ADA Compliance:
What do I do?

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Basics

- Employment
- State and Local Government
- Public Accommodations
Employment

Applies to:

a) private employers,
b) State and local governments
c) employment agencies
d) labor unions

With 15 or more employees

What does the ADA prevent?

Prohibits discrimination against “qualified individuals” with disabilities in:

a) job application procedures,
b) hiring,
c) firing,
d) advancement,
e) compensation,
f) job training, and
g) other terms, conditions, and privileges of employment.
Who is a “qualified individual” with a disability? Must be able to do/have qualifications for the job:

a) a person who has a physical or mental impairment that substantially limits one or more major life activities,

b) a person who has a history or record of such an impairment, or

c) a person who is perceived by others as having such an impairment.

The ADA does not specifically name all of the impairments that are covered.

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“Major Life Activity:”

- walking
- seeing
- sitting
- hearing
- speaking
Who is qualified?

“Major Life Activity:” (cont.)

- breathing
- learning
- lifting
- performing manual tasks
- taking care of oneself
- “major bodily functions” - proper working of bodily processes, functions, or systems, such as the immune system, normal cell growth, and the digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions

Who is qualified?

- Short term illness usually not a disability
- Chronic condition with rare flare-ups can be a disability
Who is qualified?

Washington Law Against Discrimination

Different Definition of Disability

- The presence of a sensory, physical, or mental impairment that:
  - is medically cognizable or diagnosable; or
  - exists as a record or history (previously diagnosed or has a history of disability); or
  - is perceived to exist whether or not it exists in fact.

Who is qualified?

Washington Law Against Discrimination (cont.)

- Does not have to impair a major life activity.
- Much broader than federal ADA.
- A disability may be
  - temporary or permanent,
  - common or uncommon, or
  - mitigated or unmitigated.
Who is qualified?

- “Impairment” is further defined as:
  - any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitor-urinary, hemic and lymphatic, skin, and endocrine; or any mental, developmental, traumatic, or psychological disorder, including but not limited to cognitive limitation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

If an employee is “qualified,” now what?

- What do you do if you think an employee or applicant has a disability?
  - Must provide a reasonable accommodation if not an undue hardship.
If an employee is “qualified,” now what?

- “Reasonable” Accommodation – Examples
  - making existing facilities accessible
  - job restructuring
  - part-time or modified work schedules
  - acquiring or modifying equipment
  - changing tests, training materials, or policies
  - providing qualified readers or interpreters

If an employee is “qualified,” now what?

- If a disability affects an employee’s ability to do his/her job, must engage in the “interactive process.”
  - Discuss the problem with the employee and, if necessary, obtain documentation
  - Brainstorm about solutions
  - Decide on an accommodation
  - Implement and follow up (adjust as necessary with the situation)
  - Document every step along the way
If an employee is “qualified,” now what?

- What you DON’T have to accommodate? If you have proper documentation to support your reasoning, you can DENY:
  - changing a job’s essential functions;
  - lowering qualitative or quantitative production standards;
  - allowing use of illegal drugs;
  - providing treatment or monitoring of employee’s condition;
  - allowing a disabled employee to violate work rules applicable to other employees;

- What you DON’T have to accommodate? If you have proper documentation to support your reasoning, you can DENY: (cont.)
  - accepting violent conduct;
  - eliminating stress from the work environment (may have to reduce stress though);
  - creating a new position;
  - transferring an employee because of a personality conflict with a supervisor;
  - granting an accommodation that imposes an undue hardship, and;
  - tolerating erratic attendance or “work-when-you-feel-like-it” leave.
If an employee is “qualified,” now what?

- “Undue Hardship”
- An "action requiring significant difficulty or expense" when considered in light of a number of factors.
  - Factors include the nature and cost of the accommodation in relation to the size, resources, nature, and structure of the employer's operation
  - Case by case basis
  - Need to document
  - Brainstorm a lesser accommodation

Case Study #1

- What do you do when…
  - Employee in the accounts receivable department has sleep apnea and narcolepsy, which cause the employee to have difficulty concentrating and fall asleep during the day.
Case Study #1

What would you offer as accommodations?

- Alternative Lighting
- Apps for Memory
- Cubicle Doors, Shields, and Shades
- Desk Organizers
- Desk Pedal Exercisers
- Electronic Organizers
- Environmental Sound Machines / Tinnitus Maskers / White Noise Machines
- Fidget Devices
- Focus Enhancement

- Full Spectrum or Natural Lighting Products
- Noise Abatement
- Noise Canceling Earbuds
- Noise Canceling Headsets
- Simulated Skylights and Windows
- Sound Absorption and Sound Proof Panels
- Flexible Schedule
- Modified Break Schedule
- Periodic Rest Breaks

Case Study #2

- Use of illegal drugs is not protected as a disability.
- What about medical marijuana?
  - In *Roe v. Teletech Customer Care Mgmt.*, the Washington Supreme Court (2011) found that Washington's law does not prohibit an employer from firing an employee for using medical marijuana as authorized by a physician because the state law does not expressly require employers to accommodate on-the-job or off-duty medical marijuana use.
Case Study #2

- Trend is changing: *Barbuto v. Advantage Sales and Marketing, LLC, (2017)(Mass.)*
  - During the onboarding process, the applicant mentioned that she suffered from Crohn’s disease and used medical marijuana based on her physician’s written certification to treat it.
  - She said she did not use marijuana daily and would not consume it before or during work.

Case Study #2 (cont.)

  - Fired shortly after she started the job because her drug test came back positive for marijuana.
  - The court held that an exception to the employer’s drug policy to permit offsite marijuana use may be a reasonable accommodation where the employee’s physician determines that marijuana is the most effective treatment for the employee’s disability and that any alternative medication permitted by the employer’s drug policy would be less effective.
Case Study #2

- Statutes prohibiting discrimination against off-duty cannabis use or require employers to accommodate its use for medical reasons:
  - Arizona, Arkansas, Connecticut, Delaware, Illinois, Maine, Minnesota, New York, Pennsylvania and West Virginia

Enforcement by EEOC

- Title I complaints must be filed with the U. S. Equal Employment Opportunity Commission (EEOC) within 180 days of the date of discrimination, or 300 days if the charge is filed with a designated State or local fair employment practice agency. Individuals may file a lawsuit in Federal court only after they receive a "right-to-sue" letter from the EEOC.
State and Local Government

- Title II covers all activities of State and local governments regardless of the government entity's size or receipt of Federal funding. Title II requires that State and local governments give people with disabilities an equal opportunity to benefit from all of their programs, services, and activities (e.g. public education, employment, transportation, recreation, health care, social services, courts, voting, and town meetings).
- Also covers public transportation services, such as city buses and public rail transit.

Public Accommodations

- Businesses and nonprofit service providers that are public accommodations.
- Privately operated entities offering certain types of courses and examinations, privately operated transportation, and commercial facilities.
- Public accommodations are private entities who own, lease, lease to, or operate facilities such as restaurants, retail stores, hotels, movie theaters, private schools, convention centers, doctors' offices, homeless shelters, transportation depots, zoos, funeral homes, day care centers, and recreation facilities including sports stadiums and fitness clubs.
- Transportation services provided by private entities.
Thank you.

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