



Utah's Protection & Advocacy Agency

REASONABLE ACCOMMODATIONS & THE AMERICANS WITH DISABILITIES ACT (ADA)

Objectives:

- DLC Overview
- ADA Overview
- Title I Focus
 - Definition, protections and other important stuff
 - Reasonable Accommodations
 - Essential Functions
 - Unreasonable Accommodations
 - How to request an accommodation
 - What to do if request is denied



Mission:

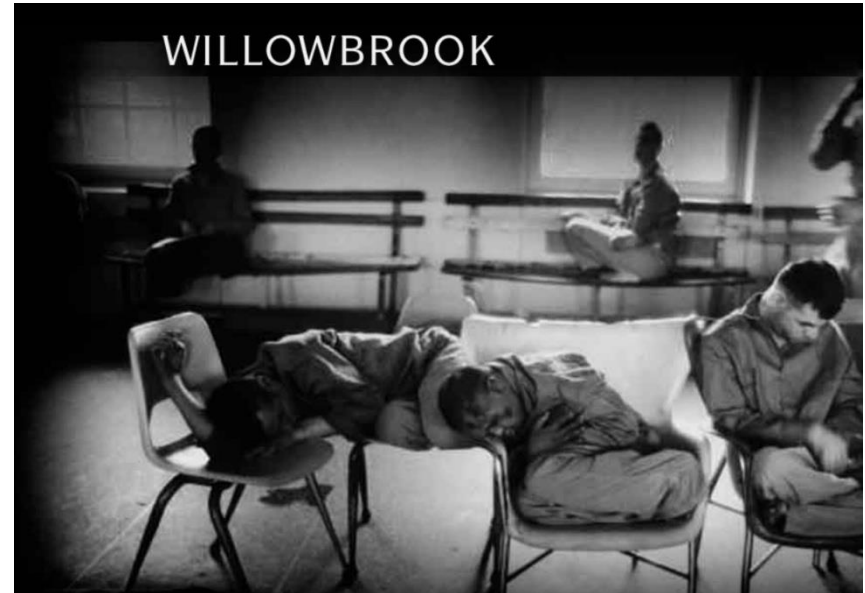
To enforce and strengthen laws that protect the opportunities, choices, and legal rights of people with disabilities in Utah.

Vision:

We envision a just society where all people are treated with dignity, equity and respect.

Our History

- 1970s Willowbrook investigation resulted in development of Protection & Advocacy system
- DLC was established in 1978 as a result of that legislation
- As part of the P&A system, the DLC is a congressionally mandated, legally based disability rights agency
- A P&A/CAP agency exists in every U.S. state and territory.
- There is also a Native American P&A in the four corners region of the Southwest.



Short Term Assistance Team (STAT)

- Initial point of contact for all callers and walk-in clients
- Assists with self-advocacy
- Opens individual cases based on case criteria
- Provides information & referral services



Community Integration

- Promotes full inclusion of people with disabilities by advocating for high quality, community based services
- Currently working with the State on Home & Community Based Services (HCBS) implementation
- Represents individuals facing denials, reductions, and termination of healthcare (Medicaid) and/or AT (Medicare and private insurance)



Abuse & Neglect

- Uses systemic legal tools, such as class-action litigation, to ensure individuals residing in institutions, like jails or nursing homes, receive constitutionally or statutorily required medical and mental healthcare, live in adequate conditions, and have access to appropriate programs and services.
- The team will take an individual case, if it involves an allegation of serious bodily injury or death.



Access & Rights

- Architectural access to public places
- Access to public services
(i.e. ASL interpreters at SSA offices)
- Accessible transportation
- Voting
- Higher Education Accommodations
- Service animals in public places



Education

- Student eligibility for special education.
- Inappropriate uses of discipline including restraint, seclusion, suspension, expulsion, and calling in law enforcement.
- Placing students in an appropriate educational setting (the least restrictive environment)
- Use of assistive technology
- Individualized educational program services in transition to post high school



Employment

- Discrimination in employment
 - hiring,
 - termination
 - wage & hour issues
- Accommodations in the workplace
- SSDI/SSI work-related overpayments
- Vocational Rehabilitation issues
- Representative Payee Program



Fair Housing

- Housing discrimination
- Housing accommodations/modifications
- Testing program – HUD grant, applicable to ALL protected classes
- Emotional support and companion animals in housing



Public Policy

- Promote new legislation that will positively affect change for people with disabilities
 - The “R” Word – Utah HB 230 changing all state documents to say “intellectual disabilities”
- Lobby at state/community levels to increase awareness among key stakeholders on issues and policies



What we DON'T do....

- Family law matters
(divorce, custody, child support, etc.)
- Wills, trusts and probate
- Malpractice cases
- Worker Compensation
- Product liability and personal injury
- **Guardianships**
- Bankruptcy
- Consumer protection issues
- Tax and pensions
- Property disputes
- **Social Security applications**
- **Unemployment denials**
- Food stamp claims
- Criminal proceedings or expungement

Americans with Disabilities Act as amended (ADAAA)

- Signed into law on July 26, 1990, by President George H.W. Bush.
- One of America's most comprehensive pieces of civil rights legislation that prohibits discrimination and guarantees that people with disabilities have the same opportunities as everyone else to participate in the mainstream of American life –
 - to enjoy employment opportunities
 - to purchase goods and services
 - to participate in State and local government programs and services.

- **Title I Employment**

- requires covered employers to provide reasonable accommodations for applicants and employees with disabilities (Public and private employers with 15+ employees)
- prohibits discrimination on the basis of disability in all aspects of employment.
- Title I also regulates medical examinations and inquiries.

- **Title II Public Services**

- Under Title II, public services cannot deny services to people with disabilities or deny participation in programs or activities that are available to people without disabilities.
- public transportation systems, such as public transit buses, must be accessible to individuals with disabilities.

- **Title III Public Accommodations**

- Private businesses and facilities such as restaurants, hotels, grocery stores, retail stores, etc., as well as privately owned transportation systems. Title III requires that all new construction and modifications must be accessible to individuals with disabilities. For existing facilities, barriers to services must be removed if readily achievable.

- **Title IV Telecommunications**

- Telecommunications companies offering telephone service to the general public must have telephone relay service to individuals who use telecommunication devices for the deaf (TTYs) or similar devices.

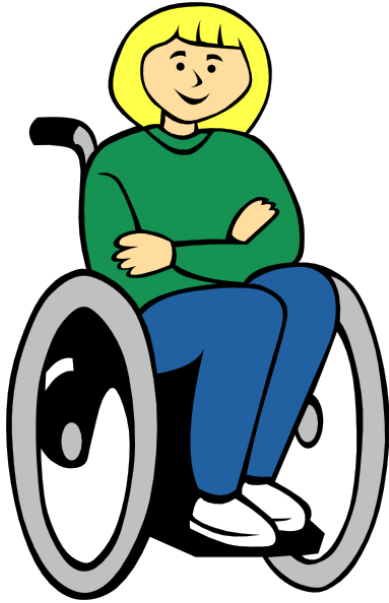
- **Title V Miscellaneous**

- This title includes a provision prohibiting either (a) coercing or threatening or (b) retaliating against individuals with disabilities or those attempting to aid people with disabilities in asserting their rights under the ADA

ADA Definition of Disability

- Physical or mental impairment that substantially limits a major life activity:
 - Walking
 - Seeing
 - Hearing
 - Speaking
 - Learning
 - Working
 - Self-care
- History of such a disability,
- An employer believes that you have such a disability, even if you don't.
- Meant to be broad. Easy to gain coverage under the ADA.

ADA Definition



Lisa uses a wheelchair



Tammy has seasonal allergies

cast of characters



John has a
Mental Illness



Sally has an
Intellectual Disability



Pete has a
Physical Impairment



Joan is
Deaf

ADAAA 101: Title I Protections

The ADA makes it unlawful to discriminate against people with disabilities in all facets of employment, including:

- recruitment
- firing
- hiring
- training
- job assignments
- promotions
- pay
- benefits
- lay off
- leave
- all other employment related activities



It is also unlawful for an employer to retaliate against you for asserting your rights under the ADA.

The Act also protects you if you are a victim of discrimination because of your family, business, social or other relationship or association with an individual with a disability.

Protections Pop Quiz!

- Are company-sponsored trust falls and team tugs of war covered under the ADA?



ADA Title I

- Protects qualified individuals with disabilities
- Applicants/Employees must:
 - Perform the **essential functions** of the job with or without reasonable accommodations
 - Must possess the skill, education, certifications, or experience necessary for the job

Qualified?

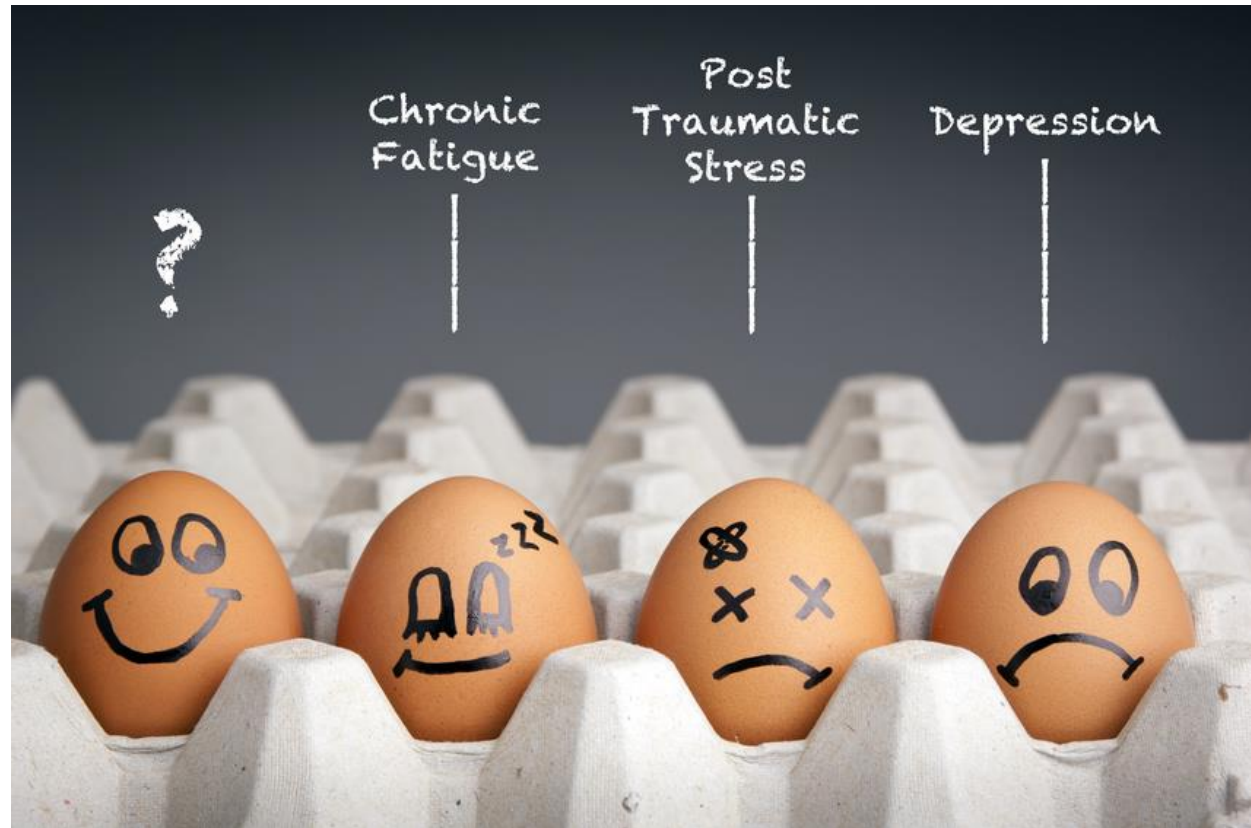


Essential Functions?



Disclosure

- Do I have to disclose my disability?
- When should I disclose my disability?



Disclosure 101

- **Do disclose when you need an accommodation:**

Deciding when to disclose can be a difficult choice for a person with a disability. If you have a hidden disability such as brain injury or post-traumatic stress disorder, knowing when to disclose your condition can be a real dilemma.

- **Do know who to disclose to:**

This can be tricky. Many employers have their own in house procedures that detail how they handle accommodation requests. Check your employee handbook or your company's intranet for this information. Also, if you have an EEO office or a human resources department, they can assist you. The other option is to talk to your manager or supervisor directly.

- **Do know how to disclose:**

You only have to let your employer know that you need an adjustment or change at work for a reason related to a medical condition. You can use "plain English" to make your request and you do not have to mention the ADA or use the phrase "reasonable accommodation." Once you disclose, then the interactive process should begin. At this point, your employer can ask for limited information about your disability and your need for accommodations.

- **Don't disclose too soon:**

Many people with hidden disabilities may feel that they are not being completely honest with an employer if they do not tell everything about their disability up front at the time of their interview. Just remember that you are not obligated to do so. When you disclose, just provide basic information about your condition, your limitations, and what accommodations you may need.

- **Don't disclose too late:**

Don't wait to disclose until after you begin to experience work performance problems. It is better to disclose your disability and request accommodations before job performance suffers or conduct problems occur. Employers do not have to rescind discipline that occurred before they knew about the disability nor do they have to lower performance standards as a reasonable accommodation. Remember, the purpose of an accommodation is to enable a qualified person with a disability to perform the essential functions of the job. So, disclose when you first realize you are having difficulties.

Reasonable Accommodations

- Any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities



Accommodation Basics

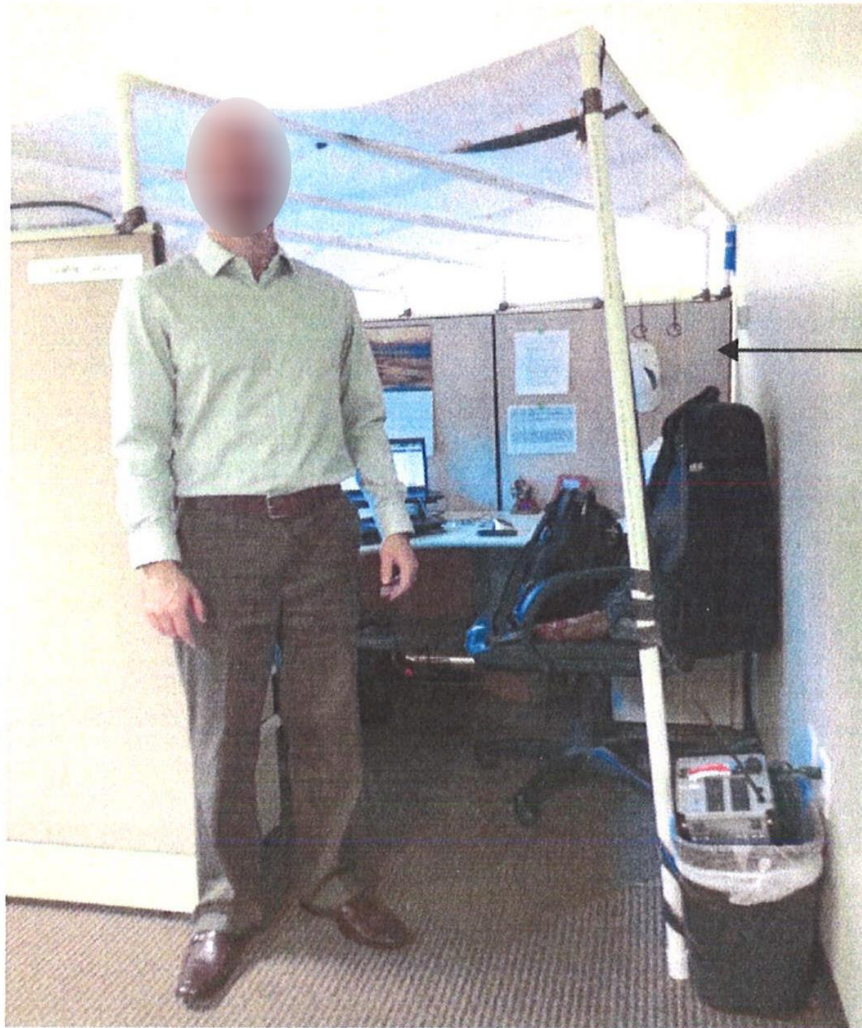
- Must be effective
- Need not be the best accommodation, just effective
- Personal devices not required (i.e. Modified van for home use vs. work use)
- Create an equal playing field

Effective Accommodation Example

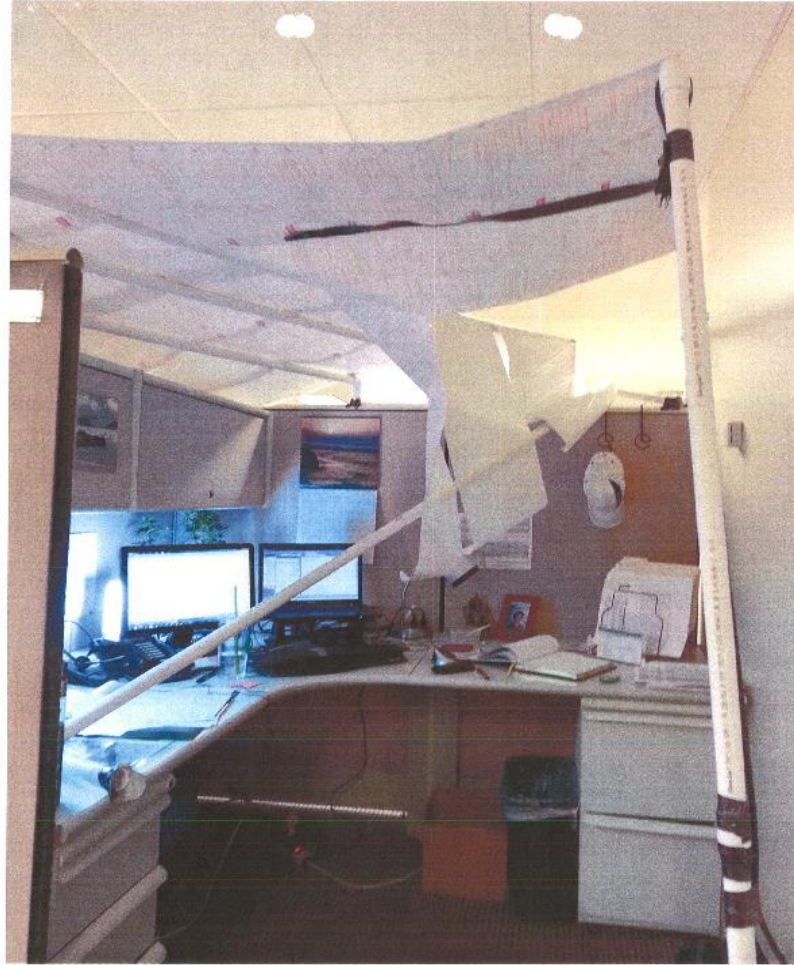
- Employee for 7 yrs in IT dept
- Good employee with positive performance reviews and no disciplinary actions
- Began experiencing severe migraines due to a neurological disorder
- Met with doctors who suggested the following changes to help condition:
 - Eliminate overhead lighting
 - Sit near window for access to natural lighting
 - Use projector with appropriate distance and focus

Should the company accommodate him?

Is this “effective”?



Is this “effective”?



Is this “effective”?



Reasonable accommodations could include:

- Making existing facilities accessible
- Part-time or modified schedules
- Acquiring or modifying equipment
- Changing tests, training materials, or policies
- Providing qualified readers or interpreters
- Flexible personal leave policies
- Reassignment to a vacant position

- Good to know!
 - 50% of accommodations cost less than \$500
 - 19% cost nothing at all
 - 80% cost less than \$1000

When can I ask for a reasonable accommodation?

Short answer: **ANYTIME.**



What are some ideas on accommodations John could ask for at the application stage?



What about Joan?

Reasonable Accommodations in Essential Functions

- Do not assume a job function is essential simply because the supervisor says it is or because it is listed in the job description.
- Consider the following:
 - Job description
 - Frequency & importance of the task
 - Are others available to perform the task?
 - Do other employees in the same position perform the task?

Reasonable Accommodations in Essential Functions



John is told he must be able to close the store on his own.



Pete's job description says he must be able to lift 50 lbs.

Reasonable Accommodations in Benefits & Privileges

Sally has worked at a fast food chain for 10 years. A new manager is hired and Sally notices that her hours are being cut, but she isn't sure why.

What can she do?



Pete exhausts his 12 weeks of FMLA to recover from back surgery. His doctor has not yet cleared him to return to work. Is it reasonable to ask for more time?



Reasonable accommodations do not include:

- Eliminating essential job functions
- Lowering production standards applied to all employees
- Providing personal use items
- Changing an employee's supervisor
- Excusing violation of uniformly applied conduct rules
- Undue hardship
- Direct threat
 - Employer MAY ONLY exclude individual from job for safety reasons when individual poses a direct threat
 - Direct threat= a *significant* threat of *substantial* harm to individual or others that cannot be eliminated/ reduced through reasonable accommodation
 - Employer must consider
 - Duration of risk
 - Nature/severity of potential harm
 - Likelihood that potential harm will occur
 - Imminence of the potential harm

Tips and tricks

- Have an accommodation in mind that you know will work
- askjan.org to search by disability or limitation
- Document communications and correspondence
- Job coaches, friends, and family can help
- Don't expect employer to know you have a disability





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A to Z of Disabilities and Accommodations

Review JAN materials by disability and by topic. Not all accommodation ideas are provided on the JAN Website, so you can contact JAN directly with any question not answered here.

By Disability

- Find information on various disabilities, impairments, and conditions.

By Topic

- Find information on accommodations and other ADA issues.

By Limitation

- Find information on accommodations organized by limitation.

ASK A JAN CONSULTANT

JAN provides free, confidential technical assistance about job accommodations and the Americans with Disabilities Act (ADA). [Send Us Feedback](#).

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Accommodation Ideas for Autism Spectrum Disorders

- Accommodation and Compliance Series: Employees with Autism Spectrum Disorder Audio Version
- Accommodation and Compliance Series: Employees with Executive Functioning Deficits
- Effective Accommodation Practices Series: Autism Spectrum Disorders Audio Version
- Consultants' Corner: Interviewing Tips for Applicants with Autism Spectrum Disorders (ASD), Volume 10, Issue 01

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SOAR - Memory Loss

soar.askjan.org/Limitation/67

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Memory Loss

There are multiple disabilities or medical conditions that can cause memory deficits that affect the ability to recall something that is seen or heard. This may result in an inability to recall facts, names, passwords, and telephone numbers, even if such information is used regularly.

Solutions:

- [Additional Training Time / Training Refreshers](#)
- [Apps for Memory](#)
- [Electronic Organizers](#)
- [Memory Software](#)
- [Recorded Directives, Messages, Materials](#)
- [Reminders](#)
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The Reasonable Accommodation Process

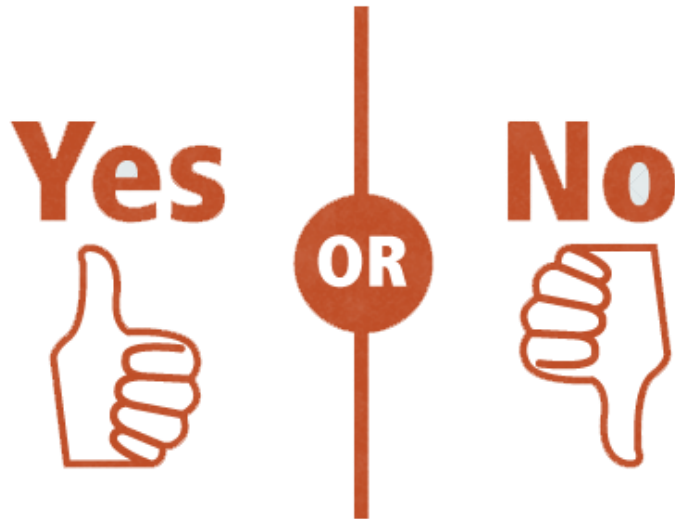


Ask the employer for a change or modification related to a medical condition

- No magic words
- Employee starts process
- Not required to disclose your exact disability
- Does not have to be in writing*
- Should be interactive
- Medical documentation
 - Letter from doctor
 - Beware of HPPA releases

* Should be written whenever possible

Did you get your reasonable accommodation?



- Don't quit your job – talk to an advocate first
- Consider how important the accommodation is and how important it is to keep your job
- If denied, call the DLC

DLC involvement

- Free
- Client-driven process
- Legal clinic consultation
- Involvement ranges from lower level advocacy efforts to formal court proceedings
- Examples:
 - Ghost written letter
 - Demand letter
 - UALD or EEOC complaint
 - Court

DLC Success Story

- Papa John's Pizza To Pay \$125,000 To Settle EEOC Disability Discrimination Lawsuit
- ***Pizza Company Refused to Accommodate and Fired Disabled Employee Because He Had a Job Coach, Federal Agency Charged***
- According to EEOC's lawsuit, Papa John's discriminated against Scott Bonn, who has an intellectual disability, Down syndrome. EEOC alleged that Papa John's employed Bonn successfully at its Farmington location for more than five months and allowed an independently employed and insured job coach to assist him. EEOC further charged that after an operating partner visited the Farmington location and observed Bonn working with the assistance of his job coach, the operating partner ordered Papa John's local management to fire Bonn.
- Under the consent decree settling the suit, Papa John's is required to pay \$125,000 to Bonn, review its equal employment opportunity policies, conduct training for management and human resources employees for its restaurants in Utah, and establish a new recruitment program for individuals with disabilities in Utah.



Interview Questions

Job Performance

DO

-Are you able to perform the essential function of the job you are seeking, with or without accommodations?

DON'T

-Do you have any physical or mental impairment that would keep you from performing the job you seek?

-What physical or mental impairments do you have that would affect your job performance?

Attendance Requirements

DO

-Can you meet our attendance requirements?

-How many days were you absent from your last job?

-How many Mondays or Fridays were you absent last year on leave other than approved vacation leave?

DON'T

-How many days were you sick during your last job?

History of Injury

DO

-How did you break your leg?

DON'T

-Do you break bones easily?

-Do you expect the leg to heal normally?

Drug Use

DO

-Are you currently using illegal drugs?

-Have you ever used illegal drugs?

DON'T

-What medications are you currently taking?

-How often did you use illegal drugs in the past?

-Have you ever been addicted to drugs?

-Have you ever been treated for drug addiction?

-Have you ever been treated for drug abuse?

Alcohol Use

DO

-Do you drink alcohol?

-Have you ever been arrested for driving under the influence of alcohol?

DON'T

-How much alcohol do you drink?

-Have you ever participated in an alcohol rehabilitation program?