



Lupus and Workplace
Accommodation
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Workplace Accommodation

In this session, we will cover:

- Your rights as a disabled person applying for employment
- Your rights as a current employee to receive reasonable accommodation
- Remedies available if your rights are violated

- This presentation will focus on the Americans with Disabilities Act (“ADAA”).

- The ADAA is a federal law applicable in all 50 states and the District of Columbia

- A number of states have laws protecting the rights of the disabled. Some state laws provide broader protection than federal law.

A Short History of the Americans with Disabilities Act

- The Act was passed in 1991 to require employers of 15 or more employees to take steps to reasonably accommodate disabilities.

- Under the ADA, the definition of “disability” is “a physical or mental impairment that substantially limits one or more of the major life activities of an individual.”

- The courts narrowly interpreted the 1991 Act which led Congress to enact the ADA Amendments Act of 2008 (“ADAA”).

What Did the ADAA Change?

- The ADAA broadened an expansive list of life activities, including: sleeping, reading, thinking, eating, concentrating, communicating, working, performing manual tasks, caring for one's self, standing, lifting, bending, seeing, hearing, speaking, learning, walking and breathing.

- The ADAA clarified that the term “disability” included impairments that would limit a major life activity if active, even if currently in remission. Examples:
 - Multiple Sclerosis
 - Lupus
 - Cancer
 - Epilepsy
 - General Seizure Disorder

- Under the ADAA, a person is considered “disabled” even if his disability is lessened by devices such as hearing aids, prosthetics, wheelchairs or medication.

If I am Disabled, How Do I Obtain Relief?

Your Rights as a Job Applicant

The Pre-Offer Stage

- At the “pre-offer stage,” an employer simply cannot ask any disability-related questions or require any medical examinations.

- The employer may ask whether a job applicant can perform any or all job functions “with or without reasonable accommodation.”

- In other words, an employer may lay out the job functions and ask whether the applicant can perform them.
- The employer can also ask the applicant how the applicant handles stress.

- At the “pre-offer stage,” the employer may not ask whether an applicant has a medical condition that would interfere with the ability to perform a job.

- Regarding the issue of absence, an employer may ask how many days an applicant was absent from work in a prior job. The employer, however, cannot ask what was the reason for the absence.

- An employer should not ask how many “sick leave” days an applicant took on this last job.
- An employer should not ask the applicant to explain any gaps in employment.

- At the “pre-offer stage,” an employer may not ask about an applicant’s lawful use of medication.

The Post-Offer Stage

- After an offer is made, the employer may ask reasonable medical questions.
- An employee conditionally offered a position must truthfully respond to medical questions or risk withdrawal of the offer.

- If a job offer is withdrawn because of disability, the employer must show that the reason is job-related and consistent with business necessity.

An Employee's Right to Accommodation after Hire

- Under the law, an employee must initiate what is known as “the interactive process.” What this means is that the employee must advise the employer he has a disability and needs some modification to his job.

- In the interactive process:
 - An employer may ask questions concerning the nature of the disability and the individual's functional limitations in order to identify an effective accommodation.

- While the employee does not have to be able to specify a precise accommodation, the employee does need to describe the problems posed by the job.

- Accommodation requests must be specific. A request for an employer to tolerate a lower standard of work production is not a proper request.

- Is there an open position within the company which you can handle?

- If you have a specific treatment regimen which causes exhaustion or nausea, make a request for intermittent Family Leave. This benefit is available only to employers of 50 or more persons.

- An employee should try to suggest types of accommodation. The employer, however, does not have to accept the precise accommodation requested if another method is equally effective.

What are the Limits of Accommodation?

- The standard for accommodation is what is “reasonable.”
- What is “reasonable” for a large employer may be unreasonable for a smaller employer or an employer with limited financial resources.

- It is not “reasonable” to expect an employer to provide “personal use items” which are needed in accomplishing daily activities both on and off the job. For example, it is not reasonable to expect an employer to purchase a hearing aid for an employee who will use the device away from the job.

- Any accommodation is only the business of the employee and certain key management employees. While coworkers may expect to have an explanation on why an employee's job has been modified, it is management's job to advise the inquiring employee that the modification is none of his business.

- For medical conditions such as lupus, it is advisable to have the treating physician's involvement in both the interactive process and in the process of assisting the design of a reasonable accommodation.

What if my
Rights are Violated?

- The ADAA is enforced by the Equal Employment Opportunity Commission (“EEOC”).
- An individual denied a job because of a disability or an individual who loses a job due to a disability can obtain relief from the EEOC if a Charge of Discrimination is filed within 180 days from:

- The employer's decision not to hire or
- The employer's decision to terminate a current employee.

- You can file a claim with the EEOC without the need to hire a lawyer. It is best, however, to obtain legal representation to navigate your way through the administrative process.

- If the EEOC finds your claim has merit, it will invite the Employer to commence the conciliation process.
- If the Charge is not resolved in the conciliation process, the EEOC can:

- File suit on your behalf or
- Provide you with a Notice of Right to Sue.

- If given a Notice of Right to Sue, you must file suit in either state or federal court within 90 days of your receipt of the Notice.

Q & A