



CAUTION

POWERPOINT PRESENTATIONS CAN BE DANGEROUS

NASA's Columbia Accident Investigation Board identified simplistic thinking from an over-reliance on PowerPoint presentations as a contributing factor in the Columbia shuttle disaster.

(New York Times Magazine 12/14/2003)

"Congress acknowledged that society's accumulated myths and fears about disability and disease are as handicapping as are the physical limitations that flow from actual impairment."

Justice William J. Brennan 1987



EMPLOYMENT PRACTICES UNDER THE ADA AS AMENDED

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Non-Discrimination & Reasonable Accommodation

Provide equally effective access to programs, benefits and services for qualified individuals with disabilities in the most integrated manner possible

- Individual with a disability
- Record of a disability
- Regarded as having a disability
- Relationship or association with someone who has a disability.

Aspects Of Employment



- Advertising
- Recruitment
- Hiring & Terminations
- Compensation
- Assignment
- Transfer & Promotion
- Technology & Tools,
- Testing & Communications
- Professional Development
- Pay
- Benefits

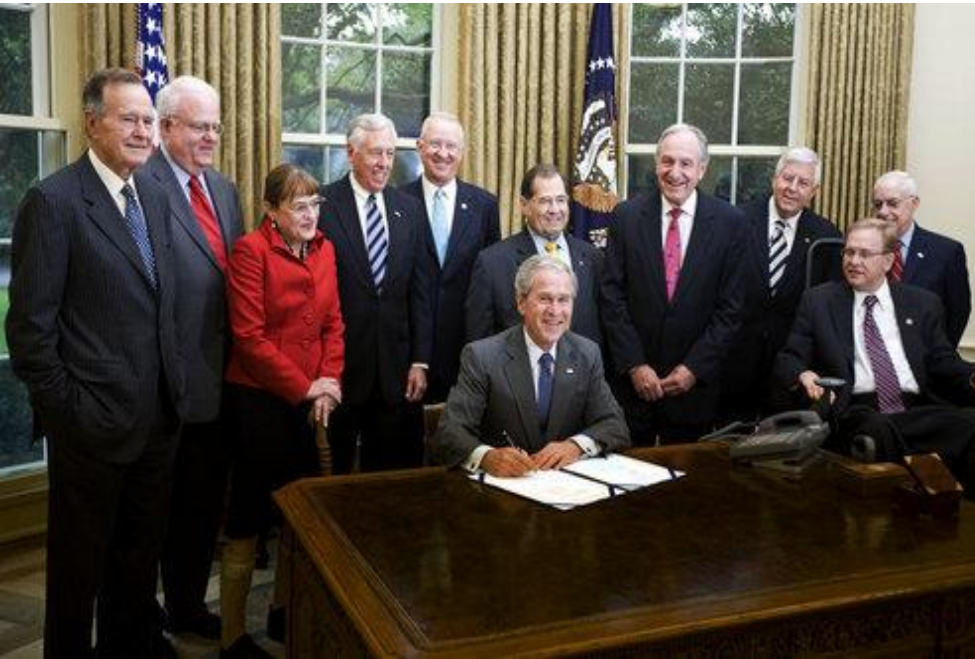
CONTEXT

- 1973 - Section 504
- 1977- 504 Regulations
- 1990 – ADA
- 1999 – Sutton Trilogy
- 2002 – Toyota v. Williams



ADA AMENDMENTS ACT

- September 2008 signed by Pres. Bush
- January 2009 became law
- October 2009 EEOC Draft regulations



you are now

COVERED!

SW

CANCER

HIV

MENTAL
ILL HEALTH

Definition of Disability



- A physical or mental impairment that substantially limits a major life activity
- A record of such an impairment
- Being regarded as having such an impairment

What is Substantial?

- Broad & Inclusive interpretation(not Toyota)
- Exclude ameliorative impact of mitigating Measures in determining coverage
- Episodic conditions or those in remission
 - If it substantially limits when active
- Proposed: Sec. 1630.2 Definitions J. 2 (IV)
 - The comparison of an individual's limitation to the ability of most people in the general population often may be made using a commonsense standard, without resorting to scientific or medical evidence.

Limited in What Way?

- Manner
- Condition
- Duration



- Compared to most people



Major Live Activities

- Includes but 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 Life Activities” also include the operation of major bodily functions including but not limited to :



- Immune
- Respiratory
- Circulatory
- Endocrine
- Digestive
- Reproductive
- Neurological
- Brain
- Normal Cell Growth
- Bowel
- Bladder

Also of Note

- Discrimination on the “basis of disability”
- No reverse discrimination
- Changes Section 504 to match
- Does not change the definition of reasonable accommodation
- Does not impact the use of rationally based qualification standards

BE PREPARED:

REVIEW:

- Policies to reference ADAAA
- **Accommodation request process**
- Documentation requirements
- **Determining essential functions**
- Determining accommodations
- Assistance
 - Integrated Disability Benefits
 - ADA Coordinator's Office



Typically Covered Disabilities

- Epilepsy
- Paralysis
- Blindness
- Deafness
- Major Depression
- Autism
- Diabetes

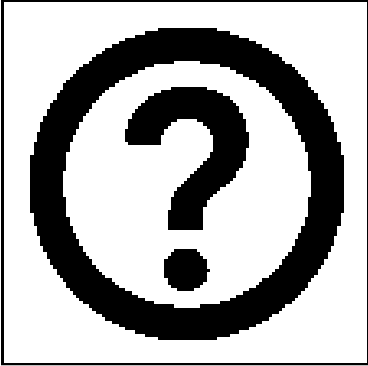


Not generally covered

- Minor non-chronic conditions of short duration (< 6 months)
- Simple physical characteristics
- Common personality traits
- Interpersonal allergies



Documenting Disability



- Ask For What You Need
 - Impairment /limitation present
 - Impact related to work place needs
 - Recommended adaptations

- Who Determines Disability
 - Interactive process
 - Supervisor & Manager
 - Employee
 - Integrated Disability or ADA Coordinator's Office
 - Grievance process

Maintaining Documentation

- Confidentiality
 - Disability information
 - Not in main file
 - Record of accommodations provided
 - Who Needs to Know
 - Supervisor to implement
 - Safety/Evacuation personnel
 - Complaint investigators



Who is a Qualified Individual?

- To determine if a person is a qualified individual, ask two questions:
 - Does the person meet the necessary pre-requisites for the job?
 - Can the person perform the essential functions of the job, with or without reasonable accommodation?



What Is An Accommodation?



- Any modification to a job, employment practice or the work environment
- An aid, tool, technology, interpreter, etc., that helps the individual with a disability to overcome a barrier

Reasonable Accommodation:

- Rationally Related to the impacts of the disability
- Assists in the effective performance of the essential functions of the job
- Makes it possible for an individual with a disability to enjoy an equal employment opportunity



Reasonable Accommodation (cont.)

- Does not present an undue burden
 - Safety
 - Business necessity
 - Administrative burden
 - Financial burden
 - Institutional not unit



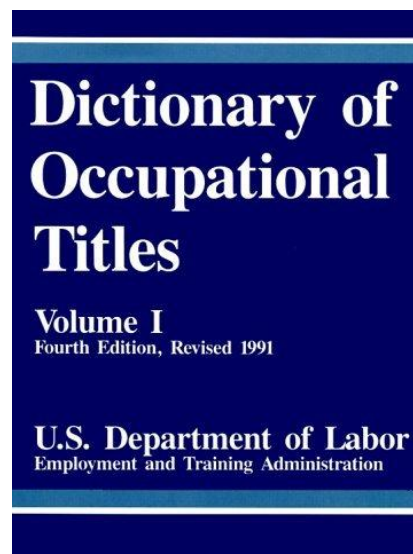
Safety Considerations



- The nature, severity and duration of the potential harm;
- The likelihood that the potential harm will occur;
- The imminence of the potential harm; and
- The potential for reasonable accommodations to mitigate the risk.

What Are Essential Job Functions?

- The “fundamental job duties” of the employment position
 - Do not include marginal functions
 - Focus on the purpose of the function and result, rather than the manner in which it is performed



How are the essential job functions determined?

- Questions to ask:
 - Are the other employees in the position actually required to perform the function?
 - Would removing that function fundamentally change the job?
 - Does the position exist to perform the function?
 - What is the degree of expertise or skill required to perform the function?
 - What is the number of other employees available to perform the function, or among whom the function can be distributed?

Job Descriptions:

- Does not require job descriptions - may be used as evidence of whether a function is essential

- If they are current and accurate
- If they were prepared prior to the job offer

A job description alone is not conclusive evidence that a function is essential

- The ADA does not require that job descriptions be limited to essential functions

START TODAY!
Male Driver Needed
needed to haul heavy equipment metro Atlanta area.

Immediate Openings
Volunteers needed for all aspects of Festival and event operations. Stage hands, ticket takers, general help etc. No pay and good music, contact curleyblues@hotmail.com

ATTENTION
Sponsor Service Rep
Excellent Telephone and people skills required. Must be computer literate and dependable. Must be willing to hang out in Bars and Alleys to determine needs of and to interface with Important Corporate Sponsors. Must be 21 and have own car and enjoy the Blues. We are a work for free org. EOE. bluenomo@aol.com

Do You Need To Place AN Employment Ad?

Full Time
Board of Directors Positions Open
A high visibility 501(c)3 Corp. seeks qualified candidates to run for the position of Board Member. Position requires min 10hr /per wk of hard work + up to 3 meetings per Mo. Candidate must be innovative & willing to follow through & implement progs. & ideas. Prev. Mgt. exp. is a +. Must be computer literate and respond to e-mails. Must believe in Corp mission to Preserve, support & have a passion for the Art Form known as the Blues. EOE absmail@mindspring.com

Fax Today
Publicity People
Volunteer Org has need for exp pub. people. Solid media contacts a +. Must be outgoing and highly motivated individual. Contact absmail@mindspring.com

Immediate Opening
Festival Director
Strong leadership and attention to detail reqd. for this volunteer position. Must be able to form and motivate committees absmail@mindspring.com

Great Opportunity
ADMINISTRATIVE
Recording Secretary Wanted
Must be available 1st and 2nd Tuesday's of the month in eve. Comp. lit. & exp in MS Word. Required to take and publish Minutes of Board Meetings. absmail@mindspring.com

Personal
Loser Ad
Desperately seeking Peggy Known to frequent Job's I know you, Willey and M.L. done me wrong but I am willing to forgive and forget. I.L.U
reply to box 4523

Director of Corporate Sponsorship
Highly motivated individual blessed with the gift of gab sought to form and direct group of individuals to interface with Corporate Sponsors of 501 (c)3 Corp. Comp. lit a + Must be 21 or over and enjoy working with people. Must be responsible and be able to work financial issues. Position requires min 5 to 10hrs/wk of volunteer work night and weekends.
We are a work for free EOE. Contact bluenomo@aol.com or absmail@mindspring.com

Evidence For Essential Functions

- **Written job descriptions prepared before advertising or interviewing**
- **Consequences of not performing the task**
- **Amount of time spent on the task**
- **Work experience of current or former incumbents**
- **The employer's judgment as to which functions are essential**
- **Terms of a collective bargaining agreement**

Special Cases

- Performance Evaluations
 - Pre & Post accommodation
 - Oh! That is because of.....
 - Evaluating the Effectiveness of acco



- Disciplinary Action
 - Conduct is conduct
 - Failure to accommodate as a factor
 - Extenuating circumstances & disability





RESOURCES

- OSU ADA COORDINATOR
[HTTP://ADA.OSU.EDU](http://ADA.OSU.EDU)
E-MAIL ADA-OSU@OSU.EDU
- Job Accommodations Network
<http://www.jan.wvu.edu/>
- Ohio Bureau of Vocational Rehabilitation
http://www.rsc.ohio.gov/VR_Services/BVR/bvr.asp
- Federal Disability Portal
<http://www.disabilityinfo.gov>

RESOURCES

- **Disability Law Lowdown 20 – Employee Performance**

Discussion of the Equal Employment Opportunity Commission's new guidelines on applying performance standards to employees with disabilities under the Americans with Disabilities Act.

(QuickTime; also available on iTunes)

<http://dll.ada-podcasts.com/shownotes/DLLPod20.php>

- **Disability Law Lowdown 21 - Employee Conduct**

Discussion of the EEOC's guidance on applying conduct standards to employees with disabilities under the Americans with Disabilities Act.

(QuickTime; also available on iTunes)

<http://dll.ada-podcasts.com/shownotes/DLLPod21.php>

- *School Bd. of Nassau County v. Arline*, 480 U.S. 273, 94 L. Ed. 2d 307, 107 S. Ct. 1123 (1987)
- *Sutton v. United Airlines, Inc.*, 527 U.S. 471 (1999)
- *Murphy v. United Parcel Service, Inc.*, 527 U.S. 516 (1999)
- *Albertson's, Inc. v. Kirkingburg*, 527 U.S. 555 (1999)
- *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002)