

WEBVTT

1 "Richard Dornfeld" (430216704)

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Good afternoon. My name is Richard. Kornfeld, I'm an attorney with the Minnesota attorney general's office and I'm pleased to welcome you to today's presentation on the Americans with Disabilities Act. Uh, we have a great program for you to schedule for this afternoon, and I want to note that this program runs to 115 0. P. M and not the.

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Usual 10 PM so we encourage everyone to stick around til the end. Um.

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Uh, additionally in the chat, you'll find a copy of the presentation where you can download the slides and, uh, the Minnesota events code. I want to note that that code is still pending, but we expect to.

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Get approval for that in the next couple of days. If you have any questions, as the presentation goes on, please feel free to put those in the chat. We'll keep track of those and then pose those to Jana and Chad at the end of the program.

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In addition, I want to encourage everyone to sign up for upcoming programs, including our upcoming on tribal sovereignty on Wednesday, February, 7th, and our on environmental law coming up on Wednesday, March, 13th, and you can find the details about how to register on the attorney general's office.

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Today, we have 2 speakers with us. Joanna are leery solvent. Who's a staff attorney with the league of Minnesota cities where she represents cities and employment discrimination, harassment and other related matters before joining the league of Minnesota cities. Joanna worked in private practice and clerk at the Minnesota court of appeals.

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Our other presenter today is Chad Wilson who's an assistant supervising attorney with the Minnesota disability law center and mid Minnesota legal aid uh, before joined the disability law center uh, Mr. Wilson.

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Uh, was a law clerk in the 1st, judicial district of a public defender, and also a judicial external in the 1st, judicial district and with that, I'm going to turn it over to Janna, our 1st presenter. Thanks so much.

9 "Jana O'Leary Sullivan she/her/hers" (3552973824)

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Afternoon everyone, it's very much a pleasure to be here with you today to talk about the Americans with Disabilities Act. I primarily practice employment law at the league and represents cities. And so a lot of my cases involve, like, police and fire and things like that. And really, I'm hoping today that this is really useful for you, wherever you are in your practice.

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Whether you practice and employment law, whether your practice in public law, whether you're just kind of like here, because it's the free wherever you are, I hope this is useful to you. Um, I think the ADA is just a really important topic to talk about because next year the is going to be celebrating is 35th birthday.

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And it remains probably 1 of the most robust and sort of relevant employment laws, uh, on the books that really every employer, every employee, even all of us as employees and workers, um, we work with the ADA, at some point along the way. And so hopefully you'll learn some useful things as we go along.

12 "Jana O'Leary Sullivan she/her/hers" (3552973824)

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You go to the next slide, please.

13 "Jana O'Leary Sullivan she/her/hers" (3552973824)

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So, we're going to be talking about sort of the basics the 101, and I'm going to give you some additional resources if you want to do a deep dive, but the, the 1st part, we're just going to do the basics and I'm going to cover some of the kind of key employment provisions next slide please.

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So, in a nutshell, the Americans with disabilities app is like, every other sort of anti discrimination, anti retaliation law that exists out there whether we're talking about title 7, which prohibits discrimination, like, on the basis of race, sex, and many, many other factors. The ADA prohibits discrimination. So you can't.

15 "Jana O'Leary Sullivan she/her/hers" (3552973824)

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They are an employer, can't say, you know, I'm not going to hire somebody, or I'm not going to promote somebody because they have a disability and we're going to talk a little bit about what that means having a disability and just a moment.

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But the bigger and sort of a really unique thing about the, and for those of you who practice in this area, this is like, old hat now you can, like, focus on your to do list, or take a little bit of a brain daydream. I'll bring you back here in just a moment, but, um, I know this is, uh, basics for you, but for those of you, that are not as familiar with it. Uh, the reason the is just really unique.

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Is because it imposes sort of an affirmative obligation on an employer for both applicants and employees in this realm. And that really kind of sets it aside every once in a while, especially sort of in the beginning of the practice of the, you know, people would come back and say, well, do we have to give, you know, special treatment.

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00:04:33.520 --> 00:04:53.520

That was often the word that would be used and oftentimes, when we're talking about the other employment laws, the standard is we have to treat similarly situated employees similarly and we don't want to treat them differently. But the Americans with Disabilities Act puts a little bit of a spin on that and says, no, actually, when we're talking about individuals, employees and applicants with disability.

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00:04:53.520 --> 00:05:13.520

We have something that we have an extra obligation. It's not just treating them fairly but really the key is we have to provide a reasonable accommodation and I think perhaps I'm wrong. You can tell me I'm in the chat or otherwise if you see me out in about, is that I think a reasonable accommodation is 1 of those kind of legalistic terms. That is really sort of.

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Have entered the vocabulary of the general population earliest lawyers I should say. Um, so that's a term that I'm going to use throughout my presentation.

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The other I I've highlighted on this slide a few of those other buzzwords too, that I'm going to talk about, as we go on that are really sort of the key components of the, when we're talking about reasonable accommodations in the employment context. 1st, just what's the definition of reasonable accommodation? Um, really, it's just any modification to the.

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Place to the job that's going to still allow that employee or that applicant to do the essential functions of the job, but it's giving them some extra tools to do that. Oftentimes it can include things like modified leads modified schedule, additional breaks additional leave.

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Specialize.

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Equipment and where it really is encouraged that employers with that assistance of employees, and medical providers really try to be creative to come up with solutions to help employees do their job in the workplace. I highlighted that term essential functions. Because if you delve into this area, that is something that you're gonna see over and over.

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And, of course, you know, lawyers, we always have to add that legalistic language, but really, it just means those core job duties of why that job exists. And what it does now, sometimes essential job duties is confused with, like, this is something I do to day to day, but it's maybe not something that I do very often. So, if I'm doing a task that, you know, I don't.

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I have to do very often. It's not an essential job function and well, that may often be the case. That isn't necessarily always the case. Um, there's some job some jobs in my world, I think of firefighters.

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00:06:55.739 --> 00:07:15.739
Where in that job structural firefighting is in the grand scheme of things. Not all that common. But instead responding to medical calls. And other calls is much more frequently. But that job ultimately exists to do structural fires and so that is a very key essential function even if it's not being done, sort of.

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00:07:15.739 --> 00:07:35.739
On a regular basis, another key kind of term of art that I would like to emphasize and if you had an early lunch and you're in a little bit of a carb coma, you're, um, you're like, you know, just daydreaming about sun. If we ever see it again, come back to me for 1 moment while I highlight this. And that's an individualized.

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Inquiry that is something that is so key when we talk about the, that we have to look at that individual situation, we have to look at, sort of the broader situation. And then, specifically, what is that person's job? Um, that is seeking protection or some benefits under the, what's the nature of their job? Like, how does it work.

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You know, what's the workplace look like and then really? What are that? Um, that employees very specific work restrictions. Sometimes that means we're gonna have to get into a little bit of the information about, you know, what is the, what is the condition? What is the injury? What is the diagnosis? What is the treatment plan? Sometimes that's necessary.

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But not always when we get into this individualized inquiry.

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Another term of our in this case, that's really important when we talk about this is an interactive process again lawyers kind of complicating it, but really it just means having a discussion with an employee that is something that is required under the Americans with Disabilities Act although there's a lot of case law that says, you know, ultimately, if there's no reason.

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Accommodation that exists an employer isn't going to be on the hook for not engaging in that interactive process but importantly, for all of us, um, under our Minnesota human rights act and interactive process is required and that's something that was newly added to the law in this last year, and that's something that I think is really important to note because.

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I can't think of a situation where the ADA is going to apply, but our state law is not going to apply. And so you definitely want to keep that in mind that while the may have some more kind of gray area around the contours, our state laws pretty clear about that being a requirement. 1 other thing to keep in mind, um, in this area, is that.

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When it comes to reasonable accommodations, an employer has a duty to provide that, but they don't necessarily have an obligation to provide the accommodation that's preferred by the employee. Now. Usually, that is going to be the 1st place that you start, and that's often going to be the workable a solution, the reasonable accommodation but it's important to remember that. It's not always something that.

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Has to be given it's just an effective reasonable accommodation has to be given next slide. Please.

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So, big picture, especially for all of those of you that do not practice in this area is like, so what is this? Why is this important to us? I think this is this law is really important to talk about because most public

employers, most private employers are going to be covered the threshold for the ADA is 15.

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Employees in contrast, for our state law, our Minnesota human rights act, it is 15 employer. It's 1 employee generally. But when it comes to talking about, when that requirement to provide a reasonable accommodation comes into play, that comes into play when an employer has 15 or more employees. I know in my world, oftentimes people are.

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They're like, well, we're a really tiny city, you know, you know, we have 3 employees in the office and the question that I often ask for them is well, what about if we include your pay down call firefighters are some of those more non traditional employees and that usually puts them over the threshold of 15 employees. The other thing is that.

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Medical conditions and injuries are covered once upon a time. That wasn't the case that really there was a lot of sometimes torturous kind of findings and decisions kind of working through. If a person had a disability that was covered by the egg. Ada, but That'll change. It. About 2008, 2009.

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When Congress amended that, and really these days, I take the position that pretty much all medical conditions are going to be covered. All illnesses are gonna be covered. Probably not, you know, a simple cold, a simple stomach flu or something like that. But usually, you know, in those circumstances, um, last lawyers are not getting involved in that. So, um, usually, I do.

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To start with that premise, once in a great while there may be some circumstance where a disability is not going to be covered by the. But that would be a very rare exception. Also. The ADA doesn't just cover sort of, um.

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Actual current medical conditions, it also covers a history of medical conditions. So an employer can't be like, oh, you applicant you had cancer in the past, or, you know, somehow they learned that information. We're not going to hire you now. It's usually not that over, but sometimes it's a little bit, um, you know, it's kind of around the edges that we look at that.

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But that's something that the is also going to prohibit an employer to do to kind of consider that past history of a medical condition. It also covers, um, conditions that are perceived to be a disability. And that is really important and comes into play a lot, especially with things like mental health conditions is that if an employer perceived that some.

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But he has that they can't act on that other than the way that they would be able to act if a person actually had that condition going through the process and things like that. I also think it's really important to talk about this at this time because I think it's fair to say that at any time unless you sort of become the Bionic.

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00:12:38.519 --> 00:12:58.519

A person in your robotic, and maybe that's in the future and that the whole other, every human is going to cover, or have a medical condition at some point in their life. And what that really means is that most employees are going to have some sort of medical condition, sometime in their career, including all of us. And so, while it's certainly important.

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Supervisors HR departments, employment, attorneys and other attorneys no ADA requirements. It's also good for us just to have an understanding of that, because we're all workers, we all have colleagues or friends or other individuals who, at some point, are going to have a medical condition. And so it's really helpful to know that.

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It's also important in this area to really understand the contours of the, and some of those other sister laws, like our state law, because in a.

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Into ensuring legal compliance, we really have to think of where we are at right now the is more relevant than ever that was certainly the case in the pandemic. And it's also important, um, as we move on from the pandemic. And also, even as we explore additional laws, which I'm gonna talk about in just a moment, um, specifically.

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It's a very hot labor market. Now if you're 1 of those individuals, where you're working for employers, or your clients are working for employers, where everybody's fully staffed, no retention and recruitment issues. Awesome, please share your secrets. But most of us we are constantly in that mode of recruitment and retention and the demographics, which.

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I hear from our Minnesota demographics office is going to be our, um, our reality for the next, you know, for the foreseeable future probably for the rest of our working life. That that is really going to be important. And so when we have good employees, we don't want them to have to leave the workforce because of a medical condition, or an illness. But instead we want.

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00:14:27.839 --> 00:14:37.289

To retain them work with them, get them on what they need, and then bring them back whether, or, um, help them while they're still in the workplace with those medical issues.

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It's also really important to dive into this issue and to really embrace it and to know about it because of our goals. I know. That is something that's extremely important. Just in society in general, but especially for our public entities that we are constantly thinking of ways that we can be more diverse, how we can reach out to more diverse candidates.

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How we can be more inclusive, and when we really sort of, sort of embrace our obligations under the, that really fulfills our obligations or really, um, furthers our goals in that area. And again, it's going to be especially important too. That, as we look at the demographics that we really want to, um, maybe tap into.

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Some sources of human work, our workforce that we may be previously have underserved, whether that's people of color, whether that's individuals with disability or whether it's older individuals or retirees. And so that again really speaks to that. And ultimately, in addition to the business.

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Case the legal case for, um, kind of delving into this area ultimately, when we're providing accommodations to people, when we're working with individuals with disabilities, especially applicants and employees but also, including our residents and our citizens. Um, it's the right thing to do, um, that there's sort of that moral case for doing that. And I know sometimes.

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Especially when we're in government, we're like, oh, we don't we don't talk about that. Especially moral case, but I do think there is, um, that to be made in this realm. And so I would just emphasize that next slide. Please.

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1 thing that I would like all of you to understand, and it's probably.

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Or is how I view these cases, considering the legal landscape I think a lot of what I have to say in this area is going to be something that you'll probably not along with and that you're also seeing in your practice or, in other areas of the law that it's not just confined to the or employment law, but I think it's important to.

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So that when we approach situations with applicants and employees with a disability that we keep this legal landscape in the back of our mind 1, is that, you know, there isn't been pretty dramatic changes. Um, at the state and federal level. Both the courts are all courts, executive branch agencies, legislative branch.

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And, um, also, some of those sort of those 4th branches, like the media and that sort of thing and that really impacts this area. 1st, of all, um, um, at the state and federal, uh, legislature level. Obviously, at the Minnesota legislature was very active this past year. I know a lot of us are digging into still and.

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We're preparing for paid family, medical leave law as well as many other things. And that just shows that this is definitely a focus. And a lot of those laws really speak to sort of the central issue that is at place in the, which is, how do we handle employee medical issues? So we can serve employees and also serve and.

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Lawyers, um, to the best way, possible the federal level, as I think many of us know is sort of locked in gridlock. And I don't really think that's gonna change, especially in this election year. But this, the, the 1 thing that did pass, um, this past year at the federal level, was the pregnant fairness workers act.

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And that really solidified and codified something that had been long trickling through the courts and said, pregnancy is also something that employers must accommodate. Now. By this time before that was passed, it had already been the case that if a pregnant worker had a condition that sort of triggered the, they had.

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And maybe preeclampsia or pregnancy related condition, they would be covered by the ADA. But there was a little bit of a gray area, especially outside of states, um, other than Minnesota because Minnesota, we have some

pretty robust state laws that really filled in in this area. But that really makes clear that employers must also accommodate pregnant workers.

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Even if pregnant workers don't have an additional pregnancy related medical condition, and I think that's important to note that while our federal government really can't reach a lot of consensus. I, at least unemployment law they did on that. And so I think that that really says, you know, this is something that employers and others really need to focus on.

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00:18:54.779 --> 00:19:14.779

In addition what we're seeing at the federal and state level is really robust agency enforcement and employment law in general. But especially in this area, of course, at the state level, I'm talking about our Minnesota human rights app department, but I'm also talking about the state and federal, uh, Department of labor and some other agencies that also come into play with.

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So, that also means, you know, that's going to kind of encourage some additional work and really diligent efforts by employments and in this area. And then this is also something that because of some of those changes at the state and federal courts that we're also seeing what I'm seeing, especially in the state court is there is a very.

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High level, or maybe higher than we are used to of turnover. And a lot of the experience of our judges who are very smart, very hardworking, but there are a lot of them are coming to the bench with a criminal background. They may not have had an employment case in the past. Maybe they even haven't really delved into the.

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Whole area very much and so that's something that really speaks to it. Also the other thing that when we think about the legal landscape, is that whenever we're working through a situation that includes an employee's medical issue. I know when I'm dealing with that. Um, whether that's in litigation, but especially when I'm in that Pre litigation.

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Mode where I'm working with a city employer about, how do we handle this situation? What our next steps what do we do? How do we handle that? Certainly, I am considering the Americans with Disabilities Act. That's kind of where I start, but I know that I have to consider many other laws that really come into play when we're dealing with an employee medical issue. That includes of.

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As I mentioned the Minnesota human rights act, but, and as I also mentioned the pregnant workers, uh, fairness workers act, but it also includes the family medical leave act that's going to apply where there's 50 or more employees. The upcoming where a lot of it is going into effect in the next year, or 2 of our paid, our state paid family, medical leave act as well.

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Well, as or unsafe and sick time, the genetic information nondiscrimination act that really comes into play when we're requesting medical information. And I'll talk about that in just a moment and then even some other laws that aren't strictly employment lot. They're also implicated when we're talking about an employees medical issue 1 of those that I know.

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Is very much on my radar is the cannabis law. There are some parts of that that, you know, it's really clear cut, um, for instance, under the new revision that was just passed this past legislative session. We know that generally speaking that employers are not going to be allowed to test for cannabis with the exception of some specific areas.

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Which I know in my world include police fire safety, sensitive positions, and for many of us, it also is important to note that it covers dot or department of transportation employees. But there's still a lot of gray area. Um, like, you know, well, what does that mean? And, like, even for firefighters, and even for police, where it seems like it's clearer.

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Um, how does that play out when we're coming with, uh, we're evaluating cases of reasonable accommodations of testing of medical exams and things like that and so stay tuned because I think there's going to be a lot, uh, being hashed out 1, practice tip. I want to give you 2, is that when you delve into this area really? I caution.

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00:22:14.779 --> 00:22:32.249

You to really look very carefully at cases that are Pre, 2008, 2009, because there was such a significant change after that time. That that really is sort of aligned in the sand. So, if you have to, you know, just go on WestLaw or Lexis, real quick, just be aware of that.

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00:22:32.249 --> 00:22:52.249

Next slide, these are also my big tips, um, are my big takeaways in my practice tips. And again, if you, you're a little bit in that carb coma, because something yet for lunch or you're again, daydreaming about the sun, come back to me for a moment because I want to emphasize some of these has an employment lodge.

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00:22:52.249 --> 00:23:12.249

And I think this is pretty fair for all of us as attorneys. You know, frequently my mantra is document document, document, communicate, communicate, communicate but that is especially true in this area when I get a situation, or a case with a medical issue. And I'm like, well, we'll show me the personnel file, and it's very sparse and there's not medical records.

80 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:23:12.249 --> 00:23:32.249

There's not correspondence back and forth that is going to be very problematic. The other thing that I say is, it is, okay, and in fact, I encourage you, um, and the people that you advise in council to practice compassionate leadership in this case, and to really trust your instincts. I also want to be mindful of time. So, I'm going to scoot ahead and just cover very briefly. Some of.

81 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:23:32.249 --> 00:23:36.479

It was hot topic areas that we're talking about. Next slide. Please.

82 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:23:36.479 --> 00:23:57.709

So 1 of the things, before I talk about all the ways that this law impacts employees, I do want to cover some of the things sort of the hot topic areas. And also, I want to be mindful that wherever you are, whether you're an expert in this area, or you're a newbie in this area I wanted to talk about some of those hot topics with applicants. 1st.

83 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:23:57.709 --> 00:24:17.709

The 1st thing I want to emphasize is that at the application stage, whether it's, we're talking about the written application, whether we're talking about other materials, whether we're talking about background investigations or interviews. Really? The overarching rule when it comes to, that is don't ask, don't ask, don't ask about people's medical conditions. Don't ask.

84 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:24:17.709 --> 00:24:37.709

Medical leaves, don't ask about any of those type of things. Um, even if it's obvious, similarly, don't ask about pregnancy, like, oh, you know, how much maternity leave are you taken or things like that? Now? There may be some things that you can ask and there's some contours. But really, I think there's really a lot of traps for the.

85 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:24:37.709 --> 00:24:57.709

And really, if you stick to that overarching theme with, perhaps the caveat per, usually it's better in the written materials of asking, whether an applicant can do the job with or without reasonable accommodation and leaving it at that saving those more in depth questions for a time. After a conditional offer has been made.

86 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:24:57.709 --> 00:25:19.219

And that's usually going to be a, the best bet. Like I said, there may be sometimes some areas where oh, well, we want to do this. Those are things where, you know, you want to phone a friend, especially if you're not an expert in this area and, um, do some additional research. Because generally that is not going to be allowed. The other big takeaway is there are no automatically automatic.

87 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:25:19.219 --> 00:25:39.219

Medical device qualifiers this frequently comes up with my police employees. My firefighter employees, my public works employees who are doing, like, heavy equipment operation as well as some other ones. Um, I think once upon a time, maybe a couple years ago, people would think, oh, if somebody, let's say a police officer has PTSD, or has.

88 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:25:39.219 --> 00:25:59.219

Bipolar disorder, or we have a firefighter with a seizure disorder, epilepsy, or something like that. That automatically disqualifies them. And again, the answer is Nope, that is not the case. Now there may be some situations where a particular condition is going to make that candidate.

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00:25:59.219 --> 00:26:19.219

In eligible for certain types of jobs in the vast majority of cases, but an employer still has to go through through the proper process to make that determination. Um, and for those of you individuals out there who have fire departments. I know that city's mainly. But, uh, for that is 1 thing I want to know.

90 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:26:19.219 --> 00:26:39.219

Is that, uh, the National Fire Protection association puts out great standards. They're awesome. When it comes to safety equipment. Staffing ratio is many, many other things, but the 1 area where I would caution and really say is, that's being reworked. Don't rely on. It is how the.

91 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:26:39.219 --> 00:26:59.219

Deals with medical conditions, because they really do deal with, hey, you have this condition, you are disqualified, or you're ineligible for this amount of time sometimes for life and that really runs a follow of the requirement to do an individualized inquiry. So, I would really caution you against that, or, at least requires a deeper dive.

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00:26:59.219 --> 00:27:19.309

The other thing that I would really emphasize is that in this area, it really behooves employers to really look at what the job requirements are. Are those really legitimate are they really required by the job and really

asking the question of, like, where did these come from? And this often pops up in those areas where.

93 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:27:19.309 --> 00:27:39.309

There's a vision requirement or a hearing requirement or a lifting requirement. And especially when it looks like, maybe a candidate isn't going to fit that. And maybe it's the 1st time in a long time. That that employer is revisiting that. I know this is again, something that with my safety employees, I am constantly revisiting once upon a time. It was pretty.

94 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:27:39.309 --> 00:27:59.309

Comment that you would go to any law enforcement agency and there would be some pretty strict vision requirements, including no color blindness. Well, then, as we started to get some more inquiries, maybe a case or 2, and there's some new stories about how, for instance, you know, the Los Angeles police department has really changed some of their standards on vision, including color blindness. It.

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00:27:59.309 --> 00:28:19.309

Really, um, opens up that door. Like, we need to look at this again. Is that really required and that's something that for those of you that are working, you know, for instance, in a state agency that is something that we're already doing. Um, again, as part of the tight labor market, as part of our efforts, you know, for instance, I noticed a lot of state agencies have really abandoned. Um.

96 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:28:19.309 --> 00:28:37.919

You know, having some formal education requirements for certain types of jobs and that really speaks to the same things. Like, is this really necessary? And that's where a lot of us, wherever we are in, sort of how the ADA plays out that we can really get involved and offer our insight in that area next slide.

97 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:28:37.919 --> 00:28:59.359

Now, let's dig into some of those, those most common issues and scenarios that come up with current employees. 1, is medical leave medical leave is a reasonable accommodation that really must always be considered. And probably 1 of the biggest misnomer that I hear is, oh, you know, that employee is an eligible.

98 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:28:59.359 --> 00:29:19.359

For FMLA, family, medical leave act. So, you know, that ends any questions that we have to ask about medical leave and the big takeaway when you think about medical leave and accommodating employees, medical conditions, is that the is above and beyond MLA and really all the other myriad of laws that applies.

99 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:29:19.359 --> 00:29:39.359

In this area that it's going to apply from day 1 of employment, you know, some of those other laws, they require a certain number of hours per week or per year. Um, this is also something that even if somebody exhausts all of their FMLA leave, which is usually 12 weeks, they may be entitled to medical leave above and beyond that.

100 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:29:39.359 --> 00:29:59.359

Because of the NDA and the requirement to provide reasonable accommodation the other thing that I would want to note, is that not not only does it cover, like, a block of time, you know, like, consecutive time off. It also covers intermittent leave sometimes for those of us who practice in this area that intermittent leave can really be.

101 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:29:59.359 --> 00:30:15.599

Be challenging to kind of handle the housekeeping housekeeping and communication pieces of it and that's oftentimes an opportunity or a situation where we want to reach out to others involved in the situation and work out to the, the.

102 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:30:15.599 --> 00:30:35.599

Workable solution the MO, the best, uh, reasonable accommodation some other big takeaways that I want to emphasize in this area is that while the law does not require employers to provide indefinitely, it may require an extended leave. And it really, when we look at this area, the courts and the agencies.

103 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:30:35.599 --> 00:30:55.599

Really really, really frowned upon bright line rules, especially those that apply to maximum leave even if those are generous, and an example is, you know, lots of employers and I see it still in the public sector where they have something like, after a year. That's like the maximum amount of leave now on 1 hand that seems very generous. On the other hand, though.

104 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:30:55.599 --> 00:31:00.359

That is going to be a problem because again, it's not getting into that individualized inquiry.

105 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:31:00.359 --> 00:31:20.359

In many jobs, it may be unreasonable to provide leave above and beyond 1 year but we have to look at what is the nature of the job and, you know, if it's something where there's constantly being openings or things like that, it may be totally reasonable to have an extended leave and that's something that is really, really, really been the focus of a.

106 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:31:20.359 --> 00:31:40.359

Agencies, especially the the federal agency that enforces the ADA, um, along with the counterpart of our and in 2016, they issued guidance, which I've linked to this, and you'll get a copy of the written materials, but that really emphasizes that we've really needs to be considered and, um, even in those.

107 "Jana O'Leary Sullivan she/her/hers" (3552973824)
00:31:40.359 --> 00:31:48.119

Circumstances where maybe it ultimately doesn't work. It's something that employers have to carefully kind of work through. Let's go to the next slide.

108 "Jana O'Leary Sullivan she/her/hers" (3552973824)
00:31:48.119 --> 00:32:09.829

The other thing that I want to note that the pandemic was really a game changer is the, um, remote or hybrid work as a reasonable accommodation. Once upon a time we were pretty confident Pre pandemic to say, you know, that really doesn't work most of the time. Um, at least that strictly remote work, but these.

109 "Jana O'Leary Sullivan she/her/hers" (3552973824)
00:32:09.829 --> 00:32:29.829

Is when an employee wants remote or telework that is really something that employers have to consider and importantly, employers have to consider even if they have a policy that generally even now post pandemic frowns upon or discourages or limit hybrid or remote work you know, for instance, if an employer has a policy.

110 "Jana O'Leary Sullivan she/her/hers" (3552973824)
00:32:29.829 --> 00:32:49.829

We're only going to allow that, you know, 2 days a week, 3 days a week, or we're going to have it on this rotating basis. That's something that even those limits an employer has to consider differently. If an employee with a disability is requesting that as an accommodation now, sometimes it's going to be reasonable and sometimes it's not going to be, depending on that person's job, depending on the work.

111 "Jana O'Leary Sullivan she/her/hers" (3552973824)
00:32:49.829 --> 00:33:09.829

Restrictions and something that also comes into play is sometimes in the vast majority of cases, when we're dealing with an employee medical issue, I'm not involved. Your not not involved. It's smoothly handled by whoever's handling those HR functions. No problem. But the cases in situations that come across my desk and may come across your.

112 "Jana O'Leary Sullivan she/her/hers" (3552973824)
00:33:09.829 --> 00:33:29.829

Are the complicated cases, right? They're the ones kind of on the fringes that kind of implicate. So I don't want to say that every person with a disability. Especially every person with a mental health disability has a performance issue, or a misconduct issue, but I should say that is a common scenario that comes across my desk. And so sometimes.

113 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:33:29.829 --> 00:33:49.829

When it comes to come in talking about remote and hybrid work, we're asking well, what, if they have performance concerns where we're really worried about, you know, they're gonna be able to effectively do their job at work. There may be some reasons that remote or hybrid work. Doesn't work, but an employer really has to work through some of those. That's my, uh.

114 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:33:49.829 --> 00:33:59.669

My alarm telling me. Okay, Joanna, wrap it up. You're gabbing too much and I'm just going to do that in the next few minutes. So we can hand this over to Chad for his portion of it.

115 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:33:59.669 --> 00:34:19.669

What I would say in those situations, though, as an employer really has to document why it's not workable and really what I like to see these days, especially where an employer is skeptical. Like, eh, I don't know if this is going to work is, you know, what, what's the harm in trying it for a trial basis whether that's 2 weeks 3 weeks a month, whatever the case may be. And then.

116 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:34:19.669 --> 00:34:26.849

But ultimately doesn't work. Okay but if it does work, awesome win, win for everybody around. Let's go on to the next slide.

117 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:34:30.479 --> 00:34:50.479

1 thing I want to highlight, which is the case, wherever whatever workplace you are dealing with and then we've all kind of seen this I think play out is there has been a dramatic rise and individuals diagnosed with mental health illnesses. I think Pre pandemic. It was about 20% of American adults had to diagnose mental health illness and about 5.

118 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:34:50.479 --> 00:35:07.289

5% were serious mental health issues that sort of disrupted our caused issues in the workplace or some significant accommodations. And now that statistic is over 40% of adults have a, um, a disability or a mental health condition and about.

119 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:35:07.289 --> 00:35:27.289

10% have a serious 1. what we've also seen is that there is a dramatic rise in mental health conditions in our youth and so that's going to play out for the next few generations in the workplace as well. And what that really means is that, um, I really encourage my clients that ultimately you want.

120 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:35:27.289 --> 00:35:33.899

To be ahead of these things that you want to be very proactive with your wellness programs, you're reaching out to employees.

121 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:35:33.899 --> 00:35:53.899

Once upon a time, employers would be like, well, I'm just sort of going to be an oxygen in the sand. If somebody sort of seems like they have a health condition, especially a mental health condition. I'm going to wait for them to come to me and I'm going to wait for them to ask very deliberately and explicitly for an accommodation.

122 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:35:53.899 --> 00:36:13.899

When I tell my clients these days is, if you have any sort of indication that somebody is struggling with a mental health condition, it's impacting their work or otherwise a medical condition. It's really to your benefit and to the employees benefit to reach out early and often. Now, it can just be very open ended.

123 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:36:13.899 --> 00:36:33.899

You know, is there something we can help you with or I see that you're having some struggles, you know is there things that we can do? Or is there things that you want to share now? Ultimately, if an employee doesn't want to at that stage, then. Okay, then we kind of, you know, wait until they do, or, you know, maybe something else pops up, but I really think that there is a benefit to doing that. Let's go to the.

124 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:36:33.899 --> 00:36:36.149

Next slide.

125 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:36:36.149 --> 00:36:56.149

Um, I'm not going to belabor this too much with, uh, some of the time constraints, but I would just say when it comes to mental illness or mental health conditions, is that really in addition to proactively addressing those that there's lots of things employers can do and a lot of things that all of us can do, regardless of whether we work in this.

126 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:36:56.149 --> 00:37:16.149

Including normalizing the conversation about mental health looking at these from a very holistic perspective yes. Looking at them from a legal perspective. But also looking at it from a workplace morale, a media or a public relations perspective, as a hey, we want to be an employer of choice. So, does it really.

127 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:37:16.149 --> 00:37:25.769

Is it really in our best interest to actually go above and beyond what the law requires and do some extra in this area let's go on to the next slide.

128 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:37:25.769 --> 00:37:45.769

This is an area where I could spend a whole hour and a half. Maybe you're like, oh, I'm so glad she can't or she's limited on time, but I could talk

about medical exams and inquiries for a very long time. And, in fact, I do, and I presented other in other areas. The big takeaway I.

129 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:37:45.769 --> 00:37:57.029

Want you to remember is that when it comes to exams and inquiries, they have to be job related and there has to be a business reason for them and employers get into trouble when they're being overly broad.

130 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:37:57.029 --> 00:38:17.029

When they're asking for things way prematurely, especially before a conditional offer is being made, or what I see from time to time when they're using exams or inquiries or fitness for duty exams as a weapon, which should never be the case all. I would tell all of you is that if you ever to have a situation where you're wondering, hey.

131 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:38:17.029 --> 00:38:37.029

Should we be following up with additional questions with that medical provider? Or should we be sending this person to a fitness for duty exam? That is always the time where it's like, pause pump the brakes. Let's do a little bit more digging. Let's do a little bit more digging on what is the lay of the law, but also we have to gather some more information.

132 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:38:37.029 --> 00:38:57.029

About well, what do we know medically about this employee? What have we weren't learn for the employee what have they shared about his, or her or their medical provider that we also have and that really kind of will inform on what our next steps are. The other thing to know is that when it comes to exams and things like that, an employer has to pay for that.

133 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:38:57.029 --> 00:39:13.470

That's true under the, and I said this recent consent decree that I entered into, at the Department of justice, in a case that I had with the city of blame that also implicated Department of transportation, that is also the case under 1 of our state laws. Uh, 1 of the provisions under 181, that has to be the case.

134 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:39:13.470 --> 00:39:33.470

Let's go to the next slide, um, lots of different things for accommodations. Um, the only thing I'm going to note is that there's no duty to provide something that provides our, that, uh, that is an undue hardship. There is no duty to provide a stress free work environment. Otherwise I mean, all of us would maybe.

135 "Jana O'Leary Sullivan she/her/hers" (3552973824)

00:39:33.470 --> 00:39:49.920

Clamoring for that and the other thing that I see from time to time that is inherently unreasonable is asking for a new supervisor or changing a supervisor. Although an employer can do that. And there are then there are

many, many other things that, um, I'm going to give you a resource where you can dig into. Let's go to the next slide though.

136 "Jana O'Leary Sullivan she/her/hers" (3552973824)
00:39:49.920 --> 00:40:09.920

As we wrap this up, if there's 1 big takeaway to just remember axle rose and Abby Levine, they say at all right? When she says, you know, it's complicated and in, you know, these things, all you need is a little patience. And that is so so true. When it comes employment in law in general, but it's.

137 "Jana O'Leary Sullivan she/her/hers" (3552973824)
00:40:09.920 --> 00:40:28.650

Actually, when you're working through employees, medical issues, and how to work through those and handle those and address those and accommodate accommodate those in the workplace, and let's wrap up with like, a list of resources and then we'll hold for questions to the end. You can also always reach out to me, but let's go to that next slide.

138 "Jana O'Leary Sullivan she/her/hers" (3552973824)
00:40:28.650 --> 00:40:50.210

The 1 thing I want to note in addition to our website, which, I mean, I know I'm biased, but it is a really, really awesome resource is the league of Minnesota cities. We have a lot of model policies and things like that. And in the very new near future, in the next month or 2, we hope to be adding even more to that, including a model, a reasonable accommodation requests.

139 "Jana O'Leary Sullivan she/her/hers" (3552973824)
00:40:50.210 --> 00:41:10.210

Form as well, as some other things, including a temporary letter to a medical provider in addition the and the have amazing resources and I really want to highlight this 1 for you. The job accommodation network. It is truly an awesome website. It gives lots of ideas. That if an employer needs certain types of accommodations.

140 "Jana O'Leary Sullivan she/her/hers" (3552973824)
00:41:10.210 --> 00:41:30.210

Because of a certain work restriction or health condition, it gives you very pragmatic, real life type examples and scenarios. And it's something that I go to on a regular basis. Especially when I'm sort of stumped myself. So, I'm going to wrap up now and turn it over to Chad, and we will handle questions at the end. But again, you can always reach out.

141 "Jana O'Leary Sullivan she/her/hers" (3552973824)
00:41:30.210 --> 00:41:46.955

Talk to me via email or phone, or otherwise to talk about these things, because it really is a phone, a friend type situation where bouncing ideas off is always going to be very valuable. And now I'll turn it off to Chad and forgive me for going a little bit into your time.

142 "Chad Wilson" (2863664384)
00:41:46.955 --> 00:42:06.270

Thank you. Janna, that's all right. I'll make do here. So so I'm going to be here today, talking about titles, 2 and 3, and you'll notice some similarities with Taiwan, maybe intersecting with 2 and 3, but there are some discreet differences. I'm not going to get into those differences too much, but you will notice some similarities as we advance through this.

143 "Chad Wilson" (2863664384)
00:42:06.270 --> 00:42:26.270

So, we cannot move on to the next slide. So, before getting into the specifics of the, that we're all here to talk about. I would like to chat a little bit about the display loss center and who we are. So, we are part of Minnesota, legal aid, and we are the protection advocacy organization for the state of Minnesota for people with disabilities. And so all 50.

144 "Chad Wilson" (2863664384)
00:42:26.270 --> 00:42:38.190

States and some of his territories have comparable programs to ours and we provide civil legal services to individuals with disabilities throughout the state, regardless of income. So that income.

145 "Chad Wilson" (2863664384)
00:42:38.190 --> 00:42:43.770

It makes us a little different than maybe some of those legal in organizations that are out there and we provide.

146 "Chad Wilson" (2863664384)
00:42:43.770 --> 00:43:03.770

Uh, representation advice, uh, in a broader range of topics to people with disabilities. Um, as long as the legal issue is disability related, we can probably at least provide advice, or in representation in some cases. So, uh, in in my role, I do take on cases that that deal with, uh, titles, 2, and 3 of the Americans with disabilities acts. So, let's move on to.

147 "Chad Wilson" (2863664384)
00:43:03.770 --> 00:43:09.180

Talking about the specifically.

148 "Chad Wilson" (2863664384)
00:43:09.180 --> 00:43:25.560

Next slide, so, and it's most basic. The ADA is a broad federal civil rights statute mandate. Elimination of discrimination will also mandating the integration of people with disabilities into American mainstream life.

149 "Chad Wilson" (2863664384)
00:43:25.560 --> 00:43:45.560

As we go forward, I'm going to kind of talk about the basics of title 2, which which entities they both it applies to which entities title 2 applies to which entities title 3 applies to and then talk a little bit about who qualifies as a person with the disability at Janet spoke about that a lot. So, um, and then talk through some.

150 "Chad Wilson" (2863664384)
00:43:45.560 --> 00:43:59.040

Violations under the law, some potential defenses, and if there's time at the end, some enforcement options for enforcing these rights under the so, let's move on to the next slide and we can talk about the basic structure of the.

151 "Chad Wilson" (2863664384)

00:43:59.040 --> 00:44:04.590

So, there are 5 titles to the NDA, the Taiwan technical employment, as you just heard about.

152 "Chad Wilson" (2863664384)

00:44:04.590 --> 00:44:09.840

And title 2 talking about public services title 3 talks about public accommodations.

153 "Chad Wilson" (2863664384)

00:44:09.840 --> 00:44:29.840

And you'll find a lot of the protections and definitions that the analysis is pretty similar. I will cover some differences between titles 2 and 3 as we continue. And then title 5 talks about telecommunication relays, which is, uh, kind of a niche area that I haven't really encountered professionally. But, um, you know, involves.

154 "Chad Wilson" (2863664384)

00:44:29.840 --> 00:44:49.840

Communication companies providing people with disabilities multiple ways to use different devices for telecommunication and then title 5 contains some miscellaneous provisions. Um, but most noteworthy, it contains the provision prohibiting against retaliation against people for exercising their rights under the Americans with Disabilities act out.

155 "Chad Wilson" (2863664384)

00:44:49.840 --> 00:44:52.920

You move on to the next slide.

156 "Chad Wilson" (2863664384)

00:44:52.920 --> 00:45:03.570

So, let's start with the, um, I'm just providing a pretty basic definition here if we simplify this down down completely. Um, so, title 2 of the prohibits.

157 "Chad Wilson" (2863664384)

00:45:03.570 --> 00:45:13.110

Public entities from discriminating against a qualified individual with a disability. So moving on to the next next slide we'll talk about what is a public entity here.

158 "Chad Wilson" (2863664384)

00:45:13.110 --> 00:45:33.120

So, a public entity is any state or local government, or any department agency, or other instrument of that entity. It also applies to the National railroad passenger corporation also knows Amtrak and any other commuter authority. And also.

159 "Chad Wilson" (2863664384)

00:45:33.120 --> 00:45:43.440

Applies to public transportation, but there are specific regulations in that area from the Department of transportation. But, uh, in this matter, it's important to keep in mind that, uh.

160 "Chad Wilson" (2863664384)

00:45:43.440 --> 00:45:53.880

Courts have stated that title to conferences, virtually everything that a public entity does. It's rather broad, um, you know, beyond just services it, it applies to the courts.

161 "Chad Wilson" (2863664384)

00:45:53.880 --> 00:46:12.000

Uh, state legislatures, it could apply to town and fire departments, motor vehicle, licensing, and it also applies to public school. So it's, it's rather broad. It's most basic. You can just think of any function of any state or local government entitled to would apply. We can move on to the next slide.

162 "Chad Wilson" (2863664384)

00:46:12.000 --> 00:46:16.950

And when when we're talking about title to.

163 "Chad Wilson" (2863664384)

00:46:16.950 --> 00:46:24.570

A comparable statute that we encounter at the same time quite often the section 504 of the rehabilitation act.

164 "Chad Wilson" (2863664384)

00:46:24.570 --> 00:46:44.570

Which covers federal agencies and federally funded programs. So meaning programs that receive direct federal funding. So, in a lot of cases, you can find situations where a state or local government receives those federal funds. And so generally plaintiffs such as our clients like to cite title 2 in section 504 at the same time.

165 "Chad Wilson" (2863664384)

00:46:44.570 --> 00:46:50.700

As the is is genuinely generally, um, modeled after.

166 "Chad Wilson" (2863664384)

00:46:50.700 --> 00:47:07.830

Uh, 504 of the rehabilitation act, and the 8th circuit specifically held that the enforcement remedies and rights are the same under both both title 2 in section. 504. so that's why many times we'll, we'll bring forth. Those claims when it's applicable together.

167 "Chad Wilson" (2863664384)

00:47:07.830 --> 00:47:10.980

Um, next slide please.

168 "Chad Wilson" (2863664384)

00:47:10.980 --> 00:47:27.210

So, changing topics here a little bit now, we're going to talk about title 3, which is analyzed pretty similarly to, uh, title 2 in most aspects. And so title, 3 of the APA prohibits a public accommodation from discriminating as a qualified individual.

169 "Chad Wilson" (2863664384)

00:47:27.210 --> 00:47:41.580

With a D, a disability and so if we go with just that basic definition, you'll see the statutory definition here, but do a time. I'm just gonna keep chatting on. My, my basic definition here is the main difference is is the word a combination.

170 "Chad Wilson" (2863664384)

00:47:41.580 --> 00:47:47.250

And so if we move on, as we move on to the next slide, WH, WH, what is the public accommodation? Exactly.

171 "Chad Wilson" (2863664384)

00:47:47.250 --> 00:47:52.590

So, a public accommodation is a private entity.

172 "Chad Wilson" (2863664384)

00:47:52.590 --> 00:47:57.240

Open the public that affects commerce and falls in at least 1 of 12 categories.

173 "Chad Wilson" (2863664384)

00:47:57.240 --> 00:48:00.960

You'll notice here, these 12 categories are pretty broad.

174 "Chad Wilson" (2863664384)

00:48:00.960 --> 00:48:05.520

Uh, more basically, it would cover retail stores, restaurants, bars.

175 "Chad Wilson" (2863664384)

00:48:05.520 --> 00:48:22.380

Um, hotels, uh, entertainment venues, uh, places of education, um, daycare. So the list goes on. I'm not going to go through the whole list, but but you can see it's rather broad. Um, as long as it's a establishment that's open to the public.

176 "Chad Wilson" (2863664384)

00:48:22.380 --> 00:48:27.990

That that that affects commerce, it's a private entity title. 3 is probably going to apply.

177 "Chad Wilson" (2863664384)

00:48:27.990 --> 00:48:34.500

Ah, so we can move on to the next slide and so as, as as Jana noted.

178 "Chad Wilson" (2863664384)

00:48:34.500 --> 00:48:40.920

In Minnesota, we have some comparable statutes that provides similar protections to the.

179 "Chad Wilson" (2863664384)

00:48:40.920 --> 00:48:51.840

To the, and that is the Minnesota human rights act. It's a state law that prohibits discrimination based on many protected classes specifically on disability.

180 "Chad Wilson" (2863664384)

00:48:51.840 --> 00:49:11.840

And it protects unemployment housing, public, uh, accommodations, public services, education, credit and business. So covers many different areas and it's circuit has specifically held that claims under the ADA and Mr. human rights act are, uh, construed similarly. So we're bringing forth claims. We really look at the.

181 "Chad Wilson" (2863664384)

00:49:11.840 --> 00:49:22.260

And the Minnesota human rights act to figure out what our options might be for a client as they are very comparable and have many of the same protections. Um, and I will know.

182 "Chad Wilson" (2863664384)

00:49:22.260 --> 00:49:27.840

The human rights sexual different, because it has a 1 year statute of limitations, which is shorter than the and I will get into that.

183 "Chad Wilson" (2863664384)

00:49:27.840 --> 00:49:33.810

Fda statute, limitations question, as we resume here, we can move on to the next slide.

184 "Chad Wilson" (2863664384)

00:49:33.810 --> 00:49:49.290

So, moving on WH, what is a qualified individual with a disability Janet touched on this, that, you know, at this point in time, it's pretty broad, but I want to break down. Exactly. How do we show that that somebody.

185 "Chad Wilson" (2863664384)

00:49:49.290 --> 00:49:56.190

Has a qualified disability so that they can receive those are 4 of those protections under.

186 "Chad Wilson" (2863664384)

00:49:56.190 --> 00:50:05.850

Title 2 entitled 3 so these requirements, as far as disability are going to be virtually the same under titles, 2 and 3. so we can move on to the next slide here.

187 "Chad Wilson" (2863664384)

00:50:05.850 --> 00:50:27.260

So, I'm going to analyze this with with 2 prongs, 22 prong approach here. So, starting with the 1st problem, what is an individual with a disability Janet touch on this a little bit, but it's someone that has a physical or

mental impairment that substantially limits 1 or more major life activities.

188 "Chad Wilson" (2863664384)

00:50:27.260 --> 00:50:42.240

This is meant to be brought. Now, some of this is due to the changes that took place to the, to the NDA with some revisions in 2008 but you can think of it as it's intended to be broad and should cover almost almost any, um.

189 "Chad Wilson" (2863664384)

00:50:42.240 --> 00:51:02.240

It should cover almost any disability or condition provided it, it limits some type of major life activity and similarly major life activity is rather broad. Um, it it can apply to things such as caring for 1 selves um, uh, any bodily function, like seeing or hearing or eating walking.

190 "Chad Wilson" (2863664384)

00:51:02.240 --> 00:51:13.110

If it's something we do on a daily basis, and you need to carry out most days, then it's probably a major life activity. So that 1 is a little more simplified as far as meeting that requirements.

191 "Chad Wilson" (2863664384)

00:51:13.110 --> 00:51:31.500

We could think of the 2nd part seeing that the person has a record of a physical or mental impairment, that substantially limits 1 or more major life activities. If we could think of that as being something that maybe had the pyramid to the past, or at some point, or maybe when they brought forth the claim. Um, so that that that provides.

192 "Chad Wilson" (2863664384)

00:51:31.500 --> 00:51:38.820

Um, a wider range, because sometimes somebody could be, uh, face elements of discrimination for, for a disability had in the past.

193 "Chad Wilson" (2863664384)

00:51:38.820 --> 00:51:46.680

And then 1, more interesting 1 is, uh, the 3rd 1, which is regarded as having an impairment or disability. Whether have that 1 or not.

194 "Chad Wilson" (2863664384)

00:51:46.680 --> 00:51:52.410

Um, this is just for situations maybe somebody doesn't have a disability, but others believe they do.

195 "Chad Wilson" (2863664384)

00:51:52.410 --> 00:51:56.610

So, maybe they have a condition, but it doesn't substantially limit something in their daily life.

196 "Chad Wilson" (2863664384)

00:51:56.610 --> 00:52:15.420

It's just kind of mistaken identification of saying somebody has a disability when maybe they really don't. So I've not encountered that 1

yet in practice. But, uh, you know, because we do hire work with people that have disabilities. So, I'm not quite sure if that would fall into our work. Um.

197 "Chad Wilson" (2863664384)

00:52:15.420 --> 00:52:19.530

And then 1 more thing, I'll note which, which is kind of interesting, is that.

198 "Chad Wilson" (2863664384)

00:52:19.530 --> 00:52:22.740

Or you're helpful to know, maybe people would know this is that.

199 "Chad Wilson" (2863664384)

00:52:22.740 --> 00:52:40.290

The FDA does provide protections to individuals that are addicted to drugs who no longer use a controlled substance. So it doesn't protect the active use. But if somebody, um, let's say they went through rehab or going through having, they're not actively using, then they, they are entitled to the protection of the FDA to find the.

200 "Chad Wilson" (2863664384)

00:52:40.290 --> 00:52:44.100

We need all the other requirements, um, and also.

201 "Chad Wilson" (2863664384)

00:52:44.100 --> 00:52:55.530

Relatively related to that drug testing is permitted under the so, just some interesting facts there. I think maybe people will don't know on this. Um, we can move to the next slide.

202 "Chad Wilson" (2863664384)

00:52:55.530 --> 00:53:06.870

So, Jana touch on this a little bit as far as temporary impairments that they can be covered under the, um, the has has, um.

203 "Chad Wilson" (2863664384)

00:53:06.870 --> 00:53:11.280

Release some technical assistance documents to entitled to talking about.

204 "Chad Wilson" (2863664384)

00:53:11.280 --> 00:53:14.460

Making that determination and it looks at the duration.

205 "Chad Wilson" (2863664384)

00:53:14.460 --> 00:53:18.630

The LATAS looks at the duration of impairment to the extent.

206 "Chad Wilson" (2863664384)

00:53:18.630 --> 00:53:24.060

Uh, that the condition limits, a major life activity, and this deal date.

207 "Chad Wilson" (2863664384)

00:53:24.060 --> 00:53:29.520

Technical assistants document provides a great example of an individual that was, um.

208 "Chad Wilson" (2863664384)

00:53:29.520 --> 00:53:36.870

Farm during house fire, burning their hands and arms and do that they're expected to recover, but.

209 "Chad Wilson" (2863664384)

00:53:36.870 --> 00:53:41.130

During that recovery, they are unable to feed themselves or dress themselves. Um.

210 "Chad Wilson" (2863664384)

00:53:41.130 --> 00:54:01.130

Independently, and because those burns are limited his or her ability, or anybody's ability to such an extent it is for a significant period of time, then they would meet that definition of a temporary impairment and be entitled to those protections under the person with a disability. Of course, provided they meet all the other.

211 "Chad Wilson" (2863664384)

00:54:01.130 --> 00:54:05.190

Requirements we can move on to the next slide.

212 "Chad Wilson" (2863664384)

00:54:05.190 --> 00:54:24.210

And I've already spoken about this a little bit, but there was a big change to to the NDA, uh, with the amendments that act of 2008 and this took place because case law had had overturned a lot of their protections and really restricted uh, the, the intent of of the NDA, um.

213 "Chad Wilson" (2863664384)

00:54:24.210 --> 00:54:35.310

Including the definition of disability, and so narrowed that definition of substantial limiting that goes to that more broad definition. Like, I already talked about.

214 "Chad Wilson" (2863664384)

00:54:35.310 --> 00:54:39.630

Um, it made clear that having many mitigating measures in place.

215 "Chad Wilson" (2863664384)

00:54:39.630 --> 00:54:59.630

You think of something like that maybe somebody has a reasonable modification, or maybe a hearing aids. It doesn't all of a sudden make that condition go away. Um, so this change made sure. That that was no longer something that a court could cite determining if a person has a disability or not that covers, that would have coverage under titles 2 or 3.

216 "Chad Wilson" (2863664384)

00:54:59.630 --> 00:55:08.160

Um, and then it made clear that episodic impairments are are considered, would then be considered a disability when active.

217 "Chad Wilson" (2863664384)

00:55:08.160 --> 00:55:19.740

Provide a substantial limit major life activity are active. So you could think of this 1 as being an example comes to mind would be somebody has a seizure disorder or condition and so.

218 "Chad Wilson" (2863664384)

00:55:19.740 --> 00:55:38.100

Wh, when they're actually having seizures, it's definitely gonna limit a major life activity in a lot of cases. So, this broaden that. So, we can move on to the next slide and and talk about this, um, 2nd prong here of this determination, which directly links back to that, that 2008 amendment.

219 "Chad Wilson" (2863664384)

00:55:38.100 --> 00:55:44.190

And so it walks through qualified image disabilities we already talked about, but then.

220 "Chad Wilson" (2863664384)

00:55:44.190 --> 00:55:47.460

An individual who with a disability who with or without.

221 "Chad Wilson" (2863664384)

00:55:47.460 --> 00:55:52.920

A reasonable modification or removal of architectural or other transportation barriers.

222 "Chad Wilson" (2863664384)

00:55:52.920 --> 00:56:04.770

Or AIDS, so it takes away anything trying to point to and say, we're using these things here, have a disability disability with these revisions, um, is present with, or without these revisions. Um, but.

223 "Chad Wilson" (2863664384)

00:56:04.770 --> 00:56:12.870

Important other piece of the 2nd problem is that the person meets the essential eligibility requirements for the service set issue.

224 "Chad Wilson" (2863664384)

00:56:12.870 --> 00:56:29.010

1 idea that comes to mind is maybe somebody is applying for for public benefits of some kind and, um, maybe they're over income or maybe they don't live in a ca issue where they're applying. So that person would not be eligible for that program necessarily.

225 "Chad Wilson" (2863664384)

00:56:29.010 --> 00:56:49.010

Education could be another let's say it's a public university. Um, maybe that university has strict rules as far as exams or prior courses someone takes, or, or, um, you know, maybe a certain GPA. Um, that could be a situation where somebody doesn't meet those essentially eligible.

226 "Chad Wilson" (2863664384)

00:56:49.010 --> 00:56:57.210

The requirements, so those are the basics of determining if an individual has a condition that.

227 "Chad Wilson" (2863664384)

00:56:57.210 --> 00:57:17.210

Qualifies for protection under titles, 2 or 3 of the we can move on to the next slide. We'll talk a little bit about potential violations. So let's say we've determined there's a covered entity and this is an eligible person with a disability. What are some potential violations or active discriminate acts and discrimination?

228 "Chad Wilson" (2863664384)

00:57:17.210 --> 00:57:22.050

And, uh, we can say to to, to save this, um, and so.

229 "Chad Wilson" (2863664384)

00:57:22.050 --> 00:57:30.030

Yeah, most importantly, it would be just directly excluding people with disabilities and not letting them participate in a program. Um.

230 "Chad Wilson" (2863664384)

00:57:30.030 --> 00:57:33.750

Or denying the person with disability opportunity to.

231 "Chad Wilson" (2863664384)

00:57:33.750 --> 00:57:37.080

Have an equal benefits or access.

232 "Chad Wilson" (2863664384)

00:57:37.080 --> 00:57:46.770

Then was afforded to others and so that could be an example I think of, as we're thinking about a public accommodation, maybe there's a store that, um.

233 "Chad Wilson" (2863664384)

00:57:46.770 --> 00:57:53.400

Only has stairs is only way to enter. I have a physical disability where I use a wheelchair, so I wouldn't be able to get in there.

234 "Chad Wilson" (2863664384)

00:57:53.400 --> 00:57:58.530

If that's there, so, I mean, technically, I can probably purchase things in there. If I send somebody else in.

235 "Chad Wilson" (2863664384)

00:57:58.530 --> 00:58:10.380

But I'm not having that equal opportunity to a browse through there and have that full access to that public accommodation. So, that's a simple example. That comes to mind. We can move to the next slide.

236 "Chad Wilson" (2863664384)

00:58:14.100 --> 00:58:21.540

And so what's important to keep in mind is a potential violation could also be in play if, um.

237 "Chad Wilson" (2863664384)

00:58:21.540 --> 00:58:25.320

Providers specifically providing different separate aid or benefit.

238 "Chad Wilson" (2863664384)

00:58:25.320 --> 00:58:36.090

Or service, the individuals with disabilities that then what they provide to other, unless it's necessary to do. So in order that they can receive the same benefit as provided, um.

239 "Chad Wilson" (2863664384)

00:58:36.090 --> 00:58:49.110

What's important to note in this 1 is, you know, with this restriction, for example, a city may offer a recreational program designed specifically for children with disabilities without violating the.

240 "Chad Wilson" (2863664384)

00:58:49.110 --> 00:59:05.430

Now, we're potential violation come into play is if the city tries to state well, you have a disability, you have to access this adaptive recreational program we have for kids with disabilities. Um, that would be a violation in that example. Um.

241 "Chad Wilson" (2863664384)

00:59:05.430 --> 00:59:14.640

And building off that, the can't be considered, require an individual with a disability to accept the specific accommodation aid or service.

242 "Chad Wilson" (2863664384)

00:59:14.640 --> 00:59:23.460

That they choose, not to accept there still, is this ability to to accept, or or deny, uh, a given accommodation uh, we can move on to the next slide.

243 "Chad Wilson" (2863664384)

00:59:23.460 --> 00:59:30.000

And, um, other ways of potential violations could be, um.

244 "Chad Wilson" (2863664384)

00:59:30.000 --> 00:59:38.940

1 thing is covered entities that are allowed to place a surcharge and individuals with disability to cover the cost of remedial measures or an accommodation.

245 "Chad Wilson" (2863664384)

00:59:38.940 --> 00:59:55.110

So, an example we could use here is maybe someone that is deaf, hard of hearing needs an American sign language interpreter to communicate with others. A covered entity couldn't say well, yeah we'll allow, but you're paying for it. Yourself.

246 "Chad Wilson" (2863664384)

00:59:55.110 --> 01:00:11.250

Um, or another common 1, uh, counter, every, once in a while practice would be hotels trying to say oh, yes, you can have a service animal there, but you have to pay for a cleaning fee for them to be there. That would be in most cases deemed up. Excuse me? I drink water here.

247 "Chad Wilson" (2863664384)

01:00:15.420 --> 01:00:18.960

That'd be deemed impermissible under the NDA. Okay.

248 "Chad Wilson" (2863664384)

01:00:18.960 --> 01:00:25.170

And then, as I already spoke about retaliation is prohibited under the ADA for.

249 "Chad Wilson" (2863664384)

01:00:25.170 --> 01:00:28.290

And individual exercising their rights.

250 "Chad Wilson" (2863664384)

01:00:28.290 --> 01:00:37.410

Now, we can move to the next slide. So Janice spoke a little bit about regional modifications and so.

251 "Chad Wilson" (2863664384)

01:00:37.410 --> 01:00:42.960

I'll try to make this pretty basic that it's a change or exception or adjustment to any rule or policy.

252 "Chad Wilson" (2863664384)

01:00:42.960 --> 01:00:50.910

That a cover entity might have as necessary for a personal disability to have an equal opportunity to access that program.

253 "Chad Wilson" (2863664384)

01:00:50.910 --> 01:01:01.080

And the whole point is is to allow equal opportunity of access for an individual disability, not a better or worse opportunity.

254 "Chad Wilson" (2863664384)

01:01:01.080 --> 01:01:05.160

Excuse me, I seem to be getting a cold here of some kinds so I apologize.

255 "Chad Wilson" (2863664384)

01:01:05.160 --> 01:01:25.160

And so, 1 thing also to note is that in the context of title to the terms reasonable accommodation and modification, those are synonyms courts use those interchangeably. Um, that can be different if we're talking about maybe the elements of the fair housing act or something. But under the, those are generally looked at.

256 "Chad Wilson" (2863664384)

01:01:25.160 --> 01:01:32.010

Changeable so what are some examples of of reasonable modifications? We can move to the next slide and talk about that.

257 "Chad Wilson" (2863664384)

01:01:36.120 --> 01:01:46.470

So, as we move it, there we go so an example that comes to mind as far as in practice for attorneys, it could be rescheduled here in the afternoon to accommodate.

258 "Chad Wilson" (2863664384)

01:01:46.470 --> 01:01:56.430

Problems and individual with a disability I have with medications or depression, because a lot of disabilities that maybe the symptoms are more severe in the morning versus the afternoon.

259 "Chad Wilson" (2863664384)

01:01:56.430 --> 01:02:00.450

Another 1, we encountered a lot.

260 "Chad Wilson" (2863664384)

01:02:00.450 --> 01:02:20.450

Over over the pandemic, but with hospitals would be a modification, align a person with a disability accompanied by a support person. Um, you know, the context of of medical care could be needing somebody there right next to you to maybe explain better in a way to somebody, maybe with a, uh, uh, intellectual and development of disability.

261 "Chad Wilson" (2863664384)

01:02:20.450 --> 01:02:36.090

You know, what staff is trying to tell them as far as what their options are, or care um, or it could be having a support person there to help someone work through the symptoms of their disability. Maybe make sure they don't they don't take out vital. Life's saving, uh.

262 "Chad Wilson" (2863664384)

01:02:36.090 --> 01:02:47.910

You know, connections, or anything like that. Um, another common 1 would be allowing a person to be accompanied by a service animal, which we'll get into a little bit here if we have some time, or in the context of education.

263 "Chad Wilson" (2863664384)

01:02:47.910 --> 01:02:51.600

Um, could book be extended time? Let's say it's a public um.

264 "Chad Wilson" (2863664384)

01:02:51.600 --> 01:03:02.220

University would be extended time to take an exam that would be an example of a modification or, or a combination. This list, of course, is an exhaustive. Um.

265 "Chad Wilson" (2863664384)

01:03:02.220 --> 01:03:22.220

As long as it's related to a disability, it's probably a reasonable accommodation modification of some kind. So, the lists are endless. So there are times we have clients come into us and it is coming up with maybe ideas of they're like, well, I have this specific need, but I don't know what supports I need. So, sometimes it's being creative to come up with ideas to.

266 "Chad Wilson" (2863664384)

01:03:22.220 --> 01:03:27.480

To help people, so the options are endless endless. We can move on to the next slide.

267 "Chad Wilson" (2863664384)

01:03:27.480 --> 01:03:33.240

And changing topics are a little bit, but good practice tip.

268 "Chad Wilson" (2863664384)

01:03:33.240 --> 01:03:53.240

You know, as attorneys that are watching, this would be the Minnesota state court has a section of the website specifically talking about accommodations. There's grievance policies on there, and just general contact information and there is an accommodation request form. Um, so.

269 "Chad Wilson" (2863664384)

01:03:53.240 --> 01:04:03.420

This could be something helpful if you get something out of this if you have a disability or account counter someone with a disability, this might be a good thing to recommend them. I will know at this state.

270 "Chad Wilson" (2863664384)

01:04:03.420 --> 01:04:21.630

Website does ask that these, when possible that these requests you made, at least 10 days before somebody needs a specific accommodation, but something important to keep in mind, um, with anything. I think the sooner you let the court know what combination is needed the quicker you can start working on it.

271 "Chad Wilson" (2863664384)

01:04:21.630 --> 01:04:27.270

Um, we can move to the nextslide and.

272 "Chad Wilson" (2863664384)

01:04:27.270 --> 01:04:31.050

Similar to the idea will apply to courtroom accessibility.

273 "Chad Wilson" (2863664384)

01:04:31.050 --> 01:04:38.310

This is a lot related that previous slide. And if courtroom isn't, let's say, physically accessible. Um.

274 "Chad Wilson" (2863664384)

01:04:38.310 --> 01:04:47.310

Let's say another example with the wheelchair user, the only way to get up to the 2nd floor for that person is elevator. It's broken. Then it would be, um.

275 "Chad Wilson" (2863664384)

01:04:47.310 --> 01:04:51.870

On that court to to figure out other ways for that person to access it. Um.

276 "Chad Wilson" (2863664384)

01:04:51.870 --> 01:05:08.520

1 of the good things, maybe that came out of pandemic is, is when I put things but, you know, changes that makes it easier for people with disabilities. If they wish is, um, you do have a lot more access to, um, you know, video conference hearings, which are a lot more common now. And a lot more of the norm.

277 "Chad Wilson" (2863664384)

01:05:08.520 --> 01:05:12.720

So, good, because it was low on time. I'll keep keep moving around the next slide here.

278 "Chad Wilson" (2863664384)

01:05:12.720 --> 01:05:35.270

And another potential violation under titles, 2, or 3, uh, relate to effective communication. So, under this provision, communities must ensure effective communication for people with disabilities and they must provide relevant auxillary, AIDS, meaning.

279 "Chad Wilson" (2863664384)

01:05:35.270 --> 01:05:40.260

Find interpreters, uh, system, listening, listening headsets.

280 "Chad Wilson" (2863664384)

01:05:40.260 --> 01:05:45.450

Uh, television captioning, uh, or things, such as larger print.

281 "Chad Wilson" (2863664384)

01:05:45.450 --> 01:06:01.440

And the guidance based regulations basically saying, determining the type of a, the entity should give primary consideration to the request and the individual with a disability and we can move on to the next page and keep talking about, uh, next slide. Keep talking about this. Um.

282 "Chad Wilson" (2863664384)

01:06:01.440 --> 01:06:04.530

A big 1 with this would be, um.

283 "Chad Wilson" (2863664384)

01:06:04.530 --> 01:06:24.530

Yeah, covered entity you can't require a person with a disability to bring another individual to be their interpreter. They can't require that's now, if that's what the person prefers or it's an emergency that can be viable and further if a public entity uses, let's say, uh, or covered entity.

284 "Chad Wilson" (2863664384)
01:06:24.530 --> 01:06:29.670
He'd say uses, uh, any type of technology such as video, remote, interpreting services.

285 "Chad Wilson" (2863664384)
01:06:29.670 --> 01:06:49.670
They need to make sure that stuff works otherwise that's a potential violation there as well. So, um, and some of my colleagues have worked quite a bit on this. It seems like it's a pretty simple, uh, requirements, but in practice, a lot of covered entities do not follow this. Um, so this is an important thing to keep in mind that I.

286 "Chad Wilson" (2863664384)
01:06:49.670 --> 01:06:54.930
They get something that it's simple, but it's overlooked in practice quite a bit. We can move to the next slide.

287 "Chad Wilson" (2863664384)
01:06:54.930 --> 01:07:09.480
And another common potential violation would, it relates to denying access to a personal disability that has a service animal. I always like to cover this topic.

288 "Chad Wilson" (2863664384)
01:07:09.480 --> 01:07:28.500
In these presentations, because it's hot, hot button and you like you encounter at some point. So, service animal is a dog individually trained to do work or perform tasks for the benefit of an individual with the disability in general other species. It can't be a cat or any other other type of animal.

289 "Chad Wilson" (2863664384)
01:07:28.500 --> 01:07:41.670
They are not service animals. There is a provision, uh, where miniature horses can be deemed service animals, but it can change the analysis a little bit. But I have yet to, um, encounter 1 of those in practice. Um.

290 "Chad Wilson" (2863664384)
01:07:41.670 --> 01:07:47.580
And, you know, key thing would be that work or task has to be directly related to the person's disability.

291 "Chad Wilson" (2863664384)
01:07:47.580 --> 01:07:52.290
And moving on to the next slide, I'll talk about some examples.

292 "Chad Wilson" (2863664384)
01:07:52.290 --> 01:07:56.100
Um, it could be assisting individual who was blind with navigation.

293 "Chad Wilson" (2863664384)
01:07:56.100 --> 01:08:16.100

Or interrupting, impulsive behaviors of individuals with psychiatric disabilities. There can also be like, diabetes assistance, dogs, um, physical assistance dogs. Maybe they're trained to pick up items, drop by a person with a disability. Um, but 1 thing is clear that providing emotional support or comfort is not considered.

294 "Chad Wilson" (2863664384)

01:08:16.100 --> 01:08:32.520

Uh, work or task, meaning emotional support animals are not recognize that service animals under the, uh, can gain more more protection in the context of housing. Um, under the fair housing act. Um, so that can be kind of confusing for folks. But, um.

295 "Chad Wilson" (2863664384)

01:08:32.520 --> 01:08:36.150

Just 1 thing you take away is the most support animals not generally.

296 "Chad Wilson" (2863664384)

01:08:36.150 --> 01:08:45.990

Except it's not accepted as a service animal, uh, under interpreting regulations on the law. Uh, we can move on to the next slide here. So low on time.

297 "Chad Wilson" (2863664384)

01:08:45.990 --> 01:09:07.530

So generally a covered entity has to allow personal with the service animals everywhere with their service animal that they allow the public to go. Unless the animal is out of control, which could be maybe they're barking or they're just running around and not on a leash for long periods of time. Or the animal is house broken.

298 "Chad Wilson" (2863664384)

01:09:07.530 --> 01:09:19.590

But the main takeaway should be is that people with service service animal handlers have the right to go anywhere that the public is allowed to go within any covered covered entity. Um.

299 "Chad Wilson" (2863664384)

01:09:19.590 --> 01:09:24.000

So, anywhere the public is go, the service animal should be deemed allowed to go there.

300 "Chad Wilson" (2863664384)

01:09:24.000 --> 01:09:28.470

Uh, we can by the next slide and.

301 "Chad Wilson" (2863664384)

01:09:28.470 --> 01:09:32.520

If a covered entity encounters and service animal.

302 "Chad Wilson" (2863664384)

01:09:32.520 --> 01:09:36.900

There are 2 inquiries that are allowed is the animal acquired because of the disability.

303 "Chad Wilson" (2863664384)
01:09:36.900 --> 01:09:42.210
If the answer's no, then, of course the, it would stop and and the idea would apply there.

304 "Chad Wilson" (2863664384)
01:09:42.210 --> 01:09:59.340
But the next question would be what work or task is, the animal been trained to perform as those examples we already talked about and covered entities can't talk about specifics about the person's disability, or require any type of, uh, proof of documentation or training. It can just be those 2 questions.

305 "Chad Wilson" (2863664384)
01:09:59.340 --> 01:10:19.340
Um, next slide please and public so we're specifically talking about title 3 here. Um, but our removal barriers requirements for 2 and 3, but they're slightly different. This is where 1 of the differences, uh, comes into play and so a public accommodation shall remove architectural barriers.

306 "Chad Wilson" (2863664384)
01:10:19.340 --> 01:10:40.010
Here's why we're such removal is readily achievable meaning it's easy to accomplish and able to be carried out without much difficulty or expense. So this could be repositioning shelves, winding doors or grab bars and restrooms or accessible parking. We can move to the next slide here. Kind of a long time, so.

307 "Chad Wilson" (2863664384)
01:10:40.010 --> 01:10:43.500
And does have specific design.

308 "Chad Wilson" (2863664384)
01:10:43.500 --> 01:11:01.770
Standards for, um, both, uh, public accommodations and and, uh, other covered entities. Um, I'm not going to go into specifics there. Those could be back to how wide doors need to be, or how highlights switches need to be, um, or other accessibility standards. Uh, we can move to the next slide.

309 "Chad Wilson" (2863664384)
01:11:01.770 --> 01:11:07.710
So this is the big difference between titles, 2 and 3. um.

310 "Chad Wilson" (2863664384)
01:11:07.710 --> 01:11:10.920
Like, private entities under Title 3.

311 "Chad Wilson" (2863664384)
01:11:10.920 --> 01:11:14.670
Public entities are not required to move barriers for each.

312 "Chad Wilson" (2863664384)

01:11:14.670 --> 01:11:23.760

Facility, even if removals readily achievable, so long as the program is accessible and so fiscal changes only required if there's no feasible way.

313 "Chad Wilson" (2863664384)

01:11:23.760 --> 01:11:27.120

Allow it now in contrast.

314 "Chad Wilson" (2863664384)

01:11:27.120 --> 01:11:33.960

Places of public accommodation have to remove barriers when they're readily achievable without whether they.

315 "Chad Wilson" (2863664384)

01:11:33.960 --> 01:11:39.180

That service can somebody made accessible through other other methods? So you could say in this, that.

316 "Chad Wilson" (2863664384)

01:11:39.180 --> 01:11:48.420

State local government kind of gets a little easier in this regard then public accommodations we can move on to the next slide.

317 "Chad Wilson" (2863664384)

01:11:48.420 --> 01:11:58.530

And I'll just quickly say the FDA does apply to web site accessibility. There's not clear guidelines at this point that are required.

318 "Chad Wilson" (2863664384)

01:11:58.530 --> 01:12:18.530

Um, there is the website content, accessibility guidelines, that service guide, but there are no formal regulations in place yet, but, uh, under title, 2, there wasn't a sub proposal making, uh, last summer on this, but nothing has been finalized on that. So, just another takeaway to keep in mind, it applies to websites next slide.

319 "Chad Wilson" (2863664384)

01:12:18.530 --> 01:12:29.970

Please, and then I'll just quickly touch on this, uh, some people that might not be aware that the APA has an integration mandate, which applies to title 2 entities.

320 "Chad Wilson" (2863664384)

01:12:29.970 --> 01:12:47.310

Stating that a public entity show, administer services and programs in the most integrated setting to the needs of a qualified person individual with a disability. So moving on to the next slide leading case implementing. This is onset versus and in that case, the.

321 "Chad Wilson" (2863664384)

01:12:47.310 --> 01:12:51.060

Uh, Supreme Court held that title to the ADA requires.

322 "Chad Wilson" (2863664384)

01:12:51.060 --> 01:12:54.990
Persons with mental health, with mental disabilities in communities.

323 "Chad Wilson" (2863664384)
01:12:54.990 --> 01:13:07.740
Excuse me, require states to place persons with mental disabilities and community settings, rather than institutions where they can live in a community setting. So, the main takeaway for this should be.

324 "Chad Wilson" (2863664384)
01:13:07.740 --> 01:13:23.010
This case stands for yet the proposition that title 2 prohibits unjust discrimination of individuals with disabilities. So it's a really important aspect there. Um, let's go to slides ahead. Um, that has more specifics on the case.

325 "Chad Wilson" (2863664384)
01:13:23.010 --> 01:13:28.110
And then it also has some, some.

326 "Chad Wilson" (2863664384)
01:13:28.110 --> 01:13:39.030
Recognize the fences, so it could be fundamental alterations or undo financial administrative burdens. If I'm putting this short as, as we run out of time here. Um.

327 "Chad Wilson" (2863664384)
01:13:39.030 --> 01:13:44.880
And so we can move to the next slide and a fundamental alteration is really a.

328 "Chad Wilson" (2863664384)
01:13:44.880 --> 01:13:50.580
A lot of these defenses are are are are fact, uh, intensive and so, um.

329 "Chad Wilson" (2863664384)
01:13:50.580 --> 01:14:00.660
An example of the fundamental alterations to change that so significant, it alters the nature of of the good or service the case PGA Tour versus, um.

330 "Chad Wilson" (2863664384)
01:14:00.660 --> 01:14:20.660
Martin is a good example of this where, um, the individual requested to use a golf cart on PGA Tour events. Um, because he had a condition that wouldn't allow him to have the energy to walk, hold the whole and the court ruled that that's not a fundamental alteration as it doesn't change the course. Now, we could think of an example where it would be an.

331 "Chad Wilson" (2863664384)
01:14:20.660 --> 01:14:32.670
Where Maybe yes, well, I want to where I T, have to be closer to the green. That would be a violation there, so looks like we're about at time. So I know Jana talked a little bit about undue burdens.

332 "Chad Wilson" (2863664384)

01:14:32.670 --> 01:14:37.650

Um, and so I'll just note 1, more thing. Uh, 1, defense can be a direct threat.

333 "Chad Wilson" (2863664384)

01:14:37.650 --> 01:14:57.650

But that is, if the person places, the health or safety of others at risk, this is something I've seen practice, get covered entity. It wrong a lot where they say, well, we're worried about your client's safety. So, we're not going to provide them services. A threat to a person itself is not a defense under the so, because we're at time I'm going to end here.

334 "Chad Wilson" (2863664384)

01:14:57.650 --> 01:15:03.660

Thank you everybody, I couldn't quite get through everything, but I think we hit the major points.

335 "Richard Dornfeld" (430216704)

01:15:03.660 --> 01:15:23.660

Thank you Chad and thank you. Jenna. Um, because we're at time I don't think we're gonna hold everyone for questions, but I'll put my email in the chat and if Chad and Jenna are game, if folks want to send me email me a question. We'll get those to Chad and Jana and see if we can get you an answer. I really want to. Thank both of them for their excellent presentations today.

336 "Richard Dornfeld" (430216704)

01:15:23.660 --> 01:15:41.220

This is really substantive and I think I gave a lot of us a primer that we desperately needed. So I want to thank you for that. And folks have questions. I'll put my email in the chat and you can follow up with me directly and we'll get those to our panelists. Uh, thanks have a great afternoon. We hope to see you soon.