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An Overview of Federal and State Law Regarding Disabilities in the Workplace

Presented to:

NJ Center for Tourette Syndrome &
Associated Disorders, Inc.

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Statistics

- According to the US Census Bureau, disabled employees make up less than 1% of the federal workforce.
- Decrease of 15% since 1997.



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The Law

- New Jersey Law Against Discrimination (“NJLAD”)
- New York Human Rights Law (“NYHRL”)
- Americans with Disabilities Act (including ADA Amendments Act of 2008) (“ADA”)



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Coverage:

- **NJLAD**
 - covers all employers regardless of size
 - “disability” = physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect, or illness including epilepsy and other seizure disorders, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device, or any mental, psychological, or developmental disability resulting from anatomical, psychological, physiological or neurological conditions which prevents the normal exercise of any bodily or mental functions or is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques. Disability shall also mean AIDS or HIV infection.



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- **NYHRL**
 - covers employers with 4 or more employees
 - disability = (i) a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques; (ii) a record of such an impairment; or (iii) a condition regarded by others as such an impairment. With regard to employment, the term is limited to disabilities which, upon the provision of reasonable accommodations, do not prevent a complainant from performing in a reasonable manner the activities involved in the job or occupation sought or held.



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Coverage con't.:

- **ADA**
 - covers employers with 15 or more employees
 - “disability” = (A) “a physical or mental impairment that substantially limits one or more major life activities of such individual . . .”
 - (B) a record of such an impairment; or
 - (C) being regarded as having such an impairment . . .”
 - “physical impairment” = physiological condition, cosmetic disfigurement or anatomical loss that affects one or more of the body’s systems.



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Coverage con't.:

- “**mental impairment**” = mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities.
- “**major life activity**” = caring for oneself, performing manual tasks, seeing, hearing, communicating with others, eating, sleeping, walking, standing, etc.




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Under the ADA, in determining whether an employer has a covered disability, employer may not consider “ameliorative effects of mitigating measures” (except glasses)



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Examples of disabilities covered by law

Many conditions covered including:

- Tourette’s Syndrome (“TS”)
- Obsessive Compulsive Disorder (“OCD”)
- Attention Deficit Disorder (“ADD”)
- AIDS and HIV
- Alcoholism
- Blindness
- Deafness
- Depression and mental illness
- Diabetes
- Cancer
- Heart Disease




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Protections Against Discrimination

- **Preemployment Inquiries**
 - Pre-offer – Employer cannot ask about disability, even if job-related, or if applicant needs reasonable accommodation
 - But can ask if applicant can perform job-related essential functions of job
 - Post-offer – Employer can ask disability-related questions.




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- **Prohibition against discrimination**

Employer may not discriminate against a “disabled” employee or a “qualified individual with a disability” in any term or condition of employment, including, but not limited to, hiring, wages, terms or conditions, benefits, terminations, etc.



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McDonnell Douglas Test:

To establish prima facie case of discrimination, employee must show


- that he/she is disabled;
- that he/she is otherwise qualified to perform the essential functions of the job; and
- that he/she was discriminated against because of disability

Employer then has burden to –

- advance a non-discriminatory reason for the adverse action; or
- establish the reasonableness of the otherwise discriminatory act.

Employee must then –

- meet ultimate burden of proving that the employer’s stated reasons for its action were a pretext and that the real reason for the employer’s action was intentional discrimination.




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Reasonable Accommodation Requirement

Employer is obligated to engage in interactive process and provide a disabled employee with a reasonable accommodation to allow the employee to perform the essential functions of his/her job unless the accommodation would cause the employer's business an undue hardship.




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When is an employer obligated to provide an employee with a reasonable accommodation?

- When requested or when there is an obvious need.
- No magic language requirement.




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Examples of reasonable accommodations

- providing a piece of equipment (ex. hearing device for phone)
- changing manner in which task is performed
- altering a physical facility (ex. widening doorway for a wheelchair)
- providing leave of absence
- reassignment to vacant position
- change of shift
- work from home
- request that co-employees understand outbursts are caused by TS
- assigning intermediary to handle assignments




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Representative TS and Related Cases

- Purcell v. Penn. Dept. of Corrections, 1998 WL 10236 (E.D. Pa. 1998)
 - Court found that Purcell’s disorders (TS & OCD) substantially limited his ability to interact and/or communicate with others so he was limited in a major life activity.
- Lanci v. Arthur Anderson, 2000 WL 329226 (S.D.N.Y. 2000)
 - Finding issue of fact as to whether Lanci’s acute TS symptoms (when systems were severe and he had outbreaks) lasted long enough to constitute a “disability.”




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Representative TS and Related Cases

- Ray v. Kroeger Co., 1264 F. Supp. 2d 1221 (S.D. Ga. 2003)
 - Court found plaintiff grocery clerk was not qualified for job because he could not interact with customers without offending them, which was an essential function of the job.
- Okros v. Angelo Iafrate Const. Company, 502 F. Supp. 2d 648 (E.D. Mich. 2007)
 - Jury award for plaintiff with TS who was unlawfully terminated.
- Domurat v. Specialty Chemicals Corp., 353 N.J. Super. 74 (App. Div. 2002)
 - Holding ADD to be a covered “handicap” under the NJLAD.



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