

Maddin Hauser's
Employment Law
Symposium

**ACCOMMODATING SUCCESSFULLY:
NAVIGATING THE ADA AND PWFA**

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Overview

- Overview of the ADA interactive process
- Common types of requests and accommodations available
- How the Pregnant Workers Fairness Act fits into this framework, and where additional assessment is needed



THE INTERACTIVE PROCESS

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- Steps:
 - Recognize an accommodation request
 - Request additional information
 - Engage in a discussion
 - Complete the process



RECOGNIZING AN ACCOMMODATION REQUEST

- Do not wait for an employee to use “magic words”
- Listen for where an employee indicates a problem
- **EXAMPLES:**
 - “I need six weeks off to get treatment for a back problem.”
 - “My wheelchair cannot fit under my desk.”



REQUEST ADDITIONAL INFORMATION

- Assess whether you need additional information
- If yes, assess what information is needed:
 - Specific accommodation?
 - Medical documentation?



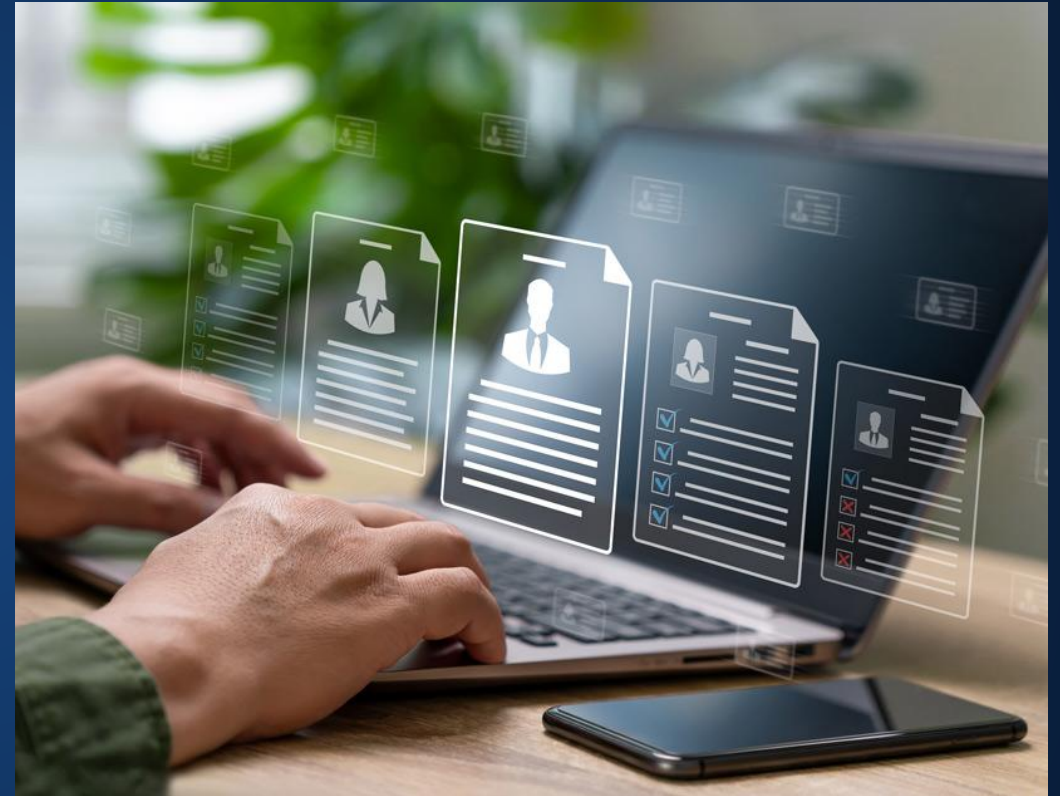
ENGAGING IN THE INTERACTIVE PROCESS

- If possible, grant the accommodation.
- If you cannot grant the requested accommodation, consider alternatives.
- If no specific accommodation requested, engage employee to assess what their needs are.



COMPLETING THE PROCESS

- Find the mutually agreeable accommodation and grant it.
- Inform the employee no accommodation is available.
 - Document, document, document!



COMMON TYPES OF ACCOMMODATIONS

LEAVE

- Typically offered where:
 - There is no other effective accommodation;
 - Employee is not otherwise eligible for FMLA, or has exhausted FMLA;
 - Employee has exhausted, or is not otherwise eligible for other paid time off
- What happens if the employer offers other types of leave?

REASSIGNMENT

- Typically offered when an employee can no longer perform the essential functions with or without an accommodation, and ***an alternative position is available.***
- Does NOT require the employer to restructure a job or create a vacant position for the employee



MODIFIED SCHEDULE

- Typically in the form of adjusting arrival or departure times, breaks, altering when certain functions are performed, or providing additional unpaid leave



TELEWORK

- Handling telework requests in the wake of COVID-19
- No obligation to accept telework if there is another accommodation available
- Review existing job descriptions to assess whether an essential function of the job must be performed in the office



THE PREGNANT WORKERS FAIRNESS ACT AND THE ADA

HOW DOES THE PWFA FIT INTO THE ADA DISCUSSION?

- Both provide reasonable accommodations for qualified individuals with limitations
- Certain pregnancy-related conditions may also be covered under the ADA
 - Note: pregnancy, itself, is not a disability under the ADA
- Both require employers to provide a reasonable accommodation, unless the accommodation would cause an undue hardship

DOCUMENTATION UNDER PWFA

- Encourages employers to minimize documentation
- Self-confirmation – informal process in which the employee can provide the employer with information about their pregnancy
- “Predictable assessment” – four requests that will not impose an undue hardship in ‘virtually all cases’

UNREASONABLE DOCUMENTATION REQUESTS

In certain circumstances, it is unreasonable to ask an employee for supporting documentation:

- Limitation/adjustment is obvious and there is self-confirmation
- Employer has sufficient information;
- Request for a “predictable assessment;”
- Related to pumping/nursing during work hours;
- Otherwise available to all employees

REASONABLE DOCUMENTATION REQUESTS

- Confirm the physical or mental condition;
- Confirm condition is related to pregnancy; or
- Describe adjustment/change needed



UNDUE HARDSHIP UNDER THE PWFA

- If the employee can perform all of the essential functions – same meaning as ADA
- If the employee cannot perform all of the essential functions:
 - Consider the ADA definition; and
 - Additional relevant factors.



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QUESTIONS

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THANK YOU



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