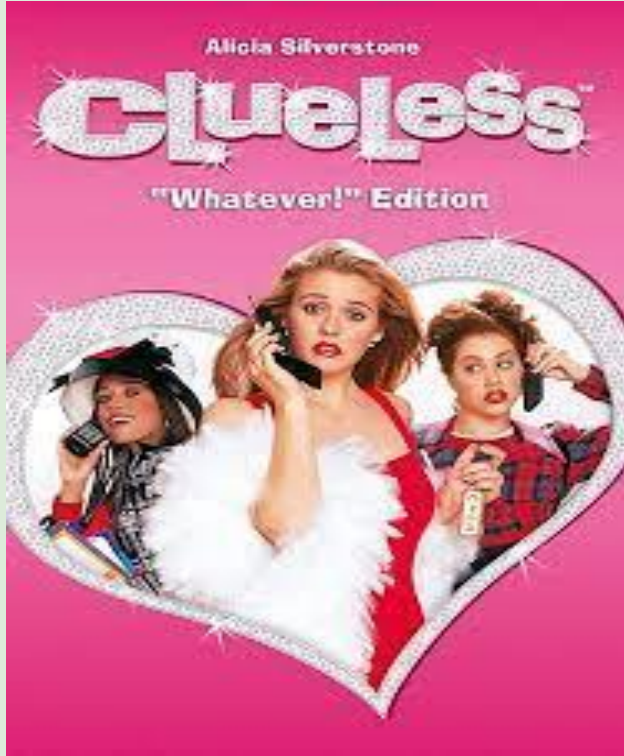




Clueless: The ADA Accommodation process

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“I so need lessons from you on how to be cool.”

- ADA Accommodation

- The Basics

- The Skinny on the Reassignment Process

A LITTLE REFRESHER



Americans with Disabilities Act Prohibits

- Discriminating against someone with a disability
- Harassing someone with a disability
- Retaliating against someone for exercising their rights under the law
- Regarding someone as disabled
- Making unlawful medical inquiries

And, requires accommodation...

TO QUALIFY FOR PROTECTION UNDER THE ADA

Must have:

- A disability
- That substantially limits
- A major life activity



A bit of history . . .

- In 2008 the ADA was amended by Congress. (ADAAA) Congress made three significant changes:



- Broadened the definition of “**disability**”
- Changed the meaning of “**substantially limits**” (lower burden)
- Expanded the list of “**major life activities**”

So what does this mean?

Definition of "disability" relaxed

+

"Substantially limits" now means
"moderately limits"

+

Expanded list of "major life activities"

=

More exposure for Employers

Who is disabled under the ADA?

- Those with a disability (currently)
- Those with a record of a disability (formerly)
- Those perceived as having an impairment
- Those who associate with disabled individuals

What is reasonable accommodation under the ADA?

"In general, an accommodation is any **change in the work environment** or **in the way things are customarily done** that enables an individual with a disability to enjoy equal employment opportunities."

-EEOC Enforcement Guidance

Accommodation Examples

- Flexible scheduling
- Voluntary substitutions or swaps
- Lateral transfers
- Modifying or acquiring equipment
- Modification of grooming requirements
- Modification of other workplace policies or practices

“Reassignment to a vacant position”

THE REASSIGNMENT PROCESS



When should the Company consider reassignment?

- Reassignment is the reasonable accommodation of last resort and is required only after it has been determined that:
 - (1) there are no effective accommodations that will enable the employee to perform the essential functions of his/her current position, or
 - (2) all other reasonable accommodations would impose an undue hardship

THE GUARDRAILS

Qualified

- An employee is "qualified" for a position if he/she:
 - (1) satisfies the requisite skill, experience, education, and other job-related requirements of the position, and
 - (2) can perform the essential functions of the new position, with or without reasonable accommodation

THE GUARDRAILS

Qualified – umm, we hire the most qualified person for the job

The employee does not need to be the best qualified individual for the position in order to obtain it as a reassignment.



THE GUARDRAILS

Vacant

- "Vacant" means that the position is available when the employee asks for reasonable accommodation, or that the employer knows that it will become available within a reasonable amount of time.
- A "reasonable amount of time "should be determined on a case-by-case basis considering relevant facts, such as whether the employer, based on experience, can anticipate that an appropriate position will become vacant within a short period of time.

THE GUARDRAILS

Equivalent or Downgrade

- The employer must reassign the individual to a vacant position that is equivalent in terms of pay, status, or other relevant factors (e.g., benefits, geographical location) if the employee is qualified for the position.
 - “Pay, status, geographical location”
- If there is no vacant equivalent position, the employer must reassign the employee to a vacant lower level position for which the individual is qualified.

AS IF!! But we have . . .

- A policy that doesn't allow employees to transfer between jobs
- A policy that doesn't allow employees to transfer between offices, departments, etc.
- A seniority system we use for all job placements





*I felt impotent and out of control,
which I really hate.*

Whatever! Are there any limitations?

No Duty to Bump

No Duty to Promote

No Duty to Create



How long to we have to look for another job?



- An employer must “proceed expeditiously” to search for another position
- Length of the search process “depends” – size of employer, how quickly an employer can implement the search
- Are the Courts consistent about what constitutes a reasonable period of time? **AS IF!**

I'M TOTALLY BUGGIN'!

**This is still intended to be an interactive process
(ahem, DOCUMENT)**

- You aren't sure whether the employee is qualified for a vacant position
- There are multiple equivalent vacant positions where the employee could be placed
- You've found a reassignment position
- You've looked and there aren't any equivalent or downgrade vacant positions for which the employee is qualified



I'm outty.



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