




## Transition & Employment Rights

**Connect to Community  
Friday Forum  
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## Equip for Equality

**Mission:** Advancing the human & civil rights of people with disabilities in Illinois

- Legal Advocacy
- Training & Education
- Public Policy Advocacy
- Self-Determination
- Latino Outreach
- Traumatic Brain Injury
- Information & Referral
- Abuse/Neglect Investigations
- Self-Advocacy Assistance
- Employment Issues
- Special Education
- Assistive Technology

**(800) 537-2632 (V) (800) 610-2779 (TTY)**  
[www.equipforequality.org](http://www.equipforequality.org)

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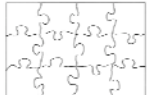
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## Training Outline



- Anti-Discrimination Laws
- Transitioning to Work – Rights Under the ADA
  - General Anti-Discrimination
  - Reasonable Accommodations
  - Disclosure
  - Medical Exams and Inquiries, Harassment, Retaliation, Confidentiality
- Transitioning to School – Rights Under the ADA
- Resources
- Questions

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**Rehabilitation Act of 1973**



## Employment Discrimination... So Many Laws!

**1973: The Rehabilitation Act (Federal Law)**  
Prohibits employment discrimination for qualified individuals with disabilities who work for:

- Federal government
- Entities that receive federal funding (including colleges)

**1979: Illinois Human Rights Act (State Law)**  
Prohibits employment discrimination for qualified individuals with disabilities who work for:

- State government
- Local government
- Private businesses with 1+ employee

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## Employment Discrimination: Disability Rights Laws



**1990: Americans With Disabilities Act (Federal Law)**  
Prohibits employment discrimination for qualified individuals with disabilities who work for:

- State government
- Local government
- Private businesses with 15+ employees

**Local Laws (example: Cook County; Chicago)**

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## What Does the Law Do?



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## Workplace Protections

**Protects qualified applicants/employees with disabilities in:**

- Job application procedures
- Hiring / Firing
- Benefits and Compensation
- Advancement
- Training
- Any terms, conditions, or privileges of employment
- Refusing to provide reasonable accommodations
- Certain medical exams and inquiries

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## You Be The Judge

- **Bill** has an intellectual disability. He applied to be a French language translator, but he does not speak French. He is not selected – is this discrimination?



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## Qualified

**No – Individual must be also be qualified**

An employee is "qualified" for a position if s/he:

- (1) satisfies the requisite skill, experience, education, and other job-related requirements of the position, and
- (2) can perform the essential functions of the position, with or without reasonable accommodation.

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## Essential Job Functions



Factors to consider when determining whether a job function is essential:

- The employer's judgment
- Job descriptions
- The amount of time spent performing the function
- The consequences of not requiring the person to perform the function
- The terms of a collective bargaining agreement
- The work experience of others who have had, or currently hold, the same or similar positions

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## Workplace Protections

**Q. Does an employer have to give preference to a qualified applicant with a disability over other applicants?**

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## Workplace Protections: Limitations

### Answer

**ADA:** No. An employer is free to select the most qualified applicant available and to make decisions based on reasons unrelated to the existence or consequence of a disability.

<http://www.eeoc.gov/facts/adaqa1.html>

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## Workplace Protections: Limitations

Q. Does having a disability protect an individual from being fired or laid off?

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## Workplace Protections: Limitations

### Answer

**ADA:** No. The ADA protects you from being discriminated against because of your disability. It is not a violation for your employer to fire, demote, not promote, reduce hours, or change any other condition of your employment for some other reason unrelated to your disability.

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## Reasonable Accommodations

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## Reasonable Accommodation

**Discrimination under the ADA may include:**

- Not providing a reasonable accommodation for known limitations caused by a disability

**What is a Reasonable Accommodation?**

- Modifications or adjustments to the work environment, or ...
- to the manner or circumstances under which the position is customarily performed ...
- that enable a qualified individual with a disability to perform the essential functions of that position ... or ...
- enjoy equal benefits and privileges of employment.

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## Three Categories of Accommodations

- Application Process
- Performance of the essential functions of the position
- Enjoyment of equal benefits and privileges of employment

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## Examples of Accommodations for Job Applications / Interviews

- Replacing a written test with a more extensive interview
- Allowing a support person during the interview
- Conducting the interview in a physically accessible location
- Modifying tests, training materials, testing time, and/or policy manuals
- Providing someone to read/interpret application materials
- Demonstrating what the job requires

**Other examples?**

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## Examples of Employment Accommodations

- Reassigning "marginal" tasks
- Modifying training or providing additional training
  - ◊ Slower pace; additional time; breaking up job tasks
  - ◊ Using charts, pictures, or colors
- Providing a tape recorder to record directions to help memory
- Use detailed schedules for completing tasks
- Permitting / providing a job coach
- Modifying work schedule or shift change
- Permitting support person in job evals or disciplinary proceedings
- Acquiring or modifying equipment or devices

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Other examples?

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## Examples of Accommodations for Benefits/Privileges of Employment

- Holding office parties at in an accessible location
- Accessible cafeterias or employee lounges
- Accessible parking
- Sign language interpreter for job training

Other examples?

### Examples:

JAN: <http://askjan.org/media/intcog.html>

EEOC: [www.eeoc.gov/laws/types/intellectual\\_disabilities.cfm](http://www.eeoc.gov/laws/types/intellectual_disabilities.cfm)

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## Not Required to Provide An Accommodation That...

- Causes an **undue hardship** to the employer
- Results in a **direct threat** to the health or safety of the employee or others
- Is **unreasonable**
  - ◊ Requires reallocation of essential job functions
  - ◊ Will not enable to the employee to be qualified
  - ◊ Lowers production standards applied to all employees
  - ◊ Provides personal use items
  - ◊ Changes an employee's supervisor
  - ◊ Excuses violation of uniformly applied conduct rules

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## What Should We Do?

Maria has been hired to work at a large retail store and is required to do computer-based work. At home and in school, she uses computer with voice output. She is nervous that she won't be able to do the job without that software. The software is expensive.

What should Maria do?

- What should she say? Who? How? When?
- Can someone else do it for her?

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## Interactive Process Step 1: Employee Request



- Requests do not need to be in writing
  - ◊ Best practice: Put it in writing
- There is no specific language that must be used
  - ◊ Best practice: Use ADA and reasonable accommodation
  - ◊ Best practice: Use employer-created forms
    - State employees: Most state agencies have their own forms (ask supervisor, agency EEO/AA Officer, ADA coordinator)

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## Interactive Process Step 1: Employee Request

- Another person may request an accommodation on the employee's behalf
- Request should describe:
  - ◊ Nature of the disability/resulting limitation
  - ◊ Need for an accommodation
  - ◊ Requested accommodation, if known

What happens after the request is made?

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**Step 2: Interactive Process**



- Considerations during discussions with employer:
  - ✦ Is the requested accommodation reasonable and effective?
  - ✦ Do other possible accommodations need to be examined?
  - ✦ Employers must provide an **effective accommodation**, not necessarily the requested one.
  - ✦ Employee's preference gets "primary consideration."

How do the following factors play into this?

- Small neighborhood store v. Target?
- What if DRS will pay for the software?
- What if there is software that is cheaper?

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**Step 2: Interactive Process**



- Consult with:
  - ✦ Supervisor and possibly HR
  - ✦ Doctors
  - ✦ VR agency
  - ✦ Computer experts
  - ✦ Resources – Job Accommodation Network

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**Reasonable Accommodation**  
**Step 2: Initiate Interactive Process**

- Employers may request limited medical info regarding:
  - ✦ The nature, severity, and duration of the impairment.
  - ✦ The activity or activities that the impairment limits.
  - ✦ The extent of the limitations of the impairment.
  - ✦ How the impairment(s) relate to the accommodation.
- Employers are not entitled to release of entire medical record

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**Reasonable Accommodation**  
**Step 3: Implement Accommodation**

- If an effective reasonable accommodation is agreed upon, it should be implemented and there should be follow-up to ensure its effectiveness.
- The duty to accommodate is ongoing. The interactive process and the duty to accommodate can continue beyond the initial accommodation. The employer may need to modify the current accommodation or provide a new accommodation.

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**Disclosure**



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**Disclosing a Disability**

**Question:**  
Am I required to disclose my disability?

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## Disclosing a Disability

Answer:

No – you are not required to disclose your disability unless you decide to request a reasonable accommodation.

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## Disclosing a Disability

Question:

Should you disclose your disability?



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## Disclosing a Disability

A. It depends on personal situation – Reasons you may want to disclose:

- You are applying for a position with a government that has an affirmative action program for people with disabilities
- You are applying for or working for a known disability-friendly employer
- Your disability makes you more qualified for your job
- You are requesting a reasonable accommodation

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Other ideas?

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**Resources about Disclosure**

- JAN fact sheet:
  - ✦ [askjan.org/media/disclosurefact.doc](http://askjan.org/media/disclosurefact.doc)
- Illinois ADA Project fact sheet:
  - ✦ [www.ada-il.org/resources/disabilitydisclosureFAQ.doc](http://www.ada-il.org/resources/disabilitydisclosureFAQ.doc)

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**Snapshot of Other Employment Protections**



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**Restrictions on Medical Exams & Inquiries**

Three Stages of Employment =  
Three Different Rules for Medical Exams and Medical Inquiries

- Pre-Employment: Application and Interview
- After a Conditional Job Offer Has Been Extended
- Current Employees

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## Disability Harassment: Recent Case



### *EEOC v. Mont Brook, Inc.* 2014 WL 2119862 (N.D. Ill. 2014)

- Employee w/ physical disability filed a hostile work environment claim
- Allegations:
  - ◊ Co. president called her "a cripple" on 2 occasions
  - ◊ Mocked her by imitating the way that she walked
  - ◊ When plaintiff objected, called her a "hysterical basket case"
- Employer: Filed motion to dismiss – allegations don't rise to the level of sufficiently pervasive/severe conduct
- Court: Found for employee – case could move forward
- Status: Case settled

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## Retaliation

- Retaliation occurs when an employer, employment agency, or labor organization takes an **adverse action** against a **covered individual** because he or she engaged in a **protected activity**.
  - ◊ Adverse Action
  - ◊ Covered Individual
  - ◊ Protected Activity

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## Confidentiality



- All information about disability and accommodations must be kept confidential
- Information can be available to supervisory staff but only on a "Need to Know Basis"
- Keep separate medical and personnel files
- Beware of office gossip
- What should employers tell co-workers?
- Exception for "voluntary" medical information

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## Disability Discrimination in College



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## Non-Discrimination Requirements



Title II v. Title III v. Rehabilitation Act

- Public colleges covered by Title II of the ADA
- Private colleges covered by Title III of the ADA
- Colleges that receive federal funds covered by the Rehabilitation Act

Discrimination Defined

- Slightly different requirements, but generally, prohibit discrimination against individuals with learning disabilities.
- Discrimination includes failing to make reasonable modifications or accommodations in policies, practices, or procedures.
- Note: ADA/504 is different from IDEA

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## Possible ADA Modifications or Accommodations



- Reasonable modifications may include:
  - Extended time for tests
  - Alternative sites (distraction-free testing)
  - Alternative methods for testing
  - Assistive technology (talking book)
  - Note-takers
  - Readers
  - Re-take tests in certain circumstances.
- *Peters v. University of Cincinnati College of Medicine*, 2010 WL 3878601 (S.D. Ohio, Sept. 6, 2012)

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## Reasonable Accommodations



- Reasonable modifications may not include:
  - Lowered criteria for admission.
    - *Gent v. Radford Univ.*, 976 F. Supp. 391, 393 (W.D. Va. 1997)
  - Requests to lower academic standards or required GPA.
    - *Beitts v. Rector and Visitors of University of Virginia*, 198 F. Supp. 2d 787 (W.D. Va. 2002) (waiving of GPA requirement was not reasonable)
  - Requests to modify curriculum.
    - *Guckenberger v. Boston Univ.*, 8 F. Supp. 2d 82 (D. Mass. 1998) (waiver of foreign language requirement was not reasonable)

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## Best Practices



- Connect with disability services office
- Follow University procedures for requesting accommodation
- Do not wait until to request an accommodation
- Make requests for accommodations in writing
- Keep records of all requests
- Take advantage of University resources available for all students (tutoring, peer editing, etc.)

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## Resources



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## EFE: Examples of our work

### *Civil Rights Team*

- Community integration - *Ligas*
- Employment discrimination – Case examples
- Guardianship restoration

### *Special Education*

### *Abuse / Neglect Investigations*

### *Policy*

- Employment First Blueprint

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## Resources

- **Great Lakes ADA Center** - [www.adagreatlakes.org](http://www.adagreatlakes.org); 800/949-4232(V/TTY)
- **Job Accommodation Network** - <http://askjan.org/>
- **Department of Justice** – [www.ada.gov](http://www.ada.gov)
- **Equal Employment Opportunity Commission** - [www.eeoc.gov](http://www.eeoc.gov)
- **Equip For Equality** - [www.equipforequality.org](http://www.equipforequality.org); 800/537-2632 (V); 800/610-2779 (TTY)
- **Illinois ADA Project** - [www.ada-il.org](http://www.ada-il.org); 877/ADA-3601 (V); 800/610-2779 (TTY)

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