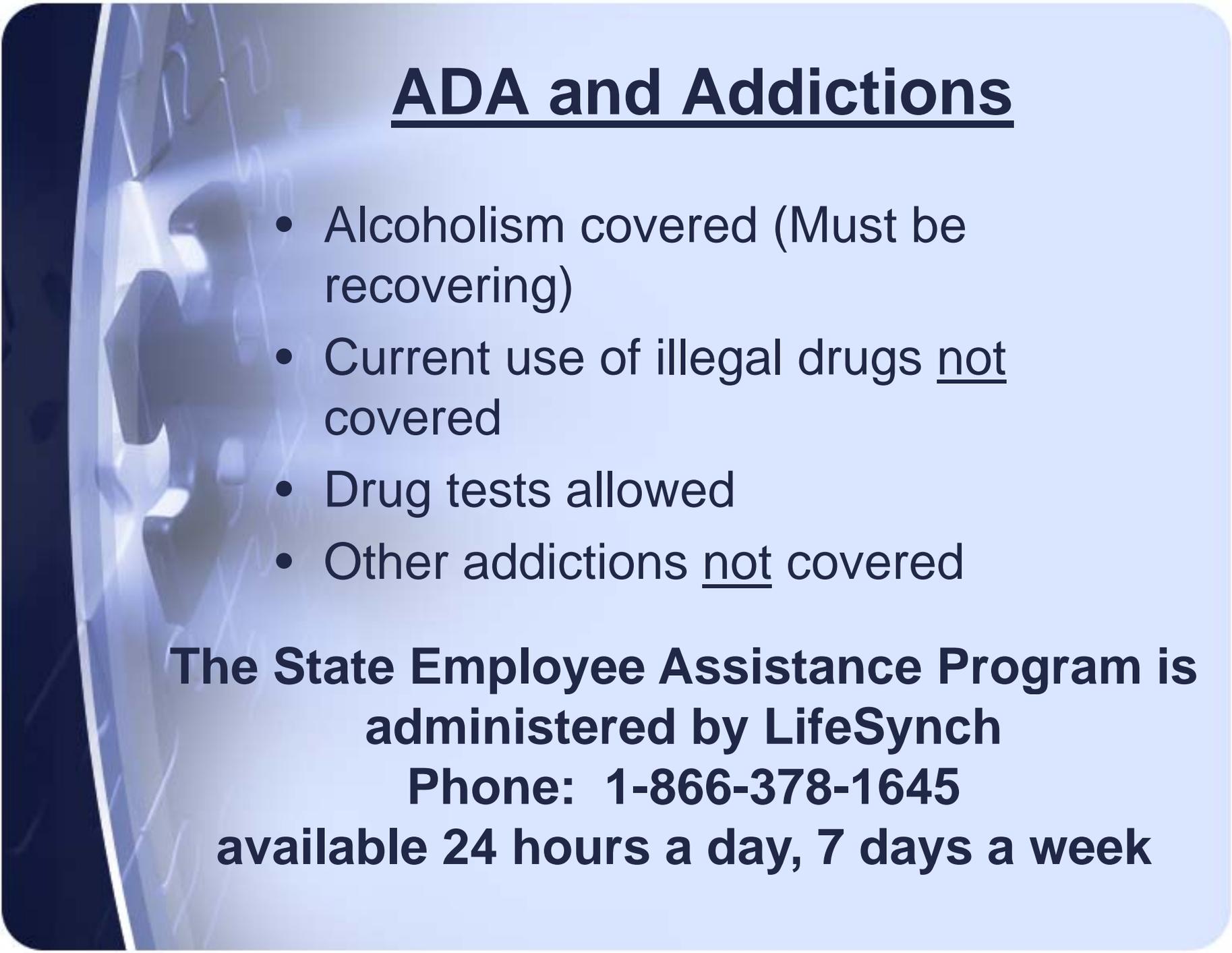
- ADA Does not Cover:
 - Impairments of short duration (ex. Broken limbs or appendicitis)
 - Temporary impairments from injuries or illnesses
 - Current users of illegal drug use



Some disabilities, such as epilepsy or learning disabilities, are hard to identify. It makes sense, therefore, to focus on employees' abilities to do their jobs rather than on their visible or invisible disabilities.

- 
- A person wearing a white protective suit and a mask is walking through a doorway. The scene is dimly lit, with light coming from the doorway, creating a silhouette effect. The person is moving from left to right.
- The ADA treats different kinds of addictions differently. For example:
 - Individuals who have an alcohol abuse problem are protected by the ADA as long as they can perform their job duties safely and effectively. The ADA allows you to hold an alcoholic employee to the same qualifications and job performance standards as other employees.
 - An individual who is currently using illegal drugs, however, is not protected by the ADA and may be denied employment or fired on the basis of such use. An individual who has had a drug problem in the past, but is no longer using drugs illegally, is protected.

- 
- A test for the illegal use of drugs is not considered a medical examination under the ADA so it is not a prohibited pre-employment medical examination. The ADA does not prevent us from testing applicants or employees for current illegal drug use or from making employment decisions based on verifiable results.
 - Other addictions, such as gambling, kleptomania (stealing), and pyromania (setting fires), are not covered.



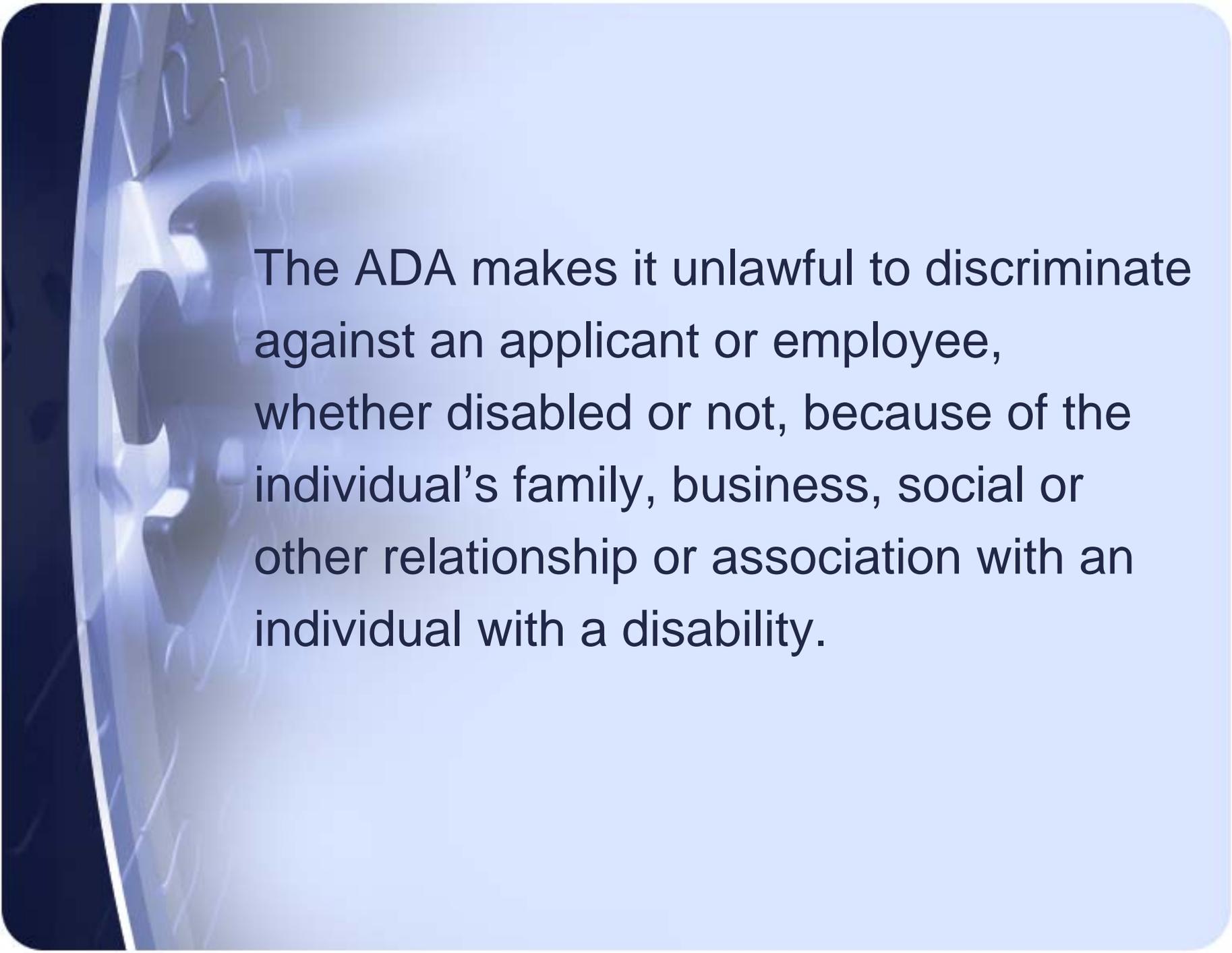
ADA and Addictions

- Alcoholism covered (Must be recovering)
- Current use of illegal drugs not covered
- Drug tests allowed
- Other addictions not covered

The State Employee Assistance Program is administered by LifeSynch

Phone: 1-866-378-1645

available 24 hours a day, 7 days a week

A person in a wheelchair is shown from behind, ascending a ramp. The scene is dimly lit, with a strong light source from the left creating a silhouette effect. The ramp has a textured surface, possibly for safety. The overall mood is one of quiet determination and accessibility.

The ADA makes it unlawful to discriminate against an applicant or employee, whether disabled or not, because of the individual's family, business, social or other relationship or association with an individual with a disability.

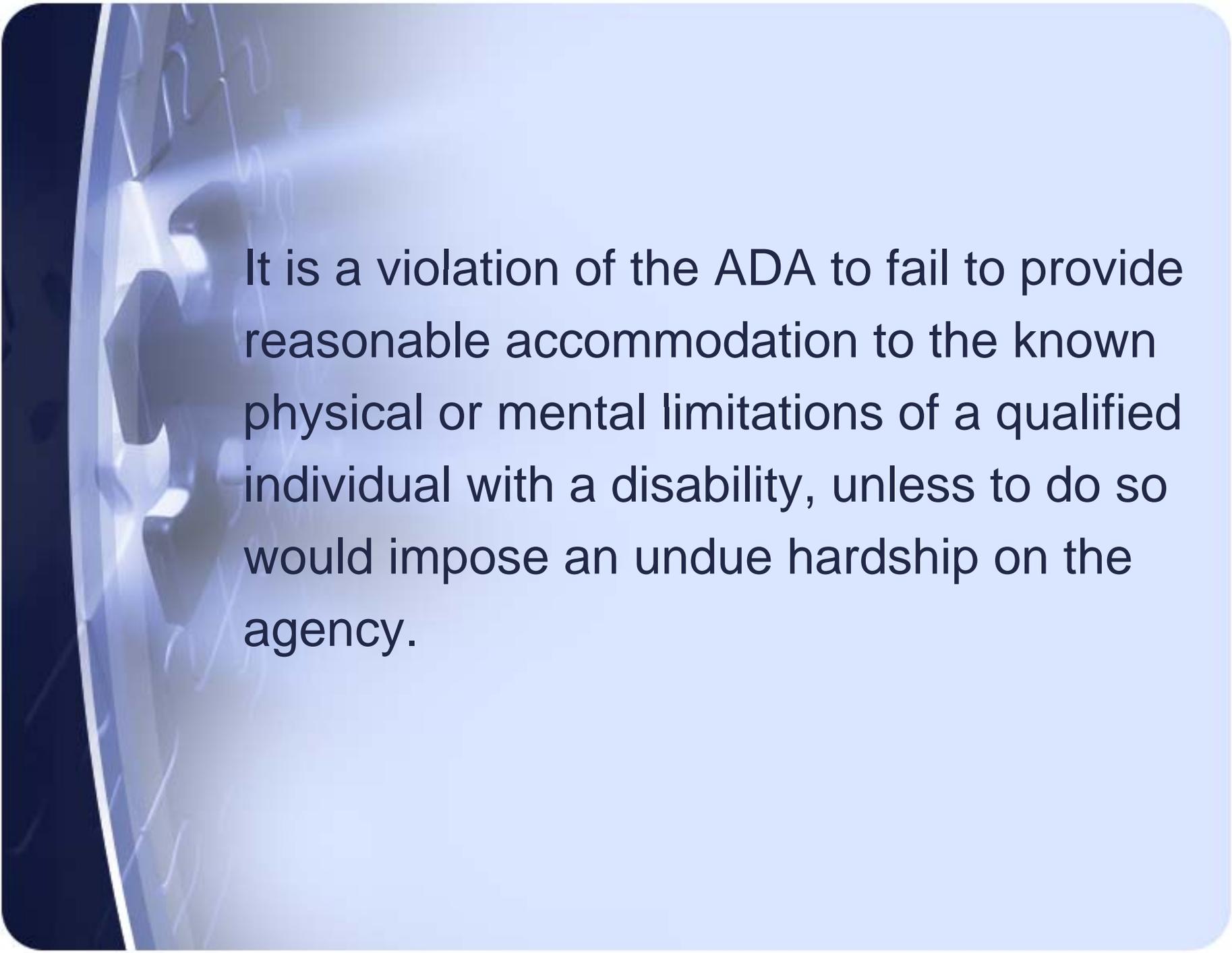
EEOC ADA Charges

<u>Impairment</u>	<u># of Charges (2007)</u>
Anxiety Disorder	488
Asthma	269
Cancer	578
Depression	1,200
Diabetes	912
Record of Disability	1,052
Regarded as Disabled	3,143
Relationship/Association	253

Reasonable Accommodation

Change or adjustments to a job, the work environment or the way things usually are done that enables a qualified individual with a disability to enjoy an equal employment opportunity.



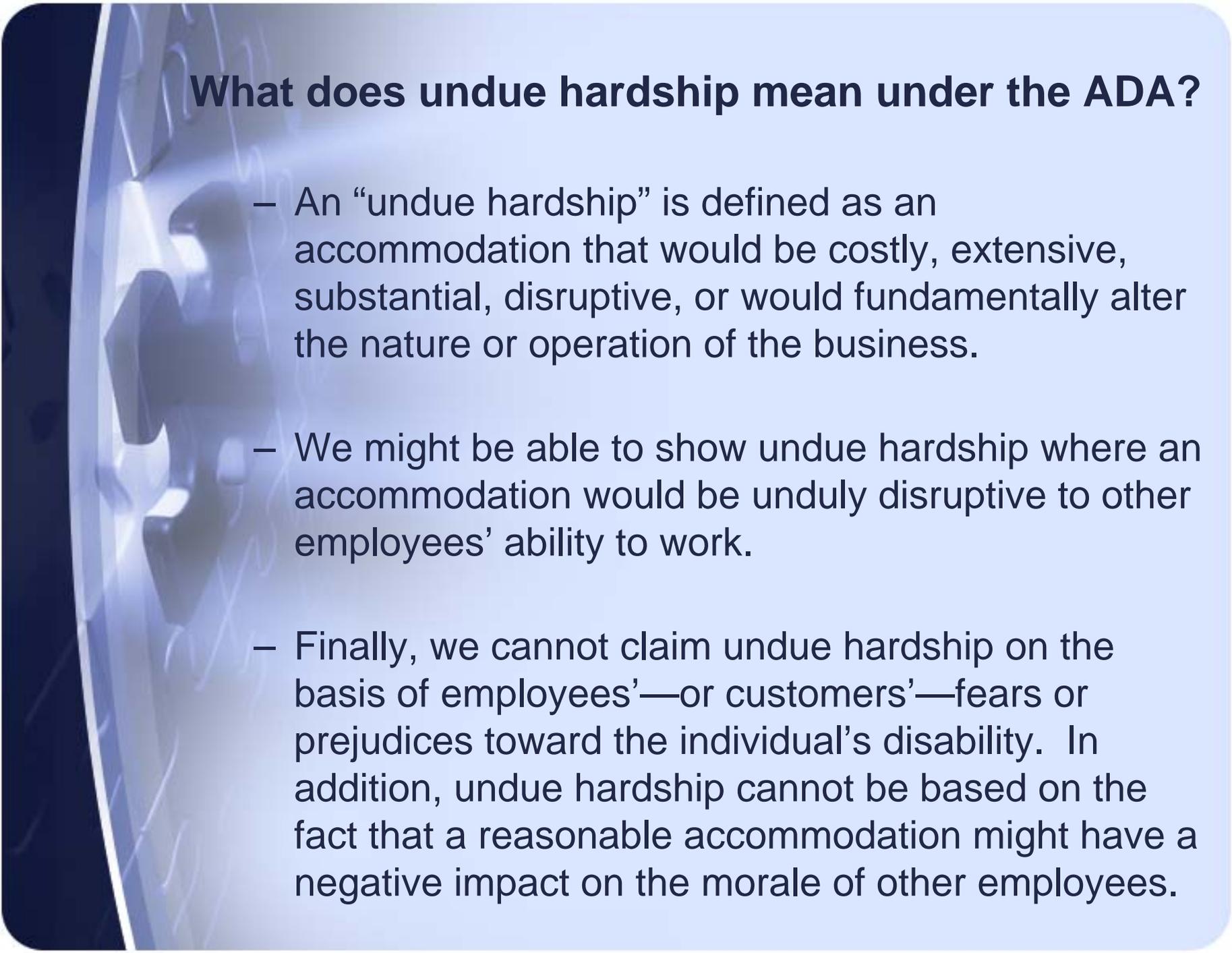
A person in a wheelchair is shown from behind, ascending a ramp. The ramp has a textured surface for traction. The background is a light blue gradient. The text is overlaid on the right side of the image.

It is a violation of the ADA to fail to provide reasonable accommodation to the known physical or mental limitations of a qualified individual with a disability, unless to do so would impose an undue hardship on the agency.

Undue Hardship

- Changes that are significantly difficult or expensive
- Try to identify another accommodation
- Prejudice is not hardship



A person in a wheelchair is walking through a doorway. The scene is dimly lit, with light coming from the doorway, creating a silhouette effect. The person is in the center of the frame, moving from left to right. The background is dark, and the foreground is also dark, with some light reflecting off the floor.

What does undue hardship mean under the ADA?

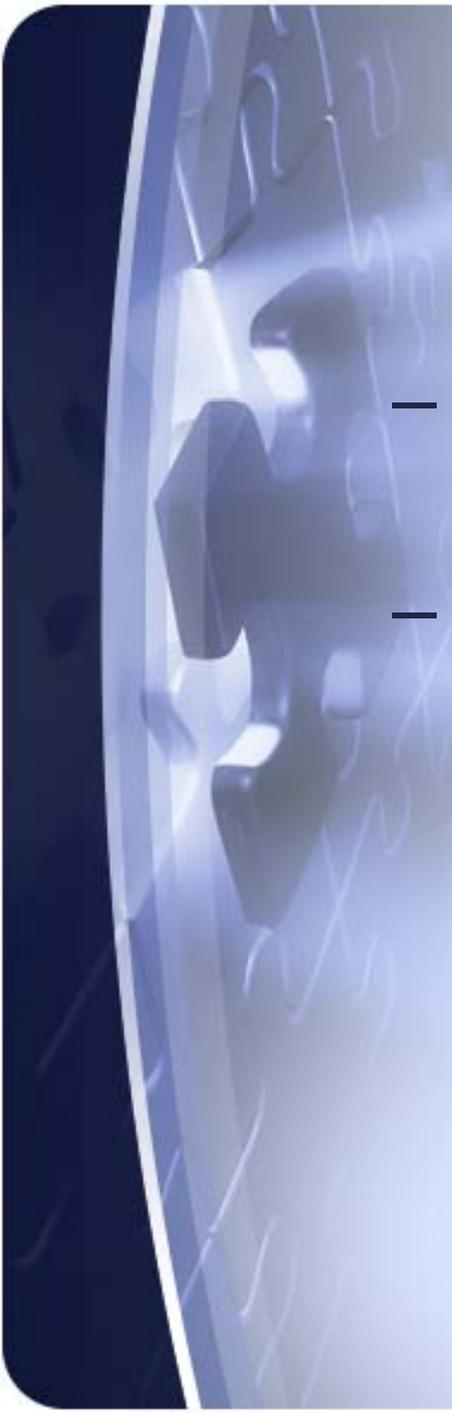
- An “undue hardship” is defined as an accommodation that would be costly, extensive, substantial, disruptive, or would fundamentally alter the nature or operation of the business.
- We might be able to show undue hardship where an accommodation would be unduly disruptive to other employees’ ability to work.
- Finally, we cannot claim undue hardship on the basis of employees’—or customers’—fears or prejudices toward the individual’s disability. In addition, undue hardship cannot be based on the fact that a reasonable accommodation might have a negative impact on the morale of other employees.

A person in a wheelchair is shown from the side, ascending a ramp. The person is wearing a dark jacket and a light-colored cap. The ramp is made of light-colored concrete or stone blocks. The background is a light blue gradient.

Examples of Reasonable Accommodations

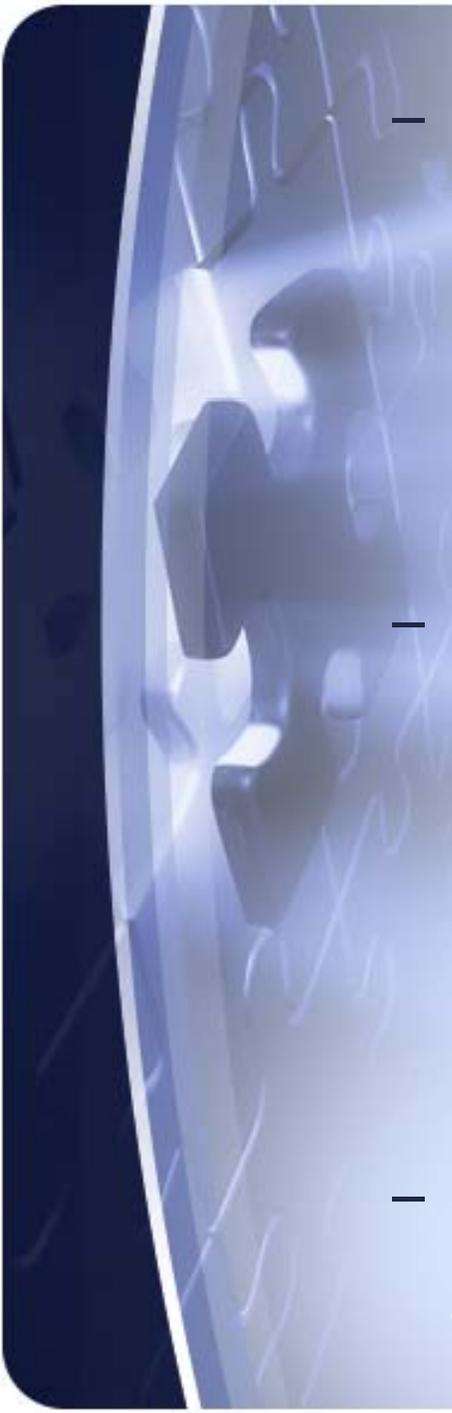
- Acquiring or modifying equipment or devices
- Job restructuring
- Part-time or modified work schedules
- Providing readers or interpreters
- Making the workplace accessible to and usable by individuals with disabilities
- Reassignment to a vacant position
- Adjusting or modifying examinations, training materials or policies

- 
- A person in a wheelchair is shown from a side profile, ascending a ramp. The scene is dimly lit, with a strong light source from the left creating a bright highlight on the ramp and the person's wheelchair. The background is dark and indistinct.
- Accommodations vary depending upon the needs of the individual applicant or employee.
 - Not all people with disabilities (or even all people with the same disability) will require the same accommodation.
 - For example:
 - A deaf applicant may need a sign language interpreter during the job interview.
 - An employee with diabetes may need regularly scheduled breaks during the workday to eat properly and monitor blood sugar and insulin levels.
 - A blind employee may need someone to read information posted on a bulletin board.
 - An employee with cancer may need leave to have radiation or chemotherapy treatments.
 - What reasonable accommodations have you noticed around your workplace?



Talking Accommodations

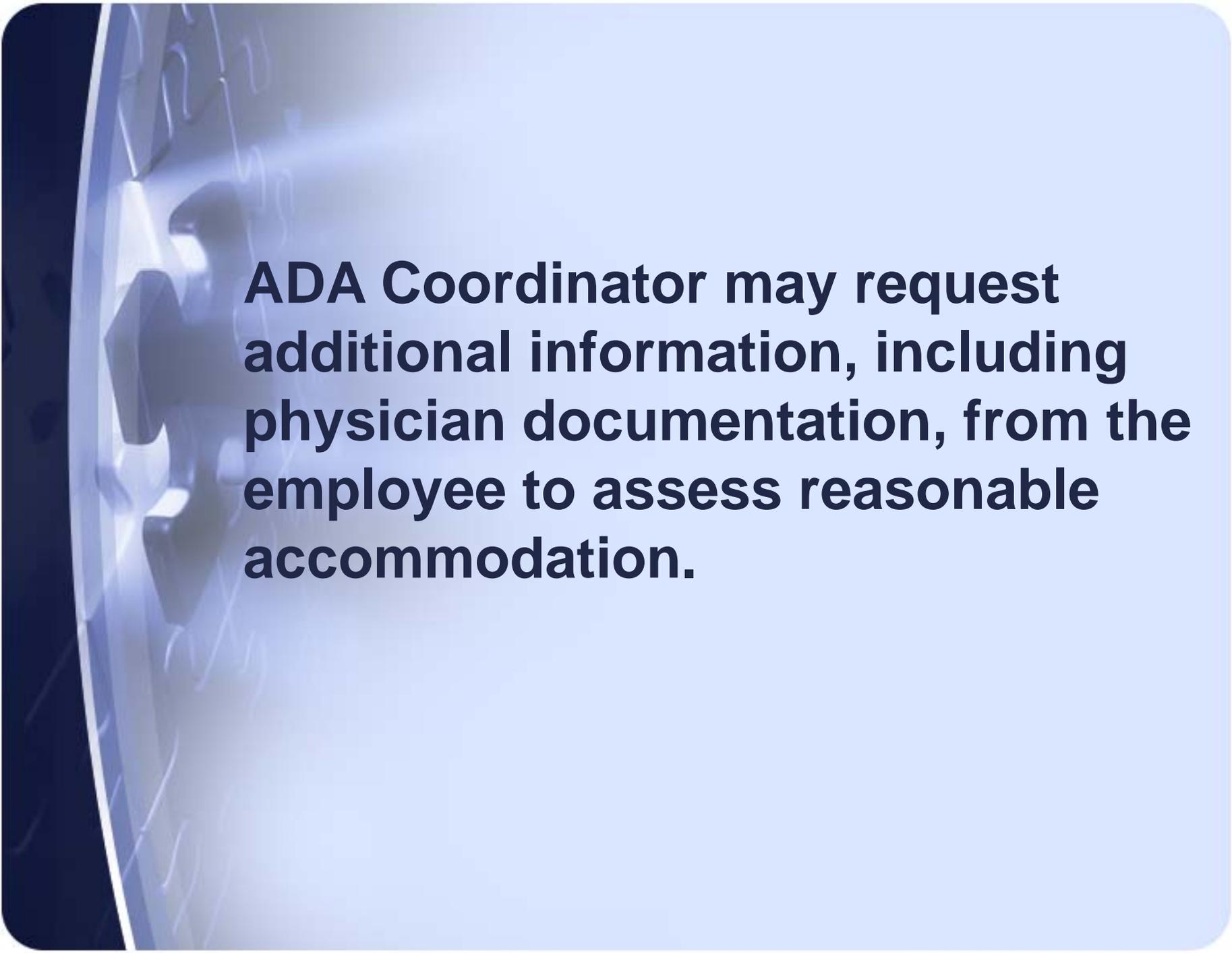
- Employees may suggest a reasonable accommodation
- Employees are not guaranteed their choice of accommodation

- 
- A person in a wheelchair is shown on a ramp, likely at an airport or public building, illustrating the concept of accessibility and accommodation. The person is wearing a dark jacket and a hat, and the wheelchair is a standard manual model. The ramp is light-colored and has a textured surface for safety. The background is slightly blurred, showing other people and structures.
- Furthermore, the Equal Employment Opportunity Commission, or EEOC, does not require us to choose the best accommodation or the accommodation the individual prefers—although the law does say that “primary consideration” should be given to the preference of the individual.
 - In other words, you should certainly try to take employee preferences into account. But EEOC has stated that we have the final discretion to choose among effective accommodations and may select an accommodation that is the least expensive or easier to provide, as long as it enables the employee to perform the essential job functions.
 - If a reasonable accommodation cannot be identified, contact ADH’s ADA Coordinator, Helen Ticey.

A person in a wheelchair is shown from behind, walking up a concrete ramp. The person is wearing a dark jacket and a light-colored hat. The ramp has a textured surface and a handrail on the right side. The background is a bright, overcast sky.

Procedures for Requesting Reasonable Accommodations

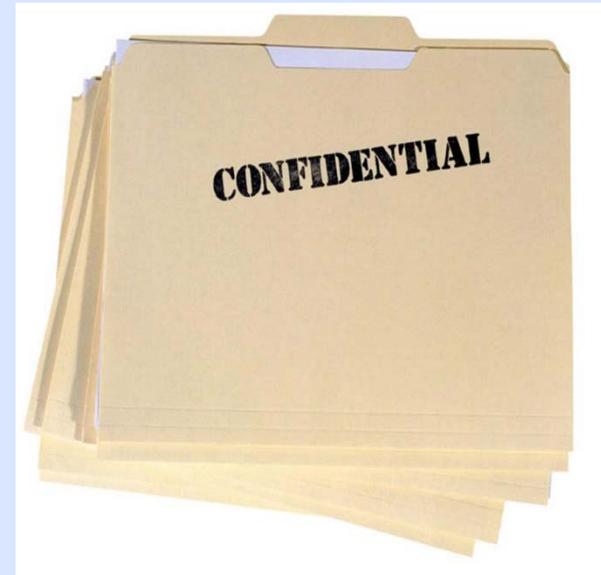
1. Request made verbally or in writing to supervisor
2. Supervisor provides request in writing for clarification with employee
3. Request sent to ADA Coordinator by supervisor
4. ADA Coordinator reviews, works with supervisor, employee, and ADH legal services for best accommodation
5. ADA Coordinator notifies employee of accommodation action

A person in a wheelchair is shown from the side, ascending a ramp. The person is wearing a dark jacket and a light-colored hat. The ramp is made of metal and has a handrail. The background is a light blue gradient. The text is overlaid on the right side of the image.

ADA Coordinator may request additional information, including physician documentation, from the employee to assess reasonable accommodation.

Medical Information

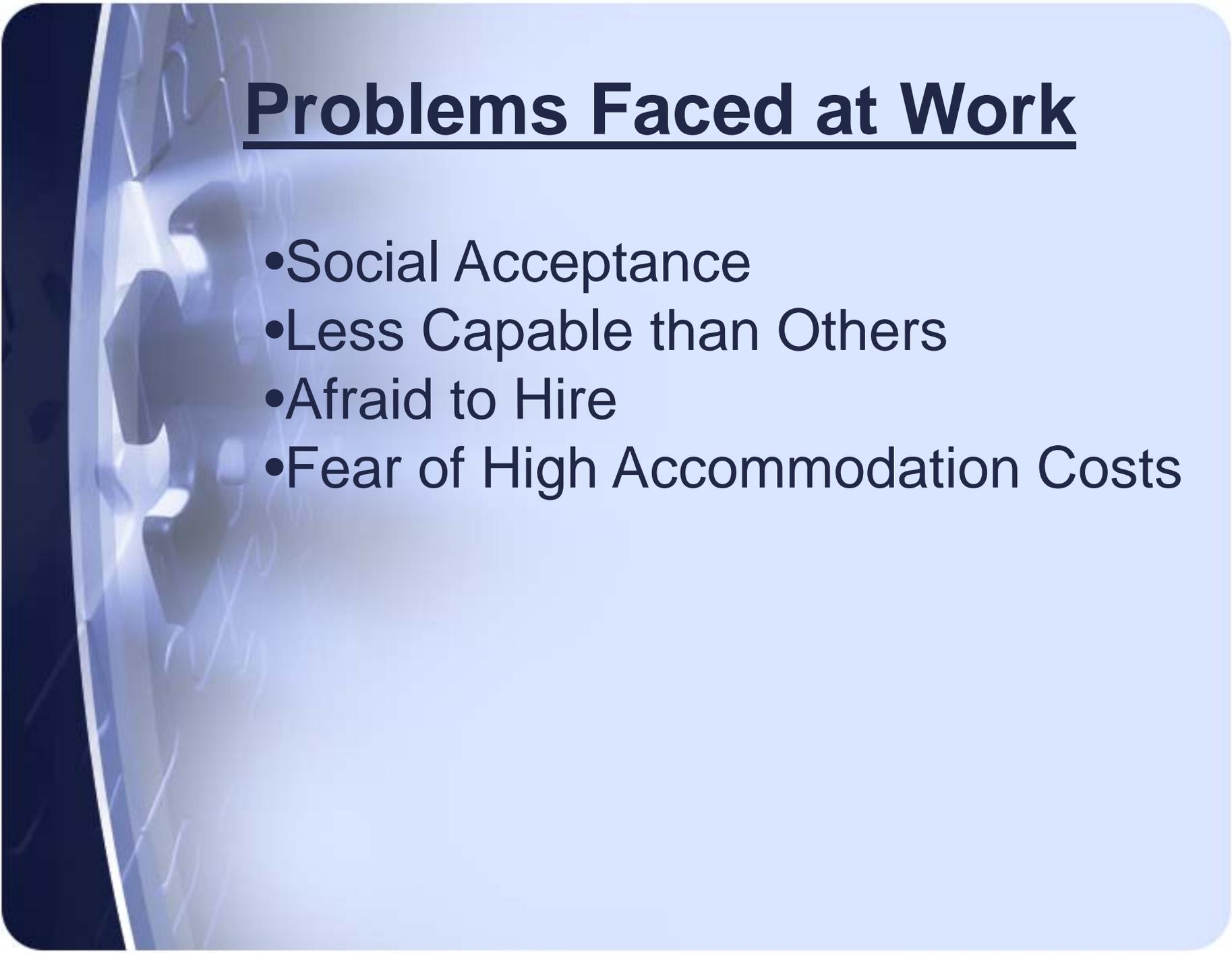
- All medical information must be kept strictly confidential





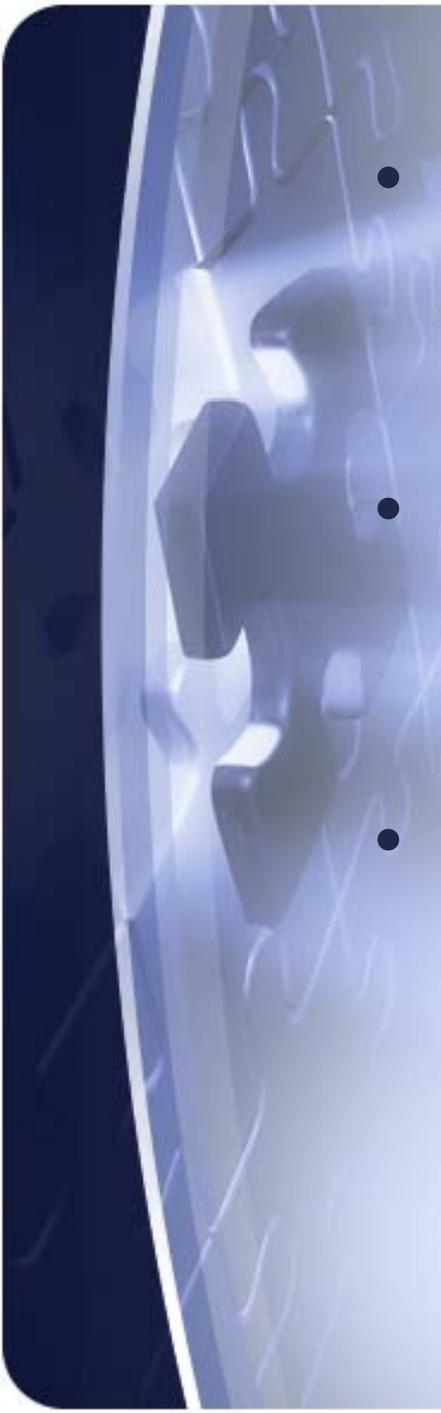
Recordkeeping Requirements Impact on Medical Records

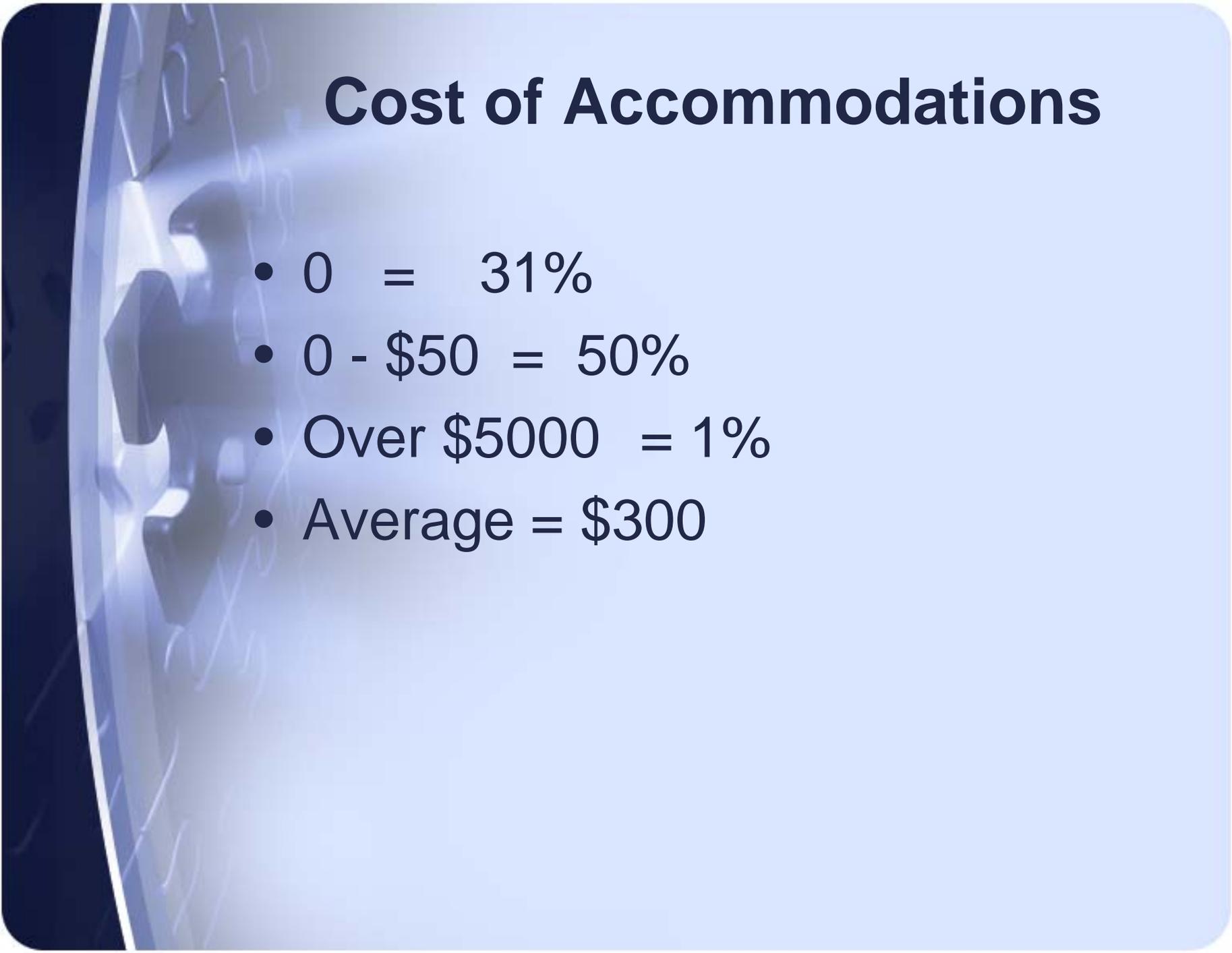
- Employees' medical information must be kept in separate medical files and treated as strictly confidential. This information may be disclosed only to:
 - Those who must be advised of work restrictions and accommodations for the employee;
 - First-aid and safety personnel, who may be informed if the disability might require emergency treatment;
 - Government officials investigating compliance with the ADA
 - State workers' compensation offices or second injury funds pursuant to state workers' compensation laws that do not conflict with the ADA.



Problems Faced at Work

- Social Acceptance
- Less Capable than Others
- Afraid to Hire
- Fear of High Accommodation Costs

- 
- A person in a wheelchair is walking down a hallway. The person is wearing a dark jacket and a cap. The hallway has a tiled floor and walls. The image is partially obscured by a light blue overlay on the right side.
- Unaccepted, coworkers may not befriend employees with disabilities, or they simply just don't know how to relate to them
 - Misconception that they may not be able to perform as well as someone that does not have a disability
 - Fear they may quit or may not be able to handle the pressure, but studies have shown that absenteeism and turnover among disabled employees are only a fraction of employees that do not have disabilities



Cost of Accommodations

- 0 = 31%
- 0 - \$50 = 50%
- Over \$5000 = 1%
- Average = \$300



In some situations, safety concerns affect accommodation of disabilities

- Direct threat occurs when an employee with a disability poses a significant risk of substantial harm in the workplace. But please note that we cannot refuse to hire or fire individuals because of a slightly increased risk of harm to themselves or others, or because of a speculative or remote risk.
- If an employee with a disability poses such a direct threat to health or safety in the workplace—that is, a significant risk that cannot be eliminated by a reasonable accommodation—we do not have to accommodate the disabled employee.
- We must use objective, factual evidence regarding the individual's present ability to perform essential job functions when determining that the individual poses a direct threat. If an applicant or employee with a disability poses a direct threat to the health or safety of himself or others, we must consider whether the risk can be eliminated or reduced to an acceptable level with a reasonable accommodation.
- Think about what areas, situations, or jobs in your workplace exist where specific disabilities might pose a direct threat.

A person in a wheelchair is walking up a ramp. The scene is dimly lit, with a strong light source from the left creating a bright path on the ramp and casting long shadows. The person is in the center-left of the frame, moving towards the right. The background is dark and indistinct.

Direct Threat

- Employee with disability poses a significant risk of substantial harm in the workplace
- We are not required to accommodate
- We must determine direct threat

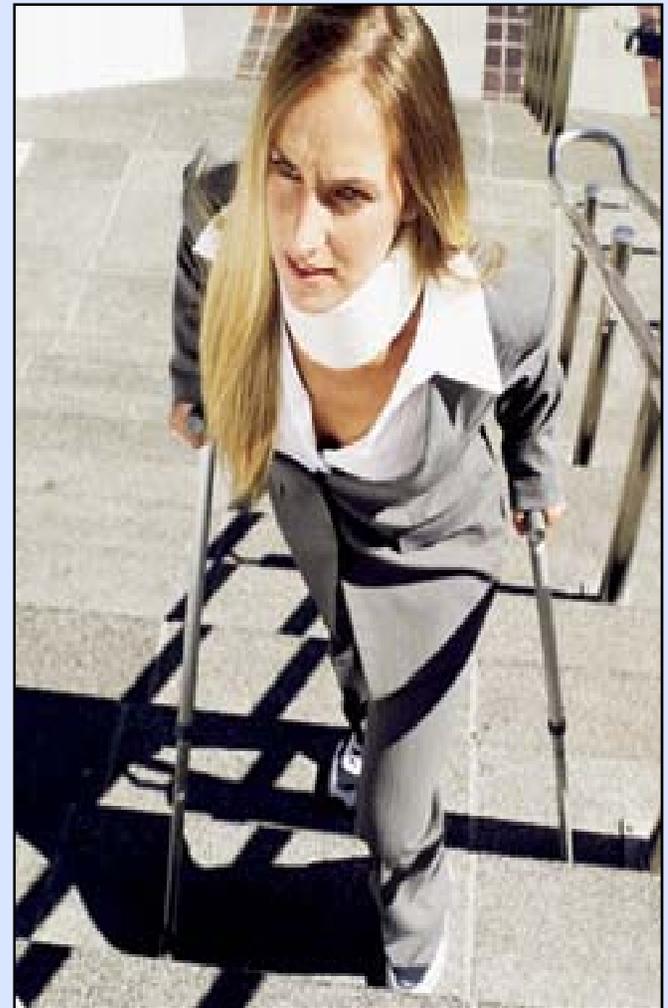


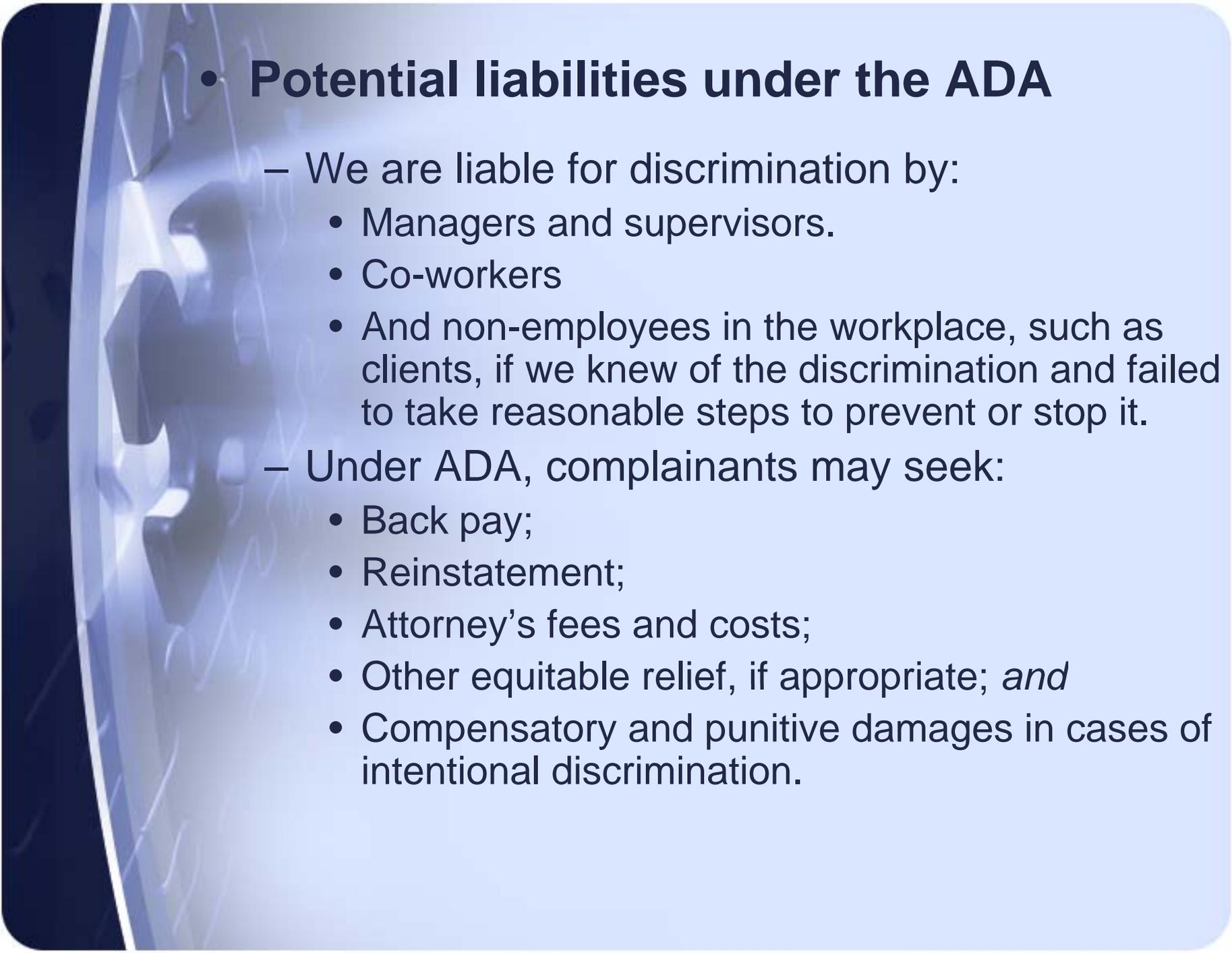
An Employee's Return to Work After Leave

- Employees with disabilities who return to work must be given the same or an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.
- If employees' former positions are no longer available—for example, if holding a position open would have posed undue hardship—we must accommodate by placing employees in vacant positions at a lower level, even if the pay is lower.
- We are not required to promote returning employees or to bump other employees in order to make positions available.
- We may terminate disabled employees if they are not able to perform essential job functions and no reasonable accommodation can be made. Before terminating employees, however, we need to ensure that proper steps have been taken to determine if:
 - The employee is a qualified individual with a disability;
 - The employer has taken all appropriate steps to attempt to accommodate the individual; *and*
 - No reasonable accommodation can be made.
- Never terminate an employee without first consulting Employee Relations in Human Resources.

Reinstatement Requirements

- Employees get:
 - Same or equivalent position
 - Vacant job at lower level
 - No promoting or bumping required
 - Termination possible (Contact HR first)



A person in a wheelchair is shown using a ramp to ascend a set of stairs. The person is wearing a dark jacket and a light-colored hat. The ramp is a light-colored, textured surface. The background is a light blue gradient.

- **Potential liabilities under the ADA**

- We are liable for discrimination by:

- Managers and supervisors.
- Co-workers
- And non-employees in the workplace, such as clients, if we knew of the discrimination and failed to take reasonable steps to prevent or stop it.

- Under ADA, complainants may seek:

- Back pay;
- Reinstatement;
- Attorney's fees and costs;
- Other equitable relief, if appropriate; *and*
- Compensatory and punitive damages in cases of intentional discrimination.

Liability under ADA

- Compensation determined by extent of liability and damage to victim
- Retaliation prohibited



A person in a wheelchair is shown from behind, ascending a ramp. The scene is dimly lit, with a strong light source from the left creating a bright path on the ramp and casting long shadows. The person is wearing a dark jacket and a hat. The ramp has a textured surface, possibly for grip. The background is dark and indistinct.

ADA Does Not:

- Interfere with the right to hire the best qualified applicant
- Impose any affirmative action obligations

A person in a wheelchair is shown from behind, ascending a ramp. The scene is dimly lit, with a strong light source from the left creating a silhouette effect. The ramp has a textured surface, possibly for safety. The overall tone is blue and professional.

Key Points to Remember about the Americans with Disabilities Act

- Avoid making assumptions about a disability and its impact on the job
- Judge individuals only on their *ability* to perform essential job functions
- Make reasonable accommodations to provide equal opportunities to people with disabilities

ADA Basics

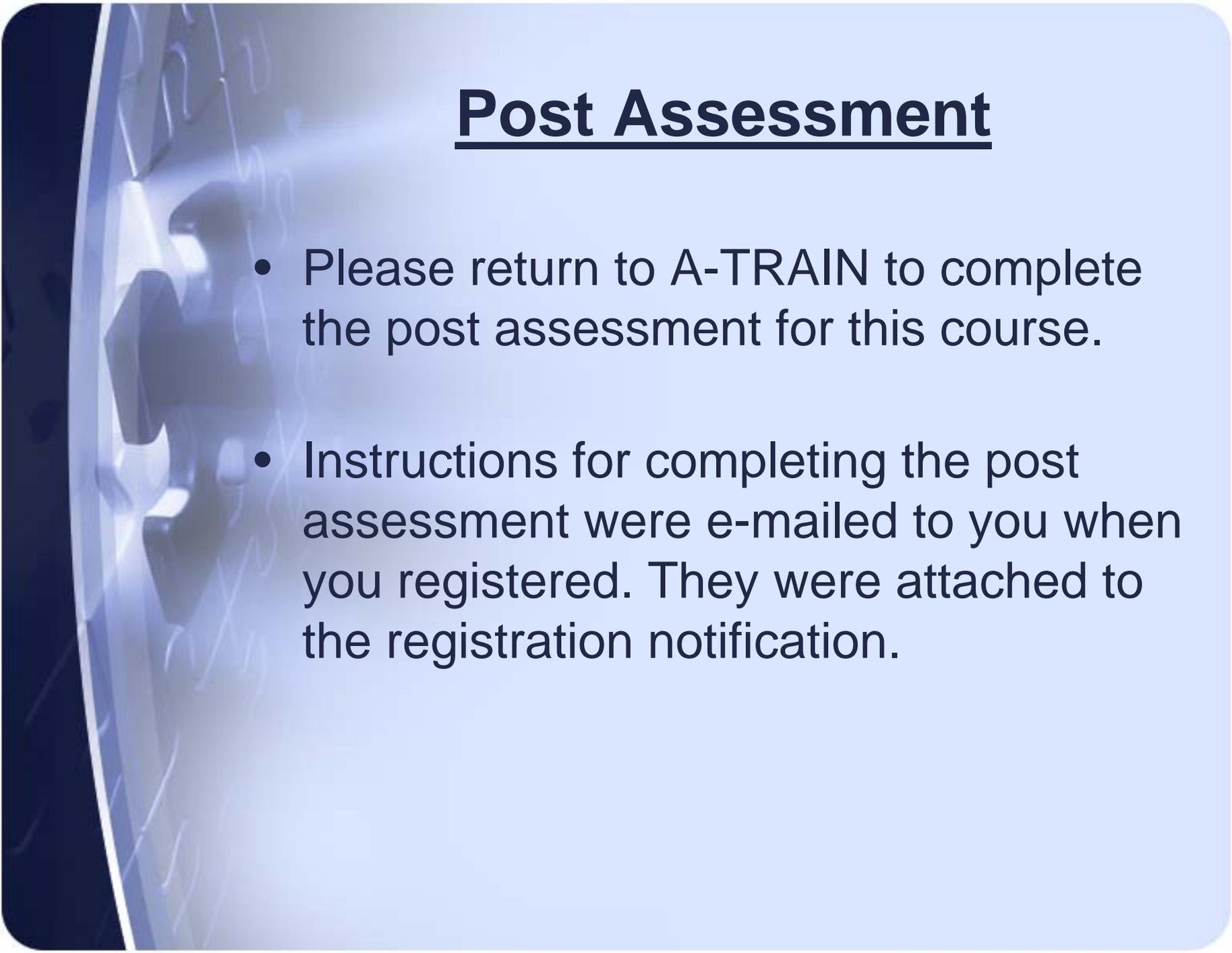
- Be sure you understand to whom the ADA applies, how disability is defined under the law, what reasonable accommodations organizations are required to make, and what undue hardship means.





Questions or Accommodations?

- ADA Coordinator
Helen Ticey, HR Manager
Recruitment and Employee
Relations
- Office of Legal Counsel
- HR-Employee Relations



Post Assessment

- Please return to A-TRAIN to complete the post assessment for this course.
- Instructions for completing the post assessment were e-mailed to you when you registered. They were attached to the registration notification.