

# UNDERSTANDING THE NEW AMERICANS WITH DISABILITIES ACT OF 1990

by

*Scott Warrick, JD, MLHR, CEQC, SHRM-SCP*

*Scott Warrick Human Resource Consulting, Coaching & Training Services  
&*

*Scott Warrick Employment Law Services  
(614) 738-8317 ♣ [scott@scottwarrick.com](mailto:scott@scottwarrick.com)*

[WWW.SCOTTWARRICK.COM](http://WWW.SCOTTWARRICK.COM)

Link Up With Scott On [LinkedIn](#)

## HIGHLIGHTED AREAS A NEW FOR 2018

### SESSION 1: WHO IS COVERED? = 19 MINUTES

- I. THE AMERICANS WITH DISABILITIES ACT OF 1990 OVERVIEW
  - A. Which Employers Are Covered By The ADA?
  - B. Discrimination and Harassment Prohibited
  - C. Burden Of Proof
- II. WHO IS COVERED BY THE ADA OVERVIEW?

### SESSION 2: WHO IS COVERED? = 20 MINUTES

- III. WHO IS DISABLED UNDER THE ADA AMENDMENTS ACT (ADAAA) of 2008 AND THE 2011 REGULATIONS?
  - A. Summary of the ADA's 2011 Regulations
  - B. ADA Is To Be "Broadly Construed"
- IV. WHO IS NOW "DISABLED" UNDER THE ADA?
  - A. Categorical Disabilities
  - B. Specific Conditions Excluded
  - C. Temporary Impairments Are Protected
  - D. Episodic Impairments

**SESSION 3: MAJOR LIFE ACTIVITY & SUBSTANTIALLY LIMITS = 21 MINUTES**

- V. 2011 REGULATIONS CHANGE “MAJOR LIFE ACTIVITY” STANDARD
  - A. What Is A “Major Life Activity?”
  - B. Eating Held To Be A “Major Life Activity”
- VI. WHAT IS A PHYSICAL OR MENTAL IMPAIRMENT?
- VII. 2011 REGULATIONS CHANGE “SUBSTANTIALLY LIMITS” STANDARD
- VIII. MITIGATING MEASURES IGNORED
  - A. U.S. Supreme Court Sutton Case
  - B. 2011 Regulations and Mitigating Measures

**SESSION 4: ESSENTIAL FUNCTIONS = 32 MINUTES**

- IX. ESSENTIAL FUNCTIONS
  - A. Definition
  - B. EEOC 7 Factors for Determining Essential Functions
  - C. Employer Must Be Able To Document Essential Functions
  - D. Listing Essential Functions On Job Descriptions Is Critical
  - E. Criteria For Job Must Be Related To Essential Functions Of Job
  - F. Only Current Job Is Pertinent For Analysis
  - G. Timely Attendance MAY NOT Be An Essential Function
  - H. Punctuality Is Not Necessarily an Essential Job Function

**SESSION 5: EMPLOYER DEFENSES = 14 MINUTES**

- X. EMPLOYER DEFENSES
  - A. Employer Defense: Undue Hardship
  - B. Employer Defense: Employer Must Be Aware Of Disability
  - C. Employer Defense: Direct Threat To Others
  - D. Employer Defense: Direct Threat To Self

**SESSION 6: REASONABLE ACCOMMODATION = 1 HOUR 15 MINUTES**

**XI. REASONABLE ACCOMMODATION**

- A. In General, What Is A “Reasonable Accommodation”?
- B. What More Specifically Is A “Reasonable Accommodation”?
- C. EEOC Guidance On Requesting A Reasonable Accommodation
- D. Requesting A Reasonable Accommodation: Employee ONLY Needs to Ask For An Adjustment Or Change Due To A Medical Condition
- E. What Is NOT A Request For A Reasonable Accommodation?
- F. No “Magic Words” Required
- G. Request For FMLA Leave Could Likely Qualify As A Request For A Reasonable Accommodation Under The ADA?
- H. The Accommodation Need Only Be “Reasonable” ... It Need Not Be The BEST
- I. Employee Who Declines A Reasonable Accommodation Loses ADA Coverage
- J. EEOC Comments On Telecommuting
- K. Circuit Court Rules Telecommuting IS A Reasonable Accommodation Consideration

**XII. LEAVE OF ABSENCE AS A REASONABLE ACCOMMODATION**

- A. Leave Of Absence IS A Reasonable Accommodation Consideration
- B. Indefinite Leave of Absence Is Not A Reasonable Accommodation
- C. Repeated Requests For Extended Leaves of Absence Under The ADA
- D. Length Of Leave Of Absence
- E. Rigidly Following A Leave Of Absence Policy Is A “Per Se” (“By Itself”) Violation Of The ADA

**XIII. “REASONABLE ACCOMMODATION” MUST BE TIMELY and EMPLOYERS CANNOT FORCE EMPLOYEES TO TAKE A LEAVE OF ABSENCE WHEN ANOTHER ACCOMMODATION IS AVAILABLE**

**XIV. OTHER TYPES OF REASONABLE ACCOMMODATIONS**

- A. Flextime As An Accommodation
- B. Work Breaks As A Reasonable Accommodation
- C. Reassignment As A Reasonable Accommodation

- D. Employee Must Be Qualified For Reassignment To Another Position

**SESSION 7: THE INTERACTIVE PROCESS = 19 MINUTES**

**XV. ADA AND THE “INTERACTIVE PROCESS”**

- A. “Reasonable Accommodation” And The Interactive Process
- B. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION: Final Rule on ADA and “Interactive Process”
- C. Inquiries Of Reasonable Accommodations And The Interactive Process
- D. Failure To Participate in “Interactive Process” Costs Employee Her Case
- E. Continuing Duty To Accommodate
- F. Circuit Courts’ Treatment of the Interactive Process

**SESSION 8: OTHER TYPES OF ADA COVERAGE = 22 MINUTES**

**XVI. OTHER TYPES OF ADA COVERAGE**

- A. “Regarded As Being” Disabled
- B. “Regarding” An Employee As Being Disabled: Requiring Rehabilitation
- C. “Regarding” Employees As Being Disabled: 100% Return To Work Policy
- D. “Record” Of A Substantially Limiting Condition

**SESSION 9: MEDICAL INFORMATION AND EXAMINATIONS = 20 MINUTES**

**XVII. MEDICAL INFORMATION AND EXAMINATIONS**

- A. Pre-Employment Examinations
- B. Drug and Alcohol Tests
- C. Requiring Current Employees To Undergo Medical Examinations
- D. Contacting Individual’s Physician
- E. Keeping Medical Files Separate
- F. "Return-To-Work" Or "Fit For Duty" Certificate Requirements

**SESSION 10: THE ADA & PREVIOUS DRUG ABUSE = 14 MINUTES**

**XVIII. THE ADA & PREVIOUS DRUG ABUSE**

- A. Prior Drug Use As A Bar To Employment
- B. Last Chance Agreements While In Rehab

**SESSION 11: PRE-EMPLOYMENT QUESTIONS AND DISCLOSURE = 13 MINUTES**

- XIX. THE REGULATIONS & PRE-EMPLOYMENT INQUIRIES**
- XX. EEOC GUIDANCE ON THE DISCLOSURE OF A DISABILITY**
- XXI. EEOC's SPECIFIC GUIDANCE ON PRE-EMPLOYMENT INQUIRIES UNDER THE ADA**

**SESSION 12: OTHER ADA ISSUES = 22 MINUTES**

- XXII. ADA MEDICAL TESTING & “NO HARM NO FOUL” DEFENSE REJECTED**
- XXIII. ANGER ISSUES AND THE ADA**
- XXIV. NEGLIGENT TRAINING**
- XXV. U.S. SUPREME COURT: ADA DOES NOT TRUMP SENIORITY RIGHTS**

**SESSION 13: ADA CHECKLIST = 9 MINUTES**

- XXVI. FINAL THOUGHTS: GENERAL ADA CHECKLIST**

**TOTAL RUNNING TIME: 5 HOURS**

## COURSE DESCRIPTION

What do the *NEW 2011 ADA AAA REGULATIONS* say and how they have changed the ADA? What conditions are on the new ADA's "**VIRTUALLY ALWAYS**" list ... and why are so many of your employees now covered by the ADA? What did the courts say about "**ATTENDANCE**" and "**PUNCTUALITY**" under the ADA? How does the new ADA define "**ESSENTIAL FUNCTIONS**"? Why is it **ILLEGAL** to require employees to sign **LAST CHANCE AGREEMENTS** when they voluntarily go into rehab? Why are your "**NO LIGHT DUTY RULE**" and "**100% RETURN TO WORK**" policies illegal under the ADA? How does the new ADA define "**SUBSTANTIALLY LIMITED**"? How have the courts treated "**TELECOMMUTING**" and "**FLEXTIME**" under the ADA? What are you required to do under the "**INTERACTIVE PROCESS**"? Are "**ANGER ISSUES**" covered by the ADA? When can you conduct "**MEDICAL**" and "**DRUG**" testing under the ADA ... and when can you not? What do you need to do to comply with the new ADA? Join one of Ohio's most popular speakers as he reviews how the ADA has **COMPLETELY CHANGED** under the ADA AAA and its corresponding new regulations. Learn how the ADA has changed and why it is now one of the most dangerous laws out there for employers. Scott will show you how to use this information **IMMEDIATELY** with his own "rubber hits the road" approach as a 30-year human resource professional and employment attorney.

### **Learning Objectives**

#### **In this session you will learn ...**

- What the new ADA AAA regulations say and how they have drastically changed the ADA.
- How to recognize disabilities NOW covered by the new ADA
- What employers need to do to comply with the new ADA.

**Notice: Legal Advice Disclaimer**

**The purpose of these materials is not to act as legal advice but is intended to provide human resource professionals and their managers with a general overview of some of the more important employment and labor laws affecting their departments. The facts of each instance vary to the point that such a brief overview could not possibly be used in place of the advice of legal counsel.**

**Also, every situation tends to be factually different depending on the circumstances involved, which requires a specific application of the law.**

**Additionally, employment and labor laws are in a constant state of change by way of either court decisions or the legislature.**

**Therefore, whenever such issues arise, the advice of an attorney should be sought.**



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*Business First's 20 People To Know In HR*

*CEO Magazine's 2008 Human Resources "Superstar"*

*Nationally Certified Emotional Intelligence Instructor*

**2012, 2008, 2007, 2006 and 2003 SHRM National Diversity Conference Presenter**

**Scott Warrick** combines the areas of law and human resources to assist organizations in **"Solving Employee Problems BEFORE They Happen."** Scott uses his unique background of **LAW** and **HUMAN RESOURCES** to help organizations get where they want to go, which includes coaching and training managers and employees in his own unique, practical and entertaining style.

**[Scott Trains Managers and Employees ON-SITE in over 50 topics](#)**

***LET SCOTT DESIGN A PROGRAM FOR YOU!***

Scott's "[Employment Law Videos](#)" on the ADA, FMLA, FLSA and Harassment.

**["The Human Resource Professional's Complete Guide To Federal Employment And Labor Law"](#) &**

Scott's "[Do It Yourself HR Department](#)"  
are favorites for anyone wanting to learn Employment Law and run an HR Department.

**Scott's academic background and awards include:**

Capital University College of Law (Class Valedictorian (1st out of 233))

Master of Labor & Human Resources and B.A. in Organizational Communication:  
The Ohio State University

The Human Resource Association of Central Ohio's Linda Kerns Award for Outstanding Creativity in the Field of HR Management and the Ohio State Human Resource Council's David Prize for Creativity in HR Management

For more information on Scott, just go to [www.scottwarrick.com](http://www.scottwarrick.com)