



Reasonable Accommodation in Employment

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Overview

1. Disability?
2. Qualified?
3. Reasonable?
4. Interactive Process

WHAT IS A DISABILITY?

- A physical condition that
 - Affects a major life system, and
 - Limits the ability to participate in a major life activity (MLA)



Example: Nearsightedness



WHAT IS A DISABILITY?

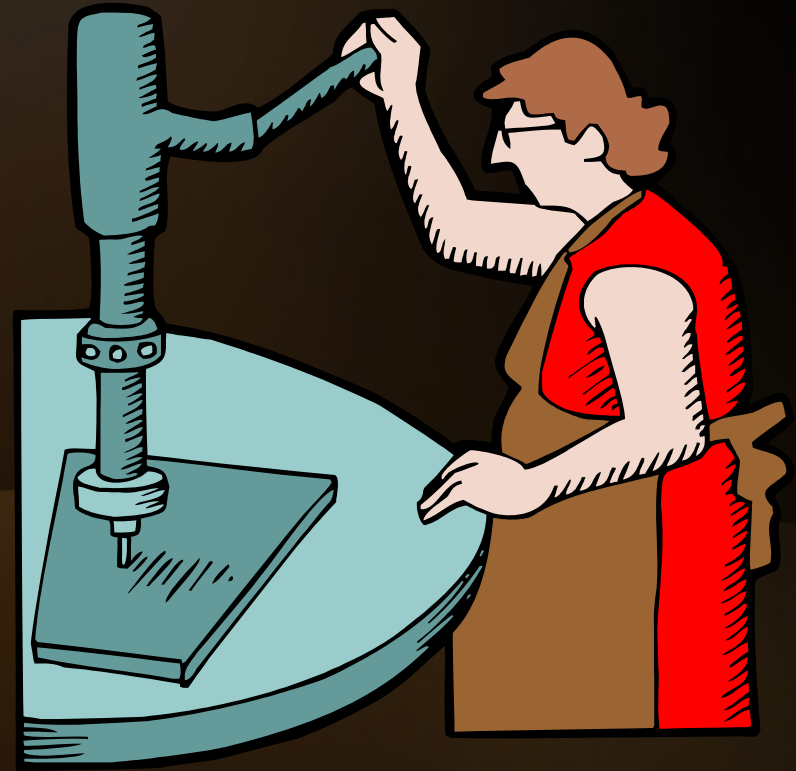
Disability	Maybe	Not
<ul style="list-style-type: none">• HIV/AIDS• Hepatitis• Epilepsy• Clinical depression• Bipolar disorder• Diabetes• Multiple sclerosis• Heart disease	<ul style="list-style-type: none">• Back conditions• Polio• Hypertension and high blood pressure	<ul style="list-style-type: none">• Obesity• Pain

Limitation on Major Life Activity

- “Makes the achievement of the major life activity more difficult”
- What is an MLA?
 - Physical activities,
 - Mental activities,
 - Social activities, and
 - Working

The MLA of Working

- Exclusion from a single job with a single employer constitutes a limitation on "working"



Regarded as having a disability

- Record or history of physical disability
- Regarded as disabled



QUALIFIED?

- OK to discriminate if unable to perform essential duties even with reasonable accommodations

Essential Functions

- The fundamental job duties
 - Not marginal



Example: Essential or Marginal?

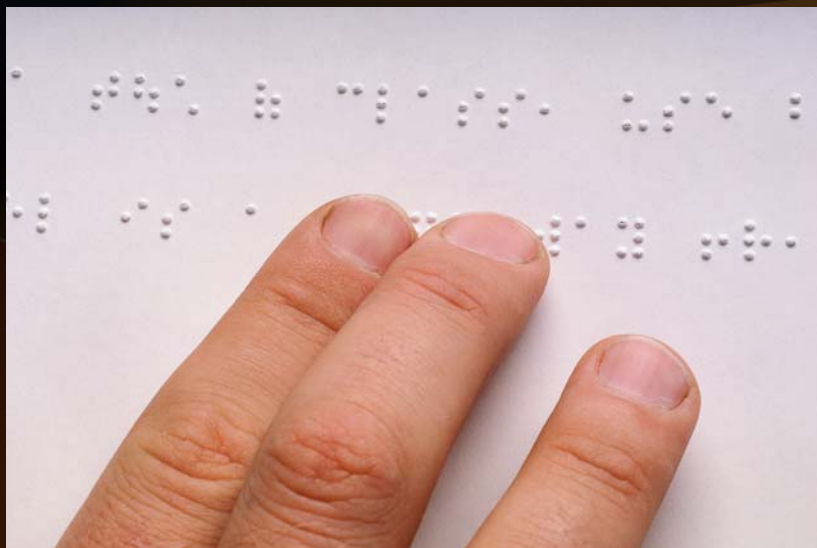
- A cable installer's asthma prevented her from tearing out cables
 - But tearing out cables occupied only 12% of a cable installer's time
 - H: Tearing out cables not an "essential function"

REASONABLE?

UNREASONABLE = UNDUE HARDSHIP

NOTICE

- Knowledge of disability triggers duty to accommodate



ACCESS TO INFORMATION

- No diagnosis
- May ask for functional limitations

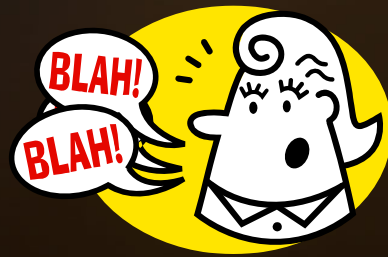
Types of reasonable accommodations

- Making facilities accessible
- Part-time schedule
- Buying new equipment or devices
- Adjusting or modifying examinations
- Providing qualified readers or interpreters
- Leave of absence
- Alcohol or drug rehabilitation
- Reassignment to vacant position

Reassignment to vacant position

- When employee no longer able to perform EF
- Even if less pay
- Preferential consideration over existing employees
 - But, no need to promote or create new position

THE INTERACTIVE PROCESS



Elements

- Timely
- Good Faith
- Interactive
- Purpose is to determine whether an effective accommodation can be found

Employer discretion

- Employer may choose most effective accommodation
 - Less expensive
 - Easier to provide

Hypothetical #1

Marriage and Family therapist Mary Toot counsels patients in psychological crisis for a large HMO. Due to the convergence of stressors including a high caseload, two patient suicides, a sexual harassment scandal at the workplace, and the onset of menopause, Mary suffers a nervous breakdown, becoming completely unable to work.

What should her employer do?

- Leave of absence
- Return to work when Mary's doctor says she's ready:
 - Reduced hours
 - No crisis counseling
 - Different supervisor

Hypothetical #2

Nurse Practitioner Deena Mahon performs routine patient care at the OB/GYN clinic of a large HMO. She develops repetitive stress injuries in her wrist and shoulder due to a poor ergonomic environment and the relentless appointment schedule. Her employer replaces some of the equipment in her examination room, but Deena continues to experience pain on the job. After speaking with her doctor, she brings in a note asking to work a six hour day.

What should her employer do?

- Ergonomic evaluation of exam room, equipment
- Redistribution of tasks?
- Flexible scheduling
- Undue burden analysis

Hypothetical #3

Jane Chow works the swing shift at the County Jail, booking inmates. She has high blood pressure. Sometimes there are not enough workers reporting in on the graveyard shift, and Jane is required to work a double shift on those days. When she is asked to work a double shift, Jane experiences an episode of high blood pressure, and uses her sick leave to go home.

- Should Jane's employer allow her to be excused from the second shift as a reasonable accommodation?
- Now consider that Jane's union contract requires her to work a double shift when necessary to provide adequate coverage for the Jail.
 - Does this change your answer?

THE END

