



# When to Say When – Undue Hardships Under the ADA and State Law

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BUSINESS LAW & LITIGATION

# Americans with Disabilities Act ("ADA")

## PLAN FOR TODAY:

1. What is the ADA?
2. Reasonableness of requested accommodation
3. Whether an accommodation constitutes an undue hardship

# Americans with Disabilities Act ("ADA")

- An employer with 15 or more employees shall not discriminate against a qualified individual with a disability
- The ADA makes it unlawful to discriminate in all employment practices such as:
  - Recruitment
  - Hiring
  - Training
  - Job assignments and promotions
  - Pay and benefits
  - Leave
  - Termination

# ADA: Basics

## What is a disability?

A person has “disability” if he or she has (1) a physical or mental impairment that substantially limits one or more major life activities; (2) a record of this impairment; or (3) is regarded as having such an impairment

- Ability to perform a major life activity is measured against the average person’s ability
- Requires an individualized assessment

# ADA: Basics (cont'd)

## Who is qualified?

- Considered qualified if, with or without reasonable accommodation, the person can perform the essential functions of the job
- Reasonable accommodations to the known limitations of a qualified individual with a disability must be made unless they would cause undue hardship

# ADA: Prohibits Discrimination/Retaliation

- Discrimination may include:
  - denying employment opportunities to qualified individuals;
  - failing to make reasonable accommodations for the individual's known physical or mental limitations;
  - and/or terminating an employee for requesting a reasonable accommodation
  
- Employees with disabilities may be disciplined like any other employee

# ADA: Prohibits Discrimination/Retaliation

- Employees with disabilities may not be disciplined if the employer has refused to provide a reasonable accommodation and the reason for unsatisfactory performance was the lack of accommodation
- Employees with disabilities may not be terminated for requesting a reasonable accommodation

# ADA: Reasonable Accommodations

- What is a Reasonable Accommodation?
  - EEOC Enforcement and Guidance  
[www.eeoc.gov/policy/docs/accommodation.html](http://www.eeoc.gov/policy/docs/accommodation.html)
- Policies and Procedures
- Accommodation Request - Contemplates an Iterative Process



# ADA: Reasonable Accommodations

- Types of Accommodations:
  - Make it possible for employees with disabilities to perform the essential functions of the position held or desired
  - Enable disabled person to enjoy the benefits and privileges of employment equal to (rather than the same as) the benefits and privileges of other employees
  - Time off (modified schedule/flexible leave policy/part time hours) may be required

# ADA: Undue Hardships

- What is an Undue Hardship?
  - EEOC Enforcement Guidance:  
<http://www.eeoc.gov/policy/docs/accommodation.html>
- “An action requiring significant difficulty or expense” when considered in light of the cost of accommodation in relations to size, resources, nature and structure of operations



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*Questions? Comments? Discussion?*

# Employers Association of the NorthEast

## *4 Convenient Offices:*

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