LET’S BE REASONABLE
ACCOMMODATING EMPLOYEES UNDER THE AMERICANS WITH DISABILITIES ACT

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PRESENTATION AGENDA

- Brief overview of the Americans with Disabilities Act (ADA)
- Reasonable Accommodations
- Hiring Practices
- Drugs, alcohol, and the ADA
- Examples and Discussion
- Q&A
BRIEF OVERVIEW

AMERICANS WITH DISABILITIES ACT
The ADA makes it unlawful to discriminate against a qualified individual on the basis of a disability in regard to:

- job application procedures;
- the hiring, advancement, or discharge of employees;
- employee compensation;
- job training; and
- and other terms, conditions, and privileges of employment.
**DEFINITIONS**

- **Qualified individual:**
  - an individual who, with or without reasonable accommodation(s), can perform the essential functions of the employment position that the individual holds or desires.

- **Disability:**
  - a physical or mental impairment that substantially limits one or more major life activities of the individual;
  - a record of such an impairment; or
  - being regarded as having such an impairment.
MENTAL IMPAIRMENTS

- Psychiatric and emotional disabilities are covered under the ADA because they are “mental impairments.”

- Examples of covered mental impairments include:
  - Major depression;
  - Bipolar disorder;
  - Anxiety disorders;
  - Schizophrenia;
  - Personality disorders.

- Courts usually do not quibble over whether a person has a disability or not (although sometimes they do inquire as to whether the disability limits a major life function).
MITIGATING FACTORS

- An employer CANNOT consider the impact of mitigating or rehabilitative factors when deciding whether an employee has a disability under the ADA.
- Ex: medication
WHAT IS NOT A DISABILITY UNDER THE ADA?

- Impairments that do not limit a life activity.
- Short-term injuries or illnesses of less than six months.
- But . . . be careful! These impairments may last longer than expected and become disabilities under the ADA!
REASONABLE ACCOMMODATIONS
AND THE UNDUE HARDSHIP ANALYSIS
REASONABLE ACCOMMODATIONS

- An employer discriminates under the ADA if it fails to make a **reasonable accommodation** to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless the employer can demonstrate that the accommodation would impose an **undue hardship** on the operation of the business.

- A reasonable accommodation is any change in the work environment (or in the way things are usually done) to help a person with a disability apply for a job, perform the duties of a job, or enjoy the benefits and privileges of employment.
Examples of reasonable accommodations include:

- Altering physical premises;
- Job restructuring;
- Part-time or modified work schedules;
- Reassignment to a vacant position;
- Modifications to workplace policies;
- Modifications to workplace examinations or training materials;
- Time off to recover.*
UNDUE HARDSHIP

- An employer doesn't have to provide an accommodation if doing so would cause undue hardship to the employer.
- Undue hardship means that the accommodation would be too difficult or too expensive to provide, in light of the employer's size, financial resources, and the needs of the business.
- An employer may not refuse to provide an accommodation just because it involves some cost.
An employer does not have to provide the exact accommodation the employee or job applicant wants. If more than one accommodation works, the employer may choose which one to provide.

The ADA contemplates a dialogue between employers and employees regarding necessary reasonable accommodations. This means workers and supervisors should engage in a constructive back-and-forth discussion about what accommodations are best, necessary, and reasonable.
Unless the impairment is obvious, it is the employee’s responsibility to ask for an accommodation. The employee may ask for an accommodation through his or her representative, such as a doctor. The employee does not need to use any “magic words” when asking for an accommodation, and can do so in plain English.

It is ok to have a discussion with the employee about what reasonable accommodations might be necessary. You can even make suggestions to the employee about ways his or her needs can be accommodated. You should listen to the employee’s suggestions and seriously consider those before making your own suggestions. The reasonable accommodation process is not a one-and-done situation. An employee’s accommodations may need to change over time.
If the employee’s disability or need for an accommodation is not obvious, then you may ask the employee for medical documentation of the need for an accommodation. However, you cannot ask an employee for his full medical records or history.

You can only ask for documentation related to the accommodation the employee asked for. You can and should require that this documentation come from a healthcare professional, such as a doctor or therapist. If the employee refuses to produce documentation to support an accommodation that is not obvious, you do not have to grant the accommodation request.

However, you should still maintain dialogue with the employee about accommodations that can be made without the need for documentation.
You cannot ask for documentation if the employee’s need for an accommodation is obvious (ex: a blind employee requests to use a guide dog) or if the employee has already provided sufficient documentation.

Do not ask an employee what medications she is taking, or ask if the employee has taken any medications.
Recent EEOC guidance requires employers to consider additional time-off from work—over and above the time required by the FMLA and District policy—as a potential reasonable accommodation if the employee so requests.

Such a request is still subject to the reasonableness / undue hardship standard.
1. The employee asks for an accommodation. Ask the employee to put the request in writing so there will be no misunderstandings.

2. If the employee's need for the accommodation is not obvious, ask for documentation from a doctor or therapist.

3. If the employee produces documentation or the need for accommodation is obvious, engage in an interactive conversation about what accommodations the employee needs.

4. If the employee asks for a reasonable accommodation, grant it. If the employee asks for an unreasonable, overly burdensome or costly accommodation, return to the interactive process to try to come up with a more reasonable solution.

5. Implement the reasonable accommodations by shuffling work schedules, reassigning work duties, or altering the work environment.

6. Reevaluate the accommodation as needed.
HIRING PRACTICES

ACCOMMODATING PROSPECTIVE EMPLOYEES
Prospective employees / interviewees are protected by the ADA.

The District must provide a reasonable accommodation requested by an interviewee (ex: sign language interpreter).
Job descriptions must match the actual and necessary requirements of the position.

Ex: a job description for a cafeteria worker should not include a requirement that the worker be able to lift 50 lbs. if the employee will not be required to lift 50 lbs.

Flawed job descriptions can unnecessarily exclude applicants with disabilities.

Job descriptions should contain all essential functions of the position so employees can ask for accommodations.
The interviewer may ask if the applicant can perform the essential functions of the position (ex: Can you lift XX lbs.? Can you attend work five days a week?)

The interviewer may NOT ask:

- If the employee has a disability;
- If the employee will require accommodations (unless the employee brings it up);
- If the employee has been treated for an illness, injury, or drug/alcohol addiction;
- If the employee has ever filed for workers’ compensation;
- If the applicant has used too many sick days in past jobs.
MEDICAL TESTING

- Pre-offer medical testing is prohibited.
- Post-offer testing is acceptable if:
  - All employees in the job category must submit to the test;
  - The test is job related and consistent with business necessity.
- To deny employment to an applicant on the basis of a medical test, the employer must show:
  - The exclusion was job related and consistent with business necessity;
  - There are no reasonable accommodations available.
DRUGS & ALCOHOL

WHO IS PROTECTED UNDER THE ADA?
CONTROLLED SUBSTANCES AND THE ADA

- Current illegal drug users are **not** protected by the Americans with Disabilities Act.
- A recovered or recovering alcoholic or drug addict **is** protected by the ADA.
- What is the difference?
CURRENT ILLEGAL DRUG USE

- Illegal drug use is **current** if the employee:
  - Attends work while under the influence of drugs or alcohol;
  - Tests positive for illegal drug use;
  - Admits to the recent use of illegal drugs;
  - Used illegal drugs in the past for recreational purposes, but was never addicted to drugs or alcohol.
PROTECTIONS UNDER THE ADA

- Recovered/Recovering addicts or alcoholics are protected under the ADA; a recovered/recovering person must not currently use illegal drugs.

- An employer may not discriminate against an employee or applicant based on his/her treatment for drug/alcohol addiction.

- An employer must reasonably accommodate a recovering employee. Example: reasonable time off to attend alcoholics anonymous meetings.
EXAMPLES AND DISCUSSION

APPLYING THE ADA
EXAMPLE #1: LOUANNE

- A campus principal organizes a fun-filled excursion during the in-service week prior to school starting. All campus employees will load up on a school bus in the morning and travel to Main Event for a day of bowling, laser tag, and arcade games. Employees may eat lunch at any of the restaurants surrounding Main Event.

- One employee, LouAnne, has a disability and utilizes a manual wheelchair.

- The excursion day is approaching, and LouAnne has not yet contacted the principal to discuss participation.

- What steps should the campus principal take?
EXAMPLE #2: WALT

- Walt is a high school science teacher and assistant football coach. Walt drives the school bus to and from football games.

- Walt’s district requires teachers who drive a bus to take a yearly drug test. Days before he is scheduled to test, Walt calls his assistant principal and explains that he will probably fail the test. Walt admits that he smoked marijuana legally while on vacation in Colorado. Walt says he suffers from a disability—severe anxiety—and used marijuana as medicine because his prescription ran out while on the trip.

- Is Walt protected by the ADA?

- May the district take adverse employment action against Walt?

- Should Walt be required to take the upcoming drug test?
EXAMPLE #3: JAMIE

- Jamie is the district math curriculum coordinator. His office is located at the central administration building, but his job description requires travel to several district campuses each week.

- Jamie approaches his supervisor with medical documentation from a licensed physician indicating he has chronic fatigue syndrome, a condition that causes Jamie to tire easily and that compromises his immune system, causing him to frequently be absent from work. Jamie also claims to have a visual impairment that gives him headaches if he is exposed to too much light, but he does not provide documentation for this condition.

- Jamie requests the following accommodations: reassignment to an office near the restroom to avoid walking prolonged distances; a reduced travel schedule; a larger computer monitor to reduce eye-strain; additional paid sick time; a more supportive office chair to reduce tiring; a cot in his office to lie down on when overly tired; and the installation of a dimmer switch to lower the lights in his office.

- May Jamie’s supervisor ask for additional documentation? Why or why not?

- Assume Jamie produces additional documentation to substantiate his visual impairment. What accommodations should Jamie’s supervisor grant, deny, or modify?
EXAMPLE #4: DEWEY FINN

- Dewey Finn is an applicant for an open teaching position.
- The application process requires all candidates to take the TeacherInsight Assessment on a home computer.
- Mr. Finn suffers from Parkinson’s disease, and requests to take a modified version of the test because he is concerned his disability will not permit him to finish the test in the allotted time.
- Is Mr. Finn covered by the ADA?
- What options does the district have to accommodate Mr. Finn?
Mr. Feeny is a cafeteria worker. He has chronic back pain that prohibits him from lifting over 20 pounds.

The job description for Mr. Feeny’s position lists “lifting up to 10 pounds” as an essential function of the job. However, in practice, Mr. Feeny is regularly required to lift boxes weighing over 20 pounds.

Mr. Feeny complains to his supervisor that he cannot lift these boxes.

What action should the supervisor take?

What action should HR take?
THREE ACTION STEPS

#1 Review your District’s job descriptions for ADA compliance.

#2 Train your District’s supervisors on accommodating employees and prospective employees.

#3 Establish procedures to document the ADA dialogue process.
QUESTIONS?
THANK YOU!

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