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Community Action Program Legal Services, Inc.

EVENTS AND TRAININGS

upcoming CAPLAW trainings on the legal and financial issues critical to CAAs



Webinar Control Panel

The image shows a screenshot of a GoToWebinar control panel window. The window has a title bar with 'File View Help' and standard window controls. It is divided into several sections:

- Audio Section:** Contains 'Audio Mode' with two radio buttons: 'Use Telephone' (selected) and 'Use Mic & Speakers'. Below this, it displays 'Dial: +1 (314) 627-1519', 'Access Code: 204-368-834', and 'Audio PIN: 31'. A note below says 'If you're already on the call, press #31# now.'
- Questions Section:** A large text area for entering questions or comments. Below the text area is a 'Send' button.
- Footer:** Displays 'TEST WEBINAR', 'Webinar ID: 507-858-862', and the 'GoToWebinar™' logo.

Annotations with arrows point to specific features:

- An arrow points from the text 'Raise your hand to ask a question' to a hand icon in a vertical sidebar on the left.
- An arrow points from the text 'Enter Your Audio Pin' to the 'Audio PIN: 31' field.
- An arrow points from the text 'Enter questions & comments here' to the 'Send' button.

Additional text on the left side reads: 'Only enabled if you have entered your Audio Pin!' in red.

Conquering Employment Law Conundrums Webinar Series

Registration Open Soon For:

- **May 15: A Cup Of Alphabet Soup To Cure A Few FMLA Ills**

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Navigating an Employee Request for Accommodation

*CAPLAW's Conquering Employment Law Conundrums
Webinar Series*

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Atlanta Boston Charlotte Chicago Cleveland Columbia Columbus Dallas Denver Fort Lauderdale Houston
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Two Laws Require Accommodation

- Title VII of the Civil Rights Act of 1964
 - Accommodation for religious beliefs
- The Americans with Disabilities Act (and its amendments)
 - Accommodation for disability

EEOC Charge Statistics – FY 2012

Total charges filed - 99,412

Charges filed:

- Retaliation – 38.1%
- Race – 33.7%
- Sex – 30.5%
- **Disability – 26.5%**
- Age – 23%
- National Origin – 10.9%
- **Religion – 3.8%**
- Color – 2.7%
- Equal Pay – 1.1%



Religion

Religious Accommodation

Title VII's definition of religion: "*all aspects of religious observance and practice, as well as belief.*"

- Employers must accommodate *sincerely held* religious beliefs.
- That conflict with an employment requirement.
- Unless "undue hardship."
- Cultural, social and political beliefs do not qualify.

Religion in the Workplace

EEOC Guidelines:

- Religion defined broadly, can include lesser-known and “incomprehensible” beliefs



Religion in the Workplace

Accommodations, simplified:

- No “magic words” needed to trigger accommodation
- Interactive Process is recommended
- Fact-dependant analysis: look to nature of duties, cost of accommodation, number of employees affected, and other similar factors
- Undue hardship defense (easier to prove than ADA defense, but more than *de minimus* cost): diminished efficiency, infringes on rights of others, or safety

Religious Accommodation

Dress or appearance accommodations:

- Hair and beard
- Veils
- Dresses v. pants
- Piercings



Religious Accommodation

Work schedule accommodations:

- Prayer time
- Religious holidays
- Sabbath observance

Religious practices:

- Prayers
- Modified job duties
- Telephone greeting

Disability

The Basic Rule

You must *reasonably accommodate a disabled* employee or applicant unless doing so is an undue hardship or creates a direct threat.

What Does “Reasonable” Mean?

The accommodation is reasonable on its face.



Who is “Disabled”?

**Virtually
Everybody**

Who is “Disabled”?



- ADAAA significantly expanded definition.
- Virtually all non-minor physical or mental disorders are likely to qualify as disabilities.
- Focus on the need for accommodation.

Reasonable Accommodations

- Equal opportunity to be considered for the job individual *holds or desires*.
- Enable employee to perform essential functions of job employee holds or desires.
- Has equal opportunity to enjoy equivalent benefits and privileges.

What Is the Interactive Process?

A timely good-faith exchange of information between employer and a disabled employee or applicant to explore:

- Necessity of accommodation, and
- Accommodation options.



What Is the Interactive Process?

- Neither party can take “my way only” position.
- You must solicit and consider the employee’s input.
- Employer may select among reasonable accommodations.
- If first accommodation doesn’t work, keep trying until all reasonable options exhausted.

The Interactive Process: When to Start?

Initiate the interactive process when the employee's disability is *known or apparent, e.g.,*

- Requests an accommodation.
- Presents doctor's note with work restrictions
- Employer otherwise becomes aware of need for accommodation, e.g., third party or observation.
- FMLA leave exhausted.

Requesting Medical Information

- May request medical documentation and information.
- If unclear, may seek clarification and give reasonable time to obtain.
- Entitled to know the nature and duration of restrictions.
- Not necessarily entitled to know diagnosis



Interactive Process: Step 1

Determine the “essential functions” of the position.

- Position exists to perform function.
- Time spent performing.
- Job description.
- Collective bargaining agreement.
- Consequences if not done.

Interactive Process: Step 1

Obtain employee's agreement regarding essential job functions.

- At first meeting, review list of essential job functions.
- Have the employee sign a statement acknowledging essential job functions.

Interactive Process: Step 2

Consult with disabled employee regarding limitations:

- Ascertain job-related limitations.
- Determine impact of limitations on ability to perform essential functions.
- Discuss how limitations can be overcome.

Interactive Process: Step 3

Identify potential accommodations:

- Ask employee and/or healthcare provider for proposed accommodations.
- Determine if other reasonable accommodations exist.
- Assess the effectiveness of proposed accommodations.

Interactive Process: Step 3

Identify potential accommodations:

- No accommodation in position held, any vacant positions available?
- Is employee qualified for position?



Interactive Process: Step 4

Select and implement accommodation that enables employee to perform essential job functions.

- Employee's preference does not control.
- Provide written explanation why you selected a different accommodation.

What If It Doesn't Work?

- Interactive process extends beyond the first attempt.
- Determine whether other reasonable accommodations are available.
- Document reason first accommodation failed; i.e., employee unable to do job.

When Are You Done?

- Accommodation no longer needed.
- Accommodation is successful.
- No reasonable accommodation exists.
- Employee fails to cooperate
 - Unresponsive to communications.
 - No show for meetings.
 - Does not provide requested medical documentation.
 - Rejects a reasonable accommodation.
 - Abandons or fails to show up for alternative work without valid explanation.

Documentation Is Essential!

You must thoroughly document:

- All meetings and communications with the employee.
- All accommodations considered.
- Search for alternate positions.
- Employee's failure to cooperate.



Undue Hardship



- Nature and net cost of accommodation.
- Overall financial resources of the employer.
- Accommodation's impact on employer's operations or on coworkers.

Direct Threat

- Employee must not pose an imminent risk of substantial harm.
- Fear of a future harm is not sufficient.
- Evaluation of risk should be based on recent medical judgment and available objective evidence.

Job Restructuring



- Reallocation of *nonessential* job functions or when/how they are performed.

Work-At-Home

- Reasonable when the essential functions can be performed at home.
- Not reasonable where the job requires close supervision, or the essential functions of the job involve teamwork and coordination with others at workplace.



Leave of Absence

- Unpaid leave for employee to seek treatment or to recover may be required if employee *is expected to return following the leave*.
- Additional leave after expiration of FMLA.
- Indefinite leave is not required.
- Tolerating erratic attendance is not a reasonable accommodation, but . . .

Misconduct

- Employer need not rescind or forego discipline for prior rule violations but must consider whether a reasonable accommodation would enable employee to comply with rule in the future.
- Need not permit employee to violate rules that protect health or safety, or where violation creates disruption to the operation of the business.

Transfer to a Vacant Position

- Only if cannot accommodation in current position.
- Must give qualified disabled employee preference over *more* qualified applicants.
- Need not create a new position.
- Need not violate seniority unless exceptions are commonly made.

Final Questions

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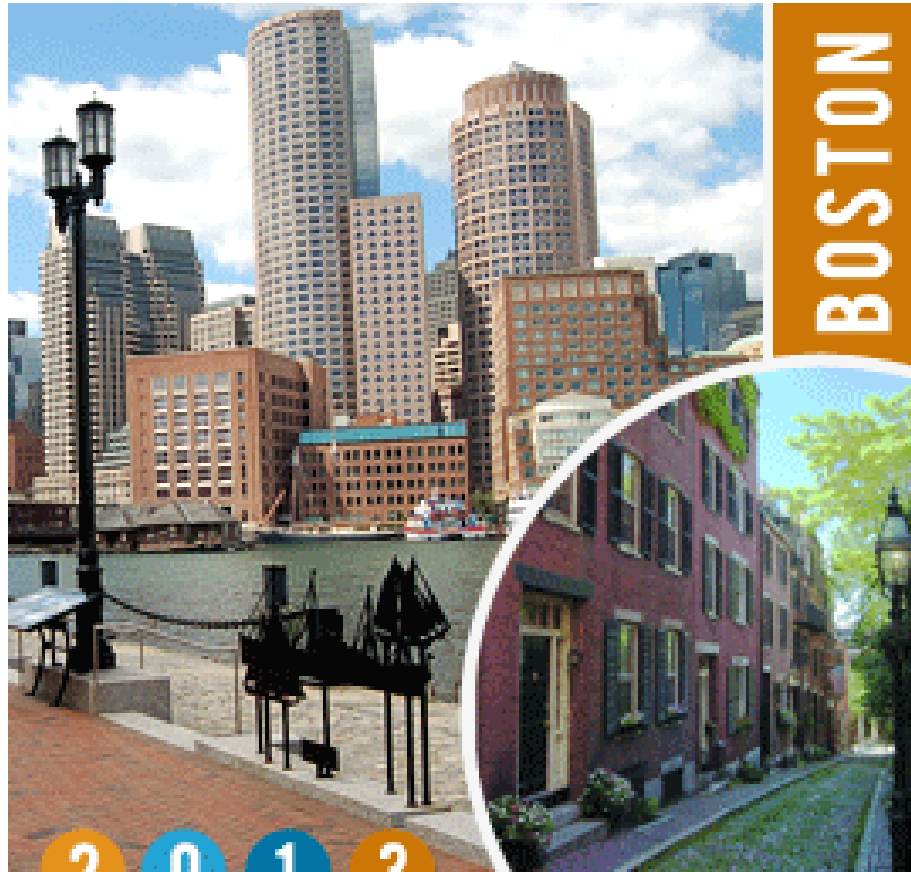
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