



ADA Live!

EPISODE 41: TOP 5 ADA TOPICS: NOTES FROM AN ADA SPECIALIST (PART 2)

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Presenters: Nancy Horton, Mid-Atlantic ADA Center

Host: Rebecca Williams, Southeast ADA Center

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

REBECCA WILLIAMS: Good afternoon and welcome to WADA ADA Live! On behalf of the Southeast ADA Center, the Burton Blatt Institute at Syracuse University and the ADA National Network, welcome to the 21st episode of ADA Live.

REBECCA WILLIAMS: Good afternoon and welcome to WADA ADA Live! On behalf of the Southeast ADA Center, the Burton Blatt Institute at Syracuse University and the ADA National Network, welcome to the 22nd episode of ADA Live. My name is Rebecca Williams, and I am the Technical Assistance Specialist for the Southeast ADA Center.

Last month we began a discussion about the top five ADA employment accommodation requests. Our guest speaker was Nancy Horton, Technical Assistance Specialist for the Mid-Atlantic ADA Center. We had a great discussion last month, and Nancy provided so much information that we only made it through the top three employment accommodation requests.

We began Episode Number 21 by discussing the definition of who was a qualified individual with a disability and the reasonable accommodation process, including under what circumstances an employer must provide an accommodation. We then moved to leave, reassignment, and accessible or reserved parking and reasonable accommodations.

Nancy's discussion about leave highlighted attendance and leave policies, leave time limits, return to work issues and a brief mentioning of how leave under the Family Medical Leave Act may come into play when an employee requests leave under the ADA. A couple of key points in Nancy's discussion about reassignment as a reasonable accommodation includes seniority systems, lateral versus a downward reassignment and who decides to reassign a position.

We also learned from Nancy that accessible or reserved parking as an accommodation is not as simple as it seems. One must take into consideration the situations when parking is not provided for employees. Who owns the parking facility being used and maintaining accessible parking meant for customers.

I encourage today's listeners who missed last month's show to check out the ADA Live! Episode Number 21 in our archives at www.ADALive.org.

And now let's continue with our show – “The Top Five Employment Accommodation Requests, Notes from an Employment Specialist” with Nancy Horton, Technical Assistant Specialist with the Mid-Atlantic ADA Center. ADALive! Listening audience, you can submit your ADA employment questions at any time on ADALive.org. Nancy, welcome back to our show.

NANCY HORTON: Thank you, it's great to be here.

REBECCA WILLIAMS: There has been a lot of controversy, Nancy, regarding service animals and emotional support animals. Will you inform our listeners about the differences between service and emotional support animals?

NANCY HORTON: Service animals, there is a lot of terminology around animals that work for people with disabilities or assist people with disabilities. Generally, a service animal is considered an animal that performs some sort of work or task for a person with a disability.

Where an emotional support or comfort animal very often is an animal that just a good natured, not much different from a pet, kind of hangs around with the person with a disability and the person with the disability feels better, gets some benefit from that. But the animal doesn't really do what we would consider work.

REBECCA WILLIAMS: Thanks for explaining those differences. Does an employer have to allow someone to use a service animal in the office as an accommodation?

NANCY HORTON: Possibly. A request to bring a service animal, or an emotional support animal for that matter, into the workplace is approached like any other request for a reasonable accommodation, the decision is based on whether the request can be

reasonably granted or would impose an undue hardship for some reason - all of the same kinds of factors and the process is really not fundamentally different from other types of accommodations.

REBECCA WILLIAMS: For clarity, I want to recap what you just said, Nancy. An employee with a disability can request to have either a service animal -- that is that a dog specifically trained to perform a service, job or task -- or an emotional support animal in the workplace. Are there any differences between service animals that people use in the general public and animals used within the workplace?

NANCY HORTON: There certainly can be. There certainly are fundamental differences in the way animals are approached in terms of Title I of the ADA and reasonable accommodation, particularly as opposed to provisions of other parts of the ADA or even other laws that address the use of animals by people with disabilities in various settings.

For example, Title II and Title III of the ADA are regulated by the Department of Justice which defines and addresses service animals very specifically under those titles that covers state and local government programs and many types of private businesses in relation to the general public.

But the EEOC doesn't address animals under Title I with any kind of specificity at all. They don't define service animals or support animals or assistance animals or anything like that. It's a reasonable accommodation and that issue is approached in the very same individualized and situation-specific kind of way that we have been talking about.

REBECCA WILLIAMS: Thanks for the clarification, Nancy. So, service animals in employment situations are not viewed the same as service animals within state and local government, which is Title II under the ADA, and that businesses or places of commerce would fall under Title III of the ADA.

Now I have a couple more service animals as workplace accommodation questions

Generally, people who use service animals can only be asked if the dog is a service animal and what it has been trained to do. Is this the same in the employment situation?

NANCY HORTON: No. Absolutely not. Because that kind of language, the two questions, really comes from the Department of Justice's regulations for Title II and Title III and that's not what controls in the employment environment.

The EEOC's regulations control in the employment environment where an employer has the right to get documentation from a qualified professional to establish that the

person has a disability and needs the animal. If either or both of those things are not obvious or already known, then the employer has the right to ask for that documentation and get it. And the animal in the employment context doesn't need to meet some definition or criteria established under some other part of the ADA or some other law.

REBECCA WILLIAMS: Thanks, Nancy. I have one more question under service animals. Under the ADA, the definition is a dog that has been specifically trained. Are there any restrictions regarding the types of animals that someone can have at a job site as a reasonable accommodation?

NANCY HORTON: Not per se. The basic limitations on reasonable accommodation will apply. The language -- it's a dog and it has to be trained and all of that -- is Department of Justice, Title II, Title III. That's not Title I. But certainly the obligation, the reasonable accommodation obligation, is not an unlimited one. Undue hardship comes into play. Direct threat could potentially come into play. Direct threat isn't something we talked about, but that means a significant risk of substantial harm to health or safety in the workplace based on objective evidence and not on assumptions and stereotypes and so forth.

Consideration of direct threat is technically related to the person, the person with the disability and the employment context, and not an animal. But if a person's use of an animal somehow created a direct threat that could be considered. There certainly are considerations and limitations but there is no per se definition or limitation on the type of animal or what purpose it might serve for someone with a disability in the workplace.

REBECCA WILLIAMS: Thanks, Nancy, for explaining the role of service animals in the workplace as one type of reasonable accommodation. I would like to pause now for a word from our sponsors.

ADA Live! listening audience, if you have a question about employment and reasonable accommodations, you can submit it at any time at our online forum at ADALive.org.

VOICE-OVER ANNOUNCER: The Southeast ADA Center is your leader in providing information, training and guidance on the Americans with Disabilities Act and disability access tailored to the needs of business, government and individuals at local, state and regional levels. The Southeast ADA Center, located in Atlanta, Georgia, is a member of the ADA National Network and serves eight states in the Southeast region.

For answers to your ADA questions, contact the ADA National Network at 1 800 949 4232.

REBECCA WILLIAMS: Welcome back to ADA Live!. On our show on the top five employment accommodation requests. Our guest today is Nancy Horton, Technical Assistance Specialist with Mid-Atlantic ADA Center.

Our last most commonly requested work site accommodation request pertains to job related tests or training. Could you talk with us about that for a little bit?

NANCY HORTON: Well, you know, that's an area we tend to get a lot of questions about and we tend to see a lot of confusion about that. What we hear is that we don't want to give the person with the disability an unfair advantage in this process. And I often tell folks if you are giving testing accommodations that gives a person with a disability an unfair advantage, you are doing it wrong because that's not the purpose of accommodations.

Accommodations should be designed to give people with disabilities equal opportunities, not unfair advantages or guarantees of success. Testing accommodations should only mitigate or eliminate disability related limitations that would interfere with a person's ability to produce meaningful test results.

So, for example, a lot of tests are given in a written format, printed on a piece of paper or you pull up a computer screen. People have to read this written material to take the test. But maybe the purpose of the test is really just to measure whether the person can do some sort of mathematical calculations. Not - the test isn't to measure how well they can read.

So it might make sense to accommodate someone who is blind or has low vision by reading that material out loud to them and writing down or entering their answers for them, or something of that nature -- providing some assistive technology for them to do that on a computer or something. And you will get test results that are meaningful. You will find out if that person can do the math and that's what you are really trying to find out. You know, not trying to find out if they can read. So that's the way testing accommodations should be approached. You don't want to eliminate the validity of the test results. You want those results to be meaningful.

But I really encourage employers to think about tests in the broader sense, what tests they are giving to applicants or job candidates. Make sure that you are giving tests that really are well designed to measure the skills or the knowledge that you really need to measure that are job related that give you information that you really need to evaluate job candidates or employee performance.

REBECCA WILLIAMS: So, Nancy, it sounds as though providing needed accommodation for job testing is part of leveling the playing field that is an integral concept of the ADA. Here is my next question. Sometimes employers sponsor training but that training is actually provided by outside organizations or agencies. In this situation, Nancy, who is responsible for providing a test accommodation when needed?

NANCY HORTON: They may both have responsibilities, but again it's always the employer who has the direct responsibility to provide reasonable accommodations to their employees.

An outside organization may have obligations of their own to their customers under another part of the ADA or some other law, for example. But whether that organization meets those obligations or not, doesn't change the fundamental relationship between the employer and the employee, that employment relationship.

I always recommend if the employers are actually hiring an outside firm, entering some kind of a formal arrangement or contract with a training provider to train their employees, that they address these kinds of issues in their negotiations. Establish that in their agreement, in their contract, who is going to do what, who is going to be responsible for accessibility issues accommodation issues. So that things can go more smoothly.

Sometimes employers merely send one employee to some event or training program that is being offered at a firm or a school or something of that nature. And again, that organization, that school may have obligations, but bottom line is, if the employee needs something to go to that training and that outside organization can't or won't provide it, the employer needs to consider that in terms of potential or reasonable accommodation.

REBECCA WILLIAMS: Nancy, I want to thank you for sharing your experiences with the top five job accommodation requests with our listeners today. ADA Live! listening audience, if you have a question about employment and reasonable accommodations for employees, you can submit it at any time in our online forum at ADALive.org. And now, a word from our sponsors.

VOICE-OVER ANNOUNCER: The Mid Atlantic ADA Center, administered by TransCen Incorporated, serves the states of Delaware, Maryland, Pennsylvania, Virginia and West Virginia, as well as the District of Columbia. Our staff and expansive network of affiliates provide information, materials and a variety of training programs ranging from webinars to workshops. Additionally, our information specialists are available to respond to specific questions from businesses, architects, employers and

other individuals interested in the Americans with Disabilities Act. Call 1 800 949 4232 with your questions.

REBECCA WILLIAMS: Welcome back to ADA Live! and our show on the top five employment accommodation requests. Our guest today is Nancy Horton, Technical Assistance Specialist with the Mid-Atlantic ADA Center. Nancy, I know you addressed the top five reasonable accommodation requests by employees, however I would like to sneak in one more question.

Advances in technology seem to be making it more and more common for people to work from home. Briefly tell us how this may come into play in terms of reasonable accommodation for workers with disabilities.

NANCY HORTON: Well, it is becoming more common both for workers with and without disabilities. Lots of employers are implementing various work at home options. Sometimes they call it telework or telecommuting or flexy place or all of these terms you might hear these days. And certainly, where employers offer these options workers should have the opportunity to participate in ways that are comparable to similarly situated workers. But even if an employer does not routinely allow people to work from home or remote locations, workers with disabilities may need to be allowed to do so as a reasonable accommodation. If that need is related to their disabilities and it's reasonable, doesn't create an undue hardship and all of these things, then it may be required.

I mean, obviously there are many, many jobs in the world that can't be done remotely, but there are many that can be at least to some extent, like maybe a day or two a week or during certain times.

So we tend to find this coming into play more and more often and sometimes it does overlap with some of these other types of accommodations. Telework can be another tool in the reasonable accommodation toolbox and sometimes it can be combined with other tools like flexible scheduling or leave or part-time work as part of a successful stay at work or return to work strategy.

REBECCA WILLIAMS: Thank you, Nancy for that thrown in question there at the last minute.

At this time, I would like to thank Nancy Horton from the Mid-Atlantic ADA Center for being our guest speaker last month during which we discussed leave, reassignment and accessible, reserved or designated parking as employee accommodations, and for completing our show on the top five employee accommodation requests today. You have covered such a great deal of valuable information the past two shows, Nancy.

Thank you also to our ADALive! listening audience. The Southeast ADA Center is grateful for your support and participation in this series of WADA, ADALive! broadcasts. You may submit questions about any of our ADALive! topics by going to our website at adalive.org. If you have questions about the Americans with Disabilities Act, please contact your Regional ADA Center at 1 800 949 4232. Once again, that's 1 800 949 4232. All calls are free and confidential.

Learn more about the ADA at the National ADA Symposium taking place May 14 through 17 in Chicago. The ADA symposium is the most comprehensive affordable conference on the ADA in the United States. This four-day event features over 70 diverse breakout sessions, interactive discussion forums, content rich pre conference workshops and keynotes from nationally recognized experts. This is the conference you can't afford to miss to stay current on the ADA implementation strategies and best practices. Registration opened on January 6 and spaces are expected to fill up quickly. Learn more and register for the 2017 National ADA Symposium at www.ADAsymposium.org. That's www.ADAsymposium.org.

We hope you'll join us next month on ADALive when we will be talking with Pamela Williamson and Corinne Gilliam about food allergies and The Rights of Individuals with Allergy-Related Disabilities Under the ADA. See you then!

VOICE-OVER ANNOUNCER: Thank you for listening to ADA Live! Talk radio. Brought to you by the Southeast ADA Center. Remember to join us the first Wednesday of each month for another ADA topic, and you can call 1-800-949-4232 for answers to your ADA.

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