

Know Your Rights!

An Overview of Title I of the ADA

Jeffrey J. Tamburo, LMSW,
Extension Faculty
Northeast ADA Center
Yang-Tan Institute @ Cornell University



Cornell University



Northeast ADA Center

Today's Presenters



Contact Us:

Northeast ADA Center

1-800.949.4232

northeastada@cornell.edu

Jeffrey J. Tamburo, LMSW

K. Lisa Yang and Hock E. Tan Employment & Disability Institute

Industrial & Labor Relations School

Cornell University



Disclaimer



Information, materials, and/or technical assistance are intended solely as informal guidance, and are neither a determination of your legal rights or responsibilities under the ADA, nor binding on any agency with enforcement responsibility under the ADA.

The Northeast ADA Center is authorized by the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR) to provide information, materials, and technical assistance to individuals and entities that are covered by the ADA. The contents of this presentation were developed under a grant from NIDILRR, grant number 90DPAD0003. NIDILRR is a Center within the Administration for Community Living (ACL), Department of Health and Human Services (HHS). The contents of this presentation do not necessarily represent the policy of NIDILRR, ACL, HHS, and you should not assume endorsement by the Federal Government.

Northeast ADA Center

1-800-949-4232

Northeast ADA Center

...providing training, technical assistance, consultation, and materials on a broad range of topics related to disability in the United States.



www.northeastada.org
northeastada@cornell.edu

Overview

- **ADA Basics**
- **Disclosure**
- **Reasonable Accommodation**
- **The Interactive Process**
- **Resources**



The ADA: *A Little Background*

Five Titles of the ADA



Title I Employment

Prohibits disability discrimination in all employment processes

Title II Accessibility in Public Entities

Physical and program accessibility in state/local govt. entities

Title III Accessibility in Businesses

Physical and program accessibility in restaurants, hotels, stores, places of business

Title IV Telecommunications

Telephone and communications systems for the public

Title V Miscellaneous

Protection from retaliation

A Snapshot: *The Spirit* of the ADA



“The ADA is the civil rights act of the future.”

Justin Dart, Jr., A founder of the ADA

“...The world’s first comprehensive declaration of equality for people with disabilities.”

President George Bush, upon signing the ADA into law on July 26, 1990

Qualified Individuals with Disabilities



What does Qualified mean?

- Requisite skills and experience necessary to perform the job
- Able to perform the essential functions of the job with or without reasonable accommodation

The Heart of the Matter

NON-DISCRIMINATION!



Know Your Rights!

Disability Disclosure in the Workplace



Disclosure Video

[Video link](#)

“Very Important” Factors When Deciding to Disclose a Disability to an Employer

Factor	Persons <u>with</u> a disability (N=598)
Need for accommodation	68.2
Supportive supervisor relationship	63.5
Disability friendly workplace	56.8
Active disability recruiting	50.5
Knowing of other successes	49.9
Disability in diversity statement	48.9
Belief in new opportunities	40.7

Emerging Employment Issues for People with Disabilities: Disability Disclosure, Leave as a Reasonable Accommodation, Use of Job Applicant Screeners by Sarah von Schrader, Valerie Malzer, William Erickson, Susanne Bruyère. <http://digitalcommons.ilr.cornell.edu/edicollect/1288>

“Very Important” Factors When Deciding NOT to Disclose a Disability to an Employer

Factor	Persons <u>with</u> a disability (N=598)
Risk of being fired/not hired	73.0
Employer may focus on disability	62.0
Risk of losing health care	61.5
Fear of limited opportunities	61.1
Supervisor may not be supportive	60.1
Risk being treated differently	57.8
Risk being viewed differently	53.8
No impact on job ability	44.0
Desire for privacy	27.9

Emerging Employment Issues for People with Disabilities: Disability Disclosure, Leave as a Reasonable Accommodation, Use of Job Applicant Screeners by Sarah von Schrader, Valerie Malzer, William Erickson, Susanne Bruyère. <http://digitalcommons.ilr.cornell.edu/edicollect/1288>

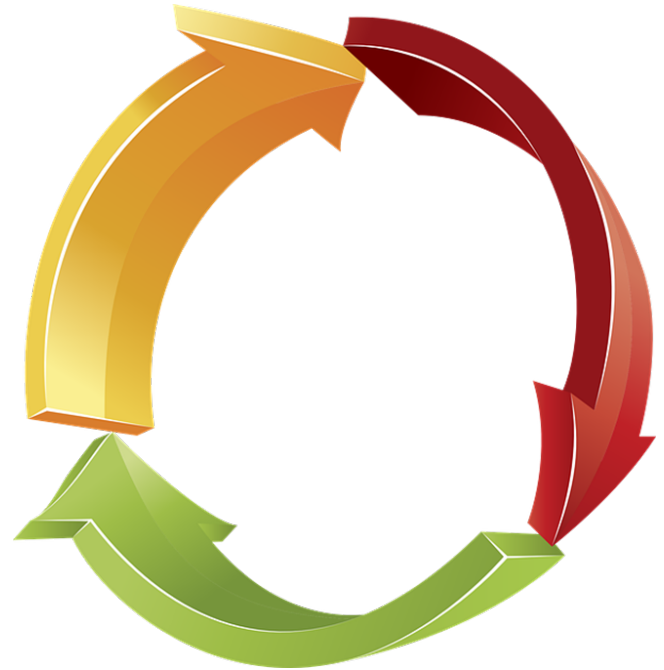
It's not just about what you see...

Non-Obvious Disabilities

- Can't see them
- Often permanent
- May be well managed
- They are real
- Depression
- Anxiety
- Learning disabilities
- ADHD
- Cancer
- Multiple sclerosis
- Autism
- Epilepsy

First Steps... Disclosure

- “Plain language”/“No Magic Words”
- No mention of law or specific medical condition necessary
- The employer must respond to the request in a timely manner
- *The Interactive Process*
- Employer can have a formal process that the employee must follow
- Medical documentation (usually for non-obvious disabilities):
“Job-related and consistent with business necessity.”



What Would You Do?

Wanda recently was hired as a warehouse assistant in a distribution center for a large pharmaceutical retailer. After working for one week, Wanda told her supervisor that she had diabetes and would need an accommodation of one extra 10-minute break during the day to monitor her condition. Her supervisor now wants to fire her because the supervisor believes Wanda lied during the interview by not disclosing her accommodation need.

What Do You Think Should Happen?

- A. Transfer Wanda to another job within the firm.
- B. Terminate Wanda because she failed to inform the employer of an accommodation need when she was hired.
- C. Begin the interactive process to put a reasonable accommodation in place.
- D. Educate supervisors about accommodation rights and responsibilities.



An employee who first discloses a disability in response to a termination action cannot be fired because this would constitute discrimination under the ADA.



TRUE or FALSE?

A Note on Section 503 of the Rehab Act

Affirmative action requirements for federal contractors



Aspirational goal of 7% people with disabilities in the federal contractor workforce.



Targeted outreach and recruitment (and evaluation of efforts)



Requires employer to seek voluntary self-ID of disability at application, hire, and intermittently of incumbent employees.

What's the Difference?

Disclosure

- Needed to access rights (accommodations, etc.)
- Supporting documentation may be required (can be limited)
- No “magic words”
- Case by case decision

Self-Identification

- For the purpose of affirmative action
- Does not equal disclosure (info is protected)
- No supporting documentation required
- Voluntary but gets a “foot in the door”

For More Information on Disclosure



The ADA National Network

<http://www.adainfo.org/content/disclosure-disabilityaccommodation-requests-workplace>



US Department of Labor

Office of Disability & Employment Policy (ODEP)

<http://www.dol.gov/odep/pubs/fact/ydw.htm>

Job Accommodation Network (JAN)

<https://askjan.org/topics/discl.htm>



Know Your Rights

Reasonable Accommodation



Cornell University



Northeast ADA Center

What is Reasonable Accommodation?

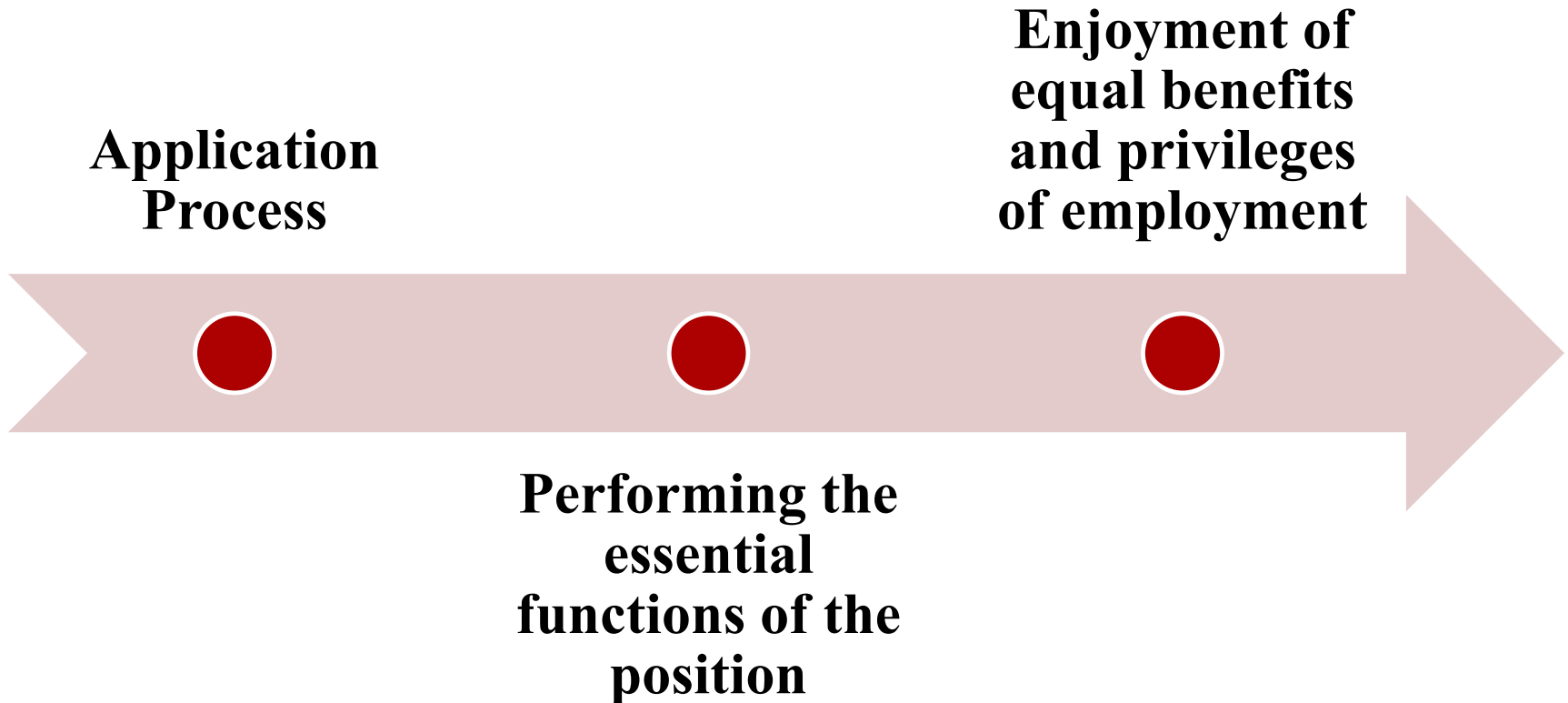
Any **change** in the **work environment** or in the way things are customarily done that enables an individual with a disability to **enjoy equal employment opportunities...**

-29 C.F.R. pt. 1630 app. § 1630.2(o)
(1997)

...and the opportunity to attain the same level of performance or to enjoy **equal benefits and privileges of employment.**

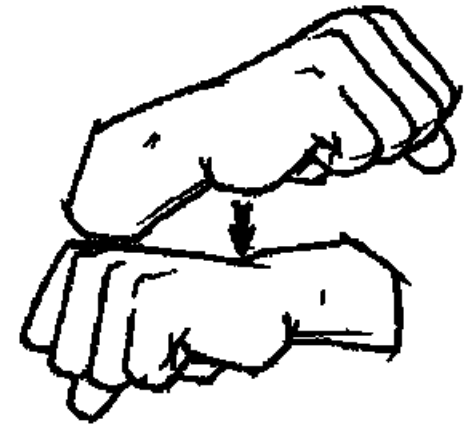
-29 C.F.R. § 1630.2(o)(1)(i-iii) (1997)

Categories of Accommodations



About Reasonable Accommodation

- Must be provided to **applicants and employees** with **known** disabilities
- Based on an **interactive process**
- Employer may collect **medical documentation**
- Must be provided unless there is **undue hardship or direct threat**



ASL sign for “work”

- See EEOC document: *Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act*. Accessed at <http://www.eeoc.gov/policy/docs/accommodation.html>
- See EEOC document: *Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees under the ADA*. Accessed at <http://www.eeoc.gov/policy/docs/guidance-inquiries.html>

Basic Roles and Responsibilities

Employee

- Request
- Documentation
- Participation in process

Employer

- Verify need
- Confidentiality
- Participation in process

What Would You Do?

Eric, who has a mild intellectual disability, works in the produce department of a large grocery store chain. When Eric started the job two years ago, a job coach designed a system to ensure that Eric stocked the produce correctly. Since then, Eric has been performing well. Two weeks ago, a new store manager came onboard. This new manager has now told Eric that she is standardizing job processes and policies and that Eric's accommodation can't be used in the new system. She has told Eric that he must learn the new system or find another job.

What Do You Think Should Happen?

- A. Refer Eric an agency that will enable him to find another job.
- B. Involve Eric's job coach to find accommodation alternatives that might work with the new store manager's system.
- C. The new store manager could be required to modify policies and processes as an accommodation.
- D. The business needs to make sure that all store managers fully understand their ADA obligations.



If an employee did not disclose or discuss a disability at time of hire, they cannot request a reasonable accommodation once employed.



TRUE or FALSE?

Reasonable...

- Modifications to increase facility accessibility
- Job restructuring
- Flexible scheduling
- Acquiring new equipment
- Providing qualified readers and interpreters
- Modification of application and testing procedures or training materials
- Allowing a job coach at the work site



...not so much.



- Eliminating essential job functions
- Lowering production standards applied to all employees
- Providing personal use items
- Changing an employee's supervisor
- Excusing a violation of uniformly applied conduct rules

For More Information

[The ADA National Network](#)

[US Department of Labor Office of Disability & Employment Policy \(ODEP\)](#)

Job Accommodation Network (JAN)

- [Disability Disclosure](#)
- [Job Accommodation Network Website](#)
- [Employers' Guide](#)

Northeast ADA Center

1-800-949-4232

Northeast ADA Center

...providing training, technical assistance, consultation, and materials on a broad range of topics related to disability in the United States.



www.northeastada.org
northeastada@cornell.edu

References

U.S. Equal Employment Opportunity Commission (2000). Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees under the ADA. Retrieved from <http://www.eeoc.gov/policy/docs/guidance-inquiries.html>

U.S. Equal Employment Opportunity Commission (2002). *Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act*. Retrieved from <http://www.eeoc.gov/policy/docs/accommodation.html>

U.S. Equal Employment Opportunity Commission (n.d.). *Questions and Answers about Deafness and Hearing Impairments in the Workplace and the Americans with Disabilities Act*. Retrieved from http://www.eeoc.gov/eeoc/publications/qa_deafness.cfm

U.S. Equal Employment Opportunity Commission (n.d.). *Questions and Answers about Persons with Intellectual Disabilities in the Workplace and the Americans with Disabilities Act*. http://www.eeoc.gov/laws/types/intellectual_disabilities.cfm

von Schrader, S., Malzer, V., Erickson, W., & Bruyère, S. (2011). Emerging employment issues for people with disabilities: Disability disclosure, leave as a reasonable accommodation, use of job applicant screeners. Report of a Cornell/AAPD Survey. Ithaca, NY: Cornell University Employment and Disability Institute.

Northeast ADA Center

K. Lisa Yang and Hock E. Tan

Institute on Employment and Disability

School of Industrial and Labor Relations

Cornell University

201 Dolgen Hall

Ithaca, NY 14853

800.949.4232 in NY, NJ, PR and the U.S. VI

607.255.6686

northeastada@cornell.edu

<http://www.northeastada.org>

The contents of this presentation were developed under a grant from the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR grant number 90DP0003). NIDILRR is a Center within the Administration for Community Living (ACL), Department of Health and Human Services (HHS). The contents of this presentation do not necessarily represent the policy of NIDILRR, ACL, HHS, and you should not assume endorsement by the Federal Government.