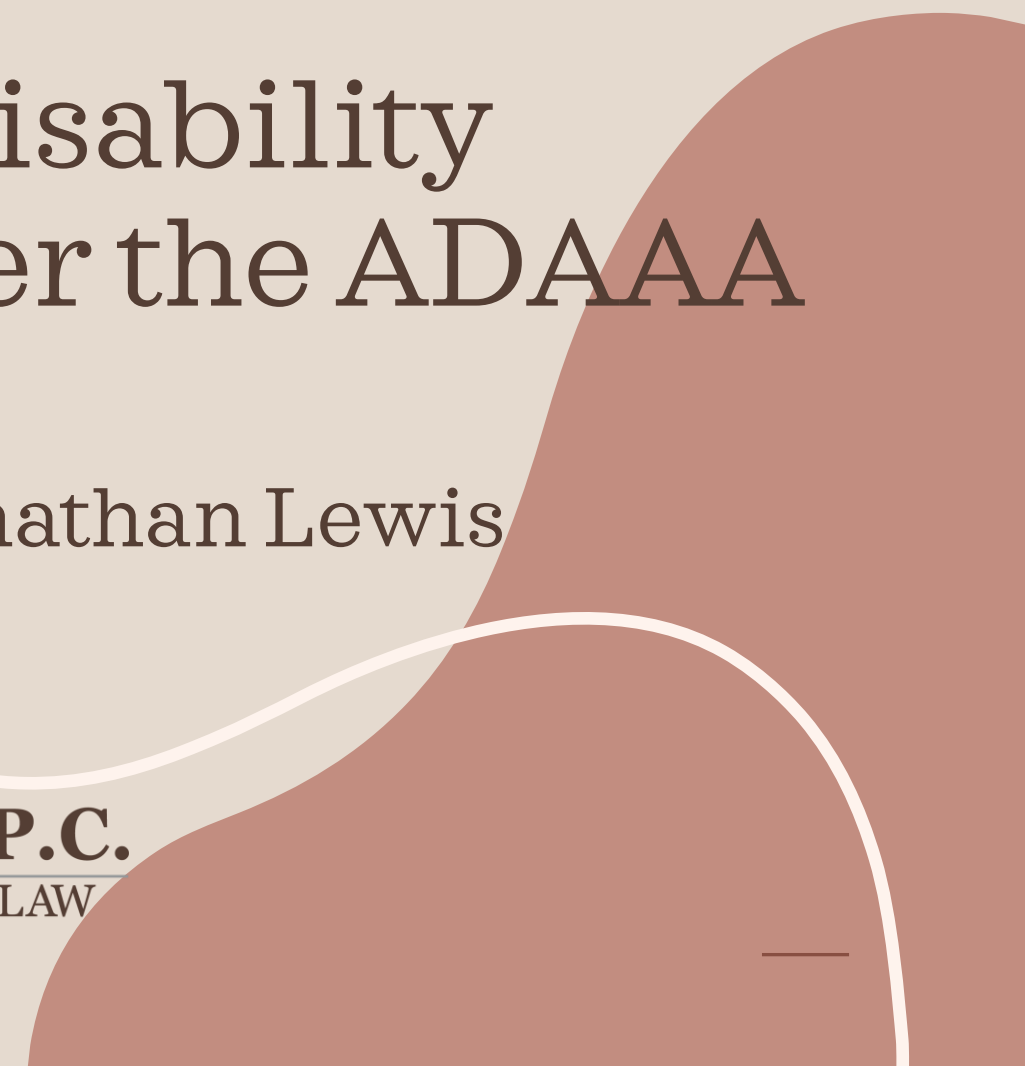


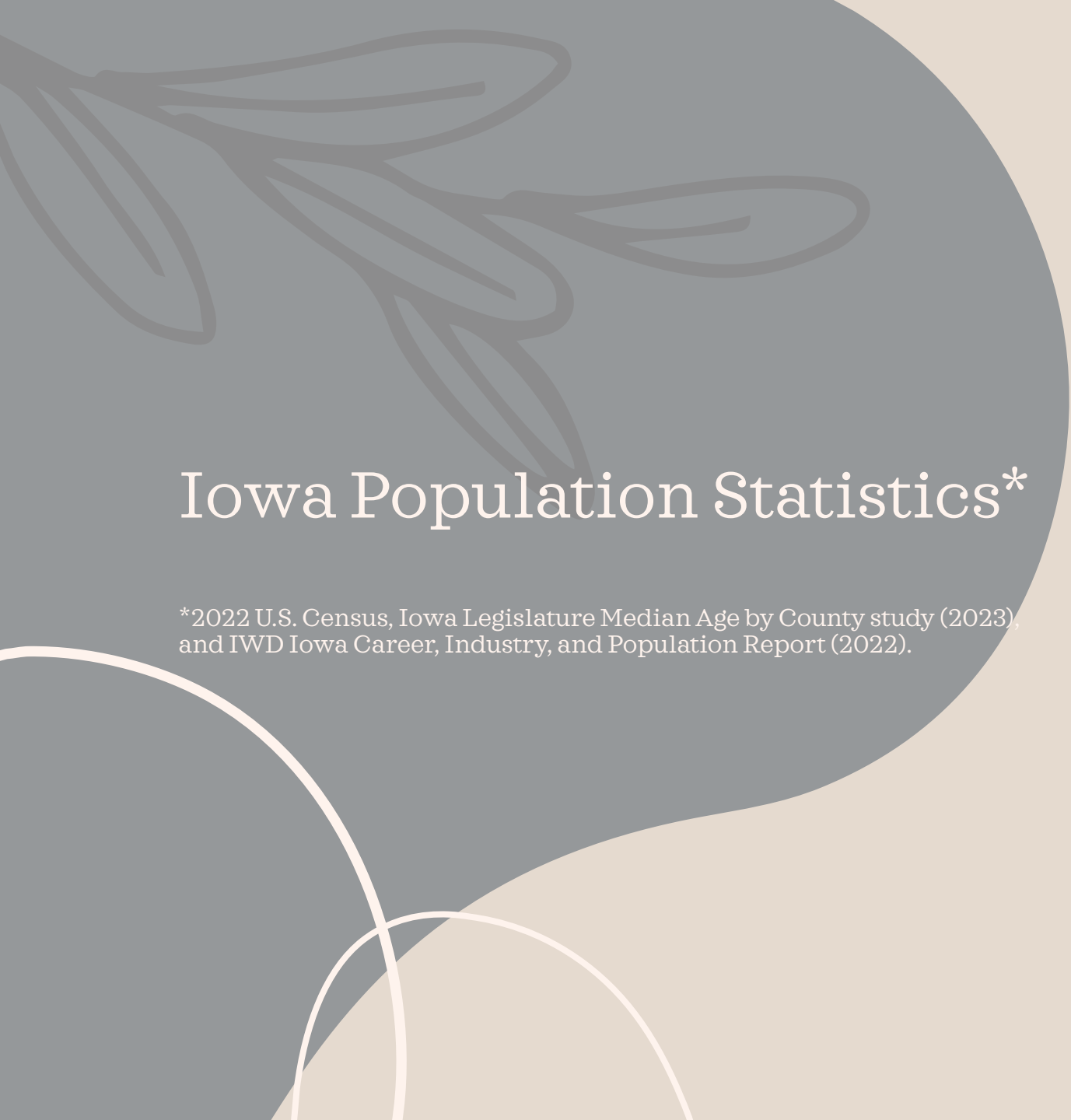


Reasonable Compassion: Mental Health Disability Accommodation under the ADAAA

By Brent Hinders and Jonathan Lewis

**HOPKINS
& HUEBNER, P.C.**
ATTORNEYS AT LAW





Iowa Population Statistics*

*2022 U.S. Census, Iowa Legislature Median Age by County study (2023), and IWD Iowa Career, Industry, and Population Report (2022).

- IOWA HAS APPROXIMATELY 3.2 MILLION RESIDENTS WITH A PREDICTED ANNUAL POPULATION INCREASE OF ~0.2%
- APPROXIMATELY 26% ARE UNDER 19 YEARS OLD
- APPROXIMATELY 18% ARE 65 OR OLDER.
- MEDIAN AGE OF RESIDENTS STATEWIDE IS 38.6
 - U.S. median is now ~38.9.
 - In 2000, the U.S. median was ~35.
 - In 1980, the U.S. median was ~30.
- 72 of Iowa's 99 counties have a median age of 40 or older.
- 15 of Iowa's 99 counties have a _____ median age of 45 or older



Iowa Labor Statistics*

*Iowa Workforce Development Labor Market Quick Stats (Dec. 2024); U.S. Bureau of Labor Statistics (July 2024).

- TOTAL LABOR FORCE:
 - Approximately 1,689,000 civilians in Iowa (accounting for fluctuation)
 - LABOR FORCE PARTICIPATION:
 - 66.4% in December 2024
 - UNEMPLOYMENT:
 - 3.2% in December 2024
 - NON-FARM JOBS
 - +19,200 overall in 2024
 - Biggest gains in Health Care and Education
 - Biggest losses in manufacturing and warehousing
 - Government gain to loss was equal with losses at the local level and gains at the State level.
-



Iowa Mental Healthcare*

National Alliance on Mental Health – Iowa (2023) and Bureau of Labor Statistics: Persons with a Disability – Labor Force Characteristics (2023).

- EST. 600,000 IOWANS HAVE SOME FORM OF MENTAL HEALTH ISSUES.
 - 128,000 adults in Iowa have a “serious mental illness” i.e. Major depressive disorder, BPD, PTSD, OCD, and schizophrenia.
 - 42.2% of adults report symptoms of anxiety or depression.
 - MENTAL HEALTHCARE
 - 1.8 million Iowans live in communities without sufficient mental health professionals.
 - Average 11 years between onset of symptoms and medical diagnosis/intervention.
 - U.S. WORKFORCE
 - 18% of the overall U.S. workforce reports a mental health disability.
 - 38.1% of individuals with a mental health disability cannot find employment.
-

The Americans with Disabilities Act

Passed in 1990 and Amended in 2008

“There were four goals of the Americans with Disabilities Act: full participation, equal opportunity, independent living and economic self-sufficiency. The last one referring to employment and jobs.

The first three we’ve done pretty well on. We’ve seen physical barriers go down all over our country, places are more accessible, whether they are theatres or sports stadiums, restaurants or businesses. Education has also opened up opportunities too.

But the one place where we really haven’t made much progress, and this dampens my happiness a little bit, is unemployment. The rate of unemployment for adults with disabilities is just about today where it was 30 years ago. And if you’re talking about the future, to me, that’s what we really need to focus on. We’ve come a long way on independence and participation. The final frontier is competitive, integrated employment for persons with disabilities.

There’s also some fear I think amongst employers that if they hire people with disabilities that it comes with all these rules and regulations they need to follow, which if they mess up they’re going to end up in court and going to be sued. A lot of this is misinformation and lack of understanding.”

~ Iowa Senator, Tom Harkin, Author of the ADA at its 30th Anniversary Celebration (2020)

DISABILITY DEFINITION UNDER THE ADA

- 29 C.F.R. § 1630.2(G)

- Disability means, with respect to an individual—
 - A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
 - A record of such an impairment; or
 - Being regarded as having such an impairment as described in paragraph (I) of this section.
- This means that the individual has been subjected to an action prohibited by the ADA as amended because of an actual or perceived impairment that is not both “transitory and minor.”
- An individual may establish coverage under any one or more of these three prongs of the definition of disability, i.e., paragraphs (g)(1)(i) (the “actual disability” prong), (g)(1)(ii) (the “record of” prong), and/or (g)(1)(iii) (the “regarded as” prong) of this section.
- Where an individual is not challenging a covered entity's failure to make reasonable accommodations and does not require a reasonable accommodation, it is generally unnecessary to proceed under the “actual disability” or “record of” prongs, which require a showing of an impairment that substantially limits a major life activity or a record of such an impairment.
 - In these cases, the evaluation of coverage can be made solely under the “regarded as” prong of the definition of disability, which does not require a showing of an impairment that substantially limits a major life activity or a record of such an impairment.
 - An individual may choose, however, to proceed under the “actual disability” and/or “record of” prong regardless of whether the individual is challenging a covered entity's failure to make reasonable accommodations or requires a reasonable accommodation.

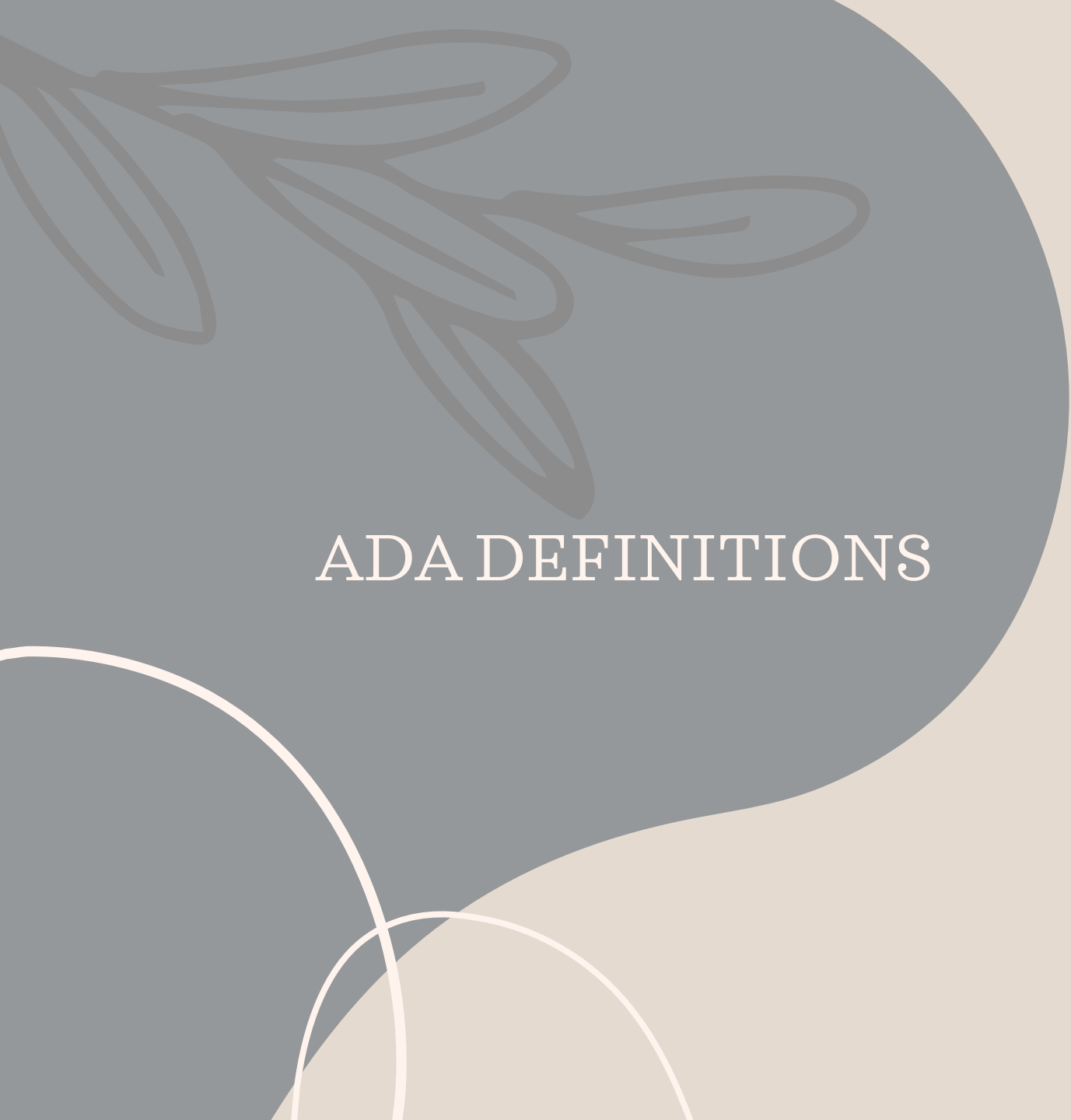


AMERICANS WITH DISABILITIES ACT COVERED EMPLOYERS

APPLIES TO ALL EMPLOYERS
WITH MORE THAN 15
EMPLOYEES AND ALL LOCAL
GOVERNMENTS REGARDLESS
OF SIZE.

MAKES IT ILLEGAL TO
DISCRIMINATE AGAINST A
QUALIFIED INDIVIDUAL WITH
A DISABILITY.

INDIAN TRIBES AND
RELIGIOUS INSTITUTIONS ARE
EXCLUDED FROM
EMPLOYMENT PROVISIONS.



ADA DEFINITIONS

QUALIFIED INDIVIDUAL

A PERSON WHO HAS A DISABILITY
WHO WITH OR WITHOUT
REASONABLE ACCOMMODATION
CAN PERFORM THE ESSENTIAL
FUNCTIONS OF THE JOB.

ESSENTIAL FUNCTION

A JOB REQUIREMENT THAT
EMPLOYERS REQUIRE EMPLOYEES
TO PERFORM AS PART OF THE JOB
AND IF REMOVED WOULD
FUNDAMENTALLY ALTER THE
POSITION.

DISABILITY

A PHYSICAL OR MENTAL
IMPAIRMENT WHICH
SUBSTANTIALLY LIMITS ONE OR
MORE MAJOR LIFE ACTIVITIES
AND/OR BODILY FUNCTIONS, OR
AN IMPAIRMENT WHERE THERE IS
SUCH A SUBSTANTIAL RECORD
THAT THE PERSON IS REGARDED
AS HAVING SUCH AN IMPAIRMENT.



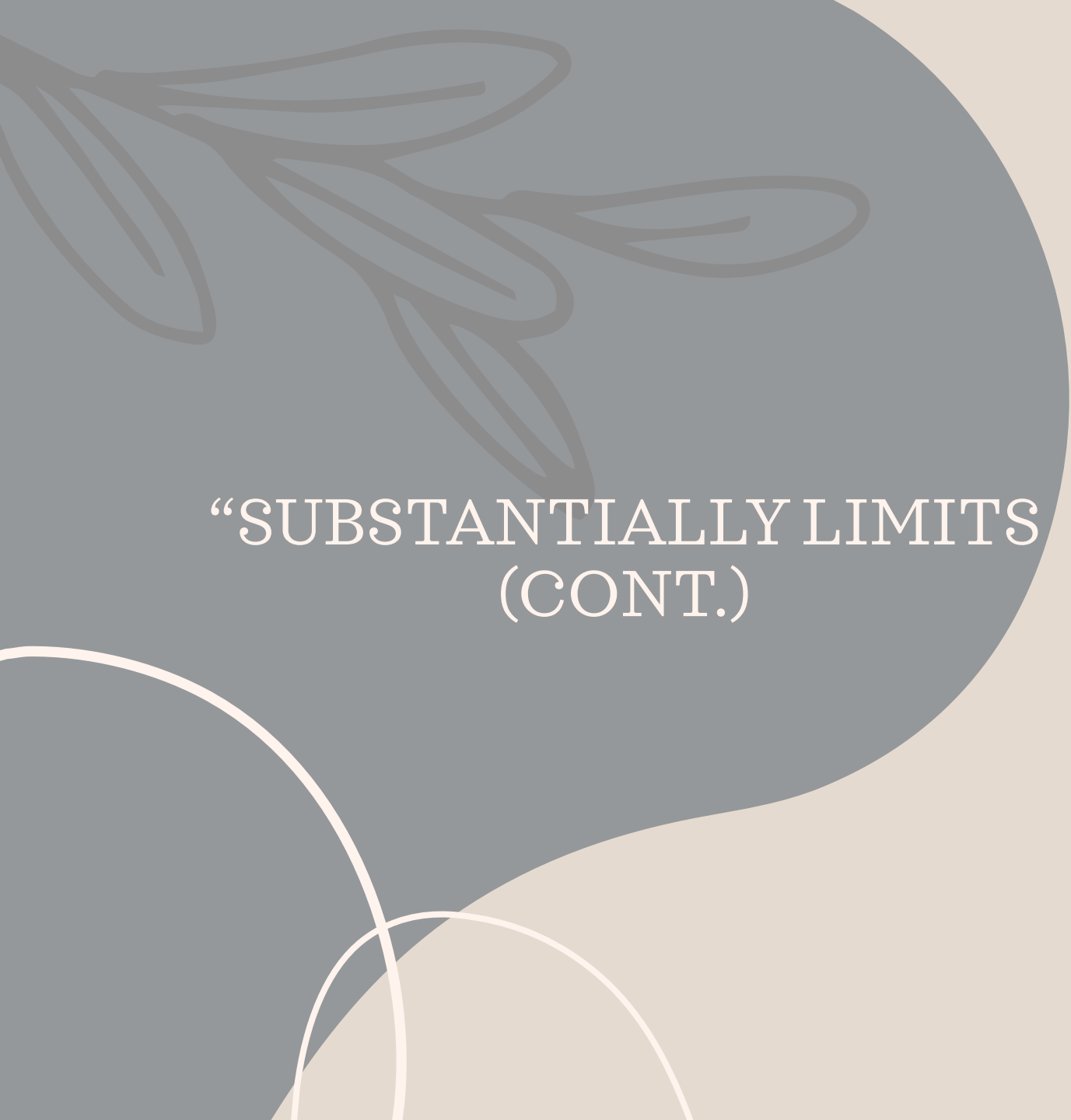
ADA AMENDMENTS ACT (ADAAA)

EFFECTIVE JANUARY 1, 2009

- REDEFINED THE MEANING OF “SUBSTANTIALLY LIMITS”
 - AMENDED LIST OF ACTIVITIES THAT ARE DEEMED TO CONSTITUTE “MAJOR LIFE ACTIVITIES” AND INCLUDED “BODILY FUNCTIONS” WITHIN THE MEANING OF THE ADA
 - AMENDED THE “REGARDED AS” PRONG OF DISABILITY DEFINITION
 - I.E. PERCEIVED DISABILITY.*

“SUBSTANTIALLY LIMITS”

- Pre-2009
 - ADA
 - Substantially limits-impairment that “prevents or severely restricts” activities.
- Post-2009
 - ADAAA
 - Substantially limits is to be interpreted in favor of broad coverage under the Act.



“SUBSTANTIALLY LIMITS (CONT.)

ADAAA

- An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.
- The impairment does not need to be permanent, severe, significant and/or continuous so long as it is substantially limiting when symptoms are present.
- An Impairment may be “episodic” or “in remission” but still be considered a disability.



The Goals of the Interactive Process

- GOAL 1:

TIMELY, GOOD FAITH PROCESS BETWEEN EMPLOYER AND EMPLOYEE TO DISCUSS POTENTIAL ACCOMMODATIONS.

- GOAL 2:

EMPLOYER AND EMPLOYEE, THROUGH DISCUSSION, REACH A MUTUALLY AGREEABLE ARRANGEMENT OF TERMS AND CONDITIONS OF WORK THAT MEETS THE EMPLOYER'S NEEDS AND ALLOWS THE EMPLOYEE TO ACCOMPLISH THE EMPLOYEE'S JOB AT THE SAME QUANTITY AND QUALITY OF WORK AS AN EMPLOYEE WITHOUT AN ACCOMMODATION.



ADAA Bodily Functions List

29 C.F.R. § 1630.2(I) NOW INCLUDES A NON-EXHAUSTIVE LIST OF BODILY FUNCTIONS THAT INCLUDES:

- MAJOR LIFE ACTIVITIES: WALKING, SEEING, HEARING, SPEAKING, BREATHING, LEARNING, THINKING, CONCENTRATING, READING, BENDING AND COMMUNICATING FROM 1990 ADA.
- ADAA ADDED BODILY FUNCTIONS
 - Immune system
 - Special sense organs and skin
 - Normal cell growth
 - Digestive, genitourinary, bowel, and bladder
 - Neurological
 - Brain
 - Respiratory
 - Circulatory, cardiovascular
 - Endocrine
 - Hemic
 - Lymphatic
 - Musculoskeletal
 - Reproductive
 - Operation of an individual organ. —



The Interactive Process under the ADA

- STARTED BY EMPLOYEE ACKNOWLEDGING TO THE EMPLOYER THAT THE EMPLOYEE HAS A PHYSICAL OR MENTAL HEALTH CONDITION, *OR THE EMPLOYER PERCEIVING AN EMPLOYEE'S PHYSICAL OR MENTAL DISABILITY*, THAT MAKES AN ESSENTIAL JOB FUNCTION DIFFICULT OR IMPOSSIBLE TO PERFORM WITHOUT AN ACCOMMODATION.
- LEGALLY REQUIRED ON-GOING CONVERSATION BETWEEN THE EMPLOYER AND THE EMPLOYEE TO DETERMINE WHAT, IF ANY, REASONABLE ACCOMMODATION CAN BE FOUND TO ENABLE THE EMPLOYEE TO ACCOMPLISH THE ESSENTIAL JOB FUNCTIONS —

the Interactive process

Interactive Process Steps:

1. Analyze the particular job involved and determine its purpose and essential functions

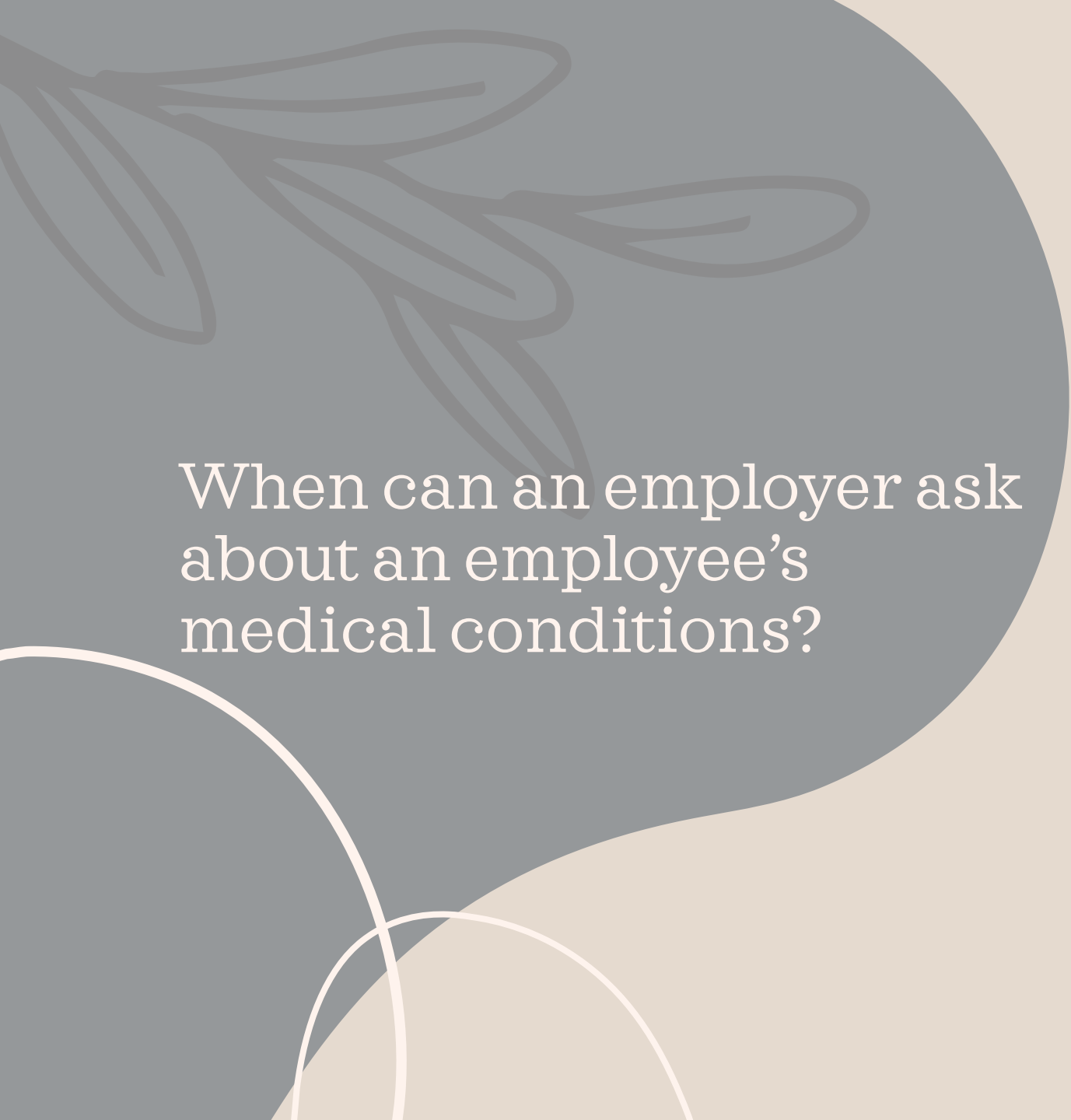
2. Consult with the individual with a disability to ascertain the precise job-related limitations imposed by the individual's disability and how those limitations could be overcome with a reasonable accommodation.

3. In consultation with the individual to be accommodated, identify potential accommodations and assess the effectiveness each would have in enabling the individual to perform the essential functions of the position.

4. Consider the preference of the individual to be accommodated and select and implement the accommodation that is most appropriate for the employee and the employer.

Employee's physician recommendations may be helpful

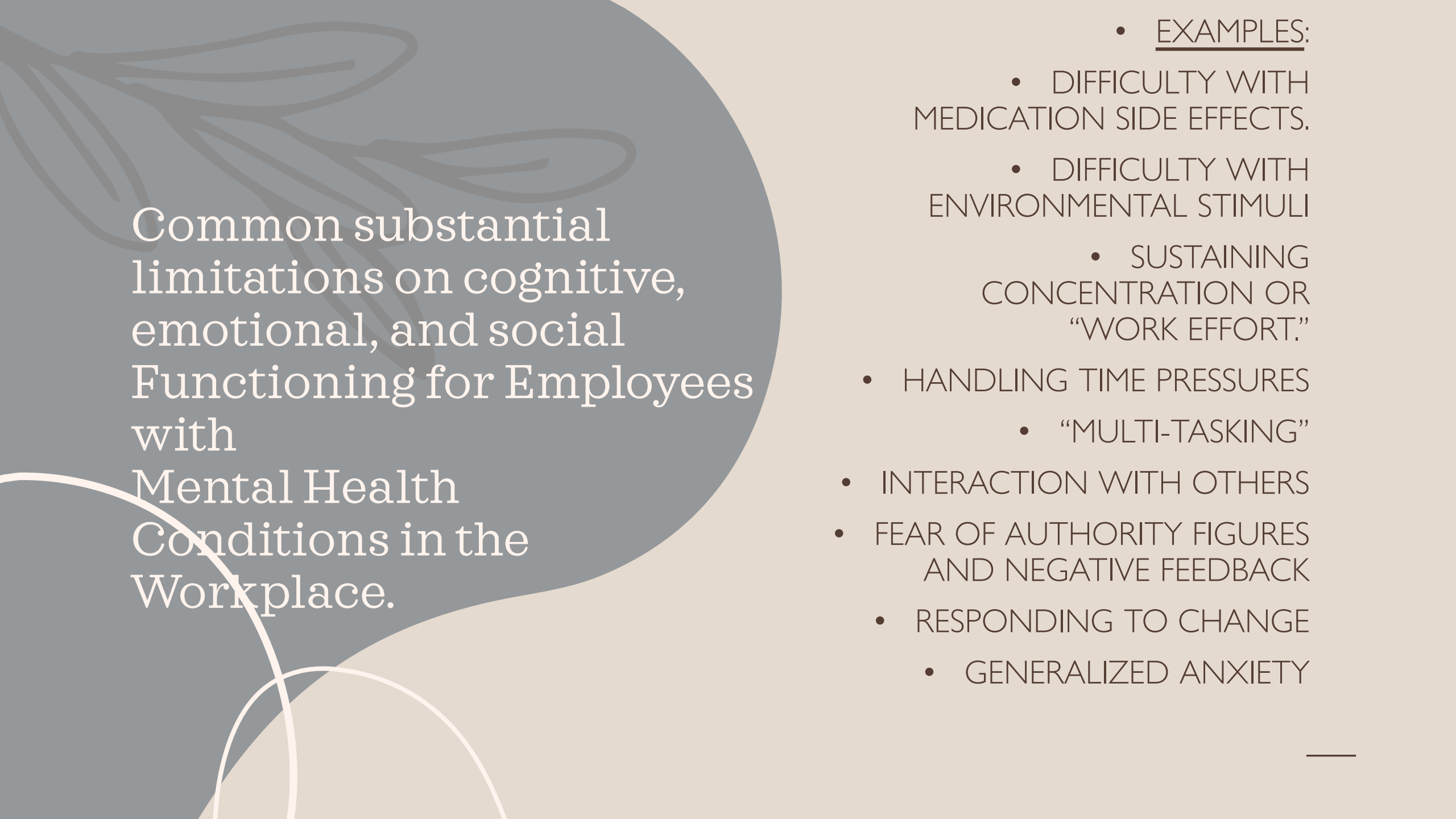
When in doubt, have an Occupational Medical Doctor, Functional Capacity Exam service provider, or another third-party provider evaluate if allowed by the employer's policies or Collective Bargaining Agreement.



When can an employer ask about an employee's medical conditions?

EMPLOYEES ARE ENTITLED TO KEEP ANY MEDICAL INFORMATION PRIVATE UNLESS

- WHEN THE EMPLOYEE ASKS FOR A REASONABLE ACCOMMODATION OR ANOTHER BENEFIT SUCH AS FMLA COVERAGE.
 - AFTER THE EMPLOYER HAS MADE A JOB OFFER, BUT BEFORE EMPLOYMENT BEGINS, AS LONG AS EVERYONE ENTERING THE SAME JOB CATEGORY IS ASKED THE SAME QUESTIONS.
 - WHEN AN EMPLOYER IS ENGAGING IN AFFIRMATIVE ACTION FOR PEOPLE WITH DISABILITIES, IN WHICH CASE THE EMPLOYEE MAY CHOOSE WHETHER TO RESPOND.
 - ON THE JOB, WHEN THERE IS OBJECTIVE EVIDENCE THAT YOU MAY BE UNABLE TO DO YOUR JOB OR THAT YOU MAY POSE A SAFETY RISK BECAUSE OF YOUR CONDITION.
-



Common substantial limitations on cognitive, emotional, and social Functioning for Employees with Mental Health Conditions in the Workplace.

- EXAMPLES:
 - DIFFICULTY WITH MEDICATION SIDE EFFECTS.
 - DIFFICULTY WITH ENVIRONMENTAL STIMULI
 - SUSTAINING CONCENTRATION OR “WORK EFFORT.”
 - HANDLING TIME PRESSURES
 - “MULTI-TASKING”
 - INTERACTION WITH OTHERS
 - FEAR OF AUTHORITY FIGURES AND NEGATIVE FEEDBACK
 - RESPONDING TO CHANGE
 - GENERALIZED ANXIETY
-



REASONABLE ACCOMMODATION

IF AN EMPLOYEE REQUESTS AN
ACCOMMODATION, THE EMPLOYER
MUST...

- ENGAGE IN AN INTERACTIVE PROCESS TO DETERMINE WHETHER REASONABLE ACCOMMODATIONS ARE VIABLE AND WHICH ACCOMMODATIONS ARE POSSIBLE GIVEN THE POSITION AND ESSENTIAL JOB FUNCTIONS.
- CANNOT CONSIDER MITIGATING MEASURES (I.E. EYEGLASSES, HEARING AIDS, ETC.) WHEN DETERMINING WHETHER AN ACCOMMODATION IS REASONABLE.
 - CAN CONSIDER WHETHER WHEN HIRING OR PROMOTING THAT THE INDIVIDUAL IS THE BEST QUALIFIED.
- DO NOT JUST SAY “NO” AND TRANSFER OR TERMINATE.



REASONABLE ACCOMMODATION AND UNDUE HARDSHIP

AN EMPLOYER MUST REASONABLY
ACCOMMODATE UNLESS IT IS AN UNDUE
HARDSHIP.

UNDUE HARDSHIP IS AN ACTION BY THE
EMPLOYER REQUIRING SIGNIFICANT
DIFFICULTY OR EXPENSE.

REASONABLE ACCOMMODATION
INCLUDES:

- ⦿ making facilities accessible,
 - ⦿ job restructuring,
 - ⦿ reassignment,
 - ⦿ modification of equipment,
 - ⦿ acquisition of technology.
-

Duties of Employer for reasonable Accommodation

Normally an employer must only accommodate if the employee has reported a disability and requested a reasonable accommodation

- Conditions:
- 1) Connection between disability, essential job function, and accommodation and
- 2) request must be prior to termination.
- Exceptions: Employer knowledge, Obviousness, Employee unable to ask.

Employer Does not have to ...

- eliminate or reallocate essential functions
- give an accommodation that is an “undue hardship”
- accommodate a job duty which isn’t an essential function of the job – but may have to “assist”
- Grant a request for indefinite leave of absence because it is not a reasonable accommodation
- provide personal items (eyeglasses, hearing aids),
- allow for lower quality/quantity standards,
- give a preference on hiring or promotion.

Employer Should Consider...

- Accessibility to the facility or workplace
- Job restructuring
- Schedule modifications
- Reassignment (if there is an open position that the individual is qualified to hold) – may alter pay or benefits
- Qualified readers or interpreters
- Modifying training, examinations, or other programs
- Equipment changes or technology acquisition
- Reasonably limited unpaid leave.



Common Reasonable Accommodations for Mental Health Conditions

- FLEXIBLE WORK SCHEDULES, INCLUDING BREAK TIMES, AND THE ABILITY TO MAKE UP WORK.
- SUPPORT ANIMALS AND PEOPLE IN THE WORKPLACE.
- REST AREA AND REST TIMES.
- REDUCING OR CHANGING ENVIRONMENTAL STIMULI.
- INCREASED NATURAL LIGHTING OR NATURAL LIGHTING SIMULATION.
- REMOTE WORK.
- INCREASED UNPAID LEAVE.



UNDUE HARDSHIP CRITERIA

MUST REASONABLY ACCOMMODATE
UNLESS IT IS UNDUE HARDSHIP.

UNDUE HARDSHIP EXISTS WHEN AN
ACCOMMODATION WOULD REQUIRE
SIGNIFICANT DIFFICULTY AND
EXPENSE* WHEN CONSIDERING:

- Nature and cost of the accommodation (but Iowa law*)
- The financial resources of the facility, including the number of persons employed at the facility, the effect on expenses and resources and the impact of the accommodation upon the operation of the facility
- The overall financial resources of the employer, including the size of the business and the total number of locations.
- Not just money but also if the accommodation substantially changes the workplace, the job, or how others accomplish work.
- Unpaid leave is rarely deemed an undue hardship.*

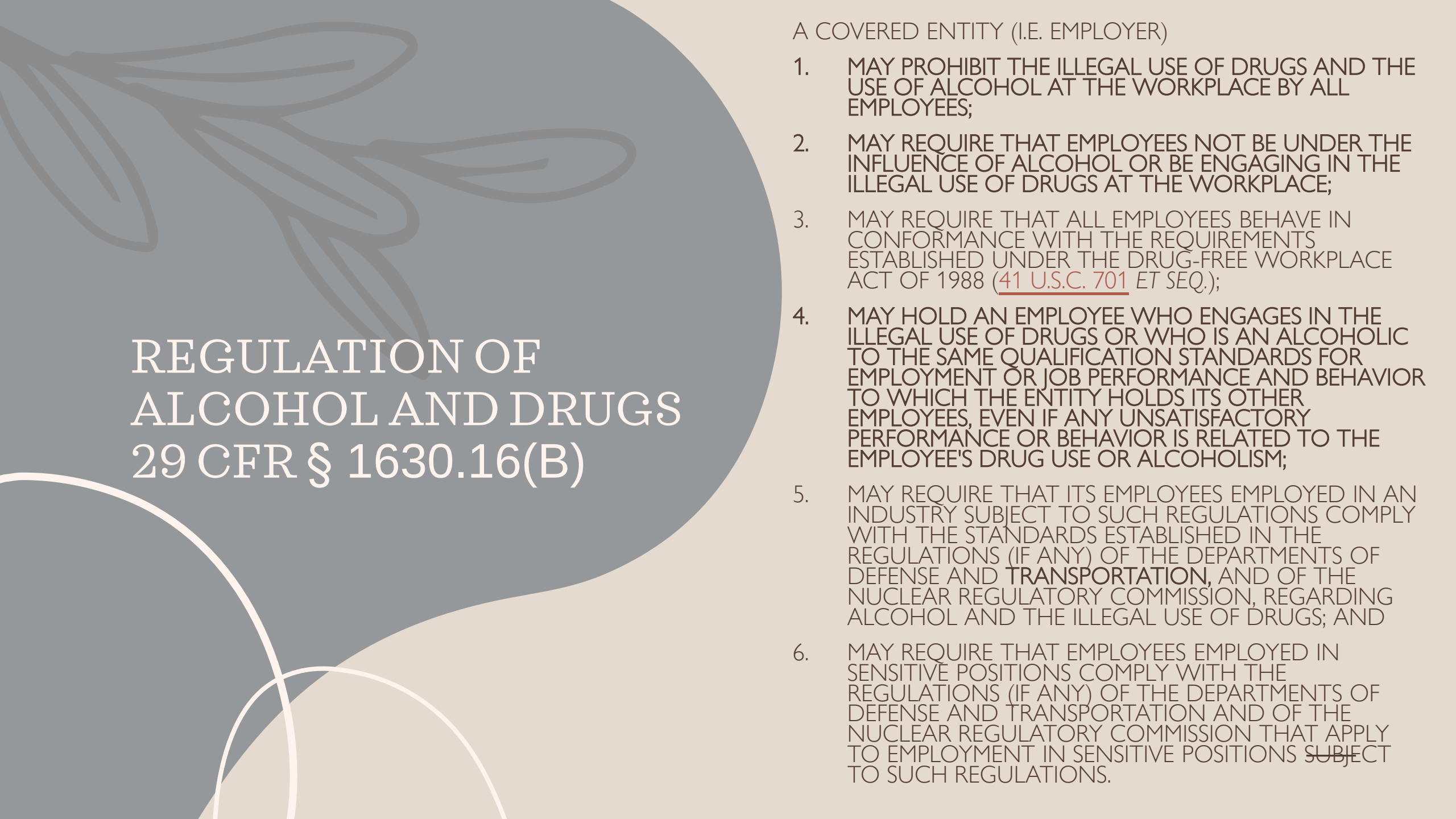


Transitory AND Minor impairments are excluded from coverage under the ADAAA

29 CFR § 1630.15(f)

ADAAA DOES NOT COVER DISABILITIES THAT ARE TRANSITORY AND MINOR.

- TRANSITORY – LASTING, OR EXPECTED TO LAST, LESS THAN 6 MONTHS.
- MINOR – DETERMINED ON A CASE-BY-CASE BASIS.
 - “of less consideration”
 - “lesser in importance, seriousness, or significance.”
- OBJECTIVE STANDARD
- EXAMPLES OF TRANSITORY AND MINOR:
 - Common Cold
 - The flu
 - Minor bone fractures
- ALWAYS FOCUS ON THE INDIVIDUAL CIRCUMSTANCES RATHER THAN THE CAUSATION.



REGULATION OF ALCOHOL AND DRUGS

29 CFR § 1630.16(B)

A COVERED ENTITY (I.E. EMPLOYER)

1. MAY PROHIBIT THE ILLEGAL USE OF DRUGS AND THE USE OF ALCOHOL AT THE WORKPLACE BY ALL EMPLOYEES;
2. MAY REQUIRE THAT EMPLOYEES NOT BE UNDER THE INFLUENCE OF ALCOHOL OR BE ENGAGING IN THE ILLEGAL USE OF DRUGS AT THE WORKPLACE;
3. MAY REQUIRE THAT ALL EMPLOYEES BEHAVE IN CONFORMANCE WITH THE REQUIREMENTS ESTABLISHED UNDER THE DRUG-FREE WORKPLACE ACT OF 1988 (41 U.S.C. 701 ET SEQ.);
4. MAY HOLD AN EMPLOYEE WHO ENGAGES IN THE ILLEGAL USE OF DRUGS OR WHO IS AN ALCOHOLIC TO THE SAME QUALIFICATION STANDARDS FOR EMPLOYMENT OR JOB PERFORMANCE AND BEHAVIOR TO WHICH THE ENTITY HOLDS ITS OTHER EMPLOYEES, EVEN IF ANY UNSATISFACTORY PERFORMANCE OR BEHAVIOR IS RELATED TO THE EMPLOYEE'S DRUG USE OR ALCOHOLISM;
5. MAY REQUIRE THAT ITS EMPLOYEES EMPLOYED IN AN INDUSTRY SUBJECT TO SUCH REGULATIONS COMPLY WITH THE STANDARDS ESTABLISHED IN THE REGULATIONS (IF ANY) OF THE DEPARTMENTS OF DEFENSE AND **TRANSPORTATION**, AND OF THE NUCLEAR REGULATORY COMMISSION, REGARDING ALCOHOL AND THE ILLEGAL USE OF DRUGS; AND
6. MAY REQUIRE THAT EMPLOYEES EMPLOYED IN SENSITIVE POSITIONS COMPLY WITH THE REGULATIONS (IF ANY) OF THE DEPARTMENTS OF DEFENSE AND TRANSPORTATION AND OF THE NUCLEAR REGULATORY COMMISSION THAT APPLY TO EMPLOYMENT IN SENSITIVE POSITIONS SUBJECT TO SUCH REGULATIONS.



Employers are not required to accommodate, and may terminate, for substance abuse

- EMPLOYERS ARE REQUIRED TO REASONABLY ACCOMMODATE TREATMENT FOR SUBSTANCE ABUSE THAT MAY INCLUDE ADJUSTED WORK SCHEDULES AND WORK ASSIGNMENTS.
 - EMPLOYERS ARE NOT REQUIRED TO ACCOMMODATE FOR ACTIVE USE OR MISUSE OF ILLEGAL OR CONTROLLED SUBSTANCES AND ANY OF THE EFFECTS ON WORK PERFORMANCE ISSUES THAT ARE CAUSED BY SUCH USE OR MISUSE.
 - MEDICAL MARIJUANA MAY HAVE A SPECIAL STATUS UNDER SOME LIMITED CIRCUMSTANCES.
-

Substance Abuse

Active (Current) Use Example

SHAFFER V. PRESTON MEMORIAL HOSP. CORP.

- PLAINTIFF WORKED IN THE DEFENDANT HOSPITAL AS A NURSE AND NURSE ANESTHETIST
- BECAME ADDICTED TO FENTANYL
- FIRED
- **“AN INDIVIDUAL IS NOT OTHERWISE QUALIFIED . . . IF SHE ‘IS CURRENTLY ENGAGING IN THE ILLEGAL USE OF DRUGS, WHEN THE COVERED ENTITY ACTS ON THE BASIS OF SUCH USE.’”**
 - Plaintiff argued that “current” meant “at the precise time” or “at the exact moment.”
 - Court found that **“current” more broadly applied to “a periodic or ongoing activity in which a person engages . . . that has not permanently ended.”**



Substance Abuse

Notable Distinction

COLLINGS V. LONGVIEW FIBRE CO.

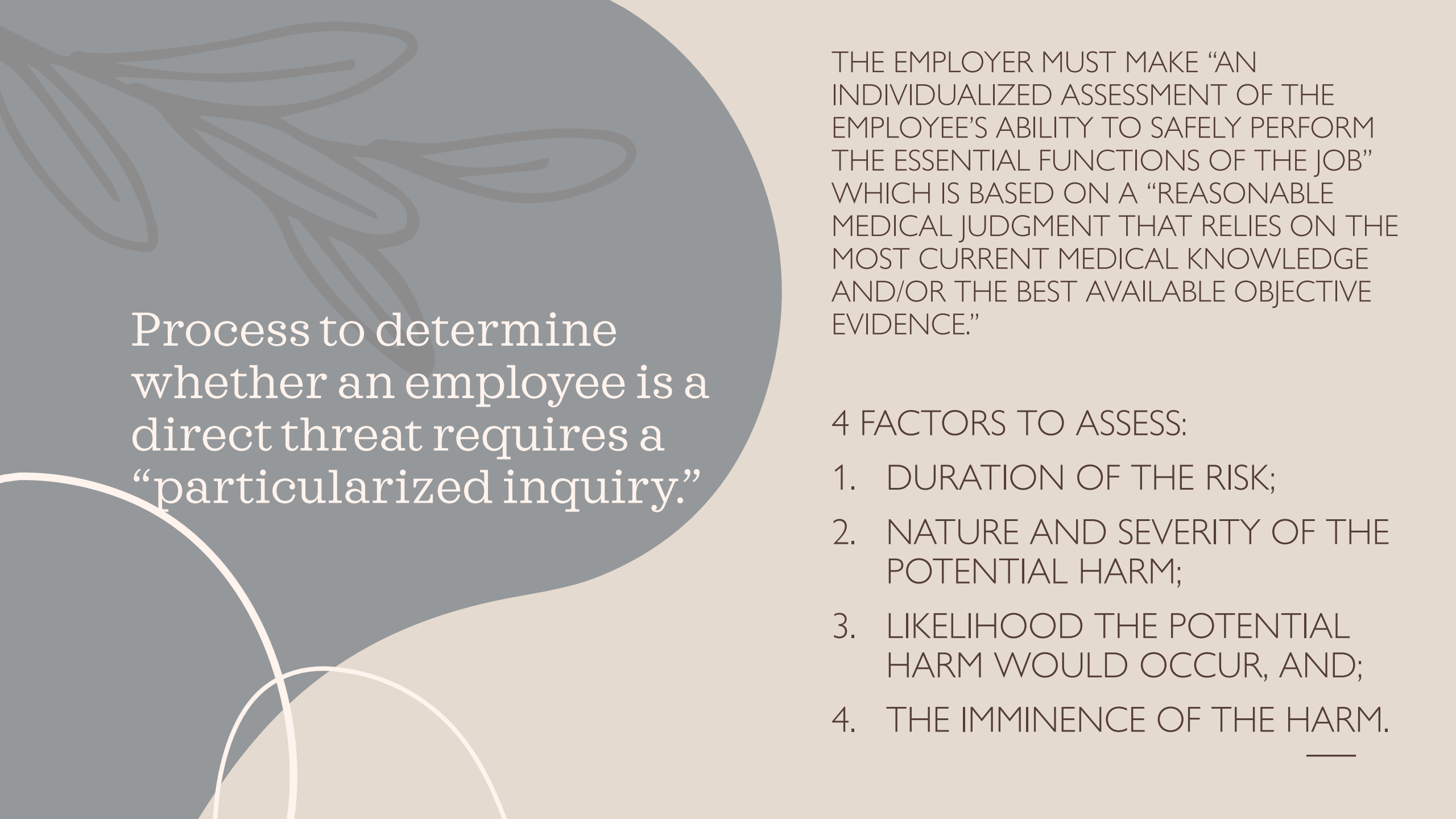
- EIGHT PLAINTIFFS WORKED IN A BOX MANUFACTURING PLANT
 - WHILE THE TERM “QUALIFIED INDIVIDUAL WITH A DISABILITY” DOES “NOT INCLUDE ANY EMPLOYEE . . . WHO IS CURRENTLY ENGAGING IN THE ILLEGAL USE OF DRUGS . . .” THE ADA DOES PROTECT INDIVIDUALS WHO HAVE SUCCESSFULLY COMPLETED OR ARE PARTICIPATING IN A SUPERVISED DRUG REHABILITATION PROGRAM AND ARE NO LONGER USING ILLEGAL DRUGS
 - PLAINTIFFS ARGUE THAT THEY WERE ALL “DRUG-FREE” AT THE TIME OF DISCHARGE AND HAD EITHER COMPLETED DRUG REHAB PROGRAMS OR WERE IN THE PROCESS OF BEING REHABILITATED
 - **THERE IS A DISTINCTION BETWEEN TERMINATION BECAUSE OF MISCONDUCT AND TERMINATION OF EMPLOYMENT BECAUSE OF DISABILITY**
 - **PLAINTIFFS ADMITTED TO BUYING, SELLING, OR USING MARIJUANA AT THE WORKPLACE, OR RETURNING TO WORK UNDER THE INFLUENCE**
-



Employers are not required to accommodate and may terminate if the employee is a direct threat.

AN EMPLOYEE IS A *DIRECT THREAT* IF THE EMPLOYER HAS INFORMATION THAT

- THE EMPLOYEE POSES A SIGNIFICANT RISK OF SUBSTANTIAL HARM
- TO THE HEALTH OR SAFETY OF THE INDIVIDUAL OR OTHERS
- THAT **CANNOT** BE ELIMINATED OR REDUCED BY REASONABLE ACCOMMODATION.



Process to determine whether an employee is a direct threat requires a “particularized inquiry.”

THE EMPLOYER MUST MAKE “AN INDIVIDUALIZED ASSESSMENT OF THE EMPLOYEE’S ABILITY TO SAFELY PERFORM THE ESSENTIAL FUNCTIONS OF THE JOB” WHICH IS BASED ON A “REASONABLE MEDICAL JUDGMENT THAT RELIES ON THE MOST CURRENT MEDICAL KNOWLEDGE AND/OR THE BEST AVAILABLE OBJECTIVE EVIDENCE.”

4 FACTORS TO ASSESS:

1. DURATION OF THE RISK;
 2. NATURE AND SEVERITY OF THE POTENTIAL HARM;
 3. LIKELIHOOD THE POTENTIAL HARM WOULD OCCUR, AND;
 4. THE IMMINENCE OF THE HARM.
-



Other considerations in a direct threat assessment

CASE-BY-CASE DETERMINATION

- “THE EMPLOYER MUST IDENTIFY THE SPECIFIC BEHAVIOR ON THE PART OF THE INDIVIDUAL THAT WOULD POSE THE DIRECT THREAT” THAT “MUST BE BASED ON INDIVIDUALIZED FACTUAL DATA, USING THE FACTORS DISCUSSED ABOVE, RATHER THAN ON STEREOTYPIC OR PATRONIZING ASSUMPTIONS AND MUST CONSIDER POTENTIAL REASONABLE ACCOMMODATIONS.”
 - “RELEVANT EVIDENCE MAY INCLUDE INPUT FROM THE INDIVIDUAL WITH A DISABILITY, THE EXPERIENCE OF THE INDIVIDUAL WITH A DISABILITY IN PREVIOUS SIMILAR POSITIONS, AND OPINIONS OF MEDICAL DOCTORS, REHABILITATION COUNSELORS, OR PHYSICAL THERAPISTS WHO HAVE EXPERTISE IN THE DISABILITY INVOLVED AND/OR DIRECT KNOWLEDGE OF THE INDIVIDUAL WITH THE DISABILITY.”
 - AN INDIVIDUAL MAY NOT BE DISQUALIFIED BASED ON FEARS, GENERALIZATIONS, STEREOTYPES, OR MYTHS.
-

Finding a “Direct Threat”

Example

JOHNSON V. CITY OF BLAINE

- PLAINTIFF WAS HIRED AS A PATROL OFFICER FOR THE CITY’S POLICE
- DEVELOPED SYMPTOMS OF PTSD AND DEPRESSION
- MENTAL BREAKDOWN
- PLAINTIFF POSED A DIRECT THREAT
- COURT LOOKED AT AN INDIVIDUALIZED ‘FITNESS FOR DUTY REPORT’
 - Extensive psychological assessment
 - Evidence of an individualized assessment

COMPARE WITH THE NEXT CASE

Finding a “Direct Threat”

Example

MCKENZIE V. DOVALA

- PLAINTIFF WAS SERGEANT FOR THE COUNTY SHERIFF'S OFFICE
- BEGAN SUFFERING FROM A RANGE OF PSYCHOLOGICAL AFFLICTIONS
- BEGAN TO MISS WORK
- FIRED SIX ROUNDS FROM HER SERVICE REVOLVER AT HER FATHER’S GRAVE
- **SHERIFF'S OFFICE DENIED HER REEMPLOYMENT WITHOUT ORDERING A STANDARD PSYCHOLOGICAL EVALUATION**
- **COURT HELD THAT A FACT ISSUE REMAINED ON THE QUESTION OF “DIRECT THREAT”**
 - Found no evidence suggesting in what way, once the Plaintiff had undergone rehabilitation and been cleared by a doctor, employing her in a position that did not require the use of force would create a direct threat.

NO EVIDENCE OF AN INDIVIDUALIZED ASSESSMENT

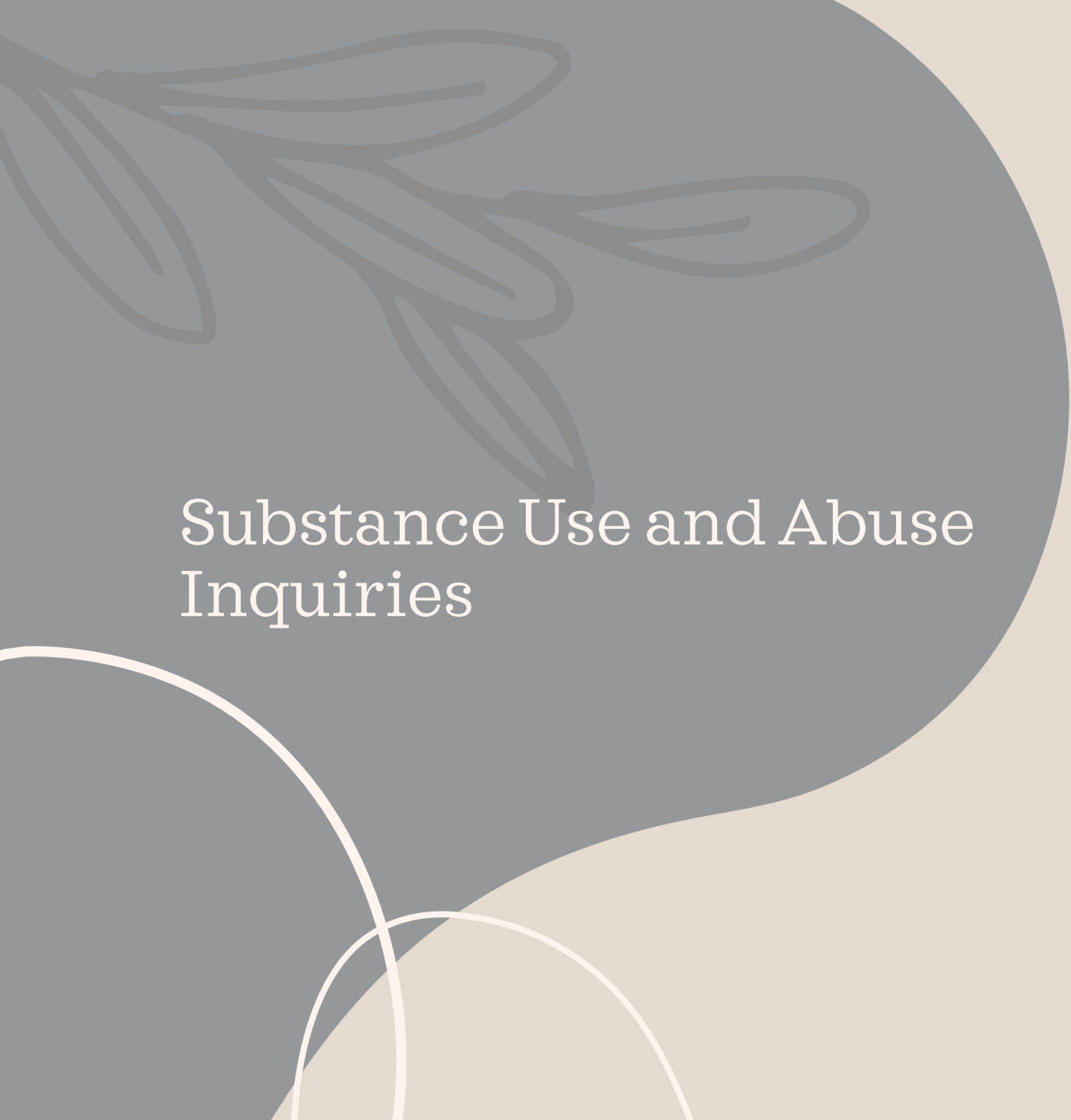
Finding a “Direct Threat”

One more example

BORGLIALLI V. THUNDER BASIN COAL CO.

- PLAINTIFF WORKED AS A “BLASTER” FOR 18 YEARS AT A MINE
- HAD A CHANGE IN HIS SUPERVISOR
- BEGAN SUFFERING FROM DEPRESSION AND MIGRAINE HEADACHES AT WORK
- BEGAN SUFFERING FROM A RANGE OF PSYCHOLOGICAL AFFLICTIONS
- RECEIVED A NEGATIVE EVALUATION FROM HIS NEW SUPERVISOR
- PLAINTIFF EXPRESSED THOUGHTS OF SUICIDE
- COURT FOUND THAT PLAINTIFF, WHO WORKED WITH EXPLOSIVES, WHO HARBORED A GRUDGE AGAINST HIS SUPERVISOR, AND WHO THREATENED SUICIDE, CONSTITUTED A DIRECT THREAT
- **MULTIPLE INDEPENDENT MEDICAL OPINIONS**

HERE AGAIN, EVIDENCE OF AN INDIVIDUALIZED ASSESSMENT



Substance Use and Abuse Inquiries

PRE-EMPLOYMENT FOR ALL APPLICANTS

- USE OF ALCOHOL OR ILLEGAL DRUGS – YES
- EXTENT OR FREQUENCY OF USE – NO*

PRE-OFFER

- MEDICAL INQUIRIES AND EXAMINATIONS RELATED SPECIFICALLY TO THE JOB
- USE OF ALCOHOL, DRUGS, EXTENT OF USE, DIAGNOSIS OF ADDICTION

ON THE JOB

- MEDICAL INQUIRIES THAT ARE JOB-RELATED AND CONSISTENT WITH BUSINESS NECESSITY —



What about medical
marijuana?

MARIJUANA IS STILL
ILLEGAL UNDER
FEDERAL LAW AND
EMPLOYEES ARE NOT
PROTECTED BY THE
ADA FOR USE OF
MEDICAL MARIJUANA...

HOWEVER, THE
UNDERLYING
CONDITION THAT THE
INDIVIDUAL IS
PRESCRIBED MARIJUANA
MAY BE COVERED BY
THE ADA OR ICRA AND
THE TREATMENT MAY
BE LEGAL UNDER STATE
LAW.
