



## **ADA Live! EPISODE 1: EMPLOYMENT/REASONABLE ACCOMMODATIONS**

**Event Date: October 2, 2013**

**Presenters: Jack Humburg, Boley Centers; and Cheri Hofmann, Southeast ADA Center**

**Host: Elaine Sutton-Mbionwu, Southeast ADA Center**

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**VOICE OVER ANNOUNCER:** Welcome to WADA. ADA Live Talk Radio. Brought to you by Southeast ADA Center, your leader for information, training and guidance on the Americans with Disabilities Act. And here's your host.

**ELAINE SUTTON-MBIONWU:** Good afternoon, and welcome to the inaugural show of WADA "ADA Live!" On behalf of the Southeast Center, Burton Blatt Center and Syracuse University, we are excited to welcome our internet radio office to the first installment of WADA "ADA Live!" My name is Elaine Sutton-Mbionwu, and today's host. Hello, and welcome to our "ADA Live!" listening audience.

The Southeast ADA Center is pleased to have with us today two extremely knowledgeable and well-versed speakers on the topic of Employment and Reasonable Accommodations. Today's guest speakers are Jack Humburg of the Boley Centers in St. Petersburg, Florida, and Cheri Hofmann of the Southeast ADA Center.

Today our guest speakers will address the legal and practical issues surrounding reasonable accommodations in the employment arena, including areas of coverage, the definition of disability, the legal rights and responsibilities of employees and employers as well as the process for requesting reasonable accommodations.

"ADA Live!" listening audience, please note that you are able to call throughout the show to submit your ADA-related questions and have them answered live through today's guest speakers. The number is 646-595-2880. Again, the call-in number is 646-595-2880.

To kick off this segment of the show, I would like to ask a few employment-related questions with our guest speakers. Welcome, Jack and Cheri, and thank you for spending time with our ADA audience.

Now, our series of questions I will post to Cheri Hofmann of the Southeast ADA Center. Cheri, does the ADA require employers to post a job description?

**CHERI HOFMANN:** Thank you for that question. It does not require them to maintain or develop job descriptions, but if they use a job description, they should be used to make sure they reflect the

actual functions of the job, and a job description is normally most helpful if it focuses on the results or the outcome of the job function and not actually the way it's customarily performed to request reasonable accommodation.

**ELAINE SUTTON-MBIONWU:** Great. Would you mind expounding on the concept of direct threat?

**CHERI HOFMANN:** I apologize. The direct threat, it can be viewed different ways, but the main reason direct threat is out there, it's a narrow exemption to the general rule that employers have that employers may not discriminate based on a disability, and it cannot be based on fears or misconceptions or stereotypes about an employee's disability.

One example would be, for instance, if a person were applying for a job and they were HIV positive and that employer would have an incorrect assumption of HIV, that it would be spread through casual contact. Instead, the employer must make a reasonable medical judgment relying on the best objective available evidence based on that individual.

**ELAINE SUTTON-MBIONWU:** All right. Thank you for that, Cheri. Who is a qualified individual with a disability?

**CHERI HOFMANN:** Well, I like to break that down two ways because it helps people understand the qualified person with a disability. The word qualified meets legitimate skill, experience, education, or any other condition the position seeks and then there's a person with a disability who meets the definition of a person with a disability, and somebody with a physical or mental impairment that substantially limits one or more major life activities and obviously a person who has a record of such impairment, and that would be determined at a later date.

So back to what I was saying, the person would need to be qualified for the position that they are seeking and also be able to perform the essential functions of the position with or without reasonable accommodation.

**ELAINE SUTTON-MBIONWU:** Thank you for providing such a very thorough explanation for our "ADA Live!" listeners. That helps to give a greater clarity on the fact that just because you have a disability does not necessarily make you qualified for a position.

Cheri, does an employer have to give preference to an applicant with a disability?

**CHERI HOFMANN:** No, the employer can hire the most qualified applicant and they can make these decisions based on everything and anything unrelated to the disability.

For example, if a person applies for a job and the essential function would be to type 75 words a minute and one applicant is a person with a disability and they type 50 words a minute and the other person accurately provides 75 words a minute, the individual with the higher typing speed would be successfully performing the job and the employer can hire them based on those merits.

**ELAINE SUTTON-MBIONWU:** So in other words, this levels the playing field. There is no special treatment.

**CHERI HOFMANN:** That's exactly what the ADA is saying. We're out there, you can apply for the job, but we'll go back into seguing prior, that they meet the definition of reasonable accommodation.

**ELAINE SUTTON-MBIONWU:** Now, my last question for you in this segment, can you tell us when an employer can ask an applicant to self-identify with a disability?

**CHERI HOFMANN:** Let's take it another way. A lot of people think they have to say, "I have a disability," but they do not have to self-disclose unless they have an immediate need. If you're an individual who is Deaf, you might need an interpreter, especially if you can't speed-read on lips.

So after getting a qualified job offer, there may be a time when individuals ask disability-related questions. So keep in mind, the ADA is a nondiscrimination law. It does not require employers to take any special things or for the applicant to self-identify during the interview or even after job offer, but if the employers are seeking out people with a disability, you may have to disclose in that case because their recruitment is recruiting people with disabilities.

**ELAINE SUTTON-MBIONWU:** Great. Thank you, Cheri. Now, I'm sure our "ADA Live!" listeners are much more informed after this. This closes the first segment of our show. "ADA Live!" listeners, if you should have a question you would like for our guest speakers to answer, please call 646-595-2880.

Now, a word from our sponsors.

The Boley Centers provide information training and guidance on the Americans With Disabilities Act and located in St. Petersburg, Florida, and serves as the affiliate of the Southeast ADA Network, and for answers, call the ADA National Network at 800-949-4232.

The ADA National Network consists of ten regional ADA centers in the United States providing local assistance to ensure that the ADA is implemented whenever possible. It is not an enforcement agency, but a helpful resource and makes it possible for everyone with a disability to live a life of freedom and equality.

**ELAINE SUTTON-MBIONWU:** Welcome back to our "ADA Live!" Listening audience. We have a few questions that have come in, and Cheri, I'm going to pose these questions to you.

We have our first question from our caller, Mary, and Mary says she has a 5-year-old son and he has muscular dystrophy. My employer gets upset when I ask for time off and he will be in the hospital for four weeks with another week to recover. My boss flatly refuses me the week at home with my son. I am a single parent. What can I do?

**CHERI HOFMANN:** Well, Mary, under the ADA, employers are required to provide reasonable employees with disabilities, and in your case, your son is the one with the disability, not you as the employee and the ADA is not applicable in your case. You might want to discuss this with your employer or your Human Resources and ask if you qualify for the Family Medical Leave Act. We're happy to discuss this with you further, and if you could call 800-949-4232, we could do some more research and give you more detailed information and tailor it to you specifically.

**ELAINE SUTTON-MBIONWU:** Thank you, Cheri. Cheri, I have another question for you from Gertrude. Gertrude says, my mother, who has MS, used to walk with a cane, but now needs a wheelchair. She works part-time at a local store. What accommodations does her employer need to provide?

**CHERI HOFMANN:** Well, good afternoon, Gertrude. And to answer that question in general, an accommodation is a change in the work environment or the way things are done to enjoy equal opportunities and they are required to provide these for employees with disabilities. Therefore, your mother can request an accommodation that is considered reasonable.

In her case, being part time would not exclude her from the process, but the size of employer could. However, the EEAC guidelines have listed as not forms of reasonable accommodation providing use items such as a prosthetic limb, a wheelchair, eyeglasses, hearing aids, or similar devices, if they are also needed off the job.

Now, it might not mean -- I don't know what kind of job your mom has and I don't know if she's in a warehouse and something else might be acceptable for use for her, so I would like to follow up with, again, the 800 number to discuss this with you further at 800-949-4232. We can get more detailed information to you, the resources available, because every situation is different, and we can tailor this to your situation.

**ELAINE SUTTON-MBIONWU:** Cheri, thank you, and Gertrude, thank you for your question, and thank you for listening to "ADA Live!" At this point we're going to discuss segment 2, and we will bring forward for this, Jack Humburg from the Boley Centers in St. Petersburg, Florida. Good afternoon, Jack.

**JACK HUMBURG:** Good afternoon, Elaine. I'm excited to be one of your first speakers on "ADA Live!"

**ELAINE SUTTON-MBIONWU:** When can an employer ask an employee for medical information?

**JACK HUMBURG:** Inquiries must be job related and consist of job necessity, such as public safety, like police or firefighters, obviously need to be able to physically do the job, and an employer can ask if they have a reasonable belief based on objective evidence that an employee's function would be impaired by a medical condition or he has a reasonable belief based on objective evidence that an employee would pose a direct threat by medical condition, as you mentioned

earlier, and if they ask for need for accommodation is not known or obvious, the employer then can ask for medical documentation.

**ELAINE SUTTON-MBIONWU:** Okay. Excellent. Jack, how can an employee request reasonable accommodations from an employer?

**JACK HUMBURG:** Well, when an individual decides to request an accommodation, he or her or her representative must let the employer know that they need an adjustment or the change in the work environment for a reason related to a medical condition or disability. To request an accommodation, the individual can use plain language. Doesn't have to be anything fancy. They don't need to mention the ADA or even use the phrase "reasonable accommodation," although it might be a good idea. While a person with a disability may request a change due to a medical condition, this does not necessarily mean the employer is required to accommodate that change and it's the first in an interactive process between the employer and the employee and if a person does get medical information about an employer and their medical information, that needs to be kept in a separate file and available to those who only need to know. It should not be in the personnel file. It should be held in a separate file and held confidential.

**ELAINE SUTTON-MBIONWU:** Now, the separate files is intriguing to me. When those accommodations have been requested, there has to be a separation between the regular personnel file and then the accommodation file. Is that correct?

**JACK HUMBURG:** That's correct. Any medical information should be kept in a separate file.

**ELAINE SUTTON-MBIONWU:** Okay.

**JACK HUMBURG:** So keep in mind that in some instances, the employer needs to determine if that person's medical condition is under the ADA and that would determine whether they are entitled to a reasonable accommodation.

**ELAINE SUTTON-MBIONWU:** Thank you for that. Jack, can an employee or an employer get funding to assist with accommodations, and if so, where might our listeners find out about these funding opportunities?

**JACK HUMBURG:** Well, that's an excellent question. There are resources available, and I would suggest the first place you might want to check with is the division of rehabilitation in your state. There are others who serve the needs of people with disabilities, including the united cerebral palsy, division of lung services, and so on. And I would suggest they check with the local center for independent living throughout the country.

Otherwise, you can check the job accommodation network at [askjan.org](http://askjan.org). It's a great website to provide ideas for what kind of accommodations might be available for specific disabilities or to perform specific tasks. And further, there are assistive technology programs around the country that can provide technology solutions for individuals with disabilities.

**ELAINE SUTTON-MBIONWU:** So there are a wealth of resources available, and our "ADA Live!" listening audience, I hope you jotted down some of those resources available to you.

Jack, how much do accommodations typically cost?

**JACK HUMBURG:** Well, I mentioned the job accommodation network, and they've done a lot of research on this topic and they've stated that of the employers who gave cost information related to accommodations that they had provided, 58% of the employers stated the accommodations needed by employees cost absolutely nothing. Another 36% experienced a one-time cost. Only 4% said the cost resulted in an ongoing annual cost to the company, and 1% said it resulted in one-time and ongoing cost, but the typical one-time expense by employers was only \$500.

**ELAINE SUTTON-MBIONWU:** Only \$500? That's relatively inexpensive.

**JACK HUMBURG:** Yes, I certainly think it is, and those are typically one-time expenses.

**ELAINE SUTTON-MBIONWU:** Okay. Now, my final question, Jack, is testing for the illegal use of drugs permissible under the ADA?

**JACK HUMBURG:** Oh, yes. Yes. Employees and applicants currently engaging in the illegal use of drugs are not covered by the ADA when an employer acts on the basis of such use. Employers may suggest current employees for illegal use of drugs and may require job applicants to undergo such testing at any stage of the application process. So keep in mind that the illegal use of drugs are not going to be covered by the ADA.

**ELAINE SUTTON-MBIONWU:** All right. Thank you, Jack, for joining us in this segment of "ADA Live!"

"ADA Live!" listeners, if you would have a question you would like to have our guest speakers answer, please call 646-595-2880. Again, that number is 646-595-2880. Now, a word from our sponsors.

This ADA Center is providing guidance and training and disability access to government, individuals, and the Southeast ADA Center, located in Atlanta, Georgia, serves eight states in the southeast region. Contact the ADA National Network at 1-800-949-4232.

Boley Centers provides training and guidance tailored to the needs of individuals and governments at local, state, and regional records. Boley Centers is located in St. Petersburg, Florida, and serves as the southeast affiliate. For answers to your ADA questions, contact 1-800-949-4232.

**ELAINE SUTTON-MBIONWU:** Welcome back to our "ADA Live!" Listening audience. Jack, we have a couple of questions that have come in during the commercial break that I'd like to have you answer for our listening audience, and we have a question from Joyce here in Georgia.

And Joyce says, I have severe migraines. At times, I have to take medications that impair my ability to drive. Most of my work is done on the computer and by phone. Would it be reasonable to request an accommodation of teleworking on the days that I am unable to drive to the office due to migraines?

**JACK HUMBURG:** Well, that's an excellent question, Joyce. It may be reasonable. It depends on the circumstances and keep in mind that we talked earlier about performing the essential functions of your job. So the employer needs to look at, if you make such a request, is it essential for you to be in the office to do the essential functions of your job or can those functions be done from home? Clearly, it's dependent upon what your employer thinks is necessary for you to perform those essential functions.

**ELAINE SUTTON-MBIONWU:** Jack, thank you for that, and Joyce, thank you for listening to "ADA Live!" and for your questions.

I have another question for you, Jack, and we have a questions posed by Anna, and Anna asks, how shall my employer handle a situation in which my service dog is being territorial about my cubicle and snarls or growls when someone invades that space? Should the cubicle walls come down? Should I be given an office? Should I be expected to retrain my service dog? Should I be told that my service dog has to stay home? There are a lot of questions in that, Jack.

**JACK HUMBURG:** Yes, there are. Well, Anna, a person with a disability cannot be asked to remove the service animal from the premises unless the dog is out of control and the handler -- you, in this case -- does not take effective action to control it. It may be to your benefit to determine why the animal has become territorial and discuss possible accommodations such as what you have mentioned -- maybe a different office, maybe placing the dog in the area in your cubicle. You are ultimately responsible for your service animal, and your employer is responsible for possible reasonable accommodations. It's important for you to determine what's causing this issue for your service animal and fix it, because it may be cause for your employer to ask you to remove your service animal, and yes, it may mean additional training on your part. Joyce, if you would like to discuss your case, please call 1-800-949-4232 to reach the national network and the question may require more research and we may need to talk more about the details of your case.

**ELAINE SUTTON-MBIONWU:** Thank you. And our final question in this segment, Jack, is from David, and David asks, if an employer does not have a legal obligation to honor medical documentation and grant a reasonable accommodation, how can they then say it is a legal requirement to produce medical documentation before they'll discuss the accommodation?

**JACK HUMBURG:** Interesting question. Some employees do not want to give their employers a lot of details about their disability, and if you prefer to give a lot of information, you may want to limit the amount of medical information you give to your employer when you initially request an accommodation. For example, you may want to tell your employer what you're having trouble doing and that it's related to a disability and ask for what the accommodations are. Some will not inquire, but employers do have the right to request additional medical information when an

employee requests an accommodation, and if you do not provide can, the employer can deny your accommodation request. Remember, they have to decide if you are entitled to accommodation under the ADA. So when the employee refuses to give that information and it's not immediately obvious, the employer may require documentation.

**ELAINE SUTTON-MBIONWU:** David, thank you so much for listening to "ADA Live!" and thank you for that question. Jack, thank you for taking the time to answer those questions.

**JACK HUMBURG:** You're welcome.

**ELAINE SUTTON-MBIONWU:** At this moment I would like to thank our guest speakers, Jack Humburg and Cheri Hofmann for joining us today and for our "ADA Live!" audience. We are extremely thankful, and "ADA Live!" audience, if you would like to continue to discussion, go to ADA.org. It will open from 1:30 to 2:30 live. Don't forget to tell a friend or like us on Facebook. See you next month on WADA "ADA Live!"

Thank you for listening to "ADA Live!" radio, brought to you by the Southeast ADA Center. Remember, to join us the first Wednesday of every month for another ADA topic, and you can call 1-800-949-4232 for answers to your ADA questions!

Thank you for using BlogTalkRadio. Good-bye.

(End of session at 1:30 p.m.)

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