

Disability Discrimination and Reasonable Accommodations under the ADA: Training Presentation

A Practical Guidance® Practice Note by
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[Click here for the PowerPoint presentation.](#)

This presentation educates employees about disability discrimination and how to handle reasonable accommodations requests.

The presentation provides:

- A brief overview of the ADA and disability discrimination, generally
- Discussion of employers' duties under the ADA
- An overview of the following key ADA terms:
 - Covered disability
 - Qualified individual
 - Reasonable accommodation
 - Interactive process
 - Essential functions
 - Undue hardship
- Key tips for preventing disability discrimination in the workplace
- Preparing for and responding to employee requests for disability accommodations
- Discussion on the interaction of the ADA and the Family Medical Leave Act (FMLA)

- Discussion of reasonable accommodations in light of COVID-19

You will want to personalize this presentation to reference the employer's internal policies where noted and to create industry and entity-relevant discussions.

For practical guidance on the ADA, see [Americans with Disabilities Act: Guidance for Employers](#), [Americans with Disabilities Act Website Compliance](#), [Permissible Disability-Related Inquiries, Medical Exams, and Certifications: Key Considerations](#), [Drug and Alcohol Use, Testing, and Accommodation: Key Employment Law Issues](#), [Discrimination, Harassment, and Retaliation State Practice Notes Chart](#), [ADAAA Definition of Disability Chart](#), [Medical and Recreational Marijuana State and Local Law Survey](#), [Disability and Reasonable Accommodation Policies: Key Drafting Tips](#), [Service Animals, Emotional Support Animals, and Pets: Accommodation Rules and Best Practices](#), [ADA and FMLA Comparison Chart](#), [Disability Law Resource Kit](#), and [Coronavirus \(COVID-19\) Resource Kit](#). For checklists on the ADA, see [Drug and Alcohol Testing of Employees Checklist \(ADA\)](#), [Medical and Genetic Information Request, Handling, and Disclosure Checklist](#), and [Accommodating a Disability under the Americans with Disabilities Act Checklist](#).

For templates on the ADA, see [Disability and Reasonable Accommodation Policy](#), [Disability Accommodations Policy \(with Acknowledgment\)](#), [Disability Accommodation Request \(ADA\)](#), [Disability Accommodation Request Resolution \(ADA\)](#), [ADA Reasonable Accommodation Letter and Questionnaire to Healthcare Provider \(with HIPAA Authorization\)](#), and [Demand Letter \(ADA Failure to Accommodate, Discrimination, and Retaliation\)](#).

[>] Videos: For a three-suite of videos on the ADA, see [ADA Prohibition of Discrimination, Harassment, and Retaliation Video](#), [ADA Reasonable Accommodation Video](#), and [ADA Medical Exams and Drug Testing Video](#).

For information on legal developments regarding disability discrimination and other Labor & Employment legal developments in jurisdictions across the country, see [Labor & Employment Key Legal Developments Tracker \(Current\)](#).

Disability Discrimination and Reasonable Accommodations under the ADA: Training Presentation

Slide	Contents	Notes
1.	<p>Disability Discrimination and Reasonable Accommodations under the Americans with Disabilities Act (ADA): Training Presentation</p> <p>for [AUDIENCE NAME]</p> <p>by [PRESENTER]</p> <p>[PRESENTER AFFILIATION]</p> <p>[DATE]</p>	<p>It is both practically important and legally necessary for training regarding what constitutes disability discrimination and handling reasonable accommodations to be interactive and include industry- and entity-relevant discussion. Encourage participation and questions and consider incorporating polls, role-playing, and table discussions.</p> <p>The presenter should start with an introduction about themselves and why this topic is important to the organization. Ideally, the training will include a live or video welcome message from the employer's CEO or other senior leader to reinforce the organization's commitment to maintaining a respectful workplace that is free from discrimination, emphasize the importance of the training, and encourage the audience to be engaged in the topic by asking questions and actively participating in the session.</p> <p>Keep a copy of this presentation and a record of attendees. Maintaining training records may be helpful in addressing any future complaints or lawsuits.</p>
2.	<p>Overview Questions</p> <ul style="list-style-type: none"> • What is a disability? • What disabilities need to be accommodated? • What is required of an employee? • What is an employer's duty to accommodate? • How do you determine what constitutes a reasonable accommodation? • How does the ADA interact with the Family and Medical Leave Act (FMLA)? • How has COVID-19 impacted an employer's requirement to provide reasonable accommodations? • What if the employee does not have a disability but is "associated" with someone who does? Is the employer still required to accommodate the employee? 	<p>Consider starting with some general questions and a discussion concerning what a respectful work environment looks and feels like.</p> <p>Discuss the need for a high performing team and emphasize that employees who are happy at work are more productive. Discuss also that disabilities do not prevent employees from being productive employees, including when such employees receive accommodations.</p>

3.	<p>Today's Agenda</p> <ul style="list-style-type: none"> • Reasonable accommodations • The ADA and the FMLA • Interplay between COVID-19 and the ADA • When someone other than the employee has a disability • Key takeaways 	Review the agenda and discuss the presentation's goals.
4.	<p>What Is the Purpose of the ADA?</p> <p>The ADA prohibits discrimination against employees and job applicants on the basis of a disability.</p> <ul style="list-style-type: none"> • The employee or applicant must be qualified for the position held or sought. • Employees and job applicants with a disability who, with or without reasonable accommodation, can perform essential functions of the job are protected under the ADA. • Employers are affirmatively required to provide reasonable accommodations to employees and job applicants. • An employer is prohibited from retaliating against employees and job applicants who request accommodation under the ADA. 	<p>The Americans with Disabilities Act of 1990 (ADA) prohibits employers of 15 or more employees from engaging in workplace discrimination against individuals with disabilities, and from failing to provide reasonable accommodations to employees with disabilities. 42 U.S.C. § 12112. See Americans with Disabilities Act: Guidance for Employers.</p> <p>Sample Comments</p> <ul style="list-style-type: none"> • This slide discusses the purpose of the ADA and who it protects. • The ADA prohibits employers from discriminating against individuals with a disability in the application procedure, hiring, advancement, discharge, compensation, training, and other terms, conditions, or privileges of employment. • The ADA also requires employers to provide reasonable accommodations to employees if it assists them with performing the essential functions of their job. • What does the term “disability” mean to you?
5.	<p>2008 Amendments to the ADA (ADAAA)</p> <p>The ADA Amendments Act of 2008 (ADAAA) expanded the definition of “disability,” modifying key terms of that definition by:</p> <ul style="list-style-type: none"> • Broadening the definition of “major life activities” • Redefining who is “regarded as” having a disability • Modifying the regulatory definition of “substantially limits” • Specifying that the term “disability” includes any impairment that is episodic, or in remission, if it would substantially limit a major life activity when active – and– 	<p>This slide explains the amendments to the ADA and how the ADAAA changed the definition of disability.</p> <p>The ADA was amended in 2008. Why?</p> <ul style="list-style-type: none"> • Congress found that courts were taking a narrow view of who was covered by the ADA. The holdings of the Supreme Court in <i>Sutton v. United Air Lines, Inc.</i>, 527 U.S. 471 (1999), and its companion cases narrowed the broad scope of protection intended to be afforded by the ADA. 154 CONG. REC. H8286 (daily ed. Sept. 17, 2008). Courts were finding that “people with a range of substantially limiting impairments [were] not people with disabilities.” 154 CONG. REC. H8286 (daily ed. Sept. 17, 2008). • Congress, therefore, determined that the proper focus of the ADA should be “whether discrimination occurred rather than whether or not an individual's impairment qualifies as a disability.” 154 CONG. REC.

	<ul style="list-style-type: none"> Prohibiting consideration of the ameliorative effects of “mitigating measures” when assessing whether an impairment substantially limits a person’s major life activities, with one exception, “the mitigating measures of ordinary eyeglasses or contact lenses” 	<p>H8286 (daily ed. Sept. 17, 2008). Congress sought to increase the scope of protection of the ADA and change its focus. As a result, the ADA was amended to broaden the definition of disability. 154 CONG. REC. H8286 (daily ed. Sept. 17, 2008).</p>
<p>6.</p>	<p>Defining Disability</p> <p>Generally, a disability is a physical or mental impairment that substantially limits a major life activity.</p> <p>The definition of a disability also applies to persons who:</p> <ul style="list-style-type: none"> Have a record of having a such an impairment even if they do not currently have a disability –or– Do not have a disability but are regarded as having a disability <p>To meet this definition, the individual must also be:</p> <ul style="list-style-type: none"> Qualified for the position –and– Able to perform the essential functions of the employment position that the individual holds or desires with or without reasonable accommodation <p>Examples:</p> <ul style="list-style-type: none"> Deafness Blindness Epilepsy Depression Cerebral palsy 	<p>This slide explains how the ADA defines disability. 42 U.S.C. § 12102(1).</p> <ul style="list-style-type: none"> Disability. “Disability” means a physical or mental condition that significantly restricts, or prohibits an individual’s ability to perform a major life activity. <ul style="list-style-type: none"> Example. A person who is hearing-impaired would be considered to have a disability because the person has a condition that prevents or substantially limits their ability to hear (a major life activity). Record of. “Record of” means that the person has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities, even though the person does not currently have a disability. <ul style="list-style-type: none"> Example. Shelly had cancer but is currently in remission. She is not given a promotion because the company is concerned that her cancer will come back and she will not be able to do the job. This violates the ADA because the company would not consider her for the promotion because she had cancer. Regarded as. “Regarded as” means treating a person who has, or is perceived to have, an impairment as if the impairment limits, or is perceived to limit, a major life activity. 42 U.S.C. § 12102(3)(A). <ul style="list-style-type: none"> Example. Bob has prosthetic leg and company does not hire him to be a construction worker because they believe he cannot handle physical labor due to his prosthetic leg. However, Bob meets all the job qualifications, including being able to lift over 50 pounds and climb. This would be a violation of the ADA because the company assumes that Bob cannot do the job simply because he has a prosthetic leg. <p>Key Point</p> <ul style="list-style-type: none"> The ADA does not interfere with an employer’s right to hire the best qualified applicant. The ADA only seeks to prevent employers from discriminating against qualified applicants or employees because of their disability.

		<p>Note</p> <ul style="list-style-type: none"> It is important to note that the purpose of the ADA is to protect <i>qualified</i> individuals with a disability. Qualified individuals are those who are qualified for the position (e.g., able to satisfy the job requirements for educational background, employment experience, skills, licenses, and any other qualification standards that are job-related and able to perform those tasks that are essential to the job, with or without reasonable accommodation).
7.	<p>Defining Major Life Activities</p> <p>Under the ADAAA, “major life activities” is expanded to include “major bodily functions.”</p> <p>Specifically, the ADAAA provides that:</p> <ul style="list-style-type: none"> Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working Major bodily functions include, but are not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions 	<p>This slide discusses major life activities as defined by the ADAAA. Equal Employment Opportunity Commission Guidance, 29 C.F.R. § 1630.2(i).</p> <p>Key Points</p> <ul style="list-style-type: none"> Major life activities are those functions that are important to most people’s daily lives. The amendments to the ADA expanded what is considered a “major life activity” by adding more major life activities to those listed in the ADA and Section 503 regulations, and including a non-exhaustive list of “major bodily functions.” Now that major life activities include major bodily functions, individuals with impairments that affect a major bodily function need not demonstrate a limitation in their ability to perform activities of central importance to daily life. They need only show a substantial limitation of a major bodily function to qualify for protection under the ADAAA. <p>Sample Comments</p> <ul style="list-style-type: none"> It will be easier to find that individuals with certain types of impairments have a disability. Individuals with conditions such as epilepsy, cancer, multiple sclerosis, and diabetes may now be protected under the ADA even when the impairment is inactive, or they are taking medication to control their symptoms.
8.	<p>Employee’s Role under the ADA</p> <p>Under the ADA, a qualified individual with a disability is:</p> <ul style="list-style-type: none"> An individual with a disability who can, with or without reasonable accommodations, perform the essential functions of the job 	<p>During this section of the presentation, we will discuss qualified individuals with disabilities under the ADA.</p> <p>Examples</p> <ul style="list-style-type: none"> A job description requires a person to be able to lift 50 pounds but, because of a back impairment, Dwayne has a 25 pounds lifting restriction. Because lifting 50 pounds is an essential function of the job, the ADA requires the employer to consider whether Dwayne could lift 50 pounds using a lifting device.

	<ul style="list-style-type: none"> • The employee must establish that they are “otherwise qualified” or can “reasonably perform a job” by proving that: <ul style="list-style-type: none"> o They can perform all essential job functions without modifications or accommodations –or– o If the employer provides some reasonable accommodation, they can perform the job 	<ul style="list-style-type: none"> • Suppose that employer posts a job as a typist and an essential function of the job is to type 75 words per minute accurately. Brandy, an individual with a disability who is provided with a reasonable accommodation for a typing test, types 50 words per minute while Mia, the other applicant who has no disability accurately, types 75 words per minute. The employer can hire the applicant with the higher typing speed, if typing speed is needed for successful performance of the job.
a.	<p>What Are Essential Job Functions?</p> <p>A function is “essential” if:</p> <ul style="list-style-type: none"> • The position exists to perform the function • There are a limited number of employees who can perform the function –or– • The function is highly specialized <p>Evidence of the essential nature of a function includes:</p> <ul style="list-style-type: none"> • The employer’s judgment • The consequence of not requiring someone to perform the function • A written job description • The amount of time spent performing the function –and– • The work experience of people in that position 	<p>Examples</p> <p>A receptionist position might include:</p> <ul style="list-style-type: none"> • Essential functions such as answering the telephone and assisting callers, recording messages for department personnel, and greeting clients and customers • Nonessential functions such as serving coffee to clients and customers and escorting clients to staff offices <p>Physical elements of a job might include:</p> <ul style="list-style-type: none"> • Essential functions such as lifting and carrying 50–65 pounds; frequent bending, kneeling, and reaching; standing for long periods of time; climbing ladders; and handling and assembling small parts <p>Mental elements of a job might include:</p> <ul style="list-style-type: none"> • Essential functions such as organizing and coordinating schedules, analyzing and interpreting data, calibrating precise measurements, problem solving, creating written communication, and completing purchase orders
9.	<p>Notice of Accommodation</p> <p>Employees and job applicants have a duty to:</p> <ul style="list-style-type: none"> • Inform the employer of their need for an accommodation • Tell the employer what type of accommodation is needed, unless the disability and need for accommodation is known or obvious –and– • Engage in the interactive process with the employee 	<p>Key Points</p> <p>How to know when there is a need to accommodate?</p> <ul style="list-style-type: none"> • When an individual makes it known that an adjustment or change is needed because of a disability, this is a request for accommodation under the ADA • Where an employee or job applicant returns from FMLA or has a fitness for duty form • When a request has been made on behalf of the employee/applicant <ul style="list-style-type: none"> o For example, by a doctor, relative, co-worker, lawyer, or others • When circumstances are present where the employer knew, or should have known, of the employee’s/ applicant’s need for an accommodation

<p>10.</p>	<p>When Is a Request for a Reasonable Accommodation Necessary and How Does It Look?</p> <p>Employee's, or job applicant's, requests for reasonable accommodation:</p> <ul style="list-style-type: none"> • Are necessary only where the person's disability and need for accommodation are not known or obvious • May come from a family member, friend, doctor, other healthcare or rehabilitation professional, or other representative • Does not have to be in writing • Must be in plain language • Need not expressly state: <ul style="list-style-type: none"> ○ "I need an accommodation for," or "reasonable accommodation." • The request for a reasonable accommodation is the first step in the informal, interactive process, between the employee, or job applicant, and the employer. 	<p>Notes</p> <ul style="list-style-type: none"> • Although the employee is not required to submit the request for accommodation in writing, employers may want to document the employee's request in writing. • The ADA does not preclude an employee with a disability from requesting a reasonable accommodation because the employee did not ask for one when applying for a job or after receiving a job offer. <p>Examples</p> <ul style="list-style-type: none"> • An employee tells his supervisor, "I need six weeks off to get treatment for a back problem." This is a request for a reasonable accommodation. • An employee tells her supervisor, "I'm having trouble getting to work at my scheduled starting time because of medical treatments I'm undergoing." This is a request for a reasonable accommodation. • A new employee, who uses a wheelchair, informs the employer that her wheelchair cannot fit under the desk in her office. This is a request for reasonable accommodation. • An employee tells his supervisor that he would like a new chair because his present one is uncomfortable. Although this is a request for a change at work, his statement is insufficient to put the employer on notice that he is requesting a reasonable accommodation because he does not link his need for a new chair with a medical condition. • An employee's spouse phones the employee's supervisor on Monday morning to inform her that the employee had a medical emergency due to multiple sclerosis, needed to be hospitalized, and thus requires time off. This discussion constitutes a request for reasonable accommodation. <p>Key Points</p> <ul style="list-style-type: none"> • When an individual makes it known that an adjustment or change is needed because of a disability, this is a request for accommodation under the ADA. • Where it is unclear whether a request for accommodation has been made, an employer may ask
<p>11.</p>	<p>What Is Not a Request for Accommodation?</p> <ul style="list-style-type: none"> • A request for workplace adjustments or access to benefits and privileges already available to employees without disabilities is not necessarily a request for a reasonable accommodation. 	<p>Example</p> <ul style="list-style-type: none"> • If employees are permitted to work a flexible schedule, or to work at home, then employees with disabilities should not be required to jump through extra hoops to receive the same workplace flexibility or privileges as those without disabilities.

12.	<p>Medical Documentation</p> <p>An employer's request that an employee or job applicant provide medical documentation:</p> <ul style="list-style-type: none"> • Is limited to information related to the employee's disability and request for accommodation that is job-related • Can only inquire as to the person's ability to perform essential functions of job – and– • Can ask whether an accommodation is needed and why <p>An employee's medical documentation should include:</p> <ul style="list-style-type: none"> • A description of the nature, severity, and duration of the impairment • The activity(ies) the impairment limits • The extent to which the impairment limits the employee's ability to perform the activity(ies) –and– • Information substantiating why the requested reasonable accommodation is needed 	<p>Notes</p> <ul style="list-style-type: none"> • Do not ask an employee's medical provider for an employee's medical records, or information about an employee's health, without permission from the employee. • But you can ask an employee to obtain medical documentation to determine whether the employee's disability necessitates an accommodation. <p>Key Points</p> <ul style="list-style-type: none"> • Under the ADA, there is no set time frame for an employee to provide medical documentation in support of a request for reasonable accommodations. But employers may have a reasonable accommodation policy indicating a time frame for employees to respond (10 to 15 business days may be considered reasonable). <p>Example</p> <ul style="list-style-type: none"> • Medical documentation stating that an individual needs "a noise canceling headset to help minimize distractions while working" is an example of sufficient documentation. It provides the link between the requested accommodation (the headset) and how it helps the individual (to minimize distractions).
13.	<p>When an Employee Cannot Obtain Disability-Related Documentation</p> <p>Employers still have the right to request ADA documentation when asked to provide an accommodation, but employers may want to consider, under the current circumstances, whether this documentation is necessary.</p> <p>If so, employers should consider being pragmatic and flexible about the information requested for ADA purposes.</p>	<p>Notes</p> <ul style="list-style-type: none"> • Employers can include a job description and ask a provider to comment on what the employee can or cannot do. • Employers can explain why the documentation provided was insufficient (if no documentation was provided, why documentation is necessary) and ask specific job-related questions about how the employee's impairment affects job performance, and why the employee is requesting a reasonable accommodation.
14.	<p>Employer's Duties under the ADA</p> <p>Employers have a duty to:</p> <ul style="list-style-type: none"> • Provide a work environment free from discrimination based on an individual's disability • Ensure that employees with disabilities are not subjected to harassment based on their disability –and– • Provide reasonable accommodations for qualified employees and job seekers with disabilities 	<p>This slide discusses an employer's responsibility under the ADA.</p> <p>Sample Comments</p> <ul style="list-style-type: none"> • What does it mean to have a work environment free from discrimination based on a person's disability? <p>Disability-based discrimination can occur in all stages of employment from hiring to promotion, compensation, and termination.</p>

		<p>Example. Bob is visually impaired and unable to fill out the application form. He requests an alternative format to apply for the position (e.g., a copy of the form in braille or that the form be read out loud to him and he provide verbal responses).</p> <ul style="list-style-type: none"> • What are examples of harassment based on a person's disability? <p>Example. Nancy has a leg deformity and walks with a limp. A co-worker nicknames her "gimpy." When a supervisor or co-worker taunts or teases an employee because of her disability, this will likely be considered harassment based on the employee's disability, and a violation of the ADA.</p> <ul style="list-style-type: none"> • What are reasonable accommodations? <p>Example. Making job modifications or adjustments:</p> <ul style="list-style-type: none"> o To a job application process o To the work environment –or– o That allow an employee with a disability to "enjoy equal benefits and privileges of employment" as are enjoyed by "similarly situated" employees without a disability, such that the employee may perform their job duties
15.	<p>What the ADA Does Not Require of an Employer?</p> <p>Under the ADA, employers are not required to:</p> <ul style="list-style-type: none"> • Accommodate the desire to care for another • "Accommodate away" essential functions of the job • Grant more leave if another reasonable accommodation will work • Accept employee's accommodation preference –or– • Make an accommodation if it would impose an "undue hardship" on the operation of the employer's business 	<p>Key Points</p> <ul style="list-style-type: none"> • The ADA does not require that an employer hire an applicant with a disability over other applicants because the person has a disability. The ADA only prohibits discrimination on the basis of disability. • The ADA does not require an employee to obtain additional medical coverage if the health insurance it offers does not cover all of the medical expenses related to an employee's disability. <p>Example</p> <ul style="list-style-type: none"> • Duncan has a severe learning disability that causes him great difficulty in reading. His supervisor sends him many detailed memoranda which he often has trouble understanding. However, he has no difficulty understanding oral communication. Duncan requests that the employer install a computer with speech output and that his supervisor send all memoranda through electronic mail which the computer can then read to him. The supervisor asks whether a tape-recorded message would accomplish the same objective and Duncan agrees that it would. Since both accommodations are effective, the employer may choose to provide the supervisor and Duncan with a tape recorder so that the supervisor can record her memoranda and Duncan can listen to them.

<p>16.</p>	<p>“Knowledge” Triggers an Employer’s Duty to Engage in the Interactive Accommodations Process</p> <p>An employer must “know,” or have reason to know or believe, that an employee or job applicant has a need for an accommodation due to a disability before it has a duty to accommodate.</p> <ul style="list-style-type: none"> • If the individual does not request an accommodation, the employer is not obligated to provide one. <p>Except when an employee’s known disability impairs the ability:</p> <ul style="list-style-type: none"> • To recognize that the employee needs to request an accommodation –or– • To effectively communicate a need for an accommodation –and– • The disability is obvious to the employer 	<p>Key Points</p> <ul style="list-style-type: none"> • Employer must “know” before it has a duty to accommodate . . . or it should have known. • Knowledge may be derived from the circumstances. • The request could come from a family member, doctor, friend, or others. • The request does not have to be in writing. • The request must be in plain language. • Employee does not need to expressly say: “I need an accommodation for _____.” • A nexus must exist between a medical impairment and a work-related barrier. <p>Word of Caution</p> <ul style="list-style-type: none"> • EEOC guidance advises that employers should not ask an employee if the employee has an underlying medical condition or needs an accommodation. However, if the employee puts the employer on notice of the condition, or the disability is obvious and the employer “could reasonably believe that the applicant [or employee] will need a reasonable accommodation to perform specific job functions,” the employer should inquire if the employee will need an accommodation. See Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA U.S. Equal Employment Opportunity Commission (Issued Oct. 17, 2002).
<p>17.</p>	<p>Steps of the Interactive Accommodation Process</p> <p>The accommodation process is an interactive one in which an employer should:</p> <ul style="list-style-type: none"> • Meet with the employee • Inquire about limitations and identify functional limitations • Ask the employee what accommodation(s) is (are) sought –and– • Implement the accommodation(s) <p>The employer should work with a medical provider as necessary.</p>	<p>Key Points</p> <ul style="list-style-type: none"> • Employers may ask employees with disabilities to request accommodations that they believe they may need. • Employers may begin the “interactive process” with employee focusing on: <ul style="list-style-type: none"> o Whether the impairment is a disability –and– o The reasons that an accommodation is needed <p>Notes</p> <ul style="list-style-type: none"> • If the process did not work or a particular accommodation would be an undue hardship, the employer must try to identify another accommodation that will not pose such a hardship. • The accommodation process is an interactive one; employers have a responsibility to repeat the process until all reasonable accommodations have been exhausted.

<p>18.</p>	<p>Responding to a Request for Accommodation</p> <p>An employer should:</p> <ul style="list-style-type: none"> • Engage in an informal process with the individual to clarify what the individual needs and identify the appropriate reasonable accommodation • Document every conversation with the employee about the accommodation, and every option offered • Develop a procedure/policy for requesting an accommodation • Maintain employee confidentiality, especially with medical information • Never say “we can’t do that,” “we can’t afford that,” or “we don’t make exceptions” without confirmation 	<p>Key Points</p> <ul style="list-style-type: none"> • The exact nature of the dialogue will vary. In many instances, both the disability and the type of accommodation required will be obvious, and thus there may be little or no need to engage in any discussion. In other situations, the employer may need to ask questions concerning the nature of the disability and the individual’s functional limitations to identify an effective accommodation. • The individual with a disability does not have to specify the precise accommodation, but does need to describe the problems posed by the workplace barrier. <p>Notes</p> <ul style="list-style-type: none"> • Suggestions from the individual with a disability may help the employer determine the type of reasonable accommodation to provide. • There are extensive resources to help the employer identify reasonable accommodations once the specific limitations and workplace barriers have been determined.
<p>19.</p>	<p>Responding to Request for Accommodation (continued)</p> <p>An employer can:</p> <ul style="list-style-type: none"> • Ask for the employee’s doctor’s certification of health-related work restrictions • Discuss with the person the nature of the person’s disability and functional limitation • Make plans based on information the employee provides • Remember that the employee must cooperate in the “interactive process” and cannot unreasonably refuse requests for information or accommodations offered <p>It would be useful for the employer to make clear to the individual why it is requesting information (i.e., to verify the existence of an ADA disability and the need for a reasonable accommodation).</p>	<p>Key Points</p> <ul style="list-style-type: none"> • In some instances, before addressing the merits of the accommodation request, the employer may need to determine if the individual’s medical condition meets the ADA definition of “disability,” a prerequisite for the individual to be entitled to a reasonable accommodation. • In requesting documentation, an employer should specify what type of information they are seeking regarding the disability, its functional limitations, and the need for reasonable accommodation. • The employer can ask the individual to sign a limited release allowing the employer to submit a list of specific questions to the healthcare or vocational professional. <p>Examples</p> <ul style="list-style-type: none"> • An employee tells the employer that they are having trouble reaching tools because of a shoulder injury. The employer may ask for documentation describing the impairment; the nature, severity, and duration of the impairment; the activity or activities that the impairment limits; and the extent to which the impairment limits the employee’s ability to perform the activity or activities to determine whether the employee has an ADA disability.

		<ul style="list-style-type: none"> An employee's spouse calls the employee's supervisor to inform her that the employee had a medical emergency due to multiple sclerosis, needed to be hospitalized, and will require time off. The supervisor can ask the spouse to provide documentation from the employee's treating physician confirming that the hospitalization was related to the multiple sclerosis and providing information on how long the employee may be absent from work.
20.	<p>Responding to a Request for Accommodation (continued)</p> <p>An employer cannot:</p> <ul style="list-style-type: none"> Ask for documentation when: <ul style="list-style-type: none"> Both the disability and the need for reasonable accommodation are obvious –or– The individual has already provided the sufficient information to substantiate an ADA disability and needs the reasonable accommodation requested Require a qualified individual with a disability to accept an accommodation <ul style="list-style-type: none"> But, if an employee needs a reasonable accommodation to perform an essential function or to eliminate a direct threat, and refuses to accept an effective accommodation, they may not be qualified to remain in the job. 	<p>Example</p> <ul style="list-style-type: none"> Drew brings a note from his treating physician explaining that he has diabetes and that, as a result, must test his blood sugar several times a day to ensure that his insulin level is safe to avoid a hyperglycemic reaction. The note explains that a hyperglycemic reaction can include extreme thirst, heavy breathing, drowsiness, and flushed skin, and eventually would result in unconsciousness. Depending on the results of the blood test, Drew might have to take insulin. The note requests that he be allowed three or four 10-minute breaks each day to test his blood, and if necessary, to take insulin. The doctor's note constitutes sufficient documentation that Drew has an ADA disability because it describes a substantially limiting impairment and the reasonable accommodation needed as a result. The employer cannot ask for additional documentation.
21.	<p>Reasonable Accommodations Employers Are Required to Make under the ADA</p> <p>What reasonable accommodations must an employer make?</p> <ul style="list-style-type: none"> Employers must make accommodations that are reasonable under the circumstances. The accommodations need not "relate to the performance of essential job functions." 	<p>During this section of the presentation, we will discuss an employer's responsibility under the ADA as it relates to "making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability" that does not impose an undue hardship on the employer.</p> <p>Example</p> <ul style="list-style-type: none"> Camie can no longer perform the essential functions of a job she has held for the last 10 years because of a disability. However, her employer has a vacant position for which she is otherwise qualified. Under the ADA, reasonable accommodations may include an appropriate reassignment by Camie's employer to a vacant position within the company, with or without reasonable accommodation, even though she is unable to perform her existing job no matter how much accommodation is extended to her.

<p>22.</p>	<p>Accommodations That Might Be Reasonable</p> <ul style="list-style-type: none"> • Work from home • Reduced hours • Ergonomic seating • Time off work • Schedule change • Job restructuring • Make existing facilities accessible • Change tests, training materials, or policies • Providing qualified readers or interpreters • Reassignment to a vacant position 	<p>Note</p> <ul style="list-style-type: none"> • Sometimes, whether the accommodation is reasonable depends on the circumstances: <ul style="list-style-type: none"> ○ Change in supervisor? Generally not reasonable. ○ Providing an assistant or a job coach? Sometimes reasonable. ○ Rescinding discipline? Generally not reasonable. ○ Working at home? Depends on the circumstances. ○ Modified work schedule? Generally reasonable to an extent. ○ Shift change? Depends on the circumstances. ○ Irritant-free environment? Depends on the circumstances. ○ Parking space / commuting assistance? Depends on the circumstances. ○ Reassignment? Yes, for current employees, but not applicants or former employees. <ul style="list-style-type: none"> ▪ However, the employer does not have to bump any employee from a job to create a vacancy, promote the employee, or reassign them to a job for which they are not qualified. <p>Examples</p> <ul style="list-style-type: none"> • Janice has a hearing disability and must be able to contact the public by telephone. She proposes that she use a TTY to call a relay service operator who can then place the telephone call and relay the conversation between the parties. <ul style="list-style-type: none"> ○ This is “reasonable” because a TTY is a common device used to facilitate communication between hearing and hearing-impaired individuals. Moreover, it would be effective in enabling Janice to perform her job. • Adrian is a cashier and easily becomes fatigued because of lupus and, as a result, has difficulty making it through her shift. She requests a stool because sitting greatly reduces the fatigue. <ul style="list-style-type: none"> ○ This accommodation is reasonable because it is a common-sense solution to remove a workplace barrier being required to stand when the job
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23.	<p>Accommodations Generally Are Not Reasonable</p> <ul style="list-style-type: none"> • Eliminate, or change, the essential functions of the job • Lower production standards • Assigning to other employees some of the essential functions, or hiring someone else to help the employee out • Modifying the employee's work schedule if it adversely affects other employees' ability to perform their jobs • Changes for the mere convenience or personal benefit of an employee (i.e., providing personal use amenities, such as a hot pot or refrigerator, if those items are not provided to employees without disabilities) 	<p>Examples</p> <ul style="list-style-type: none"> • Requests for the employer to purchase personal items such as eyeglasses, hearing aids, and walking canes • Lowering the standard of quality • Displacing another employee <p>Lisa applies for a job doing data entry. The job requires that she spend a great majority of her day typing invoices. However, Lisa cannot spend more than 30% of her day typing. It may be unreasonable to accommodate restrictions of no typing greater than 30% of the day if Lisa's essential job function is primarily data entry.</p>
24.	<p>Employer's Failure to Accommodate</p> <p>An employer fails to accommodate when:</p> <ul style="list-style-type: none"> • The employee is a qualified individual with a disability • The employer knew, or should have known, about the employee's disability – and– • An accommodation was available to the employer that is not unduly burdensome 	<p>Examples</p> <ul style="list-style-type: none"> • Failing to make a reasonable accommodation • Failing to explore, or consider, a reasonable accommodation or alternate accommodations • Failing to recognize that a request for an accommodation is being made • Failing to recognize mental disabilities • Failing to engage in, and document, the interactive process • Failing to anticipate when additional leave may be required <ul style="list-style-type: none"> o Many employers maintain no-fault attendance policies or other rules that restrict the availability of leave to employees and apply the policies to deny leave. The EEOC has been clear that an explicit purpose of the ADA is "to change the way things are customarily done." In other words, the ADA requires the employer to break their own rules (e.g., no-fault attendance policies or policies denying leave until six months of service) if an employee requests leave as an accommodation.

<p>25.</p>	<p>Employers Are Not Required to Make Accommodations If the Accommodation Will Create an Undue Hardship on Its Business Operations</p> <p>Although an undue hardship is determined on a case-by-case basis, some factors to consider when determining if an accommodation imposes an undue hardship are:</p> <ul style="list-style-type: none"> • Nature and net cost of the accommodation needed • Employer’s overall financial resources • Total number of employees • Type of operation, including the structure and function of the workforce • Type, location, and number of employer’s facilities –and– • The accommodation’s impact on the employer’s operations and other employees 	<p>Key Points</p> <ul style="list-style-type: none"> • If a particular accommodation would be an undue hardship, the employer must try to identify another accommodation that will not pose such a hardship. • If the cost of an accommodation would impose an undue hardship on the employer, the individual with a disability should be given the option of paying that portion of the cost which would constitute an undue hardship or providing the accommodation. <p>Note</p> <ul style="list-style-type: none"> • Undue hardships include accommodations that would significantly impact the ability of the business to operate, at which point the accommodation would be considered unreasonable. <p>Examples</p> <ul style="list-style-type: none"> • An accommodation request may include a job-sharing situation that requests the hiring of another to share the job. This could be an undue hardship for a sole proprietor’s small business that produces a small amount of revenue and only has one employee in that position. • Brooke is a convenience store clerk with multiple sclerosis. She requests that she be allowed to go from working full time to part time as a reasonable accommodation because of her disability. The store assigns two clerks per shift, and if the first clerk’s hours are reduced, the second clerk’s workload will increase significantly beyond his ability to handle his responsibilities. The store determines that such an arrangement will result in inadequate coverage to serve customers in a timely manner, keep the shelves stocked, and maintain store security. This is an undue hardship based on the significant disruption to the employer, therefore, the employer can refuse to reduce the employee’s hours. <ul style="list-style-type: none"> o The employer, however, should explore whether any other reasonable accommodation will assist Brooke without causing undue hardship.
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<p>26.</p>	<p>COVID-19 Impact on Employer's Requirement to Accommodate Employees</p> <p>EEOC Guidance (June 11, 2020)</p> <ul style="list-style-type: none"> • The guidance answered questions regarding the following: <ul style="list-style-type: none"> o Can employers require older workers to stay home? <ul style="list-style-type: none"> ▪ No, this requirement would violate the Age Discrimination in Employment Act (ADEA). o Can employers require pregnant employees to work from home? <ul style="list-style-type: none"> ▪ No, employers cannot impose this requirement on pregnant employees if they do not require other workers to work from home. ▪ Employers may be required to afford those women reasonable accommodations under the ADA or the Pregnancy Discrimination Act. o Are employers required to accommodate an employee who requests a reasonable accommodation so they can avoid potentially exposing family members to COVID-19? <ul style="list-style-type: none"> ▪ No, the ADA does not require that an employer accommodate an employee without a disability based on the disability-related needs of a family member or other person with whom the employee is associated. 	<p>Key Point</p> <ul style="list-style-type: none"> • The EEOC requires only that an employer accommodate the employee's disability. <p>Note</p> <ul style="list-style-type: none"> • An employee who does not have a disability cannot ask that they be allowed to telework during the pandemic as an accommodation to safeguard the health of an at-risk family member who does have a disability.
<p>27.</p>	<p>What If the Accommodation Possess a Significant Expense during Pandemic?</p> <p>Prior to the COVID-19 pandemic, most accommodations, when considered against an employer's overall financial resources, did not pose a significant expense. However, the pandemic created the need for consideration of additional relevant factors:</p> <ul style="list-style-type: none"> • Sudden loss of some or all of an employer's income stream because of the pandemic 	<p>This slide discusses how a pandemic can create hardships for employers.</p> <p>Key Point</p> <ul style="list-style-type: none"> • These considerations do not mean that an employer can reject any accommodation that costs money; an employer must weigh the cost of an accommodation against its current budget while considering constraints created by the pandemic.

	<ul style="list-style-type: none"> • The amount of discretionary funds available: <ul style="list-style-type: none"> o When considering other expenses – and– o Whether there is an expected date that current restrictions on an employer’s operations will be lifted 	<p>Note</p> <ul style="list-style-type: none"> • For employers who are arranging for their employees to return to the physical workplace, the EEOC guidance explores whether an employer can invite employees to ask for reasonable accommodations that they may need at a future date when they are permitted or required to return to the workplace.
28.	<p>COVID-19 Vaccines and the ADA</p> <ul style="list-style-type: none"> • COVID-19 vaccines approved or authorized by the Food and Drug Administration (FDA) are not “medical examinations” for purposes of the ADA. • If an employer requires its employees to receive a vaccination from the employer (or a third party with whom the employer contracts to administer a vaccine), pre-vaccination medical screening questions are likely to elicit information about a disability and are “disability-related” under the ADA. <ul style="list-style-type: none"> o Thus, if the employer requires an employee to receive the vaccination, administered by the employer, the employer must show that disability-related screening inquiries are “job-related and consistent with business necessity.” o To meet the standard, an employer would need to have a reasonable belief, based on objective evidence, that an employee who does not answer the questions and, therefore, does not receive a vaccination, will pose a direct threat to their health or safety or safety of others 	<p>Key Points</p> <ul style="list-style-type: none"> • The EEO laws do not interfere with or prevent employers from following Center for Disease Control (CDC) or other federal, state, and local public health authorities’ guidelines and suggestions. • Requesting proof of receipt of a COVID-19 vaccination is not likely to elicit information about a disability and, therefore, is not a disability-related inquiry. <ul style="list-style-type: none"> o However, subsequent employer questions, such as asking why an individual did not receive a vaccination, may elicit information about a disability and would be subject to the pertinent ADA standard that they be “job-related and consistent with business necessity.” o If an employer requires employees to provide proof that they have received a COVID-19 vaccination, the employer may want to warn the employee not to provide any medical information as part of the proof to avoid implicating the ADA. • Once an employer is on notice that an employee’s sincerely held religious belief, practice, or observance prevents the employee from receiving the vaccination, the employer must provide a reasonable accommodation for the religious belief, practice, or observance unless it would pose an undue hardship under Title VII of the Civil Rights Act. <ul style="list-style-type: none"> o If an employee cannot get vaccinated for COVID-19 because of a disability or sincerely held religious belief, practice, or observance, and there is no reasonable accommodation possible, then it would be lawful for the employer to exclude the employee from the workplace, but, this does not mean the employer may automatically terminate the worker. Employers will need to determine if any other rights apply under the Equal Employment Laws (EEO) laws or other federal, state, and local authorities.

		<p>For a form policy requiring employees to obtain the coronavirus (COVID-19) vaccine to minimize transmission of the virus in the workplace, see Coronavirus (COVID-19) Vaccine Policy (Mandatory). For a form policy strongly encouraging employees to obtain the coronavirus (COVID-19) vaccine to minimize transmission of the virus in the workplace, see Coronavirus (COVID-19) Vaccine Policy (Non-Mandatory). For a form documenting an employee's decision to not obtain a coronavirus (COVID-19) shot based on medical reasons, see Declination of Coronavirus (COVID-19) Vaccination for Medical Contraindication.</p>
<p>29.</p>	<p>How the ADA Protects Employees from Discrimination Based on Association</p> <p>The ADA prohibits employment discrimination against a person, whether the individual has a disability, because of their known relationship or association with a person with a known disability.</p> <ul style="list-style-type: none"> Employers are prohibited from making adverse employment decisions based on unfounded concerns about the known disability of a family member or anyone else with whom the applicant or employee has a relationship or association 	<p>Key Points</p> <ul style="list-style-type: none"> Although the ADA prohibits discrimination based on association with an individual with a disability, that protection is limited to disparate treatment or harassment. The ADA does not require that an employer accommodate an employee without a disability based on the disability-related needs of a family member or other person with whom the employee is associated. <p>Notes</p> <ul style="list-style-type: none"> The ADA does not require an individual to be related to a person with a disability to be protected by the association provision. <ul style="list-style-type: none"> The key is whether the employer is motivated by the individual's relationship or association with a person who has a disability. Employers may provide any flexibilities such as telework, modified schedules, or other benefits to employees with school-age children due to school closures or distance learning during the pandemic as long as they are not treating employees differently based on sex or other EEO-protected characteristics. <ul style="list-style-type: none"> Example, under Title VII, female employees cannot be given more favorable treatment than male employees because of a gender-based assumption about who may have caretaking responsibilities for children. <p>Example</p> <ul style="list-style-type: none"> Gerald's employer overhears Gerald mention to a co-worker that he tutors children at a local homeless shelter. The employer, recalling that the shelter in question is well-known for providing job placement assistance for people living with HIV/AIDS, terminates Gerald because it believes that its image will be tarnished if its employees associate with the "kind of person" who contracts HIV/AIDS.

		<ul style="list-style-type: none"> o The employer has violated the ADA's association provision even if Gerald is only minimally acquainted with beneficiaries of the shelter who have HIV/AIDS, because it made an adverse employment decision based on concerns about the disabilities of people with whom Gerald has an association
30.	<p>Leave under the ADA and the Family Medical Leave Act (FMLA)</p> <ul style="list-style-type: none"> • The ADA applies to employers with 15 or more employees. • The FMLA applies to all government employers (local, state, and federal) and to private businesses with 50 or more employees within 75 miles (with some exceptions). <p>Both the ADA and the FMLA could apply:</p> <ul style="list-style-type: none"> • Generally, public sector employers and private business employers with more than 50 workers are covered under both the ADA and FMLA. <ul style="list-style-type: none"> o Employees could then have rights under both laws if they meet the definition of "disability" (ADA) and "serious health condition" (FMLA). • Employees who have all their FMLA leave might still have rights under the ADA if they meet the ADA definition of a person with a disability. <ul style="list-style-type: none"> o Accommodation is one such right. o Additional leave, beyond the employee's FMLA leave, could be an accommodation that must be provided under the ADA. 	<p>Key Points</p> <ul style="list-style-type: none"> • Employers should avoid "100% healed policies." Employers cannot require employees to be completely healed before returning to work. Such policies have been found to violate the ADA because they do not allow workers to use their right to an accommodation. • Employers should avoid "no-fault leave policies." Automatically terminating employees who have, for any reason, exceeded a pre-set amount of leave violates the ADA. No-fault leave policies deny the employee the right to use a reasonable accommodation that would allow them to return to work with a disability. • Employers should treat obvious and non-obvious disabilities the same. Employees with impairments that may not be obvious (e.g., diabetes, depression, or post-traumatic stress disorder) could be covered under the FMLA or the ADA. <p>Note</p> <ul style="list-style-type: none"> • Under both the ADA and FMLA, employers can only collect the information needed to confirm that the employee has an impairment or medical condition, to identify possible accommodation options, and to determine the probable duration of the employee's condition. <ul style="list-style-type: none"> o Requesting or collecting medical information that is unduly lengthy, irrelevant, or arbitrary can violate the ADA. The FMLA does not allow the employer to demand a diagnosis to grant FMLA leave. <p>For further comparison of ADA and FMLA, see ADA and FMLA Comparison Chart.</p>
31.	<p>Questions?</p> <p>[contact information for questions]</p>	

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Laura Alaniz is an experienced litigator and advisor focusing on representation of management in all aspects of labor and employment law matters. As a litigator, Laura utilizes her experience to provide guidance to her clients on how to avoid litigation and minimize their risk of claims. Laura is Board Certified in Labor and Employment by the Texas Board of Legal Specialization.

Laura regularly represents employers and their leadership in all types of employment disputes including suits for wrongful termination, retaliation, harassment and discrimination, wage and hour disputes, disability accommodation, breach of contract, and suits for violation of state and federal statutes, such as the FLSA, FMLA, WARN, and the Texas workers' compensation retaliation statute. She has successfully resolved hundreds of demand letters, EEOC charges of discrimination, and lawsuits alleging various forms of discrimination, harassment, retaliation, and other employment claims.

On the counseling side, Laura's practice focuses on compliance issues relating to employment law and prevention of claims including counseling clients regarding hiring and terminating employees, leaves of absence, layoffs, unemployment compensation, employment handbooks and policies, and conducting employee and management training. Her practice also includes drafting employment contracts, non-disclosure agreements, and anti-competition-hiring-solicitation agreements.

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