Employees with Physical and Learning Disabilities

Utilizing a University Team Approach
Work on a preventative-law approach

Make sure that your team receives training in:

- how to interview,
- work with, and
- properly discipline/terminate employees with disabilities
Physical/Learning Disabilities

- back and other orthopedic impairments
- cardio-vascular and neurological
- Diabetes, hearing, vision, and cancer
- “regarded as disabled”
- “having a record of a disability”
Prima facie case of discrimination

A plaintiff must show that s/he is:

- (1) **disabled as defined** in the ADA;
- (2) qualified to perform
  - the **essential functions** of the job
  - with or without a **reasonable accommodation**; and
- (3) discriminated against **because of** disability
ADA Definition of “Disabled”

- A physical or mental impairment that
- substantially limits
- one or more major life activities,
- a record of such impairment,
  - [or] being regarded as having such impairment.
Defining: Physical impairment

- any physiological disorder,
- cosmetic disfigurement, or
- anatomical loss affecting body system

considered in light of mitigating measures
**Definition:** Substantially limits

- a significant restriction
  as compared to an average person
  in the general population
Definition: Major Life Activities

- caring for oneself
- performing manual tasks
- walking, seeing, hearing, speaking
- breathing, learning, and (sometimes) working

split in Circuits: ability to get along with others
**Definition:**

“Record of” Such Impairment

- Treated as disabled by the employer
  - one has either a **history** of such impairment or
  - one has been wrongly classified as having such impairment
Definition:
Regarded as Having an Impairment

- employer must actually **perceive** the employee as being impaired
Qualified to Perform the Essential Functions of the Job

- (1) disabled as defined in the ADA;
- (2) qualified to perform the essential functions of the job with or without a reasonable accommodation; and
- (3) discriminated against because of disability.
Essential functions of the job

Courts consider the:

- (1) employer's judgment
- (2) written job descriptions
- (3) **time** expended performing the function
- (4) **consequences of not requiring** function
- (5) work experience of past employees
With or without a reasonable accommodation

- qualified person with disability
- change in work environment
- reject reasonable accommodation: not qualified

to avoid reasonable accommodation:
employer must prove **undue hardship** or **business necessity** requiring that certain criteria be met
Discriminated against because of disability

Employee must prove both:
- intentional discrimination and
- an adverse employment action
A. **Individualized** and **Interactive Assessments**
Termination of disabled employees

- Unable to perform essential functions of job (even w/ reasonable accommodations)
- Posing a direct threat to self and/or others
Using standards and tests

- When tests measure the legitimate requirements for the job
Recent EEO Publications

President’s New Freedom Initiative:

EEO issued fact sheet re disabled workers teleworking as a reasonable accommodation

Accommodation of the Intellectually Disabled
Tips

- avoid asking if they “might have a disability”
- consider mediation
- have updated Policies:
  - Disability-Based Harassment
  - Retaliation for filing disability grievances
Additional Tips

Utilize a checklist or decision tree:
- thorough fact-finding
- complete analysis

- Work on a preventative-law approach