



Pennsylvania
Human Relations Commission

Reasonable Accommodations

The PHRA, ADA and ADAAA

P E N N S Y L V A N I A H U M A N
R E L A T I O N S C O M M I S S I O N

Pennsylvania's Civil Rights Agency



www.pa.gov/en/agencies/phrc

Presenters:

Stephanie Chapman, Deputy Chief Counsel

Heather Roth, Regional Director

Agenda

- Review of the PHRC
- Review of laws related to disability
- The Basics of Disability
- Disability and Reasonable Accommodations



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Disclaimer

Information, materials, and/or technical assistance are intended solely as informal guidance and are neither a determination of your legal rights or responsibilities under the PHRA and/or applicable Federal laws, nor binding on any agency with enforcement responsibility under those same laws.



Information about the Pennsylvania Human Relations Commission



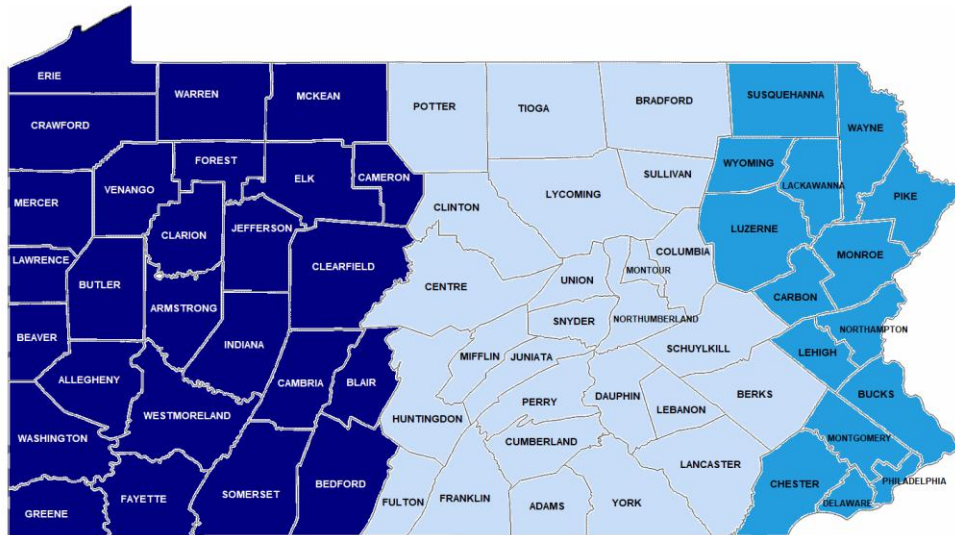
Pennsylvania
Human Relations Commission

The Pennsylvania Human Relations Commission

- Pennsylvania's Civil Rights Agency – The overarching goal is to eradicate discrimination
- Two-part mission:
 - Enforce PA non-discrimination laws
 - PA Human Relations Act
 - PA Fair Educational Opportunities Act
 - Promote equal opportunity for all
- Established in 1955, originally as the Fair Employment Practices Commission under the Department of Labor (DOL)
- Moved from the DOL to the Governor's Office to establish the Commission as an independent agency
- "Police powers," including the ability to subpoena documents and conduct onsite investigations



The Pennsylvania Human Relations Commission



There are 3 regional offices:

- Pittsburgh
- Harrisburg
- Philadelphia

Regional offices focus primarily on the Intake, Investigation and Litigation of cases.

There is one Central office also located in Harrisburg that focuses mainly on the administrative and operational functions of the Commission



Areas Covered

- Employment
- Housing
- Commercial Property
- Public Accommodations
- Education

Note: Cases involving K-12 education fall under the PHRA as a public accommodation. All other education related cases generally fall under the PFEOA



Protected Classes

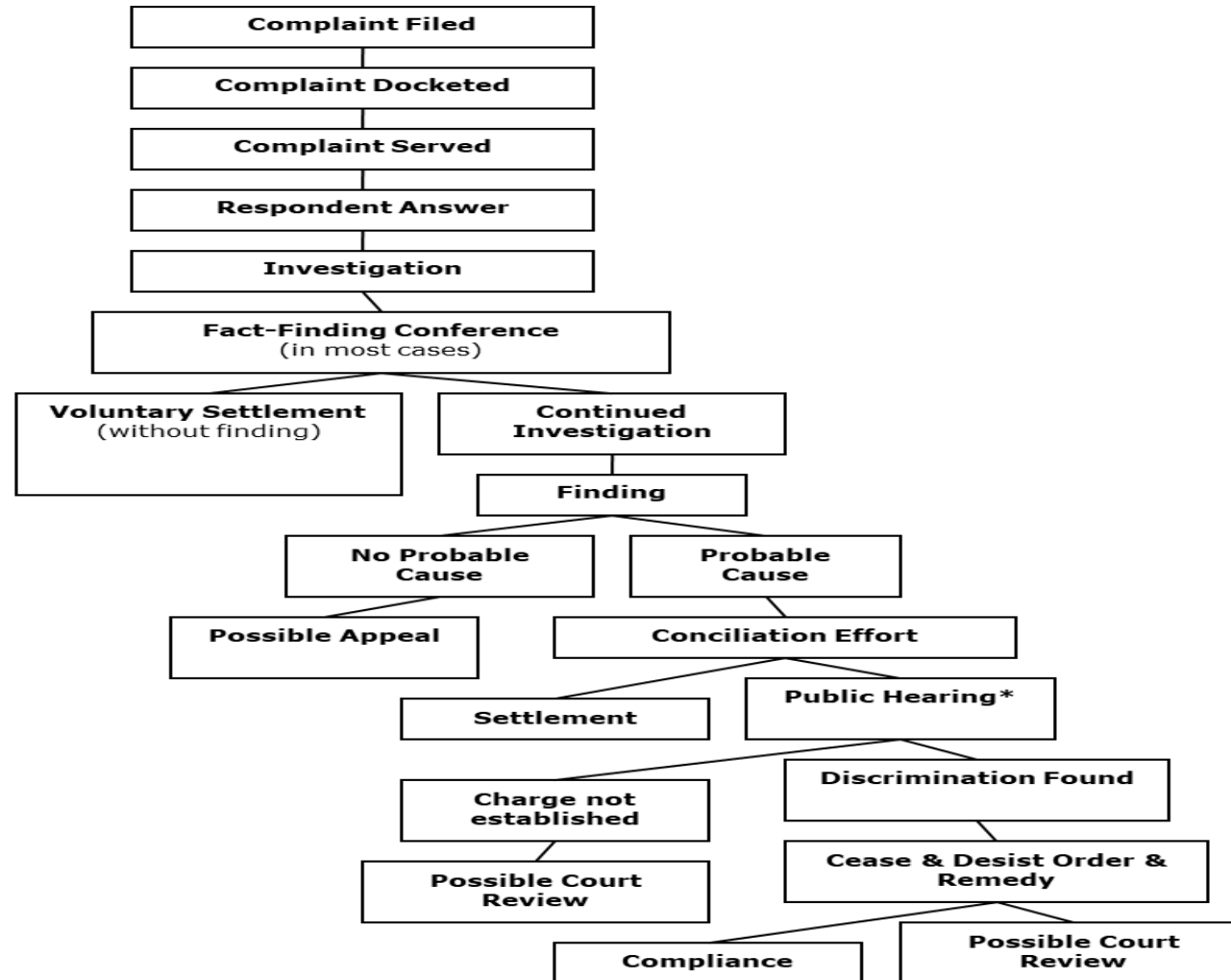
- Race or Color
- Sex
 - Includes pregnancy as well sexual orientation, gender identity and expression
- Age (40 or over)
- Religion
- National Origin
- Ancestry
- Disability
 - Currently having, having a record of, being regarded as having or association with someone who has
 - Use, handling or training of support animals for disability
- Familial status
- Retaliation

*Having a GED instead of a high school diploma is also covered



Intake and Investigation Process

- The process starts at Intake where it is determined if the allegations are jurisdictional and timely.*
- If so, the complaint moves to investigation.
- Mediation services are available for eligible complaints.



*Complaints must be filed within 180 days of the act of harm



Information about Disability Protections



The Related Laws

- **The Pennsylvania Human Relations Act (PHRA)**
- **The Americans with Disabilities Act (ADA)**
- **The Americans with Disabilities Amendment Act (ADAAA)**



Disability and the PHRA

In 1974 the Pennsylvania Human Relations Act was amended to include disability as a protected class.

- This was 16 years before the ADA was signed into law
- While employers must have 15 employees to be required to comply with ADA, the PHRA only requires 4.
- The PHRA is construed broadly. While it is not the same as the ADA, the provisions are interpreted similarly.
- The PHRC has a contract with EEOC to investigate cases that meet Federal jurisdiction. Those cases are “dual-filed.”



Disability Defined by the PHRA

- A physical or mental impairment that substantially limits one or more of a person's major life activities (MLA)
- The record of such impairment
- Regarded as having an impairment
- Relation or Association with someone with a disability
- Use of a guide or support animal and in some areas the handling and training of a support animal



The Americans with Disabilities Act



The Americans With Disabilities Act

- Signed in 1990
- Written with the intent to provide protections for individuals with impairments
- Protects against disability discrimination in all employment processes
- Limits employer disability inquiry
- Requires reasonable accommodation unless there is an undue hardship
- Defines disability the same as state law
- In employment, applies to applicants, temporary workers and employees.



The Americans With Disabilities Amendment Act



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The Americans With Disabilities Amendment Act

- Courts began to interpret what was written in the ADA differently than what was intended
- Individuals were seen as not “impaired” enough to meet the ADA definition of disability but impaired enough to be considered “not qualified” for jobs or to ask for reasonable accommodations
- “Catch 22” examples like:
 - A person whose cancer was in remission
 - A person with diabetes who just needed to take insulin
 - A person with a vision impairment corrected by glasses



The Americans With Disabilities Amendment Act

- As a result, an amendment was signed into law in 2008
- This amendment restored the intent and protections of the Americans with Disabilities Act of 1990
- Clarified for the courts the 1990 Act's intent
- The definition of disability generally stayed the same, but the terms of the definition were expanded
- More individuals now under the Federal protections



Significant Clarifications

- Disability interpreted more broadly
- Substantial limitation of MLA need not be significant or severe
- Only one MLA needs to be impacted
- MLA also included bodily functions
- Length of impairment is not as important as severity of impairment
- Mitigating measures not considered
- Episodic or in remission impairment

Congress changed the definition of “disability” to construe it “in favor of broad coverage of individuals” and “to the maximum extent permitted.”



Major Life Activities

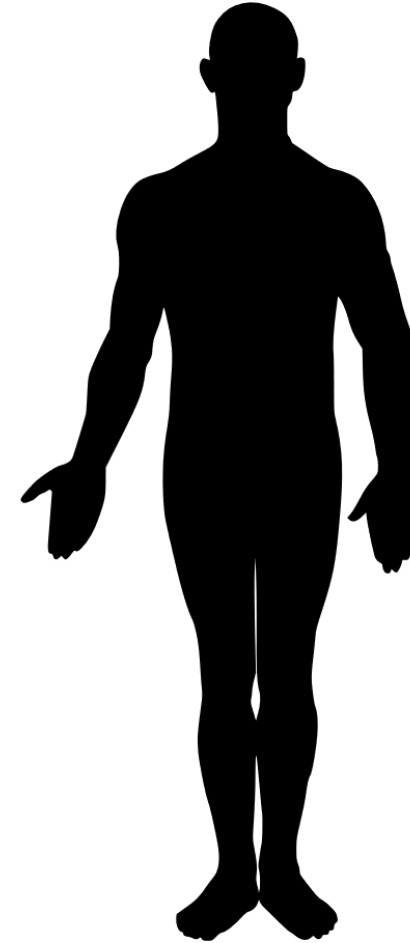
- Caring for oneself
- Walking
- Seeing
- Communicating
- Hearing
- Speaking
- Breathing
- Reading
- Eating
- Standing
- Interacting with others

Learning
Performing manual tasks
Working
Concentrating
Thinking
Lifting
Sitting
Sleeping
Bending



Major Bodily Functions

- Immune System
- Normal Cell Growth
- Digestive
- Bowel/Bladder
- Special Sense Organs and Skin
- Respiratory
- Circulatory
- Neurological brain functions
- Reproductive
- Includes the operation of an individual organ like a kidney, liver, etc.



“Typically” Not Covered Conditions

- Typically, conditions that are transitory **AND** minor are not covered.
 - The common cold, seasonal or common influenza
 - A sprained joint
 - A broken bone that is expected to heal completely

HOWEVER

Be cautious about determining that a condition does not qualify as a disability...

Guidance from EEOC says that an impairment that is expected to last less than six months that “substantially limits the ability of an individual to perform a major life activity” in comparison to the general population should be considered a disability.



Disability and Reasonable Accommodations



What is a Reasonable Accommodation

- A modification of practice and/or policy to allow persons with disabilities to work and perform the essential functions of their position, to use and enjoy their housing or to obtain an education so long as the change is reasonable



Who is Entitled to Reasonable Accommodations?

- Employment: Qualified applicants, full and part time employees, seasonal and temporary workers who:
 - Have a qualifying disability
 - Can perform the essential functions of the job with or without reasonable accommodations (qualified)
- Housing and Commercial Property: Applicants and Tenants
- Education: Potential and Current Students
- Public Accommodations: Users of services



Requests for Reasonable Accommodations

- Should be requested as soon as an individual is aware that a barrier exists
- Can begin as an informal request.
- Can be in “Plain English.” Individual does not need to use the words “ADA” or “Reasonable Accommodation”
- Does not have to be in writing
- Respondent may ask individual to complete a form or submit the request in writing, but they CANNOT ignore the request



Examples of Reasonable Accommodations in Employment

- Interview at an accessible site
- Make facilities accessible
- Restricted parking
- Transfer to a vacant funded position
- Restructure job by assigning non-essential functions to others
- Work from home
- Excuse from mandatory OT
- Allow service animal
- Modify work schedules
- Modify policies
- Acquire or modify software/equipment
- Adjust or modify examinations
- Provide qualified readers or interpreters
- Allow use of leave or additional time off

*This is not an all-inclusive list



Examples of Reasonable Accommodations in Housing

- Make facilities accessible
- Adding additional accessible parking
- Providing an assigned parking space
- Allowing a person with disability income to pay rent on a different date
- Allowing an emotional support or service animal when there is a no pet policy
- Allowing tenant to make reasonable modifications such as adding grab bars to shower, ramp at entry door or different doorknobs
- Modifying policies such as HOA type policies with restrictions on items like fences, hot tubs/spas, etc. when they are medically necessary

*This is not an all-inclusive list



Examples of Reasonable Accommodations in Education

- Make facilities accessible
- Allowing more time for testing
- Allowing alternative area for testing
- Modifying non-essential course requirements
- Providing accessible transportation to and from school
- Allowing service animal
- Allowing for medication distribution during school hours
- Allowing direct support person during school day

*This is not an all-inclusive list



Examples of Reasonable Accommodations in Public Accommodations

- Make facilities accessible
- Offer alternative ways to provide service if facility is not accessible (take out, curbside pick up, shipping at no cost, etc.)
- Allowing emotional support or service animal

*This is not an all-inclusive list



The Interactive Process

- Parties engage in an interactive and cooperative dialog to clarify what accommodation the individual needs and identify the appropriate reasonable accommodation.
- Depending on the areas, the Respondent may ask relevant questions about the nature of the disability; the individual's limitations and what may be needed to accommodate their needs
- This is a two-way interaction and both parties must participate



Documentation

- In employment and education, the Respondent is entitled to the individual's diagnosis and detailed related medical information.
- If requested, the individual must provide the documentation, or the employer/educational provider may deny the accommodation. A reasonable period must be given.
- In all other areas, the Respondent is not entitled to the individual's actual diagnosis and can only ask for/require limited documentation.
- If both the disability and the need for the reasonable accommodation are obvious and/or the documentation has already been provided this should not be requested



What is Reasonable?

- Respondent is not required to provide the exact accommodation that the individual requests
- They may choose among several options if the proposed accommodation is effective
- If there is more than one option, the Respondent may opt for the less expensive or burdensome
- The preference of the individual with the disability should be considered but it is the Respondent's option to choose what best meets their business needs
- This is more applicable in employment than in other areas.



What is Unreasonable?

- Eliminating primary job responsibilities (essential functions)
- Lowering production standards that are applied to all employees
- Providing personal use items such as eyeglasses, wheelchairs, hearing aids etc.
- Maintaining a higher salary for an employee who has been moved to a lower paying job if not done for others
- Anything that poses a real safety risk to the person or other people
- Asking a housing provider to never increase the rent
- Asking an educational provider to increase a grade when it wasn't earned
- Asking a business to provide services that they are not able to offer



Undue Hardship

A requested accommodation may be denied when it would create an undue hardship for the Respondent.

For example, if the accommodation would:

- Be unduly costly, extensive substantial or disruptive
- Fundamentally alter the nature or operation of the business

Factors to consider:

- Cost of the accommodation
- The employer's size
- Financial resources
- The nature and structure of the operation



Technology

- Let's be aware that today, in many circumstances, the use of AI and technology can make accommodating an individual with a disability easier and more efficient.
- Such accommodations are generally not cost-prohibitive and there are many sources available to assist with funding.
- Please utilize the rest of the sessions at today's conference to learn more about AI, technology and where the future of accommodations for individuals with disabilities is headed and what is possible with the advances that have been made



Questions

Q&A



Contact Us

To file a complaint, contact the regional office nearest you or by calling (717) 787-4410 | (717) 787-7279 TTY users only

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