

## **Disability Discrimination**

Description: This is a review of and legal update on disability discrimination. It focuses on the definition of a disability, a qualified individual with a disability, reasonable accommodation (to include reassignment), undue hardship, direct threat and other defenses, confidentiality of records, unauthorized inquiries or examinations, relief (to include compensatory damages).

Length: 2, 4 hours or 1 day depending on the level of detail needed.

### **Table of Contents**

#### **Disability Discrimination: A Legal Update With Case Decisions**

#### **Table of Contents**

|                               |    |
|-------------------------------|----|
| I. Disability or Not?         | 7  |
| A. Specific Disabilities      | 7  |
| 1. Alcoholism                 | 7  |
| 2. Allergic Reaction          |    |
| 3. Arthritis                  | 7  |
| 4. Asthma                     | 9  |
| 5. Attention Deficit Disorder |    |
| 6. Back Injuries              | 10 |
| 7. Carpal Tunnel Syndrome     | 12 |
| 8. Degenerative Disc Disease  | 13 |
| 9. Diabetes                   | 14 |

|  |                                       |    |
|--|---------------------------------------|----|
| 10.  | Depression and Anxiety                | 18 |
| 11.  | Drug Use                              | 19 |
| 12.  | Hearing Loss                          | 20 |
| 13.  | Lupus                                 | 21 |
| 14.  | Migraine Headaches                    | 21 |
| 15.  | Post Traumatic Stress Disorder        | 22 |
| 16.  | Sarcoidosis (an inflammatory disease) | 23 |
| 17.  | Seeing                                | 24 |
| 18.  | Seizure Disorders (“Epilepsy”)        | 24 |
| 19.  | Sensitivity to Fragrance              | 25 |
| 20.  | Speaking                              | 26 |
| 21.  | Stress                                | 26 |
| 22.  | Tourette’s Syndrome                   | 26 |
| B. Major Life Activities   |                                       | 27 |
| 1.   | Concentration                         | 28 |
| 2.   | Eating                                | 28 |
| 3.   | Interacting With Others               | 29 |
| 4.   | Lifting                               | 30 |
| 5.   | Reading                               | 31 |
| 6.   | Reproduction / Sexual Activity        | 31 |
| 7.   | Seeing                                | 33 |
| 8.   | Sleeping                              | 35 |
| 9.   | Speaking                              | 37 |
| 10.  | Traveling                             | 37 |
| 11.  | Walking                               | 38 |
| 12.  | Working                               | 39 |
| 13.  | Other                                 | 41 |
| C. Perceived or Regarded as Having a Disability                                    |                                       | 42 |
| D. Notice to Agency of Disability  |                                       | 45 |
| E. Temporary Disabilities  |                                       | 47 |
| F. Is an Individual Required to Get Treatment That Would Correct Their Disability? |                                       | 47 |

|   |    |
|---|----|
| II. Qualified Individual With a Disability  | 48 |
| III. Reasonable Accommodation   | 49 |
| A. Specific Disabilities  | 49 |
| 1. Alcoholism   | 49 |
| 2. Asthma   | 49 |
| 3. Back Injuries  | 50 |
| 4. Carpal Tunnel Syndrome   | 51 |
| 5. Hearing Impairments  | 52 |
| 6. Lupus  | 56 |
| 7. Mobility Impairments   | 56 |
| 8. Psychiatric Impairments  | 58 |
| 9. Seeing Impairments   | 59 |
| 10. Sleep Disorders   | 59 |
| B. Specific Accommodations  | 60 |
| 1. Arriving at Work Whenever Complainant is Able<br>(Frequent Unplanned Absences)                             | 60 |
| 2. Chairs and Sitting   | 63 |
| 3. Job Coach  | 64 |
| 4. Light Duty   | 65 |
| 5. Parking Space  | 66 |
| 6. Providing a New Supervisor   | 67 |
| 7. Reassignment   | 67 |
| 8. Work at Home   | 72 |
| C. Essential Job Functions  | 74 |
| D. No Request for an Accommodation  | 75 |
| E. No Nexus Between Requested Accommodation<br>and Disability   | 76 |
| F. Not Entitled to Personal Use Items   | 76 |
| G. An Employee Not Entitled to Accommodation of His or<br>Her Choice if Accommodation is Otherwise Reasonable | 78 |

|   |     |
|---|-----|
| IV. Direct Threat; Risk of Harm Defense   | 81  |
| V. Qualification Standards  | 89  |
| VI. Proof (Reasonable Accommodation + Disparate Treatment)  | 90  |
| VII. Inquiry Discrimination   | 92  |
| VIII. Confidentiality of Medical Records  | 101 |
| IX. Fitness for Duty Examinations   | 107 |
| X. Misconduct Exclusion   | 113 |
| XI. The Interactive Process   | 115 |
| XII. Nexus Between Disability and Requested Accommodation   | 118 |
| XIII. Delay to Determine Medical Condition  | 118 |
| XIV. Training as Part of Remedy for Disability Discrimination   | 119 |
| XV. Collateral Attack on the OWCP Process   | 120 |
| XVI. Required to Get Treatment To Eliminate the Disability?   | 121 |
| XVII. Association With an Individual With a Disability  | 122 |
| XVIII. Retaliation for Filing a Disability EEO Complaint  | 124 |
| XIX. Harassment Based Upon Disability   | 125 |
| XX. Disability Complaint as a Collateral Attack on Another Process (OWCP or a Negotiated Grievance Process) | 128 |
| XXI. Good Faith Defense to Award of Compensatory Damages  | 129 |