MINNESOTA
COUNCIL ON DISABILITY

ADA Title I:
Disclosure & Reasonable Accommodations

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Today's training will cover:

- Title I – employment
- Disability definition
- ADA Amendments Act
- Disclosure
- Reasonable accommodations
- Resources

Title I – Employment

No employer shall discriminate against any qualified individual with a disability in regard to any aspect of employment.

Aspects of employment include:

- Recruitment, Application process, Hiring
  Leaves, Layoffs
- Training, Job assignments, Promotions
- Benefits, Employer-sponsored events
- Discharges

What is considered a disability under the ADA?

An individual with a “disability” is someone who:

- Has a physical or mental **impairment** that **substantially limits** one or more **major life activities**
- Has a **record** of such an impairment
- Is **regarded** as having such an impairment
- **Association** with a person with a disability

ADA Amendments Act: Major Life Activities

Expands the definition of "major life activities" by including two non-exhaustive lists:

Activities EEOC has recognized (e.g., walking), and

Activities EEOC has not specifically recognized (e.g., reading, bending, and communicating);

Major bodily functions (e.g., "functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions");

Disclosure of a Disability

- Have you disclosed a disability to your employer?
- Has a family member or friend disclosed a disability?
- Have you had an employee disclose a disability to you?

Why would an employee disclose any disability; apparent or not apparent?

- To ask for job accommodations
- To receive benefits or privileges specifically for employees with disabilities
- To explain an unusual circumstance or phenomenon

Why would someone *not* disclose a disability?

- Employee does not need an accommodation
- Employee is afraid to disclose, for many reasons:
  - Fear they will be stereotyped, or misunderstood, or not believed
  - Fear their confidentiality will be violated
  - Fear of retaliation
  - Fear of their disability "being used against them"
  - Fearful of adverse employment action such as:
    - Demotion
    - Cut in hours
    - Shift change
- Employee desires privacy about their disability

What an employee may disclose

- General information about their disability;
- Why they are disclosing their disability;
- How their disability affects their ability to perform key job tasks;
- Types of accommodations that have worked for them in the past;
- Types of accommodations they anticipate needing in the workplace.

Confidentiality of disclosure

- All disclosure details, requests for accommodations & medical documentation must be in a locked file separate from the employee's personal file.
- Information regarding the employee's disability may be shared only on a "need to know" basis – not everyone in the company needs to know
- Appropriate response to inquiring colleagues/co-workers.

What the EEOC says about disclosure

An individual with a disability may request a reasonable accommodation **at any time** during the application process or during the period of employment.

The ADA does not preclude an employee with a disability from requesting a reasonable accommodation because s/he did not ask for one when applying for a job or after receiving a job offer.

What the EEOC says about disclosure (2)

An individual with a disability should request a reasonable accommodation when s/he knows that there is a workplace barrier that is preventing him/her, due to a disability, from effectively competing for a position, performing a job, or gaining equal access to a benefit of employment.

As a practical matter, it may be in an employee's interest to request a reasonable accommodation before performance suffers or conduct problems occur (only need to accommodate if they know the disability)

Reasonable Accommodations

- Have you requested a reasonable accommodation from your employer?
- Has a family member or friend requested a reasonable accommodation?
- Has an employee requested a reasonable accommodation from you?

What is a Reasonable Accommodation?

- Any change in the workplace or in the way things are usually done that provides equal opportunities for those with disabilities
- **General Rule:** An employer provides reasonable accommodations to a qualified individual with a disability if requested and not an undue hardship

What is Undue Hardship?

- Significant difficulty or expense (financial hardship)
- Focuses on the resources and circumstances of a particular employer
- Refers not only to financial difficulty, but to reasonable accommodations that are unduly extensive, substantial, or disruptive
- Administrative Hardship – alters the nature of the job or activity

Principles of Reasonable Accommodation

- The process must be interactive (employer and applicant or employee).
- It must be an effective accommodation.
- The obligation applies only to accommodations that reduce barriers to employment as they relate to an individual's disability.
- It need not be the best accommodation as long as it is effective.

What do we mean by Interactive Process?

- Generally begins with a request from the individual with the disability
- No “magic words” such as “ADA” or “reasonable accommodation”
- Request does not have to be in writing
- Request may come from someone other than the employee
- ADA requirements do not prevent an employer from providing an accommodation beyond what is required by the ADA

Requesting an accommodation

- **Follow an employer's policies and procedures**
  - Written forms, online forms, etc.
  - Request one as soon as it is known/believed that it is needed or when having difficulties with a job task
- **Even if the Employer does not have a formal process, submit the request in writing to an immediate supervisor**
  - Create a record in case it is needed for future action.
  - Save a copy
  - JAN template

Determine if accommodation is reasonable

What evidence do you have to substantiate “unreasonable”

Case by case analysis – avoid generalizations

“If we do it for one, we will need to do it for everyone” is not a defense for “unreasonable”

Avoid saying “no” unless you can substantiate “why” and have reviewed the “reasonableness” of the potential accommodation

If the request is reasonable…

Implement the accommodation

Evaluate effectiveness of the accommodation

- Adjust if needed or try a different accommodation if what has been provided is not “effective”

Monitor effectiveness of accommodation

- Periodic review of whether or not the accommodation remains needed and/or continues to be effective

Reasonable Accommodations include

- Physical modifications to the workplace – (quiet areas, air purification, lighting, doorways)
- Job restructuring, part-time work, or modified work schedules (reassignment of non-essential functions, modifying when/how a task is performed, altered work hours, alter arrival/departure time, telecommute, hybrid work from home)
- Leave – must be related to employee's disability (service animal training or treatment)
- Providing qualified readers or interpreters

Reasonable Accommodations include (2)

- Reassignment to a vacant position
  - Last resort when unable to accommodate in current position
  - Individual must be “qualified” for the position
  - First obligation is to identify positions of similar rank/pay, if not available, then may be a position with lower rank/pay
  - Employer is not required to create a position or remove someone else from a position to create a vacancy

Reasonable Accommodations include: (3)

- Acquiring or modifying equipment
  - Modified keyboard, specialized software, etc.
- Changing tests, training materials
  - Additional time on tests and or for training as needed
  - Training materials in alternative formats
- Modification of policies/procedures
  - Allow service animal in the workplace
  - Modified dress code

Actions that are not required

- Removing an essential function or hiring someone else to perform the function
- Lowering production standards
- Reassign to a different supervisor
- Promotion to a higher position
- Provision of “light duty” items
- Excusing misconduct
- Providing “personal use items”, such as eyeglasses, wheelchairs, prosthetic limbs

National Resources

US Equal Employment Opportunity Commission (EEOC) (http://www.eeoc.gov/)
toll free: 800-669-4000, local number: 612-335-4040

Job Accommodation Network (JAN) (http://www.askjan.org)
Toll free: 800-526-7234

Minnesota Resources

Minnesota Department of Human Rights (https://mn.gov/mdhr/)
Voice: 651-539-1100 or 800-651-3704
TTY: 651-296-1283

DEED/Rehabilitation Services Branch (https://mn.gov/deed/job-seekers/disabilities/)
651-259-7114 or 800-657-3858
651-296-3900 TTY

MN State Services for the Blind (https://mn.gov/deed/ssb/)
651-539-2300

Still Have Questions?

Minnesota Council on Disability
651-361-7800 or 1-800-945-8913
council.disability@state.mn.us

ADA Minnesota @Metropolitan Center for Independent Living
651-603-2015 or 1-888-630-9793
www.adaminnesota.org
cindyt@mcil-mn.org

Great Lakes ADA Center
800-949-4232
www.adagreatlakes.org

Disability Hub MN
1-866-333-2466
www.disabilityhubmn.org