HIRING WITH THE ADAAA IN MIND

SCREEN 1

As you proceed through the search and screen process, it is imperative that you understand your obligation to uphold BGSU’s EEO Policy as well as the legal standards regarding applicants with disabilities.

SCREEN 2

To aid you in this process, this module explains the ADA as well as the 2008 amendments; defines a disability; provides acceptable affirmative phrases when discussing disabilities; and outlines proper etiquette when engaging individuals with varying disabilities.

SCREEN 3

The Americans with Disabilities Act of 1990, also known as the ADA makes it illegal to discriminate against a qualified person with a disability in the private sector and in state and local governments. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The law also requires that employers reasonably accommodate the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless doing so would impose an undue hardship on the operation of the employer's business.

SCREEN 4

On September 25, 2008 the President signed the Americans with Disabilities Act Amendments Act of 2008 now referred to as the ADAAA. This Act emphasizes that the definition of disability should be construed in favor of broad coverage of individuals to the maximum extent permitted by the terms of the ADA and generally shall not require extensive analysis. Specifically,

1. It revises that portion of the regulations defining the term “substantially limits” by providing that a limitation need not “significantly” or “severely” restrict a major life activity in order to meet the standard.

2. It expands the definition of “major life activities” through two non-exhaustive lists that will be presented later in this module.

3. It provides that mitigating measures other than “ordinary eyeglasses or contact lenses” shall not be considered in assessing whether an individual has a “disability”.

4. It provides that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
5. And finally, it provides that the definition of “regarded as” is changed so that it no longer requires a showing that the employer perceived the individual to be substantially limited in a major life activity, and instead provides that an applicant or employee who is subjected to an action prohibited by the ADA (that is, failure to hire, denial of promotion, or termination) because of an actual or perceived impairment will meet the “regarded as” definition of disability, unless the impairment is both transitory and minor.

SCREEN 5

The basic three-part definition of a disability is 1) a physical or mental impairment that substantially limits one or more major life activities; 2) a record of such an impairment; or 3) being regarded as having such an impairment. In addition, impairment need not prevent, or significantly or severely restrict, performance of a major life activity to be “substantially limiting.”

SCREEN 6

An individual’s ability to perform a major life activity is compared to “most people in the general population,” often using a common-sense analysis without scientific or medical evidence. Major Life Activities include “major bodily functions,” such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, circulatory, respiratory, endocrine, hemic, lymphatic, musculoskeletal, special sense organs and skin, genitourinary, and cardiovascular systems, as well as reproductive functions.

They also include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, sitting, reaching, interacting with others, and working.

SCREEN 7

Using affirmative language is the first step in communicating well. When discussing disabilities it is sometimes hard to know how to communicate with people with disabilities. The disability shouldn’t be the focus. It is a condition the person has not how we define that person. People-first language puts emphasis on placing the individual before the disability.

When referring to individuals with disabilities, we recommend that you use affirmative phrases embraced by the disabled community. For example, persons with an intellectual, cognitive, or developmental disability should not be referred to as retarded, mentally defective or special. Terms such as “the disabled” or “handicapped” have been replaced with “person with a disability”. Moreover, a person who is hard of hearing or deaf should not be referred to as “suffers from a hearing loss” or “deaf and dumb”.

Although it may seem commonplace to use the term epileptic when referring to a person with epilepsy, it is more appropriate to use the term “person with a seizure disorder”. It would seem obvious that terms such as crippled, lame or deformed are inappropriate when describing people with a physical disability. Likewise, dumb or mute should not be used when referring to those who are unable to speak or use synthetic speech. And, it has never been appropriate to refer to a person with a psychiatric disability as crazy or nutty as a fruitcake.

At this time, we will discuss disability etiquette as it relates to those who are blind or visually impaired, deaf or hard of hearing, individuals with speech or mobility impairments, as well as some general tips.

When approaching individuals who are blind or visually impaired, speak to him or her so that they are not caught off guard. When conversing in a group, remember to identify yourself and the person to whom you are speaking. Tell the individual when you are leaving. Do not attempt to lead the individual without first asking; allow the person to hold your arm and control his or her own movements. Never touch or distract a service dog without first asking the owner. Be descriptive when giving directions; verbally give the person information that would be visually obvious if they could see. For example, if you are approaching steps, mention how many steps. If you are offering a seat, gently place the individual’s hand on the back or arm of the chair so that the person can locate the seat.

Before starting a conversation with a person, who is deaf or hard of hearing, gain the person’s attention first by tapping the person gently on the shoulder or arm. Look directly at the individual, face the light, speak clearly, in a normal tone of voice, and keep your hands away from your face. Use short, simple sentences. Avoid smoking or chewing gum. When an interpreter is in play, speak directly to the individual who is deaf or hard of hearing – not the interpreter.

You might find it challenging to have a conversation with an individual with speech impairment. If you do not understand something the individual says, do not pretend that you do. Ask the individual to repeat what he or she has said and then repeat it back. Try to ask questions that require only short answers or a nod of the head. Do not speak for the individual or attempt to finish his or her sentences. If you are having significant difficulty understanding the individual, consider writing as an alternative means of communication, but first ask the individual if this is acceptable.
Disability etiquette as it relates to mobility impairments includes placing yourself at eye-level, if possible. However, avoid leaning on wheelchairs or any assistive device. Never patronize people who use wheelchairs by patting them on the head or shoulder. Finally, do not assume the individual wants to be pushed without asking.

SCREEN 14

It is as important to offer the appropriate assistance when interacting with people with a disability as it is to use the appropriate phrases. Over-eager assistance can do more harm than good. If you offer assistance, wait until the offer is accepted, then listen to or ask for instructions. Don’t be afraid to ask questions when you’re unsure of what to do. Relax. Don’t be embarrassed if you happen to use common expressions that seem to relate to a person's disability such as “see you later” or “did you hear that”. It is appropriate to shake hands when introduced to a person with a disability. Remember, first impressions matter.

As you proceed with this important work, please do not hesitate to contact our office should you ever have any questions. You can reach the Office of Equity and Diversity by calling (419) 372-8476. Or you can go to our website which is located at http://www.bgsu.edu/offices/oed/index.html.

The contents of this presentation can be found on the Office of Equity and Diversity’s website.

Thank you for your time.