

ADA DISABILITY COMPLIANCE TRAINING:

Do They Need It Or Just Want It? Managing Specific Requests for ADA Accommodation

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Today's Agenda

- The Realities of Workplace Accommodation Requests
- Feel the Feelings
- Develop the Process
- Let's Do It!
- Questions & Answers


**Everything is
FINE!**




Training Materials

 Scan the code to download:

- Slide Deck
- Training Samples
- Additional Resources

 Use them, customize them, make them work for you.

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SCAN ME



General Information on Session

- The content presented in this training is for informational and educational purposes only. I have not reviewed your organization's policies, procedures, or collective bargaining agreements.
- Before implementing any changes to your current practices, you are strongly encouraged to consult with your legal counsel and consider any applicable meet-and-confer obligations, internal policies, or regulatory requirements.
- This presentation does not constitute legal advice.
- Now let's get to work—and enjoy!



What you're getting...

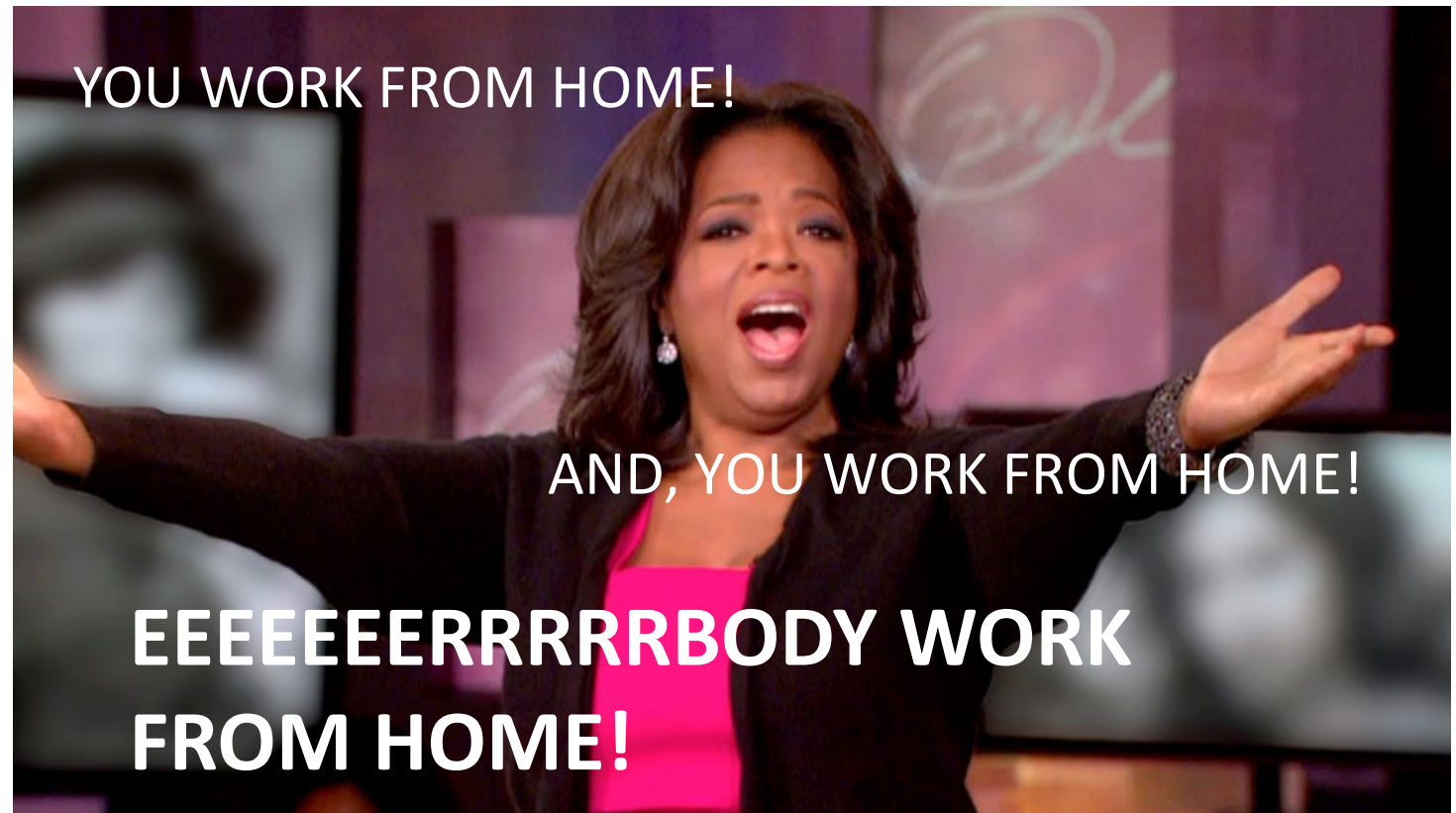
- Remote work / work from home
- Increased hybrid schedule
- 9/80 or 4/10 schedule
- Parking location
- Specific location/office/building/classroom
- No working with Rachel Shaw
- Day shift / specific workhours
- No overtime / no call-back
- Others...



The Feelings...

What we **think**...

How we **feel**...



The Risk...

Thoughts and Feelings guide Actions.

If you don't believe the request is real, *or needed*, and if you don't have a pre-set process, *bias* can get inserted into your process.



The Reality...

Sometimes people ask for things that they

- absolutely don't need
- would really like
- believe would help them
- believe they absolutely need
- were told they needed by their health care provider
- would benefit from, but there are alternatives too
- need and there are no alternatives

From the onset, you cannot know which it is.



The Right Way Forward



Know Your Stuff

THE BASICS OF ACCOMMODATION REQUESTS
VS. RESTRICTIONS

Vocabulary

Functional Limitation:

- Refers to a restriction or inability to perform an action or activity within the range considered normal due to a physical, cognitive, or psychological impairment.

vs.

Accommodation Request:

- Refers to the solution or workplace modification made to ensure that the functional limitations are adhered to.

Functional Limitation

Ingredients



Accommodation

Peach Pie



Functional Limitation

- No Lifting over 10 pounds with the right arm
- Ability to weight-bear for 10 minutes at one time, 30 minutes per hour and 4 hours per 8-hour workday



Accommodation

- Sit/stand workstation
- Ladder lift
- Remote work
- 4/10 schedule

ADA Expects Functional Limitations (Ingredients)

Per the EEOC Enforcement Notice 915.002

- May an employer ask an individual for documentation when the individual requests reasonable accommodation?
 - Yes. The employer is entitled to know that the individual has a covered disability for which s/he needs a reasonable accommodation.
 - Reasonable documentation means that the employer may require only the documentation that is needed to **establish that a person has an ADA disability**, and that the disability necessitates a reasonable accommodation...
 - An employer may require that the documentation about the disability and the **functional limitations** come from an appropriate health care or rehabilitation professional.

Source: <https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada>

ADA Expects Functional Limitations (Ingredients)

To be provided with a reasonable accommodation, an employee/applicant must:

- Have a covered ADA medical condition
- Have a disability that impairs their ability to access work or perform the essential functions of the current job
- Provide a listing of functional limitations which the person's disability creates for them, and which need to be mitigated/accommodated in the workplace



Other Effective Reasonable Accommodations

When a specific accommodation is being asked for...

- Employers can implement alternative accommodations to the employee's stated preference:
 - The EEOC's interpretive guidance clarifies that an employer is **not required to provide the specific accommodation requested by the employee** if another effective accommodation exists. This principle is further supported by U.S. Supreme Court and appellate court rulings:
 - U.S. Airways, Inc. v. Barnett, 535 U.S. 391 (2002) – The Court reaffirmed that while employers must provide a reasonable accommodation, they are not obligated to provide the employee's preferred choice if another effective option is available.
 - Rehling v. City of Chicago, 207 F.3d 1009 (7th Cir. 2000) – The court held that the employer retains discretion to choose among reasonable accommodations as long as the chosen accommodation is effective.

Prestablish Process

To Ensure Thoughts & Feelings
Don't Guide Actions

Remember Employer's Obligations

Two Mandates of the Employer:

1. Employers must engage in a timely, good faith, interactive process with applicants or employees when triggered, and
2. Employers must provide Reasonable Accommodations for persons with covered disabilities

Each is a stand-alone statutory obligation

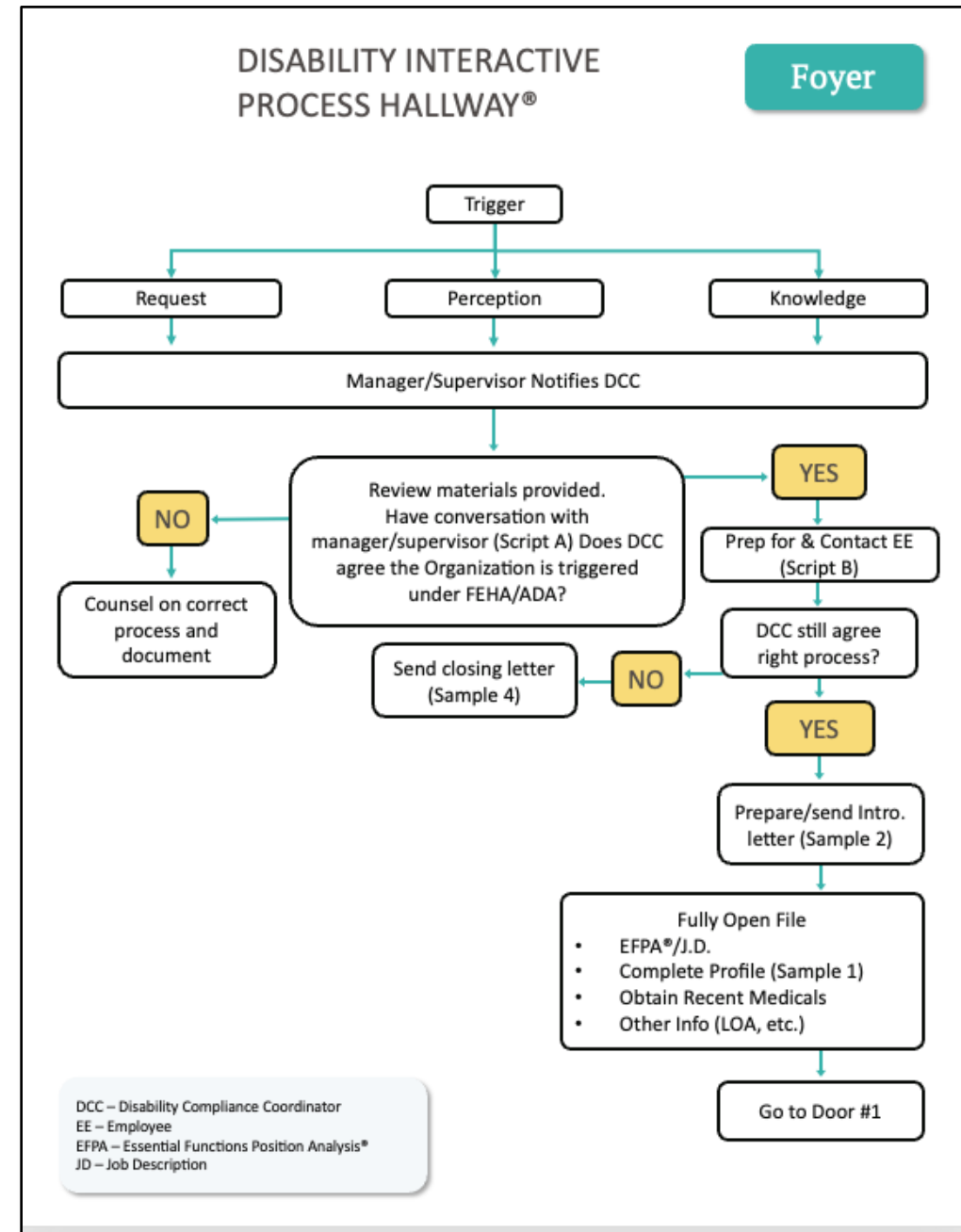
Source: ADA - 42 U.S.C. § 12112 et seq. (1990)



Establish Process

Process is the key.

Let's discuss a process option.



Get Into the Disability Interactive Process Hallway to Gather Data Get Ingredients!



Disability Interactive Process Hallway®

Disability Interactive Process Hallway

DOOR 1

Gather Clear Data: Obtain Clear Medical Work Restrictions; May determine an Essential Functions Position Analysis® (EFPA®) document needs to be created – **Today's Focus**

DOOR 2

Research Accommodations: Call/email/discuss with employee and supervisor the restrictions and begin exploring accommodation ideas

DOOR 3

Schedule, Prepare & Meet: Schedule meeting and invite the right people to attend; confirm attendance in advance; prepare notes for meeting; meet and make decisions

DOOR 4

Do What You Said You Would Do: After meeting, implement decisions; do what was decided

Door # 1 – Get The Data You Need

GATHER DATA: Through the Interactive Process, Human Resources / Risk Management Personnel **will** ask:

- For the employee's health care provider to provide in writing:
 - **Covered Disability:** Has a serious medical condition that impacts their ability to perform one or more of the essential functions of their job
 - **Work Restrictions / Leave Needs:** What are their work restrictions / functional limitations and/or leave needs
 - **Duration:** What is the duration of work restrictions / functional limitations or leave needs

Door # 1 – Get the Data You Need

When accommodations are requested, **especially desirable accommodations**, establish your process on the front end to reduce requests:

- Medical supplemental questionnaire
- Will you require a **Fitness for Duty Examination** if functional limitations are not received or if there remain concerns over the medical need of the request?



Door # 1 – Get the Data You Need

- **Be Clear:** Establish your steps at the front end of the interactive process and communicate the process to those requesting the accommodation
- **Be Consistent:** Use the same process for both personal medical conditions and work-related conditions
- **Special Circumstances:** Considerations for pregnant workers...



Door # 1 – Get the Data You Need

- Read the medical note carefully
 - “My patient *requests*...”
 - “It is *recommended*...”
 - “It would be *supportive* if...”
- Do you have a medical note or a wish list
- Respond to medical notes



The Hallway: Door #1

Prepare and Send a Questionnaire to the Health Care Provider to Obtain Data / Functional Limitations:

Sample Questionnaires for Leave and Restrictions:

- ✓ Remote Work (**sample 2**)
- ✓ Unable to commute (**sample 3**)
- ✓ Generic Accommodation Request vs. Restriction (**sample 4**)
- ✓ Supervisor/Co-Worker Restriction (**sample 5**)



What a Difference Clear Work Restrictions Make

The Goal is Functional Limitations / Ingredients:

- **“No commuting”** vs. “unable to sit for more than 30 minutes at one time without the ability to stand or walk for 5 minutes” or “night vision diminished and correction not available. Cannot drive after dusk or before dawn due to vision limitation that is created due to low natural light.”
- **“4/10 schedule”** vs. “standing medical appointments every week for 2 hours in length. Post procedure is not able to drive and is recommend to rest and not work.”
- **“Must Work Remotely”** vs. “reduced exposure to others in enclosed spaces, ability to wear a mask when indoors, requires at least 6 feet distance from others when in an enclosed space”



Get Your Samples!

**DMEC 2025 ANNUAL CONFERENCE**

The Hallway: Door #1

Where to Send the Questionnaire Once Prepared?

- Questionnaire to the Health Care Provider
 - Option: send through Employee
 - Exception: send through Risk Management / Insurance Company when workers' compensation
- Fitness for Duty Examiner



The Hallway: Door #1

Questions About the Questionnaires:

- Can I really do that?
 - YES
- Do I need a release from the employee, what about HIPAA?



**Do you even know
what HIPAA means?**



The Hallway: Door #1

Questions About the Questionnaires:

- Do I need a release from the employee, what about HIPAA?
 - NO
- Nothing being asked is PHI
- Don't ask for what you already have permission to get to further the interactive process

Requesting Medical Related Information

EEOC Says (and we place this in all your sample questionnaires):

The authority that allows us to request and receive the information requested in the attached questionnaire is from the **Equal Employment Opportunity Commission (EEOC)'s Guidance**, which states that an employer may seek disability-related information, as follows:

- *“... an employer only may seek information about an employee's medical condition when it is job related and consistent with business necessity. This means that the employer must have a reasonable belief based on objective evidence that:”*
 - *“an employee will be unable to perform the essential functions of his or her job because of a medical condition or”*
 - *“the employee will pose a direct threat because of a medical condition.”*
- *“Employers also may obtain medical information about an employee when the employee has requested a reasonable accommodation and the disability or need for accommodation is not obvious.”*
- *“In addition, employers can obtain medical information about employees when they:”*
 - *“are required to do so by another federal law or regulation (e.g., DOT medical certification requirements for interstate truck drivers)”*

The Hallway: Door #1

Questions About the Questionnaires:

- Will I ever get it back?
 - YES
 - Average return rate is 80% or higher for employers!



The Hallway: Door #1

How to Get the
Questionnaire
Returned

KIDDING!



The Hallway: Door #1

How to Get the Questionnaire Returned

- It's all about process:
 - Prepare the questionnaires using our templates
 - Email / Fax to health care provider, adjustor or the employee
 - Call provider's office to confirm receipt
 - Get the name of the person you talk with and document it
 - Follow-up with provider's office if not returned
 - Ask for the same person, and they will help get it done (so you stop bothering them)



The Hallway: Door #1

Questions About the Questionnaires:

- Can I always send the questionnaire directly to the health care provider?
 - NO

Workers' compensation exceptions (send through adjustor or workers' compensation attorney for IME/QME/AME)



The Hallway: Door #1

What if the Questionnaire Doesn't Come Back?

- Is the original report strong enough that you have to act on it or can you disregard it? (Sample 6)
 - “Recommend... suggest... would be beneficial... my patient states...”
- If the report clearly lists that the accommodation stated is medically needed, you may need to conduct a **Fitness for Duty** if not providing the accommodation stated (Samples 7 & 8)



Moving Through The Process

- Once you have clear and objective functional limitations, a.k.a. ingredients, you can move down the **Disability Interactive Process Hallway**



Disability Interactive Process Hallway

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Establish Your Process

Questions For You to Answer:

- Will you require Door # 1 – Medical Questionnaire - for
 - Temporary / Short-Term
 - Light Duty
 - Temporary Modified
 - Permanent / Long-Term
- Will you utilize a FFD examination whenever a specific accommodation is requested and functional limitations are not received or questioned?
- What will you communicate in advance to guide requests?



Concluding Thoughts...

- Be aware of the organization's preferences, biases and beliefs surrounding specific disabilities and accommodation requests.
- Solve for this problem with **data**.
- Be the **calm** in the storm.



Concluding Thoughts...


- Sometimes the solution suggested will be medically needed, reasonable and there will be no effective alternative. **Implement it.**
- Sometimes what is requested will not be needed, and you will use process to ensure **spaces are protected** for those in need.
- Sometimes the request is an option, but you will find and implement a reasonable accommodation alternative. **That is your right.**
- Your process will reduce unnecessary requests if you implement the right amount of **process**.

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