

2024

# BUSINESS IN 2023

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# Introduction



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# TODAY'S AGENDA

**Kristen Smith – (12:00PM-12:05PM)**

- Introduction / Agenda

**Kristen Smith – (12:05PM-12:15PM)**

- COVID Leave – Where Are We Now?

**Amber Lawyer – (12:15PM-12:25PM)**

- Credit Card Surcharge Rules

**Gianelle Duby – (12:25PM-12:35PM)**

- NLRB's New Standard for Employee Work Rules

**Theresa Rusnak – (12:35PM – 12:45PM)**

- EEOC Guidance on Hearing and Visual Disabilities in the Workplace

# COVID Leave – Where Are We Now?



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# Credit Card Surcharge Rules



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# NLRB's New Standard for Employee Work Rules



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# EEOC Guidance on Hearing and Visual Disabilities in the Workplace



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# EEOC Releases Guidance

- On January 24, 2023, the EEOC released “Hearing Disabilities in the Workplace and the Americans with Disabilities Act.”
  - <https://www.eeoc.gov/laws/guidance/hearing-disabilities-workplace-and-americans-disabilities-act>
- On July 26, 2023, the EEOC released “Visual Disabilities in the Workplace and the Americans with Disabilities Act.”
  - <https://www.eeoc.gov/laws/guidance/visual-disabilities-workplace-and-americans-disabilities-act>
- Both guidance documents revised prior guidance on these topics first published in 2014.

# Overview

- The Americans with Disabilities Act protects applicants and employees with disabilities in the workplace. The Act is enforced by the EEOC, and individuals can bring actions by filing an administrative charge (precursor to federal court).
  - Many states, including NY, have corresponding statutory protections for individuals with disabilities.
- The ADA is twofold: 1) Employers cannot discriminate against individuals with disabilities or harass them, and 2) Employers must provide reasonable accommodations for individuals with disabilities.

# Applicants

- The Guidance is clear that applicants need to be accommodated during the application process. This is true even if the employer believes that the individual would not be able to perform the job.
  - Ex. An employer is impressed with an applicant's resume and contacts the individual to come in for an interview. The applicant, who is deaf, requests a sign language interpreter for the interview. The employer cancels the interview and refuses to consider this applicant further because it believes it would have to hire a full-time interpreter. The employer has violated the ADA. The employer should have proceeded with the interview, using a sign language interpreter (in person or through a video remote interpreting service), absent undue hardship, and at the interview inquired to what extent the individual would need a sign language interpreter to perform any essential functions requiring communication with other people.

# Applicants

- Employers may not inquire about hearing or vision loss during the pre-offer stage of the interview process. For example, an employer cannot ask:
  - whether the applicant has ever had any medical procedures related to their vision; whether the applicant has a condition that affects the applicant's vision or that may have caused a vision impairment
- An employer may ask questions pertaining to the applicant's ability to perform job functions, with or without reasonable accommodation, such as:
  - whether the applicant can read labels on packages that need to be stocked; whether the applicant can work the night shift

# Reasonable Accommodations

- EEOC Guidance states that accommodations can be the following: 1) Time off, 2) Assistive or adaptive technology, 3) Reassignment to a vacant position, 4) Modifications to policies and procedures, including testing and training; dress code modifications, guide dogs, etc. 5) Modifying work schedules/allowing telework, 6) Workspace adjustments and 7) Altering non-essential job functions
- Recall: employers do not have to provide accommodations that eliminate the essential functions of a job.

# Undue Hardship

- Employers do not have to provide a reasonable accommodation if doing so would cause an undue hardship.
  - This is a high burden for the employer to prove.
- Undue hardship means that providing the reasonable accommodation will result in significant difficulty or expense.
- Employers do not have to grant the requested accommodation, if they have an equally effective alternative.

# Safety Threat

- Employers do not have to grant reasonable accommodations if they pose a safety threat.
  - EEOC Guidance demonstrates that this is also a heavy burden for employers.
- Ex. An employee with a hearing disability requests training to operate a forklift at a large hardware store. For safety reasons, the employer requires that forklift operators be able to communicate with a spotter employee while operating the machine. They explore whether the employee could be accommodated using a visual alert on a smartwatch, a vibrating pager with a light signal, or a smartphone or tablet on a dashboard mount to allow communication with the spotter. If the employer determines that there is a reasonable accommodation that does not pose an undue hardship, based on the facts of the specific work setting and tasks, it must provide the accommodation and allow the employee training on the forklift.

# Your Questions



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### **New York Employment Law: The Essential Guide**

NYS Bar Association Members can buy the book from the bar [here](#).

Non-NYS Bar Association Members can purchase through Amazon [here](#).

# Thank You

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