

ADA UPDATE

2015 EEO ACADEMY

Oct. 2
to Dec. 4



OhioDAS
Service · Support · Solutions

Equal Opportunity Division



CAUTION

POWERPOINT PRESENTATIONS CAN BE DANGEROUS

NASA's Columbia Accident Investigation Board identified simplistic thinking from an over-reliance on PowerPoint presentations as a contributing factor in the Columbia shuttle disaster.

(New York Times Magazine 12/14/2003)

It is not only the right thing to do it maximizes talent

WHY PROVIDE ACCESS?

Diversity contributes to innovation and service

It's the law



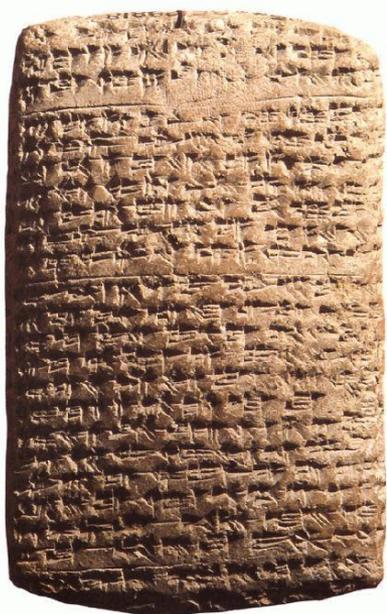
Something Old – Something New

- Definition & Documentation
- Medical Inquiries & Wellness Programs
- Extensions of Leave & FML
- Technology
- Office of Federal Contracts Compliance Programs
- Other Accommodation Groups
- Assistance Animals



The First 5,000 Years of Disability Policy

A 5000 year old Sumerian clay tablet, the code of Ur-Nammu, king of Ur, Sumer and Akkad included provisions to compensate injured workers.



In thirteenth Century France hospices provided uniforms that signified individual had a genuine disability and a royal license to beg. A measure to eliminate fraud.



Shogunates in Japan supported guilds for individuals with disabilities whose members were itinerant musicians, masseurs, and acupuncturists.



Kidai Shōran
1805

In 1856 the US Congress created the Columbia Institution for the Instruction of the Deaf and Dumb and Blind. In 1864 Pres. Lincoln signed a law allowing the school to confer college degrees. In 1894 it was renamed Gallaudet.

Paul Hubbard Bison Quarterback 1892

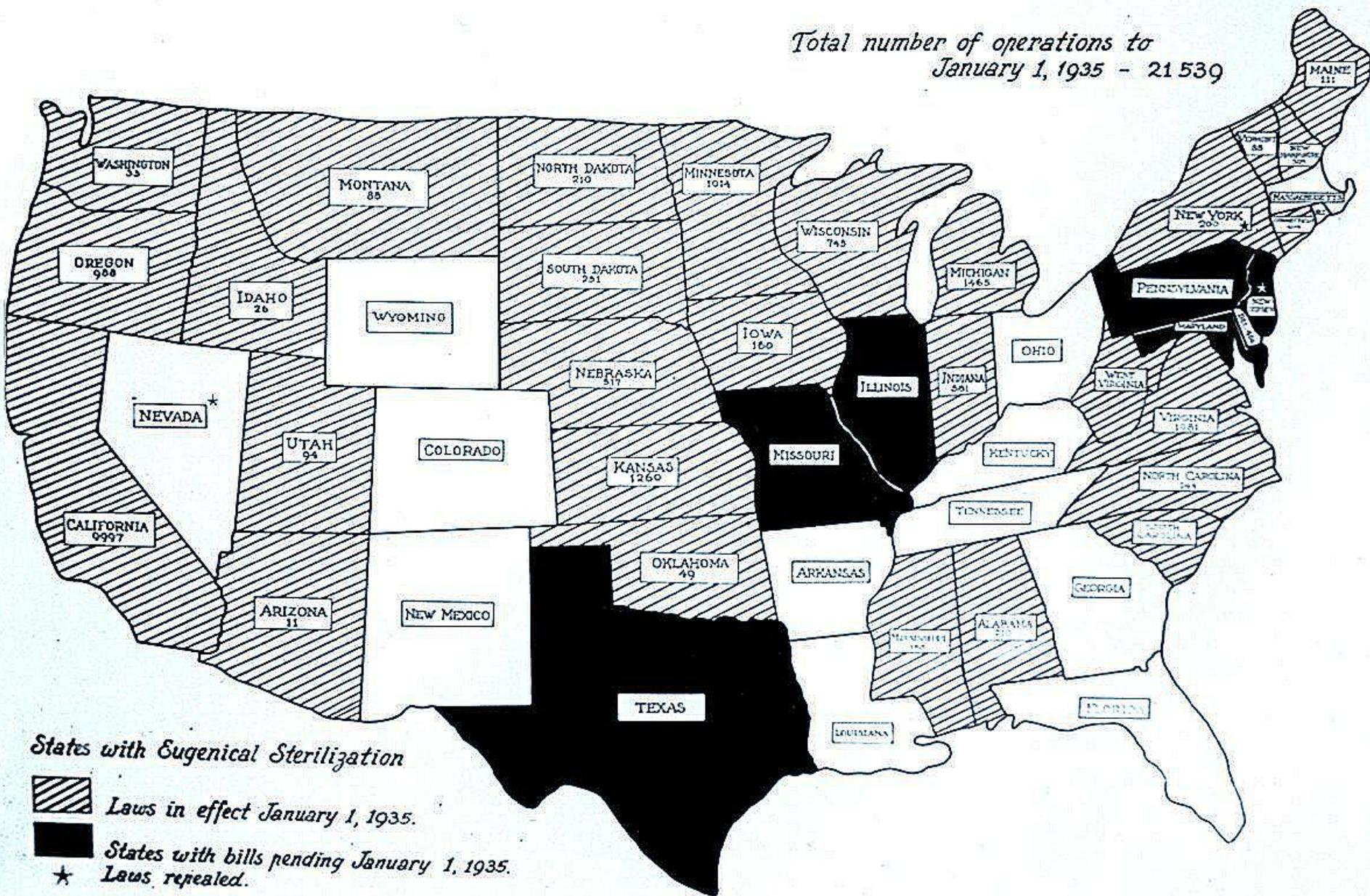


Meanwhile “ugly laws”, exclusion from public education and mandatory sterilization laws were common in the U.S.

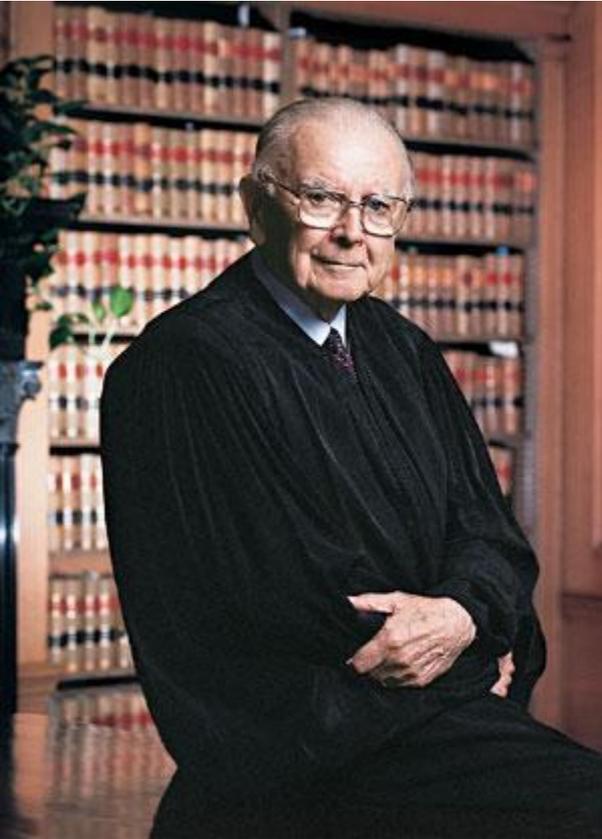


LEGISLATIVE STATUS OF EUGENICAL STERILIZATION IN THE UNITED STATES AND THE TOTAL NUMBER OF OPERATIONS BY EACH STATE TO JANUARY 1, 1935.

Total number of operations to
January 1, 1935 - 21539



A Change In Perspective



“Congress acknowledged that society's accumulated myths and fears about disability and disease are as handicapping as are the physical limitations that flow from actual impairment.”

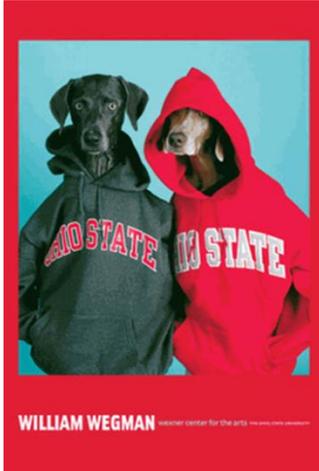
Justice William J. Brennan, *Arline v. Nassau County*, 1987



- Pre 1964 –Support Oriented
- 1964 – Architectural and Transportation Barrier Removal Act
- 1973 - Section 504 of the Rehabilitation Act.
- 1975 – PL 94-142 (IDEA)
- 1977- Section 504 Regulations
- 1990 – Americans with Disabilities Act
- 2009 – ADA Amendments Act
- 2010 – Update ADA Title II & III Regulations
- 2011 – Update ADA Title I Regulations

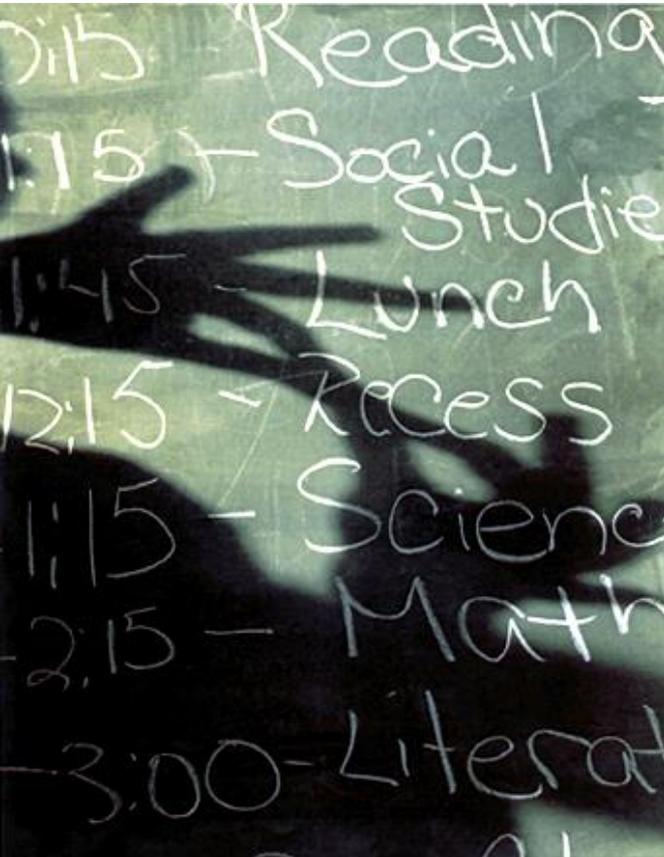
“...Congress understood in shaping the ADA, it would sometimes require not blindfolded equality, but responsiveness to difference; not indifference, but accommodation.”

Ruth Bader Ginsburg, Tennessee v. Lane



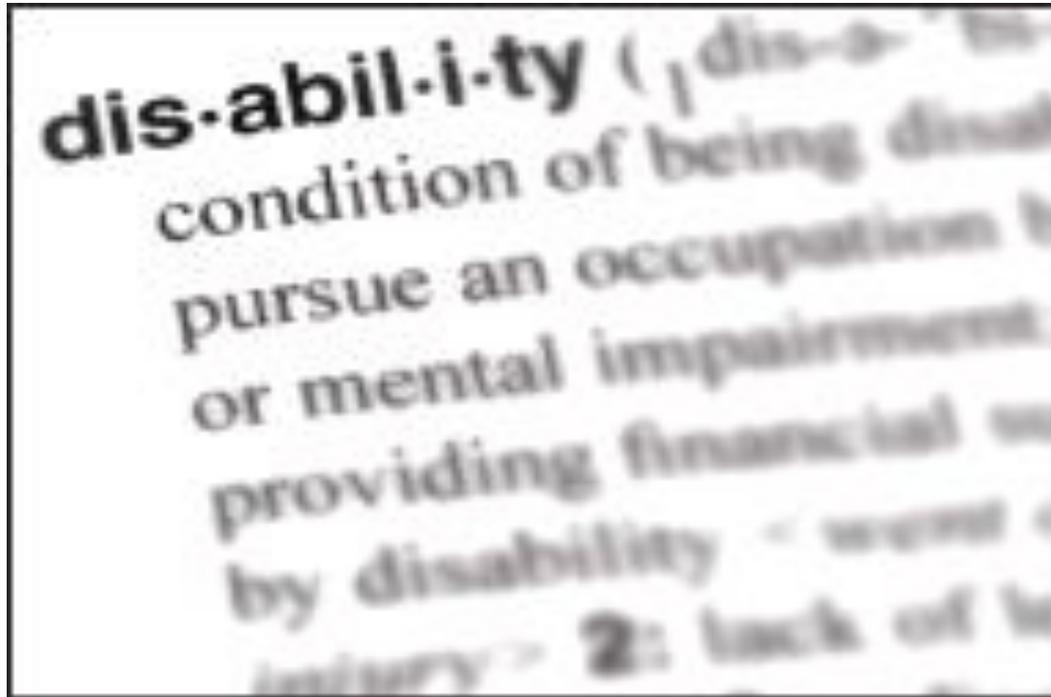


What Is An Accommodation?



- A modification to policy, procedure, practice, or the environment
- the provision of a tool, technology, or service
- that partially mitigates the impact of a disability allowing an individual to participate

DEFINITION OF DISABILITY



- A physical or mental impairment that substantially limits a major life activity
- A record of such an impairment
- Being regarded as having such an impairment

What is Substantial?

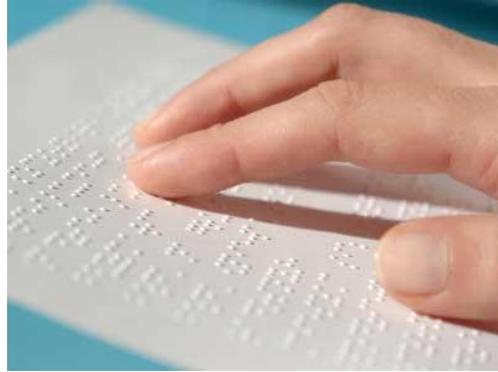
- “The definition of disability ... shall be construed broadly, to the maximum extent permitted by the ... ADA.” PRM: 1630.1(4)
 - Not Toyota’s “prevents or severely restricts”
 - Not limited to activities “of central importance to daily life” (activities of daily living) used in Toyota PRM: 1630.2(j)(1)
- Exclude ameliorative impact of mitigating measures in determining coverage
- Episodic conditions or those in remission are if they substantially limit when active

Limited in What Way?

CONDITION



MANNER



DURATION



- Relevant inquiry is “how a major life activity is substantially limited, not on what an individual can do in spite of an impairment.” PRN: 1630.2(j)(2)(vi)
- The comparison of an individual's limitation to the ability of most people in the general population often may be made using a commonsense standard, without resorting to scientific or medical evidence. PRM: 1630.2 J. 2 (IV)

MAJOR LIFE ACTIVITIES

- Includes but not limited to, caring for oneself, performing manual tasks, seeing, hearing, **eating, sleeping**, walking, standing, lifting, **bending**, speaking, breathing, learning, **reading, concentrating, thinking,** **communicating**, and working.





“Major Life Activities” also include the operation of major bodily functions including but not limited to :

- Immune
- Respiratory
- Circulatory
- Endocrine
- Digestive
- Reproductive
- Neurological
- Brain
- Normal Cell Growth
- Bowel
- Bladder

- The EEOC: Use a Common-Sense Assessment
 - An impairment need not substantially limit more than one major life activity
 - Impairments need not prevent, significantly restrict or severely restrict performance of a major life activity to be substantially limiting
 - An individual’s ability to perform a major life activity in a similar manner under comparable conditions as “most people in the general population”
 - Should not require extensive analysis
 - Typically using a common-sense analysis without scientific or medical evidence

Regarded As



- Broad Construction
- Focus on the substantive issues of failure to accommodate or exclusion not class membership
- Excludes transitory (<6 months) or minor
- Not entitled to accommodations

Also of Note

- Discrimination on the “basis of disability”
- No reverse discrimination
- Changes Section 504 to match

- Does not change the definition of reasonable accommodation
- Does not impact the use of rationally based qualification standards

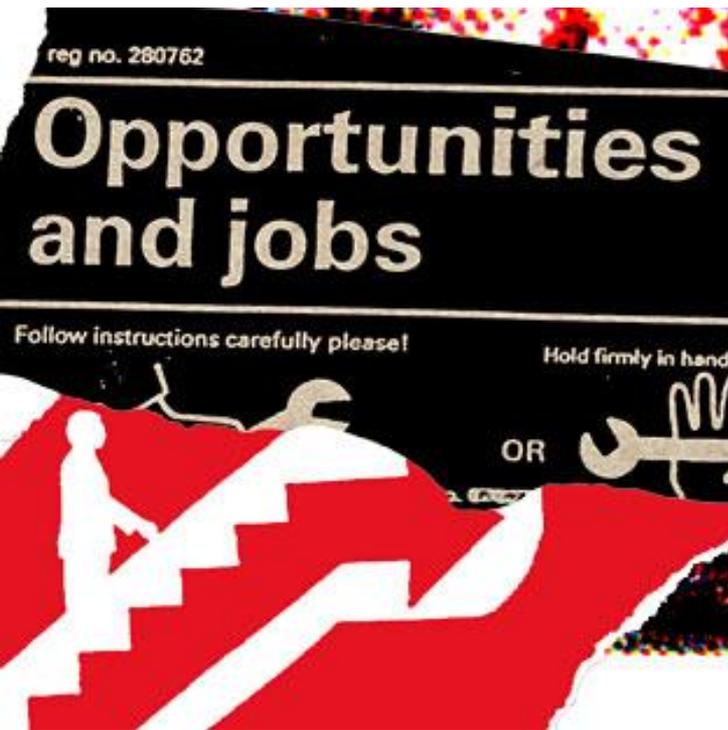
ADAAA EMPLOYMENT SETTINGS



REVIEW:

- Accommodation request process
- Documentation requirements
- Determining essential functions
- Determining accommodations
- Grievance
- Available resources

ADA Title I - Employment



- Covers employers with 15 or more workers
- Prohibits discrimination on the basis of disability in all aspects of employment
- Requires the provision of reasonable accommodations



Non-Discrimination

- Record of a disability
- Regarded as having a disability
- Relationship or association with someone who has a disability.

Reasonable Accommodation

- Individuals with disabilities

Aspects Of Employment

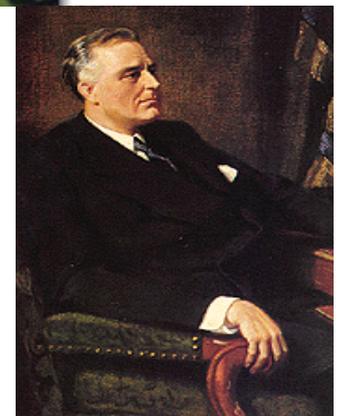


- Advertising
- Recruitment
- Hiring & Terminations
- Compensation
- Assignment

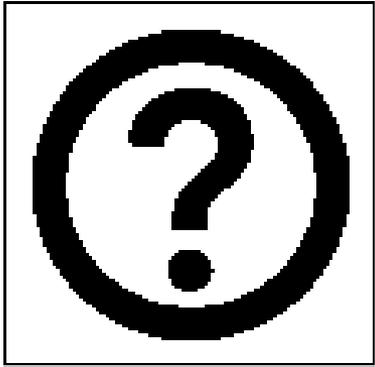
- Transfer & Promotion
- Technology & Tools,
- Testing & Communications
- Professional Development
- Pay
- Benefits

Some examples of covered disabilities

- Epilepsy
- Paralysis
- HIV/AIDS
- ADD/ADHD
- Hearing or visual impairment
- Psychological conditions
- Specific learning disability
- Back/orthopedic conditions
- Diabetes
- Morbid obesity



Documenting Disability



- Ask For What You Need
 - Impairment
 - Impact related to work place needs
 - Recommended adaptations

- Who Determines Disability
 - Interactive process
 - Fit for Duty Exams
 - Grievance process



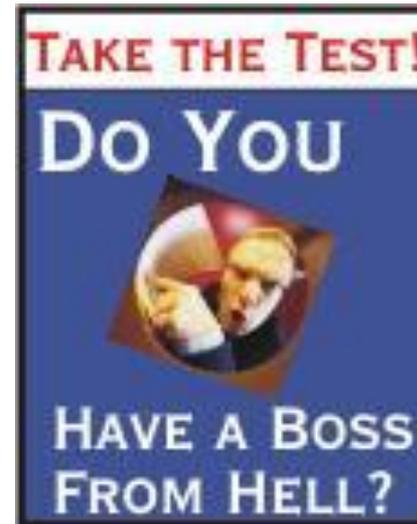
Maintaining Documentation

- Confidentiality
 - Not covered by HIPPA
 - Not main file
 - Who Needs to Know
 - Supervisor to implement
 - Safety/Evacuation personnel
 - Complaint investigators



Not generally covered

- Minor conditions of short duration
- Minor chronic conditions - allergies
- Simple physical characteristics
- Common personality traits
- Educational, cultural or economic disadvantages
- Interpersonal allergies



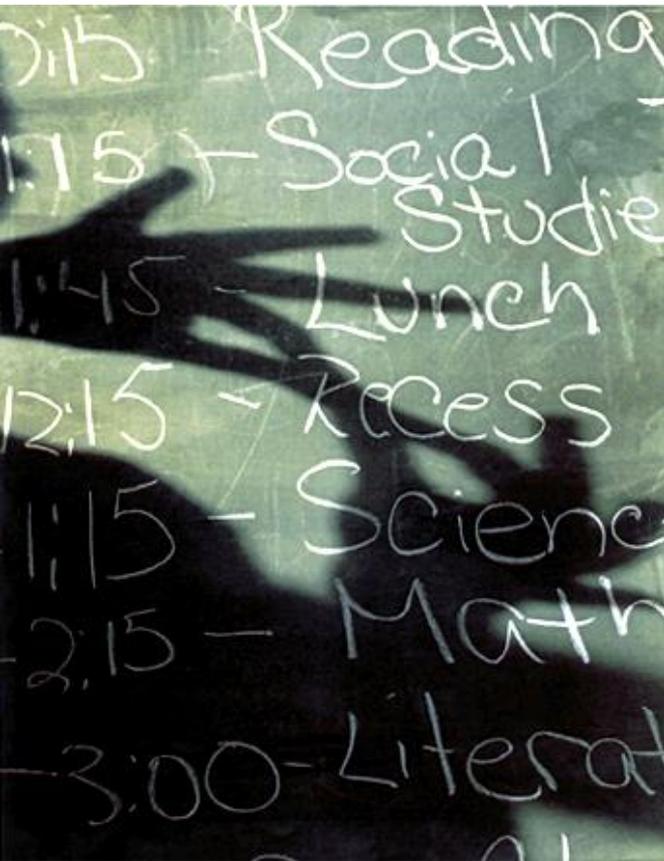
Who is a Qualified Individual?

- To determine if a person is a qualified individual, ask two questions:
 - Does the person meet the necessary pre-requisites for the job?
 - Can the person perform the essential functions of the job, with or without reasonable accommodation?





What Is An Accommodation?



- Any modification to a job, employment practice or the work environment
- An aid, tool, technology, interpreter, etc., that helps the individual with a disability to overcome a barrier

Reasonable Accommodation:

- Rationally Related to the impacts of the disability
- Assists in the effective performance of the essential functions of the job
- Makes it possible for an individual with a disability to enjoy an equal employment opportunity



Reasonable Accommodation (cont.)

- Does not present an undue burden
 - Safety
 - Business necessity
 - Administrative burden
 - Financial burden



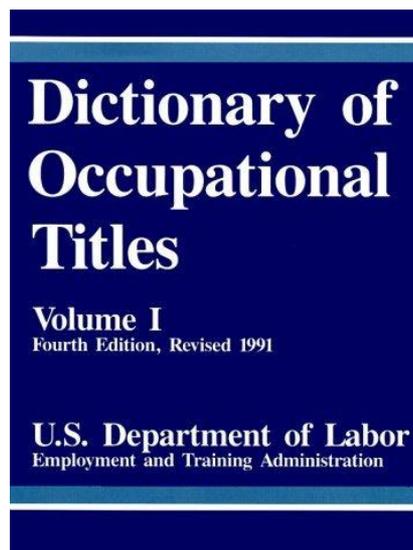
Safety Considerations



- The nature, severity and duration of the potential harm;
- The likelihood that the potential harm will occur;
- The imminence of the potential harm; and
- The potential for reasonable accommodations to mitigate the risk.

What Are Essential Job Functions?

- The “fundamental job duties” of the employment position
 - Do not include marginal functions
 - Focus on the purpose of the function and result, rather than the manner in which it is performed



How are the essential job functions determined?

- Questions to ask:
 - Are the other employees in the position actually required to perform the function?
 - Would removing that function fundamentally change the job?
 - Does the position exist to perform the function?
 - What is the degree of expertise or skill required to perform the function?
 - What is the number of other employees available to perform the function, or among whom the function can be distributed?

Job Descriptions:

- Does not require job descriptions - may be used as evidence of whether a function is essential
 - If they are current and accurate
 - If they were prepared prior to the job offer

A job description alone is not conclusive evidence that a function is essential

- The ADA does not require that job descriptions be limited to essential functions

START TODAY!
Male Driver Needed
needed to haul heavy equipment metro Atlanta area.

Immediate Openings
Volunteers needed for all aspects of Festival and event operations. Stage hands, ticket takers, general help etc. No pay and good music, contact curleyblues@hotmail.com

Board of Directors Positions Open
A high ability 501 (c) 3 Copr. seeks qualified candidates to run for the position of Board Member. Position requires min 10hr /per wk of hard work + up to 3 meetings per Mo. Candidate must be inovative & willing to follow through & implement progs. & ideas. Prev. Mgt. exp. is a +. Must be computer literate and respond to e-mails. Must believe in Corp mission to Preserver, support & have a passion for the Art Form known as the Blues. EOE absmall@mindspring.com

Great Opportunity
ADMINISTRATIVE
Recordig Secretary Wanted
Must be available 1st and 2nd Tuesday's of the month in ovo. Comp. lit. & exp in MS Word. Required to take and publish Minutes of Board Meetings. absmall@mindspring.com

Personal Loser Ad
Desperately seeking Peggy Known to frequent Job's I know you, Willey and M.L. done me wrong but I am willing to forgive and forget. I.L.U
reply to box 4523

Fax Today
Publicity People
Volunteer Org has need for exp pub. people. Solid media contacts a +. Must be outgoing and highly motivated individual. Contact absmall@mindspring.com

Immediate Opening
Festival Director
Strong leadership and attention to detail reqd. for this volunteer position. Must be able to form and motivate committees absmall@mindspring.com

Sponsor Service Rep
Excellent Telephone and people skills required. Must be computer literate and dependable Must be willing to hang out in Bars and Alleys to determine needs of and to interface with Important Corporate Sponsors. Must be 21 and have own car and enjoy the Blues. We are a work for free org. EOE. bliuenomo@aol.com
Do You need To Place AN Employment Ad?

ATTENTION
Sponsor Service Rep

Handwritten notes:
"I could do this job" (pointing to Immediate Openings)
"I like to hang out in bars and alleys!!" (pointing to Sponsor Service Rep)
"Possibility?" (pointing to Sponsor Service Rep)
"Sounds like a lot of work" (pointing to Board of Directors)
"Eering" (pointing to Great Opportunity)
"Sounds Like Work again" (pointing to Director of Corporate Sponsorship)
"Definate Maybe" (pointing to Festival Director)

Evidence For Essential Functions

- **Written job descriptions prepared before advertising or interviewing**
- **Consequences of not performing the task**
- **Amount of time spent on the task**
- **Work experience of current or former incumbents**
- **The employer's judgment as to which functions are essential**
- **Terms of a collective bargaining agreement**

Special Cases

- Performance Evaluations
 - Pre & Post accommodation
 - Oh! That is because of.....
 - Evaluating the Effectiveness of acco



- Disciplinary Action
 - Conduct is conduct
 - Failure to accommodate as a factor
 - Extenuating circumstances & disability





“It is time to move beyond the letter of the law to the spirit of the law; to shift our focus from redressing human and environmental problems through remedial design to preventing problems through holistic design.”

Leslie Kanés Weisman



RESOURCES

- Job Accommodations Network
<http://www.jan.wvu.edu/>
- Ohio Bureau of Vocational Rehabilitation
http://www.rsc.ohio.gov/VR_Services/BVR/bvr.asp
- Federal Disability Portal
<http://www.disabilityinfo.gov>