

THE CASE OF THE NON- APPARENT LIMITATION:

**SOLVING MENTAL HEALTH ACCOMMODATION
REQUESTS WITHOUT MISSING A CLUE**

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DISCLAIMER

The information and related discussion is not intended as legal advice and is for general informational and educational purposes only. While we hope it is informative, it also does not fully address the complexity of the issues or steps employers must take under applicable laws—which are also subject to change, even frequently, with or without prior notice. You should not act upon any information provided without seeking professional legal counsel tailored to your specific situation. For legal advice on these or related issues, please consult qualified legal counsel directly.

PLAYERS

WHO?

WHAT?

WHERE?

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SETTING THE SCENE

Today's Workplace Climate

THE CASE FILE IS GROWING

Mental health accommodation requests, by the numbers

56%

of HR professionals reported more accommodation requests in 2025 — the 3rd straight year of growth

#1

Mental health has been the top reason for accommodation requests for three years running

33,688+

ADA-related charges filed with the EEOC in FY2024, up 5% year-over-year

Record High

Disability accommodation litigation reached a record high in 2025

MENTAL HEALTH-RELATED REQUESTS ARE ON THE RISE

- Increased mental health awareness and reduced stigma
- More contact with care and treatment language
- Changing student-to-workplace pipeline
- Shifting employee expectations
- Changed work design and expectations
- Post-pandemic work realities
- Better internal reporting channels

THE CENTRAL CHALLENGE: THE LIMITATION MAY NOT BE APPARENT

- Many workplace limitations related to mental health, psychiatric conditions, and neurodivergence are not externally apparent.
- The first sign may be a disclosure, a request for flexibility, an attendance issue, an interpersonal conflict, a performance concern, a leave request, or a safety-related statement.
- Employers often receive incomplete information at the outset—but still need to recognize when an accommodation dialogue may be warranted.
- The task is not to diagnose or assume. It is to identify the employment issue, gather appropriate information, and work through the applicable process.

THE IDEA AND SECTION 504: MANDATORY AND AFFIRMATIVE OBLIGATIONS IN K-12 PUBLIC EDUCATION

- School districts must provide a free appropriate public education (FAPE), including special education, related services, and accommodations, to all eligible students at public expense
- “Child find” duties: school districts must affirmatively identify, locate, and evaluate children suspected of having a disability, even if they progress from grade to grade
- School districts must evaluate broadly in all areas of suspected disability: cognitive, academic, communication, behavior, social-emotional, adaptive skills, and others
- Comprehensive IEP team, including student’s parent(s), teachers, service providers, administrators, and private providers
- Cost generally does not shift to the student/family: it is provided without charge

INDIVIDUALIZED ARRAY OF SUPPORTS AVAILABLE IN K-1 2

Services

- Specially designed instruction
- Related services: speech-language therapy, physical therapy, occupational therapy, nursing services, counseling services

Program Modifications

- Assignment chunking
- Reduced quantity of work
- Modifying complexity of material
- Changing format of assignment (e.g., allowing oral vs. written presentation, no video-imaging)
- Different instructional materials/methods

Accommodations

- Environmental/sensory: quiet or reduced-distraction setting, fidgets/sensory tools, headphones, sensory breaks
- Time/attention: frequent breaks, extended time, shortened assignments, chunking of tasks, additional processing time
- Behavioral/emotional: regulation breaks, access to a calming space, specialized behavior plan, adult-prompting and redirection
- Physical/functional: adaptive equipment, specialized transportation

EMPLOYERS' OBLIGATIONS ARE DIFFERENT THAN SCHOOLS'

- Employers must provide “*reasonable accommodations*” to “qualified employees with disabilities” to allow them to perform the “essential functions” of their positions or to access any benefit or privilege of employment, unless doing so would cause “undue hardship” to the employer.
- Once the employer is aware (or should be aware) that an employee may have a disability that impairs their ability to perform their job, the employer must initiate the dialogue referred to as the “*interactive process*” to determine whether any reasonable accommodations are available.

THE RIGHT TO ACCOMMODATION AT WORK

- In this context, the right to accommodation means any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy “equal employment opportunities.”
- There are three categories of “reasonable accommodations:”
 - Modification or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or
 - Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or
 - Modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.

POTENTIAL JOB MODIFICATIONS ARE MORE LIMITED

The right to accommodation does not extend to what are considered Essential Functions:

- An “essential function” is a fundamental job duty of the position, not an employee’s marginal duties.
- An employer may consider a function essential because:
 - it is the reason that the position exists
 - only a limited number of employees can perform that function
 - it is a specialized function and the employee was hired because of their expertise or ability to perform that function
- Essential functions may or may not include those specified in the written job description, or the duties that occupy a majority of the employee’s time.

CRACKING THE CASE

The ADA Toolkit

CASE FILE

KNOWING WHEN THE DUTY IS TRIGGERED

1 Notice, Not Magic Words

The duty is triggered once the employee (or someone acting on their behalf) tells the employer they need a change at work because of a medical condition — no need to say “ADA” or “reasonable accommodation.”

2 A Broad, Low Bar

Since the ADA Amendments Act, “substantially limits a major life activity” is read broadly in the employee’s favor. A formal diagnosis is not required to trigger the duty.

3 Constructive Knowledge Counts

If the need for an accommodation is obvious, or the employer otherwise has reason to know, the duty can attach even without an explicit request.

4 An Independent Duty

The obligation stands apart from FMLA, workers’ compensation, or short-term disability — a request doesn’t need to invoke any of those to trigger it.

SOLVED

SOLVING THE CASE

- 1 Respond Promptly**
Don't let the file go cold — delay itself can be evidence of bad faith.
- 2 Engage in a Real Dialogue**
The interactive process is a genuine back-and-forth, not a box to check.
- 3 Gather Only Relevant Evidence**
Request job-related medical documentation only, and keep it in a confidential file separate from personnel records.
- 4 Consider Every Lead**
Evaluate the full menu of accommodations — leave, schedule changes, remote work, reassignment — not just the first idea raised.
- 5 Keep the File Open**
Document each step. If one accommodation doesn't work, the duty to keep engaging doesn't end.

The background of the image consists of a wooden floor with vertical planks. A large, rectangular rug with a repeating diamond pattern in dark red and gold is laid out on the floor. In the center of the rug is a solid green rectangular box. Inside this box, the text "CLUES VS. RED HERRINGS" is written in a bold, white, sans-serif font. The letter 'U' in "CLUES" is highlighted in red. In the bottom left corner of the rug, there are several faint, dark brown footprints.

CLUES VS. RED HERRINGS

THE LINEUP: WHO QUALIFIES?

To be considered “disabled” under the law, the candidate/employee must have:

- a **physical or mental condition** that;
 - Federal regulations say that some disorders should easily be found to be disabilities, including major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder, and schizophrenia. Other conditions may also qualify depending on the individual’s symptoms.
- **substantially limits;**
 - Mitigating measures (medication, etc.) are not considered
 - Limitations that may be episodic must be considered as if active
 - Temporary impairments are still likely to meet- this is to be BROADLY construed.
- one or more **major life activities**.
 - Includes everyday tasks such as physical activities (walking, standing, etc.), cognitive activities (learning, reading, thinking), communications (speaking, hearing, etc.) or self care.
 - Major bodily functions such as those impacting the immune system, neurological, brain, digestive, bowel, bladder, respiratory, circulatory, endocrine, reproductive functions

THE LINEUP

MAY BE A COVERED CONDITION

- Major depression, PTSD, bipolar disorder, anxiety disorders, OCD, or schizophrenia that would substantially limit concentrating, sleeping, interacting, or another major life activity if left untreated. *EEOC, Depression, PTSD & Other Mental Health Conditions in the Workplace: Your Legal Rights*
- A preexisting anxiety disorder, OCD, or PTSD that makes returning to in-person work materially difficult — must be treated as a request for accommodation and trigger the interactive process. *EEOC, What You Should Know About COVID-19 and the ADA*
- An employee's anxiety disorder requiring a modified schedule to attend therapy appointments during work hours. *Oregon BOLI, Disability Accommodation Toolkit*

PERSONAL PREFERENCE OR OTHER CIRCUMSTANCE

- Ordinary workplace stress, or personality traits like irritability, chronic lateness, or poor judgment, without an underlying diagnosable impairment. *EEOC, Enforcement Guidance on the ADA and Psychiatric Disabilities*
- General anxiety about returning to the workplace, or a personal preference to keep teleworking, without a medical condition driving the request. *EEOC, What You Should Know About COVID-19 and the ADA*
- A modified schedule to care for a spouse, child, or family member — even one with a disability — is not the employee's own disability. (Separate "association discrimination" protections may still apply.) *EEOC, Q&A: Association Provision of the ADA*

WHAT IS AN “ESSENTIAL FUNCTION”?

- An “essential function” is a fundamental job duty of the position, not an employee’s marginal duties.
- An employer may consider a function essential because:
 - it is the reason that the position exists
 - only a limited number of employees can perform that function
 - it is a specialized function and the employee was hired because of their expertise or ability to perform that function
- Essential functions may or may not include those specified in the written job description, or the duties that occupy a majority of the employee’s time.

WHAT MAKES THE CUT

MAY BE AN ESSENTIAL FUNCTION

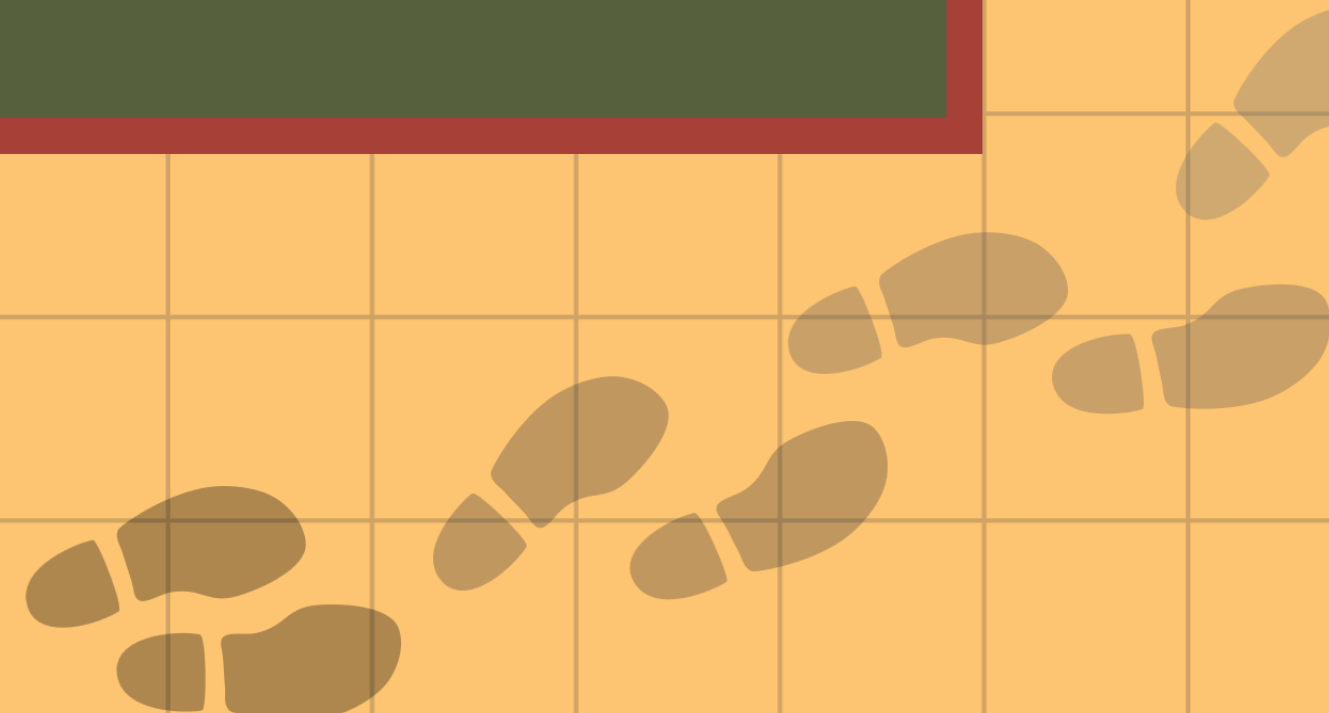
- A duty the position exists specifically to perform — e.g., proofreading, for someone hired as a proofreader. *EEOC, Interpretive Guidance / Appendix to 29 C.F.R. § 1630.2(n)*
- A highly specialized duty requiring the particular expertise the person was hired to provide. *29 C.F.R. § 1630.2(n)(2); Oregon OAR 839-006-0205*
- A duty that, because staff is limited, must be shared by everyone — e.g., a file clerk answering phones in a busy three-person office. *EEOC, Appendix to 29 C.F.R. Part 1630*
- A duty that takes up a significant amount of time on the job, or whose omission would have serious consequences for the business. *29 C.F.R. § 1630.2(n)(3)(iii)–(iv)*

MAY NOT BE ESSENTIAL (MARGINAL)

- A duty performed only occasionally that could be redistributed among other staff without changing the nature of the job. *EEOC, Appendix to 29 C.F.R. Part 1630*
- A duty missing from, or inconsistent with, the written job description prepared before recruiting or interviewing. *29 C.F.R. § 1630.2(n)(3)(ii)*
- A duty that past or current incumbents in the same or similar roles have rarely or never actually performed. *29 C.F.R. § 1630.2(n)(3)(vi)–(vii)*
- A duty the employer doesn't actually enforce in practice — courts look past the label on paper to how the job is really run. *29 C.F.R. § 1630.2(n)(3)(i) (employer's judgment is evidence, not conclusive)*

WHAT IS REASONABLE?

- A modification or adjustment is “reasonable” if it “seems reasonable” on its face, i.e., ordinarily or in the run of cases. This means it is “reasonable” if it appears to be “feasible” or “plausible.”
- An accommodation also must be effective in meeting the needs of the individual.



CLUES VS. RED HERRINGS: WHAT IS REASONABLE?



CLUES (Reasonable)

- Altered break and work schedules (e.g., scheduling work around therapy appointments)
- Quiet office space or devices that create a quiet work environment
- Changes in supervisory *methods* (e.g., written instructions from a supervisor who usually does not provide them)
- Specific shift assignments
- Permission to work from home

RED HERRINGS (Not reasonable)

- Elimination or reassignment of an essential function
- Lowering of production standards (whether qualitative or quantitative)
- Indefinite leave with no meaningful return-to-work outlook
- The employee's first choice accommodation, if another effective option exists

CRITICAL CLUES

Key Issues That Can Change the Analysis

WHAT IS AN UNDUE HARDSHIP?

Requires “an individualized assessment of current circumstances that show that a specific reasonable accommodation would cause significant difficulty or expense.”

Here are the relevant factors that employers can consider:

- The nature and cost of the accommodation needed
- The employer’s overall financial resources, size, employee headcount, and type and location of facilities (if the facility that is evaluating the request is part of a larger entity)
- The employer’s type of operations, including the geographic separateness and the administrative or fiscal relationship of the facility involved in making the accommodation
- The impact of the accommodation on the facility’s operations

WHAT IF THE PARTICULAR DISABILITY PRESENTS SAFETY CONCERNS?

There is a limited exception under the ADA that would allow an employer to exclude an employee from the workplace if they pose a “direct threat,” which means:

1. They pose a significant risk of substantial harm to self or others; and
2. The risks cannot be reduced or eliminated through reasonable accommodation

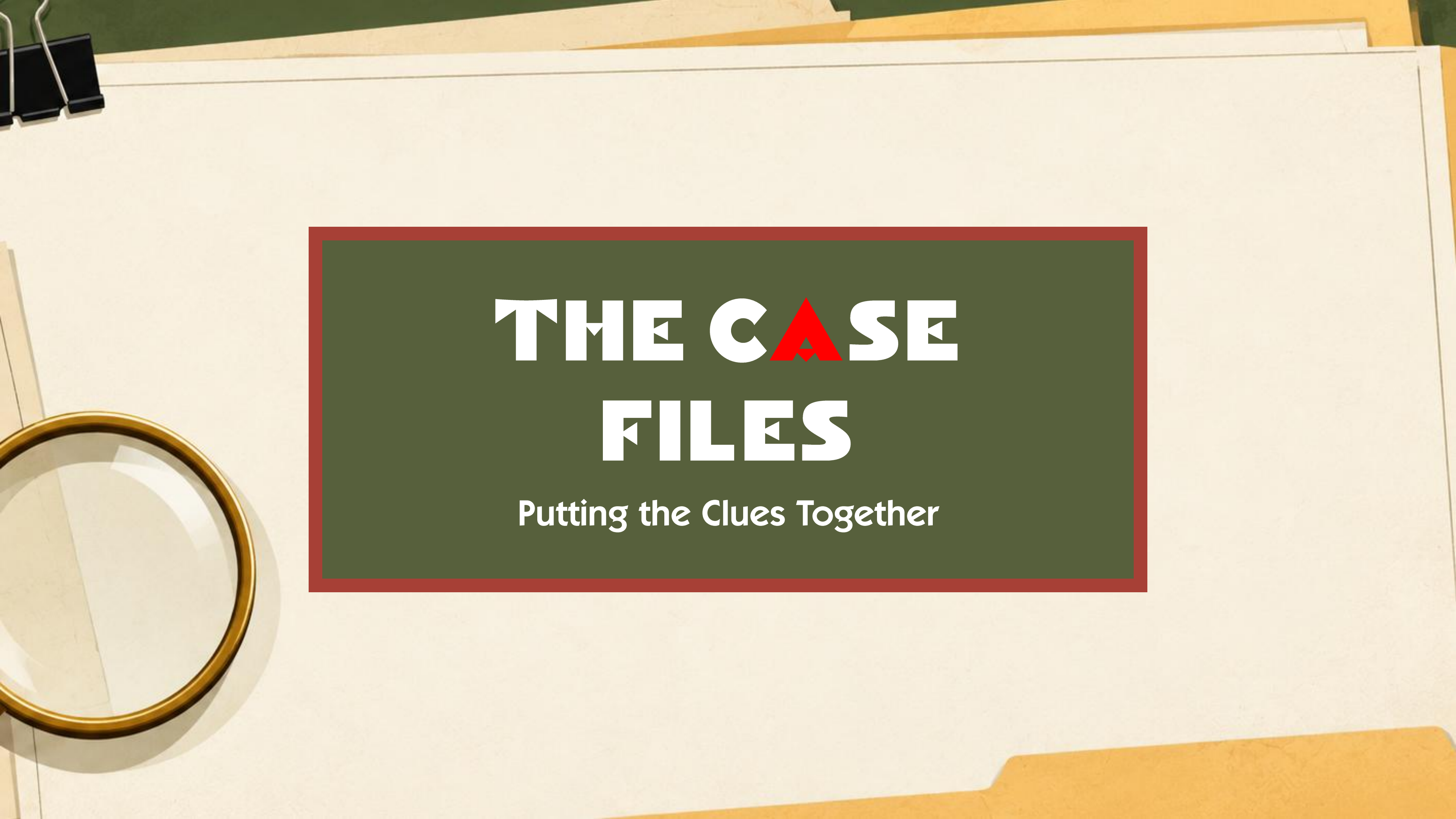
Permissible factors to consider: the nature and severity of the potential harm, the duration of the risk, likelihood of harm, and imminence of the risk.

EVALUATING A “DIRECT THREAT”

- Employers may not rely on myths or stereotypes about an employee’s mental health condition when deciding whether they can perform a job or whether they pose a safety risk.
- Employers must base direct threat determinations on the current situation. Though an employee’s health could deteriorate over time, only the present situation is relevant in making a direct threat determination. This reflects the reality that what could happen is an unknown: though a disability may worsen over time, it is also possible that it may remain consistent or even improve.
- Instead, employers must have objective evidence that shows the employee either cannot perform the essential job duties with or that they would create a significant safety risk, even with a reasonable accommodation.

WHAT ABOUT MULTIPLE ACCOMMODATIONS OPTIONS?

- Under the ADA the employee is not entitled to their preferred accommodation, necessarily.
 - The employer may choose the preferred option among reasonable accommodations as long as the chosen accommodation is effective.
 - That means, as part of the interactive process, the employer may offer alternative suggestions for reasonable accommodations and discuss their effectiveness in removing the workplace barrier that is impeding the individual with a disability.
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THE CASE FILES

Putting the Clues Together

CASE FILE

#1

A high-performing outside sales representative, James, has recently missed several client follow-ups. During a meeting with his manager about these misses, James became tearful and apologized, however, the performance issues continued. After missing two mandatory evening client events, James's manager delivered a final written warning. During their meeting, James told his manager: "My anxiety and panic attacks are getting worse. I need a less stressful role, no client presentations, no evening events, and I need to work from home until I feel better."

Darren's job description identifies prospecting, customer presentations, relationship management, travel, and occasional evening client events as duties. The company has several sales roles, but no current openings.

WHAT ABOUT PERFORMANCE ISSUES?

Question: May an employer discipline an individual with a disability for violating a workplace conduct standard if the misconduct resulted from a disability?

YES, provided the workplace conduct standard is *job-related* for the position in question and is *consistent with business necessity* and *uniformly applied* to disabled and non-disabled employees.

- Example: Workplace Violence Policy

CASE FILE

#2

Kim, a hospital nurse with a documented PTSD diagnosis, returns from medical leave. They request: “No interaction with my supervisor, no charge-nurse assignments, no night shifts, no emergency codes, and no discipline for panic-related absences.” The supervisor has documented concerns about Kim’s delayed medication administration and abrupt communication with colleagues. The nurse says the supervisor’s tone triggers their symptoms. Staffing on the unit is tight; every nurse is expected to respond to emergency codes, although charge-nurse assignments rotate and are not required every shift.

CASE FILE

#3

A software engineer works remotely three days per week and onsite two days per week. After a contentious performance meeting, the employee sends several late-night Slack messages to a coworker: “You will be sorry. I am done being treated this way.” The next day, the employee tells HR that he has bipolar disorder and is adjusting medication. He requests fully remote work, no meetings with his manager, and a 60-day pause on all performance feedback. The employee’s role includes access to proprietary systems, occasional onsite incident-response work, and participation in cross-functional sprint meetings. Coworkers report they are “scared,” but no one identifies a specific threat or weapon.

CASE FILE

#4

An employee who is returning to the office two days per week for the first time since the pandemic began asks if she can bring her cat to work with her. She tells you that she has been diagnosed with anxiety and panic attacks, and the cat has helped her to feel more calm when she is working. Does her employer have to allow her to bring her cat to work?

ANIMALS AS AN ACCOMMODATION

- Under Title I of the ADA, which is the provision that applies to the workplace, animals, whether service animals, emotional support animals or assistance animals are just another form of accommodation that the employer needs to consider through the interactive process.
- “Service Animals” are defined elsewhere in the ADA, for purposes of housing or public accommodation, as dogs (with a limited exception for miniature horses) that are trained to perform a specific task or function for a person with a disability. That might be helping a blind person with mobility, reminding a person to take meds, alerting them to seizures, etc. There is no formal certification/licensure required typically.

SERVICE ANIMALS AS PUBLIC ACCOMMODATION

- Government employers, private businesses and nonprofits that serve the public generally are required to allow service animals to accompany people with disabilities in the areas of the facility where the public is allowed to go. Even if there is an official “No Pets” policy. Certification or proof of either the disability or the animals training may not be required, instead the business may only ask:
 - Is the animal required because of a disability?
 - What work or task has it been trained to perform?
- If the animal poses a threat to the health or safety of others, or becomes disruptive (barking, growling, etc.), they may be excluded.

CASE FILE

#5

Darren is a long-time employee who performs his job well. Over the past few months, he is frequently observed talking to himself, though he does not speak loudly, make threats, or use inappropriate language. However, some coworkers who are uncomfortable around him complain to the division manager about Darren's behavior.

Darren's job does not involve customer contact or working in close proximity to coworkers, and his conversations do not affect his job performance. The manager tells Darren to stop talking to himself but Darren explains that he does so as a result of his psychiatric disability. He does not mean to upset anyone, but he cannot control this behavior. Medical documentation supports Darren's explanation. The manager does not believe that Darren poses a threat to anyone, but he transfers Darren to the night shift where he will work in relative isolation and have less opportunity for advancement. Is this permissible?

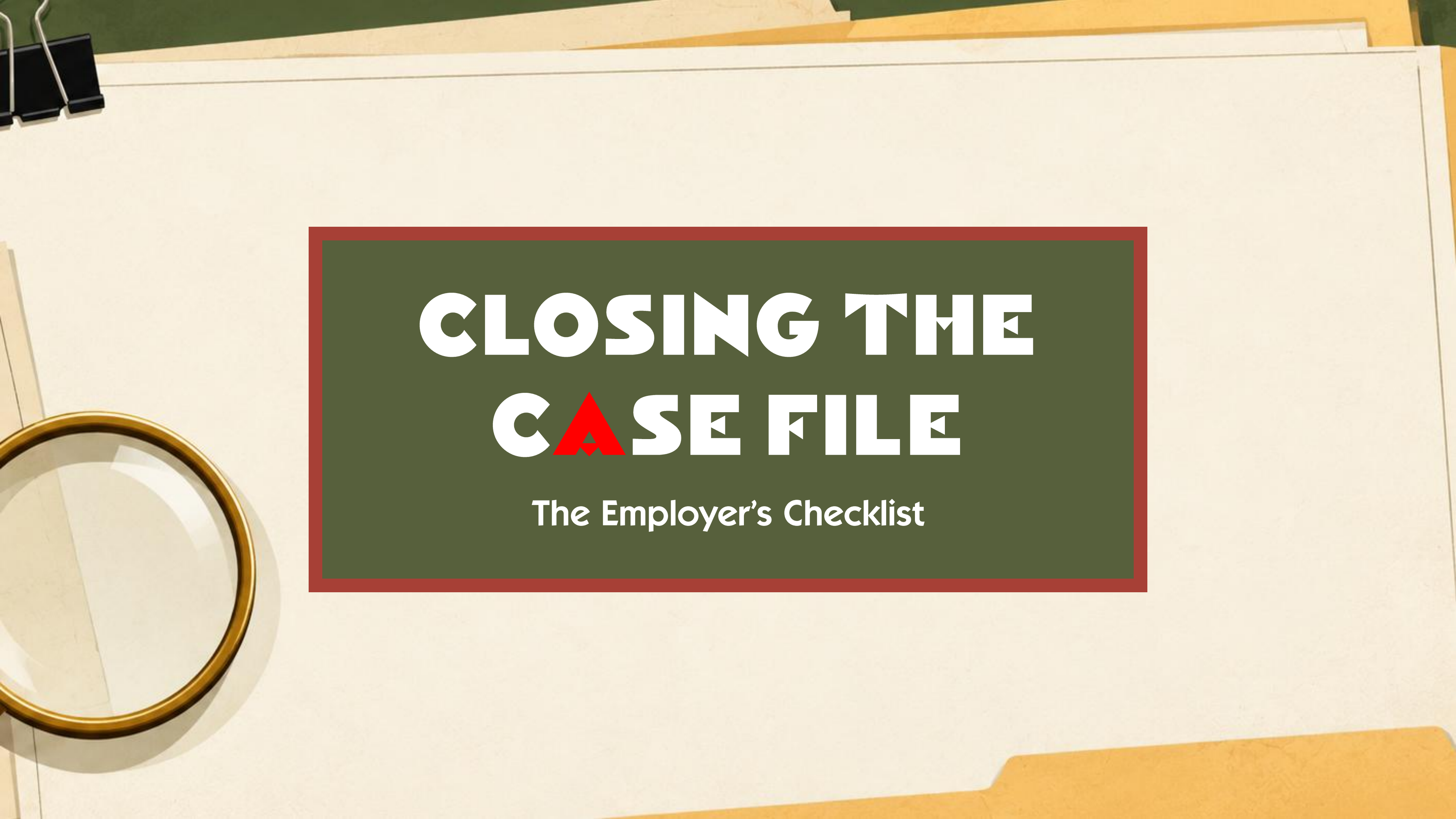
CASE FILE

#6

An employee takes medication that has a side effect that causes restlessness. This then leads them to become easily distracted by nearby colleagues which, in turn, causes them to interrupt his coworkers.

The supervisor counsels the employee about their disruptiveness and lack of focus. The employee tells the supervisor about their disability and the side effect of the medication they take, and asks to be moved to a quieter workspace to lessen the distractions. The employee also request to be given structured assignments with more deadlines to help focus their attention.

The supervisor consults with the HR director, and says he thinks there is a special medication that could control the restlessness- and he would like to propose the employee consider it. Can he do so?



CLOSING THE CASE FILE

The Employer's Checklist

SOLVED

CLUES WORTH FOLLOWING

- 1 Document, document, document**
- 2 Honor confidentiality**
- 3 Be prepared to revise, adjust, or discontinue**
- 4 Have accurate, up-to-date job descriptions**
- 5 Don't forget to consider leave, as an accommodation where appropriate**
- 6 Avoid retaliation**

PLAYERS

WHO?

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