Which laws apply to my business?

- **ADA** (Americans with Disabilities Act), Title 1: Prohibits discrimination against qualified individuals in the employment context. Applies to:
  - a) private employers,
  - b) state and local governments
  - c) employment agencies
  - d) labor unions
    - 15+ employees
- **WLAD** (Washington State Law Against Discrimination): 8+ employees
- **High Risk Worker protection- new under COVID**: ALL employers in Washington

Purpose of the laws

- Prohibit discrimination and allow people with disabilities to have the same opportunities as everyone else; including to have the same employment opportunities as folks without disabilities.
Applicable during:

- Job application procedures
- Hiring
- Firing
- Advancement
- Compensation
- Job training
- Other terms, conditions, and privileges of employment

Is the employee an individual who has qualified for the protections of these laws?

- ADA: a physical or mental impairment that substantially limits a major life activity, or a history of a substantially limiting impairment.

- Washington State: the presence of a sensory, physical, or mental impairment that: is medically cognizable or diagnosable; or exists as a record or history.
Governor Inslee’s High-Risk Worker Proclamation:

- Provides special protection to high risk workers
- Proclamation 20-46.1; two extensions and guidance issued
- Defined as people over 65 and also those with certain chronic underlying health conditions, regardless of age
- Applies to all Washington employers

Interactive Process

- How do you do it?
- What are you required to do?
- What are you not required to do?
- What are you not permitted to do?
What DON’T you have to do?

- Don’t have to provide whatever they want
- Don’t have to do something that is an undue hardship
- Don’t have to fire someone else
- Don’t have to create a job
- Don’t have to excuse them from performing the essential functions of the job

Employers DO have to...

- Engage interactively with the employee
- Consider various options which would allow them to perform the essential functions of the job
- Modify/excuse non-essential job functions
- Offer an accommodation to continue to perform the essential functions of the job
Job descriptions – best practices

- Not required, but a good idea
- Create them in advance of advertising the job
- Focus on the result or outcome that the job is to accomplish

COVID considerations

- Interim/trial accommodation in light of a changing landscape
- Undue hardship may look different
- High risk workers
High-risk workers

- Three categories of high-risk workers:
  1. Over 65
  2. At increased risk per CDC guidelines
  3. MIGHT BE at increased risk, under CDC guidelines

- Applies to: ALL Washington employers

Employer directives

- Provide all available options for alternative work assignments to protect the employee from exposure to COVID-19, if requested

- If a reasonable accommodation is not possible, the employee must be permitted to take leave or file for unemployment benefits

- Continue to maintain all provide health insurance benefits until the employee returns to work, even if leave has been exhausted
Employer directives (cont.)

- May not permanently replacing an employee who exercises rights under the proclamation
- May not require an employee to work remotely simply because they fall into one of the categories

Can you ask for medical verification from any of these high-risk employees seeking accommodation under this proclamation?

- No for 65+
- No for “At Risk”
- Yes for “Might be At Risk”
Participant Question: What can and can’t you ask?

Generally you can ask:
- Whether the person can perform the essential functions of the job, either with or without accommodation
- Practical questions about their requested accommodation
- Request additional information about their requested accommodation

Examples of questions you cannot ask:
- Whether they are disabled
- The nature and severity of the disability
- Disability-related medical issues

COVID-Specific questions you can ask:
- Whether they have symptoms
- Whether they have been exposed/been around someone with COVID
- Whether they have been tested for COVID
- Temperature checks and self-reporting questionnaires are permitted

Examples of COVID-related questions you cannot ask:
- Whether a family member has COVID
- Whether they are immunocompromised
- Whether they have a condition which makes them more susceptible to COVID
Thank you.

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Upcoming Webinars:

Wednesday, September 30, 12pm:
Employee Termination Best Practices (During COVID and Beyond)

Thursday, October 1, 12pm:
Top Three New Employment Laws You Missed During the Pandemic

Friday, October 2, 12pm:
Panel Presentation - Employment Law Updates & FAQs

ryanswansonlaw.com/registration