





# ADAAA & Hiring Basics



# Myths, Fears & Stereotypes



## Myths, Fears & Stereotypes



Irrational fear  
**“It’s contagious!”**

# The Nation's Largest Minority Group

- 59 million Americans live with a disability
- High unemployment rate

## Employment Statistics

	With Disabilities	Without Disabilities
<b>Unemployment Rate</b> unemployed people are those who did not have a job, were available for work, and were actively looking for a job in the 4 weeks preceding the survey	14.8%	9.4%
<b>Not in Labor Force</b> neither employed nor unemployed	80%	30%

2010 U.S. Department of Labor Statistics

# Education

## MYTH

*Individuals with disabilities don't have the education that I require.*



## FACT

- Over 1/2 of individuals with disabilities have high school diplomas
  
- Over 1/3 have post-secondary degrees

Bureau of Labor  
Statistic

At each level of education, persons with disabilities are more likely to be unemployed.

# Meeting Performance Standards

## MYTH

*Individuals with disabilities are unable to meet performance standards or productivity goals.*



## FACT

➤ Louis Harris and Associates survey of 920 employers found employees with disabilities have about the same (57%) or better (30%) productivity levels than persons without disabilities

# Employee Supervision

## MYTH

*Supervising employees with disabilities is more difficult. Someone will always have to help them!*

## FACT

- In most cases, individuals with disabilities have already adjusted to their disability
- With proper job training, they can work unaided

TIP: Hold employees with disabilities accountable to the same job standards as other employees.

# Job Accidents

## MYTH

*Workers with disabilities are more likely to have accidents or be prone to additional injuries.*



## FACT

➤ In 4 national studies, the U.S. Dept of Labor found that workers with disabilities experience fewer disabling injuries than the average employee exposed to the same hazards

TIP: Listen to safety concerns of workers with disabilities. Sometimes they are more aware than peers.

# Worker Compensation Rates

## MYTH

*Worker compensation rates increase when an employer hires persons with disabilities.*



## FACT

- Insurance rates are based solely on relative hazards of operation and organization's accident experience
- U.S. Chamber of Commerce study found 90% of manufacturers surveyed reported no effect on insurance costs as a result of hiring workers with disabilities

# Hiring

## MYTH

*It's impossible to interview someone with a disability because of human rights laws.*



## FACT

- Ask the same job-related questions that you would ask other applicants.
  
- Focus on abilities not disabilities

TIP: Don't make assumptions about someone's performance—everyone has the right to fail or succeed by their own doing.

# Discipline and Termination

## MYTH

*Once hired, I can't discipline or fire an employee with a disability.*

## FACT

- There are no special procedures for disciplining or firing employees with disabilities
- Discuss problems with the employee, try to find solutions and document the situation

TIP: Establish clear performance expectations from the start.

# Absenteeism

## MYTH

*Employees with disabilities are less reliable and absent more often.*

## FACT

- On average, employees with disabilities are not absent any more than employees without disabilities
- U.S. Chamber of Commerce study found workers with disabilities had an 80% lower turnover rate

Bureau of Labor  
Statistic

Persons with disabilities are more likely to be working part-time due to economic reasons.

# Special Characteristics

## MYTH

*Persons with disabilities are more sensitive. They are braver, kinder and more conscientious.*



## FACT

- Persons with disabilities are just like any other person you would employ
- Each person is individual and unique

TIP: Remember we are all human with a range of emotions.

# Accommodation Expenses

## MYTH

*Considerable expense is necessary to accommodate workers with disabilities.*

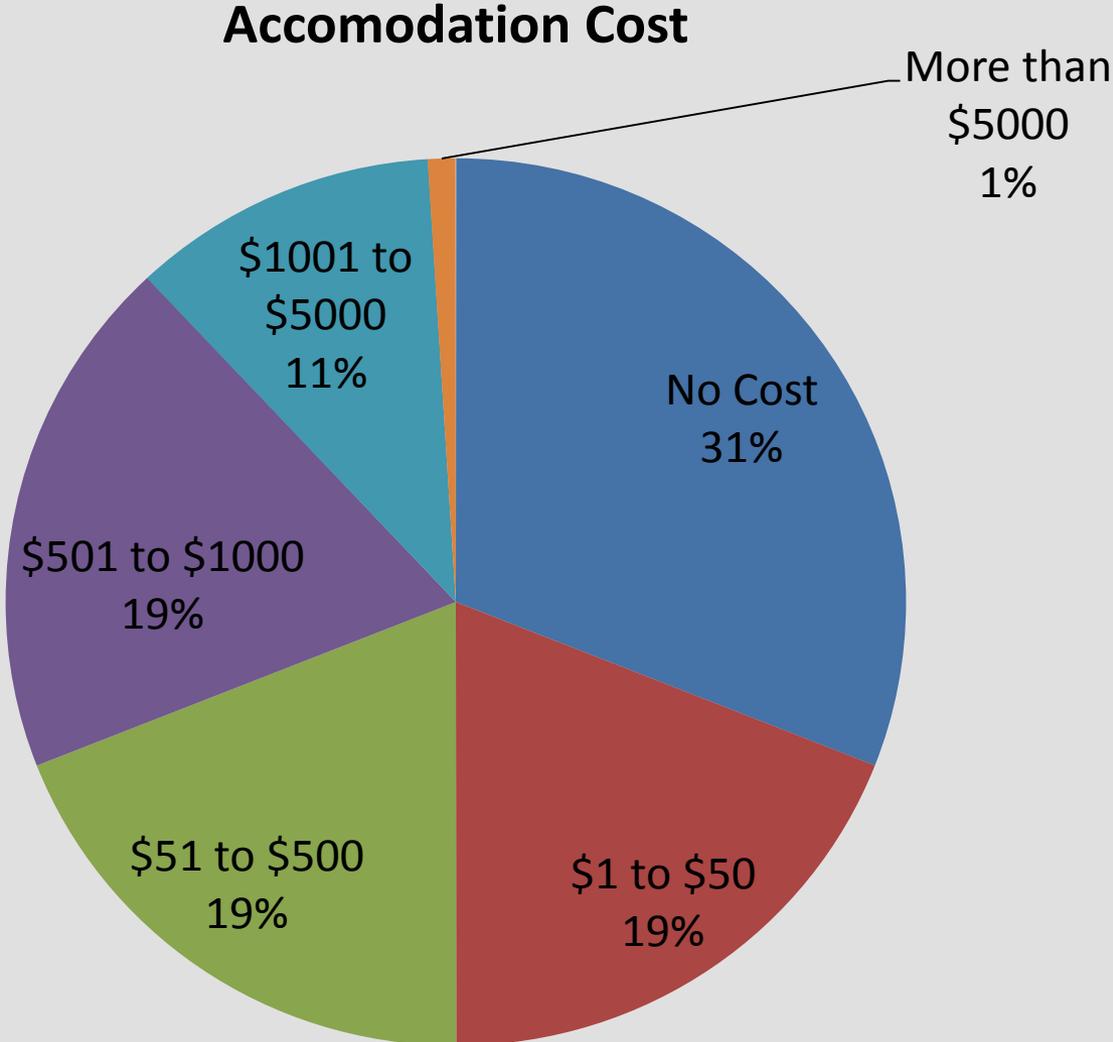


## FACT

- Most job accommodations are simple and inexpensive
- Most frequently reported accommodations were changes in job duties and modified hours

TIP: Look at the big picture. An accommodation might end up helping other employees or even customers.

# Creativity Does Not Have To Be Costly



Source- Succeeding Together: People with Disabilities in the Workplace, A Resource Manual

# Reasonable Accommodations

The Americans with Disabilities Act (ADA) requires an employer make reasonable accommodations in 3 categories:

- 1) Application process
- 2) Work environment
- 3) Benefits and privileges of employment

# Accommodation Examples

Print applications in large font

Change work hours or scheduled breaks

Swap duties among employees

Provide a large button touch-tone phone

Change desk or shelf height in workspace

Add labels in Braille

Install computer software to magnify screen

Add a ramp or widen doorway

Use Voice to Text/Text to Voice software

Relocate a program or service to an accessible area

# Business Outcomes

When you HIRE workers with disabilities, you...

**H**elp build ties with your community

**I**llustrate to employees your willingness to work with others

**R**einforce to customers your commitment to inclusion

**E**stablish a healthy, diverse work environment



# Whose responsibility is it

- **It is the employee's responsibility to request an accommodation**
- **However, the employer is responsible for notifying applicants and employees of its obligation to provide accommodations**

# How does an employer determine if an individual is covered?

- **Once an employee asks for an accommodation, an employer may request documentation.**
- **The information must be kept confidential.**
- **The information must not be more intrusive or extensive than is job-related or consistent with business necessity.**

# Reasonable Accommodation



**This is EQUALITY**



**This is JUSTICE**

Employer  
must  
**accommodate**  
unless  
undue hardship



# Definition of “Disability”

+ who is entitled to accommodation

- A **physical or mental impairment** that substantially limits a **major life activity**
  - Reasonable accommodation
- A **record** of such an impairment
  - Reasonable accommodation
- Being **regarded as** having such an impairment
  - No accommodation

# Definition of Disability: Expanded List of Major Life Activities

## **caring for oneself**

standing

bending

seeing

learning

eating

speaking

sleeping

performing manual tasks

## **interacting with others**

walking

lifting

reaching

hearing

**concentrating**

**communicating**

**thinking**

breathing

working

sitting

This list is not exhaustive

# ADAAA: Important Changes

**Conditions that are episodic or in remission:** An impairment that is episodic or in remission is a disability if it substantially limits a major life activity when active

- Examples: Bipolar disorder, PTSD

**Mitigating measures:** Ameliorative effectiveness of mitigating measures must be disregarded

- Examples: Medication, Coping Strategies

## EEOC List of Impairments That Should Easily Be Found To Be Substantially Limiting

- Deafness
- Blindness
- Mobility impairments requiring wheelchair
- Intellectual disability
- Partially or completely missing limbs
- Autism
- Cancer
- Cerebral palsy
- Diabetes
- Epilepsy
- Human Immunodeficiency Virus (HIV) Infection
- Multiple Sclerosis
- Muscular Dystrophy
- **Major Depressive Disorder**
- **Bipolar Disorder**
- **Posttraumatic Stress Disorder**
- **Obsessive Compulsive Disorder**
- **Schizophrenia**

**29 C.F.R. § 1630.2(j)(3)(iii)**

- Reproduction
- Sexual relations



# Major Life Activities

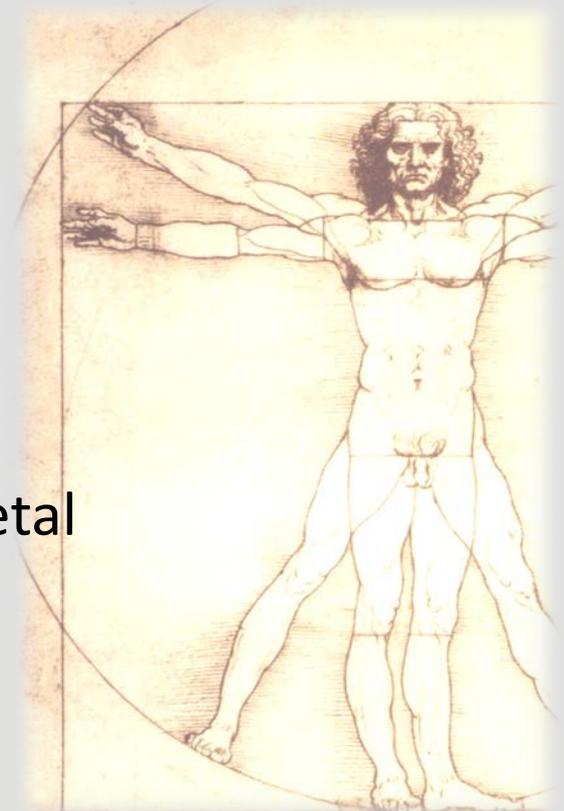
- working



# Major Life Activities

- Now also includes **“major bodily functions”**

- immune system
- normal cell growth
- digestive
- bowel
- bladder
- neurological
- brain
- respiratory
- circulatory
- endocrine
- hematic
- lymphatic
- musculoskeletal
- reproductive



**“Major Life Activities” Expanded**

- Impairments that are episodic or in remission are disabilities if they **would** substantially limit a major life activity **when active**.
- *Rule applies even if employee has never yet experienced a substantial limitation due to the effects of the impairment.*

Episodic or In Remission



# Mitigating Measures

- Determination of whether an impairment substantially limits a major life activity **must be made without regard** to the ameliorative effects of mitigating measures (except for ordinary eyeglasses and contact lenses).
- *Rule applies even if employee has never gone without the mitigating measures.*

## Examples:

- Medication, medical supplies, equipment, prosthetics, hearing aids and cochlear implants
- Use of assistive technology
- Reasonable accommodations or auxiliary aids or services
- Learned behavioral or adaptive neurological modifications
- Surgical intervention (cited in legislative history)



# Mitigating Measures Defined

# What triggers Accommodation Process?

- **Employee/Applicant** requests accommodation
- **Employer is responsible when...**  
(9<sup>th</sup> Circuit) The disability and need and desire for an accommodation are obvious.

# No Magic Words Needed!



- ❖ “Plain English” okay
- ❖ Requests do not need to be in writing
- ❖ Request can come from a family member, friend, health professional or other representative, e.g., a job coach.

# How does an employer determine if an individual is covered?

- Once accommodation is requested, employer may request documentation
  - Keep information **confidential**
  - Questions must not be more intrusive or extensive than is **job-related** or **consistent with business necessity**
    - Not about diagnosis
    - About limitations





# Interactive Process

Discussion, discussion, discussion

- **Employee** is the best position to know limitations/needs
- **Employer** in the best position to determine if undue burden
- Multiple options? **Employer** gets to chose

# If at first you don't succeed

- Try an accommodation: If it doesn't work, **employer** has an ongoing obligation to reassess and refine if needed

# Bless her heart

- Jill tells her manager, Bob, that she is pregnant. As a result of the information, Bob immediately provides a chair for her to sit as needed and disallows her from lifting anything assigning others within the department to lift for her.

# This is how it's done

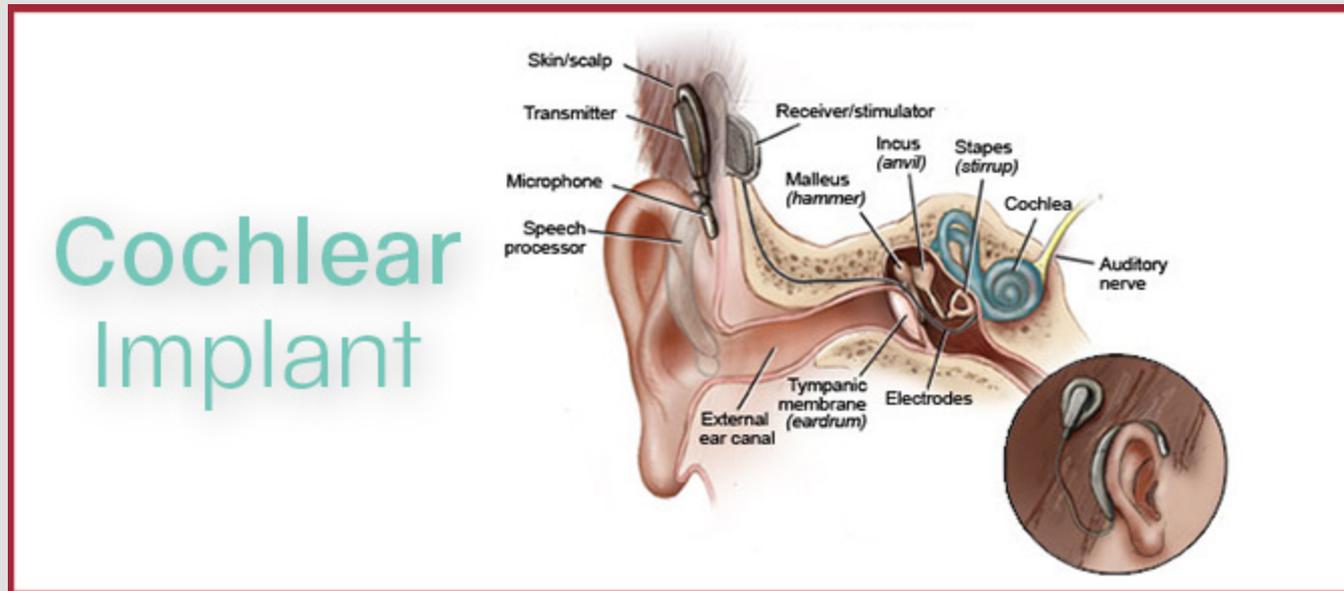
- Ted reveals that he has a chronic back condition that limits his ability to lift more than 10 pounds. He asks to be able to stock bottle by bottle with a shopping cart instead of rolling full cases on a dolly. Is this reasonable?

# The Un-Interpreter

- Susan is a new employee who is deaf and does not use her voice. The agency has an interpreter who cannot understand Susan's sign language. Susan requested that the agency hire a different interpreter. Is Susan's request reasonable?

# Don't play doctor

- Employers do not get to choose medical treatment



# Purpose of Reasonable Accommodation

Allows employee with disability to

- Perform essential functions of job
- Enjoy privileges and benefits of employment



# Undue Burden

**Which of the following is NOT an employer defense to providing reasonable accommodation?**

- a) Is financially difficult
- b) Is unduly extensive or disruptive
- c) Fundamentally alters the nature or operation of the business
- d) Causes discord among employees not receiving the accommodation

# Undue Burden



**ANSWER:** d)

**Causes discord among employees not receiving the accommodation**

An employer cannot claim undue hardship based on employees' (or customers') fears or prejudices, or because providing a reasonable accommodation might have a negative impact on employee morale.

# Undue Burden (cont.)

- Shifting essential job functions
- Moving employee to different supervisor
- Lowering production standards
- Direct threat

# Cost of Accommodation

**79% of reasonable accommodations cost under \$500**

- 31% cost nothing

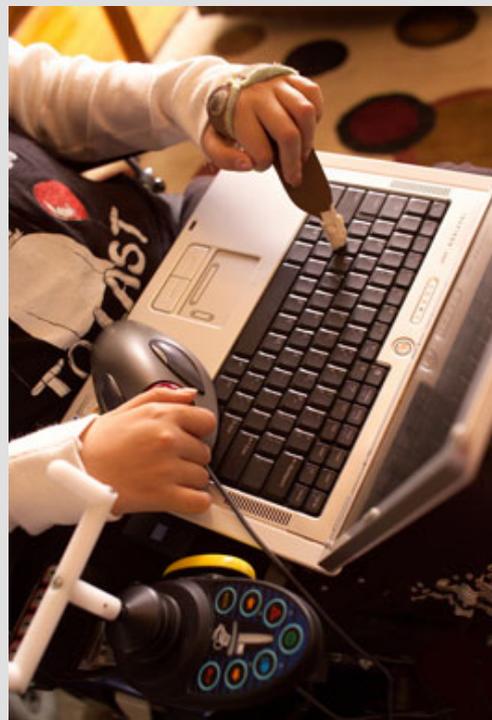
**21% cost \$500 or more**

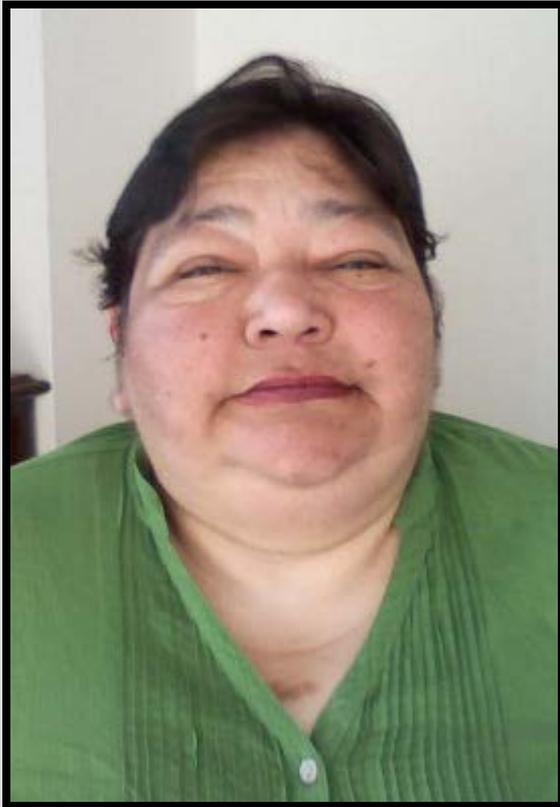
- *Only 1% of accommodations cost more than \$5,000*

*Source: Job Accommodation Survey, October 2010*

# Types of Accommodation

- Assistive tools, devices, personnel
- Exceptions to policies/rules





## Violation of “anti-grazing” policy

- Asst. Store Manager found open bag of chips by her cashier. Reported to Store Manager.
- Loss Prevention Supervisor:  
“Did you eat the chips before paying for them?”

“Yes”

*My sugar low,  
not have time*



# What other information would you want to know?

- Josefina Hernandez, cashier with 18 yr clean disciplinary record
- 13 years - known to have Type II diabetes
- Paid for chips at end of shift
- **FIRED** for violating anti-theft policy





LABOR & EMPLOYMENT LAW

# Walgreens employee fired for eating \$1.39 bag of chips accepts \$180K settlement

POSTED JUL 02, 2014 09:30 PM CDT

BY [MARTHA NEIL](#)



A diabetic woman fired after nearly 18 years on the job for eating a \$1.39 bag of chips before she paid for it has accepted a \$180,000 settlement of her disability discrimination claim.

The settlement by Walgreens with Josefina Hernandez, 57, was [announced Wednesday](#) by the Equal Employment Opportunity Commission, the [San Francisco Chronicle](#) reports.

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July 3, 2014

## Walgreen to pay fired diabetic employee who took bag of chips \$180,000

By [Judy Greenwald](#)

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Photo by Rob Wilson/Shutterstock.com

Walgreen Co. has agreed to pay \$180,000 to settle a U.S. Equal Employment Opportunity Commission disability discrimination lawsuit in which it was charged with firing an 18-year employee with diabetes after she allegedly ate a bag of chips without paying for it to stave off a low blood sugar attack.

Josefina Hernandez developed diabetes about five years after she started working as a cashier at a South San Francisco, California store operated by Deerfield, Illinois-based Walgreen, according to court papers.

Walgreen, which knew about her condition, had allowed Ms. Hernandez to possess candy in case of low blood sugar, keep...

**DISCRIMINATION & HARASSMENT**

### Walgreen's tab for ADA violation: \$180k and a bag of chips

by [Tim Gould](#) | July 3, 2014 | 2 Comments

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A \$1.39 bag of chips has cost pharmacy giant Walgreen Company \$180,000 — in the form of a settlement with a diabetic employee who was fired for taking the chips without permission to stave off an episode of low blood sugar.

# Exceptions

- Poses Direct Threat to Self or Others.
- (Possibly) Egregious and Criminal
- Where disability-related conduct renders person unable to perform essential functions of job

# Attendance

- Person with **obsessive compulsive disorder** – compelled to go through multiple personal hygiene activities before leaving the house – was frequently tardy/absent. The employer disciplined then ultimately terminated the worker.



# Attacks and threats

- Private school teacher was fired from his job due to his mentally ill son's physical attacks and threats against schoolmates and the headmaster. The teacher filed for violation of the ADA on associational grounds. Court ultimately upheld the district court's grant of summary judgment in favor of the employer. (based on a "direct threat" analysis)

# Leave

- Extended leave
  - Problems with maximum leave policies
  - Leave cannot be indefinite
- Return to work
  - Problems with 100% healed policies)





# Oakland Children's Hospital To Pay \$300,000 For Firing Employee With Breast Cancer

February 12, 2015 6:55 AM

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(Ucsf.edu)

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OAKLAND (CBS SF) — An Oakland hospital has agreed to pay \$300,000 to a former employee who claimed she was wrongfully terminated after she was diagnosed with breast cancer more than three years ago, the Equal Employment Opportunity Commission announced Wednesday.

Imelda Tamayo was hired in March 2009 at the endocrinology department of the Children's Hospital and Research Center Oakland, now UCSE Benioff

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## 6 Month Leave Policy

- Request for extended leave can be reasonable accommodation in cases of serious medical illness or injury
- Don't substitute lay opinion about an employee's prognosis for valid medical opinion.

# Reassignment

## The Accommodation of Last Resort

- Employee must be minimally qualified for the job
- Employer is not required to assist the employee to become qualified
- Need not apply/compete for the job

# Reassignment

## The Accommodation of Last Resort

- Look for equivalent jobs first, then lower positions
- Not limited to employees department, job classification or location
- Employer never has to promote
- Employer never has to create position

# How is the right accommodation determined?

*Informal, interactive process between employer and employee.*

- *A good resource is*

*The Job Accommodation Network*

*1 800 526 7234*

- Employer makes final determination for the best R.A. in compliance with the ADA.
- Not required if it would impose an undue hardship

# Disability and Business Technical Assistance Centers DBTACs 1 800 949 4ADA



**1-800-949-4232**

