



## Disability and Disclosure: When, Why, and How

July 19, 2023



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### About Your Presenter

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**1-800-949-4232**

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



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### 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 and Mid-Atlantic ADA Centers are 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.

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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?**




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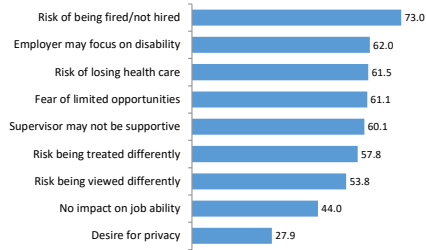
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### Maybe I Shouldn't? "Very important" factors in a disclosure decision

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



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### Maybe I Should? "Very important" factors in a disclosure decision

Source: von Schrader, S., Malzer, V., & Brayline, 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."*



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## 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."*



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## 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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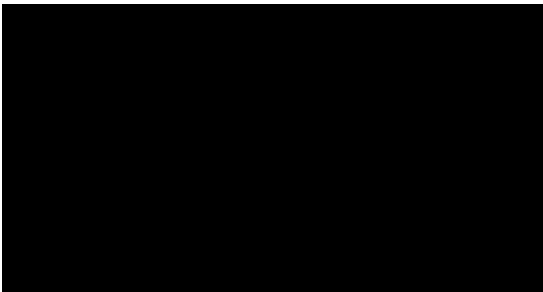
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Disclosure Video: Vet Tech




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

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### 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!

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### 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.

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### 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.

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## 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:
  - o The withdrawal is *job-related and consistent with business necessity*
  - o **No reasonable accommodation** can be provided

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## 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.

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## 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.

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### 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

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### 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?

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### 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?

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## 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?

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*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.

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## 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?*



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## 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.



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



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Disclosure Starts the Interactive Process



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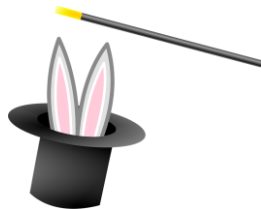
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"No Magic Words"

**The interactive process starts with disclosure!**

"Because of X medical condition or disability, I'm having trouble with Y job duty"



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## 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

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



- In a 3<sup>rd</sup> 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, (2015). *The 411 on Disability Disclosure Workbook*. Washington, DC: Institute for Educational Leadership.



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## **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!**



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## TO WHOM TO DISCLOSE ON THE JOB



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### 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?



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### 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

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### 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."

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### 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](https://taconline.org/Resource/JWHaEa5BS76FZieCJj6ZIQ/Resource-the-411-on-disability-disclosure-a-workbook-for-youth-with-disabilities-a-workbook-for-families) (taconline.org/Resource/JWHaEa5BS76FZieCJj6ZIQ/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](https://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](https://vcurrtc.org/businessconnections/documents/disclosure_decisions1.pdf))
- Job Accommodation Network: Disability Disclosure ([askjan.org/topics/Disability-Disclosure.cfm](https://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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### Certificates of Attendance: CODE

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

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## ADA National Network

- Ten regional centers provide guidance, training, and materials on the ADA
  - 1-800-949-4232
  - [ADAta.org](http://ADAta.org)
- Mid-Atlantic ADA Center
  - [ADAinfo.org](http://ADAinfo.org)



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