The ADA: What You Need to Know!

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The Protected Categories

race

color

national origin

religion

gender

sex*

disability

age (40+)

genetic information

* Gender Identity/Transgender Status

* Sexual Orientation & Retaliation
What is your first memory of seeing an individual with a disability on television (TV show, movie, sports)?
Life Before the ADA.

- No federal law prohibited private sector discrimination against people with disabilities.
- Most hotels and restaurants were not accessible. There were fewer curb cuts.
- People with disabilities were rarely seen in advertisements and TV shows.
- We rarely saw interpreters at public events.
- There were few team sports for people with disabilities.
- People with disabilities were more hidden and excluded.
Title I of the ADA prohibits discrimination on the basis of:

- Actual disability
- Record of disability
- Perceived disability
- Association

Applicable for any employment decision that may occur in the employment process....Failure to hire, Disparate Treatment, Policies/Practices, Failure to Accommodate, and Retaliation.
Americans with Disabilities Act

**Disparate Treatment**

1. Individual qualifies under the ADA.
2. They are subjected to an adverse employment action. (e.g. failure to hire, discipline, denial of benefits, discharge, etc.)
3. Someone not disabled but otherwise similarly situated was treated more favorably.
4. There is no legitimate, non-discriminatory reason for the difference in treatment.
What are the most filed claims with EEOC?

A) Age and Failure to hire
B) Disability and Failure to Accommodate
C) Retaliation and Harassment
D) Gender and Sexual Harassment
Harassment & Hostile Environment

**Definition:**

Unwelcome comments or conduct (verbal, written or physical) based on an individual’s protected basis (e.g., sex, race, **disability**, etc.) that has the purpose or effect of unreasonably interfering with an individual’s work performance **or** causing an intimidating, hostile or offensive atmosphere.
Unjustified comments about an individual’s ability to perform a job*.

Repeated comments or references related to the health of a person.

Making fun of or imitating a person’s disability.

Refusal to assist or provide necessary accommodation for disabled employee.*

Using an individual’s disability, perceived or real to make an employment decision.
Please note that individuals often file charges claiming multiple types of discrimination, therefore the sum of the discrimination bases will exceed total charges filed.

*Charge data includes all charges filed by individuals in the private sector and state and local government workplaces; it does not include discrimination complaints in the federal sector.

**For all definitions of terms please go to: https://www.eeoc.gov/enforcement/definitions-terms
ADA requires that employers provide a “reasonable accommodation” to individuals who are disabled (actual disability or record of a disability) unless the Charging Party cannot perform the “essential functions” of the job with/without an accommodation or the accommodation creates an undue hardship on the employer.
What is a Reasonable Accommodation?

A change in the workplace or in the way things are customarily done to assist an individual with a disability in the employment process.

Accommodations are available –

- for the application process
- to enable someone to perform the essential functions of a job
- to enable an employee to enjoy equal benefits and privileges of employment
Types of Accommodations

- Part-time or modified work schedules
- Reassignment to vacant position
- Leave of absence (beyond FMLA)
- Modification of equipment, devices or examinations
- Accessibility to work and off-site events
- Application assistance
- Readers or interpreters
- Exceptions to policies
What do you think the most common mistake companies make in reasonable accommodation situations?
1. **Analyze** the particular job involved and determine its purpose and **essential functions**.

2. Consult with the individual to ascertain the precise job-related **limitations** imposed by the disability and how those limitations could be overcome with a reasonable accommodation.

3. In consultation with the individual to be accommodated, identify potential accommodations and **assess the effectiveness** each would have in enabling the individual to perform the essential functions of the position.

4. Consider the preference of the individual to be accommodated and select and implement the accommodation that is **most appropriate for both** the employee and the employer.
What is NOT a Reasonable Accommodation

- Removing essential job functions
- Diluting uniformly enforced productivity standards
- Excusing or forgiving past misconduct or poor performance
- Promotion
- Bumping an employee from a job
- Creating another position or job
ADA and Retaliation

Retaliation
1. Engaged in protected activity.
   - objected to disability discrimination or
   - requested/received a reasonable accommodation
2. Subjected to a materially adverse employment action.
3. Causal nexus.
4. There is no legitimate, non-discriminatory reason for the action.
When was the last time you reviewed your employee handbook?

Do you know the process for requesting an accommodation?

Do you know the process for complaining of harassment?
Inclusion is a way of thinking, a way of being, and a way of making a decision about helping everyone to feel included and that they belong.

What does inclusion mean to you?
Disability does not reflect or define capability.

See the individual for who they are.

If you have met a person with a disability, you have met one person with a disability.

Ask questions and do not make assumptions.
Making Inclusion Work

- Setting expectations/examples of behavior.
- Promoting civility.
- Having clear and established reporting mechanisms.
- Be proactive, recognize risks.
- Train, train, train.