

AMERICANS WITH DISABILITIES ACT UPDATE

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DISABILITY MEANS ...

A physical or mental impairment that substantially limits one or more major life activities; or

A record of such an impairment; or

Being regarded as having such an impairment, meaning that an employer takes a prohibited action based on an impairment that is not BOTH transitory AND minor.

DEFINITION OF DISABILITY CONSTRUED BROADLY

- WILLIAMS V. TERRANT CTY. COLLEGE DIST., NO. 16-11804, 2018 WL 480487 (5TH CIR. JAN. 18, 2018)
 - SUFFICIENT EVIDENCE IN PLAINTIFF'S DECLARATION OF DIFFICULTIES SHE EXPERIENCED WITH MAJOR LIFE ACTIVITIES SUCH AS SLEEPING, CONCENTRATING, THINKING, INTERACTING WITH OTHERS, AND COMMUNICATING AS THE RESULT OF DEPRESSION, PTSD, ADHD, AND OTHER IMPAIRMENTS
 - COURT APPLIED BROAD DEFINITION OF DISABILITY CONSISTENT WITH THE ADA AMENDMENTS ACT
 - ALSO FOUND SUFFICIENT FACTS SUPPORTING PLAINTIFF'S "REGARDED AS" CLAIM

DEFINITION OF DISABILITY CONSTRUED BROADLY (CONT'D)

- BARLIA V. MWI VETERINARY SUPPLY, INC., NO. 17-1185, 2018 WL 327448 (6TH CIR. JAN. 9, 2018)
 - PLAINTIFF CLAIMED SHE WAS TERMINATED FROM SALES POSITION DUE TO HYPOTHYROIDISM
 - ALTHOUGH EMPLOYER DID NOT HAVE SPECIFIC DIAGNOSIS OF CONDITION, IT HAD DOCUMENTATION OVER A PERIOD OF SEVERAL YEARS INDICATING PLAINTIFF HAD A “THYROID DISORDER AND THAT SHE WAS RECEIVING TREATMENT AIMED AT “REBALANCING HER THYROID AND ADRENAL GLANDS,” WAS EXPERIENCING SYMPTOMS CONSISTENT WITH “THYROID AND HORMONAL IMBALANCE,” AND TOOK SYNTHROID, A MEDICATION THE COURT NOTED WAS USED FOR HYPOTHYROIDISM

DEFINITION OF DISABILITY CONSTRUED BROADLY (CONT'D)

- BARLIA V. MWI VETERINARY SUPPLY, INC., NO. 17-1185, 2018 WL 327448 (6TH CIR. JAN. 9, 2018)
 - COURT CONCLUDED THERE WAS EVIDENCE PLAINTIFF WAS SUBSTANTIALLY LIMITED IN AT LEAST THINKING AND CONCENTRATING
 - COURT EMPHASIZED DEFINITION IS TO BE CONSTRUED BROADLY AND WITHOUT REGARD TO MITIGATING MEASURES, AND THAT CONDITIONS THAT ARE EPISODIC CAN BE DISABILITIES
 - NOTED THAT HYPOTHYROIDISM IS AN ENDOCRINE DISORDER, LIKE DIABETES, AND EEOC REGULATIONS SAY DIABETES SHOULD EASILY BE CONCLUDED TO BE A DISABILITY
 - PLAINTIFF TESTIFIED SHE EXPERIENCED BOUTS OF SEVERE FATIGUE, REDUCED COGNITIVE FUNCTIONING , AND DIZZINESS WITHOUT MEDICATION

REGARDED AS HAVING A DISABILITY

- LEWIS V. CITY OF UNION CITY, GA., 877 F.3D 1000 (11TH CIR. 2017) -- COURT FINDS EVIDENCE EMPLOYER REGARDED POLICE OFFICER WHO HAD MILD HEART ATTACK AS HAVING A DISABILITY WHERE:
 - CHIEF OF POLICE KNEW OF HER HEART ATTACK
 - ASSISTANT CHIEF TOLD HER TWICE TO SUBMIT FMLA PAPERWORK
 - ASSISTANT CHIEF REFUSED TO RETURN HER TO WORK UNTIL CLEARED BY HER DOCTOR
 - DEPARTMENT'S REASON FOR PLACING PLAINTIFF ON LEAVE WAS THAT IT FEARED FOR HER SAFETY IN VIEW OF HER HEART CONDITION

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WHO IS “QUALIFIED”?

QUALIFIED

- INDIVIDUAL CAN MEET THE SKILL, EXPERIENCE, EDUCATION, AND OTHER JOB-RELATED REQUIREMENTS FOR A JOB

AND

- CAN PERFORM THE JOB'S ESSENTIAL FUNCTIONS WITH OR WITHOUT A REASONABLE ACCOMMODATION.

QUALIFICATION STANDARDS

- QUALIFICATION STANDARDS MAY INCLUDE LICENSES, CERTIFICATIONS, DEGREES, EXPERIENCE, ETC.
- ALSO MAY INCLUDE PHYSICAL OR MENTAL QUALIFICATIONS FOR THE JOB.
- QUALIFICATION STANDARDS MAY INTENTIONALLY OR UNINTENTIONALLY SCREEN OUT INDIVIDUALS WITH DISABILITIES.
- A QUALIFICATION STANDARD THAT SCREENS OUT AN INDIVIDUAL OR CLASS OF INDIVIDUALS BASED ON DISABILITY MUST BE JOB-RELATED AND CONSISTENT WITH BUSINESS NECESSITY, MEANING IT MUST ACCURATELY MEASURE THE ABILITY TO DO ESSENTIAL FUNCTIONS.


STANDARDS THAT FOCUS ON IMPAIRMENT

- EEOC V. NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY, CASE NO. 2:17-CV-01251
 - EEOC ALLEGES COMPANY EXCLUDED INDIVIDUALS BASED ON A NUMBER OF DISABILITIES, INCLUDING CANCER (INDIVIDUALS WHO RECEIVED CHEMOTHERAPY TREATMENTS WITHIN THE PAST YEAR); DIABETES OR ELEVATED BLOOD GLUCOSE LEVELS; PAST DRUG ADDICTION OR DRUG TREATMENT (INCLUDING INDIVIDUALS WHO WERE NOT DRUG-FREE FOR AT LEAST A YEAR); ARTHRITIS; NONPARALYTIC ORTHOPEDIC IMPAIRMENTS; CARDIOPULMONARY OR CARDIOVASCULAR IMPAIRMENTS; AND PTSD.



STANDARDS THAT FOCUS ON IMPAIRMENT: USE OF MEDICATION

- EEOC V. STEVENS TRANSPORT, CIVIL ACTION NO. 3:16-CV-03325-N (N.D. TEX. 2016)
 - COMPANY REFUSED TO HIRE VETERAN AS TRUCK DRIVER BECAUSE OF MEDICATIONS HE TOOK FOR BIPOLAR DISORDER
 - NO FEDERAL REGULATIONS THAT PROHIBIT COMMERCIAL MOTOR VEHICLE DRIVERS FROM TAKING THESE MEDICATIONS
 - CHARGING PARTY PASSED DOT-MANDATED PHYSICAL AND HAD A COMMERCIAL DRIVER'S LICENSE; SUBSEQUENTLY OBTAINED EMPLOYMENT AS TRUCK DRIVER WITH ANOTHER COMPANY



STANDARDS THAT FOCUS ON IMPAIRMENT: POST-OFFER MEDICAL EXAMS

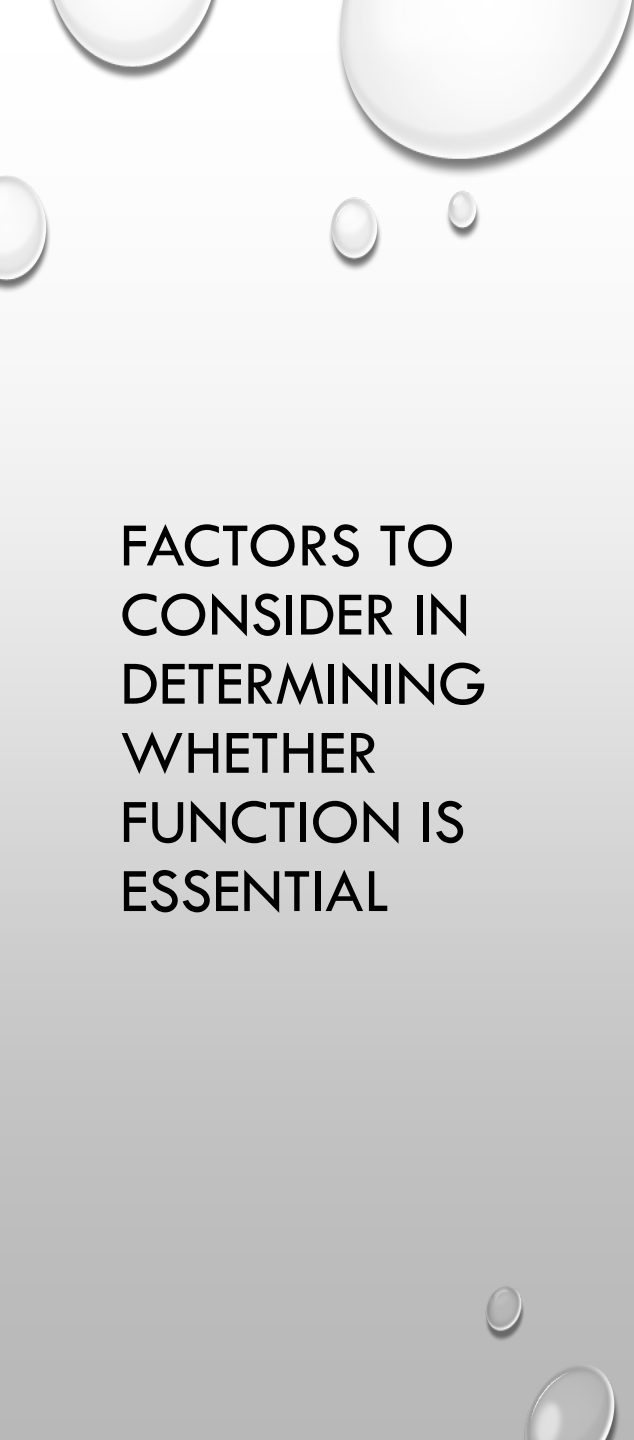
- EEOC V. HIRSCHBACH MOTOR LINES, CIVIL ACTION NO. 2:18-CV-00175-GZS (D. ME.)
 - ALLEGED USE OF “BACK ASSESSMENT” TO WITHDRAW OFFERS FOR TRUCK DRIVER POSITIONS FROM APPLICANTS REGARDED AS HAVING DISABILITIES
 - APPLICANTS ALREADY HAD DOT-MANDATED CERTIFICATES TO DRIVE TRUCKS

NEUTRAL STANDARDS

- RODRIGO V. CARLE FOUNDATION HOSP., 879 F.3D 236 (7TH CIR. 2018)
 - RESIDENT WHO COULD NOT PASS THIRD STEP OF MEDICAL LICENSURE EXAM NOT QUALIFIED, WHETHER REQUIREMENT IS CORE QUALIFICATION OR ESSENTIAL FUNCTION
 - RELEVANT FACTORS INCLUDED: THE HOSPITAL'S JUDGMENT; THE PURPOSE OF THE RESIDENCY PROGRAM; THE REQUIREMENT WAS INCLUDED IN HOSPITAL'S POLICY; NO ONE ELSE WHO FAILED THE EXAM THREE TIMES WAS ALLOWED TO CONTINUE AS A RESIDENT AFTER THE HOSPITAL ADOPTED THE RULE; AND RISKS TO THE HOSPITAL OF ALLOWING SOMEONE WHO MAY NOT BE ABLE TO PASS THE TEST WITHOUT SIGNIFICANT REMEDIATION TO PRACTICE ON THE LICENSES OF SUPERVISING PHYSICIANS

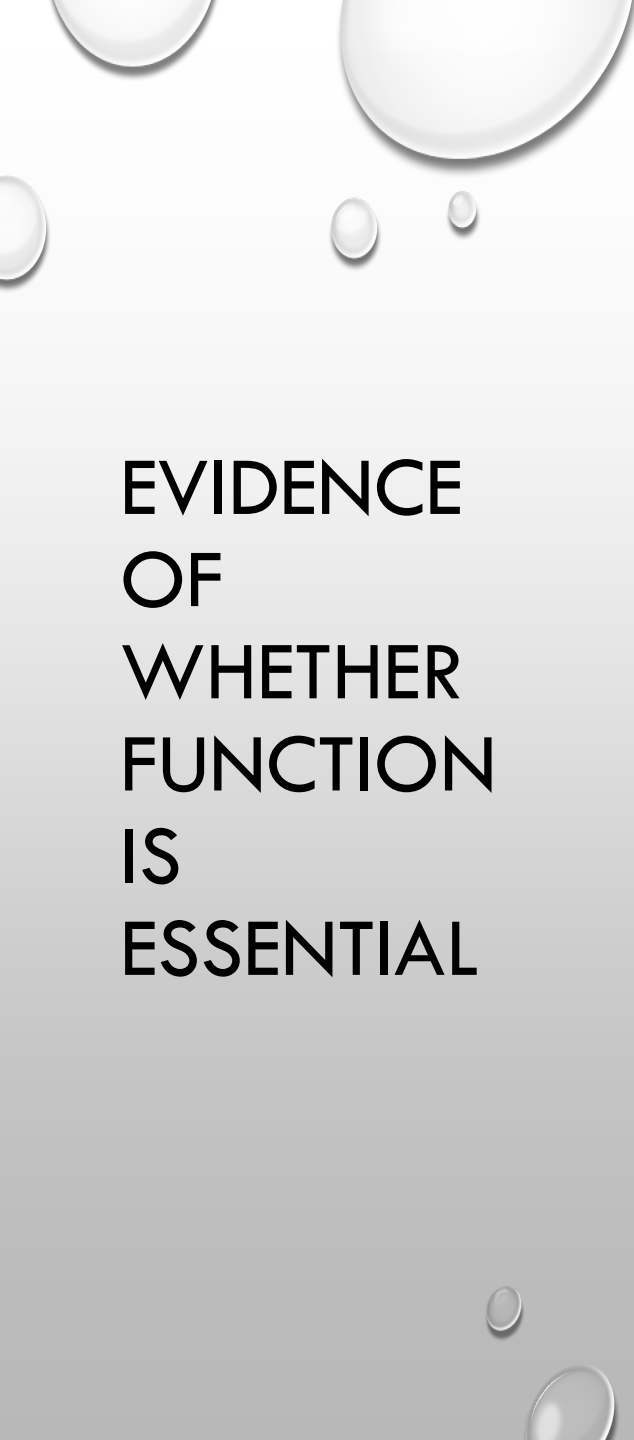
NEUTRAL STANDARDS: SECURITY CLEARANCE

- MCNELIS V. PA. POWER & LIGHT CO., 867 F.3D 411 (3D CIR. 2017)
 - NUCLEAR POWER PLANT WORKER FOUND UNFIT FOR DUTY AND LOST UNESCORTED ACCESS TO FACILITY
 - COURT REFERRED TO REQUIREMENTS FOR THE SECURITY OFFICER POSITION UNDER NRC REGULATIONS AS “ESSENTIAL FUNCTIONS”
 - INABILITY TO SATISFY REQUIREMENTS OF NRC REGULATIONS MADE PLAINTIFF UNQUALIFIED



FACTORS TO
CONSIDER IN
DETERMINING
WHETHER
FUNCTION IS
ESSENTIAL

- WHETHER JOB EXISTS TO PERFORM THE FUNCTION
- WHETHER THERE ARE OTHERS WHO CAN PERFORM THE FUNCTION
- WHETHER THE JOB IS HIGHLY SPECIALIZED



EVIDENCE OF WHETHER FUNCTION IS ESSENTIAL

- EMPLOYER JUDGMENT
- TERMS OF A WRITTEN JOB DESCRIPTION
- TERMS OF A COLLECTIVE BARGAINING AGREEMENT
- AMOUNT OF TIME SPENT PERFORMING THE FUNCTION
- CONSEQUENCES OF NOT PERFORMING THE FUNCTION
- EXPERIENCE OF CURRENT AND PREVIOUS EMPLOYEES IN THE JOB

ATTENDANCE AND WORK SCHEDULES

- WILLIAMS V. AT&T MOBILITY SERVS., LLC, 847 F.3D 384 (6TH CIR. 2017) – REGULAR ATTENDANCE ESSENTIAL FUNCTION FOR CUSTOMER SERVICE REPRESENTATIVE WHERE:
 - EMPLOYER MAINTAINED STRICT ATTENDANCE GUIDELINES
 - GUIDELINES IDENTIFY ATTENDANCE AS ESSENTIAL FUNCTION
 - GUIDELINES EXISTED PRIOR TO LITIGATION
 - MANAGERS TESTIFIED AS TO WHY ATTENDANCE WAS ESSENTIAL
 - PLAINTIFF PROVIDED NO CONTRARY EVIDENCE

ATTENDANCE AND WORK SCHEDULES (CONT'D)

- SEPULVEDA-VARGAS V. CARIBBEAN RESTAURANTS, LLC, 888 F.3D 549 (1ST CIR. 2018) -- WORKING ROTATING SHIFTS AN ESSENTIAL FUNCTION FOR AN ASSISTANT MANAGER OF FAST FOOD RESTAURANT WHERE:
 - EMPLOYER CONSIDERED IT ESSENTIAL FOR EQUAL DISTRIBUTION OF WORK
 - ALL ASSISTANT MANAGERS WORKED ROTATING SHIFTS
 - THE JOB APPLICATION EMPLOYEE FILLED OUT AND SIGNED SAID WORKING ROTATING SHIFTS WAS ESSENTIAL
 - A NEWSPAPER ADVERTISEMENT FOR THE JOB SAID WORKING ROTATING SHIFTS WAS REQUIRED



EMPLOYEE ON LEAVE MAY STILL BE QUALIFIED

- TERRE V. HOBSON ET AL, --- FED. APP'X ---, 2017 WL 3775266 (6TH CIR. AUG. 31, 2017)
 - SCHOOL TEACHER'S JOB IS ELIMINATED WHILE HE IS ON EXTENDED LEAVE
 - COURT FINDS THERE IS EVIDENCE PLAINTIFF IS STILL QUALIFIED: HE WAS ON APPROVED LEAVE; THERE IS NO EVIDENCE HE FAILED TO COMMUNICATE OR TO COMPLY WITH POLICIES FOR REQUESTING LEAVE; AND HE INTENDED TO RETURN TO WORK
 - ALSO, THERE IS EVIDENCE OF DISCRIMINATION, INCLUDING THE FACT THAT THE PRINCIPAL REFERRED TO PLAINTIFF'S HEALTH IN DISCUSSIONS ABOUT ELIMINATING HIS JOB

MULTIPLE FACTORS CONSIDERED

- LEWIS V. CITY OF UNION CITY, 877 F.3D 1000 (11TH CIR. 2017)
 - POLICE DEPARTMENT REQUIRED OFFICERS TO BE EXPOSED TO TASER SHOCK FOR 5 SECONDS AS PART OF TRAINING
 - POLICE OFFICER'S DOCTOR RECOMMENDED AGAINST TASER SHOCK AN EXPOSURE TO PEPPER SPRAY DUE TO RECENT MILD HEART ATTACK
 - COURT CONCLUDED EXPOSURE TO TASER SHOCK AND PEPPER SPRAY MAY NOT BE ESSENTIAL FUNCTIONS

MULTIPLE FACTORS CONSIDERED (CONT'D)

- LEWIS V. CITY OF UNION CITY, 877 F.3D 1000 (11TH CIR. 2017)
 - EMPLOYER JUDGMENT NOT CONCLUSIVE, ALTHOUGH MAY BE GIVEN ADDITIONAL WEIGHT WHERE EMPLOYER IS POLICE DEPARTMENT
 - POSITION DESCRIPTION FOR DETECTIVE DOES NOT REQUIRE EXPOSURE TO TASER SHOCK OR PEPPER SPRAY
 - TASER INTERNATIONAL DOES NOT REQUIRE EXPOSURE FOR CERTIFICATION
 - PRIOR TO NEW REQUIREMENT, OFFICERS COULD DECIDE WHAT NON-LETHAL WEAPON TO CARRY

MULTIPLE FACTORS CONSIDERED (CONT'D)

- CREDEUR V. LA. THROUGH OFFICE OF ATTORNEY GEN., 860 F.3D 785 (5TH CIR. 2017) -- FULL-TIME TELEWORK NOT A REASONABLE ACCOMMODATION FOR LITIGATING ATTORNEY
 - EMPLOYER ALLOWED TELEWORK ONLY RARELY AND TEMPORARILY
 - SUPERVISORS TESTIFIED THE JOB WAS “INTERACTIVE AND TEAM ORIENTED.”
 - SUPERVISOR WHO TELEWORKED DID SO IN ADDITION TO NORMAL BUSINESS HOURS AND ANOTHER ATTORNEY WHO TELEWORKED WAS NOT A LITIGATOR
 - OTHER EMPLOYEES HAD TO ASSUME SOME OF PLAINTIFF’S RESPONSIBILITIES AND PLAINTIFF FAILED TO COMPLETE CERTAIN REQUIRED JOB TASKS, SUCH AS ADEQUATELY ACCOUNTING FOR TIME

MULTIPLE FACTORS CONSIDERED (CONT'D)

- EVERETT V. GRADY MEMORIAL HOSP. CORP., --- FED. APP'X ---, 2017 WL 3485226 (11TH CIR. AUG. 15, 2017) – FULL-TIME TELEWORK NOT REQUIRED DURING PLAINTIFF'S PREGNANCY BECAUSE ESSENTIAL FUNCTIONS OF JOB REQUIRED PRESENCE IN THE WORKPLACE
 - EMPLOYER JUDGMENT
 - TERMS OF JOB DESCRIPTION
 - TESTIMONY FROM SUPERVISORS
 - TIME SPENT PERFORMING FUNCTIONS THAT REQUIRED PRESENCE IN THE WORKPLACE (10 OF 32 HOURS PER WEEK)
 - EFFECT ON OTHER EMPLOYEES OF SHIFTING PLAINTIFF'S DUTIES

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REASONABLE ACCOMMODATION



DEFINITION OF
REASONABLE
ACCOMMODATION

- A REASONABLE ACCOMMODATION IS A CHANGE IN THE WORKPLACE OR IN THE WAY THINGS ARE CUSTOMARILY DONE THAT IS NEEDED BECAUSE OF A DISABILITY
- ACCOMMODATIONS ARE AVAILABLE –
 - FOR THE APPLICATION PROCESS
 - TO ENABLE SOMEONE TO PERFORM THE ESSENTIAL FUNCTIONS OF A JOB
 - TO ENABLE AN EMPLOYEE TO ENJOY EQUAL BENEFITS AND PRIVILEGES OF EMPLOYMENT



REQUESTS FOR REASONABLE ACCOMMODATION

- GENERALLY, AN INDIVIDUAL WITH A DISABILITY MUST REQUEST REASONABLE ACCOMMODATION
- REQUEST FOR SOME CHANGE IN THE WORKPLACE OR IN THE WAY THINGS ARE DONE THAT IS NEEDED BECAUSE OF A MEDICAL CONDITION
- DOES NOT HAVE TO BE IN WRITING
- DOES NOT HAVE TO USE “MAGIC WORDS”
- MAY COME FROM A THIRD PARTY (E.G., AN EMPLOYEE’S FAMILY MEMBER OR DOCTOR)

EMPLOYEE DOES NOT LINK REQUEST TO MEDICAL CONDITION

- NUNEZ V. LIFETIME PRODUCTS, INC., NO. 17-4080, 2018 WL 921537 (10TH CIR. FEB. 16, 2018)
 - PLAINTIFF ALLEGED THAT HE ORALLY REQUESTED TO SIT FOR 5 MINUTES PER HOUR
 - HE LATER FOLLOWED UP WITH EMAILS TO HIS SUPERVISOR ABOUT WHY SITTING WOULD ALLOW HIM TO BETTER PERFORM, EXPLAINING THAT HIS REQUEST TO SIT WAS PRIMARILY TO IMPROVE PRODUCTION EFFICIENCY AND THAT HIS BACK WAS A “SECONDARY ISSUE”
 - AFFIRMING SUMMARY JUDGMENT FOR THE EMPLOYER, THE COURT HELD THAT PLAINTIFF’S “VAGUE REFERENCE TO HIS BACK” WAS INSUFFICIENT TO CONSTITUTE A REQUEST FOR A REASONABLE ACCOMMODATION



VALID REQUEST EVEN IF EMPLOYEE DID NOT FOLLOW POLICY

- DUGGER V. STEPHEN F. AUSTIN STATE UNIV., CASE NO. 2:15-CV-1509-WCB, 2017 WL 478297 (E.D. TEX. FEB. 6, 2017)
 - EMPLOYER CLAIMED EMPLOYEE DID NOT FOLLOW ITS WRITTEN POLICY FOR REQUESTING REASONABLE ACCOMMODATION
 - THERE WAS EVIDENCE EMPLOYEE SUBSTANTIALLY COMPLIED WITH POLICY
 - FACT THAT EMPLOYEE MAY NOT HAVE COMPLIED WITH ALL REQUIREMENTS OF THE POLICY, “IS NOT, STANDING ALONE, ENOUGH TO ESTABLISH CONCLUSIVELY THAT HE FAILED TO PROVIDE ADEQUATE NOTICE TO THE UNIVERSITY OF HIS DESIRE FOR AN ACCOMMODATION”

REQUESTS FOR FMLA LEAVE

- REQUEST FOR FMLA MAY BE REQUEST FOR REASONABLE ACCOMMODATION
 - CAPPS V. MONDELEZ GLOBAL, LLC, NO. 15-3839, 2017 WL 393237 (3RD CIR. JAN. 30, 2017)
- REQUEST FOR FMLA LEAVE IS NOT A REQUEST FOR REASONABLE ACCOMMODATION
 - ACKER V. GENERAL MOTORS, L.L.C., 853 F.3D 784 (5TH CIR. 2017)



EMPLOYEE FAILED TO ENGAGE IN INTERACTIVE PROCESS

- ORTIZ-MARTINEZ V. FRESENIUS HEALTH PARTNERS, 853 F.3D 599 (1ST CIR. 2017)
 - SOCIAL WORKER WITH BILATERAL CARPEL TUNNEL SYNDROME SUBMITTED NOTE FROM HER DOCTOR REQUESTING “NECESSARY ADJUSTMENTS” IN HER WORK ACTIVITIES
 - EMPLOYER’S ATTEMPT TO GET ADDITIONAL INFORMATION UNSUCCESSFUL
 - COURT HOLDS THAT ATTEMPTS TO GET ADDITIONAL INFORMATION WERE REASONABLE



EMPLOYER ENGAGED IN INTERACTIVE PROCESS

- CASH V. LOCKHEED MARTIN CORP., NO. 16-2194, 2017 WL 1352072 (10TH CIR. APR. 13, 2017)
 - EMPLOYEE WORE HEARING AIDS BUT SOMETIMES TURNED THEM DOWN TO REDUCE AMBIENT NOISE
 - HE IS DISCIPLINED FOR FAILING TO COMMUNICATE WITH OTHERS
 - BRINGS IN A DOCTOR'S NOTE ASKING FOR MEETING WITH CO-WORKERS TO DISCUSS COMMUNICATION STRATEGIES WITH EMPLOYEES WHO HAVE HEARING LOSS
 - EMPLOYER DID NOT VIOLATE ADA BY HOLDING THE MEETING WHEN EMPLOYEE WAS NOT PRESENT

WHETHER
ACCOMMODATION
IS “REASONABLE”

- PUNT V. KELLY SERVS., 862 F.3D 1040 (10TH CIR. 2017)
 - TEMPORARY RECEPTIONIST HAD SEVERAL ABSENCES, SOME OF THEM UNEXPLAINED, AND REQUESTED ADDITIONAL TIME OFF FOR TESTS AND RADIATION TREATMENT FOR CANCER.
 - COURT FOUND ADDITIONAL REQUEST FOR LEAVE WAS UNREASONABLE.
 - WHETHER AN ACCOMMODATION IS REASONABLE DEPENDS ON THE EMPLOYEE’S DISABILITY AND THE NATURE OF THE JOB.


WHETHER
ACCOMMODATION
IS “REASONABLE”
(CONT’D)

- PUNT V. KELLY SERVS., 862 F.3D 1040 (10TH CIR. 2017)
 - EMPLOYEE HAS TO GIVE EMPLOYER INFORMATION ABOUT THE EXPECTED DURATION OF THE IMPAIRMENT, SO THAT THE EMPLOYER CAN DETERMINE WHETHER THE EMPLOYEE CAN RETURN TO WORK IN THE NEAR FUTURE
 - COURT SAID EMPLOYEE WAS “VAGUE” ABOUT THE AMOUNT OF LEAVE SHE WOULD NEED
 - EMPLOYER WOULD HAVE TO ASSIGN OTHER EMPLOYEES TO PERFORM PLAINTIFF’S DUTIES OR ACCEPT A “SUPER-TEMPORARY” EMPLOYEE



TYPES OF ACCOMMODATIONS

- JOB RESTRUCTURING
- MODIFIED WORK SCHEDULES
- TELEWORK
- LEAVE
- CHANGING SUPERVISORY METHODS
- JOB COACH
- REASSIGNMENT



TYPES OF
ACCOMMODATIONS
(CONT'D)

- PHYSICAL MODIFICATIONS
- SIGN LANGUAGE INTERPRETERS AND READERS
- ASSISTIVE TECHNOLOGY AND MODIFICATION OF EQUIPMENT OR DEVICES

ACCOMMODATIONS
FOR THE
APPLICATION
PROCESS

- EEOC V. MCDONALD'S CORP., ET AL, 4:15-CV-01004-FJG (W.D. MO.)
 - APPLICANT WITH PREVIOUS EXPERIENCE AS A COOK AND CLEAN-UP TEAM MEMBER AT ANOTHER MCDONALD'S
 - INFORMS EMPLOYER HE NEEDS SIGN LANGUAGE INTERPRETER FOR INTERVIEW
 - APPLICANT'S SISTER HAD AGREED TO INTERPRET
 - NEVER CONTACTED, EVEN THOUGH RESTAURANT MANAGEMENT CONTINUED TO INTERVIEW AND HIRE WORKERS

REASONABLE
ACCOMMODATION/
FAILURE TO HIRE

- EEOC V. S&B INDUSTRY, NO. 3:15-CV-00641 (N.D. TEX. 2/23/17)
 - 2 APPLICANTS WITH HEARING IMPAIRMENTS WHO USE ASL REQUESTED SUPERVISOR TO WRITE INFORMATION ABOUT JOBS FOR WHICH THEY ARE APPLYING AT CELL PHONE REPAIR FACILITY
 - SUPERVISOR INITIALLY DOES, BUT THEN REFUSES.
 - BOTH APPLICANTS DENIED JOBS
 - \$110,000 IN MONETARY RELIEF; TRAINING FOR EMPLOYEES, INCLUDING ON REASONABLE ACCOMMODATION; LOG DISABILITY COMPLAINTS; REPORT TO EEOC SEMI-ANNUALLY; POST NOTICE OF SETTLEMENT.

REASONABLE
ACCOMMODATION:
BENEFITS AND
PRIVILEGES OF
EMPLOYMENT

- EEOC V. THE CHEESECAKE FACTORY, INC. AND THE CHEESECAKE FACTORY RESTAURANTS, INC., 2:16-CV-1942 (W.D. WASH.)
 - EEOC ALLEGED EMPLOYER DENIED SIGN LANGUAGE INTERPRETER OR CLOSED CAPTIONING FOR TRAINING VIDEOS
 - \$15,000 COMPENSATORY DAMAGES AND BACK PAY; CLOSED CAPTIONING FOR TRAINING VIDEOS, MORE DETAILED INFORMATION TO EMPLOYEES AND MANAGERS ABOUT HOW TO PROVIDE REASONABLE ACCOMMODATION
- EEOC V. WAL-MART STORES EAST, NO. 1:18-CV-01314 (D.D.C. 6/4/18)
 - DENIAL OF SIGN LANGUAGE INTERPRETERS FOR 2 EMPLOYEES WHO ARE DEAF FOR TRAINING AND MEETINGS

PURCHASE OR MODIFICATION OF EQUIPMENT

- DUNLAP V. LIBERTY NAT. PRODS., INC., 878 F.3D 794 (9TH CIR. 2017)
 - EMPLOYER FAILED TO PROVIDE EMPLOYEE REASONABLE ACCOMMODATIONS SO SHE COULD PERFORM HER SHIPPING CLERK JOB
 - EMPLOYEE REQUESTED ACCOMMODATION FOR PROBLEMS WITH HER ELBOWS AND PROVIDED MEDICAL DOCUMENTATION OF RESTRICTIONS
 - IDENTIFIED ON-SITE CARTS AND AFFORDABLE DEVICES, LIKE A SCISSOR LIFT TABLE, THAT WOULD HAVE ENABLED HER TO MOVE OBJECTS

JOB RESTRUCTURING

- CUMMINS V. CURO HEALTH SERVS., LLC,
CIVIL ACTION NO. 1:15—CV—102—SA—
DAS, 2017 WL 473896 (N.D. MISS. FEB. 3,
2017)
 - EVIDENCE HOSPICE NURSE WITH 10-
POUND LIFTING RESTRICTION MIGHT HAVE
BEEN ACCOMMODATED BY CHANGING
HER PATIENT LIST AND/OR HAVING AN
AIDE ACCOMPANY HER ON SOME VISITS

MODIFIED WORK SCHEDULE

- WILLIAMS V. AT&T MOBILITY SERVS., LLC, 847 F.3D 384 (6TH CIR. 2017) -- CUSTOMER SERVICE REP FAILED TO SHOW HOW MODIFIED START TIME AND 10-MINUTE BREAKS EACH HOUR WOULD BE REASONABLE ACCOMMODATIONS WHERE:
 - SHE CLAIMED SHE NEEDED BREAKS TO CALM DOWN AFTER STRESSFUL CALLS, BUT ADMITTED SHE COULD NOT WORK DURING ANXIETY ATTACK OR PREDICT WHEN ANXIETY ATTACKS WOULD OCCUR
 - EVIDENCE SHOWED SHE WAS UNABLE TO WORK AT ALL DURING A SIGNIFICANT PERIOD OF TIME

MODIFIED WORK SCHEDULE (CONT'D)

- EEOC V. WAL-MART STORES EAST, LP, CIVIL ACTION NO. 2:17-CV-70 (E.D. WIS. 2017)
 - EMPLOYEE WITH DOWN SYNDROME HAS HAD SAME SCHEDULE FOR 15 YEARS
 - THEN ASSIGNED LONGER AND LATER TIMES BASED ON NEW COMPUTERIZED SCHEDULING SYSTEM
 - SISTER ASKS THAT EMPLOYEE BE GIVEN HER REGULAR SCHEDULE; EMPLOYER REFUSES
 - EMPLOYEE FIRED WHEN SHE DOES NOT SHOW UP AT SCHEDULED TIMES

PART- TIME WORK

- GREEN V. BAKEMARK USA, LLC, NO. 16-3141, 2017 WL 1147168 (6TH CIR. MAR. 27, 2017) – PART-TIME SCHEDULE FOR A MONTH NOT REQUIRED WHERE:
 - MANAGERS TESTIFIED WORKING 50 HOURS PER WEEK WAS REQUIRED
 - PLAINTIFF ADMITTED HE COULD NOT PERFORM ALL FUNCTIONS WORKING 8 HOURS PER DAY, 5 DAYS A WEEK
 - POSITION DESCRIPTION REQUIRED SUPERVISION, INCLUDING INTERACTING WITH DEPARTMENT ASSOCIATES

PART-TIME WORK (CONT'D)

- HOSTETTLER V. COLLEGE OF WOOSTER (6TH CIR. JULY 17, 2018).
- REQUEST FOR ADDITIONAL LEAVE AND THEN A REDUCED SCHEDULE UPON RETURN TO WORK AS AN ACCOMMODATION DUE TO SEVERE POST-PARTUM DEPRESSION AND ANXIETY.
- HELD: “FULL-TIME PRESENCE AT WORK IS NOT AN ESSENTIAL FUNCTION”
- “AN EMPLOYER CANNOT DENY A MODIFIED WORK SCHEDULE AS AN UNREASONABLE ACCOMMODATION UNLESS THE EMPLOYER CAN SHOW *WHY* THE EMPLOYEE IS NEEDED ON A FULL-TIME SCHEDULE; MERELY STATING ANYTHING LESS THAN FULL-TIME EMPLOYMENT IS *PER SE* UNREASONABLE WILL NOT RELIEVE AN EMPLOYER OF ITS ADA REQUIREMENTS.”

LEAVE AS A
REASONABLE
ACCOMMODATION


ON MAY 9, 2016, EEOC ISSUED “EMPLOYER-
PROVIDED LEAVE AND THE AMERICANS WITH
DISABILITIES ACT,”

[HTTPS://WWW.EEOC.GOV/EEOC/PUBLICAT
IONS/ADA-LEAVE.CFM.](https://www.eeoc.gov/eeoc/publications/ada-leave.cfm)



LEAVE AS A
REASONABLE
ACCOMMODATION

- **GENERALLY, LEAVE IS A REASONABLE ACCOMMODATION WHEN:**
 - EMPLOYER PROVIDES NO LEAVE
 - EMPLOYEE IS INELIGIBLE FOR LEAVE UNDER EMPLOYER'S POLICY
 - MORE IS NEEDED THAN IS PROVIDED FOR UNDER EMPLOYER'S POLICY OR FMLA OR SIMILAR LEAVE LAWS



TYPES OF LEAVE
PROVIDED AS A
REASONABLE
ACCOMMODATION

- EXTENDED LEAVE – LEAVE FOR A CONTINUOUS PERIOD OF TIME BEYOND WHAT EMPLOYER NORMALLY GRANTS AS A BENEFIT OF EMPLOYMENT OR WHAT THE FMLA OR OTHER SIMILAR LAWS ALLOW
- INTERMITTENT LEAVE -- LEAVE NEEDED ON AN OCCASIONAL BASIS THAT MAY OR MAY NOT BE PREDICTABLE (E.G., ABSENCES ATTRIBUTABLE TO BRIEF FLARE-UPS OF A CONDITION)



PURPOSE OF LEAVE
AS A REASONABLE
ACCOMMODATION

- TO OBTAIN TREATMENT FOR A DISABILITY
- TO RECOVER FROM SYMPTOMS OF A DISABILITY
- FOR DISABILITY-RELATED TRAINING (E.G., TRAINING A SERVICE ANIMAL)
- TO MAKE REPAIRS TO EQUIPMENT NEEDED BECAUSE OF A DISABILITY
- TO AVOID TEMPORARY ADVERSE CONDITIONS IN THE WORKPLACE

LEAVE,
ACCOMMODATION,
AND THE FMLA

- CAPPS V. MONDELEZ GLOBAL, LLC, NO. 15-3839, 2017 WL 393237 (3RD CIR. JAN. 30, 2017)
 - EMPLOYEE FIRED WHEN EMPLOYER CONCLUDED HE HAD FRAUDULENTLY USED FMLA LEAVE TO ATTEND COURT PROCEEDINGS FOR DUI
 - COURT HELD THAT REQUEST FOR FMLA LEAVE CAN CONSTITUTE REQUEST FOR ACCOMMODATION
 - PLAINTIFF'S ACCOMMODATION CLAIM FAILED BECAUSE AT THE TIME HE REQUESTED LEAVE, EMPLOYER GRANTED IT

REQUEST FOR LEAVE NOT REASONABLE

- SEVERSON V. HEARTLAND WOODCRAFT, INC., --- F.3D ---, 2017 WL 4160849 (7TH CIR. SEP. 20, 2017)
 - PLAINTIFF HAD BACK CONDITION; REQUESTED FMLA LEAVE; THEN HAD SURGERY ON THE LAST DAY OF HIS LEAVE
 - ASKED FOR AN ADDITIONAL 2 OR 3 MONTHS OF LEAVE
 - COURT AFFIRMED EARLIER DECISION WHICH SAID MULTI-MONTH LEAVE IS NOT A REASONABLE ACCOMMODATION BECAUSE IT DOES NOT ENABLE EMPLOYEE TO PERFORM ESSENTIAL FUNCTIONS
 - LEAVE OF A COUPLE OF DAYS OR A COUPLE OF WEEKS MAY BE ACCOMMODATION; RESEMBLES PART-TIME WORK SCHEDULE

INDEFINITE LEAVE
NOT A REASONABLE
ACCOMMODATION

- ECHEVARRIA V. ASTRAZENECA PHARM.,
856 F. 3D 119 (1ST CIR. 2017)
 - PLAINTIFF TOOK SHORT-TERM DISABILITY LEAVE FOR 5 MONTHS DUE TO DEPRESSION; EMPLOYER EXTENDED BENEFITS 3 TIMES
 - AFTER BEING TOLD TO RETURN TO WORK, PLAINTIFF SUBMITTED DOCTOR'S NOTE REQUESTING CONTINUED LEAVE FOR 12 MONTHS
 - FIRST CIRCUIT AFFIRMED DISTRICT COURT, HOLDING THAT REQUESTS FOR LEAVE MUST BE "FACIALLY REASONABLE"

LEAVE AND TERMINATION

- EEOC V. ACCENCARE, INC., CIVIL ACTION NO. 3:15-CV-3157-D, 2017 WL 2691240 (N.D. TEX. JUNE 21, 2017)
 - EMPLOYEE HAD SEVERAL ABSENCES DURING PROBATIONARY PERIOD DUE TO BIPOLAR DISORDER
 - COURT FINDS THAT TERMINATION DUE TO EXCESSIVE ABSENTEEISM IS LEGITIMATE, NONDISCRIMINATORY REASON, BUT THAT EMPLOYER MAY HAVE BEEN REQUIRED TO GRANT A FEW DAYS OF ADDITIONAL LEAVE AS A REASONABLE ACCOMMODATION
 - SETTLED BY CONSENT DECREE ON 12/1/17 PROVIDING FOR \$25,000 AND INJUNCTIVE RELIEF

LEAVE AND TERMINATION (CONT'D)

- EEOC V. PIONEER HEALTH SERVICES, INC., CASE NO. 1:17-CV-00016-GHD-DAS (N.D. MISS. 2017)
 - SOCIAL WORKER/THERAPIST GOES ON LEAVE FOR LIVER TRANSPLANT
 - REQUESTS AN ADDITIONAL 4 WEEKS OF LEAVE BEYOND WHAT COMPANY ORIGINALLY APPROVED; SHE HAS 4 WEEKS OF SICK LEAVE LEFT
 - COMPANY DENIES LEAVE, FIRES HER AFTER COMPANY-APPROVED LEAVE ENDS, THEN REFUSES TO HIRE HER FOR SOCIAL WORKER POSITION AFTER SHE COMPLAINS.

MAXIMUM LEAVE POLICIES

- EEOC V. UPS, CASE NO. 09-CV-5291 (CONSENT DECREE 8/8/2017)
 - EEOC ALLEGED COMPANY APPLIED INFLEXIBLE LEAVE POLICY AND FIRED EMPLOYEES WITHOUT ENGAGING IN INTERACTIVE PROCESS TO FIND ACCOMMODATIONS
 - \$2 MILLION IN MONETARY RELIEF FOR 90 INDIVIDUALS
 - COMPANY WILL UPDATE REASONABLE ACCOMMODATION POLICIES, IMPROVE IMPLEMENTATION, PROVIDE TRAINING TO THOSE RESPONSIBLE FOR ADMINISTERING ACCOMMODATION PROCESS, AND REPORT TO EEOC

“100% HEALED” RULES

- EEOC V. NEVADA RESTAURANT SERVICES, CASE NO. 2:18-CV-00954-JCM-CWH (D. NEV.)
 - CONSENT DECREE ON 6/6/18 RESOLVING COMPLAINT THAT EMPLOYER MAINTAINED A POLICY THAT EMPLOYEES HAD TO BE 100% HEALED BEFORE RETURNING TO WORK
 - ALSO ALLEGED EMPLOYER TERMINATED EMPLOYEES REGARDED AS HAVING DISABILITIES, WITH A RECORD OF DISABILITY, AND DUE TO THEIR “ASSOCIATION” WITH INDIVIDUALS WITH DISABILITIES
 - \$3.5 MILLION TO COMPENSATE VICTIMS OF DISCRIMINATION; EMPLOYER TO RETAIN CONSULTANT TO REVIEW AND REVISE POLICIES; TRAINING; REPORTING TO EEOC; DEVELOPMENT OF TRACKING SYSTEM FOR ACCOMMODATION REQUESTS

TELEWORK

- EEOC V. ADVANCED HOME CARE, INC.,
CIVIL ACTION NO. 1:17-CV-00646
(M.D.N.C.)
 - CALL CENTER EMPLOYEE WITH ASTHMA AND COPD ASKS TO TELEWORK FOLLOWING MEDICAL LEAVE TO AVOID FRAGRANCES, SCENTS, AND ODORS IN THE WORKPLACE
 - TELEWORK DENIED; EMPLOYEE HAS TO TAKE ADDITIONAL LEAVE; AND IS FIRED AFTER EXHAUSTING ALL LEAVE

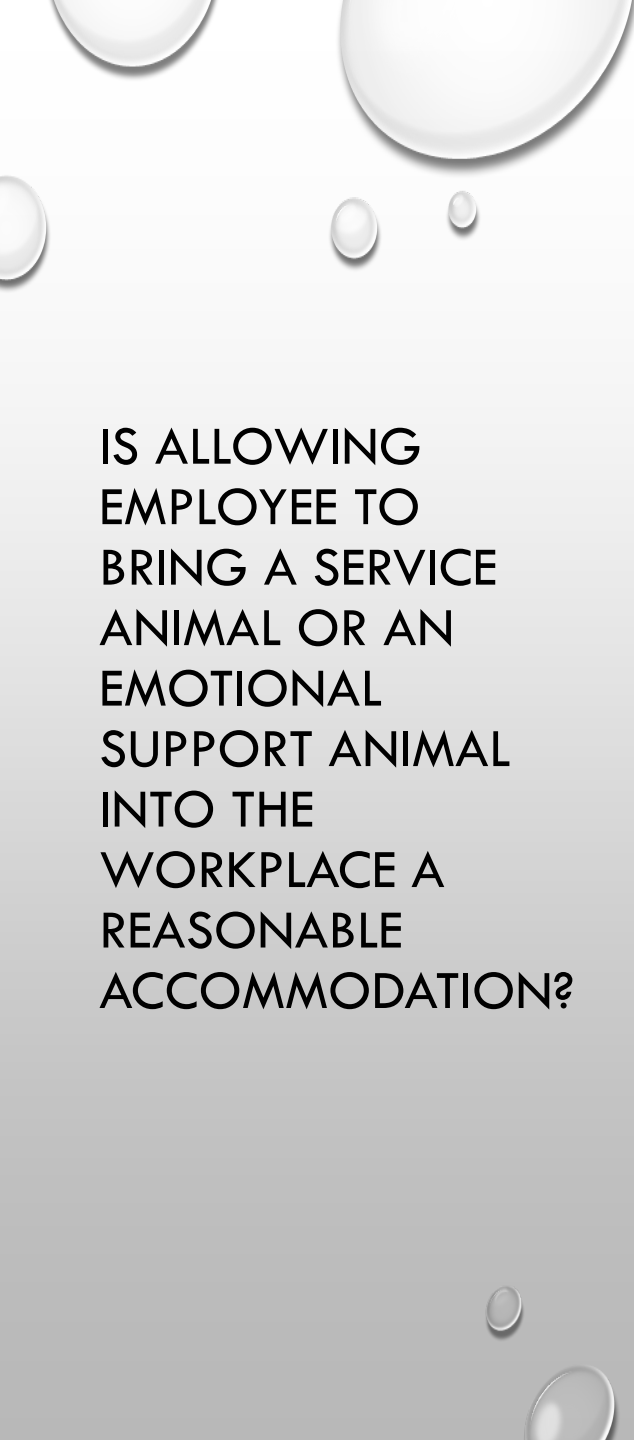
TELEWORK (CONT'D)

- MOSBY-MEACHEM V. MEMPHIS LIGHT, GAS, & WATER, 883 F.3D 595 (6TH CIR. 2018)
 - AN IN-HOUSE ATTORNEY ASKED TO WORK FROM HOME FOR 10 WEEKS WHILE ON BEDREST FOR PREGNANCY COMPLICATIONS
 - EMPLOYER SAYS PHYSICAL PRESENCE WAS AN ESSENTIAL FUNCTION
 - COURT UPHELD JURY'S VERDICT FOR THE PLAINTIFF, NOTING THAT WHILE TRYING CASES AND DEPOSING WITNESSES WERE IN ATTORNEY'S JOB DESCRIPTION, SHE NEVER HAD TO DO EITHER IN 8 YEARS WORKING FOR EMPLOYER
 -



SERVICE ANIMALS AND EMOTIONAL SUPPORT ANIMALS

- U.S. DEP'T. OF JUSTICE REGULATIONS UNDER TITLES II AND III OF THE ADA (STATE/LOCAL GOV'T AGENCIES, BUSINESSES, AND NON-PROFITS) FOR INTERACTING WITH MEMBERS OF THE PUBLIC/CUSTOMERS IN SITUATIONS OTHER THAN EMPLOYMENT:
 - OBLIGATION TO ADMIT SERVICE ANIMALS TRAINED TO PERFORM TASK, BUT NOT ANIMALS THAT ONLY PROVIDE EMOTIONAL SUPPORT AND DO NOT PERFORM A SERVICE
 - MAY NOT REQUIRE DOCUMENTATION AS CONDITION OF ENTRY, SUCH AS PROOF ANIMAL HAS BEEN CERTIFIED, TRAINED, OR LICENSED AS SERVICE ANIMAL



IS ALLOWING EMPLOYEE TO BRING A SERVICE ANIMAL OR AN EMOTIONAL SUPPORT ANIMAL INTO THE WORKPLACE A REASONABLE ACCOMMODATION?

- EEOC HASN'T ADDRESSED ISSUE IN REGULATIONS, GUIDANCE, OR FEDERAL SECTOR APPELLATE DECISIONS
 - EMPLOYERS SHOULD PROCESS REQUEST BY EMPLOYEE TO USE SERVICE ANIMAL OR EMOTIONAL SUPPORT ANIMAL SAME WAY AS ANY OTHER ACCOMMODATION
 - NOTE: ANIMAL DOES NOT HAVE TO BE "CERTIFIED"
- INTERACTIVE PROCESS PERMITS OBTAINING MEDICAL INFO. ON SAME BASIS AS WITH OTHER TYPES OF ACCOMMODATIONS:
 - IF DISABILITY (E.G., BLINDNESS) AND EMPLOYEE'S NEED FOR THE ACCOMMODATION (E.G., GUIDE DOG) ARE OBVIOUS, EMPLOYER MAY NOT NEED ANY DOCUMENTATION
 - WHERE DISABILITY AND NEED FOR ACCOMMODATION ARE NOT OBVIOUS OR ALREADY KNOWN, EMPLOYER MAY REQUEST REASONABLE MEDICAL INFO. TO DEMONSTRATE EMPLOYEE HAS IMPAIRMENT THAT SUBSTANTIALLY LIMITS MAJOR LIFE ACTIVITY AND NEEDS THE ACCOMMODATION

WHAT IF PRESENCE OF AN ANIMAL AFFECTS OTHER EMPLOYEES?


- WHAT IF OTHER EMPLOYEES MAY EXPERIENCE SEVERE ALLERGIC REACTIONS OR PHOBIAS RELATED TO THE PRESENCE OF A SERVICE ANIMAL?
- **POSSIBLE ACCOMMODATIONS MIGHT INCLUDE --**
 - SEPARATE PATHS OF TRAVEL TO MINIMIZE EMPLOYEE'S EXPOSURE TO SERVICE ANIMAL
 - TELEWORK OR OTHER FLEXIBLE SCHEDULES TO MINIMIZE DAYS ON WHICH EMPLOYEE WHO USES SERVICE ANIMAL AND ANOTHER EMPLOYEE AFFECTED BY SERVICE ANIMAL ARE BOTH PHYSICALLY PRESENT IN WORKPLACE
 - ALTERNATIVES TO IN-PERSON COMMUNICATION, SUCH AS BY ALLOWING PARTICIPATION IN MEETINGS BY PHONE, EVEN WHEN EMPLOYEE IS IN OFFICE
- **EXAMPLES OF FACTS THAT SHOW ALLOWING SERVICE ANIMAL WOULD POSE UNDUE HARDSHIP: IF THE ANIMAL --**
 - IS DISRUPTIVE
 - POSES A DIRECT THREAT (I.E., SIGNIFICANT RISK TO HEALTH OR SAFETY)
 - NOT PROPERLY CONTROLLED BY ITS HANDLER

ANIMAL MAY BE
REQUIRED AS
REASONABLE
ACCOMMODATION

- CLARK V. SCH. DIST. OF LEXINGTON, 247 F. SUPP. 3D 734 (D. S.C. 2017)
 - SPECIAL EDUCATION TEACHER BROUGHT DOG TO SCHOOL FOR TWO YEARS TO HELP HER MANAGE PANIC ATTACKS
 - SCHOOL MOVED; PRINCIPAL SAID NO DOGS WOULD BE ALLOWED
 - SCHOOL DISTRICT ARGUED PLAINTIFF DID NOT NEED DOG TO PERFORM ESSENTIAL FUNCTIONS AND, ALTERNATIVELY, COULD HAVE WORN A WEIGHTED VEST INSTEAD OF BRINGING HER DOG
 - COURT FOUND THERE WERE GENUINE ISSUES OF MATERIAL FACT AS TO WHETHER PLAINTIFF NEEDED HER DOG TO PERFORM HER JOB AND WHETHER HER REQUESTED ACCOMMODATION WAS THE ONLY REASONABLE ACCOMMODATION
 -

EMOTIONAL
SUPPORT ANIMAL
NOT REQUIRED AS
ACCOMMODATION

- MAUBACH V. CITY OF FAIRFAX, 2018 WL 2018552 (E.D. VA. APR. 30, 2018).
- UNDUE HARDSHIP TO ALLOW DISPATCHER IN ENCLOSED EMERGENCY OPERATIONS CENTER SHARED WORKSPACE TO BRING EMOTIONAL SUPPORT ANIMAL (MR. B) TO WORK FOR ANXIETY.
 - FLOOR COVERED WITH CLUMPS OF FUR AND DANDER FROM DOG, AND DOG BED LEFT THERE
 - COWORKERS EXPERIENCED ALLERGIES EVEN AFTER DISPATCHER VACUUMED
 - DISPATCHER ALLOWED INEXPERIENCED COWORKER TO COVER CENTER WHILE HE WALKED DOG



EMOTIONAL SUPPORT ANIMAL NOT REQUIRED AS ACCOMMODATION (CONT'D)

- “TITLE I HAS NO SPECIFIC REGULATIONS OR GUIDANCE RELATED TO SERVICE ANIMALS OR EMOTIONAL SUPPORT ANIMALS, AND THERE IS VERY LITTLE CASE LAW ADDRESSING THE QUESTION WHETHER AN EMOTIONAL SUPPORT ANIMAL CAN QUALIFY AS A REASONABLE ACCOMMODATION FOR A DISABLED EMPLOYEE.”
- ASSUMING WITHOUT DECIDING THAT AN EMOTIONAL SUPPORT ANIMAL QUALIFIES AS A REASONABLE ACCOMMODATION UNDER TITLE I OF THE ADA, “THE INQUIRY TURNS TO THE REASONABLENESS OF THE PARTICULAR ACCOMMODATION IN THE PARTICULAR EMPLOYMENT CONTEXT, NAMELY WHETHER MR. B’S PRESENCE IN THE EOC AS AN EMOTIONAL SUPPORT ANIMAL FOR PLAINTIFF IS A REASONABLE ACCOMMODATION FOR HER DISABILITY OR WHETHER MR. B’S PRESENCE IMPOSES AN UNDUE HARDSHIP ON DEFENDANT GIVEN THE CONTEXT IN WHICH PLAINTIFF WORKS.”

EMOTIONAL
SUPPORT ANIMAL
NOT REQUIRED AS
ACCOMMODATION
(CONT'D)

- “IF MR. B WERE A SERVICE ANIMAL UNDER TITLE II OR III OF THE ADA, AS HE IS NOT ON THIS RECORD, THEN ALLERGIES WOULD NOT BE SUFFICIENT ON THEIR OWN TO JUSTIFY BARRING MR. B FROM PUBLIC SPACES. *SEE* 28 C.F.R. § 36.104. TITLE II AND III OF THE ADA ADDRESS THE USE OF PUBLIC SPACES AND PUBLIC ACCOMMODATION BY THE DISABLED, AND IF ALLERGIES WERE A SUFFICIENT JUSTIFICATION TO BAR SERVICE ANIMALS FROM ACCOMPANYING THEIR OWNERS IN PUBLIC ACCOMMODATIONS, THEN BECAUSE ALLERGIES ARE SO COMMON THE DISABLED WHO USE A SERVICE ANIMAL WOULD BE EFFECTIVELY BARRED FROM USE OF PUBLIC ACCOMMODATIONS.”

EMOTIONAL
SUPPORT ANIMAL
NOT REQUIRED AS
ACCOMMODATION
(CONT'D)

- “IN THE CONTEXT OF TITLE I, SOME JOBS MIGHT BE ABLE TO ACCOMMODATE THE PRESENCE OF A SERVICE ANIMAL, AND TITLE I’S LACK OF DEFINITIVE REQUIREMENTS WITH REGARD TO SERVICE ANIMALS AND OTHER REASONABLE ACCOMMODATIONS SUGGESTS THAT THE INQUIRY MUST BE CONTEXT SPECIFIC. ... ALLERGIES RESULTING FROM PLAINTIFF’S USE OF MR. B IN THE ENCLOSED [EMERGENCY OPERATIONS] SPACE, IN THIS CONTEXT, IMPOSE AN UNDUE HARDSHIP ON OTHER EMPLOYEES WHO USE THE SPACE, AND ON DEFENDANT BECAUSE IT WOULD BE PROHIBITIVELY EXPENSIVE TO BUILD A SEPARATE [EMERGENCY OPERATIONS CENTER] TO BE USED EITHER BY THE PLAINTIFF OR BY THE EMPLOYEES WITH ALLERGIES.”

RESOURCES ON SERVICE ANIMALS AND THE ADA

EMPLOYMENT:

- JOB ACCOMMODATION NETWORK (WWW.ASKJAN.ORG) PUBLICATION:
- **SERVICE ANIMALS IN THE WORKPLACE**
- [HTTPS://ASKJAN.ORG/PUBLICATIONS/TOPIC-DOWNLOADS.CFM?PUBID=277897](https://askjan.org/publications/topic-downloads.cfm?pubid=277897)

NON-EMPLOYMENT (STATE/LOCAL GOVERNMENT PROGRAMS AND PUBLIC ACCOMMODATIONS):

- DOJ PUBLICATIONS:
- **SERVICE ANIMALS**
- [HTTPS://WWW.ADA.GOV/SERVICE ANIMALS_2010.HTM](https://www.ada.gov/service_animals_2010.htm)
- **FREQUENTLY ASKED QUESTIONS ABOUT SERVICE ANIMALS AND THE ADA**
- [HTTPS://WWW.ADA.GOV/REGS2010/SERVICE ANIMAL_QA.HTML](https://www.ada.gov/regs2010/service_animal_qa.html)

REASSIGNMENT

- ACCOMMODATION OF **LAST RESORT**
- POSITION MUST BE **VACANT**, MEANING IT IS AVAILABLE AT TIME REASSIGNMENT IS NEEDED OR WILL BECOME VACANT WITHIN A **REASONABLE TIME**
- MUST BE **EQUAL** IN TERMS OF PAY, STATUS, ETC., OR AS CLOSE AS POSSIBLE; DOES NOT HAVE TO BE PROMOTION
- EMPLOYEE MUST BE **QUALIFIED** FOR THE NEW POSITION, BUT DOES NOT HAVE TO BE BEST QUALIFIED
- IS NOT LIMITED **GEOGRAPHICALLY**; EMPLOYER DOES NOT HAVE TO PAY RELOCATION UNLESS IT DOES SO FOR VOLUNTARY TRANSFERS
- REASSIGNMENT THAT WOULD VIOLATE UNIFORMLY APPLIED SENIORITY SYSTEM **GENERALLY NOT REQUIRED**

NO VACANT POSITION

- AUDETTE V. TOWN OF PLYMOUTH, MASS., NO. 15-2457, 2017 WL 2298070 (1ST CIR. MAY 26, 2017)
 - PATROL OFFICER HAD REPEATED ANKLE INJURIES AND REQUESTED LIGHT DUTY ASSIGNMENT
 - EMPLOYER PREVIOUSLY ASSIGNED ANOTHER OFFICER TO A DATA ENTRY POSITION, AND PLAINTIFF ASKED FOR THE SAME ACCOMMODATION
 - DATA ENTRY POSITION WAS ONLY TEMPORARY TO ASSIST AN ACTING RECORDS SERGEANT UNTIL PERMANENT APPOINTMENT COULD BE MADE
 - RECORDS SERGEANT POSITION WOULD HAVE BEEN A PROMOTION FOR PLAINTIFF

NO VACANT POSITION (CONT.)

- BOYLE V. CITY OF PELL CITY, 860 F.3D 1280 (11TH CIR. 2017)
 - HEAVY EQUIPMENT OPERATOR ASSIGNED TO FOREMAN POSITION FOR 7 YEARS, WHILE FOREMAN WORKED IN ANOTHER JOB
 - A NEW STREETS SUPERINTENDENT ASSIGNED THE FOREMAN BACK TO HIS ORIGINAL DUTIES AND ASSIGNED DUTIES TO PLAINTIFF HE SAID HE COULD NOT PERFORM
 - EMPLOYER NOT REQUIRED TO ASSIGN PLAINTIFF TO FOREMAN POSITION
 - EVEN IF ANOTHER FOREMAN POSITION EXISTED, IT WOULD HAVE BEEN A PROMOTION

REASSIGNMENT
NEED NOT BE
PROMOTION

- BROWN V. MILWAUKEE BD. OF SCH. DIRS.,
855 F.3D 818 (7TH CIR. 2017)
 - ASSISTANT PRINCIPAL WHO COULD NOT
COME INTO CONTACT WITH STUDENTS
WHO WERE POTENTIALLY
UNCONTROLLABLE DID NOT HAVE TO BE
ASSIGNED TO A POSITION THAT WOULD
HAVE PAID \$20,000 MORE THAN HER
CURRENT POSITION
 - ALTHOUGH EMPLOYER PREVIOUSLY
ASSIGNED PLAINTIFF TO POSITIONS
WITHIN HIGHER PAY GRADES, HER SALARY
HAD NOT BEEN INCREASED



EMPLOYEE MAY BE QUALIFIED (CONT.)

- SANCHEZ V. U.S. DEP'T OF ENERGY, 870 F.3D 1185 (10TH CIR. 2017)
 - FACT THAT AGENCIES AND COURTS CANNOT REVIEW SECURITY CLEARANCE DETERMINATIONS DID NOT PREVENT REASSIGNMENT OF EMPLOYEE WHO LOST SECURITY CLEARANCE DUE TO DISABILITY FROM BEING REASSIGNED TO JOBS THAT DID NOT REQUIRE SECURITY CLEARANCE

“BEST QUALIFIED” RULES

- EEOC V. ST. JOSEPH’S HOSP., INC., 842 F.3D 1333 (11TH CIR. 2016)
 - NURSE SOUGHT REASSIGNMENT WHEN SHE WAS NOT ALLOWED TO WORK IN PSYCHIATRIC WARD WHILE USING A CANE
 - MODIFYING “BEST QUALIFIED” RULE NOT REASONABLE IN “RUN OF CASES,” BECAUSE IT IS NOT THE BEST WAY TO PROMOTE EFFICIENCY AND GOOD PERFORMANCE WHERE A BUSINESS OPERATES FOR PROFIT
 - UNDERMINING HOSPITAL’S BEST QUALIFIED POLICY IMPOSES “SUBSTANTIAL COSTS ON THE HOSPITAL AND POTENTIALLY ON PATIENTS”

REASSIGNMENT AND PAY

- EEOC V. UPS GROUND FREIGHT, INC., D. KAN., CIVIL ACTION NO. 2:17-CV- 02453
 - CP WAS REASSIGNED TO NON-DRIVING JOB AFTER STROKE
 - DRIVERS ASSIGNED TO NON-DRIVING JOBS FOR MEDICAL REASONS PAID 10% LESS THAN DRIVERS REASSIGNED FOR OTHER REASONS
 - IN JULY 2018, COURT ENTERED INJUNCTION PROHIBITING THIS PRACTICE
 - SINCE THEN, EMPLOYER AND UNION NEGOTIATED A COLLECTIVE BARGAINING AGREEMENT THAT HAD NOT BEEN RATIFIED
 - ON NOVEMBER 1, 2018, COURT DENIED DEFENDANT'S ATTEMPT TO VACATE INJUNCTION

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EMPLOYER DEFENSES



DIRECT THREAT: AN EMPLOYER DEFENSE

- DIRECT THREAT MEANS A **SIGNIFICANT RISK OF SUBSTANTIAL HARM** TO THE INDIVIDUAL OR OTHERS
- MUST BE BASED ON THE BEST AVAILABLE OBJECTIVE EVIDENCE OF THE RISKS AND POTENTIAL HARM

DIRECT THREAT FACTORS

- THE DURATION OF THE RISK
- THE NATURE AND SEVERITY OF THE POTENTIAL HARM
- THE LIKELIHOOD THAT THE POTENTIAL HARM WILL OCCUR
- THE IMMINENCE OF THE RISK
- WHERE APPLICANT OR EMPLOYEE HAS AN ACTUAL DISABILITY OR RECORD OF A DISABILITY, WHETHER REASONABLE ACCOMMODATION WOULD REDUCE OR ELIMINATE THE RISK

DIRECT THREAT: MEDICAL EVIDENCE

- STRAGAPEDE V. CITY OF EVANSTON, 865 F.3D 861 (7TH CIR. 2017)
 - PLAINTIFF RETURNED TO WORK AS WATER SERVICE WORKER FOLLOWING TRAUMATIC BRAIN INJURY
 - HE EXPERIENCED SOME PERFORMANCE PROBLEMS (TWICE GOING TO WRONG ADDRESS), AND WAS ONCE REPORTED DRIVING THROUGH AN INTERSECTION WHILE LOOKING DOWN
 - DOCTOR FOR THE CITY EXAMINES HIM AND FINDS HIM MEDICALLY UNFIT FOR DUTY

DIRECT THREAT: MEDICAL EVIDENCE (CONT.)

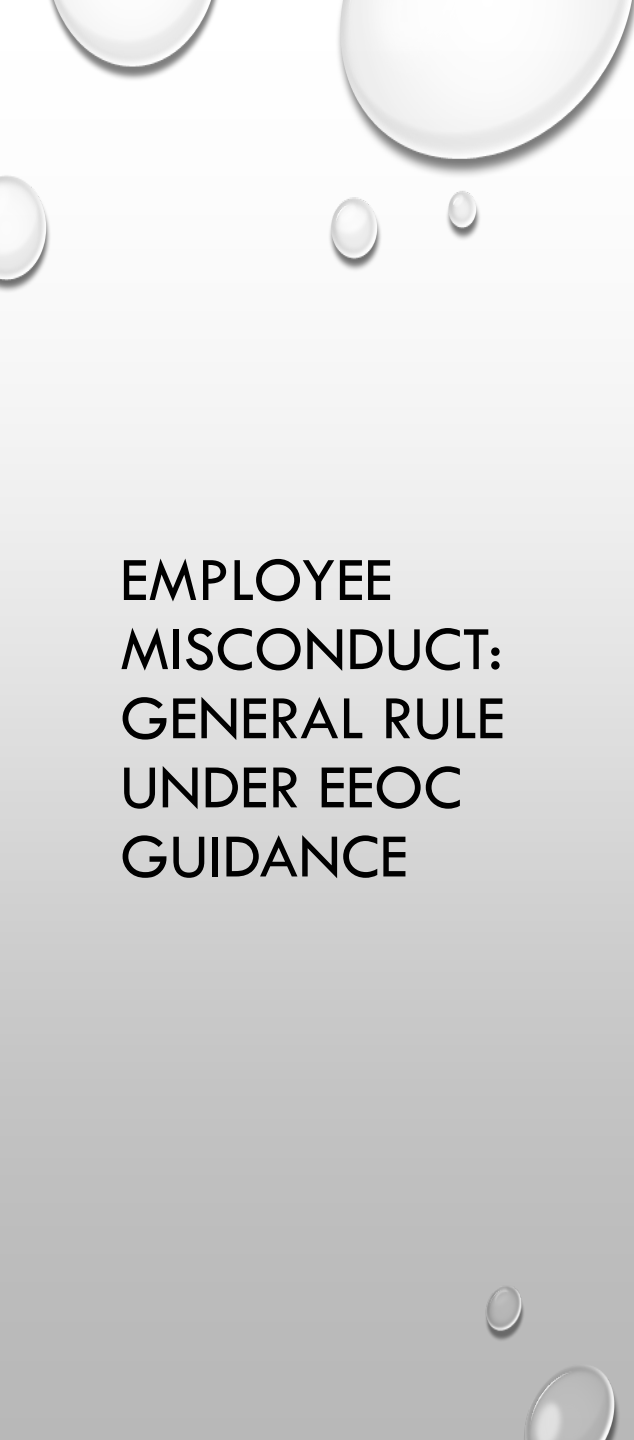
- STRAGAPEDE V. CITY OF EVANSTON, 865 F.3D 861 (7TH CIR. 2017)
 - COURT AFFIRMS JURY VERDICT FOR PLAINTIFF
 - EMPLOYEE EXPLAINED THAT HE WAS LOOKING DOWN WHILE DRIVING THROUGH INTERSECTION TO RETRIEVE A CLIPBOARD THAT HAD FALLEN; THE LIGHT WAS GREEN AND THERE WERE NO PEDESTRIANS
 - JURY COULD FIND THAT TWO INCIDENTS OF REPORTING TO WRONG ADDRESS WERE NOT SAFETY ISSUES
 - DOCTOR'S DETERMINATION EMPLOYEE WAS UNFIT WAS BASED SOLELY ON INFORMATION FROM THE CITY



UNDUE HARDSHIP

CONSIDER THE FOLLOWING FACTORS:

- NATURE AND COST OF THE ACCOMMODATION
- RESOURCES AVAILABLE TO THE EMPLOYER
- IMPACT OF THE ACCOMMODATION ON THE OPERATION OF THE EMPLOYER



EMPLOYEE
MISCONDUCT:
GENERAL RULE
UNDER EEOC
GUIDANCE

- EMPLOYER MAY DISCIPLINE EMPLOYEES FOR VIOLATIONS OF CONDUCT RULES THAT ARE **JOB RELATED AND CONSISTENT WITH BUSINESS NECESSITY** AND THAT ARE **UNIFORMLY APPLIED** EVEN WHERE DISABILITY CAUSED CONDUCT VIOLATION
- SUCH RULES INCLUDE RULES PROHIBITING VIOLENCE, THREATS OF VIOLENCE, THEFT, AND DESTRUCTION OR MISUSE OF EMPLOYER PROPERTY

EMPLOYEE MISCONDUCT (CONT'D)

- VANNOY V. FEDERAL RESERVE BANK OF RICHMOND, 827 F.3D 296 (4TH CIR. 2016)
 - EMPLOYER ATTEMPTED TO PLACE PLAINTIFF ON PIP FOR VIOLATING CONDUCT RULE
 - EMPLOYEE TERMINATED WHEN HE DID NOT COMPLETE THE PAPERWORK FOR THE PIP AND LEFT WORK WITHOUT PERMISSION
 - “ADA DOES NOT REQUIRE AN EMPLOYER TO SIMPLY IGNORE AN EMPLOYEE’S BLATANT AND PERSISTENT MISCONDUCT, EVEN WHERE THAT BEHAVIOR IS POTENTIALLY TIED TO A MEDICAL CONDITION”
 - .

EMPLOYEE MISCONDUCT (CONT..)

- GOGOS V. AMS MECHANICAL SYSTEM, INC., NO. 15-3603, 2017 WL 465678 (7TH CIR. FEB. 3, 2017)
 - PLAINTIFF NOT FIRED BECAUSE OF HIGH BLOOD PRESSURE BUT BECAUSE HE “REPEATEDLY” AND “PROFANELY” REFUSED TO PROVIDE REQUESTED DOCUMENTATION SUPPORTING ABSENCE
 - EMPLOYER ADEQUATELY EXPLAINED APPARENTLY CONTRADICTIONARY REASONS PROVIDED IN DOCUMENTATION OF TERMINATION

EMPLOYEE MISCONDUCT (CONT'D)

- DEWITT V. SOUTHWESTERN BELL TEL. CO.,
845 F.3D 1299 (10TH CIR. JAN. 18, 2017)
 - EMPLOYEE HUNG UP ON 2 CUSTOMERS
AND WAS TERMINATED
 - EMPLOYEE CLAIMED SHE DID NOT
REMEMBER THE CALLS AND ATTRIBUTED
HANG-UPS TO LOW BLOOD SUGAR
 - REASONABLE ACCOMMODATION DOES
NOT INCLUDE OVERLOOKING PAST
MISCONDUCT EVEN WHERE CAUSED BY A
DISABILITY

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DRUG AND ALCOHOL USE

ALCOHOL: GENERAL ADA RULES

- EMPLOYEE WITH ALCOHOLISM CAN BE INDIVIDUAL WITH A DISABILITY ENTITLED TO NON-DISCRIMINATION, AND ACCOMMODATION ABSENT UNDUE HARDSHIP.
- ACCOMMODATION EXAMPLES:
 - EXCEPTION TO RULE PROHIBITING PERSONAL PHONE CALLS AT WORK TO ENABLE CONTACTING AA SPONSOR
 - SCHEDULE CHANGE TO ATTEND AA MEETING
 - LEAVE FOR TREATMENT
- BUT ... ADA ALLOWS EMPLOYERS TO HOLD TO SAME PERFORMANCE AND CONDUCT STANDARDS AS ALL OTHER EMPLOYEES, INCLUDING UNIFORMLY APPLIED RULES PROHIBITING DRINKING OR BEING UNDER THE INFLUENCE AT WORK

DRUGS: GENERAL ADA RULES

- “CURRENT ILLEGAL USE OF DRUGS” IS NOT PROTECTED BY ADA WHEN EMPLOYER “ACTS ON THE BASIS OF SUCH USE”
 - ADA NEVER REQUIRES EMPLOYERS TO HIRE OR RETAIN SOMEONE WHO IS CURRENTLY ENGAGING IN THE ILLEGAL USE OF DRUGS
 - TESTS FOR CURRENT ILLEGAL USE OF DRUGS ARE PERMITTED AT ANY TIME PRIOR TO OR DURING EMPLOYMENT
- PAST DRUG ADDICTION CAN BE DISABILITY
 - PAST = APPLICANT/EMPLOYEE SUCCESSFULLY COMPLETED OR IS PARTICIPATING IN SUPERVISED DRUG REHABILITATION PROGRAM AND NO LONGER ENGAGING IN THE ILLEGAL USE OF DRUGS, OR HAS OTHERWISE BEEN REHABILITATED SUCCESSFULLY AND IS NO LONGER ENGAGING IN SUCH USE
 - PROTECTED FROM DISPARATE TREATMENT
 - ENTITLED TO ACCOMMODATION ABSENT UNDUE HARDSHIP

DIFFERENT ADA RESULT FOR DRUGS THAT CAN LAWFULLY BE PRESCRIBED

GENERAL RULE: ADA ALLOWS EMPLOYER TO EXCLUDE INDIVIDUAL WITH DISABILITY FROM POSITION IF INDIVIDUALIZED ASSESSMENT SHOWS, EVEN WITH ACCOMMODATION, HE CANNOT PERFORM THE ESSENTIAL FUNCTIONS OR POSES A DIRECT THREAT TO HEALTH OR SAFETY.

- EEOC V. M.G. OIL D/B/A HAPPY JACK'S CASINO, 4:16-CV-04131-KES (D.S.D. CONSENT DECREE ENTERED MAY 2018) (SETTLING CLAIM THAT JOB OFFER TO CASHIER WAS WITHDRAWN IN VIOLATION OF ADA BASED ON DRUG TEST SHOWING LAWFUL PRESENCE OF PRESCRIBED MEDICATION; COMPANY ALSO HAD UNLAWFUL POLICY OF REQUIRING ALL EMPLOYEES TO REPORT PRESCRIPTION AND NON-PRESCRIPTION MEDICATIONS THEY ARE TAKING), [HTTPS://WWW.EEOC.GOV/EEOC/NEWSROOM/RELEASE/5-18-18.CFM](https://www.eeoc.gov/eeoc/newsroom/release/5-18-18.cfm).
- EEOC V. HESTER FOODS, INC., CIVIL ACTION NO. 3:17-CV-000340-DHB-BKE (S.D. GA. CONSENT DECREE ENTERED FEB. 1, 2018) (SETTLING CLAIM THAT EMPLOYER FIRED KENTUCKY FRIED CHICKEN RESTAURANT EMPLOYEE WHEN IT LEARNED SHE WAS TAKING PRESCRIBED MEDICATIONS FOR BIPOLAR DISORDER).

DIFFERENT RULES FOR OPIOIDS & OPIOID TREATMENT DRUGS? (CONT'D)

- EEOC V. FOOTHILLS CHILD DEVELOPMENT CTR., INC., CIVIL ACTION NO. 6:18-CV-012555-AMQ-KFM (D.S.C. CONSENT DECREE ENTERED MAY 2018) (SETTLING CLAIM THAT EMPLOYEE WAS TERMINATED IN VIOLATION OF ADA AFTER EMPLOYER LEARNED HE TAKES SUBOXONE AS PART OF SUPERVISED MEDICATION-ASSISTED TREATMENT PROGRAM, WITH NO INDIVIDUALIZED ASSESSMENT OF WHETHER HE COULD SAFELY PERFORM ESSENTIAL FUNCTIONS), [HTTPS://WWW.EEOC.GOV/EEOC/NEWSROOM/RELEASE/5-15-18.CFM](https://www.eeoc.gov/eeoc/newsroom/release/5-15-18.cfm).
- *PENDING*: EEOC V. STEEL PAINTERS, LLC, CIVIL ACTION NO. 1:18-CV-00303 (E.D. TEX. FILED JUNE 29, 2018) (EEOC ALLEGES PAINTING COMPANY UNLAWFULLY FIRED A WORKER WHO HAD PREVIOUSLY BEEN DEPENDENT ON OPIOID MEDICATION BUT WAS TAKING A PRESCRIBED DOSE OF METHADONE AS TREATMENT), [HTTPS://WWW.EEOC.GOV/EEOC/NEWSROOM/RELEASE/6-29-18A.CFM](https://www.eeoc.gov/eeoc/newsroom/release/6-29-18a.cfm).

The background of the slide is a light gray gradient. It is decorated with numerous water droplets of various sizes and shapes, scattered across the top and bottom edges. The droplets have a realistic appearance with highlights and shadows, giving them a three-dimensional look.

DISABILITY-RELATED INQUIRIES AND MEDICAL EXAMS

PRE-OFFER DISABILITY- RELATED INQUIRIES NOT PERMITTED

- EEOC V. APPALACHIAN WOOD PRODUCTS, W.D. PA., CIVIL ACTION NO. 3:18-CV-00198
 - SUPPLIER OF CABINET COMPONENTS FOR KITCHENS AND BATHROOMS ALLEGEDLY ASKED JOB APPLICANTS ABOUT MEDICATIONS THEY WERE TAKING BEFORE MAKING AN OFFER OF EMPLOYMENT
 - EEOC ALLEGED COMPANY FAILED TO HIRE INDIVIDUAL FOR FACTORY POSITION BECAUSE HE WAS TAKING MEDICALLY-PRESCRIBED SUBOXONE AND THAT COMPANY REFUSED TO HIRE OTHER INDIVIDUALS FOR CERTAIN POSITIONS BECAUSE OF THEIR USE OF MEDICATIONS FOR DRUG ADDICTION TREATMENT WITHOUT EVALUATING WHETHER SUCH MEDICATIONS AFFECT THEIR ABILITY TO PERFORM JOBS SAFELY

DISABILITY- RELATED INQUIRIES OF EMPLOYEES LIMITED

- EEOC V. LOFLIN FABRICATION LLC, M.D.N.C., CIVIL ACTION NO. 1:18-CV-00813
 - EMPLOYER HAD POLICY REQUIRING ALL EMPLOYEES TO REPORT PRESCRIPTION DRUGS
 - OFFICE MANAGER PRESCRIBED MUSCLE RELAXANT FOR BACK AND NECK PAIN IN JANUARY 2017 THAT SHE TOOK AT NIGHT AND AS NEEDED
 - IN SEPTEMBER 2017, SHE REPORTED USE OF THE MUSCLE RELAXANT WHEN SHE WAS ASKED TO TAKE A RANDOM DRUG TEST AND WAS TERMINATED

INQUIRIES AND MEDICAL EXAMS (CONT'D)

- PAINTER V. ILL. DEP'T OF TRANSP., NO. 16-3187, 2017 WL 6032504 (7TH CIR. DEC. 6, 2017)
 - RELYING ON EEOC GUIDANCE, THE COURT CONCLUDED REQUESTS FOR MEDICAL EXAMINATIONS WERE JOB RELATED AND CONSISTENT WITH BUSINESS NECESSITY BASED ON INFORMATION ABOUT PLAINTIFF'S BEHAVIOR FROM PAST AND PRESENT CO-WORKERS AND SUPERVISORS

INQUIRIES AND MEDICAL EXAMS (CONT'D)

- FREELAIN V. VILLAGE OF OAK PARK, 888 F.3D 895 (7TH CIR. 2018)
 - REQUIRING POLICE OFFICER WHO TOOK SEVERAL WEEKS OFF DUE TO MIGRAINES AND STRESS-RELATED SYMPTOMS TO SUBMIT TO A PSYCHOLOGICAL EVALUATION BEFORE BEING RETURNED TO WORK WAS NOT “MATERIALLY ADVERSE” ACTION FOR PURPOSES OF RETALIATION CLAIM
 - THE COURT NOTED OTHER SEVENTH CIRCUIT DECISIONS ALLOWING PSYCHOLOGICAL EVALUATIONS BY PUBLIC SAFETY AGENCIES WHERE USED TO DETERMINE EMPLOYEE’S ABILITY TO PERFORM JOB FUNCTIONS SAFELY

The background of the slide is a light gray gradient with several realistic water droplets of various sizes scattered across it. The droplets have highlights and shadows, giving them a three-dimensional appearance. The text is centered in the middle of the slide.

RETALIATION AND HARASSMENT

EEOC SELECT TASK FORCE ON THE STUDY OF HARASSMENT IN THE WORKFORCE

- SELECT TASK FORCE CO-CHAIRS REPORT FROM JUNE 2016:
WWW.EEOC.GOV/EEOC/TASK_FORCE/HARASSMENT/REPORT.CFM
- KEY FINDINGS INCLUDED:
 - WORKPLACE HARASSMENT REMAINS A PERSISTENT PROBLEM
NEARLY 1/3 OF EEOC CHARGES IN FY2015 INCLUDED WORKPLACE HARASSMENT ALLEGATION, WITH TOP BASES BEING RACE, SEX, AND DISABILITY
 - MUCH OF THE TRAINING DONE OVER THE LAST 30 YEARS HAS NOT BEEN AN EFFECTIVE PREVENTION TOOL BECAUSE IT'S BEEN TOO FOCUSED ON SIMPLY AVOIDING LEGAL LIABILITY

ENFORCEMENT GUIDANCE

- **EEOC ENFORCEMENT GUIDANCE ON RETALIATION AND RELATED ISSUES:**
WWW.EEOC.GOV/LAWS/GUIDANCE/RETALIATION-GUIDANCE.CFM
- **QUESTIONS AND ANSWERS: ENFORCEMENT GUIDANCE ON RETALIATION AND RELATED ISSUES:**
WWW.EEOC.GOV/LAWS/GUIDANCE/RETALIATION-QA.CFM
- **SMALL BUSINESS FACT SHEET: RETALIATION AND RELATED ISSUES:** WWW.EEOC.GOV/LAWS/GUIDANCE/RETALIATION-FACTSHEET.CFM

HARASSMENT

- PATTON V. JACOBS ENGINEERING GROUP, INC., 863 F.3D 419 (5TH CIR. 2017)
 - PLAINTIFF CLAIMED HE WAS HARASSED BASED ON HIS CHILDHOOD ONSET FLUENCY DISORDER, WHICH CAUSED HIM TO STUTTER.
 - COURT AGREED THAT PLAINTIFF'S TESTIMONY CONCERNING THE FREQUENCY OF NAME-CALLING AND AN INCIDENT IN WHICH HIS SUPERVISOR MOCKED HIS STUTTERING IN FRONT OF 50 EMPLOYEES AT A DEPARTMENT-WIDE MEETING WAS EVIDENCE OF SEVERE OR PERVASIVE HARASSMENT.
 - BUT, THE COURT FOUND PLAINTIFF UNREASONABLY FAILED TO TAKE ADVANTAGE OF CORRECTIVE MEASURES AVAILABLE TO HIM.

HARASSMENT AND RETALIATION

- EEOC V. GOODWILL INDUSTRIES OF THE GREATER EAST BAY AND CALIDAD INDUSTRIES, CIVIL ACTION NO. 4:16-CV-07093 (N.D. CAL. 2016)
 - SUPERVISOR SEXUALLY HARASSED FIVE NIGHT-SHIFT JANITORS WORKING IN FEDERAL BUILDING UNDER CONTRACT THAT IS PART OF PROGRAM FOR EMPLOYING PEOPLE WITH DISABILITIES.
 - SUPERVISOR ALSO FALSIFIED RESULTS OF TIME STUDIES, WHICH RESULTED IN LOWER PAY FOR EMPLOYEES.
 - TWO MANAGERS WHO SUPPORTED EMPLOYEES' SEXUAL HARASSMENT COMPLAINTS WERE DISCIPLINED; ONE WAS COMPELLED TO RESIGN.



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