
Reasonably Accommodating Employees with Disabilities

Fulfilling Legal Obligations While Addressing Management
Challenges

Tuesday, June 12, 2012

Foster Pepper PLLC
Seattle, Washington

Presented by:



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Presentation

Presented by:

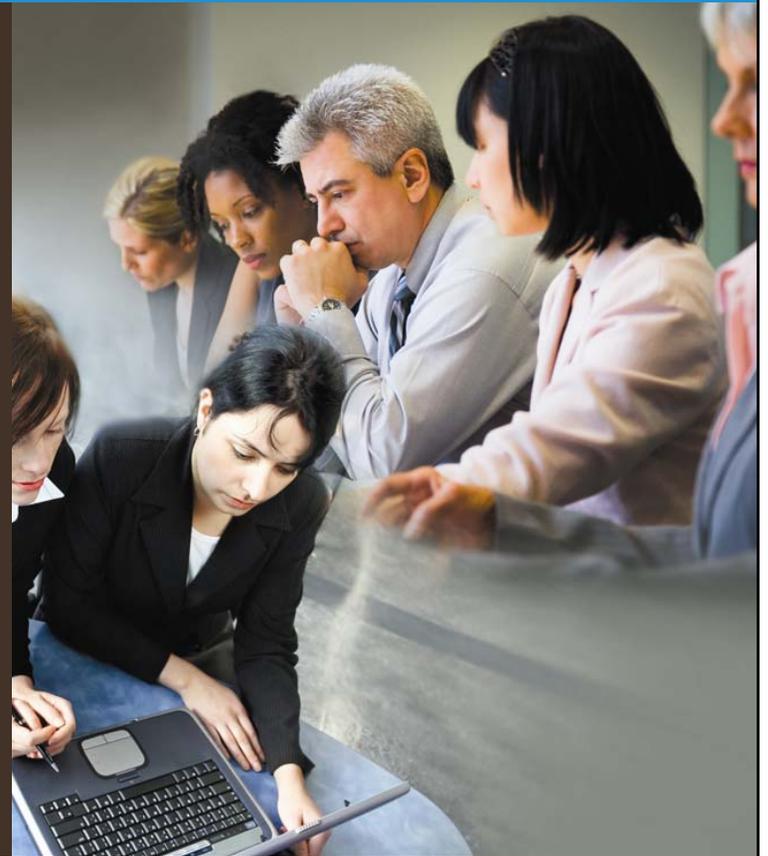




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Reasonably Accommodating Employees with Disabilities:

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Management Challenges*



Please Fill Out Evaluations



Employment Law Update



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Federal Law Protects Transgender Individuals

- EEOC interprets Title VII to prohibit discrimination against transgender people
- Employees and applicants can file EECO charges
- Not binding on courts, but persuasive
- WLAD already prohibits discrimination on basis of sex orientation, which includes transgender self-identification



Legislation on Social Media Access

- Multiple states bar employers from requiring employees or applicants to disclose password to social media accounts
- Washington state senate considering similar legislation
- Even if legal, employers should not seek passwords
 - Cultural impact
 - Learn information employer may not want to know



NLRB Clarifications on Social Media Policies

- Social media policies MAY NOT:
 - Prohibit “disparaging or defamatory” comments
 - Instruct employees to “think carefully” about friending co-workers
 - Encourage report of “unusual or inappropriate social media activity”
 - Require “a friendly tone” and avoid objectionable topics
- Social media policies MAY:
 - Prohibit online harassment between co-workers
 - Generally advise employees to be cautious



NLRB Posting Requirements

- Regulation would require posted notices of employee rights under the National Labor Relations Act (NLRA); compliance delayed multiple times
- Appeals court stayed enforcement until at least September



Seattle Sick Leave Ordinance Challenged

- Two railroads suing to invalidate ordinance
- Ordinance requires paid sick and “safe” time for employees, effective September 1, 2012
- Lawsuit relies in part on laws covering transportation industry
- Court could bar enforcement of some or all the ordinance
- Employers still should be ready to comply

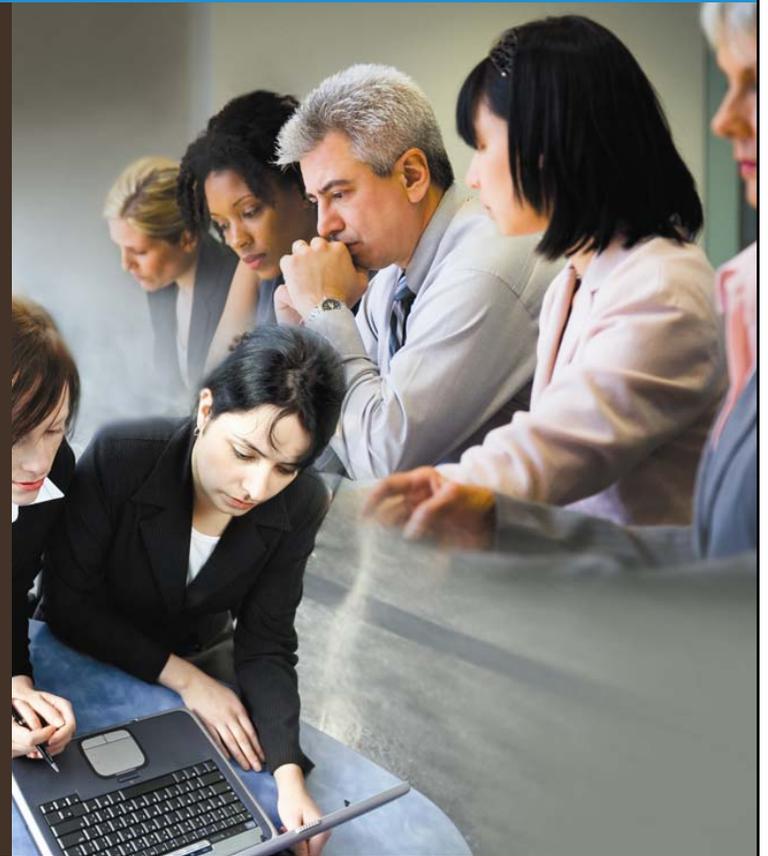




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Today's Topics

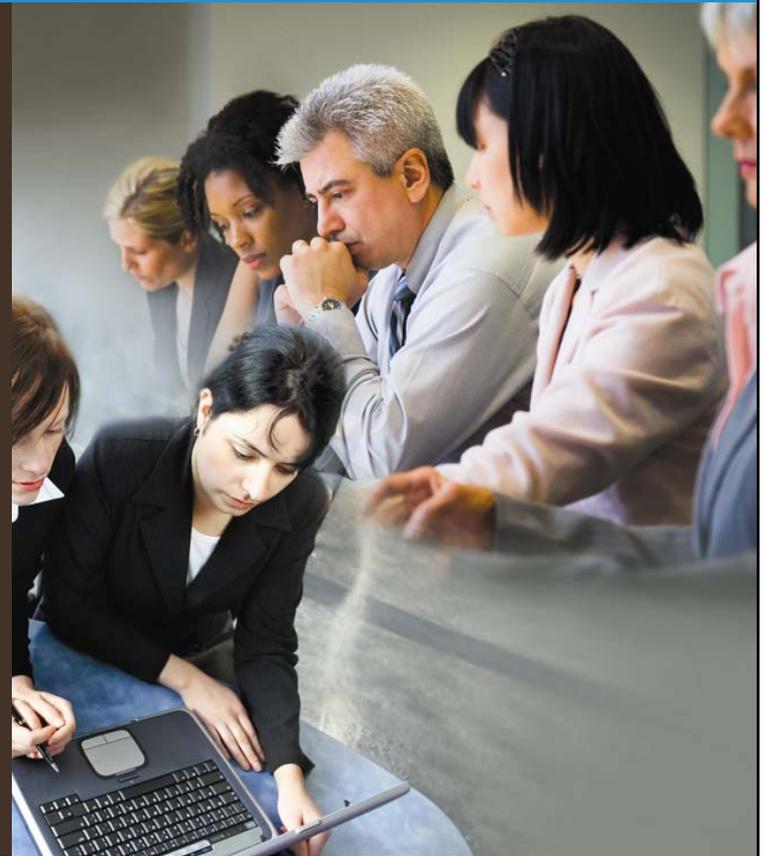
- Broadened **definition of disability** under state and federal law
- Circumstances that **require** reasonable accommodation
- Employer obligations to engage in the **interactive process**
- How to **respond to a request** for accommodation
- Examples of **reasonable accommodations**
- Harmonizing requirements under **FMLA, workers' compensation, and collective bargaining agreements**
- **Avoiding retaliation claims**





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Washington and Federal Laws on Disability Accommodation



Amy L. Kauppila

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Overview: Disability Discrimination Laws

- The Americans with Disabilities Act of 1990 (**ADA**)
- Washington Law Against Discrimination (**WLAD**)
- Under **both laws**, employers may not discriminate against employees or job applicants in employment-related decisions such as hiring, promotion, or termination
- The **ADA** (with limited exceptions) applies to all private, state and local government employers with 15 or more employees
- The **WLAD** applies to all Washington state employers with at least 8 employees



Definition of Disability - ADA

The ADA defines “disability” in one of three ways:

- A physical or mental impairment that **substantially limits** one or more **major life activities**;
- A record or past history of impairment; or
- Being “regarded as” having an impairment.

Does not apply to “transient or minor impairments” – non-recurring conditions with a prognosis for short-term recovery.

29 C.F.R. Section 1630.2(g)(1)(2011).



“Major Life Activities”

- 2008 ADA amendments expand “major life activities”
 - Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working
 - **“Operation of a major bodily function,”** including functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.



Definition of Disability – Washington

A person has a “disability” if he/she has a **sensory, mental, or physical impairment** that is:

- Medically recognizable or diagnosable;
- Recorded in their medical records; or
- Perceived to exist, whether or not it actually exists.

RCW 49.60.040(7).



Definition of Impairment – Washington

What is a sensory, mental or physical “impairment”?

- Any physiological disorder, condition, cosmetic disfigurement, or anatomical loss affecting one or more bodily systems (*i.e.*, neurological, cardiovascular, reproductive, digestive, skin)
- Any mental, developmental, traumatic, or psychological disorder (*i.e.*, mental illness, specific learning disabilities, cognitive limitations, organic brain syndrome)

RCW 49.60.040(7).



ADA versus WLAD

- WLAD disability definition broader than ADA, covers more physical, mental, or psychological conditions
- Temporary conditions explicitly covered under WLAD
- WLAD does not require condition to have an impact on a “major life activity” or be “substantially limiting;” however, must have a substantially limiting effect on individual’s ability to perform the job



Other Considerations in Identifying a Disability

- Mitigating measures not considered
 - Medication
 - Psychotherapy
 - Medical supplies, equipment or devices
- Episodic, temporary conditions covered under WLAD
 - Epilepsy
 - Mental illnesses
 - Pregnancy-related medical conditions



Tricky Cases

- Psychiatric illnesses – bipolar disorder, depression, PTSD, schizophrenia
- Drug and/or alcohol addiction – only protects those who have undergone or are enrolled in a rehabilitative treatment program
- Obesity?



Qualification for Reasonable Accommodation

Under WLAD, impairment must **substantially limit** individual's ability to:

- Perform his/her job OR
- Apply for or be considered for a job OR
- Receive equal access to benefits, privileges, or other terms or conditions of employment. RCW 49.60.040(7)(d)(i).

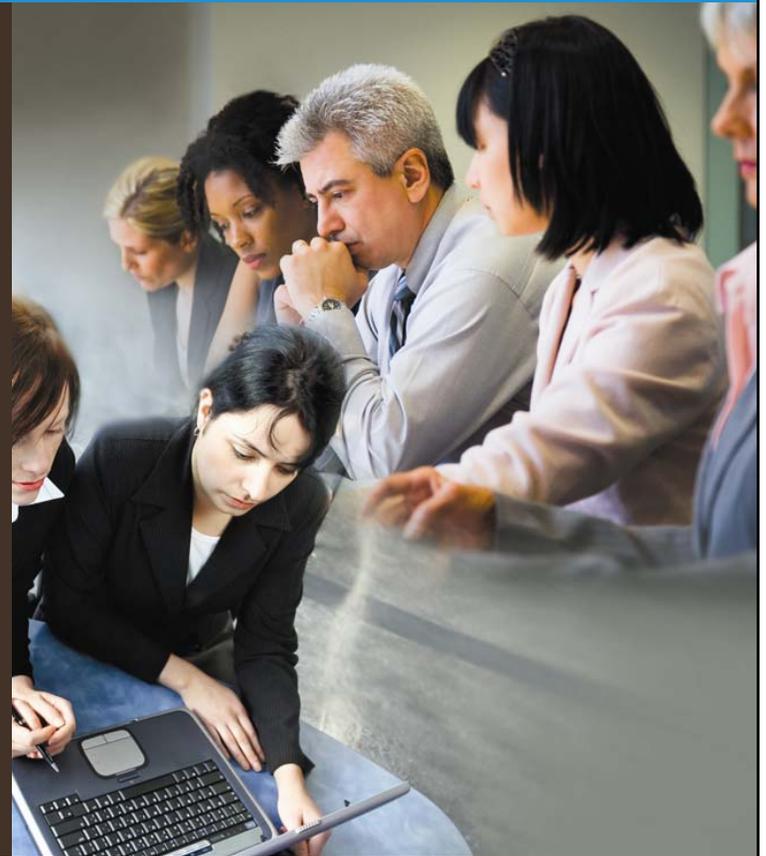
Alternative test: reasonable likelihood that working without accommodation would **aggravate the impairment** and create a "substantially limiting" effect





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Disability Accommodation: *Navigating the Interactive Process*

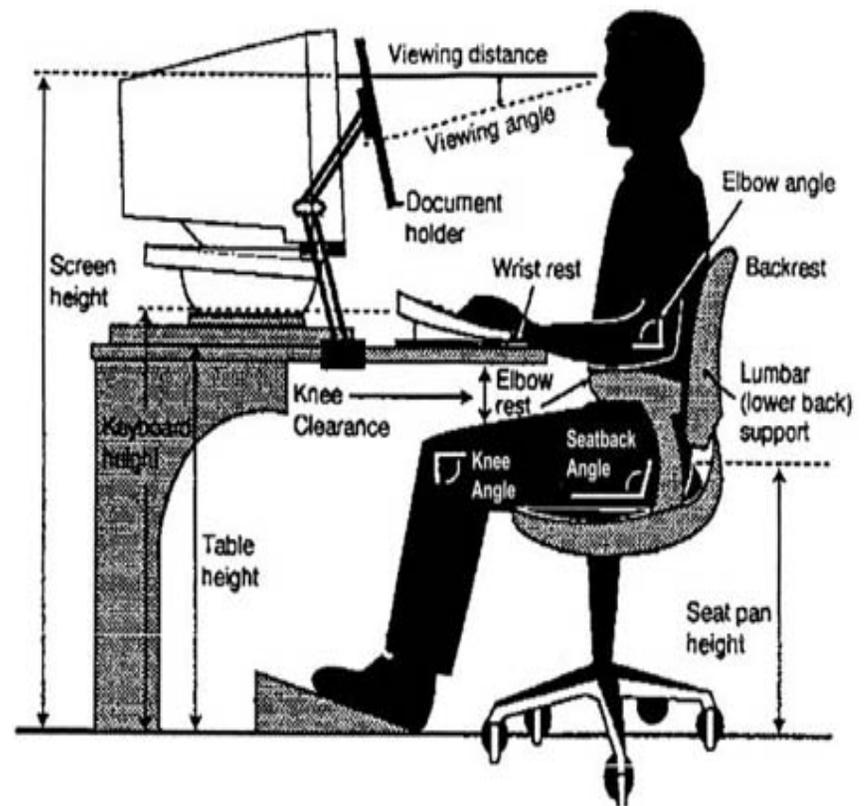


Katie Carder McCoy

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What is a Reasonable Accommodation?

Change in the work, workplace, or application process that helps individual with a disability to perform or apply for a job



What triggers the duty to accommodate?

Employer Awareness: The duty of reasonable accommodation does not arise until the employer is “aware of respondent’s disability and physical limitations.”

Goodman v. Boeing Co., 127 Wn.2d 401 (1995).



What is the Interactive Process?

Informal practice in which the **individual and the employer** determine precise limitations created by the disability and how to best respond to the need for accommodation



Interactive Process – The Employer’s Role

- Document **receipt of the request** for accommodation
- Determine whether **individual with a “disability”**
- Evaluate **essential functions** of position
- Ask for information about **the extent of the impairment**, including notes from health care providers
- Discuss **accommodation alternatives** with the individual
- Document discussion and **final determination**



Interactive Process – The Employee’s Role



- Cooperate in **information-gathering** requests
- Consider **alternative**, reasonable accommodations
- Participate in interactive process in **good faith**



Receiving requests for accommodation

- Accommodation requests may be in writing *or* orally
- No specific forms or words must be used
- No obligation to reference law or use term “accommodation”



What are the job's *essential functions*?

Employer should consider:

- Written **job descriptions**
- Whether reasons the position **exists** include performing that function
- **Amount of time** spent performing the function
- The judgment of **those who have experience** working in and around the position



Information Gathering

- Notes from doctors or health care providers
- Request medical testing relevant to the accommodation request
- Limited scope
- Confidentiality



Exploring Reasonable Accommodations



“No wonder your arm aches. Shackles should be placed at eye level. Man, it’s an ergonomic nightmare down here.”



Exploring Reasonable Accommodations

Reasonable accommodation may include adjustments in:

- job duties
- work schedules
- scope of work
- changes in the job setting or conditions of employment

to allow person to perform “essential functions” of the job



Examples of Reasonable Accommodations

- Acquiring or modifying equipment or devices
- Restructuring job
- Allowing part-time or modified work schedules
- Providing leave
- Allowing use of reserved parking spaces
- Providing qualified readers or interpreters
- Allowing service animals



No Accommodation Possible?

If disabled employee cannot be accommodated in his or her position, employer must take affirmative steps to help employee identify and apply for **any vacant position** for which the **employee is qualified**. *Davis v. Microsoft Corp.*, 149 Wn.2d 521 (2003).



Exception – Undue Hardship

An accommodation is an undue hardship if **cost or difficulty is unreasonable** considering:

- Size of and resources available to employer;
- Whether cost can be included in planned remodeling or maintenance; and
- Requirements of other laws and contracts, or other appropriate considerations.

WAC 162-22-075.



Document Efforts to Reasonably Accommodate

- Consider using a **log sheet** to record every attempt at accommodation and the employee's corresponding response
- **Memorialize conversations** with the individual about accommodation options
- Document **final determination** about how the accommodation request is resolved, providing copies to the individual



Job Accommodation: Engineering the Work Place for Employees with Disabilities

***Barney Fleming, PhD, ATP
Northwest ADA Center
University of Washington***

June 12, 2012

Northwest  Center



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***Reasonable Accommodation
= Job Accommodation***

“ANY change in the work environment or the ways things are customarily done which will allow a person with a disability an equal employment opportunity”

Is there a prescribed approach to the job accommodation process?

- ***“to determine the appropriate reasonable accommodation it may be necessary for the employer to initiate an informal, interactive process with the employee with a disability.”***
(Title I regulations – interpretive guidance)



Step-wise Approach for Providing a Job Accommodation (if needed)

Modified from: Job Accommodation Network and ADA -Title I

"I would like to talk with you about some changes that I need at work because of a medical condition"

The request for an accommodation!

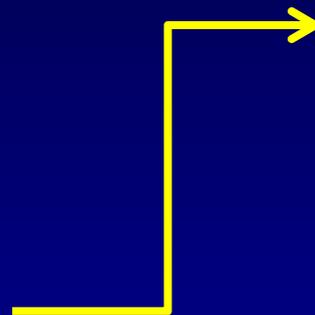
Gather Information

Explore Options

Choose Accommodation

Implement Accommodation

Monitor Accommodation



Job Accommodation Examples

“Engineering an Accommodation”

***Consultation
with the
employee***

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graph LR; A[Consultation with the employee] --> B[Effective accommodation not always identified]; B --> C[Seek technical assistance (Medical, VR, rehab engineers, AT Projects, JAN, web, etc.)];
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***Effective
accommodation
not always
identified***

***Seek technical
assistance
(Medical, VR,
rehab engineers,
AT Projects, JAN,
web, etc.)***

Job Accommodation Example

Receptionist – Vision Impairment

Operating telephone console – difficulty visualizing steady and flashing lights

Light-sensing pen with auditory output (see arrow)



Recognize Presence of visitor

Floor mat with pressure-activated switch is connected to audible signal



Job Accommodation Example ***Receptionist – Vision Impairment***

***Seeing Information on
the computer screen –
Screen Magnification
Software***



***(and if needed some day
there is also Screen
Reader Software which
provides complete
auditory access to all
information on the
computer)***



Job Accommodation Example

Data Entry – Errors Due to Attention Deficits

The image shows a 1040 tax form with a yellow arrow pointing to a green plastic sheet template. The form is a standard 1040 with various sections for income, deductions, and taxes. The green plastic sheet is a template with cutouts for the data entry fields on the form. The arrow points from the form to the template, indicating the solution for data entry errors.



“Highlighting” would visually isolate the needed data but marking on the forms is not an acceptable option.

Solution...Plastic sheet template with cutouts to overlay on form.

Job Accommodation Example Electronics Assembly – Lower Back Pain



Access work area from a prone position using a work platform mounted on wheels, for easy relocation along the work area, and having cutouts for arm clearance. In later designs, a head support was added to reduce potential neck strain.

Acknowledgement: Rich Gardner, P.E., Industrial Ergonomist, Boeing Commercial Airplanes - Seattle, WA

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Job Accommodation Example Grocery Store Employee – Memory Deficits



***Difficulty Remembering a Sequence of
Locations in Grocery Store***

***Low-tech – Picture album showing the
sequence of locations***

***High-tech – “On-Task Timer” with picture
prompts and vibrating case***

Job Accommodation Example

Inventory Clerk - Difficulty Holding Onto a Hand-held Barcode Reader.



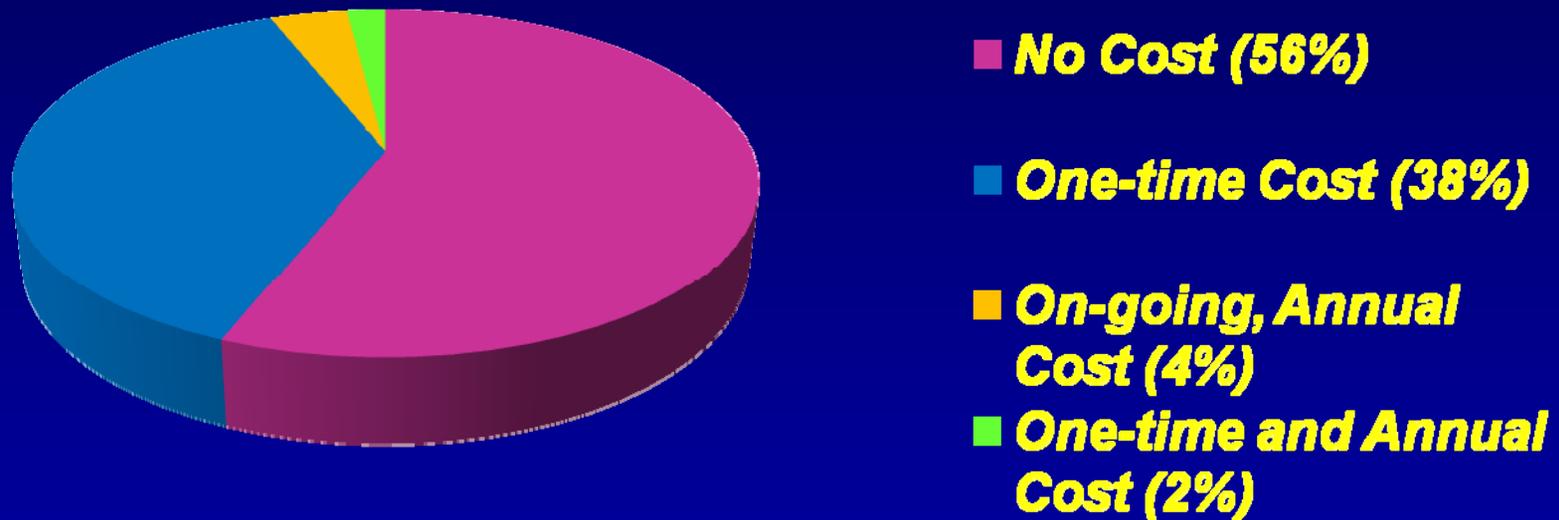
The management wanted to give him more hours for inventory in other departments but were afraid he would drop the \$1000 reader.

Shoulder strap and clamp for holding barcode reader.

Costs of Job Accommodations

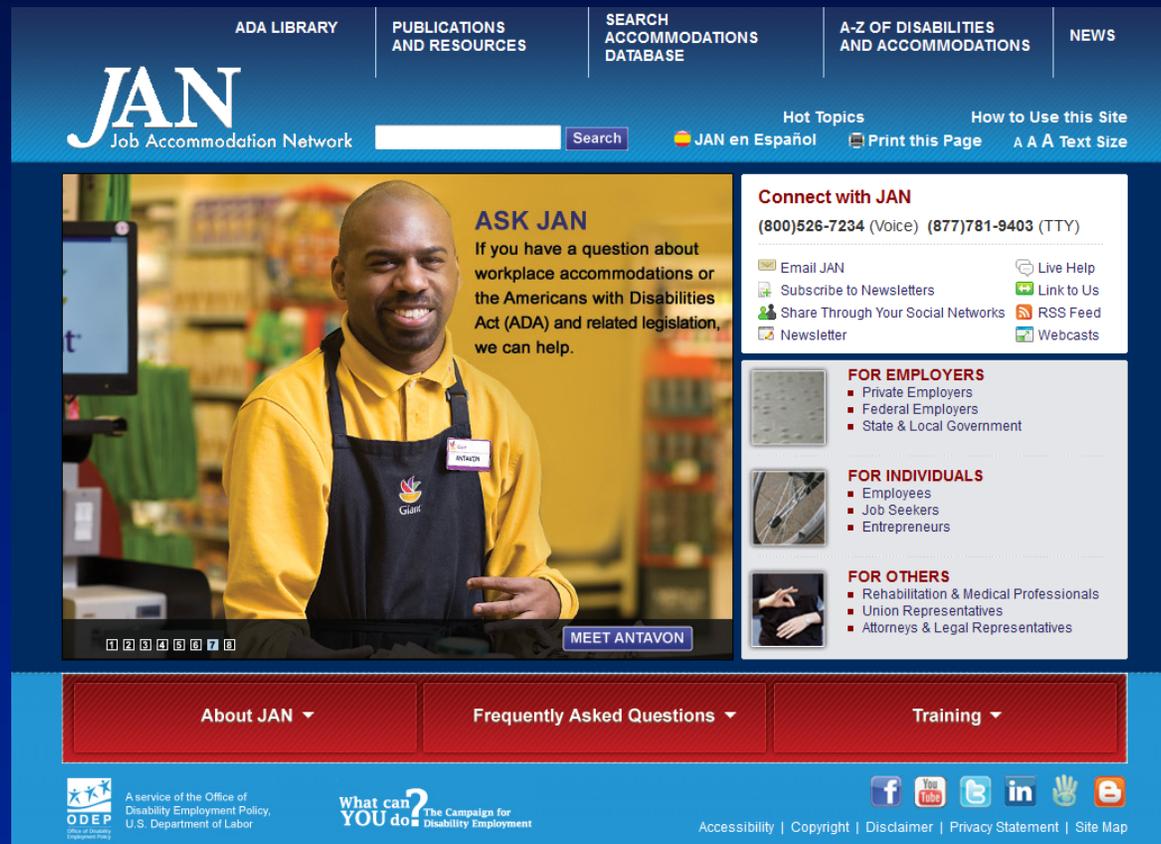
Employers report no cost or low cost

Source: Job Accommodation Network (2011)



***Of those that did have a cost,
the typical one-time expenditure was \$500.***

Where to go for information and ideas



The screenshot shows the homepage of the Job Accommodation Network (JAN). At the top, there is a navigation bar with links for ADA LIBRARY, PUBLICATIONS AND RESOURCES, SEARCH ACCOMMODATIONS DATABASE, A-Z OF DISABILITIES AND ACCOMMODATIONS, and NEWS. Below this is the JAN logo and a search bar. The main content area features a large image of a smiling man in a yellow shirt and black apron, with the text "ASK JAN" and "If you have a question about workplace accommodations or the Americans with Disabilities Act (ADA) and related legislation, we can help." To the right of this image is a "Connect with JAN" section with contact information and various social media and newsletter links. Below the main content are three red buttons: "About JAN", "Frequently Asked Questions", and "Training". At the bottom, there are logos for ODEP and "What can YOU do?", along with social media icons and a footer with links for Accessibility, Copyright, Disclaimer, Privacy Statement, and Site Map.

ADA LIBRARY | PUBLICATIONS AND RESOURCES | SEARCH ACCOMMODATIONS DATABASE | A-Z OF DISABILITIES AND ACCOMMODATIONS | NEWS

JAN
Job Accommodation Network

Hot Topics | How to Use this Site
JAN en Español | Print this Page | A A A Text Size

ASK JAN
If you have a question about workplace accommodations or the Americans with Disabilities Act (ADA) and related legislation, we can help.

Connect with JAN
(800)526-7234 (Voice) (877)781-9403 (TTY)

- Email JAN
- Subscribe to Newsletters
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FOR EMPLOYERS

- Private Employers
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- State & Local Government

FOR INDIVIDUALS

- Employees
- Job Seekers
- Entrepreneurs

FOR OTHERS

- Rehabilitation & Medical Professionals
- Union Representatives
- Attorneys & Legal Representatives

About JAN ▾ | Frequently Asked Questions ▾ | Training ▾

ODEP: A service of the Office of Disability Employment Policy, U.S. Department of Labor
What can YOU do? The Campaign for Disability Employment

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Job Accommodation Network
askjan.org

Where to go for information and ideas

[Skip to Navigation](#) [Skip to Content](#) For more information contact us at: 1-800-949-4232



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ADA ASSISTANCE

<p>FOR BUSINESS</p> <p>This section provides assistance in examining your options for managing employees and serving customers with disabilities. The recent changes in the ADA regulations will extend coverage to more employees and enhance access to your place of business. Included here is assistance with employee productivity enhancements and reasonable accommodations, as well as tools to identify and remove access barriers in your business.</p> 	<p>FOR STATE & LOCAL GOVERNMENT</p> <p>This section is designed to help ADA Coordinators in state and local government entities to comply with the administrative requirements of the ADA, and to learn the new requirements of the recent regulatory changes to Title II of the ADA. Examples of best practices, as well as administrative tools for compliance and program access to local government services, can be accessed here.</p> 	<p>FOR CONSUMERS</p> <p>This section is intended to provide information and guidance for consumers with disabilities about the ADA. Included are topics designed to ensure equal opportunity in employment and equal access to goods and services. Provided is the most current information related to parking, service animals, education, accessible shopping, travel, and recreation; and, if necessary, the process for filing complaints.</p> 	<p>FOR ARCHITECTS & CONTRACTORS</p> <p>Design professionals, code officials, contractors, members of the building trades and others will find basic and advanced information on accessibility requirements for the built environment, including the new 2010 ADA Standards for Accessible Design. There are practical tools for identifying barriers to accessibility and also comparisons of accessibility provisions in the ADA standards, guidelines and International Building Code.</p> 
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[RELATED RESOURCES](#) [ADA - Events](#) [PROJECTS & AFFILIATIONS](#)

Region 10 ADA Center and Great Plains ADA Center Presents

Northwest ADA Center
www.nwadacenter.org

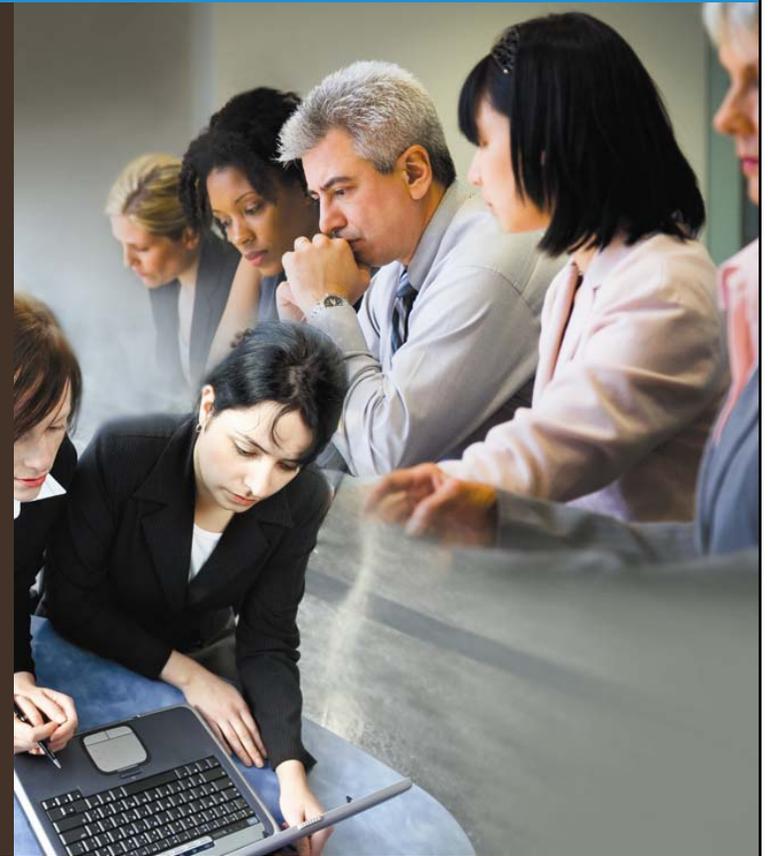
More Resources

- ***RERC Workplace Accommodations***
www.workrerc.gatech.edu
- ***US Dept of Labor – Office of Disability Employment Policy (ODEP) -***
www.dol.gov/odep
- ***Washington State Division of Vocational Rehabilitation***
- ***www.dshs.wa.gov/dvr***
- ***Washington Assistive Technology Act Program watap.org***



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Disability Leaves of Absence



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FMLA – What Does It Do?

- FMLA provides eligible employees of covered employers
 - up to 12 or 26 weeks of unpaid leave in 12-month period
 - ability to continue health benefits during leave
 - right to be returned to same or equivalent position



What Reasons Justify FMLA Leave?

- Birth and care of child
- Placement of child for adoption or foster care
- Care for spouse, son, daughter, or parent with “serious health condition”
- **Employee’s “serious health condition”**
- Qualifying military exigency
- Care for an injured service member



What is a “Serious Health Condition”?

- Narrower definition than the ADA/WLAD definition
- Illness, injury, or condition that involves either *inpatient care* or *continuing treatment* by a health care provider
- “Inpatient care” requires an overnight stay in a hospital, hospice or residential medical care facility.



What is “Continuing Treatment”?

- Incapacity for 3+ days and two later treatments, or regimen of continuing treatment by health care provider
- Incapacity due to pregnancy or prenatal care
- Chronic serious health condition
- Conditions requiring multiple treatments



The FMLA Minuet

- Request for leave
- Medical certification
- Eligibility notice
- Qualification notice
- Insurance benefits during leave
- Reinstatement rights



What is “Intermittent” Leave?

- FMLA leave on intermittent basis or to work reduced schedule
 - Intermittent leave taken in separate blocks of time (from an hour to several weeks) due to a single qualifying reason
 - Reduced schedule leave lowers usual number of hours worked



Why Would An Employee Get Intermittent Leave?

- To care for spouse, child, or parent with a serious health condition
- **Due to employee's own serious health condition**
- Due to a qualifying military exigency
- To care for an injured service member



Managing Intermittent / Reduced Schedule Leave

- Employee must make “reasonable effort” to schedule planned medical treatment so don’t “disrupt unduly” employer operations
- But medical necessity for particular schedule prevails
- Employer may require temporary transfer to job that better accommodates recurring leave
- Place employee in original job or equivalent when leave no longer needed



Leave for Pregnancy and Childbirth

- Family and Medical Leave Act
- Washington Family Leave Act (WFLA)
- Pregnancy Disability Regulation (WPDL)



Washington Pregnancy Disability Leave

- Leave for time that woman is sick or temporarily disabled due to pregnancy or childbirth
- “Pregnancy” includes potential to become pregnant, related medical conditions, miscarriage
- Treat pregnancy disability leave same as other disability/sick leaves; return to same or similar job (at least same pay)
- Pregnancy disability leave available *in addition to* FMLA leave
 - *stacks* on top of FMLA and ADA



Leave as Reasonable Accommodation

- Duty to accommodate may require time off, even if employee exhausted all statutory and policy leave
- Leave may be required if plausible chance of enabling employee to perform essential job functions
- Indefinite leave *not* required
- Not required where undue hardship
- Time off may be required even if employee does not request it



Intersection Of Workers' Comp & ADA

- Workers' comp covers workplace injury / illness only
- L&I encourages return to work / job modification
 - Reduce future payments
 - Reimbursement for some light duty work
 - L&I resources
- *Caution:* L&I's interests may not be the same as employer's



Impact of Collective Bargaining Agreements

- May be extra process for disability accommodation
- Employee still has protections of ADA/WLAD
- Coordinate CBA, personnel policies and law



Strategies For Managing Leaves

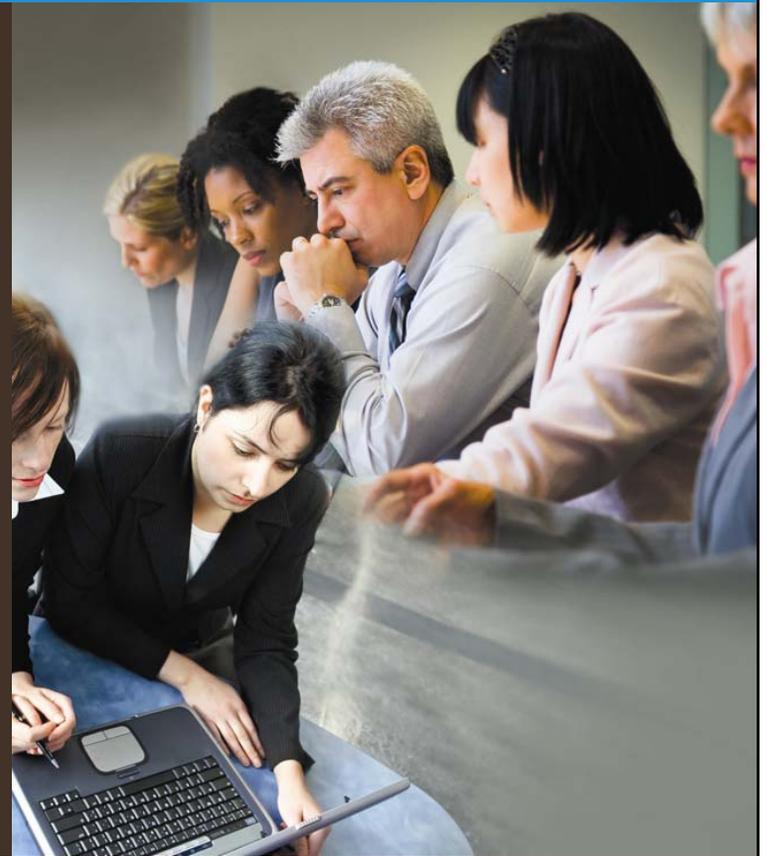
- Know the law
- Coordinate all leaves
- Maximize FMLA protections
- Review and consider changes to leave policies
- Adopt and enforce attendance policies
- Review and update job descriptions





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Avoiding Discrimination and Retaliation Claims



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Potential Claims

- Employee is in a protected class – whether accommodation, accommodation request, or notice of medical problems
- Employee can sue based on
 - disability discrimination
 - perception that employee is disabled
 - retaliation for requesting or receiving accommodation



Avoiding / Defeating Claims

- Pick defense early
 - If **can't** accommodate, follow interactive process and document
 - If termination/discipline unrelated to accommodation or medical issues, provide proper feedback, discipline and documentation



Give Appropriate Feedback

- Address performance / behavior problems early
- Document performance and discipline problems; try to avoid mixing medical or accommodation issues
- Always tell the truth
- Team with HR



Three-Step Process for Addressing Employee Performance Issues



Three-Step Process for Addressing Employee Performance Issues

Step 1: Establish Clear Criteria

- Review and update job description
- Set performance standards /objectives



Three-Step Process for Addressing Employee Performance Issues

Step 2: Communicate



Three-Step Process for Addressing Employee Performance Issues

Step 3: Document

- If it isn't written down, it didn't happen
- If it isn't written right, it can hurt
- Consequences of missing or poor documents



Have Patience

- It probably will may take longer than the ordinary termination
- Proper process
 - Performance evaluations
 - Interim performance documentation
 - Progressive discipline

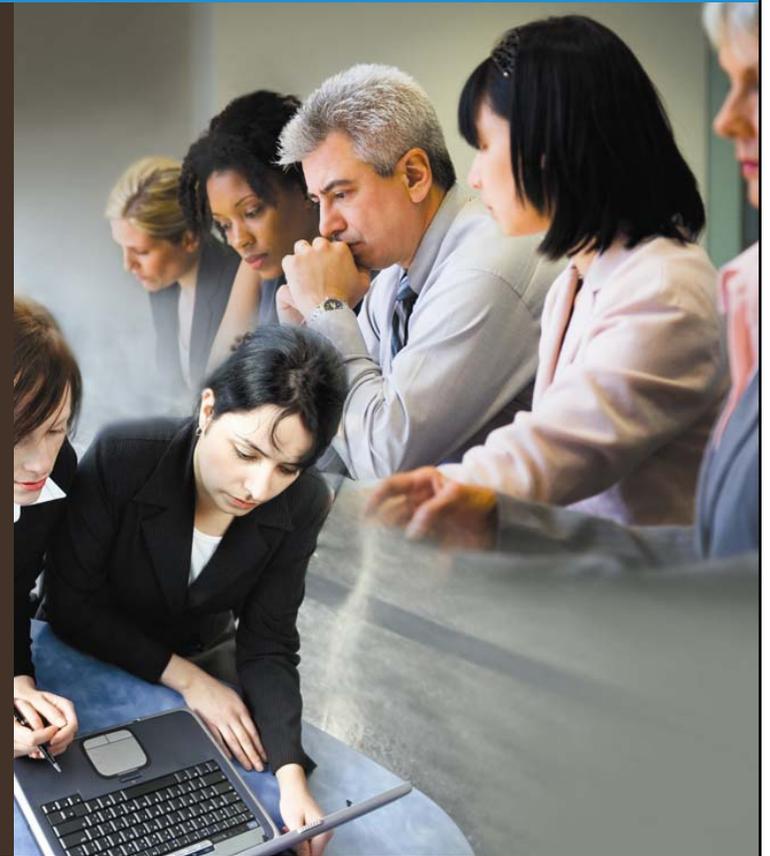




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Speaker Bios

Presented by:





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Practices

Employment and Labor Relations CHAIR

Industries

Emerging Companies and Venture Capital

Practice Summary

Steve's practice covers the gamut of employment and labor law. His advice practice is dedicated to helping employers solve problems such as employee discipline and discharge, leaves of absence, discrimination and harassment claims, and threats of employee violence. Steve enhances employee handbooks and prepares and negotiates employment, confidentiality and non-compete agreements. He also counsels executives and professionals on employment and separation agreements, and assists with corporate transactions such as purchases and sales of businesses.

On the litigation side, Steve represents public and private employers in lawsuits claiming discrimination, harassment, wrongful discharge and violations of wage and hour, employee benefits, trade secrets and non-compete obligations. He also appears before local, state and federal administrative agencies and arbitrators in employment and labor matters.

Experience

Foster Pepper PLLC
Member, 2010-Present

K&L Gates LLP / Preston Gates & Ellis, LLP
Partner, 1998-2010

Georgia-Pacific Corporation
Senior Counsel, 1996-1998

Alzheimer & Gray, Chicago, IL
Associate and Partner, 1986-1996

Isham Lincoln & Beale, Chicago, IL
Associate, 1983-1986

U.S. District Court for the Western District of Wisconsin
Law Clerk for Hon. John C. Shabaz, 1982-1983

Bar Admissions

Washington, 1999

Illinois, 1983

Representative Cases

Won a jury trial for an employer accused of age discrimination by laid-off union employee.

Prevailed in a hearing before the United States Department of Labor brought by a union business agent who claimed that the company conspired with the union to discharge him.

Co-counsel in class action claiming pay for commuting in company vehicle; certification defeated and individual claim resolved promptly.

Co-counsel for large employers in two US Department of Labor collective actions claiming that employees worked off the clock; summary judgment obtained in one case, and the other was settled favorably.

Won summary judgment on discrimination / harassment claim for financial services company.

Obtained temporary restraining orders in two cases where employees removed and refused to return computerized documents and information.

Won summary judgment on sex bias claim by male employee of performing arts client.

Convinced OSHA that a safety whistleblower on a construction site was not subject to a hostile work environment.

Obtained anti-harassment orders against former employees.

Defended company in ERISA case brought by former executive seeking payments under a Supplemental Executive Retirement Plan.

Representative Transactions

Employment and labor counsel in sales of business, including drafting of purchase agreement language, preparation of offer letters, executive employment agreements and employee communications.

Assistance to client in reductions in force.

Counseling of clients facing threat of workplace violence.

Creation of documentation for background investigations, hiring, leaves of absence, requests for disability accommodation, last chance agreement and severance agreements.

Preparation on policies such as travel pay, use of cell phones and blogging.

Management training on employment law topics, including avoiding harassment and discrimination, performance management and hiring.

Activities

Seattle Theatre Group
Board of Directors
Executive Committee

University Preparatory Academy
Board of Directors
Chair of Personnel Committee

Publications

Steve Peltin is a frequent contributor to Foster Pepper's Washington Workplace Law blog.
Check out the latest news in this fast-changing area at: www.washingtonworkplacelaw.com.

Back to Basics: Family and Medical Leaves (Part 3)
Back to Basics: Family and Medical Leaves (Part II)
Back to Basics: Family and Medical Leaves (Part 1)
Can't I Require a Job Applicant to Have a High School Diploma?
Not So Fast II: NLRB Again Delays Employer Posting Requirements
Court Rejects Arbitration Award Reinstating Employee Who Hung Noose at Work
Interns & Volunteers: Do We Really Have to Pay Them?
Letting Someone Else Dig for the Dirt: Hiring Vendors to Assist in Social Media Searches
Some Things Don't Have to Be In Writing: Supreme Court Protects Employees Against Retaliation After Making Verbal Complaints of Wage and Hour Violations
Unsafe at Any Speed: Unauthorized Passengers in Employer-Owned Vehicles May Sue Employer for Driver's Negligence

Employers: Beware of High School Diploma Requirements
Author, *WIB HR & Training Digest* - February 2012

Bad Acts: Smaller Employers Should Confront Threats of On-The-Job Physical Assaults
Author, *Washington Journal*

Telecommuting: Legal and Management Risks For Employers
Author, *Corporate Counsel Magazine*

Reducing Telecommuting Management Risks
Author, *National Underwriter Magazine*

How To Reduce Workplace Violence
Author, *National Underwriter Magazine*

Whose Workforce Is It Anyway? The Worker Adjustment and Retraining Act in the M&A Context
Author, *Preston Gates & Ellis LLP E-Alert*

50-State Survey of Employment Libel and Privacy Law, Washington Chapter
Author, *Media Law & Resource Center*

Hiring Employees: Disability Questions and Medical Exams
Author, *Realty & Building*

Workplace Sexual Harassment
Author, *Realty & Building*

Department of Labor Expands FMLA Leave Rights for Non-traditional Families
Author, *K&L Gates Labor and Employment Alert*

News

It's Not Just Paid Time Off -- It's the Law: Attorneys explain what Seattle's new sick leave ordinance means for employers

Quoted in *Puget Sound Business Journal* - September 2011

Your Office Away from the Office

Quoted in *Utah CEO Magazine*

Keeping violent employees out of the workplace

Quoted in *Risk Management Magazine*

10 Considerations in Developing Telecommuting Policies and Agreements

Quoted in HR.COM

Presentations

Employment Law Challenges for Public Employers and Current Developments under the Public Employees Collective Bargaining Act

Panelist, 2012 Association of Washington Housing Authorities (AWHA) Meeting

High-Stakes Employment and IP Protections: Protect your Company from Increasing Employment Risks and Shield your Valuable Intellectual Property

Panelist, Foster Pepper and Washington State Chapter of ACC America

Conducting Effective Workplace Investigations

Speaker/Moderator, Foster Pepper Client Briefing

Managing the Process of Labor Negotiations

Panelist, Washington Fire Commissioners Association 63rd Annual Conference

Out of Sight but Not Out of Mind: Untangling Employer Obligations under FMLA and Other Leave Statutes

Speaker/Moderator, Foster Pepper Client Briefing

FMLA and Leave Law

Speaker, 14th Annual Labor & Employment Law Conference, The Seminar Group

Social Media in the Workplace

Speaker/Moderator, Foster Pepper Client Briefing

Payroll Management

Speaker, Lorman Educational Services

Time Off: State and Federal Laws on Employee Leave, Vacations and Holidays

Speaker, Lorman Educational Services

When Hand Washing is Not Enough: Legal Challenges Presented By the Flu Pandemic

Speaker, K&L Gates Breakfast briefing

Recent Developments under the Family and Medical Leave Act

Speaker, National Council of State Housing Agencies

10 Scary Issues You Need to Know About Your Employees

Speaker, ASTRA Women's Business Alliance

New Developments in Employment Law

Speaker, Seattle CFO Arts Roundtable

Best Practice in FMLA Administration

Speaker, Council on Education in Management

Conducting Effective Investigations Into Employee Complaints

Speaker, PUD and Municipal Attorneys Association

Cyberstalking: The Washington Employer's Perspective

Speaker, King County Bar Association

Blowing the Whistle: Policies & Procures under Sarbanes-Oxley

Speaker, Preston Gates & Ellis LLP Breakfast Briefing

Workplace Investigations

Speaker, Council on Education in Management

Email and the Internet – Legal Challenges for Employers

Speaker, PUD and Municipal Attorneys Association

Minimizing Risks When Upsizing, Downsizing, and Using Alternative Work Arrangements

Speaker, Preston Gates & Ellis LLP Breakfast Briefing

Negligent Hiring Liability, Pre-Hire Investigations and the Fair Credit Reporting Act

Speaker, Preston Gates & Ellis LLP Breakfast Briefing

Honors & Awards

The Best Lawyers in America® - Labor Law - Management, 2012

Education

Cornell Law School, J.D., *cum laude*, 1983

University of Wisconsin-Madison, B.A., *with distinction*, 1978

Phi Beta Kappa

Personal / Interests

Raised in Milwaukee, Wisconsin

Investor and part-time employee in *Nena*, Steve's wife's gift and vintage shop in Seattle's Madrona neighborhood

Enthusiastic traveler, dog owner, and poker player



Alexandra Gilliland

E-mail: gilla@foster.com

Tel: 206-447-6223 / Seattle

Fax: 206-749-2055

Practices

Litigation and Dispute Resolution

Industries

Arts and Entertainment

Practice Summary

Areas of Concentration:

Electronically Stored Information - ESI Squad

Alexandra's practice focuses on commercial litigation, with an emphasis on class action suits and environmental law. Her experience includes research and presentation of neuroscience as it relates to criminal law and as a lead editor for the *Green Engineering Initiative*, a publication developed for National Instruments that focused on the company's efforts to measure and reduce its carbon footprint.

Experience

Foster Pepper PLLC
Associate, 2011-Present
Summer Associate, 2010

Vanderbilt University Law School – MacArthur Foundation Research Network on Law and Neuroscience
Research Assistant, 2009-2011

Vanderbilt Summer Academy / Vanderbilt Legal Clinic - Nashville, TN
Instructor & Clerk, 2009

National Instruments - Austin, TX
Editing Specialist, 2007-2008

Enspire Learning - Austin, TX
Marketing Fellow, 2006-2007

Bar Admissions

U.S. District Court
Western District of Washington, 2012
Eastern District of Washington, 2012
Washington, 2011

Activities

Center of Children and Youth Justice
Board of Directors, April 2012-Present
Vanderbilt Law School Alumni Admissions Program
Member

Publications

Village People Frontman Victor Willis Paves the Way for Artists and Authors to Reclaim their Copyrights
Author, Foster Pepper News - May 2012
Jeff Frank, *Without Fear or Favor in 2011: A New Decade of Challenges to Judicial Independence and Accountability*
2011 Def. Res. Inst. 12.

Honors & Awards

Vanderbilt University Law School Dean's List

Education

Vanderbilt University Law School, J.D., 2011, Dean's List
The University of Texas at Austin, B.A., *with highest honors*, 2006

Personal / Interests

Play violin, piano, and clarinet; previously a member of chamber group for weddings.
Languages: Spanish - reading and writing proficient



Amy L. Kauppila

E-mail: kaupa@foster.com

Tel: 206-447-8974 / Seattle

Fax: 206-749-1912

Practices

Health Care

Employment and Labor Relations

Practice Summary

Amy's practice is focused in health care law, primarily representing health care providers. She assists them with many aspects of their business including compliance, prevention of fraud and abuse, Medicare and Medicaid issues, physician financial relationships, certificates of need, and public records requests and retention schedule requirements for public hospital districts. Amy also assists clients in litigation involving contract disputes and administrative law matters.

Experience

Foster Pepper PLLC

Associate, 2008-Present

Law Clerk, September 2007-June 2008

Summer Associate, June 2007-September 2007

University of Washington Entrepreneurial Law Clinic

Student Clinician, September 2007-June 2008

Winston & Cashatt, Lawyers

Summer Associate, June 2006-August 2006

Bar Admissions

Washington, 2008

Activities

American Heart Association - Go Red for Women

Executive Leadership Team

Washington State Society of Healthcare Attorneys

Member

American Health Lawyers Association
Member

Featured in Foster Pepper Pro Bono Annual Report
In the Community - Darius Page: Regaining a Shot at the Future - 2010
Pro Bono in Action - Foster Independence Project - 2008
2007 Foster Pepper Pro Bono Annual Report

Publications

Amy Kauppila is a contributor to Foster Pepper's Washington Workplace Law blog.
Check out the latest news in this fast-changing area at: www.washingtonworkplacelaw.com.

New Duties for Health Care Facilities to Protect Workers Against Hazardous Drugs
Washington Court of Appeals: Missed Break Compensation Is Straight Time, Not Overtime
Recent HIPAA Enforcement Actions: Strong Medicine for Health Care Employers

Honors & Awards

Beta Gamma Sigma Honor Society
Chi Alpha Sigma National College Athlete Honor Society

Education

University of Washington School of Law, J.D., 2008
Notes and Comments Editor, Washington Law Review
President, Society for Small Business Development
University of Rhode Island, M.B.A., 2004
University of Rhode Island, B.S., summa cum laude, 2003

Personal / Interests

Interests include running, beach volleyball, and cooking.
Raised in Spokane, Washington



Katie Carder McCoy

E-mail: cardk@foster.com

Tel: 206-447-2880 / Seattle

Fax: 206-749-1911

Practices

Litigation and Dispute Resolution
Employment and Labor Relations

Industries

Retail
Transportation Industries

Practice Summary

Areas of Concentration:

Electronically Stored Information - ESI Squad
Emergency Injunction Team
Directors & Officers
Intellectual Property
Appellate Team

Katie's practice is concentrated in Litigation and Dispute Resolution, with an emphasis in commercial and employment litigation. She has broad experience litigating complex commercial disputes in state and federal courts and private arbitration, including contract claims, business torts, trademark and intellectual property claims, fraud claims, partnership disputes, and shareholder derivative actions. Katie has significant trial experience in court and private arbitration.

In her employment practice, Katie has experience in both federal and state courts defending employers and managers in employment litigation involving claims for violation of federal and state anti-discrimination, disability, and family and medical leave laws, wrongful discharge in violation of public policy, and emotional distress claims. She also helps employers enforce non-competition agreements, protect trade secrets and other confidential business information, and prevent unfair competition through negotiation, temporary restraining orders, and other injunctive relief.

Experience

Foster Pepper PLLC
Associate, 2006-Present
Summer Associate, 2005

Lane County Legal Aid - Eugene, OR
Legal Extern, 2005

Oregon Department of Justice, Trial Division - Salem, OR
Law Clerk, 2004-2005

Bar Admissions

Washington, 2006
Admitted to practice

Representative Cases

Defense of Northwest-based global retailer against former supplier's breach of contract, fraud, CPA, and unjust enrichment claims. Fraud claims dismissed on summary judgment. Client deemed the prevailing party after 12-day trial in private arbitration, defeating plaintiff's \$23 million damage claim and obtaining attorneys' fees and costs.

Defense of Northwest-based global retailer against claims brought by former supplier's bank involving supplier's sales contract and account. Dismissed on summary judgment in private arbitration, with attorneys' fees and costs awarded.

Defense of Northwest-based global retailer against fraudulent inducement, breach of contract, and unjust enrichment claims brought by former tax vendor. All claims denied following 4-day trial in private arbitration.

Obtain temporary restraining order against Snohomish County employer's former employee who violated non-competition agreement and took trade secrets to direct competitor.

Obtain temporary restraining order in Whatcom County against signature gatherers trespassing on client's private property and harassing client's customers.

Defend mortgage company against trademark, breach of contract, false light and similar claims in federal court. Summary judgment dismissal of plaintiff's trademark infringement and dilution, breach of contract, false light, and misappropriation of likeness claims.

Activities

Washington State Bar Association

Legal Voice
Auction Committee

Featured in 2010 Foster Pepper Pro Bono Annual Report
KCBA Housing Justice Project

Featured in 2009 Foster Pepper Pro Bono Annual Report
Helping Secure Land Rights for the World's Poorest - Bangladesh

Featured in 2006 Foster Pepper Pro Bono Annual Report
Real Change

Star Guild, Children's Hospital Guild Association
Board Member, 2006-2010

Publications

Katie Carder McCoy is a contributor to Foster Pepper's Washington Workplace Law blog.
Check out the latest news in this fast-changing area at: www.washingtonworkplacelaw.com.

Presentations

Employment Law Challenges for Public Employers and Current Developments under the Public Employees Collective Bargaining Act

Panelist, 2012 Association of Washington Housing Authorities (AWHA) Meeting, Seattle, WA - April 2012

Employee Investigations: A Practical Guide For Washington Employers

Speaker, Conducting Effective Workplace Investigations, Seattle, WA - February 2012

Update on Developments in Employment Law

Speaker, Social Media in the Workplace, Seattle, WA - May 2011

Just Cause

Speaker, Civil Service Conference - October 2010

Compensation Issues under FLSA/Wage and Hour

Speaker, Fundamentals of Employment Law, Seattle, WA - June 2010

Education

University of Oregon School of Law, J.D., 2006

Oregon Law Review, Editor, 2004-2006

Graduate Teaching Assistant, University of Oregon President Dave Frohnmayer, 2006

University of Washington

B.A. Political Science, 2003

B.A. Business Administration, 2003

Personal / Interests

Interests include traveling internationally, cheering for the Huskies, practicing yoga, hiking and enjoying the Great Outdoors.

Born in Santa Ana, CA

Barney Fleming, PhD, ATP

Training & Information Specialist | Northwest ADA Center, University of Washington

Barney Fleming, PhD, ATP is a training and information specialist with the Northwest ADA Center, University of Washington. Dr. Fleming is a practicing rehabilitation engineer and specializes in job accommodation, human factors engineering, ergonomics, assistive technology, universal design of products and facilities, adaptive computer technology, accessibility of the built environment, and accessibility of web technologies and multimedia.

The Northwest ADA Center is a member of the National Network of ADA Centers which is comprised of ten regional centers that provide information, training and technical assistance on the Americans with Disabilities Act. The centers are funded by the National Institute on Disability and Rehabilitation Research under the U.S. Department of Education.

Dr. Fleming has a M.S. in Biomedical Engineering and a Ph.D. in Physiology and Biophysics and 22 years of experience in providing rehabilitation engineering services.

Barney Fleming, PhD, ATP
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FOSTER PEPPER PLLC

June 12, 2012

**Reasonably Accommodating
Employees with Disabilities**

Fulfilling Legal Obligations while Addressing Management Challenges

Speaker Materials

Presented by:



Washington Workplace Law

Foster Pepper PLLC

Access Denied: Legislation Prevents Employers from Demanding Employees' Social Media Passwords

Posted by [Alicia Feichtmeir](#) on April 16, 2012

Many employers use social media to screen prospective job applicants. We've written several posts identifying "[best practices](#)" for researching a job candidate's online history.

Recent bills introduced in several states, including [California](#), [Illinois](#), and now [Washington](#), provide another reason for avoiding Facebook and other social media passwords.

Maryland is the first state to pass a [law](#) prohibiting employers from requiring or seeking social media usernames and passwords. Similar [legislation](#) has been introduced in the Washington State Senate. Senate Bill 6637 would make it unlawful for public and private employers to seek access to an employee's social media profile as part of a job application or as a condition of continued employment. Employers who violate the law would be subject to a \$500 penalty payable to the prevailing employee, as well as attorneys' fees.

Even absent these legislative requirements, employers should not require current or potential employees to provide social media usernames or passwords as a condition of employment. There are ways to screen or monitor employees without demanding direct access to non-public Facebook pages, and to thereby avoid financial penalties and infringing on employees' privacy rights. One option, discussed in one of our [posts](#), is to engage an outside vendor to conduct social media searches on an employer's behalf.

If you have any questions about these issues, please feel free to contact the [Foster Pepper Employment and Labor Relations Group](#).

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Not So Fast III: NLRB Employer Posting Requirement Again Delayed

Posted by [Steve Peltin](#) on April 17, 2012

As we wrote in [February](#) and [October](#) of last year and [January](#) of this year, the National Labor Relations Board (NLRB) has been *trying* to require employers to post a notice informing employees of their rights under the National Labor Relations Act (NLRA). Until today, the deadline for compliance was April 30, 2012.

The United States Court of Appeals in Washington, DC is considering a legal challenge to the posting requirement brought by various business groups. Today the Court temporarily prohibited the NLRB from requiring the posters, thus allowing time for briefing and argument (to be set for September). We'll provide updated information when it becomes available.

If you have any questions about compliance with NLRB requirements, please contact the [Foster Pepper Employment and Labor Relations Practice Group](#).

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EEOC Clarifies That Federal Prohibition Against Sex Discrimination Extends To Transgender Employees

Posted by [Alexandra Gilliland](#) on April 30, 2012

In an April 23, 2012 [decision](#), the Equal Employment Opportunity Commission (EEOC) declared that discrimination against transgender people is impermissible under Title VII of the Civil Rights of 1964. Title VII prohibits discrimination on the basis of sex, race and other characteristics. Until now, the EEOC and federal courts had not specifically determined that bias against transgender individuals constitutes sex discrimination under Title VII.

Mia Macy, a transgender woman, brought a discrimination claim against the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives. She alleges the agency virtually assured her it would hire her as a ballistics expert, but chose another candidate when the background check revealed her gender transition. In refusing to dismiss Macy's claim, the EEOC reasoned that because both biological and gender sex characteristics are protected against discrimination, transgender individuals are covered by Title VII.

The decision means that employees and job applicants can now file claims with the EEOC under Title VII when they experience discrimination based on transgender status. Although the Macy decision arose from a claim against a federal agency, private employers are also subject to the EEOC's interpretation of Title VII.

The Macy decision is less significant in Washington and other states that already prohibit transgender discrimination. Under the Washington Law Against Discrimination, employers are prohibited from discriminating on the basis of sexual orientation, which is defined broadly to include transgender status:

"Sexual orientation" means heterosexuality, homosexuality, bisexuality, and gender expression or identity. As used in this definition, "gender expression or identity" means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth.

If you have any questions regarding compliance with federal or state law, please contact the [Foster Pepper Employment and Labor Relations Practice Group](#).

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Railroads Challenge Seattle Sick Leave Ordinance

Posted by [Steve Peltin](#) on May 10, 2012

On May 9, BNSF and Union Pacific Railroads filed a lawsuit against the City of Seattle, seeking to invalidate Seattle's sick and safe leave ordinance. As we discussed in this blog [here](#) and [here](#), in [presentations](#), and in [business publications](#), the ordinance requires most employers to provide paid sick and "safe" time for employees who work at least 120 days in Seattle each year.

The two railroad plaintiffs argue that the ordinance is invalid for several reasons.

- Railroads are covered by federal laws that govern employment rights and benefits. One such law already requires compensation for employees who are unable to work due to illness, injury or pregnancy. Plaintiffs assert that because federal law ordinarily preempts or trumps state or local law, Seattle cannot enforce the part of the ordinance that requires sick leave.
- Another federal law governs labor relations in the railroad industry. That law requires collective bargaining over issues of pay and benefits, including paid leave. According to plaintiffs, Seattle is not permitted to impose requirements that interfere with the exclusive method for establishing paid leave – collective bargaining.
- Railroad health insurance plans and certain sickness benefit plans are governed by ERISA, the federal law that regulates employee benefit plans. Because of ERISA, plaintiffs contend, Seattle cannot enforce an ordinance that conflicts with the terms of their employee benefits plans.
- Finally, plaintiffs claim that the "safe" time provisions in the ordinance are invalid in light of Washington state law on the same topic.

Plaintiffs ask for an order prohibiting the city from enforcing the ordinance.

For more information on the ordinance, the lawsuit, or other leave of absence requirements, please contact [Foster Pepper's Employment and Labor Relations Practice Group](#).

Washington Workplace Law

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Employee Name

Address

Dear _____:

You recently made us aware that you may be seeking a reasonable accommodation due to your bi-polar disorder that may prevent you from _____. You may be eligible for a reasonable accommodation, but this eligibility depends upon a number of factors.

Before we can discuss specifics, we need information from you about what accommodations you may need to perform the essential functions of your job, and documentation confirming and clarifying the presence of a “disability” as defined by our policies and applicable law. We therefore request that you sign and return the enclosed Employee Consent Form to us. This Form will allow us to obtain information directly from your health care provider about your impairment.

I look forward to hearing from you.

Sincerely,

(Health Care Provider's Name)
(Health Care Provider Address)

Re: _____'s Request for Accommodation

Dear _____:

We employ your patient, _____, in the position of _____. Dr. _____ recently requested an accommodation in connection with her duties for [EMPLOYER]. We are attempting to gain information regarding the request for accommodation and the nature of her condition. We only are requesting information about any condition that will affect Dr. _____'s ability to perform the essential functions of her job.

Enclosed please find a job description for Dr. _____'s position at [EMPLOYER], which includes a listing of the essential functions of the job. Please also find a brief questionnaire that will help [EMPLOYER] to determine the nature and severity of Dr. _____'s impairment, as well as how the impairment affects her ability to perform the essential functions of the job. This information will assist in helping us determine whether and how to accommodate Dr. _____. We therefore request that you fill out the enclosed questionnaire and return it to us in the enclosed stamped envelope on or before _____. To assure you that Dr. _____ agrees that you should disclose this information to us, we also enclose a completed Employee Consent Form.

Thank you for your cooperation. If you have any questions, please do not hesitate to call me.

Sincerely,

(Title)

CONSENT TO RELEASE HEALTH CARE INFORMATION

Patient's Name: _____

I request and authorize _____
[Individual, Institution or Program Providing Care]

to release health care information and medical records of the patient named above to:

Name/Title:

Employer:

Address:

City, State:

Zip Code:

This request and authorization applies to health care information or documents regarding any impairment or condition that may limit the patient's ability to perform the essential functions of the job, including information regarding

the description and medical facts of the impairment;
the nature, severity and extent of the impairment;
the expected duration of the impairment;
any activities that the impairment limits and the extent of the limitations;
any way in which the impairment will affect the patient's ability to perform job functions; and
any treatment or leave needed due to the condition.

I hereby authorize the health care provider listed above to release this information and documents to [EMPLOYER]. I understand that [EMPLOYER] is requesting only information pertaining to the nature and extent of my impairment or condition and how it will affect my ability to perform my job.

Signature of patient or patient's authorized representative

Date Signed

HEALTHCARE PROVIDER QUESTIONNAIRE

1. Employee's name: _____
2. Description of the impairment/condition¹: _____

3. Expected duration of the impairment/condition: _____
4. Medical facts about the impairment/condition: _____

5. Severity of the impairment/condition: _____

6. Activities that the impairment/condition limits: _____
Extent of limitations caused by the impairment/condition: _____

7. How the impairment/condition will affect the employee's ability to perform the essential functions of the job, as described in the attached job description: _____

8. Explanation of extent to which the employee is unable to perform the essential functions of his or her job, including listing of essential functions employee will not be able to perform: _____

9. If additional treatment will be required for the condition, provide an estimate of the probable number of such treatments: _____ If the employee will need to be absent from work or other daily activities because of such treatment, also estimate the probable number and interval between such treatments, actual or estimated dates of treatment if known, and period required for recovery if any: _____

10. If medical leave is required because of the employee's condition, is the employee unable to perform work of any kind? _____ If able to perform some work, is the employee unable to perform any one or more of the essential functions of the employee's job described in the attached job description? _____ If yes, please list the essential functions the employee is unable to perform, and explain why the employee cannot perform those functions: _____

Signature of Health Care Provider

Type of Practice

Provider's Address/Telephone Number

Date

¹[EMPLOYER] only requests information about an impairment that limits the employee's ability to perform the essential job functions. [EMPLOYER] seeks no information that is not related to the employee's ability to perform these essential functions.



U.S. Equal Employment Opportunity Commission

Selected Enforcement Guidances and Other Policy Documents on the ADA

[Enforcement Guidance: Unlawful Disparate Treatment of Workers with Caregiving Responsibilities](#) *May, 2007*

- See also: [Questions and Answers about EEOC's Enforcement Guidance on Unlawful Disparate Treatment of Workers with Caregiving Responsibilities](#)

[Revised Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans With Disabilities Act](#) *October, 2002*

The Commission has re-issued the Guidance on Reasonable Accommodation and Undue Hardship to reflect a recent Supreme Court decision, *US Airways, Inc. v. Barnett*. The cover page of the Guidance notes where the major changes in the document are to be found. This revised version replaces the 3/1/99 Guidance.

- See also: [ADA Technical Assistance Manual: Addendum](#) *October, 2002*
- See also: [Small Employers and Reasonable Accommodation](#) *March, 1999*

[Enforcement Guidance: Application Of The ADA To Contingent Workers Placed By Temporary Agencies And Other Staffing Firms](#) *December, 2000*

- See also: [Questions and Answers: Enforcement Guidance: Application of the ADA to Contingent Workers Placed by Temporary Agencies and Other Staffing Firms](#)

[EEOC Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation](#) *October, 2000*

- See also: [Questions And Answers: Policy Guidance On Executive Order 13164: Establishing Procedures To Facilitate The Provision Of Reasonable Accommodation](#)

[Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act \(ADA\)](#) *July, 2000*

- See also: [Questions and Answers: Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act \(ADA\)](#)

[EEOC Policy Guidance on Executive Order 13145: To Prohibit Discrimination in Federal Employment Based on Genetic Information](#) *July, 2000*

- See also: [Questions and Answers: EEOC Policy Guidance on Executive Order 13145 Prohibiting Discrimination in Federal Employment Based on Genetic Information](#)

[Instructions for Field Offices Analyzing ADA Charges After Supreme Court Decisions Addressing "Disability" and "Qualified"](#) *December, 1999*

[EEOC Enforcement Guidance on the Americans with Disabilities Act and Psychiatric Disabilities](#) *March, 1997*

[EEOC Enforcement Guidance on the Effect of Representations Made in Applications for Benefits on the Determination of Whether a Person Is a "Qualified Individual with a Disability" Under the Americans with Disabilities Act of 1990 \(ADA\)](#) *February, 1997*

[EEOC Enforcement Guidance: Workers' Compensation and the ADA](#) *September, 1996*

[ADA Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations](#) *October, 1995*

[Compliance Manual Section 902: Definition of the Term Disability](#) *March, 1995*

Notice Concerning The Americans With Disabilities Act Amendments Act Of 2008

The Americans with Disabilities Act (ADA) Amendments Act of 2008 was signed into law on September 25, 2008 and becomes effective January 1, 2009. Because this law makes several significant changes, including changes to the definition of the term "disability," the EEOC will be evaluating the impact of these changes on this document and other publications. See the [list of specific changes to the ADA](#) made by the ADA Amendments Act.

- See also: [Executive Summary: Compliance Manual Section 902: Definition of the Term Disability](#)
[Interim Enforcement Guidance on the Application of the Americans with Disabilities Act of 1990 to Disability-based Distinctions in Employer Provided Health Insurance](#) *June, 1993*