**ADA and the interactive process summary**

**TO ONLY BE USED UNDER THE GUIDANCE/DIRECTION OF AN ATTORNEY**

**ELEMENTS FOR ADA**

1. A qualified individual
2. With a Substantial limitation
3. Of a major life activity
4. Who can perform the essential functions of the job
5. With or Without a reasonable accommodation
6. Unless the accommodation poses an undue hardship
7. Or the accommodation poses a risk to safety of the individuals or others

**CONSIDERATIONS IN PREPARING FOR THE INTERACTIVE DISCUSSION**

* How do we go about determining if there is a reasonable accommodation that will enable an individual to perform the essential functions of the job?
* What is a reasonable accommodation?
	+ Any modification that will enable the person to do the job
	+ The modification can be related to how the duties are performed
	+ The modification can be related to equipment that will enable the person to perform
	+ The modification can be related to the time necessary to perform
	+ If the individual has a substantial limitation that requires them to take a leave of absence, the modification can be related to the leave of absence
* What is not a reasonable accommodation:
	+ The modification does not have to remove an essential function
	+ The modification does not require you to bump another employee
	+ The modification does not require you to create a new position
* How do you go about determining if there is a reasonable accommodation that will enable the induvial to perform the essential functions of the job?
	+ Interactive process between the employer and employee
	+ Mandatory discussion between the employer and employee
	+ An exploration into ways that will enable the individual to be able to perform the job / the essential functions of the job
	+ Mindset cannot be about checking the box and terminating the individual
	+ Rather, it has to be a genuine desire to help find a reasonable accommodation
	+ The discussion may end up with a simple change / a little extra time / special ergonomic chair, desk, special computer screen, Or
	+ The discussion may end up requiring an IME with a medical doctor
	+ At the end, you want to be able to show a good faith attempt / maybe up to 3 times

**Example of how a mandatory interactive conversation may look like**

* How can I help you?
* Can you tell me about your **condition?**
	+ Migraines, Anxiety, PTSD, Stress / Clinically diagnosed
* Review the Job Description with the employee
* How does the condition **limit** your ability to perform the **essential functions?**
	+ Are there specific duties that you are unable or limited to perform because of your condition?
	+ Please tell me about the limitations
	+ So are the limitations related to time, space, or manner functions, meaning when or how much time it takes, the space where you perform the functions, or the manner in which the functions are performed?
	+ How and in what way
* In your mind is there **reasonable accommodation** that will enable you to perform the functions of your position