

DISABILITY DISCRIMINATION

A WORKPLACE GUIDE

Presented by:

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Overview:

- **AMERICANS WITH DISABILITIES ACT OF 1990 (“ADA”)**
- **THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (“USERRA”)**

Americans with Disabilities Act of 1990 (the “ADA”)

- Title I – Employment
- Title II – Public Services & Transportation
- Title III – Public Accommodations
- Title IV – Telecommunications
- Title V – Misc. Provisions

Uniformed Services Employment and Reemployment Rights Act ("USERRA")

- Applies to ALL employers
- Returning service-members are to be reemployed in the job that they would have attained had they not been absent for military service
- Reasonable efforts must be made to enable returning service members to refresh or upgrade their skills to help them qualify for reemployment

Forms of Discrimination

- **FAILURE TO REASONABLY ACCOMMODATE**
- **RETALIATION**
- **CREATION OF A HOSTILE WORK ENVIRONMENT**

Title I of the ADA

**PROHIBITS PRIVATE EMPLOYERS, STATE
AND LOCAL GOVERNMENTS,
EMPLOYMENT AGENCIES OR LABOR
UNIONS FROM DISCRIMINATING
AGAINST:**

**QUALIFIED INDIVIDUALS
WITH A DISABILITY ("QIWD")**

**WHO IS A
QIWD?**

An Individual with a Disability is someone who:

- **HAS A PHYSICAL OR MENTAL IMPAIRMENT THAT SUBSTANTIALLY LIMITS ONE OR MORE MAJOR LIFE ACTIVITIES; OR**
- **HAS A RECORD OF SUCH IMPAIRMENT; OR**
- **IS REGARDED AS HAVING SUCH AN IMPAIRMENT**

A qualified employee or applicant:

IS AN INDIVIDUAL WHO WITH OR
WITHOUT REASONABLE
ACCOMMODATION, CAN PERFORM THE
ESSENTIAL FUNCTIONS OF THE JOB IN
QUESTION.

**REASONABLE
ACCOMMODATION**

“Reasonable Accommodation” can include:

- **MAKING EXISTING FACILITIES READILY ACCESSIBLE FOR THE DISABLED**
- **JOB RESTRUCTURING, MODIFYING WORK SCHEDULES, REASSIGNMENT**
- **OBTAINING OR MODIFYING EQUIPMENT, POLICIES OR TRAINING MATERIALS**

**MUST AN EMPLOYER
ALWAYS
ACCOMMODATE A
QIWD?**

UNDUE HARDSHIP

AN EMPLOYER IS NOT REQUIRED TO PROVIDE A REASONABLE ACCOMMODATION FOR A QIWD IF GRANTING THE REQUEST WOULD IMPOSE AN “UNDUE BURDEN OR HARDSHIP” ON THE EMPLOYER’S OPERATIONS.

IN OTHER WORDS, IF THE REQUEST WILL CREATE SIGNIFICANT DIFFICULTY OR EXPENSE THE ACCOMMODATION NEED NOT BE PROVIDED.

Retaliation

Retaliation:

IT IS ILLEGAL TO RETALIATE AGAINST AN INDIVIDUAL THAT OPPOSES EMPLOYMENT PRACTICES OR REQUESTS ACCOMMODATION.

THIS PROTECTION EXTENDS TO ANYONE THAT PARTICIPATES IN AN INVESTIGATION, PROCEEDING OR LITIGATION UNDER THE ADA EVEN IF THAT PERSON IS NOT THE PLAINTIFF.

HOSTILE WORK ENVIRONMENT

Protection from Harassment under the ADA:

**IN ADDITION TO REQUIRING THAT EMPLOYERS
REASONABLY ACCOMMODATE A QIWD,
EMPLOYERS ARE PROHIBITED FROM:**

- **HARASSING A QIWD; OR**
- **SUBJECTING A QIWD TO A HOSTILE WORK ENVIRONMENT ON THE BASIS OF HIS/HER DISABILITY; OR**
- **ALLOWING A HOSTILE WORK ENVIRONMENT TO EXIST WITHOUT ACTING IN AN APPROPRIATE AND PROMPT MANNER.**

What constitutes actionable “harassment”

NOT ACTIONABLE: OCCASIONAL TEASING, OFFHAND COMMENTS, OR ISOLATED INCIDENTS THAT ARE NOT EXTREMELY SERIOUS.

ACTIONABLE: CONDUCT THAT IS SO OBJECTIVELY OFFENSIVE AS TO ALTER THE CONDITIONS OF THE INDIVIDUAL’S EMPLOYMENT; CULMINATES IN A TANGIBLE EMPLOYMENT ACTION OR IS SUFFICIENTLY SEVERE OR PERVASIVE.

**UNIFORMED SERVICES
EMPLOYMENT AND
REEMPLOYMENT RIGHTS
ACT
("USERRA")**

USERRA:

- **PROHIBITS EMPLOYERS FROM DISCRIMINATING AGAINST EMPLOYEES OR APPLICANTS FOR EMPLOYMENT ON THE BASIS OF THEIR MILITARY STATUS OR OBLIGATIONS**
- **ALSO PROTECTS REEMPLOYMENT RIGHTS FOR THOSE WHO LEAVE THEIR CIVILIAN JOBS TO SERVE IN THE MILITARY**

USERRA & ADA:

Some Basic Differences 1

- **ADA ONLY APPLIES TO EMPLOYERS WITH 15 OR MORE EMPLOYEES. USERRA APPLIES TO ALL EMPLOYERS REGARDLESS OF SIZE**
- **USERRA REQUIRES AN EMPLOYER TO ASSIST A VETERAN RETURNING TO EMPLOYMENT TO BECOME QUALIFIED FOR A JOB (EVEN IF THERE IS NO SERVICE CONNECTED DISABILITY)**

USERRA & ADA:

Some Basic Differences 2

- **BOTH USERRA AND THE ADA HAVE PROVISIONS WHICH REQUIRE EMPLOYERS TO PROVIDE REASONABLE ACCOMMODATION IN THE WORKPLACE, HOWEVER, THE DEFINITION OF “DISABLED” UNDER USERRA IS MUCH LESS STRICT.**
- **IT IS CONCEIVABLE TO HAVE AN EMPLOYEE THAT IS NOT “DISABLED” UNDER THE ADA BUT IS “DISABLED” UNDER USERRA.**

Additional Resources:

<http://www.sniderlaw.com>

<http://www.eeoc.gov>

<http://www.dol.gov/vets>

<http://www.mindknit.org>

<http://www.hirevetsfirst.gov>

Questions? Comments?

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