



Disability and Disclosure: When, Why, and How

July 19, 2023



About Your Presenter

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





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Type in the Chat Box...

**TELL US A LITTLE ABOUT
YOURSELF.
WHAT "HAT" ARE YOU
WEARING TODAY?**



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Getting Started



When I think of disability disclosure in the workplace, I wonder about...?



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Dale's Dilemma

Dale has a mental illness and works part-time. Dale enjoys the job but has not disclosed a disability to the employer. Last week, Dale's supervisor said that Dale needs to improve work productivity. Dale now wonders if it might be a good idea to tell the supervisor about the disability. Then Dale could request an accommodation to help improve work performance. But Dale also is worried about being treated differently--or even getting fired.

WHAT DO YOU THINK? WHAT SHOULD DALE DO?

Dale's Dilemma: Key Points

- ✓ This scenario touches upon **organizational climate**. Dale needs an accommodation but **may not feel safe talking about the disability**.
- ✓ If Dale doesn't disclose, Dale **could be at risk of losing the job** because of a performance issue.
- ✓ Many disabilities are **not obvious!**



IT'S NOT JUST ABOUT WHAT YOU SEE



The Disclosure Dilemma: Key Questions

How does the disability impact my job?

Do I need an accommodation?

What about my manager?



Will my co-workers find out?

What's the culture of the organization?

Do I trust my employer?

Maybe I Shouldn't? **"Very important" factors in a disclosure decision**

Source: von Schrader, S., Malzer, V., & Bruyère, S. (2013)



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Maybe I Should? **“Very important” factors in a disclosure decision**

Source: von Schrader, S., Malzer, V., & Bruyère, S. (2013)



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Balancing the **need** for accommodation with **timing** of disclosure



- *“I tended to let employers see my work before letting them know that I am hard of hearing.”*
- *“I need accommodations to do the job, so I have to disclose. I have multiple disabilities and one is very apparent. I might not disclose all of my disabilities until hired or necessary, but the apparent one would be disclosed at the interviewing process.”*

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It's about supportive workplaces

- *“My boss respected me and understood the difficulties I have.”*
- *“It depends on the responsiveness of co-workers, supervisors, and general work environment.”*



Disability is part of who I am

- *“It is certainly less stressful to have it out in the open than to be concerned about having to hide it and not wanting anyone to find out.”*
- *“Disclosing allows me to serve as an example of successful employment and promotions.”*



Concern about being treated differently

- *“Disability is still being treated like an acute disease. Until this changes, there is still too high a risk of losing one's job if you disclose.”*
- *“I found that having to disclose my disability with the last company I worked at, there wasn't a direct negative response. However, I did get the feeling that I was held back from promotional opportunities when I was fully capable to handle the responsibilities.”*



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Talking over the pros and the cons...

| TO DISCLOSE... | ...OR NOT TO DISCLOSE |
|----------------|-----------------------|
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Disclosure Video: Vet Tech





***Can an employer ask about disability
during the hiring process?***

Phase 1: Before being offered the job

- 1. The hiring process must be made accessible**, and accommodations must be provided if requested
- 2. No disability inquiry** during recruitment, screening or hiring*
- 3. No medical inquiries** or “indirect” questions about disability
- 4. The decision not to tell about a disability during hiring is not a “lie.” It’s a legally protected right!**

What Would You Do?



Two weeks ago, Danielle was hired as a warehouse assistant. **Danielle** just now told her supervisor that she has attention deficit disorder (ADD) and needs a reasonable accommodation for a few of her work tasks. **Marta**, the supervisor, says she feels she's been deceived. Marta believes **Danielle lied during the hiring process** by not disclosing her disability. Marta wonders if she should terminate Danielle because of this.

Which are the best options?



- A. Transfer Danielle to another job within the company.
- B. Terminate Danielle 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.

Phase 2: After the job offer, but before the job begins

1. **Some medical questions can be asked** **after** a job-offer has been made but before the job has started
2. Apply **same** medical inquiry process to all applicants in a job category (*No selective inquiries*)
3. If this shows that the person has a disability, the job offer can be taken away if:
 - The withdrawal is *job-related and consistent with business necessity*
 - No reasonable accommodation** can be provided

Disclosure Dilemma: Post-Offer



Darnell is offered a job as a cook at a hotel resort. During the medical examination he tells the employer that he has seizure disorder. The hotel doctor **expresses concern** about Darnell working around stoves and using sharp knives. Darnell states that his **seizures are controlled** with medication. In addition, he reminds the employer that he has worked as a cook **for seven years** with no issues.

Which of the following statements are correct under the ADA?



- A. The employer can withdraw the job offer.**
- B. The employer can request medical documentation on the disability.**
- C. Darnell poses a “direct threat” under the ADA due to his disability’s potential to cause harm in this work environment.**
- D. The hotel would go against the ADA if it withdraws the job offer based upon his seizure disorder.**

About confidentiality: Who needs to know?

- Supervisor/manager can be told about work restrictions or accommodations
- First aid/safety personnel if it is possible that emergency treatment may be needed
- Government officials investigating ADA compliance
- State workers' compensation officials
- Employers may use information for insurance purposes

Let's Practice!
Attendance: *Do or Don't Ask?*



- 1) How many days were you out sick during your last job?
- 2) Can you meet our attendance requirements?
- 3) How many days were you absent from your last job?

Let's Practice!

Job Performance: *Do or Don't Ask?*



- 1) Do you have a disability that would prevent you from performing this job?
- 2) Are you able to perform the essential functions of the job with or without a reasonable accommodation?
- 3) What physical or mental impairments do you have that would affect your job performance?

Let's Practice!

Drug & Alcohol Use: *Do or Don't Ask?*



- 1) Are you currently using illegal drugs?
- 2) What medications are you currently taking?
- 3) Have you ever been treated for drug addiction?
- 4) Have you ever been arrested for driving under the influence of alcohol?
- 5) Have you ever participated in an alcohol rehabilitation program?



I noticed a form attached to a job application inviting the job applicant to “self-identify” a disability.

I thought asking about disability isn’t allowed during the hiring process?

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About Self-Identification

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.

Disclosure vs. Self -identification

Disclosure

- Involves telling an employer about a disability when requesting a job accommodation



Self-Identification

- Refers to self-reporting a disability to support an employer's documentation of disability representation among their applicants and workforce for affirmative action

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Paul and the Posters



Paul, a claims representative for an insurance company, puts up obscene, offensive posters in a shared office space. The employer asks him to remove the posters. Paul doesn't take them down. He's given a formal warning in HR, but he still does not remove the posters. As a result, according to company policy, he's fired from the job. Paul then tells his employer that he has bipolar disorder and therefore can't be fired because he has a disability.

In this example, did the employer violate the ADA?



TRUE or FALSE?



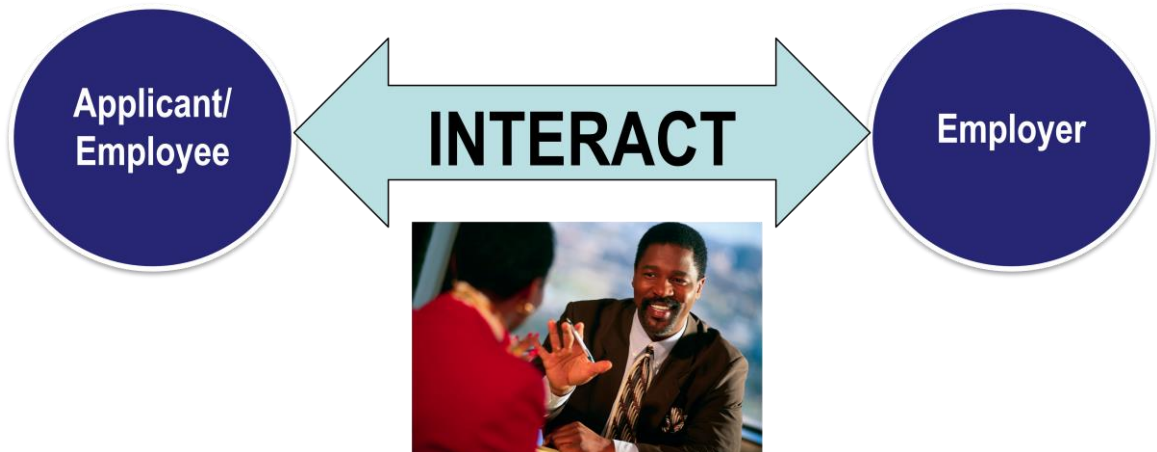
An employee who first discloses a disability when they are about to be fired cannot be fired because this is considered discrimination under the ADA.



**What does the ADA mean by
*The Interactive Process?***



Disclosure Starts the Interactive Process



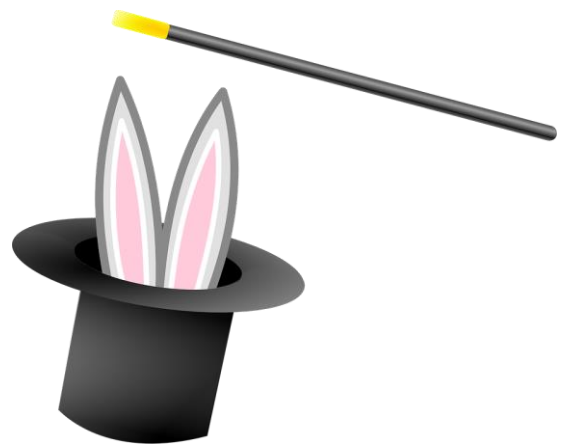
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“No Magic Words”

The interactive process starts with disclosure!

“Because of X medical condition or disability, I’m having trouble with Y job duty”



To Disclose or Not To Disclose?

But remember...



One size does NOT fit all!



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The W's (and an H) of Disclosure

WHY?

WHEN?

WHAT?

HOW?

TO WHOM?

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WHY TO DISCLOSE ON THE JOB

WHY disclose?

- **To get an accommodation!**
- Need supports and services to be successful (i.e. a job coach)
- My disability is a part of who I am
- Feeling supported at work

Consequences of not disclosing

- Not performing at your best
- Falling behind in your workload
- Increasing stress of not using the accommodations you had become accustomed to or need

The 411 on Disability Disclosure: **WHEN** to Disclose



- In a 3rd party phone call or reference
- In your letter of application or resume
- In your cover letter
- Pre-interview
- On the employment application
- At the interview
- After you've been offered the job
- Before any drug testing for illegal drugs
- During the course of employment (anytime you want)
- Never

Source: National Collaborative on Workforce and Disability for Youth. (2005). *The 411 on Disability Disclosure Workbook*. Washington, DC: Institute for Educational Leadership.



WHAT to Disclose

- You do not have to disclose all your disabilities
- Only disclose the disability that impacts on the accommodation you need
- Think: What are the vocational implications of the disability on the job? How does the disability impact the ability to perform the job? Why is an accommodation needed?
- How your disability and other life experiences can positively affect your work performance
- **Keep the disclosure conversation focused on abilities, not disabilities!**

TO WHOM TO DISCLOSE
ON THE JOB



To Whom to Disclose: Considerations...

- Does this person have the power to determine how reasonable the request is for the accommodation?
- Can the person provide the required accommodation(s)?
- Is the person responsible for hiring, promoting, or firing?
- Is the person in a supervisory role and will they support me?
- Do I trust in this person's keeping my disclosure confidential?



But **HOW** do I do this?



Disclosure Decisions Worksheet (VCU)

- ✓ Tool for working through disclosure options
- ✓ *Flow chart* format to cover all bases

My Practice Script (411 on Disability)

- ✓ Practice disclosing and requesting an accommodation
- ✓ Revisit and discuss missteps

Practice Script: Examples

- **[when arranging interview]** *"I'm really looking forward to this interview and I am checking to make sure that the interview room can accommodate my wheelchair."*
- **[after the job offer]** *"I find that I work best when instructions are both written and verbal. This helps me best process information and be most productive at work."*
- **[once the work has begun]** *"I am having more difficulty than I anticipated keeping up with my co-workers because of my learning disability. In the past, it has helped to work alongside an experienced mentor."*

10 Disclosure Tips

1. Choosing not to disclose at the time of hire is not a lie, **it's a legally-protected right!**
2. Employers are only required to accommodate **known** disabilities.
3. Does disability **impact work**? Might an **accommodation** help?
4. Tell only what is needed: **TMI!**
5. Accommodation request can be made **by someone other than employee.**
6. An **accepting workplace culture** is key!
7. Managers and supervisors need to know **ADA and RA basics.**
8. **Performance issues** are not always due to disability.
9. **Don't tolerate** harassment of any kind, at any level in the organization.
10. No **Magic Words**

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Resources

- 411 on Disability Disclosure
(ttaonline.org/Resource/JWHaEa5BS76FZieCJj6ZtQ/Resource-the-411-on-disability-disclosure-a-workbook-for-youth-with-disabilities--a-workbook-for-families)
- ODEP: Youth, Disclosure, and the Workplace: Why, When, What, and How
(www.dol.gov/agencies/odep/publications/fact-sheets/youth-disclosure-and-the-workplace-why-when-what-and-how)
- VCU Disclosure Decisions to Get the Job
(vcurrtc.org/businessconnections/documents/disclosure_decisions1.pdf)
- Job Accommodation Network: Disability Disclosure (askjan.org/topics/Disability-Disclosure.cfm)
- EEOC: Preemployment Disability-Related Questions and Medical Examinations
(<https://www.eeoc.gov/laws/guidance/enforcement-guidance-preemployment-disability-related-questions-and-medical>)

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

ADA National Network

- Ten regional centers provide guidance, training, and materials on the ADA

- **1-800-949-4232**

- [ADAata.org](https://adaata.org)

- Mid-Atlantic ADA Center

- [ADAinfo.org](https://adainfo.org)

