

Don't Be Afraid of the ADA

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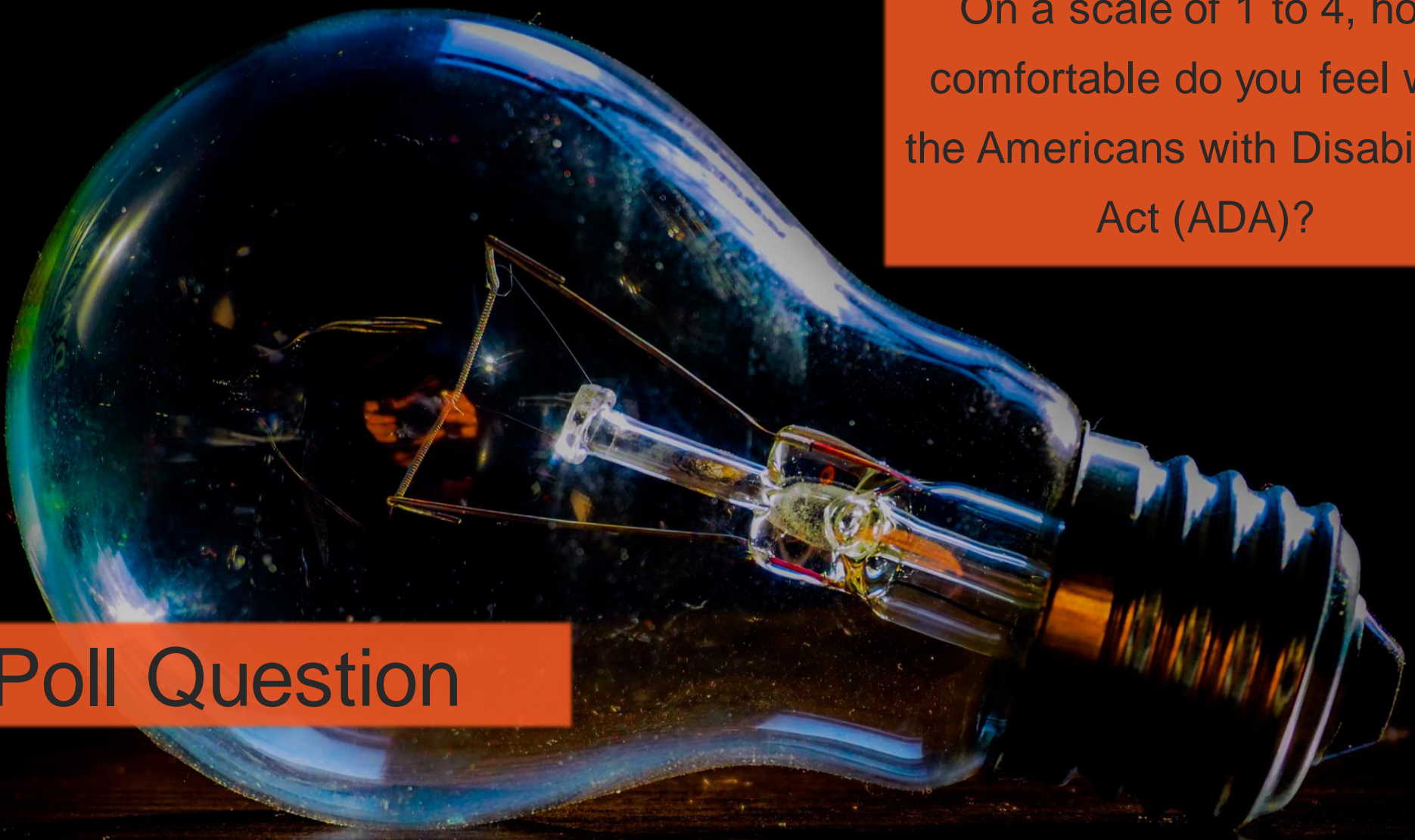


Welcome to the Webinar!

- We will email you a link to the recording + PDF of slides within 24 hours
- Please participate in our poll
- Please use the Q&A box for questions

Agenda

- A Brief History of the ADA
- Disabilities Defined
- Penalties
- An Employee Asked for an Accommodation! Now What?
- Work Accountability Under the ADA
- Accommodations in Hiring



On a scale of 1 to 4, how comfortable do you feel with the Americans with Disabilities Act (ADA)?

Poll Question

A Brief History of the ADA

Or, “It cannot possibly be that new.”



When did the ADA become law?

The ADA and the ADA Amendments Act were passed in 1990 and 2008, respectively.

Let's Talk Disabilities

What is a disability?

dis·abil·i·ty

(noun) A physical, mental, cognitive, or developmental condition that impairs, interferes with, or limits a person's ability to engage in certain tasks or actions or participate in typical daily activities and interactions.



What about the ADA/ADAAA definition?

The ADA/ADAAA defines a disability, as it relates to a person, as:

Someone who

- Has a physical or mental impairment that substantially limits one or more major life activities,
- Has a history or record of such an impairment (such as cancer that is in remission), **or**
- Is perceived by others as having such an impairment (such as an interviewee who has a limp)



What's the Worst That Can Happen?



How bad can non-compliance be?

- EEOC v. Hill Country Farms Inc. (2013)
 - ▶ \$240 Million
- EEOC v. Kaiser Foundation Health Plan of Georgia, Inc. (2021)
 - ▶ \$130,000
- EEOC v. Dollar General (2016)
 - ▶ \$277,565

Can it get even worse? Yes.

- EEOC v. Lonza America LLC (2022)
 - ▶ \$150,000
- EEOC v. L-3 Communications (2019)
 - ▶ \$75,000
- EEOC v. Mine Rite Technologies, LLC (2018)
 - ▶ \$75,000



What's the Reasonable Accommodation Process and Cost?

What is a reasonable accommodation?

(and who kicks off the process of providing one?)

- **Definition:** Any change or adjustment to the job, the work environment, or the way work is customarily done which permits a qualified applicant or employee with a disability to perform the essential functions
- Employees and applicants do *not* have to use the specific words “I am requesting a reasonable accommodation”
 - Best case is when they do, in fact, say, “I’m having an issue because of x.”
 - If they don’t say anything, but you become aware that their ability to perform their job is affected by a health issue, you should broach the topic
- If you’re raising the issue first, you can start the conversation off by simply asking “Is everything okay?”

How much do accommodations cost?

80% of reasonable accommodations requests cost the employer nothing. For example:

- A diabetic employee is allowed keep insulin in fridge
- A person in recovery is scheduled so they don't have to close on Wednesday nights because that is their 12 Step Program Home Group meeting night
- An employee is allowed to keep food or a beverage at their desk
- An employee is allowed to change workstations to an area that doesn't have fluorescent lighting
- An employee is allowed to wear specialty shoes that don't comply with the regular uniform policy



Employee Work Accountability Under the ADA

Is the ADA a pass for poor performance?



- Short answer: **No.**
You can discipline for workplace conduct violations, even if it stems from a disability provided that:
 - The standard is job-related
 - Other employees are held to the same standard
 - You do not have to excuse past conduct*
- *Some federal circuit courts have taken a very employee-friendly view on what employers need to try to accommodate when the “bad” behavior is linked to a disability

Accommodations in Hiring

What if a candidate requests an accommodation?

1. During the application process, consider including a statement that conveys your support of applicants with disabilities and encourages these applicants to reach out with specific needs.

For example:

“{{ client-company }} understands that some applicants may need reasonable accommodations to fully participate in the interview process. Please contact {{ client-company }} at (email/phone number) to discuss your specific needs.”

2. Disclosure of a disability to a potential employer is an incredibly personal choice and one that takes an immense amount of trust. Applicants may be afraid of judgment, adverse reactions, or that disclosure could risk employment opportunities. As such, when an employee or applicant takes that leap, it's important to respond thoughtfully and positively.

What if a candidate requests an accommodation?

When responding to accommodation requests during the hiring process, the following is recommended:

1. Genuinely thank the employee or applicant for disclosing. Ask what types of accommodations they may need.
2. Document any accommodation request.
3. Assuming they do not pose an undue hardship on the company, provide the requested accommodations and proceed with the recruitment process.

Examples of reasonable accommodations:

- Sensory adjustments (related to temperature, light, sound, etc.)
- Providing tools to communicate (screen readers, translators, interpreters, etc.)
- Providing or modifying equipment or devices (sit/stand desk, ergonomic keyboard, etc.)
- Changes to assessments (verbal assessments for the visually impaired, etc.)



Undue Hardship

If a requested accommodation does pose an undue hardship to the company, the applicant should be **re-engaged in the ADA interactive process** to determine if any other reasonable accommodations can be provided.

If the company determines that no reasonable accommodations can be provided, before denying all accommodations and rejecting the applicant, it's recommended to speak to an attorney to assess the risk in doing so.

Undue Hardship Defined



- Under the Americans with Disabilities Act (ADA), an employer is required to provide reasonable accommodations so long as doing so does not create an undue hardship on the organization
- **An undue hardship is defined as something that creates a "significant difficulty or expense"**

"We think it is an undue hardship"

- An employer cannot claim undue hardship based on employee or customer fears or prejudices toward the individual's disability
- An undue hardship also cannot be based on the fact that a reasonable accommodation might have a negative impact on the morale of other employees
- Employers, however, may be able to show undue hardship where a reasonable accommodation would be excessively disruptive to other employees' ability to work



A Final Question

Where is your weak link?

- Supervisors and managers
 - They have a million things to do and don't always pick up on requests for accommodation
- Paying attention
 - Pump the brakes when dealing with a sudden attendance issue. Check in with the manager; don't just approve the coaching or documentation
- Training, training, training!
 - Ensure managers not only complete your trainings but that they also receive regular retraining (or at least revisit the key points)



Q & A

Thank You