

0:4:37.640 --> 0:4:56.670

Barry A Whaley

Umm as Faith said, I'm Barry Whaley. I work for the Burton Blatt Institute at Syracuse University. The Burton Blatt Institute is an international disability research law and policy center within the College of Law. But we are an interdisciplinary center. Next slide, please.

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Barry A Whaley

So just as a disclaimer, this presentation is funded by NIDILRR, the National Institute on Disability Independent Living and Rehabilitation Research.

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Barry A Whaley

It's part of the administration on community living within the Department of Health and Human Services. So we are funded every five years in five year funding cycles. We are one of 10 centers that make up what's called the ADA National Network. So each each region of the country corresponding with the HHS regions have a umm Americans with Disabilities Act center, similar to ours. Uh, two things I want you to know. Number one is under our grant with NIDILRR. We cannot provide a legal opinion, nor do we have any enforcement responsibilities under the ADA. So we exist to do 4 things. We provide technical guidance. So should you ever have a question about the ADA, perhaps your rights have been violated or someone's rights Who you represent have been violated. You can call our 800 number. It's 1-800-949-4232 and be put in touch with one of our technical experts. We also provide training. That's why I'm here today.

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Barry A Whaley

Additionally, we provide electronic and print guidance on the law and then we conduct research. Our current research, we are looking at the intersectionality of race and disability as it applies to three ADA themes, short and long term poverty, employment, and access to digital technology. Next slide, please.

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Barry A Whaley

So. What is the ADA? Well, the ADA is a landmark civil rights law that guarantees equal opportunity equal treatment for people with disabilities or people who might have an association or relationship with somebody who has a disability. So one of the first misconceptions about the ADA is that the general public think believes that it is a law of preferential treatment, and it is not. It is a law of equal opportunity. It is powerful civil rights law.

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Barry A Whaley

Uh, it was passed in in 1990, but it has roots in the Rehabilitation Act of 1973 and in the and so as an extension of the rehab Act, we get the ADA next slide.

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Barry A Whaley

So often the general public, when they think of the ADA, what do they think of? They might see an accessible restroom or an accessible parking place at their local Kroger, but really there are five titles to

the law and for our purposes today we are going to focus on the employment protections of the ADA. That's title one. But just so you know, the other titles include title two, public entities and transportation. What do I mean there? I mean, state and local government.

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Barry A Whaley

Transportation providers, they are covered under title two of the law. Title Three are places of public accommodation and commercial facilities. So that's banks. As a restaurants, grocery stores anywhere where the general public goes to access goods and services is a place of public accommodation and they are covered under title three. Title Four are the telecommunications provisions. That's what gives us closed captioning.

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Barry A Whaley

Uh. It also gives us TTY TTD relay services, video relay services, then title five of the technical provisions of the law, which includes who has enforcement responsibility for each of these titles.

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Barry A Whaley

Next slide please.

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Barry A Whaley

So many people don't know that the ADA was amended in 2008.

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Barry A Whaley

In this picture, we see President George W Bush is father to his right. Other dignitaries, including Senator Tom Harkin, at the signing of the ADAAA and the ADAAA was necessary because what we saw almost immediately from the passage of the ADA in 1990, as we saw the courts begin to narrow the definition of disability to the point where.

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Barry A Whaley

People had to prove that they had a disability.

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Barry A Whaley

Rather than that they were the victim of discrimination. So, UM, Congress in in the the mid 2000 said no you you you really don't understand what we mean here. What we mean is a broad interpretation of what disability is and an interpretation of mitigating measures and episodic conditions and that people who are regarded as having a disability. So the ADAAA was passed to restore the intent of the ADA next slide please.

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Barry A Whaley

So we also need to keep in mind that most disability is not obvious, right? We think about what is the number one condition that leads to disability number one in this country is arthritis, but it might also

include people who have intellectual and developmental disabilities, people who have HIV or AIDS or seizure disorders. These are invisible disabilities, but unless we consider that even though the disability is invisible.

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Barry A Whaley

It does impact some of these daily life without considering that all it does is lead to misunderstandings and and greater stigmatization.

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Barry A Whaley

Next slide.

0:11:3.660 --> 0:11:25.700

Barry A Whaley

So when we talk about disability, what what exactly are we talking about? And we need to keep in mind that disability is a legal term, not a medical term under the ADA. So the ADA defines disability as a physical or mental impairment that substantially limits one or more major life activities.

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Barry A Whaley

Next slide.

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Barry A Whaley

So as I said, we're gonna focus on Title 1, the basics. So under title one, the employment protections, employers cannot discriminate against people who have disabilities in any employment, practice or term, any condition or privilege of employment. And this covers all aspects of the employment process, not just while somebody is on the job.

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Barry A Whaley

So the protections of the ADA could begin before anybody ever sits down for an interview. Perhaps you need an accommodation. Maybe you need an interpreter, an ASL interpreter, in order to participate in the job interview. Well, you can make that accommodation request before you've ever become an employee, and we're going to talk a little later about those 3 stages of employment because they they're they're very important. And at certain points.

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Barry A Whaley

The the protections or or the responsibilities. I should say that employers have changes over time, but we need to keep in mind this. This includes all aspects of the employment process so you know, years ago when I did supported employment services.

0:12:43.630 --> 0:13:3.240

Barry A Whaley

Umm, you know, I had a guy that that was working at a place and there was there was a mandatory staff meeting on Saturday morning where all the staff got together and it was kind of a a team building

activity and the supervisor said Ohh you don't need to worry. John doesn't need to come to that well.

0:13:4.670 --> 0:13:23.170

Barry A Whaley

That's a condition or privilege of employment, and John needs to be included. He should not be excluded under those circumstances, so we need to keep in mind that employers cannot discriminate against any against people, disabilities in any employment practice. Next slide please.

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Barry A Whaley

So there are three prongs of disability determination. And again, remember that ADA defines disability as a legal term, not a medical term. So the first prong of disability determination is that, you know, seems pretty obvious, right, that you have a disability and that disability impacts one or more major life activities.

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Barry A Whaley

So the first prong is you have a documented disability, the second is you could have a record of having a disability. So what do I mean by that? Well, here's here's one instance. Let's say that.

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Barry A Whaley

I have been.

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Barry A Whaley

A.

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Barry A Whaley

That that at one time I was addicted to opioids and I entered a treatment program and now I'm in medically assisted treatment and I have recovered from my my opioid addiction. Well, I'm no longer addicted to opioids, right. But I have a record of having that addiction in the past. And consequently, I have protection under the law. This would include somebody who maybe had a cancer diagnosis in the past and that cancer is.

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Barry A Whaley

Is cured or in remission then, although you are no longer impacted by having cancer at one time, you have a record of having cancer and you may have protection under the law.

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Barry A Whaley

The third prong of disability determination is being regarded as having a disability. So what do I mean? There are couple of things, you know, maybe.

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Barry A Whaley

At one time you were in a car wreck and you have some sort of disfigurement and you believe that an employer took an adverse employment reaction.

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Barry A Whaley

And adverse employment action against you because of that perception of disability, then you may have protection under the law and you know, we saw this last year.

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Barry A Whaley

Jada Pinkett Smith, right, so she has alopecia. And although it does not impact a major life activity for her.

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Barry A Whaley

She could be regarded as having a disability based upon her appearance, so those are the three prongs of disability determination. And that third prong focuses less on the extent of the the actual impairment, but more on perceptions that people have about you. Next slide please.

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Barry A Whaley

So we need to keep in mind that the ADA there are some exemptions, and the first is that if you are a private employer and you have fewer than 15 employees, then you are exempt from the ADA.

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Barry A Whaley

So small employers, 14 or fewer employees are exempt from having to comply with the ADA.

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Barry A Whaley

The second one's kind of surprising, right? Federal government is exempt. Why is the federal government exempt?

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Barry A Whaley

Well, because federal government is covered under the Rehabilitation Act of 1973, so in that circumstance, yes, the federal government has to comply, but they're complying with the rehab act and not the ADA corporations that are fully owned by the US government. So what do I mean? There could be the FDIC, for instance, or it could be.

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Barry A Whaley

Excuse me, could be the Postal Service. Those are corporations that are owned by the US government but not but are not government entities.

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Barry A Whaley

Umm, private membership clubs are exempt and I what I mean here I don't mean like the Kiwanis Club or or the Lions Club or something like that, but you, you know for instance the, the, the, the club around the corner from my house that I can't be a member of because I'm on a long waiting list.

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Barry A Whaley

That that the membership is exclusive, they just don't open it up to everybody. They limit the number of people who could join that, would they, they are exempt from complying with the ADA. U.S. government executive agencies.

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Barry A Whaley

The 573 tribal nations, uh, the indigenous populations of this country, those recognized tribal nations, the tribal governments are exempt from the ADA.

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Barry A Whaley

With that said, you, you know, we're not gonna get into this, but there's some grey areas. What if it's a federal building built on tribal land, for instance? What are the obligations? So. But anyway, in general, tribal nations are exempt. And then finally, businesses in a foreign country.

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Barry A Whaley

Uh, US businesses, if complying with the ADA, would violate some sort of foreign law, they are exempt as well. Next slide.

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Barry A Whaley

So when we talk about ADA title One, we're talking about people who are qualified and this is an important term in in the law. So we say an employer cannot discriminate against qualified applicants and employees based on disability. So what makes somebody qualify? Well, they have the skill, the education, the experience, they they have the training to do that job and and you know we put this right on the job application, right that we can.

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Barry A Whaley

For that, that person can perform the essential functions of a job, with or without reasonable accommodation. So again, the key point here is that you have to be qualified. You have to have the skill to do that job in order to have protection under the law, and that you can do the the job. The essential functions of the job, with or without reasonable accommodation. So next slide, please. What are the essential functions?

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Barry A Whaley

Umm.

0:19:26.970 --> 0:19:53.840

Barry A Whaley

Go ahead. There we go. So, so we essential functions are the reason why the job exists. They it is. It is the the reason that you know. If I let me put it this way so let's let's say that I own walley's widgets and I hire people to build widgets for me every day. That's the essential function of the job is to build those widgets.

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Barry A Whaley

And so the question is asked, can you perform doing those widgets with or without reasonable accommodation? So what is a reasonable accommodation?

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Barry A Whaley

Well, anytime that we change the work environment or how the work is done, that results in equal opportunity for somebody with a disability. We have granted what's called a reasonable accommodation.

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Barry A Whaley

Title 3. Businesses and I'm I'm sorry. Let me let me back up. I misspoke. So under title one and employer has to make a reasonable accommodation to a known physical or mental impairment.

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Barry A Whaley

Unless the business could show that the accommodation causes undue hardship, so the keyword here is no, you know, I've known a lot of employers throughout my life and I have never known one to be a mind reader. So what do we mean by known? It means that you have to disclose your disability and the need for accommodation in order to in in order to get a reasonable accommodation.

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Barry A Whaley

Next slide please.

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Barry A Whaley

So here here's my 9, my non exhaustive list of some reasonable accommodations to consider.

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Barry A Whaley

You know, perhaps someone is blind or low vision and requires screen reader or audio text technology or jaws in order to do their work. Then that would be a reasonable accommodation in in, in my family we we have a history of macular degeneration and my brother Dave.

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Barry A Whaley

A had had macular degeneration, was able to continue working over the last years of his life because he had screen reader technology.

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Barry A Whaley

Perhaps we're changing uh, making a change in work, schedule one of my employees has a mental health diagnosis, and she takes some pretty heavy duty psychotropic medication in the morning.

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Barry A Whaley

Uh, and she just does not function well, you know, first thing in the morning, our our standard work day.

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Barry A Whaley

Uh is is 9 to 5.

0:22:13.550 --> 0:22:39.740

Barry A Whaley

Uh, we have made an inch an adjustment that she begins her day at 10 so that she can take that medication and she can clear her head and she can then go to work at 10:00. O'clock. Now, does that mean that she leaves at 5? No. That means she's working later into the evening. That's the accommodation. As we have adjusted her schedule, but she is still performing her essential job functions.

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Barry A Whaley

Changes in break time. You know, I used to work with a lady who had Crohn's and and required additional breaks. You, you know, who knew before the pandemic?

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Barry A Whaley

That, that we'd all be working from home or that we would do it so successfully, but working from home is a job accommodation using job aids. You know if and when we think about accommodations, most accommodations cost \$500.00 or less. But perhaps we need to purchase some sort of job aid in order for somebody to do the essential job functions. Next slide please.

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Barry A Whaley

Changes in work location. You, you know, we saw this especially during the pandemic or in the the you know 202021 and early in 22 where we were making adaptations to work locations in order to accommodate people to keep them safe.

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Barry A Whaley

Changes in in the work environment is another typical accommodation.

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Barry A Whaley

Uh, you know, if somebody has some environmental sensitivity, then we might wanna change that work environment, changing equipment elimination or the exchange of marginal job tests. So what do I mean there? Because we've talked about what are the essential functions of the job, the reason why the job

exists. But there are also marginal or tertiary job functions. We don't have to accommodate the an employer does not have to accommodate those marginal or tertiary job functions.

0:24:16.480 --> 0:24:20.350

Barry A Whaley

They can go away. They can be given to somebody else or they can be eliminated.

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Barry A Whaley

Now, these last two, reassignment and leave uh, according to the EEOC, reassignment to a lateral job position or granting leave can.

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Barry A Whaley

You you know our possible, but they should be considered accommodations of last resort. You exhausted all other attempts at accommodation.

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Barry A Whaley

Next slide please.

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Barry A Whaley

So who has rights under the ADA? It's not just people who work full time.

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Barry A Whaley

It could be, as I mentioned before, pre employed applicants could be full time employees. It can also include part time employees, seasonal employees and people who come to work through attempt service. So temporary workers are also covered under the ADA and would have protection.

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Barry A Whaley

OK, next slide.

0:25:21.10 --> 0:25:38.780

Barry A Whaley

So again, we've talked about this, the essential functions of the job. It's the reason why the job exists. The very few people are trained to do that job. The function is highly specialized and the employer hires people specifically because of their expertise.

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Barry A Whaley

And again, we go back to this thought of employers only make accommodation for a known disability. So in order to.

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Barry A Whaley

No, in in in order to get an accommodation you have to disclose your disability and that is a very, very

personal decision and it's not one that should be made lightly. So if you are an employment professional, for instance, your role is not to out somebody, not to to say, hey, you know, I, I I represent somebody with a disability and I've got this guy who has intellectual disability. No.

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Barry A Whaley

That's not your role to disclose disability. Your role is to support the decision of the person with a disability, whether they choose to disclose or not.

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Barry A Whaley

And I'm sorry, go ahead and go to the next slide if you would please.

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Barry A Whaley

So you never have to disclose your disability unless you need a reasonable accommodation. And I've known many people whose lives are impacted by disability who have never asked for an accommodation because they are able to perform the essential job functions without the need for accommodation. So.

0:27:2.780 --> 0:27:34.790

Barry A Whaley

Again, what is our role in in disclosure, our role is to support the decision whether or not somebody chooses to disclose their disability and it should be when you first meet somebody that you're gonna be representing for the first time, that should be part of the initial discussion, right? Look, this is gonna come up. Disability is, you know, because I work for this agency and we help people with disabilities find jobs. It's out there. Let's talk about how we can disclose your disability.

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Barry A Whaley

In a respectful way.

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Barry A Whaley

That's what your role becomes. Now again, you never, never, never have to disclose your disability unless you are in need of accommodation. Now I'm gonna contradict myself because every once in a while I just kind of like to do that because I wanna draw a distinction between disclosure of disability and self identification.

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Barry A Whaley

Because we put on on, you know, many applications.

0:28:4.890 --> 0:28:12.320

Barry A Whaley

You, you know, do you have a disability now? Why would an employer put that on a job application? Well.

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Barry A Whaley

It is an invitation from the employer to voluntarily check a box. It says you have a disability now, why would you want to do that if you don't need accommodation? Well, here a couple of examples. Perhaps the employers, a federal contractor, and they are under the 7% utilization goal that the federal government has under section 503 of the Rehab Act to work towards 7% of their workforce being people with disabilities under that circumstance.

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Barry A Whaley

There, you know, those employers are looking to hire people with disabilities in order to show the federal government they're working toward the 7% goal. Here's another example. Let's say that I am a disabled veteran, and I applied to go to work at a place.

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Barry A Whaley

Where they have a policy of preferential hiring of veterans with disabilities, it's an affirming an affirmative action program in place. So under this scenario, it might be in my best interest to disclose my disability because it's going to allow for preferential hiring, but we need to remember there is a distinction between self identification.

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Barry A Whaley

Which is voluntary.

0:29:29.940 --> 0:29:32.470

Barry A Whaley

And disclosure of disability, which is.

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Barry A Whaley

Which which is a a, A well thought out process. Next slide.

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Barry A Whaley

So why would somebody want to disclose their disability? I've already talked about one, you know, maybe there's there's an affirmative action or preferential hiring, but here are some other reasons. So, you know, the person has an obvious disability and they want to address that heads on. If somebody's a wheelchair user, then if they, they may choose to disclose immediately because it's an obvious disability. Again, as I mentioned at the start, maybe somebody needs an accommodation to participate in the job interview.

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Barry A Whaley

UM.

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Barry A Whaley

#3, as I mentioned, is the competitive advantage #4 is bringing their whole self to work. So you you know.

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Barry A Whaley

When we think about disability.

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Barry A Whaley

And when we think about the social model of disability, you know, I I my my wife often accuses me of of, of living in kind of a disability bubble because.

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Barry A Whaley

You know, in my opinion, disability should be celebrated. Disability is part of the human condition. We need to keep in mind that we are all just temporarily abled. We are all one accident, one medical procedure, one birthday away from a acquiring disability. So.

0:31:0.920 --> 0:31:19.910

Barry A Whaley

Disability should be something that's celebrated. It's it's part of us and I have a very, very good friend of mine who is an autistic. She's not a person with autism. She will tell you immediately. You're with is my problem. She is an autistic and she prefers to bring her whole self to work, which means.

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Barry A Whaley

Autism is part of who she is. It's not all who she is. She, you know, she's she's.

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Barry A Whaley

You, you know, a wife. She's a coworker. She has all these other roles. All these other identities.

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Barry A Whaley

But one of our identities is being an autistic and she wants to bring her whole self. That's her choice.

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Barry A Whaley

Finally you, you know, you might have a job coach. Somebody needs a job coach in order to participate in the interview process or to be trained. So we, you know, we may want to disclose our disability as the reason why we have an employment specialist or a job coach with me. And the other thing that you need to keep in mind that we haven't mentioned yet when we're talking about reasonable accommodation, employment specialists, job coaches, according to the EEOC.

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Barry A Whaley

They are a reasonable accommodation and they cannot, you know, an employer can't say no. I don't. I don't want you. You, you know, at my business.

0:32:25.810 --> 0:32:26.300

Barry A Whaley

If if.

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Barry A Whaley

You know, certainly we we we want people to be trained in the to do their job in the most typical way possible. But the presence of a job coach could be one way of doing that. Next slide please.

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Barry A Whaley

So.

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Barry A Whaley

Although businesses may have.

0:32:47.400 --> 0:32:48.890

Barry A Whaley

Uh processes.

0:32:50.780 --> 0:32:51.230

Barry A Whaley

Umm.

0:32:52.170 --> 0:32:59.730

Barry A Whaley

And somebody had mentioned something about Judy. Uh, yeah. UM, I've had that conversation with her before. We can talk about that later.

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Barry A Whaley

So.

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Barry A Whaley

Although there may be processes in place for UM, disclosing disability and seeking accommodation put in place by the employer.

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Barry A Whaley

The ADA itself does not require a standardized form or a basic set of information. According to the ADA, you can make your request verbally, or you can write a letter, or you can e-mail somebody or somebody who you trust. Maybe a coworker or an employment specialist could make the accommodation request for you.

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Barry A Whaley

Next slide.

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Barry A Whaley

So employers have responsibilities when when someone has disclosed their disability and the need for accommodation first is to recognize that an accommodation request has been made, you, you know, you don't have to say I'm I need an accommodation. There's no magic words you could say I need help with my job or I'm having some problems here that would trigger.

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Barry A Whaley

For the employer that a request is being made for accommodation, so then what is the employer's responsibility, the employment the employer is then responsible for entering into what is called the interactive process, which is just a big term for sitting down and having a frank conversation with the person who has a disability. What are the problems? What may be some ways we can accommodate you? Maybe what's worked in the past?

0:34:39.60 --> 0:34:51.890

Barry A Whaley

You know, because we always need to keep in mind that the that when you've met one person with a disability, you've met one person with a disability and disability impacts all of us very, very differently and.

0:34:53.40 --> 0:35:8.910

Barry A Whaley

What you you know what works in in regard to an accommodation for one person may not work for another. So it's very important to have this interactive process, this conversation, to figure out what might work best. And we need to keep in mind that.

0:35:10.760 --> 0:35:33.970

Barry A Whaley

It's not always an exact science, right. Sometimes, yes, we find the the accommodation right the first time, but sometimes it takes some tweaking or sometimes it it needs to to to to take some some rethinking on our part ahead of Guy who was a friend of mine who is just brilliant. He was a rehab tech and he always told me start with a brick.

0:35:34.750 --> 0:35:52.230

Barry A Whaley

So what? What did he mean by that? Well, what he meant is, is that you, you know, don't don't put the \$5000 accommodation in place to get a door to stay open when you could put a brick there and and solve your problem. So always start with the simplest accommodation.

0:35:53.500 --> 0:35:59.290

Barry A Whaley

Employers have a responsibility to confirm the existence of a disability so they can ask for.

0:36:1.330 --> 0:36:4.600

Barry A Whaley

Documentation of the person's disability now.

0:36:6.790 --> 0:36:38.220

Barry A Whaley

The this becomes, you know, pretty interesting situation because you know we live in a very litigious society and P and employers believe I need to get every bit of information on this person's disability in order to cover myself. Well, they do not. They only need documentation of the particular disability that is in need of accommodation. So somebody may have 2, 3, 4 disabilities.

0:36:38.480 --> 0:36:58.70

Barry A Whaley

But if only one requires accommodation, then that employer is only allowed to have access to that documentation for the accommodation request. Employers have a responsibility to determine are we talking about those essential functions of the job, or are we talking about marginal functions?

0:36:59.260 --> 0:37:28.890

Barry A Whaley

Employers, as we said, should investigate solutions as part of this interactive process. Employers should implement the accommodation document and revisit because I will tell you that an accommodation that maybe worked for somebody in 2017, if you have a progressive disability, may not work in 2023. So we always have to revisit the the the accommodation to make sure that it is still effective.

0:37:29.270 --> 0:37:30.250

Barry A Whaley

Next slide please.

0:37:34.420 --> 0:37:52.330

Barry A Whaley

So we've already talked about this. You the employer does have a right to request documentation, but under the law what it says is it must be job related and consistent with the business and necessity. So again, you can't go scatter shot and get all the documentation in the world.

0:37:54.560 --> 0:38:2.490

Barry A Whaley

Employers have an obligation to keep that documentation confidential. So, for instance, you you're not going to put.

0:38:3.410 --> 0:38:11.540

Barry A Whaley

Disability documentation or accommodation requests in in in a same file as you would someone's personnel record.

0:38:12.520 --> 0:38:19.350

Barry A Whaley

It needs to be kept in a secure file, encrypted, separate from the employees work file.

0:38:20.500 --> 0:38:21.150

Barry A Whaley

Next slide.

0:38:24.940 --> 0:38:51.590

Barry A Whaley

We need to keep in mind that when we, when an employer grants an accommodation, it does not eliminate the essential functions of the job or reduce the performance standards. So let's go back to my example of walley's widgets, right? So let's say that when I train somebody to do Whaley's widgets, they have to produce 20 widgets a day. Somebody comes to me and says I'm having trouble with my job. I'm not getting all my widgets done.

0:38:52.580 --> 0:38:53.0

Barry A Whaley

Well.

0:38:54.290 --> 0:39:0.160

Barry A Whaley

My obligation, then, is to figure out a way for you to get those 20 widgets done a day.

0:39:0.930 --> 0:39:24.580

Barry A Whaley

We're not. I can't say. Hey, you know, you only have to do 16 widgets a day. Everybody else can do 20. You just have to do 16. No, that's, you know, the essential function of the job is 20 widgets. And by saying you're only doing 16, you're reducing the performance standard. You don't have to do that when granting an accommodation. You should not do that. Next slide.

0:39:29.540 --> 0:39:54.130

Barry A Whaley

So there's an employer have to honor every accommodation request now if it creates an undue hardship for the business. If it's too costly, if it's disruptive, or it fundamentally changes the essential job functions or it's dangerous or illegal, then that employer would not have to accommodate that individual.

0:39:55.380 --> 0:39:56.40

Barry A Whaley

Next slide.

0:39:59.290 --> 0:40:0.360

Barry A Whaley

So employers.

0:40:2.510 --> 0:40:14.360

Barry A Whaley

Can engage in what's called disability inquiry and what do I mean here? It's a question series of questions to find out about somebody's disability or their related medical condition. Next slide.

0:40:17.910 --> 0:40:19.750

Barry A Whaley

We need to keep in mind that that.

0:40:20.730 --> 0:40:29.790

Barry A Whaley

Disability inquiry looks different in the three phases of employment, so in preemployment before an offer has even been made.

0:40:30.190 --> 0:40:34.600

Barry A Whaley

Uh, you an employer cannot ask about somebody's disability.

0:40:36.30 --> 0:40:52.710

Barry A Whaley

After a job offer has been made but before somebody begins work that's pre employment, post offer. Yeah, an employer can ask about your disability, but only if that same inquiry is made to all candidates in that particular job category.

0:40:53.800 --> 0:41:17.80

Barry A Whaley

And then finally, the third stage of employment of the employment process is employment. When you're on the job and at that point, disability inquiry can only be made if it's job related and it's of a business necessity. But again, keep in mind you always reserve the right you as the employee, whether you choose to disclose your disability.

0:41:18.240 --> 0:41:18.930

Barry A Whaley

Next slide.

0:41:21.300 --> 0:41:31.590

Barry A Whaley

So what can employers ask? They can ask about your general well-being. They cannot ask about a non disability related impairment. Whether you can do the essential job functions.

0:41:33.110 --> 0:41:36.120

Barry A Whaley

An employer can ask about whether you've been drinking alcohol.

0:41:37.60 --> 0:41:40.990

Barry A Whaley

Or you're currently illegally using drugs.

0:41:42.670 --> 0:42:13.460

Barry A Whaley

And there's another presentation that I do that that, uh, if if you have the opportunity or perhaps you'll invite me back, what are the employment protections for people with alcohol and substance abuse disorders? Because it looks very differently how the ADA treats people with alcohol use disorder versus how the ADA treats people with illegal drug use. You can ask about.

0:42:13.550 --> 0:42:18.940

Barry A Whaley

Somebody's due date. If they're pregnant, you can ask emergency contact information. Next slide, please.

0:42:22.910 --> 0:42:28.640

Barry A Whaley

Now what can employers ask they they cannot ask if you have or have had a disability.

0:42:30.10 --> 0:42:31.80

Barry A Whaley

They can't ask.

0:42:32.690 --> 0:42:45.90

Barry A Whaley

Of for medical documentation or genetic information, they can't ask about your prior worker compensation history, and they can't ask about your past prescription medication use.

0:42:46.80 --> 0:42:51.710

Barry A Whaley

Because that could if by asking, that could inadvertently uncover a disability.

0:42:53.420 --> 0:43:2.890

Barry A Whaley

So we are at 10:46, I know that faith wanted time for questions. If you could go to.

0:43:4.200 --> 0:43:7.160

Barry A Whaley

Next slide and then the next slide after that, Jackie.

0:43:8.770 --> 0:43:11.620

Barry A Whaley

There you go. Here's our contact information again.

0:43:12.980 --> 0:43:31.730

Barry A Whaley

You can call us directly at 404-541-9000. One or the National Network number is 1-800-949-4232. You can e-mail us at ADA southeast at syr.edu. I invite you to take a look at our website, adasoutheast.org.

0:43:33.950 --> 0:43:35.420

Barry A Whaley

We also have.

0:43:36.520 --> 0:43:44.30

Barry A Whaley

An Instagram page we have LinkedIn, we have Facebook, we have Twitter. You can find us all over the place.

0:43:44.450 --> 0:43:55.920

Barry A Whaley

Umm, I suggest that one thing you might wanna do is we do produce a newsletter twice a month which has training news where you can get additional ADA training.

0:43:56.950 --> 0:43:58.0

Barry A Whaley
We have.

0:43:58.670 --> 0:44:29.120

Barry A Whaley
Information. Uh especially, uh, well, both national and in the southeast. On court cases that impact the ADA, we also do something fun. We do something called the ADA puzzler where we ask readers a question about the ADA each month. And then you send in your answer and then if you are randomly selected from the correct answers, you get fabulous cash prizes were worth 10s of dollars. So anyway, I'm gonna pause.

0:44:29.220 --> 0:44:33.510

Barry A Whaley
And I don't know how you want to handle this faith. All. I'll let you take the lead here.

0:44:33.950 --> 0:45:2.390

Thomas, Faith
OK, fantastic. Thank you very much, Barry. Great information. I have allowed people to unmute if they would like to raise their hand and we can call on them or open the MIC and ask the question directly. You can also type your question in the chat and Jackie and I will fill those questions.

0:45:16.580 --> 0:45:16.970

Barry A Whaley
Right.

0:45:4.190 --> 0:45:18.40

Thomas, Faith
I would like to start off with one question that I had with you mentioned that an individual could verbally request accommodations and I was wondering.

0:45:19.470 --> 0:45:29.40

Thomas, Faith
Is there a particular person that they need to ask, or can it just be the direct supervisor and then the accommodation?

0:45:29.180 --> 0:45:32.690

Thomas, Faith
Umm had a request has officially been made.

0:45:32.940 --> 0:45:37.570

Barry A Whaley
Yeah, so, so you know businesses have and they should have processes, right?

0:45:38.390 --> 0:45:47.630

Barry A Whaley
Who? You know what? What is our process for seeking an accommodation. And it may be going to HR or it might be.

0:45:48.790 --> 0:46:14.680

Barry A Whaley

You, you you know somebody at a certain level of business now you could you could make your accommodation request to a direct supervisor, but you know that direct supervisor should then say look this is the process for doing that. Let me show you how we're going to proceed. But what we meant by that is yeah those processes are put in place by the business that the law itself says.

0:46:15.650 --> 0:46:35.520

Barry A Whaley

You can send an e-mail, you can verbally say I need help. You can have a friend do it and and and that really is interesting you you know, a coworker perhaps is saying hey, you know, John told me he's having trouble and he he really needs some sort of accommodation where it could be an employment specialist.

0:46:40.680 --> 0:46:40.990

Barry A Whaley

Umm.

0:46:36.540 --> 0:46:41.550

Thomas, Faith

Fantastic. Jack has a question. Go ahead, Jack.

0:46:44.180 --> 0:46:47.200

Jack Maxwell He/Him

OK, so this is this is actually.

0:46:49.100 --> 0:46:54.900

Jack Maxwell He/Him

We have a gentleman right now who applied for a job with baskin-robbins.

0:46:55.370 --> 0:46:55.720

Barry A Whaley

Umm.

0:46:56.640 --> 0:46:59.180

Jack Maxwell He/Him

Went through the interview process was.

0:47:0.500 --> 0:47:8.940

Jack Maxwell He/Him

You know, in the process of being hired and they asked what his transportation was and he says he rides the bus.

0:47:9.390 --> 0:47:9.980

Barry A Whaley

Umm.

0:47:10.260 --> 0:47:15.590

Jack Maxwell He/Him

And he they said, well, we can't hire you because that's not dependable transportation.

0:47:18.440 --> 0:47:21.670

Jack Maxwell He/Him

Would that qualify as discrimination?

0:47:23.430 --> 0:47:24.540

Barry A Whaley

In my opinion.

0:47:28.130 --> 0:47:28.350

Jack Maxwell He/Him

OK.

0:47:25.560 --> 0:47:32.110

Barry A Whaley

Let's look at it a different way. Jack. How? How many people without disabilities ride the bus for transportation?

0:47:33.620 --> 0:47:38.910

Jack Maxwell He/Him

A lot. And and that that's what I came back to you because I know here in our location.

0:47:39.830 --> 0:47:41.350

Jack Maxwell He/Him

We do have.

0:47:42.140 --> 0:47:43.410

Jack Maxwell He/Him

Some issues.

0:47:44.80 --> 0:47:47.70

Jack Maxwell He/Him

With, you know, the bus being reliable.

0:47:47.870 --> 0:47:48.240

Barry A Whaley

Sure.

0:47:50.720 --> 0:47:51.80

Barry A Whaley

Right.

0:47:48.30 --> 0:47:55.190

Jack Maxwell He/Him

Yet he would be on a route bus and that is much more reliable than the mobility bus.

0:47:56.970 --> 0:47:57.360

Barry A Whaley
Sure.

0:48:14.550 --> 0:48:14.920

Barry A Whaley
Right.

0:47:56.820 --> 0:48:18.220

Jack Maxwell He/Him

So you know, I was just like, we could go back and be like, you know, he rides the route. We just need to make sure that, you know, we he knows what the bus schedule is so that he can catch the bus early enough so that he's at work early enough. You know, it's time management. It's not.

0:48:19.590 --> 0:48:21.660

Barry A Whaley
Right. Well and and and.

0:48:22.830 --> 0:48:41.130

Barry A Whaley

You know, public transportation, whether it's a bus or light rail or the train, whatever is is, is a is, you know, generally pretty reliable and to say you you know you don't get the job because you ride public transportation in my opinion.

0:48:45.700 --> 0:48:45.920

Jack Maxwell He/Him
Right.

0:48:42.230 --> 0:48:49.670

Barry A Whaley

Sounds like disability discrimination because lots of people ride public transportation. You, you know, if I'm in.

0:48:50.410 --> 0:48:55.660

Barry A Whaley

It any city I visit I prefer to use their public transportation.

0:48:57.850 --> 0:49:4.860

Barry A Whaley

So you know I I that that's calling out somebody for for a very, very poor reason in my opinion.

0:49:5.700 --> 0:49:11.860

Jack Maxwell He/Him

Alright, cause I my my suggestion was go back and talk to them in regards to the fact that you know.

0:49:17.720 --> 0:49:18.70

Barry A Whaley
Sure.

0:49:12.940 --> 0:49:19.840

Jack Maxwell He/Him

Time management. It's it's not. You know that they can't do the job. We will work with them on time management.

0:49:20.480 --> 0:49:24.470

Jack Maxwell He/Him

So you know, we will make sure that they get to the job on time.

0:49:24.710 --> 0:49:25.820

Barry A Whaley

Umm hmm.

0:49:25.440 --> 0:49:38.790

Jack Maxwell He/Him

Uh, you know, because I don't just like if they don't wanna do it at that point. I was just like, you know, we need to stop not forcing, you know, reach out to EOC and be like, this is discrimination. We gave you the option.

0:49:42.710 --> 0:49:43.60

Barry A Whaley

Right.

0:49:39.790 --> 0:49:46.740

Jack Maxwell He/Him

You know you now need to, you know, actually identify why you're not gonna hire this person because he takes the bus.

0:49:47.180 --> 0:49:51.70

Barry A Whaley

Well, and then and then you, you know the other thing to consider, Jack is.

0:49:53.490 --> 0:49:56.260

Barry A Whaley

A lot of people were late for work, for a lot of reasons.

0:49:56.510 --> 0:49:56.740

Jack Maxwell He/Him

Right.

0:49:57.280 --> 0:50:1.190

Barry A Whaley

And you, you know, so that that's a very poor excuse.

0:50:2.560 --> 0:50:4.330

Jack Maxwell He/Him

Alright, I just want I mean because I.

0:50:13.320 --> 0:50:13.650

Barry A Whaley
Yeah.

0:50:6.500 --> 0:50:14.770

Jack Maxwell He/Him

We we seem to not push the envelope around here, we just say ohh well, we'll find a different job and I'm tired of not pushing the envelope.

0:50:15.200 --> 0:50:15.500

Barry A Whaley
Yep.

0:50:16.590 --> 0:50:20.960

Jack Maxwell He/Him

You know, this has been around for 50 years, and why are we still having this fight?

0:50:21.970 --> 0:50:22.420

Jack Maxwell He/Him

So.

0:50:22.930 --> 0:50:23.350

Thomas, Faith

Great.

0:50:21.770 --> 0:50:23.590

Barry A Whaley

Well, so.

0:50:24.740 --> 0:50:26.460

Barry A Whaley

I'm sorry someone was going to say something.

0:50:27.370 --> 0:50:35.720

Thomas, Faith

No, I was going to say you're exactly right, Jack. I I wanted to get if it's OK.

0:50:39.960 --> 0:50:40.220

Barry A Whaley

Yeah.

0:50:37.20 --> 0:50:41.610

Thomas, Faith

Are you satisfied with the answer? We have a couple of other questions in the chat, not.

0:50:48.530 --> 0:50:48.870

Thomas, Faith

Yeah.

0:50:40.690 --> 0:50:49.460

Jack Maxwell He/Him

Yeah. No, I'll go. I'll. I'll leave a I I had another personal thing, but I'll. I'll send that more directly cause you know

0:50:50.330 --> 0:50:55.370

Thomas, Faith

OK. We had one question in the chat.

0:50:55.790 --> 0:51:5.520

Thomas, Faith

Umm would a verbal agreement be able to be defended by the employee if the employer disputes that it was ever requested?

0:51:11.190 --> 0:51:11.490

Barry A Whaley

You.

0:51:13.280 --> 0:51:19.770

Barry A Whaley

You know you should always document document. You know, I always tell people unless it's written down somewhere it never happened.

0:51:20.720 --> 0:51:31.710

Barry A Whaley

UM, simply a verbal agreement without any sort of documentation is is very difficult to defend you're absolutely right here. Here's an example that.

0:51:33.60 --> 0:51:34.190

Barry A Whaley

That came up.

0:51:35.710 --> 0:51:49.260

Barry A Whaley

In another training, I think I did for maybe Utah State a few weeks ago where somebody in Colorado which has recreational and medical marijuana.

0:51:50.60 --> 0:52:14.170

Barry A Whaley

Doesn't. You know, there there's a duty of care. You can't be high at work, right? Now, you could, you know, recreational at home whatever in Colorado. So what the situation was. OK, So what if a guy comes in and they they are not high, they they have. They've not had, you know, had any cannabis that day. But there's an accident.

0:52:15.380 --> 0:52:16.630

Barry A Whaley

And the employer

0:52:17.430 --> 0:52:30.800

Barry A Whaley

Says you were high on the job, right? You're you're going to be fired. The burden of proof then is on. And I'm making the point the hard way here. But the burden of proof then is.

0:52:32.800 --> 0:52:44.480

Barry A Whaley

You know that that employee's gonna test positive. How do you prove without any sort of documentation that that you were not high on the job? So same thing. Yeah. You should always document.

0:53:0.280 --> 0:53:14.500

Thomas, Faith

We have another question in the chat from Virginia that says what is the best approach to take when an employer will not allow a job coach on site with an employee?

0:53:17.720 --> 0:53:23.50

Barry A Whaley

What is the best approach to take when so I I I I think it would come down to the circumstances you.

0:53:24.520 --> 0:53:44.290

Barry A Whaley

Comes down to the circumstances of why that, that employment specialist or job coach is needed. Now. You, you, you. You know the as I said earlier the EOC does say employment specialist, job coaches and this has been reaffirmed in the courts are reasonable accommodation.

0:53:45.120 --> 0:53:56.130

Barry A Whaley

And you, you would have to grant that account. Now let me stop for a minute because I'm gonna. I'm I'm. I'm gonna try to clarify it this way.

0:53:58.470 --> 0:54:19.330

Barry A Whaley

The final decision of what accommodation is put in place is always left up to the employer, so if the employer believes, for instance, that this employee can be trained through some other accommodation so long as it is effective.

0:54:20.170 --> 0:54:26.0

Barry A Whaley

Then that employer can use that accommodation, so simply saying.

0:54:27.380 --> 0:54:35.40

Barry A Whaley

You, you you know. I'm. I'm. I'm the job coach. You have to let me in. May not. May not be accurate.

0:54:35.700 --> 0:54:50.110

Barry A Whaley

Uh, because the the conversation should be well, if you're not allowing me in and and you know,

whatever your reasons are, then what accommodation are you going to put in place in order for this person to learn their job?

0:54:51.60 --> 0:54:53.920

Barry A Whaley

And is it effective and how do we revisit it?

0:54:55.660 --> 0:54:56.960

Barry A Whaley

I don't know if that helps or not.

0:55:6.570 --> 0:55:7.570

Wilson, Ryan

Can I ask a question?

0:55:8.20 --> 0:55:8.320

Barry A Whaley

Umm.

0:55:8.10 --> 0:55:8.580

Thomas, Faith

Yes.

0:55:8.980 --> 0:55:13.890

Wilson, Ryan

OK, I didn't know if I could. If you heard me, I am part of.

0:55:15.260 --> 0:55:16.280

Wilson, Ryan

Our state's WIOA.

0:55:16.960 --> 0:55:22.570

Wilson, Ryan

And I have a question that's actually part of the employer, the state's employment.

0:55:24.210 --> 0:55:44.180

Wilson, Ryan

Organization. They're having questions coming to me because they don't want to ask the wrong things to somebody coming in for a job they don't want to be. They're trying to ask me, how can they ask to see if the person wants to do like vocational rehabilitation.

0:55:45.140 --> 0:55:49.350

Wilson, Ryan

Because I know that that's something because that's a fine line because it's.

0:55:50.660 --> 0:55:59.550

Wilson, Ryan

It's an employment agency, but so it's pre employment, but they're also asking do you wanna take this other way? I don't know if.

0:56:1.330 --> 0:56:7.470

Wilson, Ryan

This is something you can, if I can, talk to you more about it or if you know or I'm sorry every.

0:56:8.640 --> 0:56:9.430

Barry A Whaley

I'm I'm.

0:56:11.410 --> 0:56:16.520

Barry A Whaley

I'm not sure I understand, so somebody goes to the employment agency.

0:56:16.280 --> 0:56:20.950

Wilson, Ryan

I'm part. It's WIOA the act.

0:56:21.300 --> 0:56:21.750

Barry A Whaley

Yeah.

0:56:22.490 --> 0:56:23.500

Wilson, Ryan

And so.

0:56:24.600 --> 0:56:35.190

Wilson, Ryan

I'm the liaison between the vocational rehabilitation program and like the work one employment services.

0:56:34.800 --> 0:56:36.530

Barry A Whaley

Gotcha. OK, alright.

0:56:36.180 --> 0:56:40.120

Wilson, Ryan

And so work one is coming to me and asking me.

0:56:49.350 --> 0:56:49.760

Barry A Whaley

Right.

0:56:42.0 --> 0:56:50.450

Wilson, Ryan

They want to be able to help people if because a lot of people do not understand vocational rehabilitation so.

0:56:51.390 --> 0:56:57.330

Wilson, Ryan

They don't want to all of a sudden if they just see maybe there could be a reason to ask about.

0:56:59.90 --> 0:57:1.360

Wilson, Ryan

Maybe they this person maybe.

0:57:2.830 --> 0:57:4.900

Wilson, Ryan

Would be interested, but it's hard to.

0:57:5.540 --> 0:57:8.290

Wilson, Ryan

It's kind of like the disclosure and.

0:57:10.490 --> 0:57:24.270

Wilson, Ryan

Print voluntary and I I don't know how. They're just they want to make sure that they are able to ask the right questions. That won't upset people, yet they're still trying to help them. In the end, it's not too.

0:57:23.500 --> 0:57:27.360

Barry A Whaley

Right, so, so so the the, the the covenant here is

0:57:28.20 --> 0:57:33.740

Barry A Whaley

You are going to this place because they have this menu of services, right?

0:57:35.240 --> 0:57:35.550

Barry A Whaley

So.

0:57:34.350 --> 0:57:38.870

Wilson, Ryan

Yes, they're services and like classes to get a job, but.

0:57:39.810 --> 0:57:40.260

Wilson, Ryan

Works.

0:57:40.10 --> 0:57:40.290

Barry A Whaley

Right.

0:57:44.10 --> 0:57:44.520

Wilson, Ryan

OK.

0:57:41.40 --> 0:57:49.750

Barry A Whaley

So. So you present those options, you know whether it's VR or or some other use, you know some other.

0:57:51.730 --> 0:57:52.570

Barry A Whaley
Opportunity.

0:57:54.250 --> 0:57:54.760

Barry A Whaley
And.

0:57:56.420 --> 0:57:58.910

Barry A Whaley
Excuse me and you, you know, you can make.

0:58:1.530 --> 0:58:2.880

Barry A Whaley
The recommendation?

0:58:3.820 --> 0:58:4.680

Barry A Whaley
But then.

0:58:6.850 --> 0:58:9.670

Barry A Whaley
It's up to that individual and his trusted.

0:58:11.90 --> 0:58:11.700

Barry A Whaley
People.

0:58:11.460 --> 0:58:19.300

Wilson, Ryan
So are you saying that the best way to go about it is just the percent it every time that they need someone new?

0:58:23.960 --> 0:58:24.200

Barry A Whaley
I.

0:58:26.600 --> 0:58:29.30

Barry A Whaley
I guess without understanding the scenario.

0:58:30.170 --> 0:58:33.110

Barry A Whaley
Like what? What do you mean by every time they need it?

0:58:33.380 --> 0:58:35.260

Wilson, Ryan
OK for an example.

0:58:36.760 --> 0:58:37.140

Wilson, Ryan
Well.

0:58:37.910 --> 0:58:42.580

Wilson, Ryan
Do you want me to get a hold of you somehow differently? Because I don't wanna keep up anybody, I mean.

0:58:46.330 --> 0:58:46.710

Wilson, Ryan
OK.

0:58:41.900 --> 0:58:51.550

Barry A Whaley
Well, yeah. Why don't you do this? Why don't you put it? Maybe write it out in an e-mail, send it to adasoutheast.edu.

0:58:52.140 --> 0:58:52.560

Wilson, Ryan
OK.

0:58:52.330 --> 0:58:55.40

Barry A Whaley
Address it to me in and let me take a look at it.

0:58:55.100 --> 0:58:59.450

Wilson, Ryan
Yeah, I'm. I'm sorry. I know it was a big question, but I didn't know how. I was like, sorry.

0:59:2.520 --> 0:59:3.90

Wilson, Ryan
Yeah.

0:59:0.330 --> 0:59:3.830

Barry A Whaley
It's OK. It's it's Thursday morning. This is as good as I get, so.

0:59:4.130 --> 0:59:6.110

Wilson, Ryan
No, that's fine. Thanks.

0:59:7.700 --> 0:59:8.150

Thomas, Faith
Well.

0:59:9.550 --> 0:59:37.980

Thomas, Faith
We don't have any other hands up. We are past the time of our meeting, so if anyone would like to stay

on and ask a couple more questions, that's totally fine. But we also want to respect your time. We want to thank everyone for attending today and if you are interested in joining our Supervisor Circle monthly networking meeting.

0:59:38.790 --> 0:59:49.440

Thomas, Faith

We certainly encourage you to access through our website and sign up to attend or you can reach out to me.

0:59:50.840 --> 1:0:3.970

Thomas, Faith

Directly at my e-mail fthomas@pcgus.com and I am putting that in the chat right now.

1:0:4.260 --> 1:0:13.730

Barry A Whaley

And and let me just make one other point. Faith as we close today, the the folks who attended today are are in Indiana, correct?

1:0:14.320 --> 1:0:14.950

Thomas, Faith

Yes.

1:0:15.200 --> 1:0:27.790

Barry A Whaley

OK, so as I as I mentioned, there are 10 regional ADA centers. Indiana's served by the Great Lakes ADA Center at the University of Illinois, Chicago.

1:0:34.190 --> 1:0:41.930

Barry A Whaley

So if you if you call with an ADA question to that 800 number, it's going to go to the technical staff at UIC.

1:0:58.650 --> 1:0:58.990

Barry A Whaley

Yep.

1:0:44.80 --> 1:1:2.30

Thomas, Faith

Great. Good to know. So if they want to speak to you specifically, they would send an e-mail and an overall ADA question follow up in the next six months or year or two. It would be calling the toll free number for our region.

1:1:1.160 --> 1:1:9.280

Barry A Whaley

Well, you call the toll free number and it's routed by your area code. So if you have a 317 and 812 whatever area code it's gonna go to UIC.

1:1:10.410 --> 1:1:15.620

Barry A Whaley

Only area codes in the Southeast region are going to go to Southeast Asia Center.

1:1:17.470 --> 1:1:26.90

Thomas, Faith

Fantastic. Well, thank you all so much. We will stay on just for a second if there are any other questions.