

UNDERSTANDING AND EFFECTIVELY DEALING WITH THE AMERICANS WITH DISABILITIES ACT OF 1990

by

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HIGHLIGHTED AREAS HAVE BEEN NEWLY UPDATED

- 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?**
 - A. Definitions**
- 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**
- V. CIRCUIT COURT FAILS TO FOLLOW NEW ADA REGULATIONS**
- VI. 2011 REGULATIONS CHANGE "MAJOR LIFE ACTIVITY" STANDARD**

- A. What Is A “Major Life Activity?”
- B. Eating Held To Be A “Major Life Activity”

VII. WHAT IS A PHYSICAL OR MENTAL IMPAIRMENT?

VIII. 2011 REGULATIONS CHANGE “SUBSTANTIALLY LIMITS” STANDARD

IX. MITIGATING MEASURES IGNORED

- A. U.S. Supreme Court Sutton Case
- B. 2011 Regulations and Mitigating Measures

X. OTHER TYPES OF ADA COVERAGE

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

XI. 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

XII. 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. No “Magic Words” Required

F. Request For FMLA Leave Could Likely Qualify As A Request For A Reasonable Accommodation Under The ADA?

G. What Is NOT A Request For A Reasonable Accommodation?

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

XIII. 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

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

XV. NEW EEOC GUIDANCE ADDRESSES ADA REQUIREMENTS

XVI. 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

XVII. 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**

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- 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**
- G. Pre-employment Inquiries**

XIX. MEDICAL EXAMINATION UNDER THE ADA MUST BE DETAILED IN ORDER TO BE “REASONABLY OBJECTIVE”

XX. 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**

XXI. THE ADA & PREVIOUS DRUG ABUSE

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

XXII. DRUG AND ALCOHOL TEST

XXIII. ADA MEDICAL TESTING & “NO HARM NO FOUL” DEFENSE REJECTED

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XXV. NEGLIGENT TRAINING

XXVI. U.S. SUPREME COURT: ADA DOES NOT TRUMP SENIORITY RIGHTS

XXVII. EEOC GUIDANCE ON THE DISCLOSURE OF A DISABILITY

- A. May an employer ask questions on a job application about the history of treatment of mental illness or the existence of a mental, emotional, or psychiatric condition?**
- B. Do the ADA's confidentiality requirements apply to information regarding an employee's or job applicant's psychiatric disability that is disclosed to an employer?**

XXVIII. EEOC's SPECIFIC GUIDANCE ON PRE-EMPLOYMENT INQUIRIES UNDER THE ADA

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Business First's 20 People To Know In HR

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