



**2024 COMPLIANCE
DMEC CONFERENCE**
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How to Manage an Uncooperative Employee under the ADA

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Agenda

- ADA Recap
- Interactive Process
- Scenarios



ADA Recap

What is the ADA?
Definitions



What is the ADA?

- Passed in 1990
- Prohibits discrimination against individuals with disabilities in many areas of public life, including jobs, schools, transportation, and many public and private places that are open to the general public
- Amended in 2008 to redefine “disability” by defining major life activities and including the “regarded as” category

ADA, Cont.

- Applies to ALL employees
- Employers who employ 15 or more employees, state and local governments, employment agencies, and labor unions
- Requires employers to provide reasonable accommodations for applicants and employees with disabilities
- Prohibits discrimination on the basis of disability in all aspects of employment

Definitions



- Disability means, with respect to an individual:
 - A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
 - A record of such an impairment; or
 - Being regarded as having such an impairment

20 CFR§1630.2(g)(1)

Definitions, Cont.

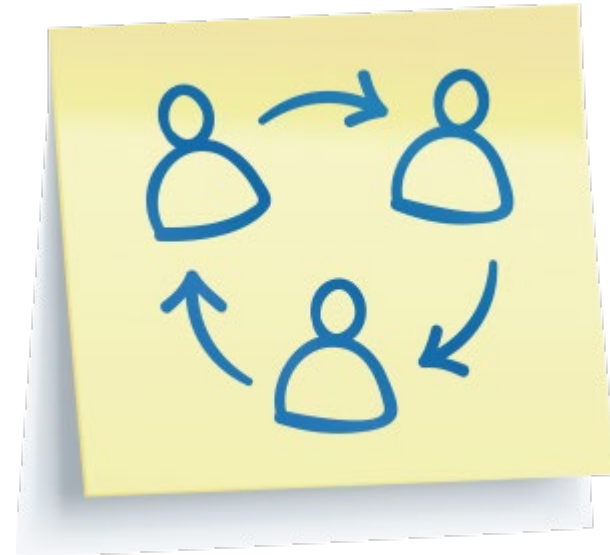
- Reasonable Accommodations
 - Modifications or adjustments to
 - A job application process, work environment, or position held
 - That enables qualified applicant or employee to
 - Be considered for the position or to perform the essential functions of that position



20 CFR §1630.2(o)

Definitions, Cont.

- Interactive Process
 - An informal, interactive process
 - With the individual and the employer
 - That identifies the precise limitations resulting from the disability
 - And potential reasonable accommodations that could overcome those limitations



20 CFR §1630.2(o)(3)



Interactive Process

Recognizing a Request

Gathering Information

Exploring Options

Choosing and Implementing an Accommodation

Monitor



Recognizing a Request

- Anytime an employee is having a problem and the problem is related to a medical condition, consider whether the employee is requesting an accommodation
- Does not need to say accommodation or ADA
 - *Jones v Clark County School District* (2017 WL 1042463)
- Plain language



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Gathering Information



- Need to know how limitations are interfering with job performance and what specific tasks are at issue
- Compare job related restrictions and limitations to essential functions of the job
- Don't ask for too much
- Cannot ask for documentation if the disability/need for accommodation is obvious

Exploring Options

- Get Creative
- Consider Employee's Preference
- Remember Confidentiality Rules



Choosing and Implementing an Accommodation

- Obligated to provide a reasonable accommodation, not accommodation of choice
- Accommodation may need additional actions to implement
 - Installation of equipment, Employee training in proper use of equipment
 - Management may need to be informed of changes to schedule or policy modifications
- Free to try accommodations and suspend/revisit if it doesn't work





Monitor

- Encourage ongoing communication
- Is the accommodation effective?
- Keep an eye out for changes
 - Conditions may improve
 - Equipment may need maintenance
 - Accommodation may no longer be effective



Scenarios

Vague Request
Uncooperative Employee
Cooperative Employee
Obvious Impairment



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Nell Walker



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Shelby Felton



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Questions?

