

Human Resources
Office of Equal Opportunity & Compliance



New Employee Orientation

Presented by

Florida State University

Human Resources Office of Equal Opportunity & Compliance

Florida State University

(850) 645-6519

Welcome to the New Employee Orientation session on Equal Opportunity and Compliance presented by the Human Resources Office of Equal Opportunity and Compliance or EOC.



Overview of Topics

- Equal Employment Opportunity (EEO)/Non-Discrimination
- Affirmative Action
- The Americans with Disabilities Act (ADA)

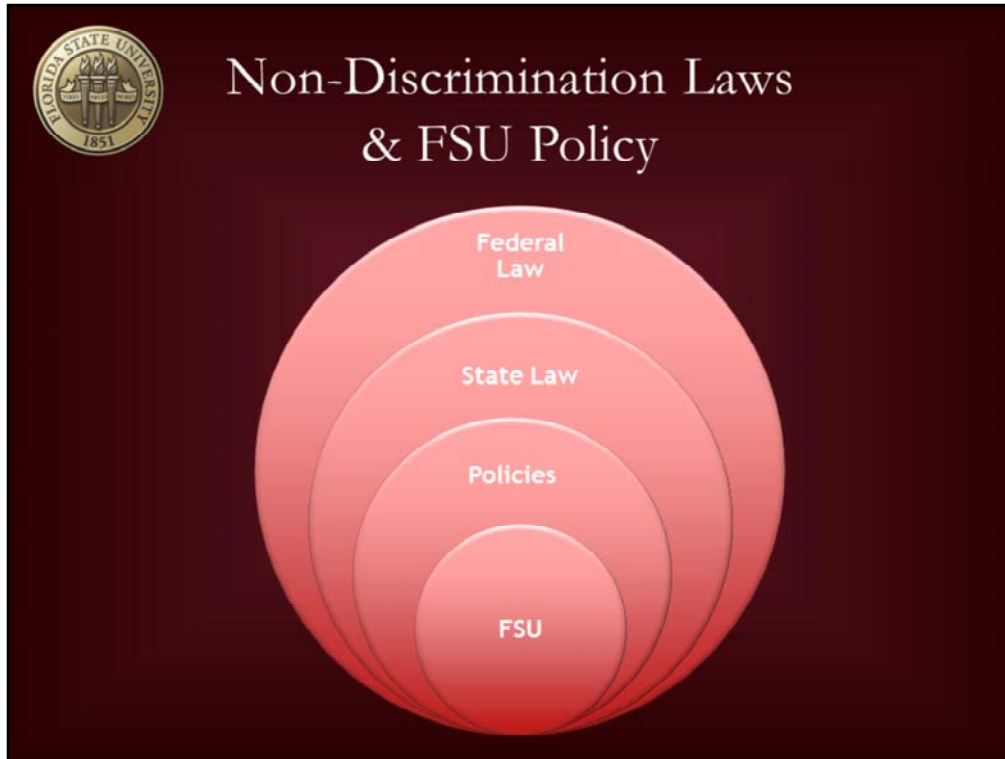
This presentation will provide an overview of the University's Equal Employment Opportunity or Non-Discrimination policies. It also addresses affirmative action, and the American's with Disabilities Act. After viewing this presentation you will know what conduct is prohibited by the University's non-discrimination policy, how to make a discrimination complaint, and how to request an accommodation for religious or disability reasons.

Any questions about the content of this presentation should be made to the Office of Equal Opportunity and Compliance. We can be reached by phone at (850) 645-6519 or by email at EOC@fsu.edu.



Equal Employment Opportunity (EEO)/Non-Discrimination

The first topic we'll review is Equal Employment Opportunity Laws and the University's Non-Discrimination Policy.



As an employer and an educational institution, FSU is subject to a number of federal and state equal opportunity and non-discrimination laws including:

- Title VII of the Civil Rights Act of 1964,
- Title IX of the Education Amendments Act of 1972,
- The Genetic Information Nondiscrimination Act,
- The Age Discrimination in Employment Act,
- The Americans with Disabilities Act,
- The Pregnancy Discrimination Act,
- The Rehabilitation Act,
- The Equal Pay Act, and
- The Florida Civil Rights Act.

The university also maintains its own policies prohibiting discrimination.

These laws and policies provide overlapping layers of protection against discrimination on the basis of an employee or student's membership in a "protected group."

This training will provide you with an overview of non-discrimination related policies and procedures at FSU.



FSU's Policies

- EEO Statement
- Non-Discrimination Policy
- ADA Policy
- Sexual Harassment Policy



Internally, the university has several policies that prohibit discrimination, which can be found online at compliance.hr.fsu.edu.

- FSU's **Equal Employment Opportunity statement** outlines the university's commitment to equal opportunity and Non-Discrimination in employment and education.
- FSU's **Non-Discrimination Policy** prohibits discrimination and retaliation in employment and education. This policy identifies the protected groups at FSU and provides procedures for discrimination complaints.
- FSU's **Americans with Disabilities Act Policy** provides a reasonable accommodation process for individuals with disabilities seeking disability related accommodations.
- Information Regarding FSU's **Sexual Harassment Policy** will be covered in a different New Employment Orientation Training.

The aim of all of these policies is to create an inclusive work and academic environment in which all individuals are treated with respect and fairness, regardless of individual differences.



Non-Discrimination

Employment/education decisions may not be based on a protected group status.

Cannot:

- limit employment opportunities
- take negative employment action
- create a hostile environment

Non-discrimination means that employment and educational decisions may not be based on your membership in a “protected group.”

This means an employer cannot limit your professional opportunities, take negative employment action against you, or create a hostile environment because of your membership in a protected group. Decisions about your employment should be based on your performance and on legitimate business needs.

Equal Opportunity and non-discrimination do not mean that you have to agree with every decision made by your supervisor(s). The key is that employment decisions can't be made on the basis of your membership in a protected group.



Protected Groups at FSU

FSU prohibits discrimination based on:

race, creed, color, sex, religion, national origin, age, disability, veterans' status, marital status, sexual orientation, gender identity, gender expression, and other legally protected groups.

So what are the protected groups at FSU?

FSU's Non-discrimination policy prohibits discrimination based on your race, creed, color, sex, religion, national origin, age, disability, veterans' status, marital status, sexual orientation, gender identity, gender expression, and other legally recognized protected groups, like genetic information.

- Sex: refers to traditional notions of biological sex, male and female. It also prohibits sexual harassment, sexual violence, and pregnancy discrimination.
- Religion: applies to any sincerely held religious belief or to an individual's lack of religious belief.
- National Origin: refers to an individual's (or their ancestor's) place of origin; physical, cultural, or linguistic characteristics. National origin discrimination includes treating people unfavorably because of ethnicity, their accent, what part of the world they come from, because they appear to be of a certain ethnic background (even if they are not), because they are married to or associate with a person of a particular national origin, or because they are connected with an ethnic organization.
- Age: applies to individuals 40 years of age and older.
- Veteran's status: refers to an individual's service in any branch of the United States military.
- Marital Status: protects both married and unmarried individuals.
- Sexual Orientation: an individual's pattern of romantic or sexual attraction to others. Examples include: homosexuality, heterosexuality, bisexuality, and asexuality.
- Gender Identity: refers to a person's innate, deeply-felt psychological identification as a man, woman, transgender, or some other gender. Gender identity may be different from an individual's biological sex.
- Gender Expression: refers to the external manifestation of a person's gender identity, such as dress, grooming, speech patterns, and mannerisms. Gender expression may or may not conform to social stereotypes of masculine and feminine behavior.



Disparate Treatment Discrimination

Adverse employment action:

- Motivated by protected group membership.

There are two main types of discrimination prohibited under law and University Policy. The first is Disparate Treatment, which means treating an employee differently because of a protected characteristic. Disparate Treatment, occurs when an employer intentionally refuses to hire, offers different employment benefits, creates different working conditions, or disciplines someone differently because of that employee's protected group status; such as race age, sex, religion, gender identity, national origin, or any other group protected under FSU's policy.

One form of Disparate Treatment is taking negative or adverse employment action against someone or denying them benefits offered to other co-workers because of their protected group characteristics. An example of this is refusing to promote someone who deserved it because of their marital status or sexual orientation.



Case Study

Samira is considering promoting one of her staff members to a supervisor position. She is choosing between two good employees: Brandon, who is African-American, and Anel, who is Latina. She decides to promote Anel because most of the office staff is Latino and Samira believes they will be more responsive to a Latina supervisor.

Did Samira violate the University's Non-Discrimination Policy?

Lets try a case study to test our understanding: Samira is considering promoting one of her staff members to a supervisor position. She is choosing between two good employees: Brandon, who is African-American, and Anel, who is Latina. She decides to promote Anel because most of the office staff is Latino and Samira believes they will be more responsive to a Latina supervisor.

Did Samira's decision violate the University's Non-Discrimination Policy?

The answer is yes. Samira's employment decision was motivated on assumptions regarding Brandon and Anel's race, which is a protected class, rather than their ability to do the job. Even though she may not have intended to treat Brandon dis-favorably because of his race, she did.



Case Study

Don, a supervisor, insists that all employees of Middle Eastern descent sign a loyalty and confidentiality oath to the University every year to prove that they aren't terrorists. No other employees have to sign this oath.

Is Don violating the University's Non-Discrimination Policy?

Lets try another case study: Don, a supervisor, insists that all employees of Middle Eastern descent sign a loyalty and confidentiality oath to the University every year to "prove that they aren't terrorists." No other employees have to sign this oath.

Is Don violating the University's Non-Discrimination Policy?

YES. Don's is imposing different employment conditions on Middle Eastern employees by forcing them to sign the oath and not others. This is an example of disparate treatment discrimination.



Disparate Treatment Continued

Hostile work environment:

- Harassing conduct
 - based on protected group status
 - so severe *or* pervasive that it objectively creates an offensive work environment
- Can be created by anyone in the workplace, not just supervisors.

Disparate treatment discrimination also includes creating a hostile work environment for an employee because of their protected group membership. Hostile environment claims usually involve a pattern of harassing conduct, but a single severe incident can create a hostile environment.

A hostile environment can be created by different types of behaviors. Examples include but are not limited to: offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance. For hostile environment discrimination, the harassing conduct must be based on protected group membership and be either severe or pervasive (wide-spread) enough that it would cause a reasonable person to find the environment offensive. A hostile environment can be created by anyone in the workplace, not just supervisors.

While not all harassing or offensive conduct will rise to the level of discrimination, any disrespectful, belittling, or harassing conduct towards co-workers is always inappropriate and unprofessional in the workplace. Accordingly such conduct may be addressed by supervisors as workplace misconduct.



Case Study

Keiko, a Japanese-American, works as a department assistant. Since she began work, a group of co-workers have been making fun of her by slanting their eyes when they see her, calling her ninja, “Cuckoo,” and complaining that she smells like raw fish. They have done this repeatedly during her first two months on the job. Keiko has asked them to stop, but they refused.

Is Keiko being discriminated against?

Lets try another case study: Keiko, a Japanese-American, works as a department assistant. Since she began work, a group of co-workers have been making fun of her by slanting their eyes when they see her, calling her ninja, calling her “Cuckoo,” and complaining that she smells like raw fish. They have done this repeatedly during her first two months on the job. Keiko has asked them to stop, but they refused.

Is Keiko being discriminated against?

The answer is Yes. Keiko’s co-workers’ conduct is sufficiently pervasive to create a hostile work environment on the basis of Keiko’s race/national origin.



Case Study

Randy and Murat dislike Cindy because she recently got a merit bonus and they didn't. Since then they have been rude to her. They roll their eyes at her and ignore her work-related emails for as long as possible. Randy keeps pointing out minor mistakes in her work to their boss and one day Murat called her a bitch during lunch.

Is Cindy being discriminated against in violation of the University's Non-Discrimination Policy?

What about this situation?

Randy and Murat dislike Cindy because she recently got a merit bonus and they didn't. Since then they have been rude to her. They roll their eyes at her and ignore her work-related emails for as long as possible. Additionally, Randy keeps pointing out minor mistakes in her work to their boss and one day Murat called her a bitch during lunch.

Cindy complains to her supervisor that Randy and Murat are creating a hostile work environment.

Is Cindy being discriminated against in violation of the University's Non-Discrimination Policy?

In this case the answer is no. While Randy and Murat's behavior is unprofessional and unacceptable in the workplace, there is no evidence that they are harassing her because of her membership in a protected group. The fact that Murat called Cindy a "bitch" on one occasion, though offensive, is not severe enough to create a hostile environment based on Cindy's sex. Instead, it appears that Randy and Murat are harassing Cindy because they are angry she got the merit bonus.

Keep in mind that, even though their conduct does not violate the University's Non-Discrimination policy, Randy and Murat's supervisor(s) can still discipline them for their unprofessional behavior.



Disparate Impact Discrimination

- Neutral employment policy/practice consistently applied to all employees,
- Has disproportionately harsher effect on members of a protected group, *and*
- Policy/practice is not job-related and consistent with business necessity.

The other type of discrimination prohibited under law and University Policy is called Disparate Impact. Disparate Impact occurs when an employer has a “neutral” policy or employment practice that applies consistently to all employees regardless of their protected group status. However the practice has a disproportionately harsher effect on members of a particular protected group. This type of policy/practice is discriminatory unless it is job related and justified by legitimate business needs.



Case Study

A meat packing plant requires that everyone applying for a packing job pass a strength test. The test eliminates over 60% of all female applicants, while eliminating less than 3% of male applicants.

Is there a potential discrimination problem here?

Lets consider another case study.

A meat packing plant requires that everyone applying for a job pass a strength test. The test eliminates over 60% of all female applicants, while eliminating less than 5% of male applicants.

Is there a potential discrimination problem here?

The answer is yes. Even though everyone has to take the same strength test, the test has a disproportionately negative impact on women. Unless the employer can show that the strength test was related to safe and effective job performance, the employer will be found to have committed disparate impact discrimination.

Any employment practice or policy can constitute disparate impact discrimination if it has a disproportionately negative impact on a particular protected group and is not justified by business needs. This includes things like dress codes/grooming standards, degree requirements, recruitment practices, and hiring criteria.



Religious Accommodations

- Adjustments that allow an employee to practice his or her religion.
- May be denied if causes an undue hardship.

For the protected groups of religion and disability, the University must go beyond merely not discriminating and must also offer reasonable accommodations. Accommodation requests can be denied if the request would cause an undue hardship on the University.

Disability related accommodations will be discussed later in this presentation, including the process for requesting a disability accommodation.

Religious accommodations are adjustments at work that allow an employee to practice his or her religion. If the requested accommodation is costly, compromises workplace safety, decreases workplace efficiency, infringes on the rights of other employees, or requires other employees to do more than their share of potentially hazardous or burdensome work, the University may deny the request.



Religious Accommodations Examples

- A Catholic employee requests to use annual leave to attend church services on Good Friday.
- A Jewish or Sikh employee requests an exception from the normal dress code to allow him to wear a religious head covering at work.
- An atheist employee asks to be excused from a religious invocation offered at the beginning of a graduation ceremony.
- An employee who adheres to Native American spiritual beliefs requests leave to attend a ritual ceremony.
- A Muslim employee requests to schedule and use break time throughout the day for prayer.

Religious accommodation requests frequently relate to work schedules, dress and grooming, or religious expression/practice while at work. The following are all examples of religious accommodation requests:

- A Catholic employee requests to use annual leave to attend church services on Good Friday.
- A Jewish or Sikh employee requests an exception from the normal dress code to allow him to wear a religious head covering at work.
- An atheist employee asks to be excused from a religious invocation offered at the beginning of a graduation ceremony.
- An employee who adheres to Native American spiritual beliefs requests leave to attend a ritual ceremony.
- A Muslim employee requests to schedule and use break time throughout the day for prayer



Requesting Religious Accommodations

- Must make need known to supervisor
- Interactive Process
- Contact EOC with questions

If you need a religious accommodation, you must make this need known to your supervisors. Supervisors are expected to engage in an interactive process with you and the Office of Equal Opportunity and Compliance to determine if your need can be reasonably accommodated.

If you have questions about religious accommodations in your employment, contact the Human Resources Office of Equal Opportunity and Compliance at (850) 645-6519.



Where to Make a Discrimination Complaint

- Immediate Supervisor
- Next Level Supervisor
- EOC in Human Resources
- Ethicspoint Anonymous Reporting Hotline

As an employee, if you believe you are being discriminated against because of your membership in a protected group, there are several avenues available to make a complaint:

- You may report your complaint to your immediate supervisor. If the allegation is against your immediate supervisor, you can contact the next level of supervision, or up the chain of command as appropriate.
- You may contact EOC directly, or
- You can file an anonymous complaint via FSU Ethicspoint, which is the University's anonymous reporting hotline.

You can find FSU's discrimination complaint form on the EOC's website, compliance.hr.fsu.edu.



Non-Retaliation

Retaliation is prohibited against individuals who:

- Make a discrimination complaint
- Help someone report
- Participate in an investigation
- Otherwise oppose discrimination
- Make a reasonable accommodation request

Sometimes employees are afraid to report discriminatory behavior because they are afraid they will be retaliated against. The law and University policy protect your right to make a discrimination complaint or request a reasonable accommodation. It is a violation of university policy to retaliate against a person by taking negative employment action or creating a hostile work environment because they: make a discrimination complaint, help someone else report discrimination, participate in a discrimination investigation, otherwise oppose discriminatory conduct in a reasonable manner, or make a reasonable accommodation request for disability or religion.



Who Investigates Complaints?



- Investigates discrimination complaints *against* employees, contractors, and visitors.
- Formal and informal options.

Florida State University's Office of Equal Opportunity and Compliance or EOC is responsible for advancing and monitoring the University's Equal Employment Opportunity, Affirmative Action, Family Medical Leave Act, and Americans with Disabilities Act policies, procedures, programs, and initiatives to ensure compliance.

The EOC also performs investigations of discrimination complaints made against employees, contractors, and visitors. The EOC serves as a neutral investigator for these complaints. Formal and informal options are available for complaint resolution.

Complaints of discriminatory behavior by students are handled by the Office of Student Rights and Responsibilities in the Dean of Students Department.



Mandatory Reporting Obligation

Supervisors must report the following to the EOC:

- Discrimination affecting a subordinate
- Disability Accommodation Requests

Failure to report may result in disciplinary action.

Any employee who experiences or witnesses what they perceive to be discriminatory conduct is encouraged to report the situation to their supervisor or to the EOC so the situation can be addressed.

Supervisors who witness or become aware of discrimination affecting someone under their supervision *must* report the concern/incident to the EOC promptly. Supervisors must also report disability accommodation requests made by individuals under their supervision to the EOC. Typically this report should be made within two business days of the occurrence of the incident to be considered prompt. A supervisor's failure to report can result in disciplinary action. It is the EOC's responsibility to handle complaints and to facilitate the interactive disability accommodation process.



Mandatory Reporting Obligation

“Supervisors” include:

- Residence Hall Coordinators
- Graduate Assistants
- Teaching Assistants
- Academic Advisors
- Athletic Coaches
- Others

Be aware that for mandatory reporting purposes, the term Supervisor includes: residence hall coordinators, graduate assistants, teaching assistants, academic advisors, athletic coaches, deans, faculty advisors, and others.

If you are not sure whether you are a supervisor in a given situation please contact the EOC for a consultation.



Recognizing Offensive Behavior

- Mocking clothes, food, or physical appearance of people from different cultures, religious beliefs, sexual orientation, or gender expressions
- Humor based on stereotyping/denigrating members of protected groups
- Not respecting different beliefs
- Making fun of accents or names

As a member of the Campus community, you must avoid engaging in discriminatory conduct. To avoid offending others you should work to develop an awareness of behaviors that can be offensive such as:

- Mocking the clothes, food, or physical appearance of people from different cultures, religious beliefs, sexual orientation, or gender expression
- Humor based on stereotyping/denigrating members of protected groups
- Not respecting different beliefs
- Making fun of accents or names, including using uninvited nicknames.

Engaging in a pattern of this type of conduct could create a hostile environment for your coworkers and violate the University's Non-Discrimination Policy.



Affirmative Action

Now we will turn to the topic of the University's affirmative action practices and legal obligations.



Commitment to Affirmative Action

Florida State University is committed to the practice of equal opportunity and affirmative action in all aspects of employment for minorities, women, protected veterans, and individuals with disabilities.

Florida State University (University or FSU) is committed to the practice of equal opportunity and affirmative action in all aspects of employment. As a federal government contractor, FSU is required to provide equal employment opportunities to qualified minorities, women, individuals with disabilities, and protected veterans.



EEO Clause

- An Equal Opportunity/Access/Affirmative Action/Pro Disabled & Veteran Employer.
- Equal Employment Opportunity/Affirmative Action information is available on the University's EOC webpage (<http://compliance.hr.fsu.edu/>)

All of the University's job advertisements for faculty, staff, and OPS positions contain the Equal Employment Opportunity (EEO) Tagline. The EEO Tagline, which reads "An Equal Opportunity/Access/Affirmative Action/Pro Disabled & Veteran Employer," is mandated by the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP). To remain legally compliant, the tagline cannot be shorted or altered.

Additional Equal Employment Opportunity/Affirmative Action information is available on the EOC webpage.



Americans with Disabilities Act

Now we will turn to the topic of disability discrimination protections under the Americans with Disabilities Act or “ADA” and FSU’s ADA policy.



Americans with Disabilities Act

The ADA, as amended by the ADAAA:

- Prohibits discrimination against qualified individuals on the basis of disability in all aspects of employment. Such as:
 - Application for employment
 - Hiring, firing, layoff
 - Job assignments, promotions, demotions.
- Requires “reasonable accommodations” for applicants and employees with a disability.
- Protects confidentiality of medical information.

(Read slide verbatim)



FSU's ADA Policy

OP-C-7-I1 AMERICANS WITH DISABILITIES ACT

The Florida State University (University) is committed to a policy ensuring that individuals with disabilities are not discriminated against and that they have equal opportunity and equal access to all the rights and privileges enjoyed by those who are not disabled. The Florida State University will comply with all applicable federal and state laws, regulations, ordinances, orders, and rules and will provide, upon request, reasonable accommodations to individuals with disabilities. This policy and procedure does not intend to expand what is required by law, but to provide procedures for implementation of reasonable accommodation requests.

In addition to disability being covered by the University's Non-Discrimination Policy, FSU has a separate ADA Policy. The policy addresses our obligation as an employer to reasonably accommodate a qualified individual with a disability and outlines the request process and determination procedures.



University Authority

- Office of Equal Opportunity and Compliance (EOC)
 - ADA Coordinator: (850) 645-6519
- Student Disability Resource Center (SDRC)
 - SDRC's main line: (850) 644-9566

The University's ADA Coordinator in the Office of Equal Opportunity and Compliance is the official university authority for all non-academic, employment related ADA compliance matters.

All student concerns, requests, and disability accommodation issues such as: taking exams, securing assistive equipment for classes, and acquiring an interpreter should be directed to the Student Disability Resource Center (SDRC) for assistance.

It is the EOC's or SDRC's responsibility to determine if an employee or student is a qualified individual with a disability and any appropriate reasonable accommodations.



Basic ADA Requirements

The ADA requires an employer to reasonably accommodate qualified individuals with disabilities, as long as making such an accommodation does not create an undue hardship or cause a direct threat to the health or safety of the requesting individual or others.

(Read slide verbatim)



Qualified Individual

A “qualified individual with a disability” is:

- a person who meets legitimate skill, experience, education, or other requirements of an employment position that s/he holds or seeks, and
- can perform the “essential functions” of the position with or without reasonable accommodation.

Title I of the ADA defines a “qualified individual with a disability” as a person who, with or without reasonable accommodation, can meet the minimum qualifications and also perform the essential functions of the job.



Disability

The ADA defines a “**disability**” as:

1. A physical or mental impairment that substantially limits one or more major life activities, or
2. The individual has a record of such impairment, or
3. The individual is regarded as having such an impairment.

The ADA lists three circumstances under which an individual is considered “disabled.”

(Starting with #1, read slide verbatim)



Physical & Mental Impairments

Physical/Mental Impairment that Substantially Limits a Major Life Activity

Physical or mental impairments include:

- Neurological
- Respiratory
- Cardiovascular
- Reproductive
- Digestive
- Skin
- Any mental or psychological disorder
 - Intellectual impairment
 - Organic brain syndrome
 - Emotional/mental illness
 - Learning disabilities

Both physical and mental impairments can constitute disabilities. A few examples of physical or mental impairments are (read bullets verbatim).

SOME DISABILITIES ARE NOT OBVIOUS...such as epilepsy, Bipolar Disorder, HIV infection, AIDS, substantial hearing/visual impairment, but they are disabilities nonetheless.



What is Not a Disability?

Impairments **excluded** from the ADA, include:

- Physical characteristic (hair color, left handedness)
- Height, weight, muscle tone
- Personality characteristics (temper, poor judgment)
- Temporary non-chronic conditions (flu, broken limb)
- Gambling, pyromania
- Sexual conditions (gender identity, bisexuality)
- *Illegal use of drugs*
- *Advanced age*
- *Obesity*
- *Stress*

Not every physical or mental condition qualifies as a disability. Impairments that are usually **excluded** from the ADA and not considered a disability are: (read bullets)

Special attention is given to the last four italicized topics because the ADA is very complex in its application and meaning regarding these topics. For example, obesity is generally excluded as an disability under the ADA; however, severe or morbid obesity may be included especially if some related physical impairment occurs. Similarly, stress may be a disability because it may result in depression or other mental disorders, likewise with age. Generally, your age is not considered an impairment; however, the effects of advanced aging may be covered.

Although current substance abusers are absolutely not protected under the ADA, the law provides that former addicts undergoing or having completed an alcohol or drug rehabilitation program are protected under the law, as long as the employee is no longer a current substance abuser.



Duration of Time

- Long term and chronic conditions.
- Episodic and/or remission impairments.
- No specific duration required.
- Non-chronic impairments of short duration with little residual affects usually do not qualify.

There is no specific length of time a person must have a condition to qualify as a disability. Long term and chronic conditions may qualify as a disability. Also, temporary disabilities that occur episodically or impairments that are in remission may be covered by the ADA. Such conditions are considered a disability if they substantially limit a major life activity when active. Examples include epilepsy and cancer. Usually non-chronic impairments of short duration do not qualify as disabilities.



Substantially Limits

Major Life Activities

- Walking, speaking, hearing, standing, seeing, breathing, performing manual tasks, learning, caring for oneself, sleeping, concentrating, thinking, eating, working, etc.
- Major bodily functions
 - Functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

To be considered a disability, the ADA requires that the physical or mental impairment substantially limit one or more major life activities.

In general, MAJOR LIFE ACTIVITIES are basic activities an average person can perform without difficulty. Examples include (but are not limited to): walking, speaking, hearing, standing, seeing, breathing, performing manual tasks, learning, caring for oneself, sleeping, concentrating, thinking, eating, working, etc.

“Major Life Activities” also include the ability to perform normal bodily functions.

Examples of bodily functions and their associated impairments include:

- Immune system (HIV/AIDS)
- Normal cell growth (CANCER)
- Respiratory (ASTHMA)
- Digestive, Bowel (gastrointestinal disorders like CROHN’S DISEASE)
- Endocrine (HORMONE DISORDERS in the Thyroid gland, pituitary gland, sex glands (ovaries and testes), etc.)
- Reproductive functions (INFERTILITY/TREATMENT)
- Sleeping (NARCOLEPSY, SLEEP APNEA, and HYPERSOMNIA)
- Cardiovascular (HEART DISEASE)



Record of Impairment

The individual has a record of such impairment if:

- He or she does not currently have a substantially limiting impairment but had one in the past. Some type of documentation of the impairment must exist.
- He or she was misdiagnosed or misclassified with a disability.

The second circumstance in which the ADA defines disability is that the individual has a record of an impairment that substantially limits one or more major life activities.

An individual with an impairment that previously limited, but no longer substantially limits a major life activity, may be entitled to a reasonable accommodation if needed and related to the prior disability. For example, an employee in remission from cancer might need schedule flexibility to attend follow up doctor appointments to monitor their health.

Likewise, individuals who are no longer engaged in the illegal use of drugs/alcohol and have successfully completed a drug/alcohol rehabilitation program would be covered under the second “prong” of the ADA Disability definition.



Regarded as Disabled

- Person regarded by an employer as having an impairment that is not transitory (lasting less than 6 months) or minor.
- Not entitled to a reasonable accommodation, but may file a claim of disability discrimination.

The third circumstance in which the ADA defines disability is when an individual is perceived by others as having a disability even when they do not. For example, a person with a severe disfigurement.

Another example would include otherwise non-disabled individuals who are discriminated against because they have a known association or relationship with an individual who is disabled (such as a spouse, a sibling, parent or child). The non-disabled individual is also protected under the ADA because of their affiliation with someone who is disabled.

Unless an individual has disclosed a specific condition, they should never be “regarded as” disabled. If an individual is “regarded as,” they are not entitled to a reasonable accommodation, but they may file a claim of disability discrimination.



Who is Not Protected Under the ADA?

- Individuals with temporary medical conditions.
- Individuals currently engaging in the illegal use of drugs.
- An alcoholic whose current use of alcohol interferes with job performance.
- Any employee creating a direct threat to the safety of themselves or others (regardless of whether or not they have a disability).

Who is not protected under the ADA?

- Individuals with temporary medical conditions, such as colds, the flu, or a sprained ankle.
- Individuals currently engaging in the illegal use of drugs.
- An alcoholic whose current use of alcohol interferes with job performance.
- Any employee creating a direct threat to the safety of themselves or others (regardless of whether or not they have a disability).

You cannot assume that an individual poses a direct threat based on a stereotype of their disability. There must be an individual assessment of the individual's behavior. For example any employee who is brandishing a weapon at coworkers poses a direct threat.



Undue Hardship

The ADA requires an employer to reasonably accommodate qualified individuals with disabilities, unless making such an accommodation creates an undue hardship.

Once we have determined that an employee is a qualified individual with a disability, based on the ADA, FSU has to offer a reasonable accommodation to that employee ... “as long as making such an accommodation does not create an undue hardship.” Whether a requested accommodation causes undue hardship is determined on a case-by-case basis.



Reasonable Accommodations Examples

- Job restructuring
- Modified work schedule
- Alteration of the work environment
- Adjustments or modifications to employment tests and training materials
- Providing qualified readers or interpreters
- Making existing facilities accessible to and usable by individuals with disabilities
- Transfer of the disabled individual to a vacant position, if appropriate

Reasonable accommodations may include: (Read slide verbatim).



ADA Key Points

- An applicant or employee must be a qualified individual with a disability.
- Employers must make a reasonable accommodation.
- The requested accommodation cannot impose undue hardship on the business.

If you are an employee you are encouraged to contact the Office of Equal Opportunity and Compliance (EOC) directly for assistance.

The University's duty to act does not begin until the employee makes a request or self-identifies a need for assistance to a supervisor or to the EOC. The University is required to accommodate a "known" disability of a qualified applicant or employee. This requirement is generally met and triggered by a request.

A supervisor should not independently determine whether an employee's request for an accommodation is reasonable or unreasonable. If you are a supervisor, you are not alone. When an employee asserts their disability and requests an accommodation, you must contact the EOC to initiate the interactive process necessary to satisfy the law.

If an employee experiences a temporary medical condition, even if they are not eligible for an accommodation under the ADA, they may be eligible for other assistance offered by the University to aid them during their recovery period. Contact the EOC as a resource to determine what assistance is applicable and available.



Keep these etiquette tips in mind when communicating and interacting with individuals with disabilities.

Service animals are defined as dogs that are individually trained to do work or perform tasks for people with disabilities. If you have questions regarding a service animal you are allowed to ask: 1) is the dog a service animal, and 2) what work or task has the dog been trained to perform. Please do not pet, feed, or distract service animals. They are working animals, not pets. Service animals are allowed in all places open and accessible by the public.

Note: these are the same types of questions you would use when dealing with individuals using non-traditional mobility devices such as Segways.

If an employee, guest, or student is using an interpreter, please speak directly to the employee, guest, or student and maintain eye contact with them, not the interpreter.

If you offer your assistance to an individual with a disability, wait and listen for a response, and then follow any specific directions given. If they do not want assistance, honor that request.

Take steps to help make the campus community accessible. Monitor the environment around you. If you can correct an issue, please do, otherwise report it to the ADA Coordinator in the Office of Equal Opportunity and Compliance.

Above all, be patient. People with disabilities may sometimes need a bit more time to express themselves or get from place-to-place.



Disability Etiquette

Negative phrases

- Handicapped, lame, crippled or deformed
- CP victim
- Confined or restricted to a wheelchair
- Dumb and mute
- Retarded, crazy or nuts

Affirmative phrases

- Person with a disability
- Person with cerebral palsy
- Person who uses a wheelchair
- Unable to speak, uses synthetic speech
- Person with a psychiatric disability

Knowing the correct, polite, and acceptable terminology is important. We've provided you with a quick list of affirmative phrases to use when discussing or commenting about an individual with a disability.

Use affirmative phrases when speaking to or about an individual such as (Read affirmative phrases).



Case Study

Marsha, a receptionist, was diagnosed with multiple sclerosis. Her physician advised her employer and provided documentation to support the negative impact of heat to her condition. Marsha requested a covered shaded parking space as a reasonable accommodation. Her employer denied her request because the company's policy is that covered parking is reserved for the executive team.

Did Marsha's employer violate the ADA?

Time for a case study. (READ SLIDE VERBATIM)

YES. Marsha filed a discrimination complaint based on her disability in federal court. The case went before a jury trial. The company was ordered to pay a six figure sum in compensation. In spite of the company asserting that it had a policy to reserve covered parking for executives, when it comes to what is considered a reasonable accommodation, sometimes exceptions to policies or standard practices are necessary.



Case Study

Harry is a full time stenographer for the Jefferson County Clerk of Courts. Last night, while at home, Harry fell and broke his arm. Harry has requested a temporary accommodation from his employer until his arm heals (6-8 weeks). The Clerk of Court denied his request.

Did Harry's employer violate the ADA?

Let's try another case study.

Harry is a full time stenographer for the Jefferson County Clerk of Courts. Last night, while at home, Harry fell and broke his arm. Harry has requested a temporary accommodation from his employer until his arm heals (6-8 weeks). The Clerk of Court denied his request. Did Harry's employer violate the ADA?

No, in this case the Clerk of Courts did not violate the ADA.

As we previously discussed most non-chronic impairments of short duration do not qualify as disabilities. This generally includes simple broken bones absent medical complications in the healing process. In this case, there is no indication that there will be complications in Harry's healing process. Therefore, he is not considered an individual with a disability.

NOTE: This is not a decision supervisors should make alone. They must contact EOC for guidance.



Roles & Responsibilities

As an **employee**:

- Monitor your behavior/be respectful.
- Know and comply with University policies & procedures.
- Support the University's commitment to foster a diverse and inclusive work environment.
- Promptly report concerns to appropriate individuals/departments.
- Get training.

As an employee, it is imperative that you follow the tips in this slide. The laws and University Policies are in place for a reason. Please make every effort to follow them to the best of your ability.

- Monitor and filter your conduct for the workplace. Always treat others with respect and professionalism.
- Know and comply with all University policies and procedures.
- Support the University's commitment to foster a diverse and inclusive work environment.
- Promptly report concerns to appropriate individuals/departments.
- Get more training. The EOC offers advanced classes in Non-Discrimination, Sexual Misconduct, ADA, and Diversity through the University's training center. Contact the training center at 850-644-8124 or Training@fsu.edu for more details.



Roles & Responsibilities

As a **supervisor**:

- Consistently apply policies & procedures.
- Take complaints & accommodation request seriously and respond promptly.
- Maintain privacy (need to know basis).
- Educate yourself and employees.
- Proactively monitor the work environment.
- Document.
- Get help from the EOC.

If you are a supervisor, the University's expectation of your conduct is heightened compared to a non-supervisory employee.

Your employment decisions and response to complaints and requests can expose the University to substantial legal liability. Furthermore, as a leader it is crucial that you model appropriate conduct at all times. Employees look to you to determine what type of behavior is permissible in the work environment.

- Be consistent and treat employees fairly.
- Treat all discrimination complaints and accommodation requests seriously and promptly report concerns to the EOC. Do not make snap judgments about a complaint or fail to notify the EOC because of your personal opinions of the people involved.
- Maintain privacy. Discrimination complaints, related investigations, and requests for accommodation must be kept on a need to know basis. Do not repeat or share information with others unless necessary for resolving the concern.
- Educate yourself by taking supervisory level courses in Equal Employment Opportunity, ADA, Sexual Misconduct, and Diversity through the University Training Center. Also educate your employees about non-discrimination and related policies. As a supervisor we encourage you to communicate the policy regularly to your employees.
- Proactively manage the work environment. Don't wait for an employee to file a discrimination complaint before you take action. Keep your eyes and ears open and respond to inappropriate and unprofessional conduct by your employees before it reaches the level of creating a hostile environment.
- Document the business reasons for your employment decisions.
- Do not make decisions on your own. Remember that the EOC is always available for consultations about how to handle difficult situations and to discuss best business practices.

As a supervisor, the KEY to avoiding employment law violations is to be proactive, not reactive!



Thank you for your Participation

If you have any questions, please call or email the

EOC at:

(850) 645-6519

or

EOC@fsu.edu.

Read slide verbatim