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Reasonable Accommodations for People with Psychiatric Disabilities

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Overview

- Introduction to the ADA (1-4)
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The Americans with Disabilities Act (ADA)

The ADA has 5 different Sections called “Titles”

- Title I Employment
- Title II State and Local Government
 Services / Public Transportation
- Title III Public Accommodations and
 Commercial Facilities
- Title IV Telecommunications
- Title V Technical Assistance and
 Miscellaneous Provisions

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Goals of The ADA

- Eliminate discrimination and ensure that people with disabilities experience:
 - ❖ Equality of opportunity
 - ❖ Full participation and integration
 - ❖ Independence
 - ❖ Economic self-sufficiency
- Remove barriers to access.
- Provide clear, strong, enforceable standards

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42 U.S.C. § 12101(a)(8)

Title I of the ADA

Overview:
The ADA in the Workplace



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Employers Covered by the ADA



The following employers are covered
under the ADA:

- Employers with 15 or more employees
- All State and local government employers with at least one employee
- Local laws may cover smaller private employers (For example, The Illinois Human Rights Act and The Cook County and Chicago Human Rights Ordinances cover all employers with one or more employee).

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Protected Individuals



An employee is protected under the ADA if:

- They have a physical or mental **impairment** that causes a **substantial limitation** of one or more **major life activities**. Also covered are individuals with a “record of” a disability or who are “regarded as” having a disability.
42 U.S.C. § 12102(2); 29 C.F.R. § 1630.2(g).

The employee must be:

- **Qualified** to do the essential job functions of the job with or without a reasonable accommodation.
42 U.S.C. § 12111(8); 29 C.F.R. § 1630.2(m).

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Definition of Impairment

Mental impairment:

Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

29 C.F.R. §1630.2(h)(2).

Physical impairment:

Any physiological disorder, condition, disfigurement or anatomical loss affecting one of the body systems.

29 C.F.R. §1630.2(h)(1).

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Definition of Substantial Limitation

Substantial Limitation

- (i) “**Unable to perform** a major life activity that the average person in the general population can perform;
- or
- (ii) **Significantly restricted** ... compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.”

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29 C.F.R. §1630.2(j).

Major Life Activities

People with psychiatric disabilities may be limited in:

- ◆ Interacting with Others
- ◆ Sleeping
- ◆ Working
- ◆ Caring for oneself
- ◆ Concentrating
- ◆ Thinking
- ◆ Performing Manual Tasks
- ◆ Learning
- ◆ Speaking

Some other major life activities are:

- ◆ Breathing
- ◆ Walking
- ◆ Seeing
- ◆ Hearing
- ◆ Lifting
- ◆ Standing
- ◆ Sitting
- ◆ Reproduction
- ◆ Eating
- ◆ Eliminating Waste

This List is Not Exhaustive

29 C.F.R. §1630.2(h)(2)(i)

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The ADA and Psychiatric Disabilities

- There is no ADA listing of covered conditions, all conditions must meet the ADA definition of disability.
- American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, (DSM-IV) is relevant.
- Each situation requires an individualized assessment.
- Regarding drug and alcohol use:
 - ❖ The ADA does not protect individuals who are currently engaging in the illegal use of drugs.
 - ❖ People with alcoholism are covered but are not protected if there is alcohol abuse on the job.

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The ADA and Mental Impairments

Mental impairments that may be an ADA disability:

- Bipolar Disorder
- Schizophrenia
- Major Depression
- Mood or Personality Disorders
- Anxiety Conditions including:
 - ❖ Panic Disorder
 - ❖ Post-traumatic Stress Disorder
 - ❖ Obsessive-Compulsive Disorder

EEOC Enforcement Guidance on the ADA and Psychiatric Disabilities;
See also, 29 C.F.R. §1630.2(h)(2).

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People with Psychiatric Disabilities in the Workplace

Recent studies showed evidence that:

- Societal stigma and discrimination against people with mental illness is widespread.
- Going public with a mental illness is risky and is statistically linked to lower wages (72-85% lower).
- Not going public is also risky as the ADA only applies to known disabilities and limitations.
- Costs of accommodations for a worker with mental illness are likely to be indirect costs.

“Keep it to Yourself? The Costly Stigma of Mental Illness,” Health Management and Policy; October 11, 2006;
www.knowledge.wpcarey.asu.edu. (Arizona State University).

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Title I of the ADA

Reasonable Accommodation Issues



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Workplace Protections

Discrimination is prohibited in any facet of employment, including:

- Job application procedures
- Hiring
- Benefits and Compensation
- Advancement
- Training
- Discipline / Termination
- Company events
- Any terms, conditions, or privileges of employment

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42 U.S.C. § § 12112(b)

Reasonable Accommodation General Requirements

Discrimination under the ADA may include:

- Not providing a reasonable accommodation for known limitations caused by a disability.
- Discrimination does not have to be intentional.
 - ❖ Policies or actions that have the effect of discriminating against an employee with a disability may also constitute discrimination under the ADA.

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42 U.S.C. § § 12112(b)(5)(A),(B);

What are Reasonable Accommodations?

EEOC Regulations define reasonable accommodations as:

- Modifications or adjustments to the work environment, or
- to the manner or circumstances under which the position ... is customarily performed,
- that enable a qualified individual with a disability to perform the essential functions of that position ... or ...
- enjoy equal benefits and privileges of employment.

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29 C.F.R. § 1630.2(o)(1)

What are Reasonable Accommodations?

Employees with psychiatric disabilities often use the following accommodations:

- Job restructuring
- Part- time or modified work schedules
- Reassignment to a vacant position
- Appropriate adjustment or modifications of examinations, training materials or policies

This List is Not Exhaustive

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42 U.S.C. § 12111(9)(B); 29 C.F.R. § 1630.2(o)

Reasonable Accommodation Limitations

An Accommodation does not have to be provided if it:

- Is unreasonable
 - ❖ Requires reallocation of essential job functions
 - ❖ Will not enable the employee to be qualified
- Causes an undue hardship to the employer; or
- Results in a direct threat to the health or safety of the employee or others;

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29 C.F.R. §1630.2(o)

Essential Job Functions

“Essential Functions”

- Fundamental Job Duties
- Employers are not required to reallocate essential functions but may chose to do so anyway.
- Job descriptions may be used as evidence but are not necessarily determinative,
 - ❖ If they are outdated; and/or
 - ❖ Do not accurately reflect the job duties.

29 C.F.R. § 1630.2(n); *EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship.*

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Reasonable Accommodation Limitations

“Undue hardship”

“Significant difficulty or expense.. in light of”:

- “The nature and net cost of the accommodation...”
- “the impact ... upon the operation of the facility, including...”
 - ❖ “the impact on the ability of other employees to perform their duties and
 - ❖ the impact on the facility's ability to conduct business.”



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29 C.F.R. §1630.2(p).

Reasonable Accommodation Limitations

“Direct threat”

- “A significant risk of substantial harm to the health or safety of the individual or others...
- that cannot be eliminated or reduced by reasonable accommodation.”
- Requires an an “individualized assessment...”
 - ❖ “based on a reasonable medical judgment that relies on...
 - ❖ the most current medical knowledge and/or
 - ❖ on the best available objective evidence.”

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29 C.F.R. §1630.2(r).

Title I of the ADA

The Reasonable Accommodation Process



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Reasonable Accommodation: The First Step

The reasonable accommodation process usually starts with a request from the employee

- The request need not be in writing but employees may want to do so anyway
- Employers can follow-up an accommodation request with a written confirmation.
- There is no specific language that must be used
- Another person may request an accommodation on the employee's behalf

EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship.

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The Request for a Reasonable Accommodation

- The request should describe:
 - ❖ The nature of the disability and resulting limitations
 - ❖ The need for an accommodation
 - ❖ A requested accommodation, if known
- If an employer has knowledge of a disability and there is a reasonable basis to believe an accommodation is needed, the employer may have a duty to accommodate even without a specific request.

EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship. See, e.g., Bultemeyer v. Fort Wayne Community Schools, 100 F.3d 1281 (7th Cir. 1996); Taylor v. Phoenixville School District, 184 F.3d 296, 312 (3rd Cir. 1999).

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Requirements of the Accommodation Request

- Employers are only required to reasonably accommodate known limitations and disabilities.
 - ❖ An employee was not entitled to an accommodation prior to being diagnosed with depression.
Estades-Negrone v. Associates Corp. of North America,
377 F.3d 58 (1st Cir. 2004).
- The request must relate to an employee's disability.
 - ❖ An employee with depressive disorder and anxiety was not entitled to a change in his shift time to accommodate his daughter's school schedule.
Boutin v. Home Depot U.S.A., Inc.,
490 F.Supp.2d 98 (D.Mass. 2007).

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Accommodation Request: Case Examples

- Employee with bipolar disorder stated: "I need to leave and I need to leave right now" before leaving early.
- This was not a reasonable accommodation request as she did not mention a medical basis for her statement.
Russell v. TG Missouri Corp.,
340 F.3d 735 (8th Cir. 2003).
- An employee disclosed bipolar disorder requesting a "reduction in...objectives" and "lessening of...pressure."
- This was not a reasonable accommodation request as no limitations were disclosed.
Taylor v. Principal Financial Group, Inc., 93 F.3d 155 (5th Cir. 1996).

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Accommodation Request: Case Examples

- A custodian's psychiatrist requested a "less stressful" environment.
- The psychiatrist's letter can be seen as requesting that accommodations previously in place be reinstated.
- Thus, the employer should have engaged in the interactive process.

Bultemeyer v. Fort Wayne Community Schools,
100 F.3d 1281 (7th Cir. 1996).

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Reasonable Accommodation: The Interactive Process

After an accommodation is requested...

- The employer, employee and other relevant personnel should enter into an informal, interactive process.
- Employer may request limited medical documentation of the disability or need for a reasonable accommodation.
- Employee's preference should receive "primary consideration."
- Employers must provide an "effective" accommodation, not necessarily the accommodation requested.
- The duty to accommodate is ongoing.

29 C.F.R. § 1630.2(o)(3); *EEOC Enforcement Guidance on Reasonable Accommodation, and Undue Hardship.*

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The Interactive Process: Medical Information

- Employers may request medical information if the disability and/or need for accommodation is not obvious.
- The request must be “job-related” and “consistent with business necessity.”
- The request should be limited in scope, related to the accommodation request.
- Employees must comply with reasonable requests.
- Employers should seek clarification if the information seems vague, incomplete, or contradictory.

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42 U.S.C. §12112(d)(4)(A); *EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations Under the ADA*

Reasonable Accommodation: Medical Information

- In most cases, “an employer cannot ask for an employee’s complete medical records.”
- All medical information must be kept confidential.
 - ❖ In a separate location
 - ❖ Only staff who “needs to know” should have access.
- Other federal or state confidentiality laws may also apply, e.g., HIPAA.
- As discrimination can only be found for known disabilities, employers may not want extraneous medical information.

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42 U.S.C. §12112(d)(4)(C); *EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the ADA*

Title I of the ADA

Specific Reasonable Accommodations

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Identifying Reasonable Accommodations

The four categories of possible reasonable accommodations most utilized by employees with psychiatric disabilities are:

- Job restructuring
- Part-time or modified work schedules
- Reassignment, and
- Reasonable modifications of the work environment and/or policies.

The Job Accommodation Network (JAN) is a useful Resource,
www.jan.wvu.edu.

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Job Restructuring – In General

Job restructuring may include:

- Reassigning non-essential functions (reallocating essential job functions is not required, although employers may choose to do so).
- Work at home / Telework
- Altering the time or manner in which a job function is performed
- Interpersonal interaction changes among employees or between an employee and a supervisor.

42 U.S.C. § 12111(9)(B); 29 C.F.R. § 1630 app. §§ 1630.2(o), 1630.9; *EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship.*

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Job Restructuring – Interpersonal Interactions



Reasonable modifications in interpersonal interactions depend on the situation involved and may include:

- Providing for regular or informal meetings
- Modifying the manner in which expectations are communicated, (using written means instead of oral communication or vice versa)
- Utilizing checklists, and
- Redirecting activity when necessary

JAN's Searchable Online Accommodation Resource on Psychiatric Impairments, www.jan.wvu.edu/soar/psych.html.

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Job Restructuring – Work at Home / Telework

- The ADA does not require that employers create a teleworking policy if none exists.
- If a telework program does exist, people with disabilities should be able to participate.
- If there is no teleworking policy, employers must still consider it as a possible reasonable accommodation.
- Some courts have found working at home is a reasonable accommodation
- Other courts have strictly interpreted these types of reasonable accommodation requests.

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EEOC Fact Sheet: Work At Home/Telework as a Reasonable Accommodation

Job Restructuring – Work at Home / Telework Cases

- Work at home not reasonable where physical attendance at the administration center was an essential function of the service coordinator position, a low-level position requiring supervision and teamwork.
Mason v. Avaya Communications, Inc., 357 F.3d 1114 (10th Cir. 2004).
- Working from home was not reasonable as presence at the workplace was necessary for meetings & mediations.
 - ❖ Accommodation of a distraction free environment was effective.

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Mobley v Allstate Insurance Company,
2006 WL 2735906 (S.D. Ill. Sept. 22, 2006)

Job Restructuring – Case Work at Home / Telework

- Working at home, (or leave), might be a reasonable accommodation for a medical transcriptionist with obsessive-compulsive disorder (OCD).
- Allowed for others in the same position
- Employee had previously been provided a flexible start time as an accommodation but it proved ineffective.

Humphrey v. Memorial Hospitals Association,
239 F.3d 1128, (9th Cir. 2001).

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Part-Time or Modified Work Schedules – In General



May be need by someone who requires active treatment or whose stamina is limited due to their disability or medication.

- Leave for a period of time
- Intermittent leave
- Extra break time
- Modifying shifts
- Flexible work schedules

42 U.S.C. § 12111(9)(B); 29 C.F.R. § 1630.2(o). See JAN's Searchable Online Accommodation Resource on Psychiatric Impairments.

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Part-Time or Modified Work Schedules – Leave

- Leave may involve the ADA and Family and Medical Leave Act (FMLA), 29 U.S.C. § 2601 *et. seq.* (1993).
- FMLA provides up to twelve weeks of leave per year
- ADA provides for reasonable amount of leave
 - ❖ May apply at expiration of FMLA leave
- If both ADA & FMLA apply, the law providing the “broadest protection to the employee” applies.
- Under the ADA, it is best to specific a period of leave
 - ❖ Requests for indefinite leave may be unreasonable (though still requiring an “interactive process.”)

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EEOC Fact Sheet: The FMLA, the ADA, and Title VII of the Civil Rights Act

Part-Time or Modified Work Schedules – Leave Cases

- Medical leave of four to five months for treatment for an employee with PTSD was deemed reasonable where the employer’s other leave policies provided up to one year of leave.

Rascon v. U.S. West Communications, Inc.,
143 F.3d 1324 (10th Cir. 1998).

- A request for “extended,” indefinite leave may not be reasonable where the employee could not show it would enable him to become qualified to perform the essential job functions.

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Byrne v. Avon Products, Inc., 328 F.3d 379 (7th Cir. 2003).

Reassignment – In General

- Reassignment to a vacant position for which the employee is qualified may be an appropriate accommodation under the ADA .
- Reassignment may be useful for an employee has limitations in handling a heavy workload, workplace stress, or who needs periodic leave.
- Reassignment is generally not reasonable where it is sought to obtain a new supervisor or to escape certain co-workers.

EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship; See, U.S. Airways, Inc. v. Barnett, 535 U.S. 391 (2002); Gile v. Untied Airlines, 213 F. 3d 365 (7th Cir. 2000).

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Reasonable Modifications – In General

The reasonable modifications may include revising policies regarding:

- Attendance
- Working from home
- Leave
- Training
- Service animals
- Personal assistants
- Job coaches

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42 U.S.C. § 12111(9)(B); 29 C.F.R. § 1630.2(o)

Reasonable Modifications – In General

Employees with psychiatric disabilities may require:

- Additional time for training or learning new tasks
- Having co-workers undergo sensitivity training
- Elimination of distractions, including permitting music or white noise at work stations
- Assistance with note taking or other job duties
- Utilizing checklists

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See JAN's Searchable Online Accommodation Resource on
Psychiatric Impairments

Reasonable Modifications of the Work Environment and/or Policies – Cases

- Providing a teacher's aide to assist a school librarian with classroom control may be a reasonable accommodation.

Borkowski v. Valley Central School District, 63 F.3d 131 (2nd Cir, 1995).

- Where a nurse at a medical facility could not fulfill the essential job function of administering drugs to patients due to depression.

- ❖ It was not a reasonable accommodation to have another employee perform this essential function.

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E.E.O.C. v. Amego, Inc., 110 F.3d 135 (1st Cir, 1997).

Disability-Related Statistics and Resources

*"Get your facts first, and then
you can distort them as much as
you please."*

Mark Twain

*"There are white lies,
damn lies, and statistics."*

Will Rogers

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Reasonable Accommodation Costs and Benefits (From JAN)

Reasonable Accommodation Costs

- 20% require no money
 - ❖ most accommodations for people with psychiatric disabilities only involve indirect costs
- Over 70% cost \$ 500 or less
- Median Cost: \$ 250

Reasonable Accommodation Benefits

- Hiring/Retaining a qualified employee
- Increased Productivity (74%)
- Saved insurance and training costs



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Benefit to the Company: \$ 35 for each \$1 spent



Resources

- **DBTAC: Great Lakes ADA Center**
www.adagreatlakes.org; 800/949 – 4232(V/TTY)
- **Equip For Equality**
www.equipforequality.org; 800/610-2779 (V);
800/610-2779 (TTY)
- **Illinois ADA Project**
www.adagreatlakes.org; 877/ADA-3601 (V); 800/610-
2779 (TTY)

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More Resources

- **DOJ – Serving Customers with Disabilities**
www.ada.gov/reachingout/intro1.htm
- **Job Accommodation Network**
www.jan.wvu.edu
- **Equal Employment Opportunity Commission**
www.eeoc.gov
- **ADA Disability and Business Tech. Asst. Ctr.**
www.adata.org/dbtac.html

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Reasonable Accommodations for People with Psychiatric Disabilities

THE END



Presented by:
DBTAC: Great Lakes
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Today's Session**



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