



# The Unique Role of Medical-Legal Partnerships in Helping Health Centers Address Disability & Chronic Disease Discrimination

*Disability Discrimination 101: Understanding the Legal Protections, Common Barriers,  
and the Role of Health Centers in Ending Discrimination*



# Opening Remarks

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# Medical-Legal Partnerships

History/Background

Intervention for  
Discrimination

Building a Disability &  
Chronic Disease MLP



Source: ["Bringing lawyers onto the health center care team to promote patient & community health"](#),  
National Center for Medical-Legal Partnership, 2020



# HRSA

## Health Resources & Services Administration

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# Learning Objectives

- Screen for disability and chronic disease discrimination faced by patients and engage in resolution activities;
- Understand basic legal protections and common barriers faced by patients living with disabilities; and
- Gain tools to help grow a disability/chronic disease medical-legal partnership.



# Terminology

## Disability:

**Anti-discrimination laws:** A physical or mental impairment that substantially limits one or more major life activity; a record of such an impairment; or being regarded as having such an impairment.

**Social Security Disability Insurance:** The inability to do any substantial gainful activity because of a physical or mental impairment that can be expected to result in death or to last for at least 12 months.



# Terminology

## Discrimination:

Unfair or unfavorable treatment of a person with a disability because that person has a disability, has a record of a disability, or is perceived to have a disability

Examples of disability discrimination include: failure to provide a reasonable accommodation; impermissible medical inquiries and examinations; harassment; failure to make reasonable modifications to policies; denying or failing to provide effective communication







# Legal Protections

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# Federal Laws

Americans with Disabilities Act (“ADA”) – prohibits discrimination on the basis of disability by public and private entities including employers with 15 or more employees, government programs and services, places of public accommodation, communications, and transportation.

Rehabilitation Act of 1973 (“Rehab Act”) – prohibits discrimination on the basis of disability by the federal government, government contractors, programs conducted by federal agencies, and programs receiving federal financial assistance, including public schools.

Patient Protection and Affordable Care Act (“ACA”) – prohibits discrimination on the basis of disability (and other protected status) in health care and applies to group and individual health insurance plans and those offered by the Federal government.



# Federal Laws, cont.

Age Discrimination in Employment Act (“ADEA”) – prohibits employment discrimination on the basis of age for workers over age 40 and applies to employers with 20 or more employees.

Family and Medical Leave Act of 1993 (“FMLA”) – requires employers with 50 or more employees to provide eligible employees with 12 weeks of unpaid job-protected leave to care for their own or a family member’s serious health condition or birth or adoption of a child.

Fair Housing Act (“FHA”) – prohibits discrimination on the basis of disability (and other protected status) in the renting or buying of a home, getting a mortgage, seeking housing assistance, or engaging in other housing-related activities.



# Not All Workers Are Protected

## Some workers may not be protected by federal anti-discrimination laws:

- Independent contractors are normally not protected unless they are doing contract work for the federal government
- The ADA does not apply to private employers with fewer than 15 employees
- The ADEA does not apply to private employers with fewer than 20 employees
- The FMLA does not apply to private employers with fewer than 50 employees within 75 miles of the individual's workplace, nor does it protect workers employed less than a year and who worked fewer than 1250 hours in the year preceding the leave

**BUT, state or local laws** may provide more protection – local legal practitioners will know!





# Protections Against Discrimination in the Workplace

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# Disability Inquiries & Examinations

**What:** Job applications or other forms asking a person to identify if they have a disability or diagnosis; a requirement to get a work physical or medical clearance; a questionnaire asking about medical history

**When:** What is permissible depends on what stage of employment it is requested.

- Pre-job offer: employers cannot ask any disability questions or require any examinations.
- Post-job offer: employers can ask disability questions or require medical exams as long as all entering employees in the same job category are subjected to the same questions or exams.



# Disability Inquiries & Examinations

When:

- During employment: employers can ask disability questions and require medical exams when it is “job-related and consistent with business necessity.”
  - Reasonable belief based on objective evidence that employee’s ability to perform essential job functions will be impaired by a disability;
  - Reasonable belief based on objective evidence that employee will pose a direct threat due to a disability;
  - Employee’s disability or need for accommodation is not known or obvious;
  - Required in positions that affect public safety, such as police and firefighters



# Reasonable Accommodations

**What:** Any change to the way a job is done or the work environment that allows a person with disability who is qualified for the job to perform the essential functions of the job.

**When:** During the application or hiring process or at any time during employment – even if not requested at the beginning of employment and even if requested after a disability-related issue arises.

**How :** Does not need to be requested in writing but that is recommended. Worker must disclose their disability and identify how it is impacting their work. A request initiates the “interactive process,” by which both parties work together to find an effective solution.

**Role of health provider:** Provide written documentation to support the request.





# Direct Threat

**What:** A defense an employer may raise alleging a worker's disability poses a direct threat to the health or safety of the worker himself or others.

It may also be a qualification standard – but to be valid this must be applied to all similar workers, not just the worker with a disability.

**How:** Employer must show risk of substantial harm from the disability is significant, specific, current (not speculative), based on objective medical or factual evidence, and cannot be eliminated or reduced by reasonable accommodation.

**Role of health provider:** Provide information about the disability to aid in direct threat assessment.





# Common Employment Barriers

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## Case Study 1:

Lucia is a highly sought-after sales director at a large pharmaceutical company where she has worked for the past 8 months. She was recently diagnosed with cancer and used her paid time off to undergo surgery, recovery, and start her cancer treatments. She has several more months of treatments remaining but has run out of PTO. For the past few weeks, she has been struggling to work full days and meet her sales goals, due mainly to fatigue. Her supervisor and other coworkers are aware of her diagnosis, but Lucia has not made any requests related to her cancer at work. She knows from coworkers that the company refuses to allow any employees to work remotely during COVID-19. Although she was heavily recruited to join the company and exceeded her goals prior to her diagnosis, Lucia now fears a bad review and even termination for not being able to keep up. She comes to the health center complaining of extreme fatigue and stress.





# Protections Against Discrimination in Access to Public Programs and Places

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# Reasonable Modifications

**What:** A requirement that entities make reasonable modifications in policies, practices, and procedures to avoid unnecessary exclusion of people with disabilities in public and private programs, services, benefits, and housing.

**When:** Must be provided unless the entity can demonstrate it would fundamentally alter the nature of the service, program, activity, goods, facilities, privileges, or advantages.

Often appears when a policy or practice appears neutral but has a discriminatory impact on people with disabilities.

**Role of health provider:** Provide information to support request for modification.





# Common Access Barriers

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## Case Study 2:

Eddie lives with major depression and anxiety as well as type 2 diabetes that is treated with insulin. As a result of a recent job loss, Eddie is currently unhoused and has been living between shelters and short-term housing in a local hotel using government housing vouchers. At the shelter, he was told there was no resident use of a refrigerator or locked storage area to hold his diabetes supplies and medications, causing him to lose track of them. His anxiety makes this situation untenable for him. He has recently been granted a support animal from a nonprofit organization whose mission is to provide service animals to people living with disabilities. However, both the shelter and the hotel have ‘no pets’ policies. Eddie comes to the health center struggling to manage his blood glucose levels, his depression, and his anxiety due to these challenges. This, in turn, threatens his chances of finding a new job and more stable housing.





# Role of the Health Center

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# Patient Advocate

Helping a patient through the healthcare process, which can include navigating the social determinants of health

Generalist vs. Specialist: Do not need to be a specialist in the condition being treated to effectively advocate for your patients!

Medical authority: Exercising your medical training is one of the most powerful tools available to help advocate for your patients



Critical part of addressing disability discrimination

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# Screening for Discrimination

## Active listening

- Be on the lookout for hints of possible disability discrimination
- Be aware it may be occurring without the patient even being aware of it herself

## Behavioral interviewing

- When establishing certain patient data, such as employment status, probe for any problems
- When reviewing clinical data, ask the patient what she believes is impacting that data



# Role of Enabling Services Staff

Identify the touchpoints for screening:

- Enrollment and registration
- Social workers & Community health workers
- Case managers
- Outreach staff
- Dietitians & health educators
- Clinical staff



# Tips for Health Centers

Your patient's ability to keep a job and income may depend on getting a reasonable accommodation. You play an important role!

Remember:

- Employers may request medical information even if the patient did not ask you to write a letter in support – *be prepared to help your patient*. It will take very little of your time.
- Important to respond promptly and provide information that is helpful and accurate.
- All medical information you provide must be kept confidential by the employer.
- You don't need a lawyer to help your patients!



# How to Support Your Patients with Disabilities

Provide medical support for an accommodation request or other assessment:

- Write a letter of support that states your professional qualifications; states the nature of your relationship with the patient; states the patient's diagnosis and the impact on them; and provides an explanation of how the patient's condition (even with treatment) requires changes at work.

Limit your letter to the specific problems that may be helped with an accommodation.

Do not provide medical records unless the patient specifically requests it.

Discourage requests for certain types of accommodations.



# Helpful Resources

American Diabetes Association Sample Letter Supporting a Request for Accommodation:

<http://main.diabetes.org/dorg/PDFs/Advocacy/Discrimination/sample-doctor-letter-from-practical-diabetology.pdf>

Disability Rights Texas Video – Medical Documentation for Accommodation Requests

[www.disabilityrightstx.org/en/video/medical-documentation-for-accommodation-requests/](http://www.disabilityrightstx.org/en/video/medical-documentation-for-accommodation-requests/)

Disability Rights Texas Sample Documentation for Workplace Accommodations (a general letter, a letter requesting accommodations for a person with ADHD, and a letter requesting a leave of absence) [www.disabilityrightstx.org/SampleMedicalLetter](http://www.disabilityrightstx.org/SampleMedicalLetter)





# Panel Discussion: Disability Discrimination in Specific Populations

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## Case Study 3:

Frank lives in California where he works as a farm worker growing produce that is shipped and sold around the country. Although his job site changes from farm to farm daily, he is employed by a large multinational corporation who hired him through a H-2A Guestworker program as a seasonal agricultural worker. Frank's wife, children, and extended family remain in Guatemala. Since arriving in the U.S., Frank was diagnosed with type 2 diabetes and hypertension. He was diagnosed at a community health center but has only been able to access care sporadically, due to his erratic work schedule and long hours farming. Recently, Frank began experiencing numbness in his left foot and lower leg. It has slowed him down at work, and he has been berated for not getting as much done as others. He's seen other workers terminated for complaining about work conditions. Frank arrives for a long overdue check up with a hemoglobin A1c of 12.6. Reticent to complain, Frank finally admits his employer does not allow breaks and he has not spoken up about his diabetes.





## Case Study 4:

Alice is a 66 year-old Black woman with diabetes who works for a large retail company. For most of her employment, Alice's diabetes has been fairly well managed. Recently a new manager came on board and changed several store policies, including instituting new split shifts for some workers and deducting "points" and pay for each work absence not scheduled and approved in advance. Alice has struggled with these new policies, and her blood glucose levels have taken a nosedive after working so many split shifts. Last week she had points deducted for calling out sick for two shifts and lost her full pay for those shifts. Yesterday Alice went to work despite feeling shaky and experienced severe hypoglycemia while assisting a customer. Her manager sent her home and told her she could not return to work until she was cleared by the store's doctor, who won't see her for 3 weeks. A group text with some coworkers revealed that the only people being given the split shifts are those who have worked there many years or are older. Alice needs to keep working but does not know what to do next.





# Open Question & Answer

**Please take a  
moment to fill  
out our survey!**

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# **Disability & Chronic Disease Discrimination with Kids**

## Navigating the Health Center's Role in Securing Legal Protections for Pediatric Patients

**May 11, 2022, 2-3:30 PM ET**

*Since you registered for today's event, you are already registered for the next event in this series!*