

# UNDERSTANDING THE AMERICANS WITH DISABILITIES ACT OF 1990

## 5 HOUR ADA MASTER PROGRAM

by

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## ADA MASTER PROGRAM OUTLINE:

5 HOUR RUNNING TIME

13 INDIVIDUAL TRAINING SESSIONS

77-page handout

### 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 DISABLED? = 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**

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Scott Warrick, JD, MLHR, CEQC, SHRM-SCP ([www.scottwarrick.com](http://www.scottwarrick.com)) is a two-time best-selling author, a national professional speaker, a practicing Employment Law Attorney and a Human Resource Professional with 40 years of hands-on experience. Scott uses his unique background 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 & Employees ON-SITE in over 50 topics**, all of which can be customized **FOR YOU!** Scott travels the country presenting seminars on such topics as Employment Law, Conflict Resolution, Leadership and Tolerance, to mention a few.

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

Scott combines the areas of law and human resources to help organizations in “Solving Employee Problems **BEFORE** They Start.” Scott’s goal is **NOT** to win lawsuits. Instead, Scott’s goal is to **PREVENT THEM** while improving **EMPLOYEE MORALE**.

Scott’s first book, **Solve Employee Problems Before They Start: Resolving Conflict in the Real World**, is a #1 Best Seller for Business and Conflict Resolution on Amazon. It was also named by EGLOBALIS as one of the best global Customer and Employee books for 2020-2021. Scott’s most recent book, **Living The Five Skills of Tolerance: A User’s Manual For Today’s World**, is also a #1 Best Seller in 13 categories on Amazon, including Business Leadership, Minority Studies, Organizational Change, Management, Religious Intolerance, Race Relations and Workplace Culture, to mention a few.

Scott’s **MASTER HR TOOL KIT SUBSCRIPTION** is a favorite for anyone wanting to learn Employment Law and run an HR Department.

Scott has been named one of Business First’s 20 People To Know In HR, CEO Magazine’s 2008 Human Resources “Superstar,” a Nationally Certified Emotional Quotient Counsellor (CEQC) and a SHRM National Diversity Conference Presenter in 2003, 2006, 2007, 2008, 2010 and 2012. Scott has also received 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.

Scott’s academic background and awards include Capital University College of Law (Class Valedictorian (1st out of 233) and Summa Cum Laude), Master of Labor & Human Resources and B.A. in Organizational Communication from The Ohio State University.

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

