

ADA and Employment Hot Topics 2023



## Remember ...

## · Foundation of ADA is non-discrimination, equal opportunity

- Reasonable accommodation is limited by undue hardship
   Significant difficulty or expense
- · Employers do not have to allow direct threat
  - Significant risk of substantial harm to health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation

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Artificial Intelligence (AI)

•AI: machine systems that make predictions, recommendations, or decisions

• Employers may use technologies such as software, apps, and algorithms developed with the use of AI, for conducting employment-related activities and making decisions

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# AI and Employment

- Activities and decisions that may be conducted or affected by AI and related technologies
- Examples: screening résumés or applications, virtual interviews, tests, scoring/rating, hiring, employee monitoring, performance evaluations, promotion, termination



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- Individuals with disabilities may be screened out when they don't "fit the mold" set by an app, algorithm, or other technology, even when the individuals may be qualified for a job
- Qualified: able to perform essential job functions, with or without reasonable accommodation
- Remember, reasonable accommodations can be requested at any time, including during the application/interview process!

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## Animals as Reasonable Accommodations

- Title I does not define "service animal"
- Requests from applicants or employees with disabilities to have an animal in the workplace may be processed like any other request for reasonable accommodation

Does the individual have a disability and need the animal because of disability?





## Animals in the Workplace

- · Employee is responsible for care and supervision of animal
- Animal must be well-behaved, not pose health or safety threat
  Co-workers may need to be informed about how to interact with the animal
- Other individuals in the workplace with disability-related issues triggered by the presence of an animal (e.g., severe allergies, phobias) may also need to be accommodated
  - · For example: physical separation, air filters, cleaning routines



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### Leave as an Accommodation

 Granting time off beyond what an employee is entitled to under employers' policies or other laws (e.g., Family and Medical Leave Act); leave as an accommodation will generally be unpaid

Employer considers whether managing absence is reasonable or will cause undue hardship

Consider other forms of accommodation that may reduce need for leave

Adjusted or flexible schedules

Workplace accommodations

Remote work

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# New Impairment: COVID-19

Individuals who experience "long" COVID may meet the definition of disability

 Individuals who have pre-existing impairments or disabilities may experience additional limitations as a result of COVID, for example ...

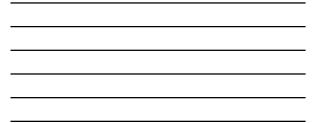
- $\bullet$  Individuals whose conditions have been worsened by COVID
- Individuals who are especially susceptible to COVID
   For example: individuals with diabetes, organ transplant recipients



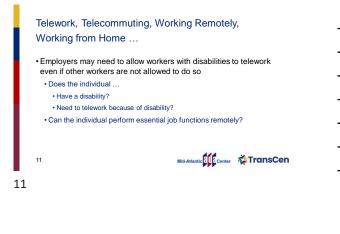


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### Associates

- An individual who is "associated" with anyone with a disability is **protected from discrimination**, for example ...
- An employer cannot refuse to hire an individual because she has a child or a spouse with a disability
- An employer cannot fire an employee who volunteers for an organization that supports people with HIV or AIDS

·Associates are not entitled to reasonable accommodations

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