

1990 AMERICANS WITH DISABILITES ACT

& THE ADA AMENDMENTS ACT OF 2008



Kentucky Personnel Cabinet
Office of Diversity,
Equality & Training

INSTRUCTOR FOR TODAY

- ▶ Singer Buchanan State EEO/ADA Coordinator

Learning Objectives

- ▶ Understand the purpose of the ADA
- ▶ Understand some of the areas covered in the law
 - *Employment*

*****Understand the importance of attitude*****

THE BASICS

Barriers to employment, transportation, public accommodations, public services and telecommunications existed.

HISTORY

- ▶ “Let the shameful walls of exclusion finally come tumbling down”

President George Bush

July 26, 1990

Title 1

- ▶ Prohibits private employers, state and local governments, employment agencies and labor unions from discrimination against qualified individuals with disabilities in job applications procedures, hiring, firing, advancement, compensation, job training and other terms and conditions and privileges of employment.

Title II

- ▶ Title II applies to State and local government entities, and, in subtitle A, protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by State and local government entities. Title II extends the prohibition on discrimination established by section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, to all activities of State and local governments regardless of whether these entities receive Federal financial assistance.

Title III

- ▶ Title III focuses on private businesses (also known as public accommodations). All new construction and modifications must be accessible to individuals with disabilities. For existing facilities, barriers to services must be removed if it is readily achievable. Public accommodations include facilities as such hotels, restaurants, bars, theaters, grocery stores, hardware stores, dry-cleaners, banks, professional offices of health care providers, lawyers, accountants, hospitals, private bus or train stations, museums, libraries, zoos, amusement parks, places of education, day care centers, senior citizen centers, homeless shelters, gymnasiums, health spas, bowling alleys, and golf courses to name a few.

EMPLOYMENT

APPLIES TO:

- ▶ State and Local Governments
- ▶ Employment Agencies
- ▶ Labor Unions
- ▶ Joint Management Labor Committees
- ▶ Agents of the Employer
- ▶ Private Employers with 15 or More Employees

EMPLOYMENT

- ▶ Application Process
- ▶ Hire
- ▶ Fire
- ▶ Promote
- ▶ Compensation
- ▶ Training
- ▶ Other terms and conditions
- ▶ Privileges of employment

EMPLOYMENT CONTINUED

- ▶ Recruitment
- ▶ Advertising
- ▶ Tenure
- ▶ Layoff
- ▶ Leave
- ▶ Fringe Benefits
- ▶ All other employment related activities

DISABILITY

- ▶ A physical or mental impairment that substantially limits a major life activity, has a record of such impairment or is regarded as having such an impairment.
- ▶ Persons discriminated against because of close friendship or relationship that is known with a person with a disability is also protected.

MAJOR LIFE ACTIVITY

- ▶ Caring for oneself
- ▶ Performing manual tasks
- ▶ Seeing
- ▶ Hearing
- ▶ Eating
- ▶ Sleeping

Major life activities

- ▶ Walking
- ▶ Standing
- ▶ Sitting
- ▶ Reaching
- ▶ Lifting

Major life activities continued

- ▶ Bending
- ▶ Learning
- ▶ Reading
- ▶ Concentrating

Additional but not all...

- ▶ Thinking
- ▶ Communicating
- ▶ Interacting with others

- ▶ This is not an exhaustive list.....

WHAT ELSE?

- ▶ Immune system
- ▶ Special sense organs and skin
- ▶ Normal cell growth
- ▶ Digestive, genitourinary, bowels, bladder
- ▶ Neurological, Brain
- ▶ Respiratory, circulatory, cardiovascular
- ▶ Endocrine, hemic, lymphatic, musculoskeletal
- ▶ Reproductive

REASONABLE ACCOMMODATION

- ▶ Any modification or adjustment to a job or the work environment that will enable an applicant or employee with a disability to participate in the application process or to perform essential job functions.
- ▶ Includes adjustments to assure that an individual with a disability has rights and privileges equal to those of employees without disabilities.

MODIFICATIONS examples...

- ▶ Different methods for testing of applicants and employees
- ▶ Moving common areas to accessible locations
- ▶ Attendance and leave policies

MODIFICATIONS examples

- ▶ Voice activated office equipment
- ▶ Use of a service animal
- ▶ Could be as simple as changing the lights

QUIZ TIME

- ▶ TRUE OR FALSE
- ▶ An employee with a disability has to pay for any changes they need to do their work?

QUIZ TIME

▶ TRUE OR FALSE

▶ An employee with a disability has to pay for any changes they need to do their work?

▶ FALSE

QUIZ TIME 2

- ▶ Which of the following are protected by the ADA?
- ▶ A A person with the loss of vision
- ▶ B A person with seizures
- ▶ C A person with extreme anxiety

And the answer is.....

▶ A YES

▶ B YES

▶ C YES

▶ They all are protected!

Getting Started, set the environment

- ▶ Lean to acceptance
- ▶ Listen first
- ▶ Express support
- ▶ Explain that this is an interactive process

Providing Support

- ▶ Step by step journey, each accommodation is unique
- ▶ Explain what documentation is necessary and why
- ▶ Provide contact information for resources
- ▶ Follow up, as necessary

You have been there before....

- ▶ Think back on a previous request for an accommodation.
- ▶ Tell us how you were able to help the employee do their job.
- ▶ Who supported you in doing your job? Supervisor, ADA Coordinator, HR?
- ▶ Was the employee able to do their job after the accommodation.

You have been there before.....

- ▶ What steps did you take to insure confidentiality?
- ▶ In your position, did you have to interact with a medical professional?
- ▶ Where did you secure any medical or other confidential documents?
- ▶ Have you ever had an unreasonable request for an accommodation?

ROLES

- ▶ Supervisor Day to day support and guidance
- ▶ Human Resources Policies and procedures, support
- ▶ ADA Coordinator Subject matter experience, facilitator
- ▶ Legal Provides counsel and advice

Service Animals

- ▶ Protected under Titles II and III of the Americans with Disabilities Act (ADA)
- ▶ Public Accommodations (28 C.F.R. 36.302)
- ▶ State and Local Government Entities (28 C.F.R. 35.136)
- ▶ Service animals in training are not protected by the ADA
- ▶ Some state laws do provide protections

DOES KENTUCKY???

KRS. 525.500

- ▶ Consolidated assistance animal/guide dog laws
- ▶ Dogs-in-training who are accompanied by a trainer for training purposes are covered by Kentucky State Law.

SERVICE ANIMALS CONTINUED

- ▶ Must be a canine or miniature horse
- ▶ Service animals are not pets, regardless how they are handled by the person
- ▶ They do not have to be professionally trained
- ▶ They do not have to wear a vest or a badge

TWO ALLOWABLE QUESTIONS, NOT THREE

- ▶ Is this a service animal?
- ▶ What task has this animal been trained to perform?

WHAT IS A TASK?

- ▶ Guiding a person who is visually impaired
- ▶ Assisting an individual with a seizure
- ▶ Picking up or retrieving objects
- ▶ Assisting a person with hearing loss about certain sounds

WHAT IS A TASK? Cont.

- ▶ Providing physical support or support with balance
- ▶ Assisting a person with psychiatric disabilities by interrupting compulsive behavior
- ▶ Task performed by service animals must be directly related to the person's disability

DO YOU HAVE A MINUTE?

- ▶ Phillip has worked for his manager, Paula, for over 10 years. They get the work done but really do not interact very often. Phillip asks to meet with Paula and she agrees. At the meeting Phillip gives Paula a letter from his physician asking for an accommodation to work remotely due to his underlying conditions and the COVID-19 virus. Paula looks at the letter and says no, he has been fine all this time.
- ▶ So we know Paula apparently has no clue about how this process should work.
- ▶ What would you do if you were Paula's supervisor and became aware of this interaction?

GOT ANOTHER MINUTE?

- ▶ Brian, an employee who has recently been hired in your department, has been telling you that he has physical problems related to his back and his hands which are affecting his ability to do his work. You are Brian's supervisor. Brian has shared with you that he has had back surgery a few years ago that left him with physical limitations, and he also has arthritis in his hands and wrist. Most of Brian's work takes place in a cubicle and workstation where he types at a computer and answers the phone. Brian has also been talking some with some of his co-workers about how people are not "treated fairly" if they have "medical needs".
- ▶ What is your responsibility as Brian's supervisor in this situation?

THE REALITY IS...

MYTH
VS
FACTS

EDUCATION

▶ MYTH

- ▶ Individuals with disabilities don't have the education that we require.

MORE EDUCATION

▶ FACT

- ▶ Over one-half of individuals with disabilities have high school diplomas.
- ▶ Over one-third have post secondary degrees.

MEETING PERFORMANCE STANDARDS

▶ MYTH

- ▶ Individuals with disabilities are unable to meet performance standards or productivity goals.

MEETING PERFORMANCE STANDARDS 2

▶ FACT

- ▶ Louis Harris and Associates survey of 920 employers found employees with disabilities have about the same (57%) or better (30%) productivity levels than persons without disabilities.

EMPLOYEE SUPERVISION

▶ MYTH

- ▶ Supervising employees with disabilities is more difficult, someone will have to help them.

EMPLOYEE SUPERVISION

▶ FACTS

- ▶ In most cases, individuals with disabilities have already adjusted to their disability, with proper job training, they can work unaided.

JOB ACCIDENTS

▶ MYTH

- ▶ Workers with disabilities are more likely to have accidents or be prone to additional injuries.

JOB ACCIDENTS FACT

▶ FACTS

- ▶ In four national studies, the U.S. Department of Labor found that workers with disabilities experience fewer disabling injuries than the average employee exposed to the same hazards.

HIRING

▶ MYTH

- ▶ It is impossible to interview someone with a disability because of human rights laws.

HIRING FACT

▶ FACTS

- ▶ Ask the same job related questions that you would ask other applicants.
- ▶ Focus on abilities, not disabilities.

DISCIPLINE AND TERMINATION

▶ MYTH

- ▶ Once hired, I can't discipline or fire an employee with a disability.

DISCIPLINE AND TERMINATION FACT

▶ FACTS

- ▶ There are no special procedures for disciplining or firing employees with disabilities.
- ▶ Discuss problems with the employee, try to find solutions and document the situation.

ABSENTEEISM

▶ MYTH

- ▶ Employees with disabilities are less reliable and are absent more often.

ABSENTEEISM FACT

▶ FACTS

- ▶ On average, employees with disabilities are not absent any more than employees without disabilities.
- ▶ U.S. Chamber of Commerce study found workers with disabilities have an 80% lower turnover rate.

ACCOMODATION EXPENSES

▶ MYTH

- ▶ Considerable expense is necessary to accommodate workers with disabilities.

ACCOMMODATION EXPENSE FACT

▶ FACTS

- ▶ Most job accommodations are simple and inexpensive.
- ▶ Most frequent reported accommodations were changes in job duties and modified hours.

ACCOMMODATION COSTS

NO COST	31%
\$1.00 TO \$50.00	19%
\$51.00 TO \$500.00	19%
\$501.00 TO \$1000.00	14%
\$1001.00 TO \$5000.00	11%
MORE THAN \$5000	1%

Source-Succeeding Together: Peoples with Disabilities in the Workplace, a Resource Guide

RESOURCES

- ▶ WWW.EEOC.GOV
- ▶ WWW.DOL.GOV
- ▶ WWW.JUSTICE.GOV
- ▶ WWW.ASKJAN.ORG

ODET

- ▶ Vikki Smiley Stone Executive Director
- ▶ Rolanda Hamilton Executive Assistant Secretary
- ▶ Singer Buchanan State EEO/ADA Coordinator
- ▶ Syl Flores Executive Staff Advisor

THANK YOU



Kentucky Personnel Cabinet
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**Thank you to the
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