Webinar Series

Advancing Equal Employment Opportunities and Creating Inclusive Workplaces

Part 3: The Americans with Disabilities Act (ADA) - Employment and Disclosure

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APSE Employment First Employment for All

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Burton Blatt Institute SYRACUSE UNIVERSITY

Meet the Presenters

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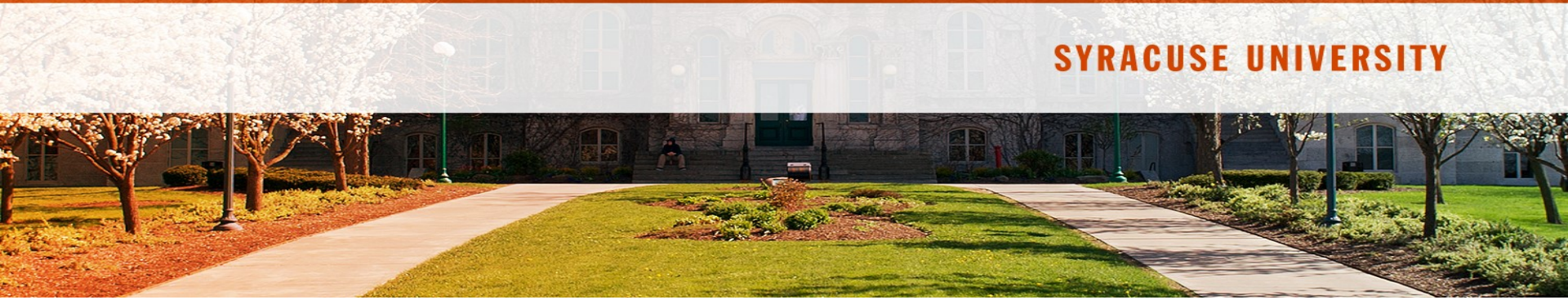
The Americans with Disabilities Act (ADA) Employment and Disclosure



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Funding

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Americans with Disabilities Act Overview

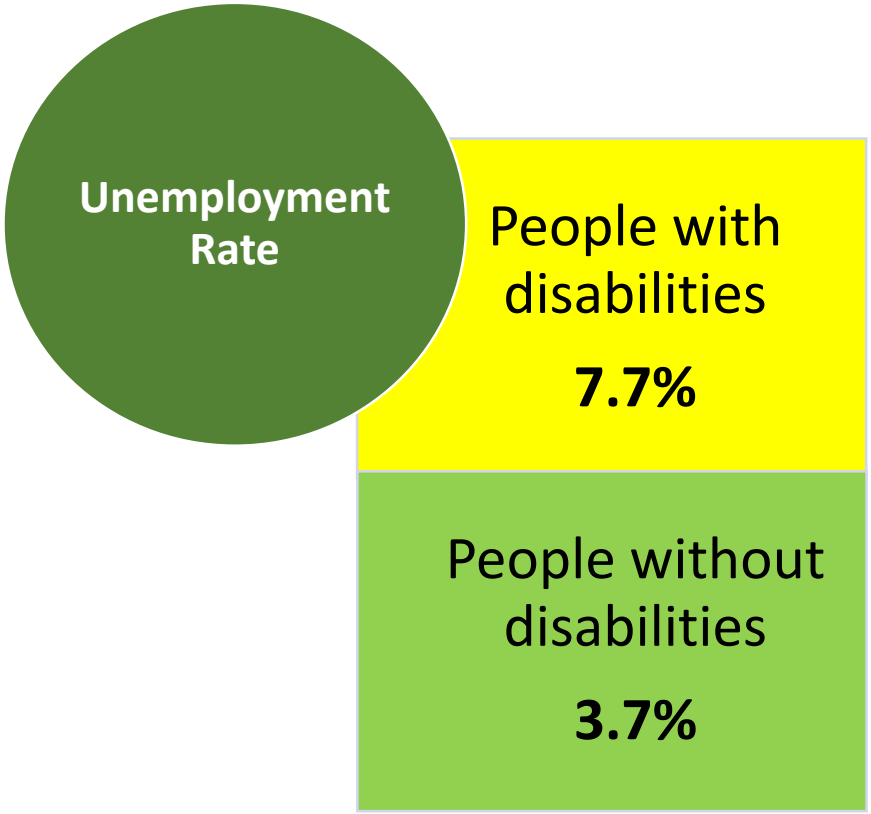
- Landmark **civil rights law** that **guarantees equal treatment** for people with all disabilities or individuals who have an association or relationship with someone who has a disability.

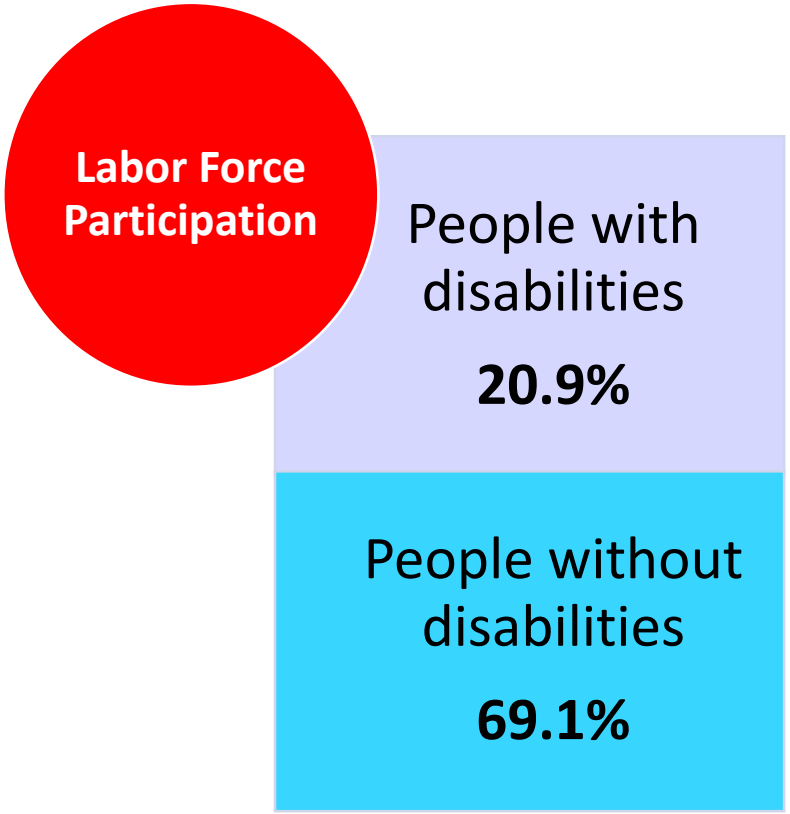
Americans with Disabilities Act – What Does It Cover?

- **Title I** Employment Protections
- **Title II** Public Entities and Transportation
- **Title III** Public Accommodations and Commercial Facilities
- **Title IV** Telecommunications
- **Title V** Technical Provisions

Unemployment vs. Labor Force Participation

June 2019 Disability Employment Statistics - Ages 16 years and over





Source: U.S. Department of Labor - Office of Disability Employment Policy (ODEP)
Link: dol.gov/odep/; Retrieved July 11, 2019

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Title I of the ADA – The Basics

- Employers cannot discriminate against people who have disabilities in regard to:
- any employment practices or terms;
- conditions; or
- privileges of employment.
- This prohibition covers **all aspects** of the employment process.

Exemptions

- Private employers with fewer than 15 employees
- The Federal Government
- Corporations fully owned by the US Government
- Private Membership Clubs
- US Government Executive Agencies
- Indian Nations
- Businesses operating in foreign countries, if compliance violates foreign law

ADA Title I: Qualified Applicant

- An employer cannot discriminate against qualified applicants and employees on the basis of disability.
- A ***qualified applicant*** is an individual who:
- meets the skill, experience, education, and other job-related requirements of a position held or desired, and
- with or without **reasonable accommodation**, can perform the **essential functions of a job**.

ADA and Reasonable Accommodation

- Any change in the work environment or how things are usually done that results in equal employment opportunity for an individual with a disability.
- A business must make a reasonable accommodation to the ***known*** physical or mental limitations of a person with a disability unless it can show that the accommodation would cause an undue hardship on the operation of the business.

Essential Job Functions

- The reason the job exists is to perform that function.
- Only a few employees can perform the function.
- The function is so highly specialized that the employer hires people into the position specifically because of their expertise in performing that function.

Reasonable Accommodation Things to Know

- The presence of a disability does not result in a presumptive reasonable accommodation.
- The person with a disability has a responsibility to disclose his/her need for an accommodation.
- Employers may ask for documentation of a continuing disability.

Who has rights under the ADA?

The ADA applies to applicants or employees who:

1. have a disability; or
2. have a record of having a disability; or
3. are regarded as having a disability.

What is a disability?

- …A physical or mental impairment that substantially limits one or more major life activities*

- **NOTE**: Employers are not required to provide accommodation to employees that are “regarded as” having a disability.

The ADA Amendments Act (ADAAA): Restoration of the Definition of Disability

- Supreme Court rulings narrowed the definition of disability so fewer people had protections.
- Focus became ***defining disability*** not the alleged discrimination.
- The ADAAA restored the definition of disability.
- Broad interpretation of: mitigating measures, episodic conditions, and broadened "regarded as."

Who Are Qualified Individuals Under the ADA?

- **Qualified individuals under the ADA** are:

- Pre-employed applicants
- Full-time employees
- Part-time employees
- Seasonal workers
- Temporary workers

The ADA and the Association Provision

- Prohibits discrimination against a person, whether or not he or she has a disability, because of his or her known relationship or association with a person with a known disability.
- The ADA **does not** require a:
  - family relationship for an individual to be protected by the association provision.
  - a reasonable accommodation to a person without a disability due to that person's association with someone with a disability.

Disclosure Decisions

Disclosure vs. Self-Identification

- **Disclosure**
  - Voluntarily sharing information about a disability
- **Self-identification**
  - Invitation from an employer to voluntary check a box that says the individual has a disability, anonymous, typically used for data collection purposes (Section 503)

Disclosure Basics

- **No standardized form or set of basic information required** for seeking accommodation in the workplace.
- **Disclosure can be made**:
  - Verbally
  - Written
  - Email
  - Someone can make the request for you

Why Disclose?

- The person has an **obvious disability** and wants to address any concerns head-on.
- The person needs an **accommodation** to participate in the interview or do the job.
- Disclosure would offer a **competitive advantage** in the selection process.
- The person wants to **bring his/her "whole self"** to work.
- Explain the **participation of a job coach or employment specialist** in the process.

The Art of Disclosure

Slide 1 of 2

Good Disclosure

- **Focuses on needs**
- Provides **suggestions** for reasonable accommodations
- Is specific rather than general (how my disability affects my ability to perform **essential job functions**)
- Focuses on **job qualifications**, not a disability

The Art of Disclosure

Slide 2 of 2

Good Disclosure

- **Avoids medical terms and labels**
- Discusses **work barriers**, not diagnoses
- Focuses on the **here and now**, not past negative experiences
- Is **positive**

To Whom Do I Disclose?

- It **varies greatly** depending on the employer and the situation.
- **Possible audiences**: recruiters, hiring managers, supervisors/managers, human resources staff, EEO staff, employee selected co-workers, health and safety staff.

- The **key** – only tell those who need to know.

Social Media and Disclosure

(Slide 1 of 2)

- Employers may use social media to seek out information on a job candidate
- Be aware that what you post in social media. It may unintentionally disclose a disability.
  - Pictures
  - Comments
  - Are there things that can be misinterpreted?

Social Media and Disclosure

(Slide 2 of 2)

- Be thoughtful and respectful in your posts.
- Know what information about you can be found on-line.
- Remember, once posted on-line, it never goes away.

Employer Rights and Responsibilities
in the Reasonable Accommodation Process

Documentation

- The employer has the **right to request documentation** about the disclosed disability.
- The documentation must be **job-related and consistent with business necessity**.
- Disability documentation must be kept **confidential**.
- Must be kept in a **secure file separate from the employee's work file**.

Disability Inquiry

- A question, or series of questions, that are likely to solicit information about a person's disability or related medical condition.

Phases of the Employment Process and Disability Inquiries

Pre-Employment (Before an offer of employment)	**No disability inquiries are allowed**
Pre-Employment – Post Offer (After an offer of employment is made)	**Disability inquiries are allowed only if the same inquiry is made of all candidates for the job category**
Employment	**A disability inquiry can only be made if it is job related and of a business necessity**

Things an Employer *Can* Ask in a Disability Inquiry

- A person's **general well-being**
- A **non disability-related** impairment
- Whether a person can perform the **essential job functions**
- Whether a person has been **drinking alcohol**
- Current **illegal use of drugs**
- **Pregnancy** information (i.e., due date and well-being)
- **Emergency contact** information

Things an Employer *Cannot* Ask in a Disability Inquiry

- Whether a person **has, or had, a disability**
- **Medical documentation** of a condition
- **Genetic** information
- **Prior workers' compensation** history
- Current or past **prescription medication usage**

Disclosure Tools and Resources

(slide 1 of 3)

- **The 411 on Disability Disclosure Workbook**

  Link: heath.gwu.edu/files/downloads/411_disability_disclosure_complete.pdf

  Source:

  National Collaborative on Workforce and Disability for Youth

Disclosure Tools and Resources

(slide 2 of 3)

- **Advising Youth with Disabilities on Disclosure: Tips for Service Providers**
  Link: dol.gov/odep/pubs/fact/advising.htm
  Source: U.S. Department of Labor - Office of Disability Employment Policy

- **The Art of Disclosing Your Disability**
  Link: miltwright.com/articles/artofdisclosingyourdisability.pdf
  Source: Richard Pimentel

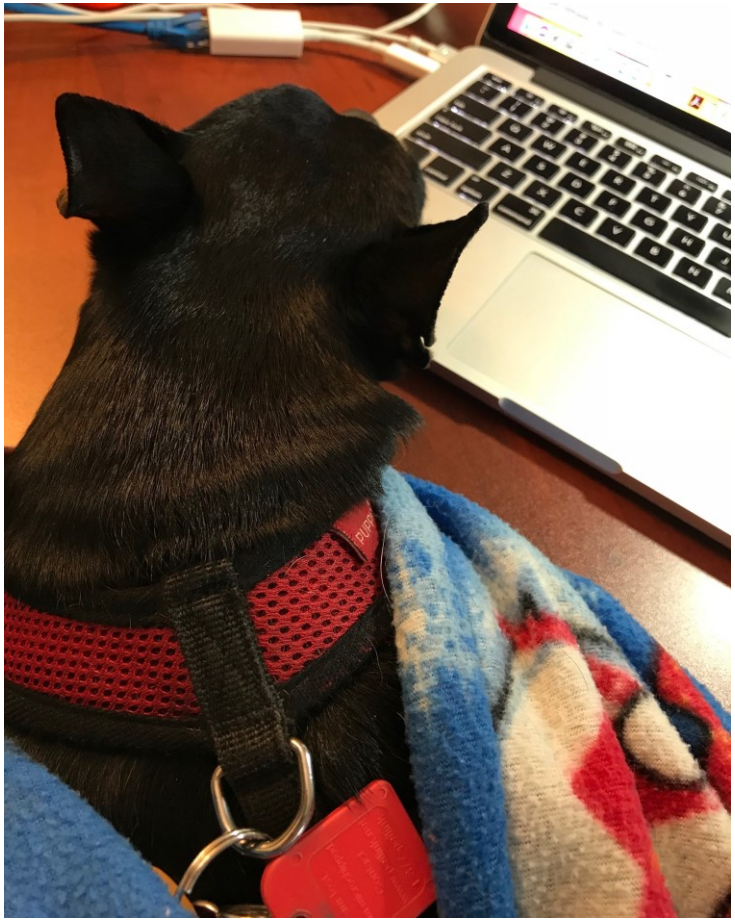
Disclosure Tools and Resources

(slide 3 of 3)

- **Disclosure Decisions to Get the Job**
  Link: vcurrtc.org/resources/viewContent.cfm/585
  Source: Virginia Commonwealth University Rehabilitation Research & Training Center

- **Disclosure Tools**
  Link: askjan.org/topics/Disability-Disclosure.cfm
  Source: Job Accommodation Network

Bandit – The **A**mazing **D**og **A**ssistant



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Credits:

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Archives: Advancing Equal Employment Opportunities and Creating Inclusive Workplaces

or copy and paste

www.adasoutheast.org/webinars/archives.php

Upcoming Webinars

Parts 4-8: Save the Dates!

- September 24, 2019
- October 22, 2019
- November 19, 2019
- January 21, 2020
- February 25, 2020

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- **Telephone**
- 800-949-4232 (toll free)
- 404-541-9001
- 711 (relay)
- **E-mail:** adasoutheast@law.syr.ed
- **Website:** adasoutheast.org

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