The Disability Blues

Americans With Disabilities Act (ADA)

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Overview of American With Disabilities Act (ADA)

Essential terms to understand

- Disability
- Limits major life activities
- Qualified individual
- Essential job functions
- Reasonable accommodation

What is a Disability?

- DISABILITY means, with respect to an individual—
  1. A physical or mental impairment that substantially limits one or more major life activities of such individual;
  2. A record of such an impairment; or
  3. Being regarded as having such an impairment (as described in paragraph (3)).

Changes in *interpretation* of definition

- Congress explicitly directed that definition of “disability” is to be construed broadly
  - Statutory language: “The definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act”
  - Applies to all three categories of “disability”

Category One: Is the individual a person with an actual, current disability?

- Does the person have a *physical or mental impairment*?
- Does the impairment affect one or more of his/her *major life activities*?
- Is the effect a *substantial limitation*?

Category One: Major Life Activities

- Previously, this term was defined only in case law
  - Regs included some examples (29 CFR 37.4, definition of “major life activities”)
  - Courts and EEOC guidance documents recognized others
- Supreme Court ruled that term should be interpreted narrowly

Then .....

Category One: Major Life Activities

- ADAAA:
  - Explicitly *rejected* Supreme Court's ruling that activity must be "of central importance to daily life"
  - *Inserted* a definition of "major life activities" in the statute

Category One: Major Life Activities

- New definition includes two **non-exhaustive** lists
  - List One: based on regulatory lists; adds some examples recognized by courts and/or EEOC guidance docs
  - List Two: entirely new list of “major bodily functions”

Category One: First List

- Remember: this list is non-exhaustive
  - Includes activities listed in 29 CFR 37.4 and other regulations
  - Also includes other activities (some recognized by courts or EEOC Enforcement Guidances)
  - Includes:
    - ✓ Eating
    - ✓ Standing
    - ✓ Bending
    - ✓ Thinking
    - ✓ Communicating
    - ✓ Sleeping
    - ✓ Lifting
    - ✓ Reading
    - ✓ Concentrating

Major Life Activities – Second List: "Major Bodily Functions"

- **Major bodily functions** include, but are not limited to (non-exhaustive list):
  - Normal cell growth
  - Immune system functions
  - Other types of functions:
    - ✓ *Digestive*
    - ✓ *Bowel*
    - ✓ *Bladder*
    - ✓ *Neurological*
    - ✓ *Brain*
    - ✓ *Respiratory*
    - ✓ *Circulatory*
    - ✓ *Endocrine*
    - ✓ *Reproductive*
- Remember: non-exhaustive list

One “major life activity” is enough

- ADAAA clarifies that:
  - An individual’s impairment meets the definition of disability if it substantially limits him/her in just *one major life activity*
  - The individual is not excluded from coverage simply because s/he is *not* substantially limited in *other* major life activities
    - ✓ In other words, s/he still has a disability even if she is able to do many other things

"Substantially Limits"

- No new statutory definition, but . . .
  - EEOC had to revise its regulatory definition to eliminate "significantly restricted"
  - Supreme Court interpretation was too narrow
    - ✓ Required "a greater degree of limitation than was intended by Congress"
    - ✓ Created an "inappropriately high level of limitation necessary" for a person to be protected

"Substantially limits" and "mitigating measures"

- Two: Congress *explicitly rejects* Supreme Court's holding that mitigating measures must be considered in determining substantial limitation
- Under ADAAA, consider how the impairment affects the person before, or without, the "mitigating measure"

  - ✓ **Example:** If a person has an amputated leg, you consider whether the amputation substantially limits him/her when s/he's not wearing a prosthesis

“Mitigating measures”

- Sole exception: you “shall” consider the effect of “ordinary eyeglasses and contact lenses”
  - ✓ Defined as “lenses that are intended to fully correct visual acuity or eliminate refractive error”
  - ✓ If the employee can’t see well without them but can see well with them, then his/her vision impairment is not “substantially limiting”
- These are distinguished from “low vision devices,” defined as “devices that magnify, enhance, or otherwise augment a visual image”

“Mitigating measures”

- The flip side of the requirement to consider “ordinary eyeglasses and contact lenses” in determining substantial limitation:
  - Employer or employment agency:
    - ✓ cannot consider an applicant’s uncorrected vision as a job qualification . . .

      In other words, must consider the applicant’s vision *with* glasses or contacts
    - ✓ . . . unless the requirement is “job related and consistent with business necessity”

"Substantially Limiting"

- "Episodic" or cyclical impairments, or impairments that go into remission
  - Examples: depression, bipolar disorder, post-traumatic stress disorder (PTSD), other psychiatric conditions, epilepsy, cancer
  - Are considered disabilities if they would substantially limit a major life activity *when active*

Category Two: Is the individual a person with a record of a disability?

- Past history of a genuine disability
- Misclassified as having a disability
- The record or misclassification has to meet the three elements of an actual disability (impairment, major life activity, substantial limitation)
    - ✓ Note: No change with ADAAAA

Category Three: Has the person been *regarded as* having a disability?

- Some aspects of this definition remain the same. Either the individual:
- Has an impairment, but:
  - ✓ Impairment doesn't substantially limit a major life activity, or
  - ✓ Impairs a major life activity because of other people's attitudes; **or**
  - ✓ Doesn't have an impairment, but is treated as having one

Category Three: Has the person been *regarded as* having a disability?

- Significant change to this category!
  - Before the ADAAA, an individual wasn't protected under this category unless:
    - ✓ S/he could prove that the person or entity who allegedly took action against him/her because of a perception of impairment . . .
    - ✓ Viewed that impairment as substantially limiting a major life activity!

Category Three: Has the person been *regarded as* having a disability?

- Congress changed that interpretation in the ADAAA
  - Post-ADAAA, all s/he has to prove is:
    - ✓ S/he was subjected to adverse treatment
    - ✓ Treatment was because of a physical or mental impairment, regardless of whether:
      - Impairment is actual or perceived (whether or not it really exists)
      - Impairment limits or is perceived to limit a major life activity

Category Three: Has the person been *regarded as* having a disability?

- Exception: Impairments that are minor **AND** transitory (6 months or less)
  - Example: common cold or ingrown fingernail
- An individual who is "regarded as" a person with a disability is not entitled to reasonable accommodation

Is everyone disabled?

- Is it smart to simply assume disability if person requesting an accommodation?
- If so how should it be handled?

What about mental impairments?

Stress?

Irritability?

Depression?

Bi-polar disorder?

Attention deficit disorder?

Clearly "Mental Impairments"

- Court have ruled these as mental impairments:
  - Depression
  - Bipolar disorder (a.k.a. as manic depression)
- EEOC guidance indicates
  - Stress alone does not qualify as impairment. *EEOC Enforcement Guidance on the Americans with Disabilities Act and Psychiatric Disabilities* (1997)
  - Stress disorders do—post traumatic stress disorder (PTSD)
- Courts have ruled that these are impairments:
  - PTSD. See *Desmond v. Mukasey*, 530 F.3d 944, 957 (D.C. Cir. 2008).
  - Irritable bowel syndrome. See *Foremanye v. Bd. of Comm. College Trustees,* 956 F. Supp. 574, 578 (D. Md. 1996).

Not a Stress Disorder

- Having to work for annoying supervisor
- *Weiler v. Household Finance Corp*., 101 F.3d 519, 524 (7th Cir. 1996) ("The major life activity of working is not 'substantially limited' if a plaintiff merely cannot work under a certain supervisor because of anxiety and stress related to his review of her job performance.") (citing *Palmer v. Circuit Court of Cook County*, 905 F. Supp. 499, 507 (N.D. Ill. 1995), *Adams v. Alderson*, 723 F. Supp. 1531, 1531-32 (D.D.C. 1989, *aff'd*, 1990 WL 45737 (D.C. Cir. 1990)).

Assume there is a mental impairment

Is the individual ***qualified*** to hold the job at issue????

Qualified Individual

- Can perform “essential functions” with OR without reasonable accommodation
- Has skills, education, experience, or other job-related requirements of employment

Essential Job Functions

- Employer's judgment to be considered
- Job descriptions (written before interviewing or hiring)
- Reason job exists is to perform that function
- Limited employees available to perform that function
- Function is highly specialized and employee was hired to perform that function
- Amount of time spent on the job performing that function
- Consequences of not requiring the disabled employee to perform the function
- Terms of a collective bargaining agreement
- Work experience of past employees in the job
- Work experience of current employees in the job

Qualified issues

- *Carroll v City of Stone Mountain,* 544 F.Appx. 926 (11th Cir.)
  - The Court held that police officer was suffering from PTSD and could not yet return to work, was not capable of meeting essential function of job and therefore was not "qualified"
  - Termination was not discriminatory

Some Essential Job Functions for ANY Job

- Physical attendance. *See Mason v. Avaya Communications, Inc.*, 357 F.3d 1114, 1119 (10th Cir. 2004) (citing *Hypes v. First Commerce Corp.*, 134 F.3d 721, 727 (5th Cir. 1998); *Gantt v. Wilson Sporting Goods Co.*, 143 F.3d 1042, 1047 (6th Cir. 1998); and *Tyndall v. National Education Centers, Inc.*, 31 F.3d 209, 213 (4th Cir. 1994)); *cf. Jackson v. Veterans Administration*, 22 F.3d 277, 279. (11th Cir. 1994) (holding that "being present on the job" is an essential function in the parallel context of the Rehabilitation Act); *King v. Kennametal, IP.G,* 2005 WL 2475718, *3 (S.D.Ga. October 6, 2005) (explaining that "[i]t is well established that regular attendance can be an essential function of most jobs."); *Petrone v. Hampton Bays Union Free School Dist.*, 2014 WL 2198612 (2d Cir. 2014) (finding that employee "had not established that he was a 'qualified individual,' because he 'did not, and could not, provide HBUFSD with any assurance that a temporary leave of absence would allow him to resume teaching.'").
- Arriving at work on time
- Ability to handle reasonably necessary stress. The Eleventh Circuit has categorically held that "[a]n employee's *ability to handle reasonably necessary stress* and work reasonably well with others are essential functions of *any position*. Absence of such skills prevents the employee from being 'otherwise qualified.'" *Williams v. Motorola, Inc.*, 303 F.3d 1284, 1290-91 (11th Cir. 2002) (emphasis supplied) (citing *Palmer v. Circuit Court of Cook County*, 117 F.3d 351 (7th Cir. 1997)); *see also, e.g., Verzeni v. Potter*, 109 Fed. Appx. 485, 488 (3d Cir. 2004) (same). See also *Owush-Ansah v The Coca-Cola Co.*, 715 F.3d 1306 (11th Cir. 2013)
- Work reasonably well with others

Other essential functions

- Ability to work independently
- Attendance or punctual performance
  - Example: *Anderson v J.P.Morgan Chase Co.*, 418 F.Appx. 881 (11th Cir. 2011)
    - Court held being "physically present" was essential function of job for First Responder Call Center employee
- Ability to stay awake
  - Example: *Smith v Sturgill, 516 Fed.Appx. 775 (11th Cir. 2013)*
    - Court held ability to stay awake essential to job of security officer

Other essential functions

- Ability to work full-time or overtime
- Ability to work a specific shift
- Ability to work rotating assignments
- Ability to travel
- Standing or walking
- Oral communication skills
- Lifting
- Manual dexterity

Note: With physical “essential functions,” employer may rely on doctors’ notes that show limitations considered “essential” to employer

Another way to attack qualifications?

- *Sindock v Volusia County School Board,* 568 Fed.Appx. 659 (11th Cir. 2014).
  - Court held that "an ADA II is estopped from denying the truth of statements made in his disability application" where employee offered no explanation as to how he was qualified in light of his social security application that said "teaching would 'guarantee [his] death,' and that although his doctors recommended that he teach gifted students, he did not think he could teach any students"

Reasonable Accommodations

- Job restructuring
- Part-time or modified work schedules
- Reassignment to a vacant position
- Acquisition or modification of equipment or devices
- These apply to known disabilities, not to those regarded as having a disability
- Employer must know of disability to be able to accommodate employee

General Requirements for Accommodations

- Must allow employee to perform essential job functions
  - If, after the accommodation is made, the employee still can't perform essential job function, then ADA claim fails
- Must relate to major life activity impaired by disability

Unreasonable Accommodations

- Eliminates essential job function from employee's responsibilities.
  - *Woodruff v. School Bd. of Seminole County*, 304 Fed. Appx. 795, 800 (11th Cir. 2008) ("An accommodation is not reasonable, and thus, not required, if it does not enable the employee to perform the essential functions of her job.").
- Places undue burden on employer (significant expense or difficulty in implementing)

Unreasonable Accommodations

- Directly threatens health or safety of employee requesting it or other employees.
  - 29 C.F.R. § 1630.2(r) (defining "direct threat" as "a significant risk of substantial harm to the health or safety of *the individual* or *others* that cannot be eliminated or reduced by reasonable accommodation")
- Requires other employees to work harder or requires the employer to "bump" another employee to another position
  - As an example, an undue burden may be presented where the suggested accommodation "would require other employees to work harder," *Mason v. Avaya Communications, Inc.,* 357 F.3d 1114, 1121 n.3 (10th Cir. 2004), or would require that "the employer . . . bump another employee from a position in order to accommodate a disabled employee." *Lucas v. W.W. Grainger, Inc.,* 257 F.3d 1249, 1256 (11th Cir. 2001).

Unpaid Leave?

- Most courts and the EEOC have concluded that, in some circumstances, an unpaid leave of absence can be a reasonable accommodation under the ADA.
  - See, e.g., *Humphrey v. Mem'l Hosps. Ass'n,* 239 F.3d 1128, 1136 (9th Cir.2001); *García-Ayala v. Lederle Parenterals, Inc.,* 212 F.3d 638, 649–50 (1st Cir.2000); *Cehrs v. Nw. Ohio Alzheimer's Research Ctr.,* 155 F.3d 775, 781–83 (6th Cir.1998); *Haschmann v. Time Warner Entm't Co.,* 151 F.3d 591, 601 (7th Cir.1998); see also 29 C.F.R. pt. 1630, app. at 356 (providing that a reasonable accommodation could include "unpaid leave for necessary treatment").

How Much Unpaid Leave is Reasonable?

- The ADA does not identify any amount of leave time that would automatically be deemed an undue hardship.
- The EEOC was supposed to issue guidance in 2011 but never did.
- Seventh Circuit says that "[i]nability to work for a multi-month period removes a person from the class protected by the ADA." *Byrne v. Avon Products, Inc.,* 328 F.3d 379 (7th Cir. 2003).
- Eleventh Circuit says **leave of indefinite duration** is by definition unreasonable. See *Wood v. Green*, 323 F.3d 1309, 1314 (11th Cir. 2003)
- EEOC guidance provides that, "[i]n certain situations, an employee may be able to provide only an approximate date of return. Treatment and recuperation do not always permit exact timetables."

EEOC: No Max Leave Policies

- Because the employer has an obligation to assess each requested accommodation on a case-by-case basis, the EEOC says employers may not apply a policy under which employees are automatically terminated after they have been on leave for a certain period of time, unless there is another effective accommodation or granting the additional leave would cause an undue hardship.
- Also subject to challenge are “no fault” attendance policies in which employees are subject to discipline for reaching a certain number of absences, regardless of the cause of the absences. Verizon paid $20 million to settle an EEOC lawsuit alleging a no-fault attendance policy adversely impacted persons with disabilities. Sears entered into a similar settlement.

ADA Unpaid Leave: A Final Note

- Remember: Unpaid leave is just **one** option.
  - "A qualified individual is not . . . entitled to the accommodation of his choice, but rather to a reasonable accommodation." *Stewart v. Happy Herman's Cheshire Bridge, Inc.,* 117 F.3d 1278, 1286 (11th Cir. 1997).

Undue Hardship Exception

- A requested accommodation would impose an “undue hardship” where it requires “significant difficulty or expense” to the employer.
- An employer doesn’t have to allow leave where it “can demonstrate that the accommodation would impose an undue hardship on the operation of its business.”

Undue Hardship Exception: Factors to Consider

- The nature and net cost of the accommodation needed
- The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, and the effect on expenses and resources
- The overall financial resources of the covered entity, the overall size of the business of the covered entity with respect to the number of its employees, and the number, type and location of its facilities
- The type of operation or operations of the covered entity, including the composition, structure and functions of the workforce of such entity, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the covered entity
- The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business

Undue Hardship – Eliminating Essential Functions

- Not required to eliminate "essential functions"
- "Essential functions" consist of the "fundamental job duties of the employment position the individual with a disability holds or desires." 29 C.F.R. § 1630.2(n)(1).
  - "While . . . the ADA may require an employer to restructure a particular job by altering or eliminating some of its marginal functions, employers are not required to transform the position into another one by eliminating functions that are essential to the nature of the job as it exists." *Earl v. Mervyns,* 207 F.3d 1361, 1367 (11th Cir. 2000); see also *Shannon v. N.Y.C. Transit Auth.*, 332 F.3d 95, 100 (2d Cir. 2003) ("A reasonable accommodation can never involve the elimination of an essential function of a job").

Undue Hardship — Indefinite Leave

- "The ADA covers people who can perform the essential functions of their jobs presently or in the immediate future." *Wood v. Green,* 323 F.3d 1309, 1312-1313 (11th Cir 2003); see also *Ivey v. First Quality Retail Service,* 490 Fed. Appx. 281, 285 (11th Cir. 2012); *Carroll v. City of Stone Mountain,* 544 Fed.Appx. 926 (11th Cir. 2013); *Lamar v. Wells Fargo Bank & Co., 2014 WL 713311 (N.D. Ala. 2014*) ("granting indefinite leave is not a reasonable accommodation because 'it does not allow [her] to perform. . . her job duties in the present or immediate future.'")
- See also *Santandreu v. Miami Dade County, 513 Fed.Appx. 902 (11th Cir. 2013) ("[T]he ADA does not require an employer to provide leave for an indefinite period of time because an employee is uncertain about the duration of his condition").*

Undue Hardship: Allowing Leave Just Because You Did Before

- Prior accommodations do not make an accommodation reasonable. *Holbrook v. City of Alpharetta, Ga.,* 112 F.3d 1522, 1528 (11th Cir. 1997); *Ivey v. First Quality Retail Service,* 490 Fed. Appx. 281 (11th Cir. 2012)

Undue Hardship: Permanent Light-Duty (or Any Permanent Exemption from Work)

- ADA does not require permanent light-duty work. *Ivey v. First Quality Retail Service,* 490 Fed.Appx. 281 (11th Cir. 2012)

Undue Hardship: Intermittent Leave?

- Courts disfavor intermittent leave under the ADA where attendance is important to the employer
- Courts have addressed the issue of intermittent leave under the ADA by asking whether attendance is an essential function of the job.
- *Peru v. T-Mobile USA, Inc.,* 897 F.Supp.2d 1078 (D. Colo. 2012) (”[T]he Court's own research has located no authority in which it was concluded that an employer's refusal to modify a compensation scheme in order to accommodate an employee taking intermittent leave due to a disability was found to violate the ADA.”); *Graves v. Finch Pruyn & Co., Inc.,* 457 F.3d 181 (2d Cir. 2006) (“This court has not had the occasion to address whether a finite unpaid leave of absence is a reasonable accommodation under the ADA. . . . We note, however, that the idea of unpaid leave of absence as a reasonable accommodation presents “a troublesome problem, partly because of the oxymoronic anomaly it harbors”—the idea that allowing a disabled employee to leave a job allows him to perform that job's functions—“but also because of the daunting challenge of line-drawing it presents.”).

Undue Hardship: Intermittent Leave?

- Courts say that an employer who needs reliable workers need not accommodate unpredictable absences by granting unplanned, intermittent leave.
  - **"A request to arrive at work at any time, without reprimand, would in essence require Appellee to change the essential functions of Appellant's job, and thus is not a request for a reasonable accommodation."** *Earl v. Mervyns, Inc.,* 207 F.3d 1361, 1366 (11th Cir. 2000); see also *Jovanovic v. In-Sink-Erator Div. of Emerson Elec. Co.,* 201 F.3d 894, 899-900 (7th Cir. 2000); *Hilburn v. Murata Elec. N. Am., Inc.,* 181 F.3d 1220, 1231 (11th Cir. 1999); *Nesser v. TWA, Inc.,* 160 F.3d 442, 445-46 (8th Cir. 1998); *Rogers v. Int'l Marine Terminals, Inc.,* 87 F.3d 755, 759 (5th Cir. 1996); *Hartog v. Wasatch Acad.,* 129 F.3d 1076, 1082-83 (10th Cir. 1997); *Buckles v. First Data Res., Inc.,* 176 F.3d 1098, 1101-02 (8th Cir. 1999); *Waggoner v. Olin Corp.,* 169 F.3d 481, 485 (7th Cir. 1999); *Powers v. Polygram Holding, Inc.,* 40 F. Supp. 2d 195, 200 (S.D.N.Y. 1999).
  - **"Spotty attendance by itself may show lack of qualification" under certain circumstances.** *Byrne v. Avon Products, Inc.,* 328 F.3d 379 (7th Cir. 2003); Stephen Befort, "The Most Difficult ADA Accommodation Issues: Reassignment and Leave of Absence," 37 *Wake Forest L. Rev.* 439 (2002).

Examples

- *Webb v. Donley,* 347 Fed. Appx. 443 (11th Cir. 2009): "A request to arrive at work at any time, without reprimand, is not a reasonable accommodation because it would change the essential functions of a job that requires punctual attendance." In that case, the employer "presented evidence that a modified schedule was unreasonable because presence at the work site was an essential function of Webb's position and allowing her to work a modified schedule would have changed the essential functions of the job." The Court also noted that "[a]lthough the Air Force previously had allowed Webb to work a modified schedule, the fact that an employer previously has granted a requested accommodation does not render that accommodation reasonable."
- *EEOC v. Yellow Freight System, Inc.*, 253 F.3d 943 (7th Cir. 2001), the court determined that where the employee was a dockworker – a position that required him to be present at the worksite—and where he had significant absenteeism that was erratic and unpredictable, attendance was an essential function of his job. The court noted that the employee had rejected the 90-day leave of absence offered to him, and had instead sought unlimited absences on an as-needed basis.

Examples

- *Maziarka v. Mills Fleet Farm, Inc.*, 245 F.3d 675, 681 (8th Cir. 2001), the court determined that the accommodation sought by an employee with irritable bowel—the ability to be absent from his position as receiving clerk and to be allowed to make up the time later—would constitute an undue hardship, as the unpredictability interfered with employer's ability to schedule employees to efficiently receive and process merchandise.
- *Pickens v. Soo Line R.R. Co.*, 264 F.3d 773, 775-76 (8th Cir. 2001), the employee repeatedly exercised his right to withdraw his name from the list of employees available for job assignments 29 times within a 10-month period. The court held that he was not a qualified individual, and his request to work at his discretion was not reasonable.

Examples

- *Nowak v. St. Rita High School*, 142 F.3d 999 (7th Cir. 1998), the defendant terminated plaintiff, a teacher, because of his extended illness and continual absences from the classroom, which exceeded 18 months. Court held plaintiff "was unable to perform an essential function—regular attendance." Thus, the court found that plaintiff "failed to meet his burden of establishing he was a 'qualified individual with a disability' at the time of his termination. The ADA does not require an employer to accommodate an employee who suffers a prolonged illness by allowing him an indefinite leave of absence."
- *Duckett v. Dunlop Tire Corp.*, 120 F.3d 1222 (11th Cir.1997): "Plaintiff could not represent that he likely would have been able to work within a month or two. Plaintiff had already been on medical leave for ten months, had only two months of eligibility for the Salary Continuation Plan remaining and had no way of knowing when his doctor would allow him to return to work in any capacity. . . . Plaintiff's request that his employer accommodate any disability Plaintiff had by providing him with two more months leave when he could not show he would likely be then able to labor is not 'reasonable' within the meaning of the ADA: the course of Plaintiff's health was too uncertain."

ADA Medical Documentation

- The ADA allows broader medical certifications than the FMLA.
- The ADA also allows “fitness for duty” examinations when the employee appears unfit for work.
- You still need to use a tailored letter for these procedures and a GINA disclaimer.

ADA Medical Certifications

- The ADA allows inquires into the nature and extent of a person's condition, provided they are job-related, in order to:
  - Determine whether person has a disability (i.e., a physical or mental impairment that substantially limits a major life activity)
  - Is a qualified person with a disability (i.e., can perform essential job functions with or without reasonable accommodation), and
  - What, if any, reasonable accommodation (e.g., extended leave or modified work schedule) may need to be provided by the employer.

Managing ADA Leave Requests

- Make evidence-based determination of whether a disability exists by requiring detailed medical certification.
- Make evidence-based determination of what accommodations are necessary through medical certification and job description.
- Revise job descriptions to state essential job functions, and always include attendance *in the workplace*, punctuality, reliability as essential functions.
- Place limits on employees: if employee fails to provide appropriate documentation, deny leave. If leave is intermittent, consider whether this poses an undue burden.
- Track ADA leave just like FMLA leave and consider taking action after a few months.

Resources on the ADAAA

- Archive of documents and history of ADAAA and ADA:

  http://www.law.georgetown.edu/archiveada/

- Fascinating article by law professor who was involved in drafting both ADA and ADAAA:

  http://www.law.georgetown.edu/archiveada/documents/ADAAmendmentsActArticle.pdf

More resources on the ADAAA

- Transcript of Cornell Univ. Disability Policy Forum on the ADAAA: http://www.ilr.cornell.edu/edi/p-eprrtc-policyforum.cfm#2008_12
  - Includes extensive comments from EEOC Commissioner Christine Griffin

- Job Accommodation Network (JAN) Bulletin on ADAAA: http://www.jan.wvu.edu/bulletins/adaaa1.htm

Questions?

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