

# Live Captions Provided

## Two Options:

1. Access StreamText link available in the “Chat” (“Chat” control in Zoom toolbar)
2. Access the “Closed Captions” option (“Closed Captions” control with “CC” above it in Zoom toolbar)



# Spotlighting and Pinning

## Spotlighting

- Only Host or Co-host can spotlight someone
- Whoever is spotlighted will appear in Speaker View

## Pinning

- Any participant can pin any other participant's video at any time, and only impacts that participant's display

## How to Spotlight/Pin Participants

- Hover over participant you want to spotlight/pin
- Select the parenthesis (...)
- From the menu, choose "Spotlight for Everyone" or "Pin"



**State ADA Coordinator's Office**

# View Options

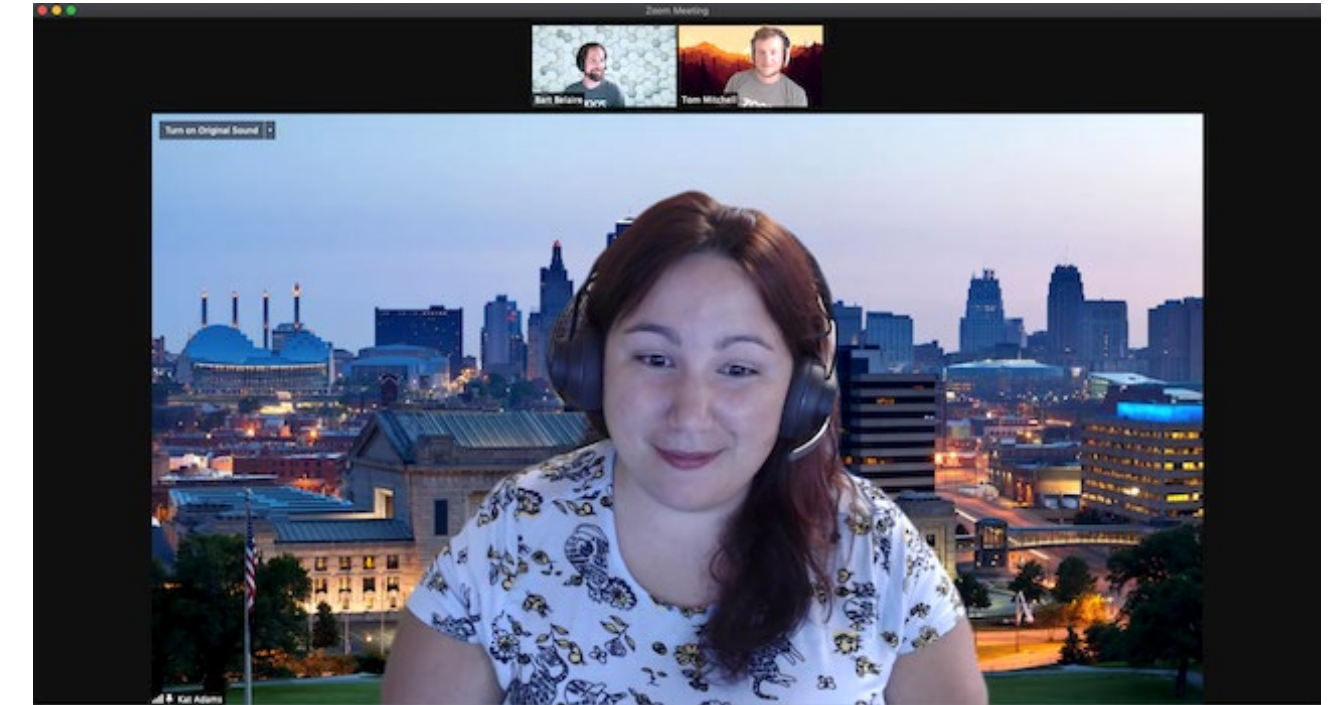
Located on the top right corner of the screen

## Speaker View

- Speaker view will switch the large video window between who is speaking with 3 or more participants in the meeting

## Gallery View

- Gallery view lets you see thumbnail displays of participants, in a grid pattern, which expands and contracts as participants join and leave the meeting.



State ADA Coordinator's Office



2021 Virtual ADA Conference for State and Local  
Governments

# ADA Title I: The Intersection of COVID-19 and the ADA

June 9, 2021


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U.S. EEOC

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DeKalb County Government

# ADA Title I: The Intersection of COVID-19 and the ADA

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"The worst  
thing about a  
disability is that  
people see it  
before they see  
you."

- Easterseals



# ADA: Reasonable Accommodation/Interactive Process

1

Request

2

Gather

3

Implement

4

Evaluate



# What is the Interactive Process?

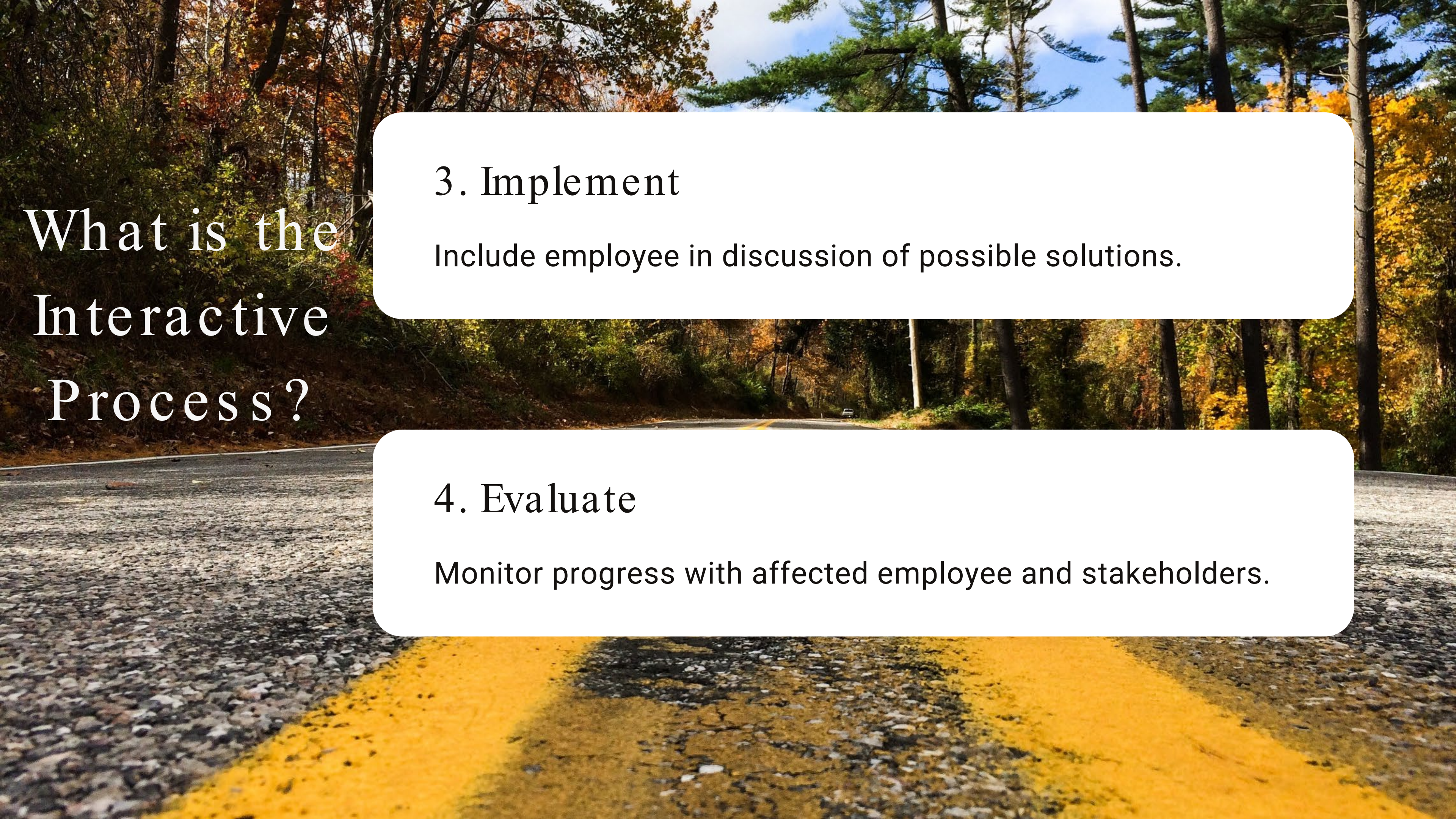
## 1. Request

Consider a standardized process to address formal and informal requests.

## 2. Gather

Obtain information related to nature of job, limitations and functions performed.





# What is the Interactive Process?

## 3. Implement

Include employee in discussion of possible solutions.

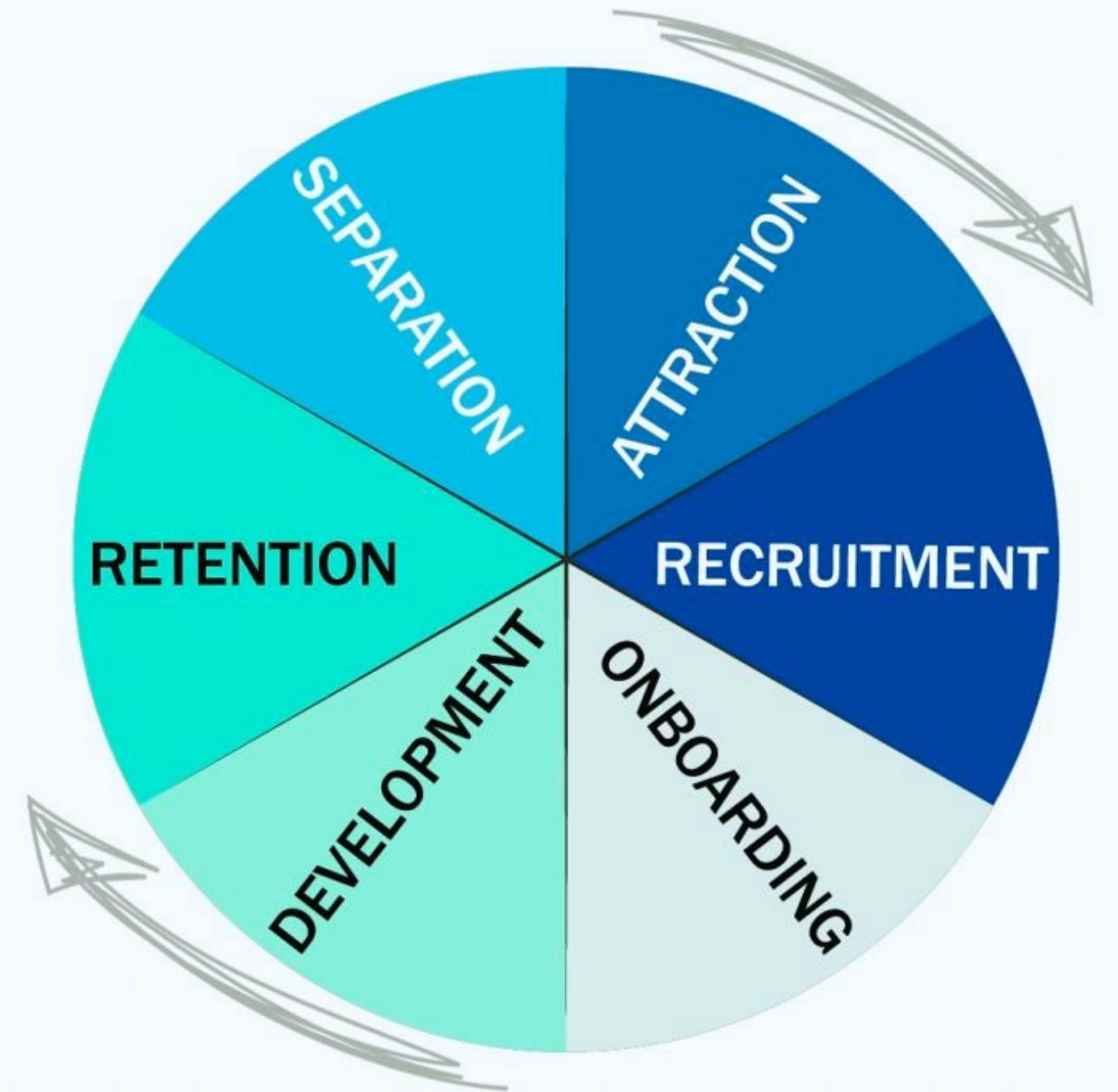
## 4. Evaluate

Monitor progress with affected employee and stakeholders.



How do we get there?

# Potential Challenges in the Workplace





# What is the Interactive Process?



- 1 Recruitment and Onboarding**  
Interviews, ergonomics and sensory requirements
- 2 Invisible Illness & Behavior**  
Aids, addition, recovery, and rehabilitation
- 3 Dispute Resolution**  
Written reports, communication and transparency



# Explore Reassignment as Accommodation

## - Temporary Assignments

Short-term offerings transitioning employees back to workforce where available

## - Limited Job-Search

Specific to division or agency based on requisite knowledge, skills, and ability

## - Alternative Offerings

Leave as accommodation, retirement options, or mutual consent



# Effective Collaboration

## Program Manager

Serve as repository for responses to requests, policy interpretation, grievance process and training

## Risk Management

Partner with in-house stakeholders, external benefit and workers' compensation vendors

# Effective Collaboration

## Executive Leadership

Consult with CHRO and legal counsel for budgetary and administrative concerns

## Publications

Refer to reputable sources, professional organizations, enforcement agencies and other sources for trending topics and updates





# COVID-19 Policy Implications

# Return-to-Work

What does it look like? Is your organization prepared?

- Strategic Planning
- Return Protocols
- Customer Interaction





# Limit the Risk of Exposure to COVID-19



- Require employees to remain home if sick or exhibiting symptoms
- Communicate attendance and leave policies
- Limit contact to communal surfaces
- Clean and disinfect public spaces frequently
- Request, provide and/or allow employees to wear a mask or face covering
- Display signage reminding employees of social distancing and proper handwashing

# COVID-19 Vaccinations and Employee Requests for Accommodation

1. Ensure policy exists for handling accommodation requests

All employers with 15 or more employees are covered.

Federal government employers must comply with Rehabilitation Act of 1973.

2. Ensure policy exists for handling accommodation requests

Organizations should review and maintain current policies.

Review job descriptions to ensure conformity with all aspects of job functions (including sensory requirements).

3. Review requests for exemption from the vaccine requirement

Review exemption request to determine ADA or Title VII obligations.

Managers and supervisors should understand how to recognize and relay information within the organization.





# COVID-19 Vaccinations and Employee Requests for Accommodation

## 4. Initiate the interactive process

Good faith effort by employer to discuss employee's specific circumstances to determine what (if any) accommodation is needed.

## 5. Determine whether employee has a disability under the ADA

Does the employee meet the definition of "disability" and/or "qualified individual".

For religious accommodation requests, skip this step.

## 6. Determine whether the employee has a sincerely held religious belief

Employer should ordinarily assume employee's request is based on sincerely held belief, however, may be justified in seeking additional information to support the request.

For medical accommodation requests, skip this step.



# COVID-19 Vaccinations and Employee Requests for Accommodation

7. Determine if the accommodation poses a direct threat or creates

"undue hardship"  
Perform individualized assessment to determine direct threat: duration of risk; nature and severity of the potential harm; likelihood harm will occur; imminence of potential harm.

8. Notify the employee

HR notifies employee in writing with approval/denial.

All documents must be maintained separately from employee personnel file consistent with confidentiality requirements of ADA.

9. Review and modify

Review of request may be necessary especially if an employee's circumstances or business needs change.





# COVID-19 Frequently Asked Questions

- Under ADA, can an employer require that employees get vaccinated against COVID-19?

[https://askjan.org/blogs/jan/2021/04/faq-covid-19-vaccination-and-the-americans-with-disabilities-act.cfm?csSearch=3378686\\_1](https://askjan.org/blogs/jan/2021/04/faq-covid-19-vaccination-and-the-americans-with-disabilities-act.cfm?csSearch=3378686_1)

# COVID-19 Frequently Asked Questions

2. Is asking whether an employee has received a COVID-19 vaccination a disability-related inquiry?

[https://askjan.org/blogs/jan/2021/04/faq-covid-19-vaccination-and-the-americans-with-disabilities-act.cfm?csSearch=3378686\\_1](https://askjan.org/blogs/jan/2021/04/faq-covid-19-vaccination-and-the-americans-with-disabilities-act.cfm?csSearch=3378686_1)



# COVID-19 Frequently Asked Questions

3. May an employer ask employees whether they have received a COVID-19 vaccination?

[https://askjan.org/blogs/jan/2021/04/faq-covid-19-vaccination-and-the-americans-with-disabilities-act.cfm?csSearch=3378686\\_1](https://askjan.org/blogs/jan/2021/04/faq-covid-19-vaccination-and-the-americans-with-disabilities-act.cfm?csSearch=3378686_1)

# COVID-19 Frequently Asked Questions

4. Can an employer end telework accommodations once at-risk employees with disabilities receive a COVID-19 vaccine?

[https://askjan.org/blogs/jan/2021/04/faq-covid-19-vaccination-and-the-americans-with-disabilities-act.cfm?csSearch=3378686\\_1](https://askjan.org/blogs/jan/2021/04/faq-covid-19-vaccination-and-the-americans-with-disabilities-act.cfm?csSearch=3378686_1)



# COVID-19 Frequently Asked Questions

5. If an employer is allowing an employee with a disability to telework as an accommodation, can the employer ask the employee whether getting a COVID-19 vaccine will enable the employee to return to work?

[https://askjan.org/blogs/jan/2021/04/faq-covid-19-vaccination-and-the-americans-with-disabilities-act.cfm?csSearch=3378686\\_1](https://askjan.org/blogs/jan/2021/04/faq-covid-19-vaccination-and-the-americans-with-disabilities-act.cfm?csSearch=3378686_1)

# ADA Title I: The Intersection of COVID-19 & the ADA

6/9/21

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# EEOC Resources on COVID-19

- Everything EEOC has issued related to COVID-19 can be found at <https://www.eeoc.gov/coronavirus>, including:
  - [What You Should Know about COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#) (regularly updated; last update 5/28/21)
- This presentation highlights key ADA points in EEOC's COVID-19 technical assistance materials.
- NOTE: Other Federal laws, as well as state or local laws, may provide employees with additional protections.

## NOTE REGARDING UPDATED CDC GUIDANCE

- These materials were prepared prior to the CDC's updated guidance for fully vaccinated individuals issued on May 13, 2021, and any supplements. The EEOC is considering any impact of these developments on COVID-19 technical assistance provided to date.
- [Interim Public Health Recommendations for Fully Vaccinated People](#)



# Federal EEO Laws & CDC Guidance

- EEO laws continue to apply during the time of the COVID-19 pandemic.
- But EEO laws do not interfere with or prevent employers from following the guidelines and suggestions made by Centers for Disease Control and Prevention (CDC) other public health authorities about steps employers should take regarding COVID-19.
- [CDC Workplace Guidance and Strategies](#)

# ADA Background: “Direct Threat” and COVID-19 Screening

- ADA permits employers to make disability-related inquiries and conduct medical exams if job-related and consistent with business necessity.
- Example: disability-related inquiries and reliable medical exams meet ADA standard if necessary to exclude employee with medical condition who would pose a direct threat to health or safety (significant risk of substantial harm).



# ADA Background: “Direct Threat” and COVID-19 Screening (continued)

- Under ADA, direct threat is to be determined based on best available objective medical evidence.
- Current, applicable guidance from CDC or other public health authorities is such evidence.
- Therefore, employers will be acting consistent with ADA as long as any screening implemented is consistent with advice from CDC and public health authorities for that type of workplace at that time.

# COVID-19 Screening for Employees Physically Entering the Workplace

- Based on guidance of CDC and public health authorities at the time, EEOC took the position in March 2020 that someone entering workplace with COVID-19 posed a “direct threat” to health of others as defined under the ADA, and that therefore employers could, if they chose, screen all employees for COVID-19 if physically entering worksite. Examples:
  - Take temperature
  - Ask about COVID-19 symptoms, diagnosis, testing
  - Ask if exposed to *anyone* who has COVID-19 (rather than asking about family members – due to prohibitions under Genetic Information Nondiscrimination Act)
  - Administer viral testing for current COVID-19 infection consistent with current CDC recommendations (but antibody testing not permitted)



# COVID-19 Screening (continued)

- Employers may instruct employees to stay home or send them home if they have COVID-19 or symptoms.
- May exclude employees from workplace if they refuse to undergo screening measures, but:
  - to gain cooperation, employers may wish to ask reasons for refusal, remind about confidentiality.
  - address disability & religious accommodation requests related to screening measures.
- No disparate treatment on protected basis in selecting who screened.

# EEO Laws & Individuals Who Do Not Have COVID-19 But May Be at Higher Risk of Severe Illness

- CDC has identified medical conditions placing individuals at higher risk of severe illness from COVID-19.
  - E.g., cancer, kidney disease, chronic lung disease, hypertension, diabetes, heart conditions, immunocompromised.
  - ADA accommodation requests from employees with such conditions analyzed according to usual ADA rules.
- Note: Involuntarily excluding employee due to such a condition would require employer to analyze & show employee poses “direct threat to self,” a high standard to meet. Even then, exclusion only allowed if no accommodation possible to reduce threat to an acceptable level.



# Reasonable Accommodation & Interactive Process

- ADA permits employer to request medical documentation if disability or need for accommodation not obvious or already known.
- Employer has discretion to choose among effective accommodations.
- Where requested accommodation would result in undue hardship, employer must offer an alternative reasonable accommodation if available absent undue hardship.
- May be helpful to consult [Job Accommodation Network \(JAN\)](#) COVID-19 resources for types of accommodations.

## Reasonable Accommodation (continued)

- Requests may be to accommodate a disability exacerbated by pandemic situation.
- Accommodations to allow being in workplace, or for those who cannot be in workplace.
- Those designated “essential” or “critical” workers still retain ADA rights, and therefore may be entitled to accommodation for disability.
- Employee not entitled to ADA accommodation based on living with or being otherwise associated with an individual with a disability.
- EEOC has not addressed when COVID-19 itself may render someone an “individual with a disability” under the ADA.



# Telework

- Under ADA, employer need not eliminate an essential function of job as accommodation or provide accommodation that would pose undue hardship.
- If employer recalls employee to work, request for continued telework as disability accommodation need not be granted unless ADA requirements met.
  - Employer can restore essential functions if they were temporarily altered due to mandatory telework.
  - Whether telework was effective during pandemic conditions may be relevant to deciding employee's request for telework after workplace reopens.

# Information/Inviting Advance Requests

- Employer is free to provide information to entire workforce about who to contact to request accommodation or other flexibilities.
- Employer also may invite advance requests even before workplace reopens from those employees who may choose to make early request.
- If an employee chooses not to request accommodation in advance, and instead requests it at a later time, the employer must still consider the request at that time.

# Confidentiality

- With limited exceptions, ADA requires employers to keep confidential any applicant/employee medical information.
- Includes not only diagnosis or treatments, but also that individual has requested or is receiving accommodation.
- Keep medical records separate from personnel file
- Restricts who employer can inform of an employee's COVID-19 diagnosis or symptoms
  - May inform official(s) designated to handle response, and public health authorities
  - If informing other employees or customers, cannot disclose employee's name. Instead need to use a generic description (e.g., "someone who works on 4<sup>th</sup> floor").



# Workplace Infection Control Policies

- What if an employer has policies requiring employees to wear face masks or adhere to other infection control practices?
- Employer may need to accommodate employees who need modification or can't comply due to disability (ADA) or religious belief/practice (Title VII of the Civil Rights Act), subject to undue hardship under each statute. Examples:
  - non-latex gloves
  - modified face masks for interpreters or others who communicate with an employee who uses lip reading
  - gowns designed for individuals who use wheelchairs
  - modified equipment due to religious garb

# EEO Laws and COVID-19 Vaccination

- The federal EEO laws do not prevent an employer from requiring all employees physically entering the workplace to be vaccinated for COVID-19, subject to the reasonable accommodation provisions of Title VII and the ADA, and other EEO considerations.
- These principles apply if an employee gets the vaccine in the community or from the employer.
- EEOC's role in addressing vaccination is limited to application of the federal EEO laws.
- Check other federal and state laws that may apply.

# ADA & Employer Vaccination Policies Requiring Employees to Bring in Proof of Vaccination

- If employees are required to bring in proof of community vaccination, it is not an ADA disability-related inquiry or medical exam by the employer.
- But an employee's proof of vaccination is subject to ADA medical confidentiality rules.



# **ADA & Employer Vaccination Policies Requiring Vaccination Administered Directly by Employer**

- **If employees are required to have a vaccination administered directly by employer (or its agent):**
  - **Employer would be asking the CDC-recommended, pre-vaccination screening questions, which include disability-related inquiries, so direct threat standard will have to be met.**
- **Note: This standard would not apply, however, if it was a voluntary program.**

# ADA & Employees Who Cannot Be Vaccinated Due to Disability

- If a particular employee cannot meet the employer's vaccination requirement because of a disability, the employer may not require compliance for that employee unless it can demonstrate that the individual would pose a "direct threat" to the health or safety of the employee or others in the workplace and that there is no reasonable accommodation that would reduce or eliminate the threat.

# Accommodation Requests Related to Vaccination

- Managers and supervisors responsible for communicating with employees about compliance with the employer's vaccination requirement should know [how to recognize an accommodation request from an employee with a disability](#) and know to whom to refer the request for full consideration.
- As a best practice, before instituting a mandatory vaccination policy, employers should provide managers, supervisors, and those responsible for implementing the policy with clear information about how to handle accommodation requests related to the policy.



# Examples of Reasonable Accommodations for Employees who are Unvaccinated Due to Disability

- As a reasonable accommodation, if it does not pose an undue hardship on the employer's business, an unvaccinated employee entering the workplace might, for example:
  - wear a face mask;
  - work at a social distance from coworkers or non-employees;
  - work a modified shift;
  - get periodic tests for COVID-19;
  - be given the opportunity to telework; or
  - reassignment
- Note: WYSK publication also contains extensive discussion of how employers should assess requests to be excused from a vaccination requirement based on pregnancy, or based on a religious belief, practice, or observance.

# ADA Confidentiality & Vaccination

- ADA requires employer to maintain confidentiality of employee medical information, such as documentation or other confirmation of COVID-19 vaccination.
- ADA confidentiality requirement applies regardless of where the employee gets the vaccination.
- Although EEO laws themselves do not prevent employers from requiring employees to bring in documentation or other confirmation of vaccination, under ADA this information, like all medical information, must be kept confidential and stored separately from the employee's personnel files.

# Requests for Accommodation by Those Who are Fully Vaccinated

- When an employee asks for a reasonable accommodation, whether the employee is fully vaccinated or not, employer should engage in interactive process to determine if there is a disability-related need for reasonable accommodation.
- This process typically includes seeking information from the employee's health care provider with the employee's consent explaining why an accommodation is needed.
- For example, some individuals who are immunocompromised might still need reasonable accommodations because their conditions may mean that the vaccines may not offer them the same measure of protection as other vaccinated individuals.



# ADA & Employer Incentives for Voluntary Vaccination

- An employer may offer an incentive to employees for voluntarily receiving a vaccination administered by the employer or its agent if the incentive is not so substantial as to be coercive.
- This incentive limitation does not apply if an employer offers an incentive to employees to voluntarily provide documentation or other confirmation that they received a COVID-19 vaccination on their own in the community (such as from a pharmacy, personal health care provider, or public clinic, rather than from the employer or its agent).

# Genetic Information Nondiscrimination Act (GINA) and Employer Vaccination Policies

- Administering a COVID-19 vaccination to employees or requiring employees to provide proof that they have received a COVID-19 vaccination does not implicate Title II of GINA.
  - It does not involve use of genetic information to make employment decisions, or acquisition or disclosure of genetic information as defined by GINA. This includes vaccinations that use messenger RNA (mRNA) technology.
- If providing vaccination for employees' family members, see WYSK discussion of GINA rules on incentives.

**QUESTIONS?**

# CONTACT US

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