Disabilities in the Workplace – "Qualified Individuals"

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While it may not be a priority for small business owners and startups, the Americans with Disabilities Act ("ADA") deserves your attention. It is a serious piece of legislation that can be difficult to navigate for employers and employees alike. The ADA is a civil rights law enacted in 1990 that prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all areas open to the general public. While not an everyday consideration for many, the ADA attempts to regulate and change the accessibility of the world around us, sometimes unsuccessfully. Take for example, a recent Post & Courier article that explored accessibility in some of Charleston's restaurants.

The first step in avoiding a violation of the ADA is determining whether an employee is a "qualified individual." The Act provides three ways for an individual to establish status as a "qualified individual with a disability":

1. being "actually disabled" such that the disability "substantially limits one or more major life activity";
2. having a record of such impairment; or
3. being "regarded as having such an impairment."

To those employers who are unfamiliar with this topic, this list might be more confusing than helpful.

Many disabilities are hidden, and for a host of understandable reasons, employees may not immediately address them with their new employers. Therefore, employers will need to gather necessary information from their employees while respecting their right to privacy. An important place to start is the job description and its necessary functions – such a discussion will likely involve ways to make reasonable accommodations for the disabled employee.

Whether you are an employer who needs help navigating the ADA or an employee who feels they are a victim of discrimination, qualified legal professionals are critical resources to help you understand your rights and responsibilities.