Webinar Series
Advancing Equal Employment Opportunities and Creating Inclusive Workplaces
Part 3: The Americans with Disabilities Act (ADA) - Employment and Disclosure
Meet the Presenters

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

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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.
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
Unemployment vs. Labor Force Participation
June 2019 Disability Employment Statistics - Ages 16 years and over

Unemployment Rate
People with disabilities: 7.7%
People without disabilities: 3.7%

Labor Force Participation
People with disabilities: 20.9%
People without disabilities: 69.1%

Source: U.S. Department of Labor - Office of Disability Employment Policy (ODEP)
Link: dol.gov/odep/; Retrieved July 11, 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**.
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.
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.”
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 voluntary 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
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.
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

<table>
<thead>
<tr>
<th>Phase</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Pre-Employment</strong> (Before an offer of employment)</td>
<td>No disability inquiries are allowed</td>
</tr>
<tr>
<td><strong>Pre-Employment – Post Offer</strong> (After an offer of employment is made)</td>
<td>Disability inquiries are allowed only if the same inquiry is made of all candidates for the job category</td>
</tr>
<tr>
<td><strong>Employment</strong></td>
<td>A disability inquiry can only be made if it is job related and of a business necessity</td>
</tr>
</tbody>
</table>
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
  
  **Source:**
  National Collaborative on Workforce and Disability for Youth
Disclosure Tools and Resources
(slides 2 of 3)

• **Advising Youth with Disabilities on Disclosure: Tips for Service Providers**
  
  **Link:** 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
  **Source:** Richard Pimentel
Disclosure Tools and Resources
(slide 3 of 3)

• **Disclosure Decisions to Get the Job**
  Link: vcurrtc.org/resources/viewContent.cfm/585
  Source: Virginia Commonwealth University Rehabilitation Research & Training Center

• **Disclosure Tools**
  Link: askjan.org/topics/Disability-Disclosure.cfm
  Source: Job Accommodation Network
Bandit – The Amazing Dog Assistant
Education Credit

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

Credits:
• Certificate of Completion
• CESP Credit
Education Credit – Post Test

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

**Post Test for Webinar Series Part 3**

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Evaluation Part 3 of Webinar Series

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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

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Upcoming Webinars

Parts 4-8: Save the Dates!

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

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