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.

"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
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 – Toyoto 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

MENTAL

ILL HEALTH

HIV
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
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 accommodation

• Disciplinary Action
  – Conduct is conduct
  – Failure to accommodate as a factor
  – Extenuating circumstances & disability
RESOURCES

• OSU ADA COORDINATOR
  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)
• Albertson’s, Inc. v. Kirkingburg, 527 U.S. 555 (1999)
• Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002)