



Mental Disabilities Under the Americans With Disabilities Act

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Presenters



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AGENDA

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ACCOMMODATIONS

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INCLUDING POTENTIAL ACCOMMODATIONS

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BACKGROUND ON THE ADA



What is the ADA?

- ▶ Stands for the “Americans with Disabilities Act”
- ▶ Federal law = law of the land (applies everywhere)
- ▶ Generally applies to employers with 15+ employees
- ▶ Divided into multiple titles (Title I = employment)

What does the ADA do?

- ▶ Requires an employer to provide “reasonable accommodation” to qualified individuals with disabilities who are employees or applicants, except when such accommodation would cause an “undue hardship.”

Who is an Individual with a Disability?

- ▶ A person who:
 - ▶ Has a physical or mental impairment that substantially limits a major life activity;
 - ▶ Has a record or history of a substantially limiting impairment; or
 - ▶ Is regarded or perceived by an employer as having a substantially limiting impairment.

What is a “Physical or Mental Impairment”?

▶ Stay tuned...

'Substantially Limits' a Major Life Activity

- ▶ Construed broadly; not meant to be a demanding standard and does not demand extensive analysis.
- ▶ An impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population; requires an individualized assessment.
- ▶ In general, the determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures.

Major Life Activities: Examples

- ▶ Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working; and
- ▶ The operation of a major bodily function, including functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions.

Individual with a Disability Must be 'Qualified'

- ▶ Able to meet the requirements for the job (e.g., education, training, employment experience, skills, or licenses).
- ▶ Able to perform the "essential functions" (fundamental duties) of the job with or without reasonable accommodation.

**EMPLOYER
REQUIREMENTS FOR
REASONABLE
ACCOMMODATIONS**



Duty to Provide Accommodation

- ▶ If an employee is qualified for the job, the employer must provide “reasonable accommodation” for the employee’s disability.

What is an 'Accommodation'?

- ▶ Any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities.
- ▶ Note: Some individuals need only one accommodation, while others need multiple.

What is an 'Accommodation'?

- ▶ 3 categories:
 - ▶ Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position;
 - ▶ Modifications or adjustments to the work environment (or to the manner or circumstances under which the position is customarily performed) that enable a qualified individual with a disability to perform the essential job functions; or
 - ▶ Modifications or adjustments that enable an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities.

Examples of Reasonable Accommodations

- ▶ Making facilities accessible
- ▶ Job restructuring or modifying work schedules
- ▶ Acquiring or modifying equipment
- ▶ Providing readers or interpreters

Accommodations Vary with the Individual's Needs

- ▶ Examples: employee with diabetes may need breaks to monitor blood sugar and insulin levels; employee with cancer may need leave for chemotherapy treatments
- ▶ Not all people with disabilities (even with the same disability) require the same accommodation

Limitations on Employer's Duty to Accommodate

- ▶ Employers must accommodate known disabilities if they would not impose an “undue hardship” on the employer's business

What is an “Undue Hardship”?

- ▶ An action requiring significant difficulty or expense in light of factors such as:
 - ▶ An employer’s size;
 - ▶ Financial resources; and
 - ▶ Nature and structure of its operation
- ▶ However, the employer cannot refuse to provide an accommodation solely because it entails some costs, either financial or administrative.
- ▶ If the requested accommodation causes an undue hardship, the employer would still be required to provide another accommodation that does not.

Additional Limitations on Duty to Accommodate

- ▶ Employer does not have to lower quality or production standards to make an accommodation.
- ▶ Employer does not have to provide an accommodation unless a person has asked for one.

How Do Employees and Employers Decide on a Suitable Accommodation?

- ▶ Via the “Interactive Process”

What is the “Interactive Process”?

- ▶ Process between individual and employer that identifies:
 - ▶ Limitations resulting from the disability, and
 - ▶ Potential accommodations to overcome them.
- ▶ First step in interactive process: individual requests accommodation from employer.

Employer's Rights

- ▶ Employer not necessarily required to provide the requested accommodation
 - ▶ Employer may choose among accommodations provided that the chosen accommodation is effective
- ▶ During interactive process, employer may offer alternative suggestions for accommodations

Duty to Accommodate is Ongoing

- ▶ Some individuals need one accommodation for a period of time, then another type of accommodation later
- ▶ Employer must consider each request for accommodation
- ▶ If an accommodation turns out to be ineffective, employer must consider whether there is an alternative accommodation
 - ▶ Employer can not say “one and done”

Reassignment

- ▶ If there is no alternative accommodation, employer must attempt to reassign the individual to a vacant position for which he/she is qualified

COVERAGE OF MENTAL DISABILITIES GENERALLY



Who is an Individual with a Disability?

- ▶ A person who:
 - ▶ Has a physical or mental impairment that substantially limits a major life activity;
 - ▶ Has a record or history of a substantially limiting impairment; or
 - ▶ Is regarded or perceived by an employer as having a substantially limiting impairment.

What is a “Physical or Mental Impairment”?

- ▶ Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as:
 - ▶ Neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or
- ▶ Any mental or psychological disorder, such as:
 - ▶ An intellectual disability (formerly termed “mental retardation”), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Conduct Individualized Assessment to Determine if there's a Covered Disability

- ▶ But remember: coverage is broad!!
- ▶ According to the federal regulations, the individualized assessment of some types of impairments will, in virtually all cases, result in coverage.
- ▶ Given their inherent nature, these types of impairments will, as a factual matter, virtually always be found to impose a substantial limitation on a major life activity.
- ▶ Therefore, with respect to these types of impairments, the necessary individualized assessment should be particularly simple and straightforward.

Examples of Covered Mental Disabilities

- ▶ According to federal regulations, it should easily be concluded that the following types of impairments will, at a minimum, substantially limit the major life activities indicated:
 - ▶ An intellectual disability (formerly termed mental retardation) substantially limits brain function
 - ▶ Major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder, and schizophrenia substantially limit brain function
- ▶ Note: The types of impairments described may substantially limit additional major life activities not explicitly listed.

**SPECIFIC EXAMPLES OF
COVERED MENTAL
DISABILITIES, INCLUDING
POTENTIAL
ACCOMMODATIONS**



Job Accommodation Network ("JAN")

- ▶ Organization that provides guidance on workplace accommodations
- ▶ Funded by contract from U.S. Department of Labor, Office of Disability Employment Policy (ODEP) (#1605DC-17-C-0038)
- ▶ Website: <https://askjan.org/>
- ▶ Provides examples of disabilities and potential accommodations, such as the following:

Learning Disabilities (e.g., Dyslexia)

- ▶ Limitation: Reading
 - ▶ Potential Accommodations: apps for pronunciation, screen reading software and training
- ▶ Limitation: Managing Time
 - ▶ Potential Accommodations: checklists, reminders, task flow charts

Depression

- ▶ Limitation: Control of Anger/Emotions
 - ▶ Potential Accommodations: flexible scheduling, support animal
- ▶ Limitation: Decreased Stamina/Fatigue
 - ▶ Potential Accommodations: anti-fatigue matting, flexible scheduling

Obsessive-Compulsive Disorder ("OCD")

- ▶ Limitation: Disruptive Behavior
 - ▶ Potential Accommodations: support animal, working remotely
- ▶ Limitation: Attentiveness/Concentration
 - ▶ Potential Accommodations: sound machines, cubicle doors

Intellectual Disabilities (e.g., Down Syndrome)

- ▶ Limitation: Organizing/Planning/Prioritizing
 - ▶ Potential Accommodations: on-site mentoring, task identification
- ▶ Limitation: Memory Loss
 - ▶ Potential Accommodations: reminders, wall calendars

Remember: Accommodations Vary with the Individual's Needs

- ▶ Not all people with disabilities (even with the same disability) require the same accommodation
- ▶ Engage in the interactive process to identify limitations resulting from the disability and potential accommodations to overcome them

SPECIFIC CASE STUDIES



Humphrey Case

Humphrey v. Memorial Hospitals Association, 239 F.3d 1128 (9th Cir. 2001).

The Players

- ▶ Carolyn Humphrey was a medical transcriptionist with Obsessive-Compulsive Disorder (“OCD”)
- ▶ Worked for Memorial Hospitals Association (MHA) in California

Carolyn's Work Performance

- ▶ Excellent
- ▶ Exceeded company's standards for speed, accuracy, and productivity

How Carolyn's OCD Affected Her Job

- ▶ Problems getting to work on time (or at all) due to obsessive rituals
 - ▶ Wash/brush hair for 3 hours/day
 - ▶ Dress very slowly
 - ▶ Repeatedly check/recheck for papers
 - ▶ Pull out strands of hair/examine them closely

Company's Response

- ▶ Gave Carolyn several disciplinary warnings

Carolyn's Psychiatrist

- ▶ Sent letter to company explaining OCD
- ▶ Said they could treat the problem
- ▶ Said Carolyn may need some time off

Carolyn / Company Engaged in Interactive Process

- ▶ Carolyn accepted a flexible start time arrangement (could begin work any time within a 24-hour period on days scheduled to work)

Results

- ▶ Carolyn continued to miss work
- ▶ Asked for new accommodation: work from home (as other transcriptionists were doing)

Company's Response

- ▶ Denied work-from-home accommodation request due to disciplinary warnings
- ▶ Did not suggest an alternative accommodation

Termination and Lawsuit

- ▶ Carolyn was absent additional times and was fired
- ▶ Carolyn sued Company for violation of ADA and state law

Quick Refresher

- ▶ To be protected under the ADA, the employee must:
 - ▶ Have a disability, or an impairment that substantially limits a major life activity
 - ▶ Be qualified: can perform the essential job duties with or without accommodation

Company's "Disability" Argument

- ▶ Carolyn was not disabled because she was not substantially limited in a major life activity

Court's Response: Argument Rejected

- ▶ “Caring for oneself” is a major life activity
- ▶ Carolyn was substantially limited when caring for herself: took her hours (sometimes entire day) to wash/dress for work

Company's “Qualified” Argument

- ▶ Carolyn was not qualified for the job
- ▶ Regular and predictable attendance was an essential function of the position

Court's Response: Argument Rejected

- ▶ Either of two potential accommodations might have worked:
 - ▶ Working from home
 - ▶ Leave of absence
- ▶ Company failed to attempt both

Court: Duty to Accommodate is Continuing Duty

- ▶ An employer must consider each request for accommodation
- ▶ If an accommodation is ineffective, employer must consider alternative accommodations

Remember

- ▶ Do not say “one and done” to an employee!!

Earl Case

Earl v. Mervyns, Inc., 207 F.3d 1361 (11th Circuit 2000).

The Players

- ▶ Debra Earl was a Store Area Coordinator with OCD
- ▶ Worked for Mervyns, Inc.

Debra's Job Duties

- ▶ Prepare her department for store's opening in morning:
 - ▶ Obtain cash for registers, stock merchandise, arrange displays

How Debra's OCD Affected Her Job

- ▶ Debra was late to work several times and received warnings

Interactive Process

- ▶ Company offered to permit Debra to clock in early and receive overtime pay
 - ▶ Debra requested that she be allowed to clock in at whatever time she arrived
 - ▶ Company said this was unreasonable; offered to schedule Debra on afternoon/evening shift at her request

Termination and Lawsuit

- ▶ Debra was late additional times and was fired
- ▶ Debra sued Company under ADA

Quick Refresher

- ▶ To be protected under the ADA, the employee must:
 - ▶ Have a disability, or an impairment that substantially limits a major life activity
 - ▶ Be qualified: can perform the essential job duties with or without accommodation

Having a “Disability”

- ▶ Parties did not dispute Debra had a disability
- ▶ Issue was whether she was “qualified”

Was Debra “Qualified” for the Job?

- ▶ Could she perform the essential job duties with or without reasonable accommodation?

Debra's Essential Duties

- ▶ Punctuality was an essential duty of Debra's job; her tasks had to be performed at a specific time
 - ▶ If she was late, her area would not be ready for customers; Area Coordinator from previous shift would have to work longer shift

Was There Any Reasonable Accommodation Available?

- ▶ Debra's psychiatrist said there was nothing Company could have done to help her arrive at work on time
- ▶ Debra admitted she was unable to arrive at work on time even when scheduled for afternoon or evening shift

One Accommodation

- ▶ Only accommodation Debra identified was to allow her to clock in at whatever time she arrived; Company said this was unreasonable
 - ▶ Court agreed: an employer is not required to accommodate an employee in any manner in which the employee desires

Debra Was Not “Qualified”

- ▶ Debra couldn't identify a reasonable accommodation
- ▶ She could not perform her essential job duties; she was not “qualified”

ACCOMMODATIONS AND COVID-19



Accommodations and COVID-19

- ▶ EEOC Guidance
- ▶ Accommodation ideas: telecommuting; designating one-way aisles; plexiglass; leave; reassignment

CONCLUSION



**DON'T HATE;
ACCOMMODATE!**



Have a Question?



Submit questions to our presenters
using the Chat.



Thank You!!!
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Please complete your event evaluation