



## ADA and Employment

### Hot Topics 2023



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### 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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## Screened Out

- 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?



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## 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 ...
  - 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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### Telework, Telecommuting, Working Remotely, Working from Home ...

- Employers may need to allow workers with disabilities to telework even if other workers are not allowed to do so
  - Does the individual ...
    - Have a disability?
    - Need to telework because of disability?
  - Can the individual perform essential job functions remotely?

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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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Certificates of Attendance: CODE

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- Please email the code above to [ADAtraining@transcen.org](mailto:ADAtraining@transcen.org) by 5 PM E.T. on July 24, 2023
- Certificates are emailed 1 – 2 weeks after the session

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Thank You for Joining Us!

Mid-Atlantic ADA Center

One of ten regional centers providing guidance, training, and materials on the ADA

1-800-949-4232

[ADAinfo.org](http://ADAinfo.org)



Funded by National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR), Administration for Community Living, U.S. Department of Health and Human Services

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