



School of Human Resources and Labor Relations

5 Myths of the Americans with Disabilities Act (ADA)



Stacy Hickox
Michigan State University
hickoxs@msu.edu

517-432-7402





“I want future generations to know that we are a people who see our differences as a great gift, that we are a people who **value the dignity and worth of every citizen** – man and woman, young and old, black and white, Latino and Asian, immigrant and Native American, gay and straight, **Americans with mental illness or physical disability.**”

- President Barack Obama, Jan. 20, 2015





5 Myths of the ADA

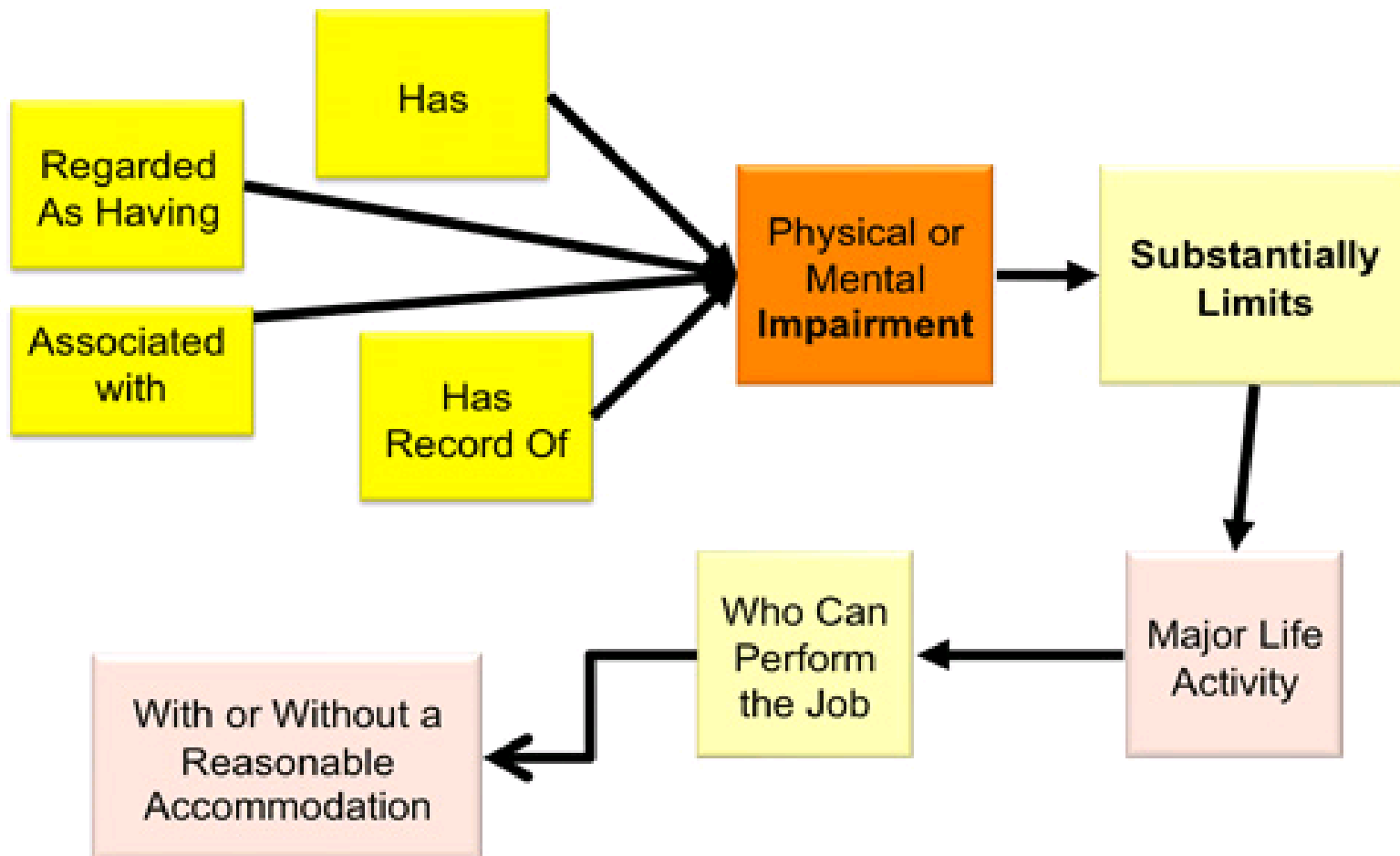
Myth #1

The ADA is frequently misused by people with vague complaints or diagnoses.





ADA Protection of Applicant or Employee





Life Activity must be “Substantially Limited”

- “Considerable” limitation
- Compare to average person in the general population
- Specific factors
 - Nature & severity of impairment
 - Duration or expected duration of impairment
 - Permanent or long term impact of or resulting from impairment





CASE Example: Limitations on Definition of Disability

- Employee with heart condition, pacemaker provided handyman services to employer
 - performed all physical duties zealously & with no apparent restrictions
 - Took leave after medical procedure
 - Certified to return to work at time of discharge

⇒ Not a person with a disability

- Transitory limitation only



Myth 2

The ADA forces employers to hire **unqualified** individuals with disabilities.





Use Interview Process to Verify Qualifications

- Can you perform [these duties] with or without accommodation?
- If applicant says “yes”
 - Applicant can still ask for accommodation later
 - Employer can still send for medical exam
 - If need is obvious or applicant discloses
 - => employer can ask more specific questions about need & how she would perform requisite duties
- If applicant says “yes, I need accommodation...”
 - Employer can ask for medical documentation



General Qualifications to Require for ANY Employee

General duties that can be deemed essential:

- 1) Ability to perform essential **job duties**
- 1) Regular **attendance**
- 2) No current **illegal** drug use
- 3) No **direct threat** to employee or others





Myth #3

Under the ADA, an employer **cannot fire** an employee who has a disability.





You can discharge an employee with a disability for ...

- Attendance
- Poor performance
- Posing a direct threat



Case Example: Attendance

- Employee suffering from depression, anxiety, post-traumatic stress disorder
 - 3 unexcused absences => placed on performance improvement plan
 - No unexcused absences for next 6 mo's
 - Employee hospitalized for several days after suicide attempt, unable to work since then
- ⇒ Discharged after use of FMLA leave
- ⇒ Employee is not a “qualified individual” => discrimination claim dismissed



Myth #4

- Under the ADA, employers must give people with disabilities **special privileges**, known as accommodations.





Accommodation Process

- Interaction required ...
 - once employer knows of need for accommodation
 - Employee request
 - Need is obvious
 - Obligation to inquire once impairment becomes known
- Documentation of Need
 - Reasonable documentation of individual's entitlement to reasonable accommodation
 - Confidentiality considerations



What can be reasonable?

- Access to application process
- Assistive technology or equipment, job coach, service animals
- Job Restructuring
 - Nonessential job duties
- Time Off/Leave
- Flexible Schedule/Telework
 - <https://www.dol.gov/odep/WorkplaceFlexibility/>
- Return to Work programs
 - <https://www.dol.gov/odep/return-to-work/>



Reasonable Accommodation Hypothetical

- Assistant Manager of Pizza Hut unable to work more than 40 hours/week after car accident.
- Managers generally work 50-55 hours per week.
- Manager responsible for supervising other staff while restaurant is open, open & closing restaurant (11 am to 10 pm)
- Managers also help hostess & servers as needed
- **Can she be accommodated?**



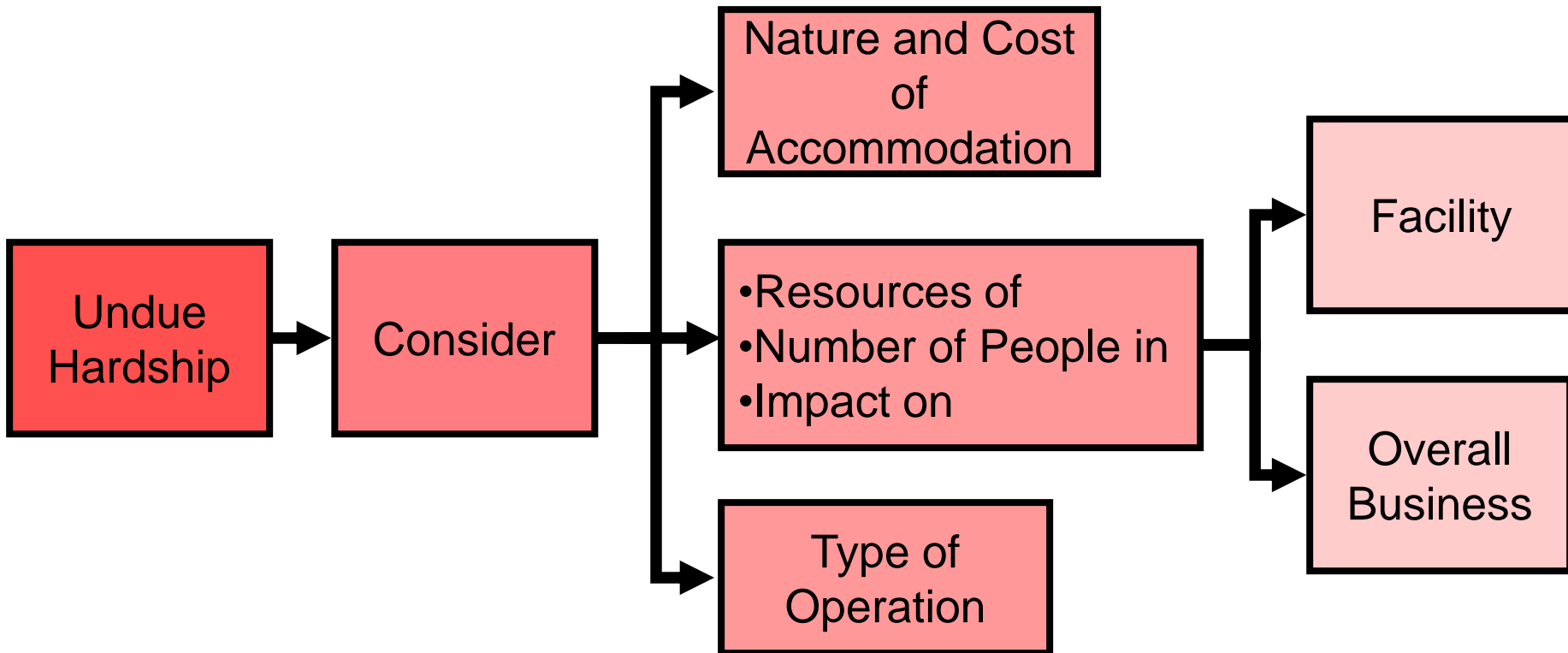
Myth #5

The ADA places a **financial burden** on small businesses that cannot afford to make accommodations for individuals with disabilities.





Undue Hardship Defense





Costs can be considered, BUT

- Relative to employer's resources & benefit to person with disability
- Costs are limited
 - approximately 56% of accommodations have no associated costs
 - approximately 37% of accommodations have onetime cost of \$500 or less
 - only 4% of accommodations result in ongoing expenses on an annual basis
- Tax benefits
 - <https://www.irs.gov/businesses/small-businesses-self-employed/tax-benefits-for-businesses-who-have-employees-with-disabilities>



CASE Example on Undue Hardship

- Employee sought reinstatement after 13 weeks of leave

Holding

- Reinstatement would have been undue hardship
 - Employer facing financial crisis that would have required layoffs
 - Other employees deemed more essential to company



Accommodation Hypothetical

- Assistant Manager of Pizza Hut unable to work more than 40 hours/week after car accident.
- Even if accommodation of working no more than 40 hours is reasonable, **could Pizza Hut show an undue hardship?**
 - Managers generally work 50-55 hours per week.
 - Manager responsible for supervising other staff while restaurant is open, open & closing restaurant (11 am to 10 pm)
 - Managers also help hostess & servers as needed