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Seeing is believing

www.foodallergy.org
Today’s Presenter

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Employers and Federal Disability Law

- Private Employers: 15 or more employees
- Public Employers: state and local governments
- Labor Organizations
- Employment Agencies
- Federal Employers
Prohibited employment practices

Discrimination in:

- Recruitment
- Hiring
- Firing
- Training
- Job assignment
- Promotions
- Pay
- Benefits
- Lay off
- Leave
- All other employment related activities
Who is protected?

- Qualified employees and applicants with a disability
- Qualified employees or applicants with a history of disability
- Qualified employees or applicants who are regarded by employer as disabled

Special Considerations: Associational Discrimination
What does “qualified” mean?

- Able to perform the essential functions of the job with or without accommodation
Is food allergy a disability?

- Substantial impairment to a major life activity
- After passage of the ADA Amendments Act in 2008, food allergy with risk of life-threatening reaction is likely a disability
The law requires an employer to provide reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause significant difficulty or expense for the employer.

A reasonable accommodation is any change in the work environment (or in the way things are usually done) to help a person with a disability apply for a job, perform the duties of a job, or enjoy the benefits and privileges of employment.

Examples:
- Job restructuring
- Reassignment to vacant position
- Changes to work environment for accessibility
Undue Hardship

- the cost of the accommodation
- the overall size and financial resources of the employer
- the effect the accommodation would have on the employer
Direct Threat

- 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. See 42 U.S.C. § 12113(b); 29 C.F.R. § 1630.2(r)

- Based on objective, factual evidence - not on subjective perceptions, irrational fears, patronizing attitudes, or stereotypes.
How to file a complaint

Private Employers/State and Local Government Employers
*Must file a complaint with the EEOC
*Generally must file within 180 days
*http://www.eeoc.gov/employees/howtofile.cfm

Federal Employers
*Generally must notify your EEO Counselor within 45 days
To tell or not to tell...

Applicants and employees with food allergies need not disclose their allergy unless they are seeking accommodation.

Reasons to Disclose:
- Accommodation
- Awareness
- Allergy Action Plan

In most circumstances, there is no reason for job applicants to disclose an allergy.
Real Life Examples

- United States v. John Muir Health (2011)
  - $340,000 settlement on behalf of 8 employees with latex allergies who had offers of employment retracted

- Barrett v. iQuor, Inc, et al. (2011)
  - Federal court complaint by employee who was deliberately exposed to peanuts and who was harassed based on her peanut allergy by other employees and supervisor

- Coleman/Boston Children’s Hospital (2014)
  - Job applicant for position scheduling dental appointments for outpatient clinic had offer of employment retracted after employer learned of her peanut allergy

- Kaufman v. GMAC Mortgage Corp. (2007)
  - Appeals court affirmed lower court decision in favor of employer where individual with perfume allergy had been offered and refused to try accommodation

- United States v. UPS (2001)
  - UPS driver who developed serious allergy to cedar asked for reassignment to geographic location without cedar trees. United States Court of Appeals reversed lower court dismissal of claims
Family Medical Leave Act

- Applies to local, state and federal employers
- Applies to private employers with 50 or more employees
- Allows up to 12 weeks of unpaid leave in a 12-month period to care for parent, spouse or child with serious health condition
Questions

“...it only takes one voice, at the right pitch, to start an avalanche.”

— Dianna Hardy, Return Of The Wolf
Our Next Webinar

Managing The Emotional Impact of Living with a Food Allergy

Jeanne Herzog, PhD
Wednesday, June 17
1:00 – 2:00 PM ET

Member registration opens
Friday, May 29

General registration opens
Monday, June 1

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