

# *Webinar Series*

## Advancing Equal Employment Opportunities and Creating Inclusive Workplaces

### Part 3: The Americans with Disabilities Act (ADA) - Employment and Disclosure



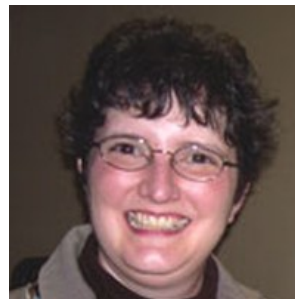
1

2

## Meet the Presenters



**Barry Whaley**  
Project Director,  
Southeast ADA Center




**Pamela Williamson**  
Assistant Project Director,  
Southeast ADA Center



Syracuse University | 2019





3



## The Americans with Disabilities Act (ADA) Employment and Disclosure

**SYRACUSE UNIVERSITY**



**Southeast  Center**
Syracuse University | 2019
**Syracuse University**  
Burton Blatt Institute


4

## Disclaimer

The contents of this presentation were developed under a grant from the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR grant number 90DP0090-01-00). NIDILRR is a Center within the Administration for Community Living (ACL), Department of Health and Human Services (HHS). The contents of this publication do not necessarily represent the policy of NIDILRR, ACL, HHS, and you should not assume endorsement by the Federal Government.

The information, materials, and/or technical assistance provided by the Southeast ADA Center are intended solely as informal guidance, and are neither a determination of your legal rights or responsibilities under the ADA, nor binding on any agency with enforcement responsibility under the ADA. The Southeast ADA Center does not warrant the accuracy of any information contained herein. Furthermore, in order to effectively provide technical assistance to all individuals and entities covered by the ADA, NIDILRR requires the Southeast ADA Center to assure confidentiality of communications between those covered and the Center. Any links to non-Southeast ADA Center information are provided as a courtesy, and are neither intended to, nor do they constitute, an endorsement of the linked materials.

You should be aware that NIDILRR is not responsible for enforcement of the ADA. For more information or assistance, please contact the Southeast ADA Center via its web site at [adasoutheast.org](http://adasoutheast.org) or by calling 1-800-949-4232 or 404-541-9001.

**Southeast  Center**
Syracuse University | 2019
**Syracuse University**  
Burton Blatt Institute

## Funding



## Americans with Disabilities Act Overview



- Landmark **civil rights law** that **guarantees equal treatment** for people with all disabilities or individuals who have an association or relationship with someone who has a disability.



7

## Americans with Disabilities Act – What Does It Cover?

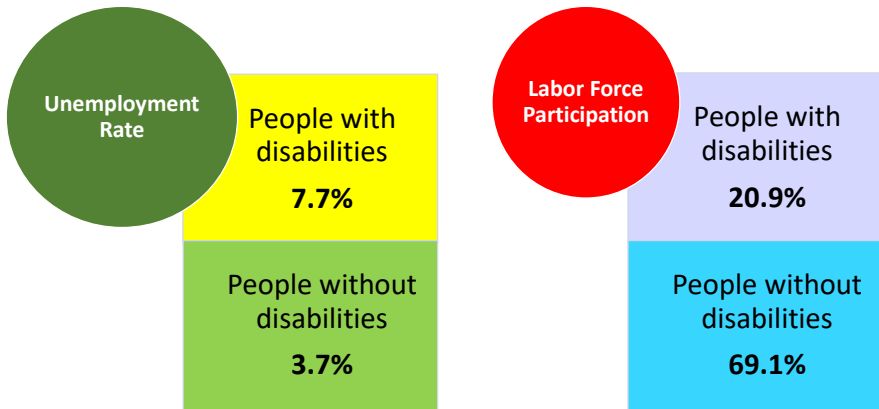
- **Title I**                      Employment Protections
- **Title II**                      Public Entities and Transportation
- **Title III**                     Public Accommodations and Commercial Facilities
- **Title IV**                     Telecommunications
- **Title V**                     Technical Provisions


Syracuse University | 2019


8



## Unemployment vs. Labor Force Participation

June 2019 Disability Employment Statistics - Ages 16 years and over



| Metric                    | People with disabilities | People without disabilities |
|---------------------------|--------------------------|-----------------------------|
| Unemployment Rate         | 7.7%                     | 3.7%                        |
| Labor Force Participation | 20.9%                    | 69.1%                       |

Source: [U.S. Department of Labor - Office of Disability Employment Policy \(ODEP\)](https://www.dol.gov/odep/)  
 Link: [dol.gov/odep/](https://www.dol.gov/odep/); Retrieved July 11, 2019


Syracuse University | 2019


## Title I of the ADA – The Basics

- Employers cannot discriminate against people who have disabilities in regard to:
  - any employment practices or terms;
  - conditions; or
  - privileges of employment.
- This prohibition covers **all aspects** of the employment process.



## Exemptions

- Private employers with fewer than 15 employees
- The Federal Government
- Corporations fully owned by the US Government
- Private Membership Clubs
- US Government Executive Agencies
- Indian Nations
- Businesses operating in foreign countries, if compliance violates foreign law

## ADA Title I: Qualified Applicant

- An employer cannot discriminate against qualified applicants and employees on the basis of disability.
- A **qualified applicant** is an individual who:
  - meets the skill, experience, education, and other job-related requirements of a position held or desired, and
  - with or without **reasonable accommodation**, can perform the **essential functions of a job**.

## ADA and Reasonable Accommodation

- Any change in the work environment or how things are usually done that results in equal employment opportunity for an individual with a disability.
- A business must make a reasonable accommodation to the **known** physical or mental limitations of a person with a disability unless it can show that the accommodation would cause an undue hardship on the operation of the business.



## Essential Job Functions

- The reason the job exists is to perform that function.
- Only a few employees can perform the function.
- The function is so highly specialized that the employer hires people into the position specifically because of their expertise in performing that function.

## Reasonable Accommodation Things to Know

- The presence of a disability does not result in a presumptive reasonable accommodation.
- The person with a disability has a responsibility to disclose his/her need for an accommodation.
- Employers may ask for documentation of a continuing disability.

## Who has rights under the ADA?

### The ADA applies to applicants or employees who:

1. have a disability; or
2. have a record of having a disability; or
3. are regarded as having a disability.



## What is a disability?

- ...A physical or mental impairment that substantially limits one or more major life activities\*
- **NOTE:** Employers are not required to provide accommodation to employees that are “regarded as” having a disability.



17

## The ADA Amendments Act (ADAAA): Restoration of the Definition of Disability

- Supreme Court rulings narrowed the definition of disability so fewer people had protections.
- Focus became **defining disability** not the alleged discrimination.
- The ADAAA restored the definition of disability.
- Broad interpretation of: mitigating measures, episodic conditions, and broadened “regarded as.”

18

## Who Are Qualified Individuals Under the ADA?

- **Qualified individuals under the ADA are:**
  - Pre-employed applicants
  - Full-time employees
  - Part-time employees
  - Seasonal workers
  - Temporary workers

## The ADA and the Association Provision

- Prohibits discrimination against a person, whether or not he or she has a disability, because of his or her known relationship or association with a person with a known disability.
- The ADA **does not** require a:
  - family relationship for an individual to be protected by the association provision.
  - a reasonable accommodation to a person without a disability due to that person's association with someone with a disability.

## Disclosure Decisions

## Disclosure vs. Self-Identification

- **Disclosure**
  - Voluntarily sharing information about a disability
- **Self-identification**
  - Invitation from an employer to voluntarily check a box that says the individual has a disability, anonymous, typically used for data collection purposes (Section 503)

## Disclosure Basics

- **No standardized form or set of basic information required** for seeking accommodation in the workplace.
- **Disclosure can be made:**
  - Verbally
  - Written
  - Email
  - Someone can make the request for you

## Why Disclose?

- The person has an **obvious disability** and wants to address any concerns head-on.
- The person needs an **accommodation** to participate in the interview or do the job.
- Disclosure would offer a **competitive advantage** in the selection process.
- The person wants to **bring his/her “whole self”** to work.
- Explain the **participation of a job coach or employment specialist** in the process.

## The Art of Disclosure

Slide 1 of 2

### Good Disclosure

- **Focuses on needs**
- Provides **suggestions** for reasonable accommodations
- Is specific rather than general (how my disability affects my ability to perform **essential job functions**)
- Focuses on **job qualifications**, not a disability

## The Art of Disclosure

Slide 2 of 2

### Good Disclosure

- **Avoids medical terms and labels**
- Discusses **work barriers**, not diagnoses
- Focuses on the **here and now**, not past negative experiences
- Is **positive**

## To Whom Do I Disclose?

- It **varies greatly** depending on the employer and the situation.
- **Possible audiences:** recruiters, hiring managers, supervisors/managers, human resources staff, EEO staff, employee selected co-workers, health and safety staff.



- The **key** – only tell those who need to know.

## Social Media and Disclosure

(Slide 1 of 2)

- Employers may use social media to seek out information on a job candidate
- Be aware that what you post in social media. It may unintentionally disclose a disability.
  - Pictures
  - Comments
  - Are there things that can be misinterpreted?



## Social Media and Disclosure

(Slide 2 of 2)

- Be thoughtful and respectful in your posts.
- Know what information about you can be found on-line.
- Remember, once posted on-line, it never goes away.





## Employer Rights and Responsibilities in the Reasonable Accommodation Process

### Documentation

- The employer has the **right to request documentation** about the disclosed disability.
- The documentation must be **job-related and consistent with business necessity**.
- Disability documentation must be kept **confidential**.
- Must be kept in a **secure file separate from the employee's work file**.

## Disability Inquiry

- A question, or series of questions, that are likely to solicit information about a person's disability or related medical condition.

## Phases of the Employment Process and Disability Inquiries

|   |  |
|---|--|
| Pre-Employment<br>(Before an offer of employment)                     | No disability inquiries are allowed  |
| Pre-Employment – Post Offer<br>(After an offer of employment is made) | Disability inquiries are allowed only if the same inquiry is made of all candidates for the job category |
| Employment  | A disability inquiry can only be made if it is <u>job related</u> and of a <u>business necessity</u>     |

## Things an Employer *Can* Ask in a Disability Inquiry

- A person's **general well-being**
- A **non disability-related** impairment
- Whether a person can perform the **essential job functions**
- Whether a person has been **drinking alcohol**
- Current **illegal use of drugs**
- **Pregnancy** information (i.e., due date and well-being)
- **Emergency contact** information

## Things an Employer *Cannot* Ask in a Disability Inquiry

- Whether a person **has, or had, a disability**
- **Medical documentation** of a condition
- **Genetic** information
- **Prior workers' compensation** history
- Current or past **prescription medication usage**

## Disclosure Tools and Resources

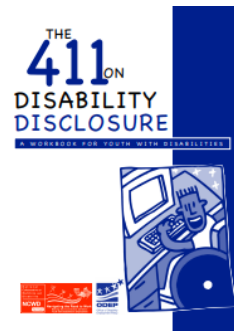
(slide 1 of 3)

- [The 411 on Disability Disclosure Workbook](#)

**Link:** [heath.gwu.edu/files/downloads/411\\_disability\\_disclosure\\_complete.pdf](https://heath.gwu.edu/files/downloads/411_disability_disclosure_complete.pdf)

**Source:**

National Collaborative on Workforce and Disability for Youth



## Disclosure Tools and Resources

(slide 2 of 3)

- **[Advising Youth with Disabilities on Disclosure: Tips for Service Providers](#)**

**Link:** [dol.gov/odep/pubs/fact/advising.htm](http://dol.gov/odep/pubs/fact/advising.htm)

**Source:** U.S. Department of Labor - Office of Disability Employment Policy

- **[The Art of Disclosing Your Disability](#)**

**Link:**

[miltwright.com/articles/artofdisclosingyourdisability.pdf](http://miltwright.com/articles/artofdisclosingyourdisability.pdf)

**Source:** Richard Pimentel

## Disclosure Tools and Resources

(slide 3 of 3)

- **[Disclosure Decisions to Get the Job](#)**

**Link:** [vcurrctc.org/resources/viewContent.cfm/585](http://vcurrctc.org/resources/viewContent.cfm/585)

**Source:** Virginia Commonwealth University Rehabilitation Research & Training Center

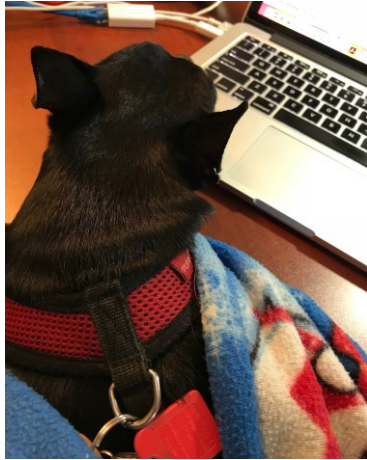
- **[Disclosure Tools](#)**

**Link:** [askjan.org/topics/Disability-Disclosure.cfm](http://askjan.org/topics/Disability-Disclosure.cfm)

**Source:** Job Accommodation Network

37

## Bandit – The Amazing Dog Assistant



Southeast  Center

Syracuse University | 2019

Syracuse University  
Burton Blatt Institute

38

## Education Credit

### Requirements:

Must be registered, attendance verified, post-test completed.

### Credits:

- Certificate of Completion
- CESP Credit

Southeast  Center

Syracuse University | 2019

Syracuse University  
Burton Blatt Institute

## Education Credit – Post Test

**\*\*Must be registered, attendance verified, and post-test completed to receive credit.**

### [Post Test for Webinar Series Part 3](#)

- or copy and paste:  
[bit.ly/equal-employ-opp-webinar-test-3](http://bit.ly/equal-employ-opp-webinar-test-3)

## Evaluation

Your feedback is important to help determine the effectiveness of this webinar in meeting your needs and to guide planning for future webinars.

### [Evaluation Part 3 of Webinar Series](#)

- or copy and paste  
[bit.ly/equal-employ-opp-webinar-eval-3](http://bit.ly/equal-employ-opp-webinar-eval-3)



## Archived Webinars

All webinars in this eight-part series will be archived with recording (video & audio), presentation, and transcript - please share.

**Archives: Advancing Equal Employment Opportunities and Creating Inclusive Workplaces**

or copy and paste

[www.adasoutheast.org/webinars/archives.php](http://www.adasoutheast.org/webinars/archives.php)

## Upcoming Webinars

### Parts 4-8: Save the Dates!

- September 24, 2019
- October 22, 2019
- November 19, 2019
- January 21, 2020
- February 25, 2020

**Register for Webinar Series: Advancing Equal Employment Opportunities and Creating Inclusive Workplaces**

or copy and paste: [bit.ly/equal-employ-opp-webinar-seada-2019](https://bit.ly/equal-employ-opp-webinar-seada-2019)

## Still Have Questions?

- **Contact the Southeast ADA Center**
- **Telephone**
  - 800-949-4232 (toll free)
  - 404-541-9001
  - 711 (relay)
- **E-mail:** [adasoutheast@law.syr.edu](mailto:adasoutheast@law.syr.edu)
- **Website:** [adasoutheast.org](http://adasoutheast.org)



## Disclaimer

The contents of this training were developed under a grant from the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR grant number 90DP0019-01-00). NIDILRR is a Center within the Administration for Community Living (ACL), Department of Health and Human Services (HHS). The contents of this training do not necessarily represent the policy of NIDILRR, ACL, HHS, and you should not assume endorsement by the Federal Government.

The information, materials, and/or technical assistance provided by the Southeast ADA Center are intended solely as informal guidance, and are neither a determination of your legal rights or responsibilities under the Act, or binding on any agency with enforcement responsibility under the ADA. The Southeast ADA Center does not warrant the accuracy of any information contained herein. Furthermore, in order to effectively provide technical assistance to all individuals and entities covered by the ADA, NIDILRR requires the Southeast ADA Center to assure confidentiality of communications between those covered and the Center. Any links to non-Southeast ADA Center information are provided as a courtesy, and are neither intended to, nor do they constitute, an endorsement of the linked materials.

You should be aware that NIDILRR is not responsible for enforcement of the ADA. For more information or assistance, please contact the Southeast ADA Center via its web site at [ADAsoutheast.org](http://ADAsoutheast.org) or by calling 1-800-949-4232 or 404-541-9001.