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Fourteenth Annual

Employment Law Forum

Employment Law Forum

Agenda

- 8:00 am** **Networking Breakfast**
- 8:20 am **Welcome**
- 8:25 am **Wage Issues in the Modern Economy**
Kerri A. Wright and Deirdre Wheatley-Liss
- 9:00 am **Post-Pandemic Peril: What Employers Need to Know Now**
David M. Schloss and Garcia Samuylov
- 9:35 am **Recruitment and Retention: Lawful Methods and Potential Pitfalls
Employers Should Know**
Janelle Edwards-Stewart and Thomas J. Reilly
- 10:10 am **Avoiding ERISA Withdrawal Liability Traps: Just When You Thought You
Were Out, They Brought You Back In**
Richard H. Bauch and Brian Giardina
- 10:45 am** **Break**
- 10:55 am **Artificial Intelligence in the Workplace**
David L. Disler
- 11:30 am **The Blunt Truth About Workplace Impairment in New Jersey**
Beau W. Huch and Weston J. Kulick
- 12:05 pm** **Networking Lunch**
- 12:55 pm **Service v. Support Animals: Handling Accommodation Requests in
Employment and School Settings**
Melanie D. Lipomanis
- 1:30 pm **Proactive Measures to Secure Your Workplace**
David C. Hespe and Kevin M. Craig
- 2:05 pm **Here Come the Judges: Supreme Court Cases Impacting the Workplace**
Vito A. Gagliardi, Jr. (moderator), Hon. Alvin Weiss, A.J.S.C. (Ret.), Hon. Jack
L. Lintner, P.J.A.D.(Ret.), and Hon. Daniel D'Alessandro, J.S.C. (Ret.)
- 2:55 pm** **Closing Remarks**



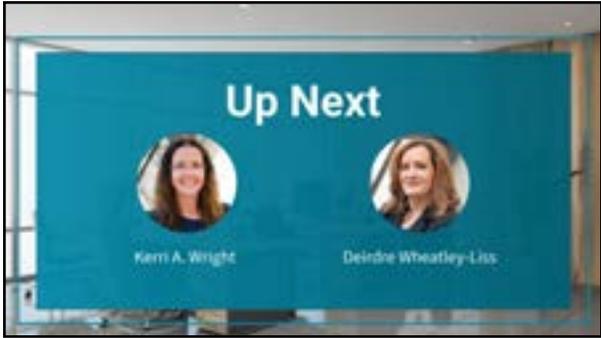
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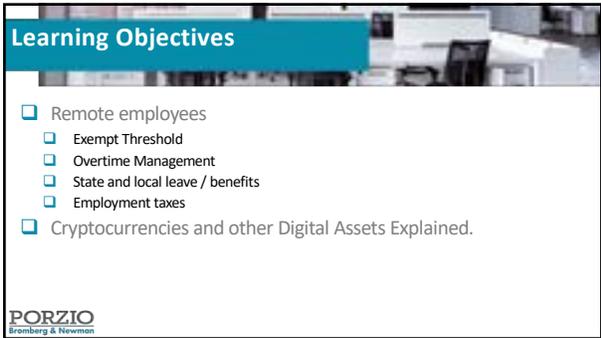
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Case Study

Tony

- Qualifications: Engineer, computer programmer, AI creator
- References: Highly recommended
- Current employment: In between jobs

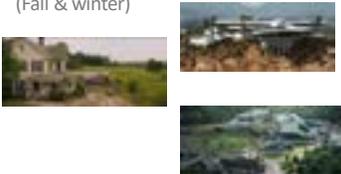
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Case Study

- Residence: Harpswell Maine (Summer); Iowa (Spring), New York (Fall & winter)



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Case Study

- Salary Demands: \$1,500 per week, \$78,000 annually

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Tony Accepts!



**Offer letter: \$57,200
(\$1,100/week)**

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Is Tony Exempt?

Fair Labor Standards Act allows exemptions from overtime and minimum wage for certain "exempt" employees who work in administrative, professional, and executive jobs if they meet the following tests:

- Salary-basis test
- Salary-level test*
- Duties

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Is Tony Exempt?

State of Residence	Salary-level	Is Tony Exempt?
Federal	\$684/week	• Yes
New Jersey	Adopted FLSA tests	• Yes
Iowa	\$310-500 per week	• Yes
California	26+ employees - \$1,200 per week - 26 employees - \$1,120 per week	• No
New York	75 times state minimum wage, varies based on region	• No

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Case Study: Is Tony Exempt?




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How to Manage Tony, as a Remote Non-Exempt Employee

- Offer Letter** – Clarify expectation of hours to be worked & location
- Policies** – Outline expected hours worked, expected meal and rest breaks, timekeeping practices, & overtime
- Verification of time records** - Records should be reviewed daily or weekly and *certified* by remote employee
- Discipline** – Remote employees should be disciplined for unauthorized off-the-clock work, but paid



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Case Study: Tony needs a leave




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Is Tony entitled to FMLA leave?

- ❑ **Eligibility** – 50 or more employees within a 75-mile radius of the worksite.
- ❑ **Worksite** – Worksite the employee reports to or from which they receive their assignments. ([29 C.F.R. § 825.111\(a\)\(2\)](#))



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Case Study: Can Tony Take FMLA leave?



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Case Study: Tony needs another leave

- Girlfriend Pepper
- Serious health condition
- He needs 3 weeks to care for her
- Recall: He took 12 weeks to recover from his MMA injuries



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Can Tony Take An NJ FLA or other State Leave?

- ❑ **Where does he perform work** – Eligibility depends on whether the employee performs any work in New Jersey; states determine eligibility.
- ❑ **Have they had FLI withheld** – Employees pay into Family Leave Insurance in New Jersey; must have it withheld in order to be eligible.



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What about other states?

Sate of Residence	Salary-level	Is Tony Eligible?
Iowa	No Paid Family Leave	• N/A
California	Paid Family Leave; California Family Rights Act	• No
New York	Paid Family Leave	• Maybe



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Case Study: Can Tony Take leave in other states?



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Case Study

- Trying to reign in costs, you offer Tony a stipend to work on a specific project.
- You also want him to work with a group of students from a nearby school, in a robotics club.

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Non-exempt Employees

- All hours “suffered or permitted” to work
- Same work v. different work
- Same title v. different title
- Same department/division v. different
- Same contract v. different contract

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Case Study: What are the tax implications for you if Tony is your only remote employee?

- Refresher:
 - Tony works remotely for your NJ entity
 - Approximately 4 months in New York, Iowa, and California
 - Occasionally comes to New Jersey for meetings

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What are the tax implications for you if Tony is your only remote employee?

Not a new issue – In 2012 in *Telebright Corp. v. Director, New Jersey Division of Taxation*, 424 N.J. Super. 384 (N.J. Super. Ct. App. Div. 2012), the New Jersey Superior Court's Appellate Division affirmed that an out-of-state employer could be liable for the state's corporation business tax (CBT) by virtue of one employee telecommuting from the state.

- Nexus for income taxes, gross receipts taxes, sales taxes, and local business taxes
- Apportionment
 - Property Factor
 - Payroll Factor
 - Receipts Factor
- Employment Taxes

Withholdings and Your Remote Employee

- How much work is the employee doing in that 'foreign' state?
Typically, withholding is triggered by the amount or timing of the work that is performed in that state.
- Does that 'foreign' state impose personal income taxes?
 - If not, then you need not worry.
 - If so, then you need to know the threshold and whether there are any reciprocal agreements between your state and the 'foreign' state.

Examples

State of Residence	Withholding Required?	Specific Requirements
New Jersey	Yes	• Reciprocity with certain states (ex Pennsylvania)
Florida/Texas	No personal income tax	• No withholding
New York	Yes	• 14-day period of work required to trigger withholding
California	Yes	• Required to pay income taxes on wages earned from California, whether a resident or not.
Iowa	Yes	

Best Practices

- Confirm location of employee in hire letter / Remote employment agreement
- Determine exemption, if applicable, under appropriate state law
- Implement, distribute, and have acknowledged (in writing) telecommuting policy
- Confirm eligibility for paid or unpaid leave or other benefits
- Certification of timesheets

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Case Study



- Tony works for you for several years
- He develops several critical programs for you
- He now wants a significant salary increase
- And.... He wants to be paid a bonus in Cryptocurrency

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What is "Cryptocurrency"

- **Digital Money** – In the simplest term, cryptocurrency is digital money in the form of virtual "tokens" or "coins" that can be used to purchase goods or services or act as an alternative to traditional investments.
- **Creation** - Cryptocurrency is created by computer algorithms hosted on a global decentralized network of computers where transactions are stored on the "blockchain" database.

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Storing, Spending and Investing Cryptocurrency

- ❑ **Storage** - Cryptocurrency is stored in a "wallet" accessed either via an app (software wallet), stored on a USB device (hardware wallet), or printed on paper with QR codes (paper wallet).
- ❑ **Spending** - Cryptocurrency can be spent like money by transferring tokens or "coins" directly to another person's wallet, linking a wallet to a debit card, or direct payment at major retailers such as Expedia, Microsoft, and Starbucks.
- ❑ **Investing** - Cryptocurrency can be invested like stock by purchasing a token at one price and selling at another for a gain or loss.

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Cryptocurrency Examples

Name	Estimated Market Capitalization
	September 2022
Bitcoin (BTC)	\$377 billion
Ethereum (ETH)	\$165 billion
Tether (USDT)	\$67 billion
U.S. Dollar Coin (USDC)	\$47 billion
Binance Coin (BNB)	\$46 billion

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Digital Assets Beyond Cryptocurrency

Digital Assets	Definition	Uses
Crypto assets	Any digital store of value or medium of exchange (currency) that's stored on the blockchain.	<ul style="list-style-type: none"> • Investments • Payments • Creating a coin to fund a project
Stablecoins	A type of cryptocurrency designed for price stability. Stablecoin prices are linked to fiat currencies, commodities or other crypto assets.	<ul style="list-style-type: none"> • Payments • Foreign exchange • Cross-border payments and transfers
Non-fungible tokens (NFTs)	A token that represents ownership of a unique digital item (think a work of art, a government ID, a specific unit of production). An NFT certifies that the holder owns the underlying digital asset and can sell, trade or redeem it.	<ul style="list-style-type: none"> • Proving your identity and granting access (to either a virtual or physical space) • Tokenizing your supply chain to track inventory movement and ownership • Ownership of virtual items (games, avatars, virtual land)

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Digital Assets Beyond Cryptocurrency (Cont'd)

Digital Assets	Definition	Uses
Central bank digital currencies (CBDCs)	A type of digital asset that represents a nation's fiat currency and is backed by its central bank. Not all nations issue CBDCs.	<ul style="list-style-type: none">• Payments• Cross-border payments and transfers
Security tokens	Digital assets that meet the definition of a security or financial investment, like stocks and bonds.	<ul style="list-style-type: none">• Tokenized versions of stocks (equity) and bonds• Tokenized versions of real-world assets (real estate, property, plant, and equipment, etc.)

Source: PWC [Demystifying Cryptocurrency and Digital Assets](#)

Economic Rational for Cryptocurrency

- ❑ **Economic Evolution of "Money"** - Consider the historic migration from barter, to precious metals like gold, silver and bronze in the form of uniformly sized coins, to government issued paper money backed by the assets of the country (e.g. the "gold standard"), to the current "fiat currency" issued by governments where the value simply comes from the faith of the users that others will accept that currency.
- ❑ **Is this a "Fad"?** - Cryptocurrency is not a "fad". Instead, it is simply the next evolution of how to exchange an item of value for goods and services.

Federal Income Tax Issues – Tax Realization - Sale or Exchange

- ❑ Cryptocurrency and Digital Assets are generally treated as property for federal income tax purposes, no different than real estate, stocks, bonds, or tangible property.
- ❑ Cryptocurrency and Digital Assets are *property* under the US Tax Code, not *currency*.
- ❑ A holder of cryptocurrency or Digital Assets will have a tax realization event upon:
 - ❑ **Selling cryptocurrency or Digital Assets**
 - ❑ **Trading or exchanging** cryptocurrency or Digital Assets

Federal Income Tax Issues – Tax Realization – Purchase of Goods or Services

- ❑ A holder of cryptocurrency or Digital Assets will also have a tax realization event upon purchasing goods or services with cryptocurrency or Digital Assets
- ❑ This situation is unique compared to a traditional purchase with cash.
 - ❑ **Cash Example** – If a taxpayer purchases a \$2,000.00 computer from Microsoft for cash, there is no tax realization event to the taxpayer.
 - ❑ **Bitcoin Example** – If the same taxpayer purchases a \$2,000.00 computer from Microsoft using Bitcoin with a basis of \$500.00, they will experience a gain of \$1,500.00 on the purchase as the purchase will be a tax realization event.

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Federal Income Tax Issues – Capital Gain / Loss

- ❑ **Gain/Loss** - A taxpayer will realize a gain or loss upon an exchange of cryptocurrency or Digital Assets for other property, no different from a sale of real estate or shares of Apple.
- ❑ **Capital Asset** - Cryptocurrency or Digital Assets will generally be capital assets of the taxpayer (similar to stocks, bonds, and other investment property), triggering capital gain or loss on the sale or exchange of the assets under the normal rules for taxation of capital gains and losses.
- ❑ **Short-Term** - If the cryptocurrency or Digital Asset is held for *less than one (1) year* the taxpayer will report a short-term gain or loss (maximum rate of 37%).
- ❑ **Long-Term** - If the cryptocurrency or Digital Asset is held for *more than one (1) year* the taxpayer will report a long-term gain or loss (maximum rate of 20%).

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Federal Income Tax Issues – Ordinary Gain / Loss

- ❑ **Ordinary Asset** - Cryptocurrency or Digital Assets are not be a capital asset to a taxpayer where they are treated as inventory or where the trade or business of the taxpayer is the sale of cryptocurrency or Digital Assets.
- ❑ **Examples:**
 - ❑ A person who creates a Non-fungible tokens (NFTs)
 - ❑ A person who is in the business of mining and selling tokens
- ❑ **Ordinary Income Tax** – With an ordinary asset, a taxpayer generally realizes ordinary gain or loss at the ordinary income tax rates (maximum 37% for individuals).

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Federal Income Tax Issues – Income on Payment

- ❑ **Payment as Income** - A taxpayer who receives cryptocurrency as payment for goods or services must include the fair market value of the virtual currency, measured in U.S. dollars, as of the date that the virtual currency was received, in their gross income for the tax year.
- ❑ **Reporting Payments** - The 2021 Infrastructure Investment and Jobs Act Section 80603 changes to 26 USC §60501 "Returns relating to cash received in trade or business" by providing that (1) any person engaging in a trade or business that receives more than \$10,000 in cash must file IRS Form 8300, and (2) that a digital asset with a value of \$10,000 is "cash" that must be reported with IRS.

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Federal Income Tax Issues – Basis and Fair Market Value

- ❑ **Basis** - The basis is the fair market value of the cryptocurrency in U.S. dollars as of the date of purchase/acquisition.
- ❑ **Fair Market Value** - The fair market value of cryptocurrency or Digital Assets is measured in U.S. dollars as of the date that it is received. If a cryptocurrency is listed on an exchange and the exchange rate is established by market supply and demand, the fair market value of the cryptocurrency is determined by converting the cryptocurrency into U.S. dollars (or into another real currency which in turn can be converted into U.S. dollars) at the exchange rate, in a reasonable manner that is consistently applied.
- ❑ **Determining Basis and Fair Market Value** - Historical data for cryptocurrencies is publicly available at www.coinmarketcap.com and www.coincodex.com.

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Federal Income Tax Issues – Tax Reporting - 2020 and Forward

- ❑ **From 1040** - Beginning in 2020 and going forward is a question on federal Form 1040 "At any time during [tax year], did you receive, sell, send, exchange, or otherwise acquire any financial interest in any virtual currency?".
- ❑ **Self-Reporting** - It is the responsibility of the taxpayer to establish that the value used is an accurate representation of the cryptocurrency's fair market value

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Federal Income Tax Issues – Tax Reporting - 2023 and Forward

- ❑ **Information Reporting for Brokers and Digital Assets** - Beginning January 1, 2023 the following information is required to be reported to the IRS and to customers by brokers: (1) name, address, and phone number of each customer; (2) the gross proceeds from any sale of digital assets; and (3) capital gains or losses and whether such capital gains or losses were short-term (held for one year or less) or long-term (held for more than one year).
- ❑ **Form 8300** - Effective January 1, 2023, any person engaging in a trade or business that receives more than \$10,000 in cash or digital must file IRS Form 8300 reporting: (1) the name, address, and TIN of the person (i) from whom the cash or digital assets was received, (ii) on whose behalf the transaction was conducted, (iii) the business that received the cash or digital assets the amount of cash or digital assets received; (2) the amount of the transaction; and (3) the date and nature of the transaction.



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Federal Income Tax Issues – Tax Fraud - Declaration under Penalties and Perjury

- ❑ **Declaration under Penalties and Perjury** - A tax return is filed with a declaration of "Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge."



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Federal Income Tax Issues – Tax Fraud – Felony and Penalties

- ❑ **Felony** - Any taxpayer who willfully makes and subscribes any return that they do not believe to be true and correct as to every material matter, or any tax preparer who willfully aids or assists, counsels, or advises the preparation of a return which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return " shall be guilty of a felony.
- ❑ **Fines and Imprisonment** – Those guilty of tax fraud may be fined not more than \$100,000 (\$500,000 in the case of a corporation), or imprisoned not more than 3 years, or both, together with the costs of prosecution.



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Tax Avoidance Issues

- There is a common and false unfounded belief that the purchase, sale, exchange, or use of cryptocurrency or Digital Assets is not subject to taxation because the ownership and use of these assets are "anonymous." This is simply not true.
- The federal income tax is assessed on all sales and exchange of property and all accretions of income. The fact that a 1099 or other tax reporting form is not issued by a party does not change the character of income or the need to report income.

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Tax Avoidance Statistics

- 50% - More than 50% of crypto investors pay taxes
- 25% - Only 25% of non-taxpayers were aware that cryptocurrency or Digital Assets are subject to tax
- 25% - Almost 25% of non-taxpayers didn't know how to report taxes on their cryptocurrency or Digital Assets

Source: CoinLedger *The State of Cryptocurrency Tax Reporting in 2022*

- Tip** - Ignorance of the law is not a defense and intentional or unintentional underreporting will lead to significant interest and penalties for these taxpayers on top of the tax amount.

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Expanded Enforcement

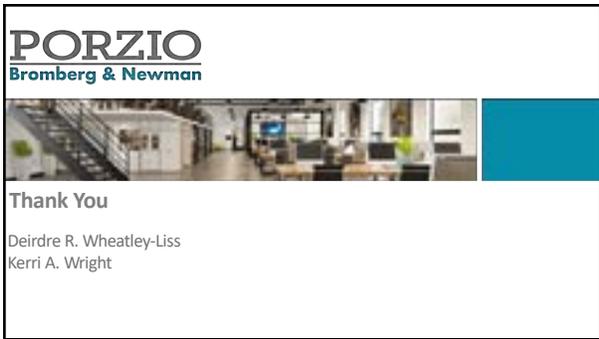
- The IRS just received \$80 billion from Congress with the authority to hire tens of thousands of new employees to assist with enforcement of the Tax Code and collections on amounts due.
- The IRS has indicated that a "top priority" is the enforcement around cryptocurrency or Digital Assets, including enforcement of the new requirements under 2021 Infrastructure Investment and Jobs Act (H.R. 3684).

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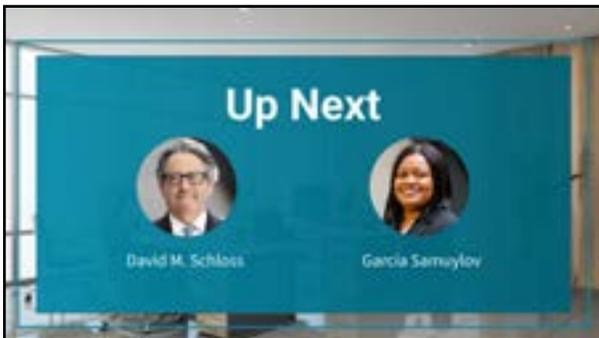
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**Post-Pandemic Peril:
What Employers Need to Know Now**

David Schloss
Garcia Samuylov

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Remote Work-Status Alert!

The pandemic has changed how we work, but...
Employers maintain a negative perception about remote work and want employees back on-site

- *“Remote work is an aberration that we are going to correct as quickly as possible”*
- *“As long as COVID remains manageable, we need everyone back in our offices on a consistent basis”*

That ship might have sailed!

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Remote Work-Status Alert!

The power dynamic between employer and employee has shifted

- Unemployment non-existent
- Quiet quitting is now a thing
- Employees accustomed to remote work-life balance
- Many would rather quit than commute
- Emerging trend: pay raise to return to the office

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The Emerging Hybrid Model

Assess current state and create a post-pandemic plan

- What is your current state of remote work?
- Where do remote-capable employees want and expect to work?
- How does remote or hybrid work fit with the needs of your business?
- What is the effect on remote-capable workers not being able to work where they prefer?

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The Employer's Prerogative

- Can employers require wide-scale return to the office?
 - Reasonable accommodation for employees with disability
 - Compliant with workplace safety measures and public health guidelines

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The Legal Standard

- New Jersey’s Law Against Discrimination (NJLAD)
 - Prohibits discrimination on the basis of disability, religion, etc.
 - “Disability” is physical or mental impairment that substantially limits one or more major life activities (*diagnosis is insufficient*)
- Americans with Disabilities Act (ADA)
 - Prohibits discrimination on the basis of disability

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The Legal Standard *cont’d*

- ADA & NJLAD require employers to provide:
 - Reasonable accommodations
 - Unless doing so would cause hardship
- ADA website:
 - <https://adata.org/factsheet/reasonable-accommodations-workplace>

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The Legal Standard *cont’d*

- *Beltran v. 2 Deer Park Drive Operations, LLC:*
 - Employer requested maintenance worker’s return to work after COVID-related absence
- *Leone v. Essex County Prosecutor’s Office:*
 - Prosecutor requested remote-work accommodation on religious basis

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Hybrid Work-Case Study

- Sarah, an editor, at a large NYC publishing house was hired in April 2020 and, as a result of the pandemic, has been successfully working from home for 2 ½ years
- The employer, citing the need for “collaboration”, is requiring all staff to return to the office two days per week
- Sarah, who has ADHD, has requested an exemption because the distractions and interruptions in the office prevent her from performing her job
- The employer, as an accommodation, has offered Sarah a private phone station to use as an office
- Sarah refuses the accommodation, suggesting that adapting to new visual environments (home and office) won’t work and that the accommodation would put her “on display” to co-workers, causing her great embarrassment
- What’s an employer to do?

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The Emerging Hybrid Model

Takeaways

- Remote/hybrid work is here to stay
- Make the business case for an on-site or hybrid model
- Examine what employees can do well from home and what efficiencies are increased in the office
- Focus on interdependencies vs independent tasks
- Shape your plan around productivity-not policy compliance
- Review job descriptions and company policies

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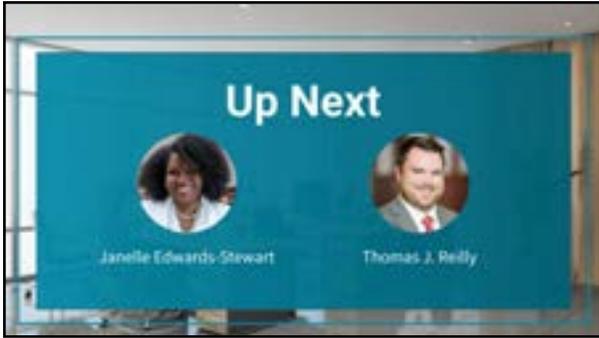


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Thank You

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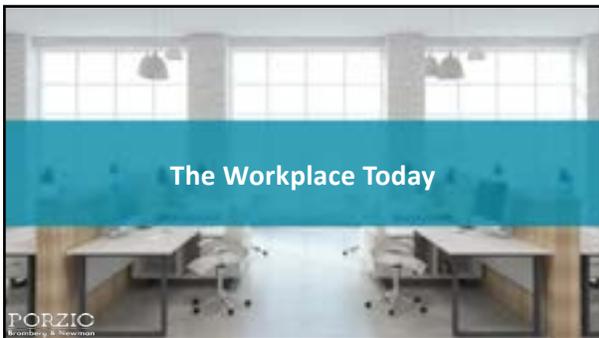
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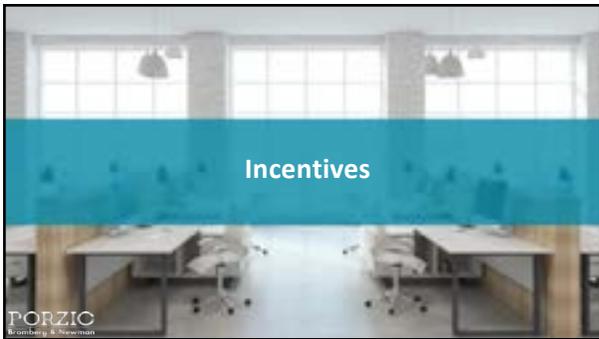
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Do Incentives Work?

Yes!

- **Two-thirds** of employees are motivated to stay at their job due to incentives.
- Companies using incentives reported a **79% success rate** in achieving their goals.
- Both **monetary and non-monetary** rewards will work -- **if implemented properly**.

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What's the Catch?

- It must be the right kind of incentive
- It must be given meaningfully



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The Right Kind of Monetary Incentive

- Certain Discounts
- Gift Cards
- Stipends

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The Right Kind of Non-Monetary Incentive

- Flexible Schedules
- Volunteer Time
- Wellness events/workshops
- Input/feedback on policies
- Mentorship
- Recognition (social media)
- Animals



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Meaningfully Given

- Who gives it?
- How is it communicated?

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Be Mindful of the Law

Complications of collective bargaining agreements

Health benefits and health benefit-related benefits (ACA)

Discrimination claims; "retention bonuses" – *Freyd v. University of Oregon*

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Remote Work

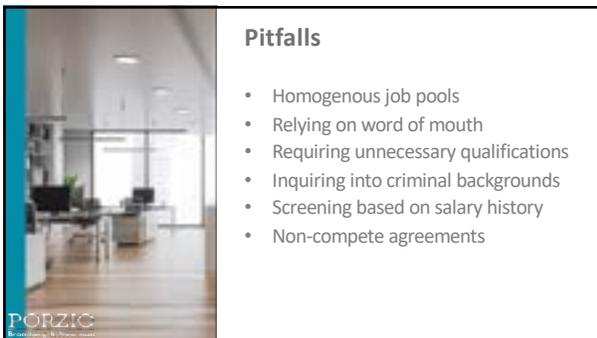
<u>Pitfalls</u>	<u>Strategies</u>
• ADA accommodations	• Embrace it
• "Company time"	• Set clear expectations
• Choice of law	• Communicate
• Confidentiality/security	• Be proactive
• Burnout/blurred lines	• Encourage "switching off"
• Visibility	
• Indirect Learning	

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Out-of-State/Out-of-Country Employees

- Which law applies?
 - No specific rule.
 - Fact-intensive analysis:
 - Location of contract/negotiations
 - How the work location relates to the work duties
 - The parties' "center of gravity"
 - Which state has the greatest interest in the matter
- *Calabotta v. Phibro Animal Health Corp.*, 460 N.J. Super. 38 (App. Div. 2019)



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Out-of-State Employee Benefits

- Access to in-network coverage
- Local leave laws
- Communication and proactive measures



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Recession-Proofing The Workplace

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Thank You
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Up Next



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Avoiding ERISA Withdrawal Liability Traps: Just When You Thought You Were Out, They Brought You Back In
Richard H. Bauch, Esq.
Brian Giardina, Esq.

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Overview

- Employee Retirement Income Security Act (ERISA)
- Multi-employer Pension Plan Amendments Act (MPPAA)
- Withdrawal Liability
- Applicability to Private Sector Defined Benefit Plans

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History of MPPAA

- Stringent minimum funding requirements
- “Collectively bargained plan maintained by more than one employer...”
 - These plans are often referred to as “Taft-Hartley plans.”
- Plan assets must be invested prudently and solely in the interests of participants

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Withdrawal Liability

- Overarching Purpose: Protect employees’ pension benefits
- Proportionate share of unfunded vested liabilities
- There’s a cap, but don’t count on it saving you!
- Family members liable
 - Parent companies, brother-sister companies
 - Even if in a different industry

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Types of Withdrawals

- **Complete Withdrawal** Occurs When an Employer:
 - Permanently ceases to have an obligation to contribute under plan; or
 - Permanently ceases all covered operations under plan
- **Partial Withdrawal** Occurs on Last Day of Plan Year in Which There is Either:
 - A 70% decline in contribution base units; or
 - A partial cessation of the employer's contribution obligation

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Withdrawal Liability Triggers

- Threshold Requirement: plan is underfunded
- Sale of assets may trigger liability for seller
- Purchase of stock may result in potential withdrawal liability as a contingent liability of the Buyer
- Purchase of assets may result in assumption of potential withdrawal liability by the Buyer
- Possible Public Section Concern: Assumption by contractor of employer status of employees

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Additional Liability Concerns

- Controlled group: common control of trades or businesses
- Parent-subsidiary controlled group: the 80% control test
- Brother-sister controlled group: the 5 & 80 rule
- Potential personal liability for sole proprietors
- Expansion to private equity funds: the investment plus rule
- Successor liability: notice & substantial continuity of operations

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Avoiding Withdrawal Liability in an Acquisition or Merger

- Ask questions and assume the worst
- Is there a collective bargaining agreement?
- Does employer contribute to pension plan for its union employees?
- Is pension plan multi-employer defined benefit plan or defined contribution plan?
- If multi-employer defined benefit plan, is it underfunded and is there withdrawal liability?
- Have contribution levels changed in the past 3 years? 5? 8?

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Exceptions to Withdrawal Liability:

- De Minimis Rule Can Reduce Withdrawal Liability by Lesser of:
 - \$50,000 or 1% of Plan's Unfunded Vested Benefits
- Under DMR, amount is reduced dollar-for-dollar for liability exceeding \$100,000
- Rule ceases to apply when employer's withdrawal liability equals or exceeds \$150,000
- Plan may determine to increase the DMR amounts to \$100,000/\$150,000

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Exceptions to Withdrawal Liability for Sale of Assets: Section 4204

- Bona Fide, Arms-Length Sale of Assets to Unrelated Party
 - If sale causes seller to cease operations or eliminates obligation to contribute, triggers withdrawal liability, UNLESS:
 - Buyer agrees to contribute for substantially same number of CBU's;
 - Buyer or seller provides a bond for 5 years for substantially same plan contributions; and
 - Contract for sale provides for seller to be secondarily liable for 5 years for any withdrawal liability it would have if buyer withdraws from the plan AND does not pay its withdrawal liability

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Other Exceptions to Withdrawal Liability

- Building & Construction Industry Exemption
- Trucking Industry Exemption
- Sale of Stock Without Interruption of Contributions
- Labor Disputes/Strike/Work Stoppage



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Other Exceptions to Withdrawal Liability

- Entertainment Industry Exemption
- Free Look
- Sale of Substantially All Assets (Sliding Scale Reduction on Liquidation Value)
- Insolvent Employer Limitation (50% of Withdrawal Liability Owed)
- Individual Property Not Subject to Enforcement in Bankruptcy
- Offset for Prior Partial Withdrawal Liability Upon Complete Withdrawal
- Transfer of Liabilities



95



Richard H. Bauch
Brian Giardina

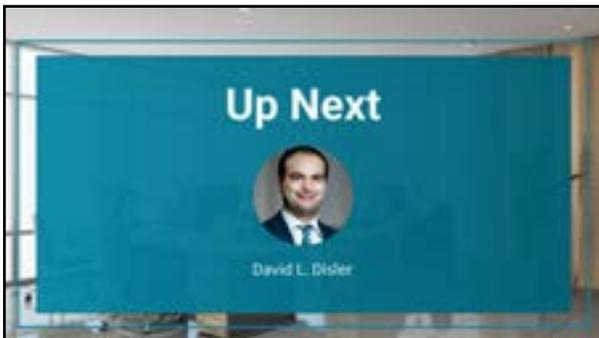
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Artificial Intelligence in the Workplace

David L. Disler

100



101



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103



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105



106

Meta is investing \$10 billion this year on the metaverse.



October 12, 2022

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Data Is Everywhere



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We have a winner

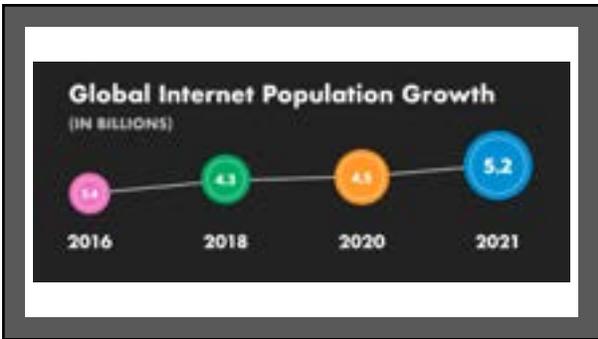
Saralyn C.	3:15 p.m. on October 5, 2022
Paul V.	3:16 p.m. on October 5, 2022
Simone A.	3:20 p.m. on October 5, 2022

Saralyn is our winner.



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Data

Over 65% of the world's population has access to the internet.

92.6% access the interview via mobile device.



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Data

Total amount of data on internet expected to more than double by 2025

2021 → 79 zettabytes

2025 → 180 zettabytes



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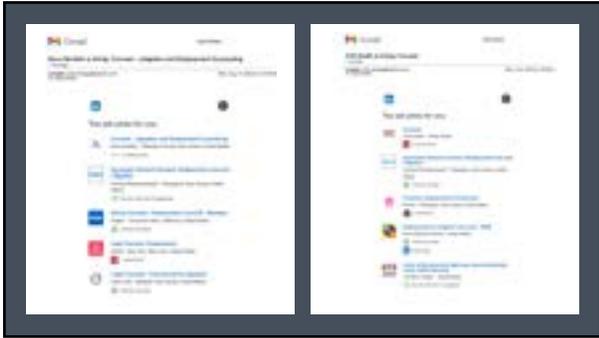
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Resume Screening

A candidate submits a resume, and an algorithm evaluates this resume to produce a score indicating the applicant's quality or fit for the job.

The ultimate hiring decision typically rests with a human.

Example: algorithm uses key words such as "manager" or "increased revenue" on the resume to rank a candidate higher than others.

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Resume Screening

Reviewing 1,000s of applications could take HR days or weeks to complete.

AI can analyze and rank candidates within minutes.

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Screening

- Algorithms to rank candidates.
- Algorithms to remove candidates.
- Chat bots perform the prescreen calls.

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Screening

Benefits in use of AI

- Streamline process.
- Reduce time to hire.
- More narrowly focused candidate pool.
- Uses "objective" measurements to remove subjectivity out of process.



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Interview & Selection

- Video interviewing & assessments.
- Chat bots to obtain information from candidates.
- Game Assessments

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Game Assessment

Applicants play custom-built games, and proprietary algorithms analyze gameplay to score candidates on a number of traits like “learning ability” and “decisiveness.”

Algorithm also may analyze reaction time or memory ability to make predictions about other traits.



124

Talent Acquisition

Study by the National Bureau of Economic Research found that hires made by algorithm had a 15% higher retention rate than those made by hiring managers.



125



126

Privacy



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AI in Video Interviews

Companies utilize AI to analyze video interviews to evaluate and make hiring

AI evaluates:

- Facial expressions
- Body language
- Word choice
- Tone of voice



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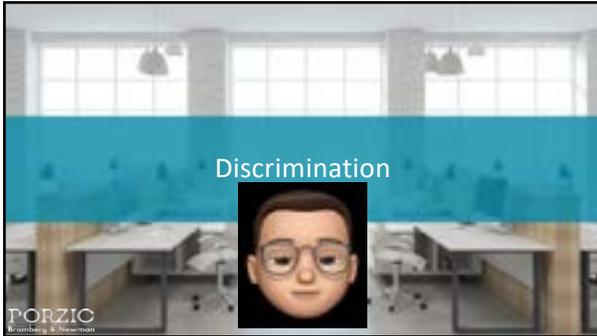


Illinois Artificial Intelligence Video Interview Act

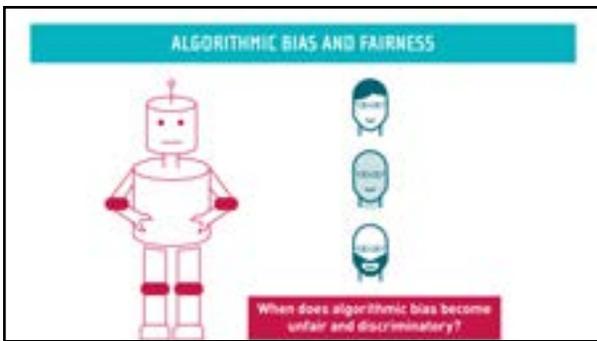
- Notice
- Explanation
- Informed consent
- Privacy and control over video

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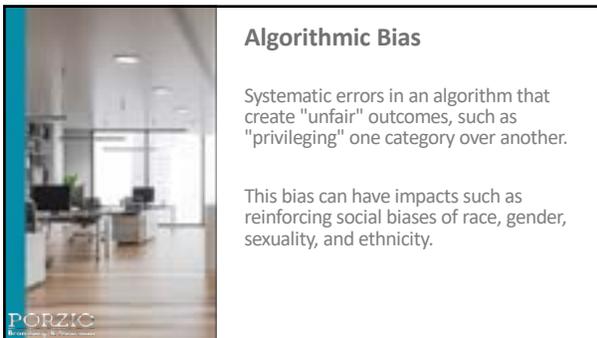
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Example – Amazon

In 2014, Amazon attempted to automate its hiring process by building algorithm to identify top talent.

Similar to how it rates products, Amazon's hiring tool used artificial intelligence to give job candidates scores ranging from one to five stars.



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Example – Amazon

Part of the algorithm used resumes submitted to the company over a 10-year period.

Since most came from men, the algorithm began to favor men.

For example, it penalized resumes that included the word "women's," as in "women's chess club captain."



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Discrimination Laws

Title VII of the Civil Rights Act of 1964 prohibits discrimination based on “race, color, religion, sex, or national origin.”

New Jersey Law Against Discrimination protects against similar categories of discrimination.

Applies to both intentional discrimination, as well discrimination resulting from a disparate impact.

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**New York City
Artificial Intelligence Ordinance**

Takes effect January 1, 2023.

Regulates use of “automated employment decisions tools” in hiring and promotion decisions.

Penalties of \$500 to \$1,500 for each violation.

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**New York City
Artificial Intelligence Ordinance**

REQUIREMENTS

Any such tool undergo an annual, independent “bias audit.”

Employers provide all candidates with 10 business days’ notice prior to being subject to the tool.

The notice list the “job qualifications and characteristics” used by the tool to make its assessment.

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New York City
Artificial Intelligence Ordinance

REQUIREMENTS

The sources and types of data used by the tool, as well as the applicable data-retention policy, be made available.

Candidates be able to opt out and request an alternative selection process or accommodation.

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EEOC Launches Initiative on Artificial Intelligence and Algorithmic Fairness

WASHINGTON, D.C. (April 11, 2022) — The U.S. Equal Employment Opportunity Commission (EEOC) today announced a new initiative to address the potential for bias and discrimination in artificial intelligence (AI) and algorithmic decision-making tools used in employment. The initiative will focus on identifying and addressing the risks of bias and discrimination in these tools, and will include a series of public workshops, webinars, and other outreach activities. The EEOC is also launching a new research project to study the impact of AI and algorithmic decision-making tools on the employment process.

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EEOC AI Initiative

"Artificial intelligence and algorithmic decision-making tools have great potential to improve our lives, including in the area of employment," Burrows said. "At the same time, the EEOC is keenly aware that these tools may mask and perpetuate bias or create new discriminatory barriers to jobs. We must work to ensure that these new technologies do not become a high tech pathway to discrimination."

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Example

Employer provides applicants with a “knowledge” test.

A job applicant reports he has limited manual dexterity because of a disability may report that they would have difficulty taking a knowledge test that requires the use of a keyboard, trackpad, or other manual input device.

This is especially problematic if the responses are timed, this kind of test will not accurately measure this particular applicant’s knowledge.

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Example

Is an accommodation required?



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Example

Provide an accessible version of the test (i.e. provide responses orally rather than manually).

Provide an alternative test.

Extended time on the test.

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AI Issues with the ADA

2. Screens Out Applicants

The employer relies on an algorithmic decision-making tool that intentionally or unintentionally “screens out” an individual with a disability, even though that individual is able to do the job with a reasonable accommodation.



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Example – Chatbot

As part of the pre-employment screening process, the employer uses a chatbot.



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Example – Chatbot

The chatbot is designed to engage in communications online to gather information about potential candidates.

Here, the chatbot is programmed with a simple algorithm that rejects all applicants who, during the course of their “conversation” with the chatbot, indicate that they have significant gaps in their employment history.



150

Example – Chatbot

Any Issues?



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Example – Chatbot

Could discriminate against candidates if the gap in employment was caused by a disability the chatbot may screen out candidates because of their disability.

Example: the candidate needed to stop working to undergo treatment.



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AI Issues with the ADA

3. Disability-related Inquiries

The employer adopts an algorithmic decision-making tool for use with its job applicants or employees that violates the ADA's restrictions on disability-related inquiries and medical examinations.

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AI Issues with the ADA

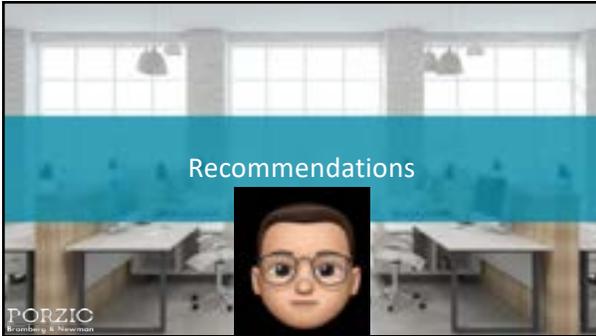
Violation may occur if employer uses algorithmic decision-making tool that:

- Poses “disability-related inquiries”
- Seeks information that qualifies as a “medical examination”

Before giving the candidate a conditional offer of employment.

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Recommendations



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Recommendations

When utilizing artificial intelligence while making employment decisions:

1. Undergo a bias audit and data testing.
2. Provide notice indicating reasonable accommodations are available.
3. Provide instructions on how to request a reasonable accommodation.

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Recommendations

When utilizing artificial intelligence while making employment decisions:

4. Provide notice regarding the technology being utilized.

For example, when using an algorithmic decision-making tool, you may want to provide the traits or characteristics being measured and provide any disability that might result in a potentially lower score or cause a screen out.

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Recommendations

When utilizing artificial intelligence while making employment decisions:

5. Avoid replacing all discretion with algorithms wholesale. Human review remains important.
6. Review internal policies and procedures related to hiring.
7. Train relevant employees on use of AI.

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Thank You

David L. Disler

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Cannabis Is Still Illegal, Federally

- Cannabis remains illegal – Controlled Substances Act
- States continue to pass laws legalizing cannabis
- Some state laws have express or implied employee protections
- Litigation is growing, with a trend supporting employees who use cannabis for medical reasons



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The Grey Area of the 2018 Farm Bill

- Hemp and hemp-derived products
- DEA, ATF, FDA, Department of Agriculture? Who regulates hemp consumable, hemp-derived products?



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Is Decriminalization Coming?

- On October 6, 2022, President Biden pardoned all federal offenses of simple marijuana possession.
- Certain rules on marijuana would remain in place, even if the drug is descheduled.
- “Even as federal and local regulations of marijuana change, important limitations on trafficking, marketing, and under-age sales should stay in place,” he said.



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Jake Honig's Act

"If an employer has a drug testing policy and an employee or job applicant tests positive for cannabis, the employer shall offer the employee or job applicant an opportunity to present a legitimate medical explanation for the positive test result, and shall provide written notice of the right to explain to the employee or job applicant..."



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CREAMMA

- Establishes nondiscrimination rules for recreational cannabis users
- Codifies that employers do not have a duty to accommodate cannabis use in the workplace
- Establishes procedures for employer drug testing



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Drug Testing: The “What”

- Cannabinoid metabolites... essentially fall out from your body processing THC.
- Drug testing is not as sophisticated as you might think! Cannot distinguish between consumed hemp derived products and legal cannabis products in a person’s system.

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Drug Testing: The “When”

- Pre-employment (but, if positive, cannot be reason for not hiring)
- At random (with a policy)
- Post-accident
- Upon reasonable suspicions of use while at work
- When presented with observable signs of intoxication

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Drug Testing: The “How”

Two components to a drug test:

1. Scientifically reliable objective testing methods (blood, urine, saliva) **AND**
2. Physical examination by a DRE or WIRE

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Drug Testing: The "Who"

HOWEVER,

- Notwithstanding the provisions of N.J.S.A. 24:6I-52, until such time that the Commission, in consultation with the Police Training Commission established pursuant to N.J.S.A. 52:17B-70, develops standards for a Workplace Impairment Recognition Expert certification, no physical evaluation of an employee being drug tested in accordance with N.J.S.A. 24:6I-52 shall be required.

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Drug Testing: What's a WIRE?

Workplace Impairment Recognition Experts

- Trained to detect and identify if an employee uses or is impaired by cannabis or other substances
- Meant to assist investigation of workplace accidents
- Can be full time or part time position, or outside vendors

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State v. Olenowski

- Challenge to the use of DREs and their 12-step protocol
- Remanded to a Special Master for a hearing
- Special Master recommended DRE evidence be admissible
- Supreme Court has received briefs



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A presentation slide with a teal header containing the word "Exemptions". The main content area is white and contains a bulleted list. The PORZIO logo is in the bottom left corner.

Exemptions

- Federal carve-out
- Safety sensitive positions

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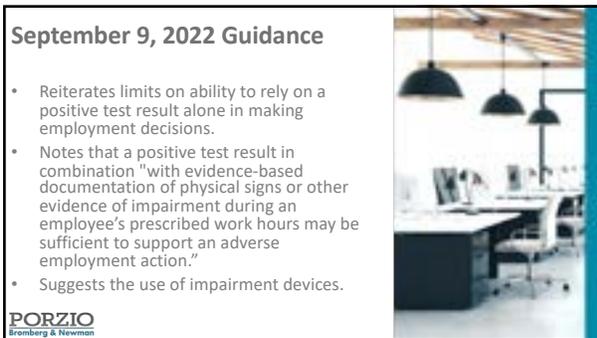
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A presentation slide with a teal header containing the text "CRC Guidance". The background image shows a modern office interior with desks and chairs. The PORZIO logo is in the bottom left corner.

CRC Guidance

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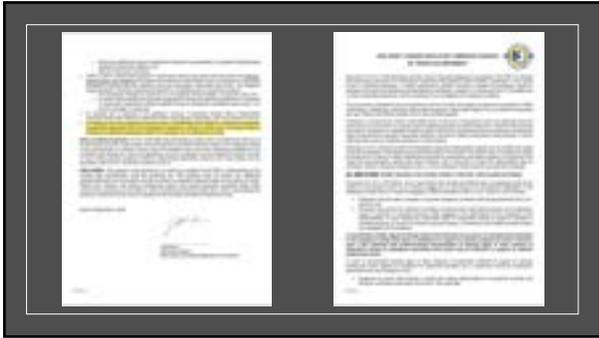
A presentation slide with a teal header containing the text "September 9, 2022 Guidance". The slide is split into two sections: a white text area on the left and a photograph of an office on the right. The PORZIO logo is in the bottom left corner.

September 9, 2022 Guidance

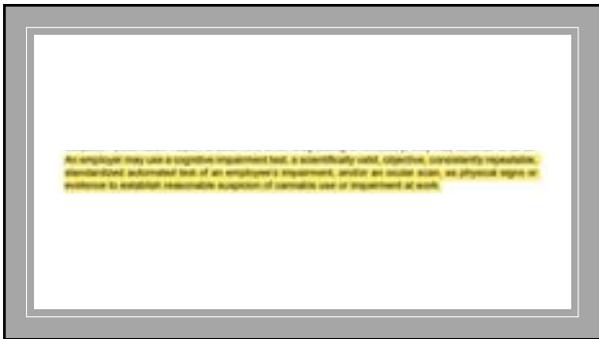
- Reiterates limits on ability to rely on a positive test result alone in making employment decisions.
- Notes that a positive test result in combination "with evidence-based documentation of physical signs or other evidence of impairment during an employee's prescribed work hours may be sufficient to support an adverse employment action."
- Suggests the use of impairment devices.

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Did You Catch That Disclaimer?

DISCLAIMER: The purpose of this guidance is to clarify and explain the NLCRC's understanding of the existing legal requirements under the governing law. This guidance does not impose any additional requirements that are not included in the law and does not establish additional rights for any person or entity. Please note, however, that adverse employment actions may impact employees' protected rights under various laws including, but not limited to, state and federal anti-discrimination laws. When incorporating this guidance, employers should ensure compliance with all state and federal employment laws.

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Evidence-Based Documentation of Impairment

CRC Guidance suggests 3 ways to obtain:

1. Designate an interim staff member to assist with making determinations of suspected cannabis use during an employee's prescribed work hours.
2. Utilize a uniform "Reasonable Suspicion" Observation Report
3. Test for physical signs of impairment at work... But wait... what about that regulation?

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REASONABLE SUSPICION OBSERVED BEHAVIOR REPORT

Employee Name: _____ Supervisor Name: _____
 Department: _____ Supervisor Title: _____
 Date of Observation: _____ Time of Observation: _____
 Location of Observation: _____

Observed Behavior:

1. _____
 2. _____
 3. _____

Physical Signs of Impairment:

1. _____
 2. _____
 3. _____

Witnesses:

1. _____
 2. _____

Supervisor Signature: _____
Employee Signature: _____

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Physical Signs or Symptoms	CIRCLE ALL THAT APPLY	
<ul style="list-style-type: none"> Headache (location, time) Headache (severity, duration) Blurred vision Blurred hearing Blurred speech Blurred handwriting Blurred reading Blurred thinking Blurred memory Blurred judgment Blurred decision-making Blurred communication Blurred coordination Blurred balance Blurred posture Blurred gait Blurred voice Blurred facial expression Blurred eye contact Blurred eye position Blurred eye focus Blurred eye color Blurred eye shape Blurred eye size Blurred eye position Blurred eye focus Blurred eye color Blurred eye shape Blurred eye size 	<ul style="list-style-type: none"> Blurred hearing Blurred vision Blurred speech Blurred handwriting Blurred reading Blurred thinking Blurred memory Blurred judgment Blurred decision-making Blurred communication Blurred coordination Blurred balance Blurred posture Blurred gait Blurred voice Blurred facial expression Blurred eye contact Blurred eye position Blurred eye focus Blurred eye color Blurred eye shape Blurred eye size 	<ul style="list-style-type: none"> Blurred hearing Blurred vision Blurred speech Blurred handwriting Blurred reading Blurred thinking Blurred memory Blurred judgment Blurred decision-making Blurred communication Blurred coordination Blurred balance Blurred posture Blurred gait Blurred voice Blurred facial expression Blurred eye contact Blurred eye position Blurred eye focus Blurred eye color Blurred eye shape Blurred eye size

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Why Did The CRC Issue This Guidance?

- Pressure from the NJ Senate Judiciary Committee
- Delay caused by *Olenowski*
- CRC needed to try something





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Criticism of the CRC Guidance

- It's guidance, it's not binding.
- Who developed those metrics?
- What does the Department of Labor have to say about this? (Nothing.)
- Impairment devices: What makes a good one? Liability concerns?





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A Note on where NJ Is with Rulemaking...

Proposed and Register Citation	Title	End of Comment Period	Link to submit public comments
August 1, 2022 (4 N.J.R. 811)	Personal Use Cannabis Rules Proposed Revision of Specially Adopted New Rules with Amendments N.J.A.C.17:26	The public comment period was closed on Friday September 30, 2022.	

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Current Legal Challenge

- *Zanetich v. Walmart*, 1:22-cv-05387-CPO-EAP



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Employer Response



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Employer Recommendations

1. *Update (or implement) drug-free workplace policy;*
2. *Review contracts and business streams;*
3. *Assess safety-sensitive positions-articulate in writing what it means to hold one of these positions;*

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Employer Recommendations

4. *Support and/or training to supervisors and managers;*
5. *Assess whether they wish to continue or begin to have a drug-free workplace and either implement new or modify existing drug testing practices (yes, we said it twice on purpose!);*
6. *Adopt the CRC's form or create a Reasonable Suspicion Observation Report, and implement a Standard Operating Procedure for completing the form;*
7. *Provide training for determining suspected workplace cannabis use and impairment;*

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Employer Recommendations

8. Review and update drug and alcohol policies! (Really, we cannot stress this enough!)

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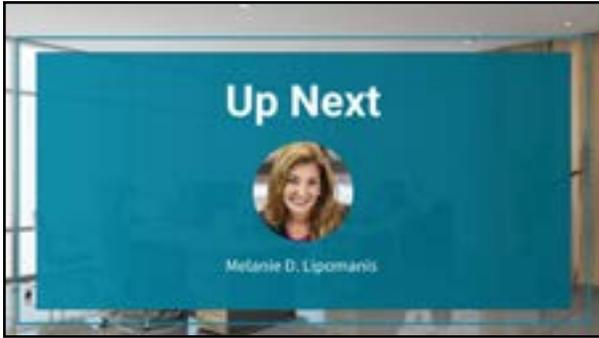
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The ADA and NJLAD Require Accommodations in Employment

- Both federal and state law require employers to provide reasonable accommodations to disabled applicants and employees who are qualified individuals.
- A “qualified individual” is one who can perform the essential functions of the job with or without a reasonable accommodation.

The ADA and NJLAD are also applicable to schools.



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Employers’ Obligations Under USERRA

- Must make reasonable efforts to accommodate an employee’s disabilities that were incurred or aggravated during military service.
- Affirmatively help returning employees become qualified to perform the essential duties of their reemployment position.

This may include the veteran’s use of a service or guide animal.



200

Title 18A: New Jersey School Law

A student with a disability, including autism, shall be permitted access for a service animal in school buildings, including the classroom, and on school grounds.

N.J.S.A. 18A:46-13.3



201

WorkingServiceDog.com

Home > Service Dog > Premium Service Dog Kit - Premium SERVICE DOGS KIT - Includes Free Registration

PREMIUM SERVICE DOG KIT - INCLUDES FREE REGISTRATION

Item Number:
WS-P-SD-KIT

Price:
\$119.99

Colors required field
COLOR:
RED
BLUE

GIRTH SIZE: See Measuring Photo*



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What is the Difference Between Service Animal and Guide Animal?

- A guide animal is a dog specially trained by a recognized organization to assist someone who is blind or deaf.
- A service animal is a dog that has been individually trained to meet the specific requirements of a person's disability.

Both types of trained animals qualify for an accommodation by law.

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What Qualifies as a Service Animal?

- Guide or "seeing-eye" dogs who help people with visual impairments navigate safely;
- Hearing dogs who alert those with hearing impairments alarms, ringtones, and other important noises;
- Seizure dogs, who alert their handlers of impending seizures;
- Animals that perform manual tasks, such as pushing elevator buttons, pulling wheelchairs, and holding and retrieving items; and
- Psychiatric service animals, who can interrupt self-destructive or dangerous behavior, alerts users to the need to take medication, or diminish the effects of acute anxiety.



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Types (Species) of Recognized Service Animals

The ADA and NJLAD define a service animal as a “dog” that is individually trained to assist a person with a disability.

Under the ADA, in some circumstances, a miniature horse also qualifies.



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Did She Say Miniature Horses?



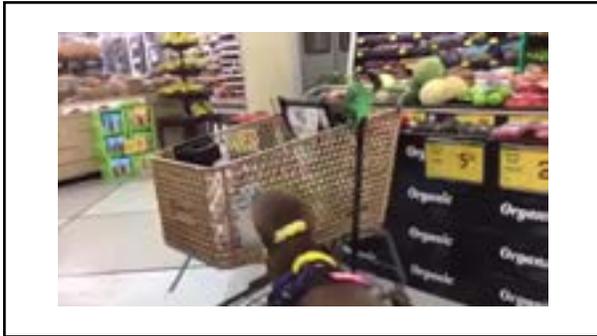
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Did She Say Miniature Horses?

- Training can take up to three years and cost between \$20,000-\$60,000
- Size and strength make miniature horses excellent guides for people with mobility problems such as individuals in wheelchairs
- Miniature horses can live 35-40 years compared to 10-15 years for dogs.
- Horses are also credited with being less likely to trigger allergies and, yes, they can be house trained



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208



**What is Not a Service Animal?
A Pet**

Some animals are described as “emotional support,” “comfort,” or “therapy” animals.

A dog whose sole function is to provide comfort or emotional support does not qualify as service animals because it has not been sufficiently trained to perform a specific job or task.

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Also, Not Service Animals



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Service Animals: The Duties Test

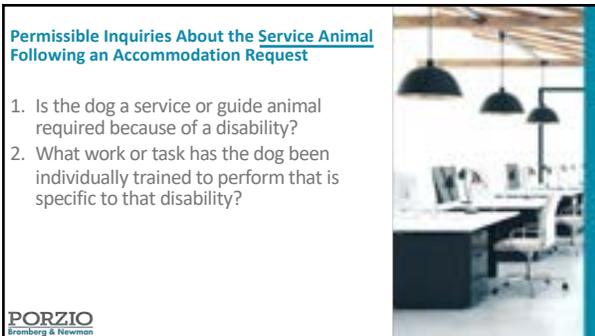
A service animal is a working partner to the person with a disability. The animal must be trained to perform a specific task or tasks that are directly related to the person's disability.



211

Permissible Inquiries About the Service Animal Following an Accommodation Request

1. Is the dog a service or guide animal required because of a disability?
2. What work or task has the dog been individually trained to perform that is specific to that disability?

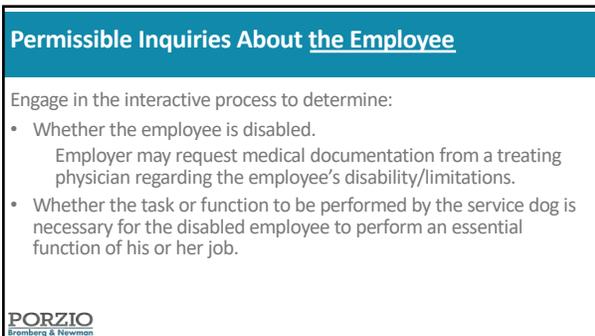


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Permissible Inquiries About the Employee

Engage in the interactive process to determine:

- Whether the employee is disabled.
Employer may request medical documentation from a treating physician regarding the employee's disability/limitations.
- Whether the task or function to be performed by the service dog is necessary for the disabled employee to perform an essential function of his or her job.



213

Permissible Inquiries About the Student

Engage in the interactive process with the student and determine:

- Is the disability documented in the IEP or 504 Plan?
- Is the task performed by the service animal directly related to the disability and/or student's limitations?
- Is the student capable of filling the role of "handler" for the dog?
 - A probationary period or test run may be offered.



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What Else May the Employer Require?

Prior to granting the accommodation to the disabled individual, the employer may request:

1. certification from a veterinarian that the service animal is properly vaccinated and does not have a contagious disease that may harm workers or students; and
2. documentation that any license required by the municipality in which the employee or student resides has been obtained for the service animal.



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Requirements of a Handler at Work

The law requires employers to provide accommodations to people with disabilities who use service dogs, subject to these conditions:

- The owner a.k.a. "handler" must keep the dog in his or her custody and control at all times.
- The dog must be harnessed, leashed, or tethered, unless the individual's disability prevents using these devices or these devices interfere with the service animal's safe, effective performance of tasks.
- The owner can be required to pay for any damage the dog causes.
- The owner cannot be charged an additional fee for having a service dog.



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Requirements of Handler in School

- The service animal shall be under a handler's control at all times by use of a leash, tether, voice control, signal, or other suitable means.
- The school shall provide reasonable accommodations to allow the handler to provide for the care and feeding of the service animal while on school grounds or at a school function.

NISA 18A:46-13.3



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What does in control at all times look like?



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Observable Traits of a Trained Service Dog

- No aggressive behaviors towards people or other animals.
- Does not solicit food or petting from other people.
- Walks calmly on a leash and stay focused on the handler.
- The dog should not urinate or defecate indoors.
- Does not sniff merchandise or people or intrude into others' space.
- Does not vocalize or bark in public places.



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When Can the Request for Accommodation to Use a Service Dog Be Denied?

The service animal can be excluded if:

- it is not housebroken
- it is not controlled by handler
- if the animal's presence would fundamentally alter the nature of the entity's services, programs, or activities
- if the animal would pose a direct threat to the health or safety of others
- if the animal was out of control or not housebroken

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Fundamentally Alter the Nature of the Entity's Services, Programs, or Activities

C.L. v. Del Amo Hosp., 2021 WL 4026761, at *11 (C.D. Cal. Sept. 3, 2021) Patient in hospital inpatient program to treat PTSD was denied her request to keep her service dog for emotional support.

District court ruled in favor of psychiatric hospital finding it could not provide effective treatment if service animal prevented patient from full experience of emotions during course of therapy.

Presence of the service animal would fundamentally alter the nature of the facility or service it provides.

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Direct Threat Analysis

(1) Individualized assessment
 (2) based on reasonable judgment that relies on current *medical knowledge* or *on the best available objective evidence* to ascertain:

- the nature, duration, and severity of the risk;
- the probability that the potential injury will actually occur; and
- whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.

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Undue Hardship Under the ADA

Maubach v. City of Fairfax, 2018 WL 2018552, at *6 (E.D. Va. Apr. 30, 2018)

A police dispatcher was allowed to bring her emotional support dog to work. Several employees were highly allergic to the dog and could not work in the same vicinity. The facility did not allow for separation of dispatchers. Plaintiff refused several alternative options offered to her including a hypoallergenic dog.

The District Court held imposing allergic reactions in other employees, that could not be mitigated, posed an undue hardship to other employees and, therefore, use of the service dog was not a reasonable accommodation.

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Consequences of Faking a Service or Guide Animal

Service Dog Fraud

It is unlawful for any person to fit a dog with a harness of the type commonly used by disabled persons or to otherwise represent that their dog is a service or guide dog when it has not been trained as a service or guide dog.



N.J.S.A. 10:5-29.5

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Protections for Service and Guide Animals

It is a criminal offense for any person to:

1. kill, injure, or interferes with the use of a service animal or guide dog, or
2. permit a dog they own or have immediate control of to interfere with a service animal or guide dog, by obstructing, intimidating, or otherwise jeopardizing the safety of that service animal or guide dog or its handler.

N.J.S.A. 2C:29-3.2

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Limited Liability for Employers/Schools

Employers and Schools are protected from liability arising from having a service animal on the premises as follows:

NJSA 10:5-29
The owner shall be liable for any damages done to the premises of a public facility by such dog.

NJSA 18A:46-13.3
The school shall not be responsible or liable for the care or supervision of the service animal.

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Fears, Allergies, and Accommodating Other Peoples' Problems

Some employers and schools have concerns that allowing a worker or student to bring a service dog onto the premises would create an undue hardship because others may have fears or severe allergies to dogs. In this type of situation, there may be solutions that are not overly expensive, disruptive, or burdensome.

- Restrict the service dog to certain areas or create animal free zones;
- Move coworkers or students to another location;
- Rearrange work or class schedules;
- Provide air filters;
- Arrange for the service dog to be kept elsewhere when employees/students must be together.

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Allergies v. Service Dog

Entine v. Lissner, 2017 WL 5507619, at *2 (S.D. Ohio Nov. 17, 2017)
Undergraduate student was permitted to keep her service dog in the living quarters of the Chi Omega sorority house at Ohio State University. One of her sorority sisters was extremely allergic to dogs which also aggravated her Crohn's disease. The University used disability-neutral factors to determine Entine be removed with her dog as newest resident (priority in time).

Weighing the conflict between two disabled students who require incompatible accommodations, the court granted a preliminary injunction to remove Entine because the University failed to conduct the direct threat analysis.

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Thank you for your loyal attention
Melanie D. Lipomanis

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Proactive Measures to Secure Your Workplace

David C. Hespe
Kevin M. Craig

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Liability and Workplace Safety

1. Liability in the workplace will flow from legal concepts of negligence and premises liability.
2. Negligence arises when you have created an unreasonable risk of harm to another person resulting from:
 - **CONDITION** of the property
 - **NEGLIGENT ACTIVITY** on the property
3. Duty to act as a reasonable administrator in your industry would act, ie. conducting safety audits, comparing your security to best practices, and then remediating deficiencies.

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When May Negligence Arise?

- Dangerous condition in your building, ie. slipping and falling on a wet floor. Note: for employees, workers compensation would be the normal recourse;
- Knowingly hiring an unqualified employee who causes harm;
- Employee who becomes unfit, mentally or physically, to perform job;
- Failure to provide adequate supervision;
- Insufficient policies or procedures;
- Harassment that is occurring in the workplace;
- Failure to properly train an employee;
- Failure to safeguard data and records, cybersecurity.

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What is Negligence?

Negligence requires that all of the following elements exist:

1. Legal duty;
2. Breach of that duty;
3. Breach was the proximate and actual cause of the injuries; and
4. Damages.

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Case Studies on Employer Liability for Workplace Safety

COVID: Employer refused to admit customers wearing masks.

Workplace Violence: Employees at psychiatric hospital were routinely exposed to physical assaults by patients.

Use of Vehicles: Employers was alleged to have failed to instruct employees regarding driving a UTV on pavement with tires designed for off-road use only.

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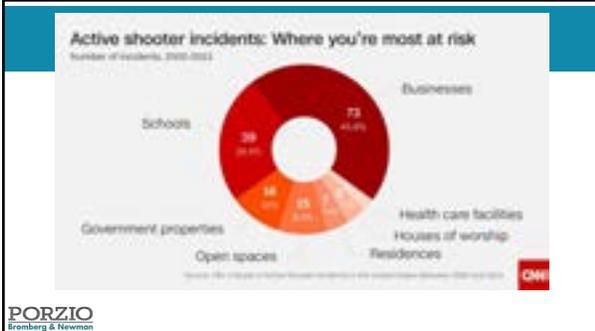
234

What Does Reasonable Diligence Look Like?

1. Find out what your colleagues are doing to safeguard.
2. Maintain a relationship with experts.
3. Create a culture of compliance, safety, and security:
 - Review policies and procedures.
 - Dialogue with employees, for tips, complaints and concerns.
 - Respond and document.



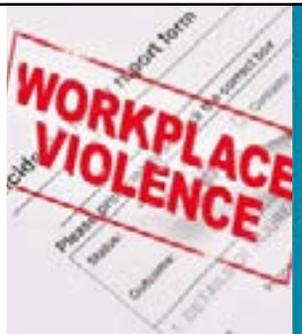
235



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Types of Workplace Violence

1. Violence by strangers
2. Violence by customers or clients
3. Violence by co-workers
4. Violence by personal relations



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Workplace Violence Prevention Program Elements

The diagram features three yellow banners on the left with the words "PLAN", "PREVENT", and "PROTECT" stacked vertically. To the right, a list of six program elements is presented, each on a line with a green underline:

- Management Commitment
- Employee Involvement
- Worksite Analysis
- Risk Prevention, Identification and Control
- Training and Education
- Recordkeeping and Evaluation of Program

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Security Preparations

The diagram shows five boxes with the following text:

- Train staff how to respond to violent incidents and techniques for handling threats
- Have an up-to-date contact list for all employees
- Maintain a list of outside emergency contacts
- Maintain regular liaison with local law enforcement
- Review the floor plan and physical layout of the workplace

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Workplace Security Aspects to Consider

The diagram shows five boxes with the following text:

- Visibility
- Alarm Signals or Emergency Phones
- Control of Access
- Arrangement of Workspace
- Adequate and Clearly Marked Escape Routes

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Recommendations

Employers should adopt clear policies and prevention plans.

Assess the physical environment to identify vulnerabilities in the workplace.

Training in violence prevention, threat detection, threat assessment, and threat management should become part of the workplace culture.

When domestic violence, personal conflicts, or other risk factors impact an employee in the workplace, employers should support, protect, and provide resources for the employee.

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Thank You

David C. Hesse
Kevin M. Craig

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Up Next



Hon. J. A. Gagliardi, A.
Hon. Mark Weiss, A.J.S.C. (Ret.)
Hon. J. B. L. S. (Ret.)
Hon. Daniel D'Alencastre, J.S.C. (Ret.)

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Here Come the Judges: Supreme Court Cases Impacting the Workplace

Vito A. Gagliardi, Jr.
Hon. Alvin Weiss, A.J.S.C. (ret.)
Hon. Jack L. Lintner, P.J.A.D. (ret.)
Hon. Daniel D'Allessandro, J.S.C. (ret.)

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Employers & the 2nd Amendment



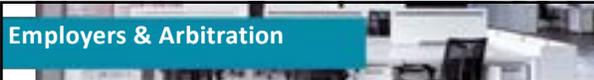
New York State Rifle and Pistol Association v. Bruen

- Regulations must be “consistent with nations historical traditions”
- Employers must have firearm policies
- What is a sensitive place?



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Employers & Arbitration



Morgan v. Sundance, Inc.

- “Overriding federal policy favoring arbitration”
- Don’t wait, arbitrate if provided by contract
- Review your arbitration policies and procedures



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Employers & Overtime

Hewitt v. Helix Energy Solutions Group, Inc.

- Oil rig worker is a “daily rate” employee
- He earned more than \$200,000 per year
- Is he entitled to overtime?
- Just argued at the Supreme Court last week!



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Thank You
Vito A. Gagliardi, Jr.
Hon. Alvin Weiss, A.J.S.C. (ret.)
Hon. Jack L. Lintner, P.J.A.D. (ret.)
Hon. Daniel D’Alessandro, J.S.C. (ret.)

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Employment Law Forum

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Rich defends public and private employers in state and federal courts and administrative agencies. He represents clients in a variety of traditional labor law matters, including collective bargaining, ERISA withdrawal liability, grievance and interest arbitration, and unfair labor practice and representation proceedings before the National Labor Relations Board and the New Jersey Public Employment Relations Commission. Rich also has successfully represented private and public employers in numerous labor and employment law cases, including discrimination and harassment cases, whistleblower, and alleged retaliation cases. Rich is a Civil Mediator qualified under N.J. Court Rule 1:40.

Practices

- Education Law
- Employment and Labor
- Litigation

Area of Focus

- Arbitration and Mediation
- Disability Accommodations & Leaves of Absence
- Discrimination, Harassment and Retaliation
- Employment Counseling
- Reductions in Force
- Restrictive Covenants
- Traditional Labor
- Wage and Hour



Honorable Daniel D'Alessandro,

J.S.C.

Judge D'Alessandro served as a Judge of the Superior Court of New Jersey, in the Chancery Division Family Part, and the Law Division (Civil) in Hudson County. Before his judicial appointment in 2010, Judge D'Alessandro founded his firm and was a general practitioner for thirty-five years with extensive statewide trial and transactional experience in civil and estate litigation, family law, commercial and residential real estate litigation, and development. He began his career as Municipal Defender for the City of Jersey City and as Prosecutor for the Town of Secaucus after his judicial clerkship. In 2022, the New Jersey Supreme Court appointed him to the Judicial Performance Evaluation Commission.



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Kevin Craig is a recognized subject matter expert in law enforcement, management, and school security. A retired New Jersey Police Chief, he has over 30 years of experience in public safety, emergency management, and school security. He is a Licensed Private Detective and is certified as a Public Manager, Police Instructor, School Safety Specialist, and School Resource Officer in New Jersey. Chief Craig holds a Master's Degree in Public Administration with a specialization in School Security and Safety Administration. He has represented the NJ State Association of Chiefs of Police on the NJ K-12 Task Force in conjunction with the Office of Homeland Security and Preparedness, and was appointed to the NJ School Security Task Force by the Governor of New Jersey as a subject matter expert.

In addition to being a certified instructor in Active Shooter Response, De-escalation, and Threat Assessment, Chief Craig is an instructor for the NJ School Safety Specialist Academy in the NJ Department of Education, a member of the ASIS International School Safety and Security Council and Advisory Board Member and Senior Instructor for the NJ Association of School Resource Officers. He is an Adjunct Professor at Fairleigh Dickinson University where he instructs courses in emergency management, threat assessment, and crisis communication.

Throughout his law enforcement career and beyond, Chief Craig has conducted training, planning and assessments for public and private schools, businesses, and faith-based institutions. He is regularly consulted as a subject matter expert on issues pertaining to school security and recently authored a book on school safety best practices.



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Practices

- Education Law
- Employment and Labor
- Litigation

Area of Focus

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Practices

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Brian concentrates his practice in the areas of employment and labor law, and education law. Brian served as Law Clerk to the Honorable Craig L. Corson in the Superior Court of New Jersey, Middlesex County. Prior to serving as a Law Clerk Brian was the Director of Legal Education at the New Jersey Law and Education Empowerment Project (NJ LEEP). Brian regularly trains our clients on issue related to employment and labor law.

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Having been appointed twice as New Jersey's Commissioner of Education, David is an accomplished policy leader with decades of experience in all areas of New Jersey and New York education matters. David has been involved in numerous employment and labor related matters while Of Counsel at Porzio Bromberg & Newman, P.C., including investigations, policy and best practice reviews, and employee disciplinary issues mostly in the education and higher education domain. He is also part of the Porzio Compliance Services safety and security team. David is also an experienced school administrator at both the PK-12 and higher education levels

Practices

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Beau counsels clients on compliance and regulatory issues relating to the emerging cannabis market. Beau also serves as Director with the firm's lobbying subsidiary, Porzio Governmental Affairs. He advises clients on strategies to navigate the legislative landscape in the areas of cannabis, alcohol, healthcare, technology, and law enforcement. He previously served as a Legislative Aide to New Jersey's 10th Legislative District Office and most recently served as Legislative Director to New Jersey's 13th Legislative District State Senator, Declan O'Scanlon. Beau collaborated with governmental agencies at the state, county, and municipal levels on critical matters of public and private enterprise concern. Additionally, Beau has dealt with highly polarizing and sensitive topics such as vaccines, social justice, and a plethora of issues that impact the state budget. He was instrumental in expanding the NJ medical marijuana program, creating a pilot program to research the cultivation of industrial hemp, and the most substantive change to the State's EMS system in 25 years with the development of a law that required uniform data collection and the codification of the State's EMS Task Force.



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Practices

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Area of Focus

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At Porzio, Judge Lintner continues his distinguished career in litigation, appellate advocacy consultation, and dispute resolution, focusing on mediation and arbitration. Judge Lintner began his judicial career as a trial judge in Middlesex County in 1988 where he attained the position of Presiding Judge of the Civil and Chancery Divisions. He was appointed to the Appellate Division in 1999 and served as Presiding Judge of the Appellate Division from 2006 until his retirement in 2008. Before his appointment to the bench in 1988, Judge Lintner practiced as a Certified Civil Trial Attorney concentrating on civil litigation specializing in tort, products liability, construction, and insurance coverage litigation.

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Practices

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David has been an employment and labor attorney as well as a global human resources executive for public and private life sciences companies. David delivers legal HR and business strategies that lead to profitable growth and value creation. He offers advice, counsel, and strategies to senior management in talent acquisition and development; benefits and compensation strategies; and ERISA and HR compliance. David provides valuable support to help organizations navigate the most challenging elements of human resources without compromising their mission, culture, and values.

Practices

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Judge Weiss was a partner at Riker Danzig Scherer Highland & Perretti from 1963 to 1986. He became a Superior Court Judge in January 1987 in Essex County and eventually became the Assignment Judge. Judge Weiss retired in 1999. He focuses his current practice in the areas of litigation, mediation, and alternative dispute resolution.

Area of Focus

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Practices

- Education Law
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- Litigation

Area of Focus

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- Wage and Hour



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Deirdre divides her practice between representation of business owners and their businesses, counselling individuals and families, and advising non-profit entities.

Deirdre counsels business owners on legal and structural issues related to start-up, financing, growth and exit strategy. As a tax attorney, she always keeps an eye on minimizing a business owner's "silent partner" – the IRS. She also advises on director and officer (D&O) liability issues, including business succession and break-ups. By creating the most efficient organizational structures and contractual arrangements during the infancy and growth of a business she has helped clients keep hundreds of thousands of dollars in their pockets upon the sale of the mature business.

To educate both the public and the legal community about issues relating to business ownerships, Deirdre is a frequent lecturer to professionals and the public on topics related to start-up, intellectual property, employee and independent contractor issues, wealth transfer, tax minimization, business succession planning and cybersecurity.

Practices

- Wealth Preservation
- Business Law

Area of Focus

- Asset Protection
- Charitable Planning
- Elder Law
- Estate Planning
- Guardianship
- Probate and Trust and Estate Administration
- Trusts and Estates Litigation
- Privately-owned Business Planning
- Corporate Tax