

# Designing an Inclusive Workplace: Legal and Personnel Considerations



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# Our intent today...

- Common concerns re: legal/personnel issues
- GENERAL guidance re: strategies to promote an inclusive workplace
  - (“bare min” legal expectations + spirit of C-RECS)
- Where to go for further info/assistance
- Is NOT to provide legal advice or an exhaustive review of requirements

# Mental Illness is NOT a Full-time Job:



*“Well, this is a very impressive resume’, young man. we think you are going to make a fine patient.”*

# What laws may be relevant?

- Rehab Act of 1973
- Family and Medical Leave Act (1993)
- ADA, Title I
  - Provides the most extensive guidance re: employer expectations both pre and post-hire
  - “Reasonable accommodations”
  - There is no “covered” list of dx... eligibility as per “impairment” in major life activities

# Pre-hire Issues for Consideration

- How do we word handle advertisements/postings in assertive outreach to PIRs?
  - EEOC advises employers to include information about the “essential functions” of the job
  - \*For peer-based positions:
    - Allowable to “screen-in” if lived experience is an essential function.
    - “As one who has availed themselves of mental health services, the CP will share their own experiences and what skills, strengths, supports, and resources they use.”
  - For varied positions: Include non-discrimination clause

# Pre-hire Issues for Consideration

- What about interview and application ??s?
  - For peer-based positions:
    - Allowable to inquire re: EF and if individual can meet expectations, e.g., RM recruitment
  - In general:
    - Note: may ask disability-related ?s AFTER a conditional job offer – only if required of all employees
    - Pre-hire can NOT ask ??s that are likely to elicit information about a disability...

Job Accommodations Network: *Pre-Offer, Disability-Related Questions: Dos and Don'ts.*

See: <http://www.jan.wvu.edu/media/preofferfact.doc>.

**Job Performance**

**DO**

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

**DON'T**

-Do you have any physical or mental impairment that would keep you from performing the job you seek?  
-What physical or mental impairments do you have that would affect your job performance?

**Attendance Requirements**

**DO**

-Can you meet our attendance requirements?  
-How many days were you absent from your last job?  
-How many Mondays were you absent last year on leave other than approved vacation leave?

**DON'T**

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

**History of Injury**

**DO**

-How did you break your leg?

**DON'T**

-Do you break bones easily?  
-Do you expect the leg to heal normally?

**Drug Use**

**DO**

-Are you currently using illegal drugs?

**DON'T**

-What medications are you currently taking?

-Have you ever used illegal drugs?

-How often did you use illegal drugs in the past?  
-Have you ever been addicted to drugs?  
-Have you ever been treated for drug addiction?  
-Have you ever been treated for drug abuse?

**Alcohol Use**

**DO**

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

**DON'T**

-How much alcohol do you drink?  
Have you ever participated in an alcohol rehabilitation program?

# Post-hire Issues for Consideration

- Will I need to make special accommodations for the person?
  - Not necessarily – do NOT assume, e.g., exempted people in past from HIC/IRB
  - Even if performance becomes an issue, may not be disability-related
  - But, if an employee identifies as an individual with a disability, they have a right to request “reasonable accommodation”

# Reasonable Accommodation

- What is a “reasonable accommodation?”
  - Any change in the work environment or in the way a job is performed that enables a person with a disability to enjoy equal employment opportunities.
    - Changes to a job application process
    - Changes to the work environment, or to the way a job is usually done
    - Changes that enable an employee with a disability to enjoy equal benefits and privileges of employment

This makes sense for people who use wheel-chairs but how does it apply to PIRs?? Stay tuned!

# Reasonable Accommodation

- How will I know if a person is entitled to such... can I request documentation?
  - Yes, but focus on the effect of the disability on the job functions, NOT on meds/Hx/Dx
- And will I recognize a request for a RA when I see it?
  - May be in “Plain English”
    - *I have a medical condition that requires breaks every two hours...*
    - *Because of health issues, I need a quiet work space at the back of the office.*

# Reasonable Accommodations

- So how does this apply to PIRs?...How *might* the illness interfere?
  - Screening out the environment
  - Sustaining concentration
  - Maintaining stamina (can be side effects)
  - Handling time pressures
  - Maintaining professional appearance
  - Responding to change or unanticipated transitions
  - Interacting with others and following social/business norms (can be symptoms or lack of practice!)
  - Organizing/prioritizing
  - Dealing with negative feedback

# Reasonable Accommodations

- How can I help as a supervisor/ administrator?
  - Scheduling modifications
    - Be sensitive to late/early arrival or “standard” schedule to accommodate appointments
    - Offer longer or more frequent breaks
  - Leverage resources (personal and external)
    - Initial meeting with the worker and those who know him/her well... what types of RAs might be useful and re-evaluate over time.
    - Encourage on-site and/or phone support from supporters
    - Leveraging resources depends on preference of the worker

# Reasonable Accommodations

- How can I help as a supervisor/ administrator?
  - Provide clarity in expectations
    - Provide a clear description of expected tasks in writing
    - Minimize changes to this description over time once successful
    - Divide larger tasks into smaller steps
    - Provide advance notice for large projects/deadlines
    - Be flexible with deadlines (to the extent possible)
    - Accept alternative formats for work
    - Consider placement in a cooperative group project
  - Environmental considerations
    - Provide access to a partitioned work space or more private work area
    - Allow use of white noise technology
    - Designate a quiet rest area in your place of business

# Reasonable Accommodations

- How can I help as a supervisor/ administrator?
  - Expand supervision/coaching
    - Provide increased supervision (cost-benefit analysis involved)
    - Make use of written to-do lists to assist with prioritization and deadlines
    - Limit supervisor changes over time once successful
    - Incorporate positive feedback in supervision
    - Note: do not automatically “exempt” the volunteer from performance reviews if these are standard across volunteers.
  - Social supports
    - Designate a co-worker mentor, e.g., Buddy system
    - Be pro-active and offer disability awareness trainings
    - Facilitate (but don't mandate) inclusion in social functions

# A Note About Interpersonal Accommodations

- JAI (Job Accommodations Inventory)
  - Measure development research
  - 87 participants with schizophrenia or schizoaffective disorder
  - How can we be pro-active in designing accommodations?

# A Note About Interpersonal Accommodations

- JAI Findings
  - Cognitive impairment, baseline work functioning, symptomatology, and job complexity are significant predictors of need for Interpersonal Accommodations
  - Findings present compelling evidence for the need to proactively think about, and prioritize, interpersonal inclusion, when designing accommodations

An administrative assistant in a social service agency has bipolar disorder. Her duties include typing, word processing, filing, and answering the telephone. Her limitations include difficulties with concentration and short-term memory. Her accommodation included assistance in organizing her work and a dual headset for her telephone that allowed her to listen to music when not talking on the telephone. This accommodation minimized distractions, increased concentration, and relaxed the employee. Also, meetings were held with the supervisor once a week to discuss workplace issues. These meetings are recorded so the employee can remember issues that are discussed and can replay the information to improve her memory.

# Reasonable Accommodations

- Isn't this just good management?
  - In many ways, YES!!
  - Likely will enhance culture of your workplace as a whole!!
  - May be particularly useful if an illness is interfering with a worker's ability to perform essential functions



# Reasonable Accommodations

- Will it cost me an arm and a leg?
  - JAN research w/ 366 employers shows low-cost, high-impact
    - 46% report NO cost
    - Of employers reporting cost...45% report one-time expenditure only. Limited in amount
    - 75% reported the RAs were either very effective or extremely effective
  - Benefits of making accommodations far outweigh the costs!

# Reasonable Accommodations

- How do I deal with co-workers perception of “special” treatment?
  - If it is cost-effective AND good management in general... maybe it shouldn't be SPECIAL!, e.g., inclusive ed
  - From legal perspective:
    - “Need to know” basis.
    - Otherwise... *Acting in accordance w/employment law, etc.*
    - Remember: Be pro-active and make disability a part of the organization's diversity dialogue!

# Reasonable Accommodations

- Can I initiate the RA conversation with an employee?
  - Yes, approach the person directly and privately.
  - Ask how things are going?, how have they been getting along with other staff?, how have they been doing with deadlines?, etc.
  - Share your observations/concerns in a direct/explicit manner.
  - Clearly describe expectations for your place of business
  - Don't put on kid-gloves – balance!
  - Get the worker's perspective



# Reasonable Accommodations

- Can we enforce conduct rules?
  - Yes. An employer never has to excuse a violation of a conduct rule that is
    - Uniformly applied (e.g., verbal altercation)
    - “Consistent with business necessity” (e.g., hygiene/dress)
  - Following disciplinary action, make an effort to provide RA to assist employee in meeting conduct codes in future.
- Can we fire an employee with a disability who is not doing the job?
  - Yes. Assuming you have first made attempts to provide RA.
  - Must be able to do the EF functions of the job.

# Other Issues In Employing PIR

- How do we handle an applicant who currently receives services HERE?
  - Confidentiality and access to records... keys, charts
  - Preferable for CPs to receive tx elsewhere in order to minimize difficulties w/ dual relationships but...(RAND, 2008)
    - by intentional team assignment/agency role
    - by establishing clear policies re: relationships and limits (e.g., romantic, financial, etc.)
    - by providing ongoing supervision
    - by educating other employees and normalizing ongoing use of services (including the hospital) as a routine part of recovery, e.g., peer ER

# Where do I go for more information?

- Don't forget about "close-to-home" resources
  - Peer-based orgs, consumer councils, employee him/herself
  - DMHAS-supported vocational specialists
  - Department of VR/BRS
  - Local EEOC, P&A, Disability Rights Centers
- See handout
  - National Center on Workforce and Disability
  - Job Accommodations Network
  - BCPR

# A Take Home Message

- We have certain legal mandates but hiring PIRs simply makes good BUSINESS sense
  - ...promotes diversity in skills and talents
  - ...has positive impact on marketing and attracts a broad customer base
  - ...is consistent with our transformation values/mission!!
- **LEAD BY EXAMPLE!!**