

**City of Hamilton**  
BUTLER COUNTY OHIO



**Management Training Series:**

**Understanding the Americans with Disabilities  
Act (ADA) and Reasonable Accommodations**

**March 2017**

**Presented by:**

**Letitia S. Block, Esq., Assistant Law Director**

# Training Objectives



- Understand federal and state anti-discrimination laws generally;
- Understand the specific protections of applicants and employees under the Americans with Disabilities Act (ADA); and
- Understand your responsibilities in complying with these laws.

# The Law



- Federal and state law prohibits discrimination on the basis of certain protected classes, including, but not limited to, race, color, religion, national origin, sex, age, disability, genetic information, military status, and ancestry.
- Discrimination includes making employment decisions (hiring, promotions, pay, assignments, training, duty hours, working conditions, discipline, etc.) based on these protected classes.



## Anti-Discrimination Laws (Federal)

- Title VII of the Civil Rights Act of 1964 (Title VII)
  - Prohibits discrimination based on race, color, religion, sex, and national origin.
- Pregnancy Discrimination Act
  - Amends Title VII to prohibit discrimination against a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.
- Equal Pay Act of 1963 (EPA)
  - Protects men and women who perform substantially equal work from sex-based wage discrimination.
- Age Discrimination in Employment Act of 1967 (ADEA)
  - Protects employees and job applicants who are 40 years of age or older from employment discrimination based on age.



## Anti-Discrimination Laws (Federal)

- Title I of the Americans with Disabilities Act of 1990 (ADA)
  - Prohibits an employer from treating an applicant or employee unfavorably in all aspects of employment because he or she has a disability, a history of having a disability, or because the employer regards him or her as having a disability.
  - Limits the medical information an employer may obtain, and requires that medical information and records be kept confidential.
  - Prohibits disability-based harassment and retaliation.
  - Provides that, absent undue hardship (significant difficulty or expense to the employer), applicants and employees with disabilities are entitled to reasonable accommodation to apply for jobs, to perform their jobs, and to enjoy equal benefits and privileges of employment.

## Anti-Discrimination Laws (Federal)

- Section 102 and 103 of the Civil Rights Act of 1991
  - Among other things, amends Title VII and the ADA to permit jury trials and compensatory and punitive damage awards in intentional discrimination cases.
- Genetic Information Nondiscrimination Act of 2008 (GINA)
  - Prohibits discrimination against applicants or employees because of genetic information. Genetic information includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about any disease, disorder or condition of an individual's family members (i.e. an individual's family medical history).



## Anti-Discrimination Law (Ohio)

- Ohio Civil Rights Act of 1959
  - Prohibits discrimination based on race, color, religion, sex, military status, national origin, disability, age, and ancestry.

# The Law

- Anti-discrimination laws also prohibit harassment and retaliation against individuals for taking protected actions under the above-referenced laws.

## **Harassment Based on Membership In Any “Protected Class” Is Prohibited**

- Sexual Harassment
  - Includes gender stereotyping/sexual orientation
- Age-Based Harassment
- Racial Harassment
- Religious Harassment
- National Origin Harassment
- Disability Harassment

---

## **Other Forms of Harassment**

- Proselytizing;
- Using racial slurs or words with racial connotations;
- Bullying or intimidation tactics;
- Threats of violence or harm.

# Retaliation



- **Internal Reports:** Employees who complain to their supervisor or personnel about harassment (or discrimination) cannot be retaliated against.
- **External Reports:** Employees who file discrimination charges with the U.S. Equal Employment Opportunity Commission and the Ohio Civil Rights Commission, participate as witnesses for other employees, or report legal violations with governmental agencies enjoy protection from retaliation as well.

# What Not To Do

## **DO NOT RETALIATE!**

- Retaliation against an employee who takes a leave of absence under the Family and Medical Leave Act (FMLA) or the ADA or engages in other protected activity is strictly prohibited. Retaliation typically takes the form of termination, reduced pay, loss of promotional opportunity, or detrimental transfer.
- Under U.S. Supreme Court precedent, retaliation can also include lesser “slights” that have the effect of discouraging employees from taking protected activities such as lack of participation in group lunches, off-duty conduct, and post-termination conduct.

# Administrative Directives on EEO and Harassment



- You have received a copy of Administrative Directives 313 and 323 with your materials for this presentation. You should review the Directives. Please feel free to raise any questions that you have during our session today or raise any questions or concerns with any of the people who should receive complaints of discrimination or harassment under the Directives.

# Administrative Directive on Sexual Harassment



## **Policy Statement**

“The City of Hamilton is committed to maintaining a work environment in which all individuals are treated in such a manner as the law fairly and respectfully requires. Each individual has the right to work in an employment atmosphere which promotes equal opportunities and prohibits illegal discriminatory practices, including harassment on the basis of sex and other protected classes.”

# Reporting Discrimination or Harassment



Reports of any type of discrimination or harassment may be made to the following:

- Non-involved Immediate Supervisor(s)
- Any Department Director or Chief
- Law Director
- Any staff member in Civil Service and Personnel Department
- Any staff member in the Human Resources Department
- Any staff member in City Manager's Office

Classified employees may also report discrimination or harassment to the Hamilton Civil Service Commission.

An employee is not required to, and should not report harassment to, the person who is engaged in the harassment or to someone who appears to be condoning it.

# Investigation of Discrimination or Harassment



- An appropriate investigation will take place and the privacy of the complainant and the person accused of discrimination or harassment will, to the extent possible under the circumstances and consistent with the need to investigate, be kept confidential.
- After the investigation, if it is determined that discrimination or harassment has occurred, immediate and appropriate corrective action, up to and including discharge, will be taken to stop the discrimination or harassment and prevent its recurrence. The City strictly prohibits retaliation for making a good faith complaint or participating in an investigation.

# Your Obligations

- Report all discrimination or harassment complaints to an appropriate person under the policy. Do not assume that others are already aware of the discrimination or harassment.
- If you discover warning signs of suspected discrimination or harassment, don't wait until someone files a formal complaint. Instead, immediately notify an appropriate person.
- Maintain confidentiality of reports.
- These rules apply to all types of harassment (whether for sex, race, national origin, religion, disability, etc.).

# Break



# ADA Definitions

- The ADA protects qualified individuals with a disability.
- “Individual with a disability” is defined as a person who
  1. has a physical or mental impairment that substantially limits one or more major life activity;
  2. has a record of such an impairment (i.e. was substantially limited in the past, such as prior to undergoing rehabilitation); or
  3. is regarded, or treated by an employer, as having such an impairment, even if no substantial limitation exists.
- An individual is considered qualified if he or she is able to meet the employer’s requirements for the job such as education, training, employment experience, skills, or licenses, and is able to perform the job’s essential or fundamental duties with or without reasonable accommodation.

# ADA Definitions



- An impairment need not prevent or severely or significantly restrict your performance of a major life activity to be considered substantially limiting.
- The determination of whether an impairment substantially limits a major life activity must be made without regard to any mitigating measures (e.g., medications or assistive devices, such as prosthetic limbs) that you may use to lessen your impairment's effects; and impairments that are episodic or in remission (e.g., epilepsy or PTSD) are considered disabilities if they would be substantially limiting when active.

# Impairments that Should Easily be Covered

---

- Per the EEOC's analysis, the following types of impairments will, at a minimum, substantially limit the major life activities indicated:

# Impairments that Should Easily be Covered



- **deafness** substantially limits hearing;
- **blindness** substantially limits seeing;
- an **intellectual disability** (formerly termed mental retardation) substantially limits brain function;
- **partially or completely missing limbs or mobility impairments** requiring the use of a wheelchair substantially limit musculoskeletal function;

# Impairments that Should Easily be Covered

- **autism** substantially limits brain function;
- **cancer** substantially limits normal cell growth;
- **cerebral palsy** substantially limits brain function;
- **diabetes** substantially limits endocrine function;
- **epilepsy** substantially limits neurological function;
- **Human Immunodeficiency Virus (HIV) infection** substantially limits immune function;
- **multiple sclerosis** substantially limits neurological function;
- **muscular dystrophy** substantially limits neurological function;

# Impairments that Should Easily be Covered

- major depressive disorder,
- bipolar disorder,
- post-traumatic stress disorder,
- obsessive compulsive disorder, and
- schizophrenia

substantially limit brain function.

29 CFR § 1630.2(j)(3)(iii).

- An impairment that is **temporary** – e.g., one that will last or expect to last fewer than six months -- **can be** substantially limiting.

29 CFR § 1630.2(j)(1)(ix).

# Reasonable Accommodation

---

- A reasonable accommodation is, generally, “any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities.”

# Examples of Reasonable Accommodations

- The following are examples of types of accommodations in the application process or on the job:
  - written materials in accessible formats, such as large print, Braille, or on computer disk;
  - extra time to complete a test if there is difficulty concentrating, a learning disability, or traumatic brain injury (TBI);
  - interviews, tests, and training held in accessible locations;
  - modified equipment or devices (e.g., assistive technology that would allow you to use a computer if you are blind or to use a telephone if you are deaf or hard of hearing; a glare guard for a computer monitor if you have a TBI; a one-handed keyboard if you are missing an arm or hand);
  - physical modifications to the workplace (e.g., reconfiguring a workspace, including adjusting the height of a desk or shelves if you use a wheelchair);

# Examples of Reasonable Accommodations

- permission to work from home;
- leave for treatment, recuperation, or training related to disability;
- a modified or part-time work schedule;
- a job coach who could assist you if you have some difficulty learning or remembering job tasks;
- modification of supervisory methods, such as having a supervisor break complex assignments into smaller, separate tasks, provide some additional feedback or guidance on a task, or adjust methods of communication (e.g., give written rather than oral instructions for completing certain tasks);
- reassignment to a vacant position if your disability prevents you from performing the duties of your current position or where any reasonable accommodation in your current position would result in undue hardship (i.e., significant difficulty or expense).

# Disability Leave



- A reasonable accommodation can include making modifications to existing leave policies and providing leave when needed for a disability, even where an employer does not offer leave to other employees.

# Disability Leave

- Example of disability leave:
  - An employer covered under the FMLA grants employees a maximum of 12 weeks of leave per year. An employee uses the full 12 weeks of FMLA leave for her disability but still needs 5 additional weeks of leave.
  - The employer must provide the additional leave as a reasonable accommodation unless the employer can show that doing so will cause an undue hardship.

# Administrative Directive on ADA



- You have received a copy of Administrative Directive 302 and the Reasonable Accommodation Request Form with your materials for this presentation. You should review the Directive. Please feel free to raise any questions that you have during our session today or raise any questions or concerns later with the Civil Service and Personnel Department or the Human Resources Department.

# Informal Interactive Process

- Step 1 – Receiving an Accommodation Request
  - Any indication (either oral or in writing) of a need for an adjustment or change in the application process or at work for a reason related to a medical condition.
  - No need for the employee or applicant to mention the ADA, disability, or use the term “reasonable accommodation.”
  - Someone acting on behalf of an applicant or employee such as a family member, rehabilitation counselor, health professional, or other representative, can also make the request.

# Q & A

---

1. An employee tells her supervisor, “I’m having trouble getting to work at my scheduled start time because of medical treatments I’m undergoing.” Is this a request for a reasonable accommodation?

A. Yes

B. No

# Q & A

2. An employee tells his supervisor, “I need six weeks off to get treatment for a back problem.” Is this is a request for a reasonable accommodation?

A. Yes

B. No

# Q & A

3. A new employee, who uses a wheelchair, informs the employer that her wheelchair cannot fit under the desk in her office. Is this is a request for a reasonable accommodation?

A. Yes

B. No

# Q & A

4. An employee tells his supervisor that he would like a new chair because his present one is uncomfortable. Is this is a request for a reasonable accommodation?

A. Yes

B. No

# Tips regarding Reasonable Accommodation Requests

- Err on the side of caution: If you are not sure regarding whether an employee has requested an accommodation, contact the Civil Service and Personnel Department or the Human Resources Department. There may be a need to ask the employee to clarify what is being requested and why.
- Act quickly and responsibly.
- Do not share information regarding the request to anyone who does not need to assist with the request.

# Informal Interactive Process

- Step 2 – Gathering Information
- Step 3 – Exploring Accommodation Options
- Step 4 – Choosing an Accommodation
- Step 5 – Implementing the Accommodation (including Communication with Essential Personnel)
- Step 6 – Monitoring Effectiveness of the Accommodation

Steps 2 through 6 should be performed in consultation with the Civil Service and Personnel Department and/or the Human Resources Department.

# Notable Cases

## *EEOC v. Ford Motor Company*

- The EEOC sued Ford charging that the company's denial of a particular employee's request to work from home up to 4 days a week as an accommodation for her irritable bowel syndrome violated the ADA. Harris was a resale steel buyer whose job primarily required telephone and computer contact with co-workers and suppliers. Ford's telecommuting policy authorized employees to work up to four days a week from a telecommuting site.
- The district court granted summary judgment for Ford, holding that attendance at the job site was an essential function of the employee's job, and that her disability-related absences meant that she was not a "qualified" individual under the ADA.
- The U.S. Court of Appeals for the Sixth Circuit reversed the lower court, explaining that "the law must respond to the advance of technology in the employment context . . . and recognize that the 'workplace' is anywhere that an employee can perform her job duties." The Appeals Court held that the "highly fact-specific" question was whether presence at the Ford facilities was truly essential.

# Notable Cases

## *EEOC v. Princeton Healthcare*

- The EEOC sued Princeton HealthCare System (PHCS), alleging that its fixed leave policy failed to consider leave as a reasonable accommodation in violation of the ADA. According to the EEOC, since PHCS's leave policy merely tracked the requirements of the FMLA, employees who were not eligible for FMLA leave were fired after being absent for a short time, and many more were fired once they were out more than 12 weeks.
- Under the consent decree settling the suit PHCS will pay \$1,350,000, which the EEOC will distribute to employees who were unlawfully terminated under PHCS's former policy. PHCS also is prohibited from having a blanket policy that limits the amount of leave time an employee covered by the ADA may take. PHCS must instead engage in an interactive process with covered employees, including employees with a disability related to pregnancy, when deciding how much leave is needed. In addition, PHCS can no longer require employees returning from disability leave to present a fitness for duty certification stating that they are able to return to work without any restrictions. PHCS also agreed that it will not subject employees to progressive discipline for ADA-related absences, and will provide training on the ADA to its workforce.

# Confidentiality of Medical Information

- An employer may not ask job applicants or employees about the existence, nature, or severity of a disability (even if a disability appears obvious).
  - Applicants may be asked about their ability to perform specific job functions.
  - A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in similar jobs.
  - Medical examinations of employees must be job related and consistent with the employer's business needs.

# Confidentiality of Medical Information

- Medical records are confidential. The basic rule is that with limited exceptions, employers must keep confidential any medical information they learn about an applicant or employee. Information can be confidential even if it contains no medical diagnosis or treatment course and even if it is not generated by a health care professional. For example, an employee's request for a reasonable accommodation would be considered medical information subject to the ADA's confidentiality requirements.
- If an employee reveals information regarding a disability (or an injury or illness), do not share the information with anyone unless you reasonably believe that the employee will need an accommodation. If you believe the employee may need an accommodation, please contact the Civil Service and Personnel Department or Human Resources Department for direction.

---

## Examples of Prohibited Disability-Related Inquiries

- asking an employee whether he or she has (or ever had) a disability or how he or she became disabled or inquiring about the nature or severity of an employee's disability;
- asking an employee to provide medical documentation regarding his or her disability;
- asking an employee's co-worker, family member, doctor, or another person about an employee's disability;
- asking about an employee's genetic information;

---

## Examples of Prohibited Disability-Related Inquiries

- asking about an employee's prior workers' compensation history;
- asking an employee whether he or she currently is taking any prescription drugs or medications, whether he or she has taken any such drugs or medications in the past, or monitoring an employee's taking of such drugs or medications;
- asking an employee a **broad** question about his or her impairments that is likely to elicit information about a disability (e.g., What impairments do you have?).

## Examples of Permissible Questions

- asking generally about an employee's **well being** (e.g., How are you?), asking an employee who looks tired or ill if he or she is feeling okay, asking an employee who is sneezing or coughing whether he or she has a cold or allergies, or asking how an employee is doing following the death of a loved one or the end of a marriage/relationship;
- asking an employee about non-disability-related impairments (e.g., How did you break your leg?);
- asking an employee whether he or she can perform job functions;



---

## Examples of Permissible Questions

- asking an employee whether he or she has been drinking;
- asking an employee about his or her **current illegal use of drugs**;
- asking a pregnant employee how she is feeling or when her baby is due;
- asking an employee to provide the name and telephone number of a person to contact in case of a medical emergency.

# Hypothetical No. 1

Sue, a customer service representative, took 5 months of leave as a reasonable accommodation. The City compares the calls of all customer service representatives over a one-year period, and any employee whose calls fall more than 25% below the median number of calls of all representatives is typically subject to corrective action. Sue is 25% below the median number of calls for the one-year period. What should Mary, Sue's supervisor, do?

# Hypothetical No. 1



1. Automatically terminate Sue.
2. Schedule a pre-disciplinary hearing for Sue.
3. Assess Sue's productivity during the period she did work (i.e., prorate her productivity).
4. Do nothing; penalizing Sue would constitute retaliation for medical leave and a denial of a reasonable accommodation.

# Hypothetical No. 2

Billy is working a modified schedule as a reasonable accommodation due to his cancer treatments. Joe comes to you and asks why Billy is receiving special treatment and hasn't been disciplined for his absences under divisional policy. What should you tell Joe?

# Hypothetical No. 2

1. Tell Joe Billy has cancer.
2. Tell Joe that Billy is receiving a reasonable accommodation under the ADA.
3. Tell Joe nothing.
4. Tell Joe that the matter is subject to confidentiality.

# Hypothetical No. 3

Joan uses a wheelchair and slurs her speech. One of Joan's co-workers, Tim, recently reported to you that Johnny consistently refers to Joan as a retard, a cripple, and has altered her work station so that her wheelchair does not fit under her desk. What should you do?

# Hypothetical No. 3

1. Tell Johnny to knock it off and consider the matter closed.
2. Interview Tim, Johnny, and Joan, and take appropriate action.
3. Report the matter to the Civil Service and Personnel Department.
4. Make sure Joan's work station is adjusted for her to work.

# Questions?

