



## **Title I of the Americans with Disabilities Act (ADA)**

ADA Resource Center for Equity and Accessibility



# Who we are!

- Mike Rounds, Associate Vice Provost for Human Resource Management.
- Catherine Johnson, Director of the ADA Resource Center for Equity and Accessibility
- Jennifer Marcinkowski, Accommodation Specialist for the ADA Resource Center for Equity and Accessibility





# Take Away: Goals for Today

- Understand key ADA definitions
- How to assist an employee in the reasonable accommodation process
- KU Reasonable Accommodation Process



# Title I

- Protects qualified individuals with disabilities from employment discrimination based upon disability.
- Limits employer's ability to make disability-related inquiries or request medical examinations.
- Requires employers provide a reasonable accommodation unless doing so causes an undue hardship.
- Employment pre-ADA



# Title I:

- The ADA states that a "covered entity" shall not discriminate against "a qualified individual with a disability".
- This applies to all aspects of employment, including job application procedures, hiring, promotion, discharge of employees, job training, benefits, leaves, activities sponsored by employer, and other terms, conditions, and privileges of employment, and retaliation for asserting rights under ADA.
- "Covered entities" include employers with 15 or more employees, as well as employment agencies, labor organizations, and joint labor-management committees.



# ADA Amendments Act of 2008 (ADAAA)

- January 1, 2009
- Restores the initial broad scope of ADA protection.
- Change in focus from what constitutes a disability to providing reasonable accommodations.



# ADAAA Intent

- Construe terms “broadly” and “without regard to the ameliorative effects of mitigating measures
- Include more individuals with less severe impairments
- View impairments that are “episodic” or “in remission” in their “active” state.
- Added new category of “major life activity” – “major bodily functions”



# What is a disability under the ADAAA?

- 1) Individual with a physical or mental impairment that **substantially limits** one or more **major life activities**;
- 2) Individual with a record of; or
- 3) Individual regarded as

## Also protected:

Individuals whom have an association with an individual with a known disability;

Individuals who are coerced or subjected to retaliation for assisting individuals with disabilities in asserting their rights under the ADA



# Qualified Individual?

- 1) Individual has a disability if he/she/they have a physical or mental impairment that substantially limits a major life activity
- &
- 2) Individual with a disability is qualified to perform the **essential functions** of the job with or without **reasonable accommodations**.



# Key Definitions

- Major Life Activity
- New Major Life Activity of “major bodily functions”
- Substantially limits
- Reasonable Accommodation
- Essential Functions of the job



## Impairments that substantially limit a MLA by regulation

- Deafness, blindness, intellectual disability, partially or completely missing limbs, mobility impairments requiring use of a wheelchair, autism, cancer, cerebral palsy, diabetes, epilepsy, HIV infection, multiple sclerosis, muscular dystrophy, major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive-compulsive disorder, and schizophrenia.
  - **Not qualified individual with disability:**
    - Individuals currently engaged in illegal use of drugs;
    - Conditions for which individuals may seek treatment such as family counseling, marital counseling;
    - Individuals with a minor, non-chronic condition of short duration, generally not covered (i.e. sprain, seasonal flu)



# Reasonable Accommodation Rule

- Qualified individuals with a disability may request a reasonable accommodation to perform the *essential functions* of their job.
- Employer must engage in an informal, interactive process with the employee to discuss their request.
- Employer must provide a reasonable accommodation to a known physical or mental impairment of a qualified individual with a disability. Not required that employer provide the specific reasonable accommodation requested by the employee.
- Unless: Providing the reasonable accommodation would impose an undue hardship.



# Requesting reasonable accommodation

- May be requested during the application, interview, to perform essential functions of the job; to enjoy the benefits and privilege of employment.
- No requirement to use certain terms, phrases or language in making request for an accommodation.
- Request must indicate the employee needs help, change, modification, etc., in their job due to a disability.
- No one size fits all accommodation

# Perspectives on making a request for reasonable accommodations:

## Employee

- Will I be treated differently or in a negative manner after disclosing my disability?
- How do I make a request? What do I request?
  - I am afraid of the process.
- Will my employee be upset with my request for a reasonable accommodation?
- Will I have to “prove” myself to my employer and my coworkers?
  - How will my coworkers treat me?
- Will my coworkers be told about my disability?
  - What are my rights?

## Employer

- I want to comply with the ADA, but unsure how to handle the request.
  - What is a disability? What is a reasonable accommodation?
  - I don't have a depth of knowledge in disability & accommodations.
- How do I balance the employee's request with the needs of my department?
  - Is the request fair?
  - Do I need to provide the exact request?
  - What happens if I deny the request
- I am afraid to do or say something incorrect.



# Types of Reasonable Accommodations

- Individually construed on a case-by-case basis
- May involve changes to workplace policies, procedures, or practices
- Physical changes to workplace
- Extra equipment
- Use of accrued paid leave, providing additional unpaid leave for treatment or recovery related to a disability
- Leaves of absence, occasional leave for a few hours, change to part-time schedule, flexible schedule
- Medical and Mental Health professions can provide valuable insight into reasonable accommodations



# The KU Accommodation Process

- The interactive process starts with the ADA Resource Center for Equity and Accessibility.
- Employee fills out the employee portion of the Reasonable Accommodation Request Form
- Employee meets with ADA Resource Center for Equity and Accessibility staff.
- Employee will provide their health care provider a detailed position description and the “Reasonable Accommodation Medical Form”
- The ADA Resource Center for Equity and Accessibility will interact with the employee and the supervisor to identify potential reasonable accommodations.
- The Supervisor ultimately fills out Section B on the “Request for Reasonable Accommodation Form:  
    “Will accommodation(s) allow the person to perform the essential job duties?”
- Follow-up
- See Job Accommodation Network: <http://askjan.org/links/atoz.htm>



# RECOMMENDED STEPS FOR DETERMINATING REASONABLE ACCOMMODATIONS

- Assess required skills and competencies for job
- Define essential and marginal job functions
- Evaluate employee strengths and functional limitations
- Generate ideas for job accommodation
- Select accommodation that is reasonable and effective
- Periodically review the effectiveness of the accommodation



# Confidentiality

Information about an employee's reasonable accommodation, disability, medical information, and history **must be kept confidential.**

**Must maintain separate files for disability information.**

Exceptions to the confidentiality rule:

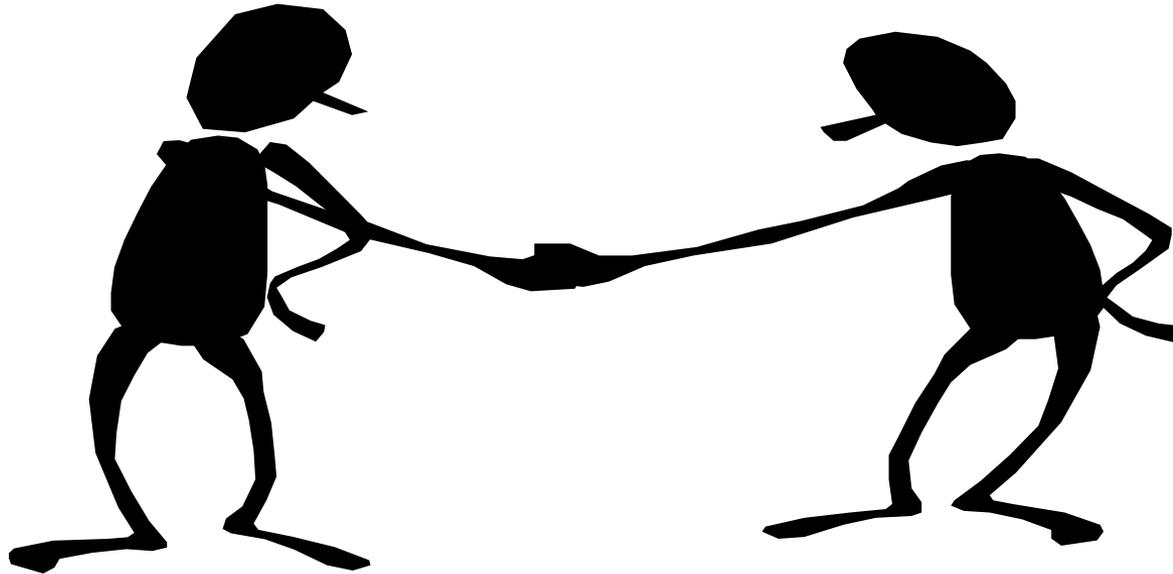
1. Supervisors and managers are informed for work restrictions/ accommodations.
2. Individuals involved in making decisions about accommodations.
3. Emergency treatment.
4. Government officials investigating compliance with ADA

# Thank you for your time!

## Questions?

Call the ADA Resource Center for Equity and Accessibility at (785) 864-4946 or email us at [accommodations@ku.edu](mailto:accommodations@ku.edu)

- Room: 103 Carruth O'Leary



# Help Desk Tickets

<http://humanresources.ku.edu/>

Click the “Submit an Inquiry” button on the right side of the web page.

