

- You are listening to HR mixtape. Your podcast with the perfect mix of practical advice, thought provoking interviews, and stories that just hit different so that work doesn't have to feel, well, like work. Now your host, Shari Simpson.

- Joining me today is Lorrie Coffey, talent management consultant at Horizon Point Consulting Inc. Lorrie specializes in strategic human resources planning and infrastructure. She helps organizations foster strong working relationships that meet the needs of employees while advancing the goals of the organization. Her focus includes full scale HR audits, classification and compensation analysis and design, HR process design and implementation, recruiting and onsite HR support. Lorrie, thank you so much for jumping on the podcast with me. Thank you. I appreciate being here. So it is Halloween when we are recording this. So I think this question is apt. I think the word accommodation can sometimes give HR pros the heebie-jeebies. So why do you think this word strikes such a nerve in the world of human resources?

- Sure. So I think the first thing is, you know, looking at the Americans with Disabilities Act, it is a very complex law. There's a lot that goes into it, a lot for employers that goes into understanding it. When you look at the EEOCs claims record, disability claims are the number three highest reason that individuals file claims with the the EEOC. So there's a fear in that from employers of getting it right and the fear of what happens if I get it wrong. I think the other thing is, and this is, you know, one of the things that I'll be talking about tomorrow is there are a lot of myths around ADA, you know, from the fact that employers think that if I hire someone with a disability and they have poor performance, I can't terminate them. The biggest one is cost. A lot of employers, when you hear the word accommodation, they see number signs, and, you know, research shows that the majority of accommodations either are free or there's low cost to that. And in addition to that, there are a lot of resources available to employers to help offset that cost.

- So when you think of ADA... I guess I'll phrase the question this way. If you had to describe ADA in a tweet, right, you only get that 280 characters or whatever it is, or X, guess I'm supposed to call it X now. How would you describe it in the simplest of terms?

- You know, I think ADA is all about creating opportunity and independence for individuals with disabilities. You know, ADA is designed to help ensure that those individuals with disabilities have equal opportunity to be gainfully employed. And through that gainful employment, a lot of them are able to gain their independence.

- So one of the, kind of the caveats or the words that we see come up a lot when it comes to accommodations is essential functions of a role, right? So maybe let's start with, could you describe a little bit about what essential functions mean and then share a surprising

example where somebody thought it was an essential function and it actually wasn't.

- Sure. So when you take a look at essential functions, you know, it depends based on the position that you're looking at, but what you're looking at are things like, is that function critical to the success of that position? Is that task that you're asking someone to do the primary part of that role? How many people are assigned to do that task or able to do that task? Is it very specialized, as well as, you know, is there someone else in the organization who could potentially handle that task if you have someone in that position that's not able to? And so, you know, when I think about essential functions and you know, I do a lot of job analysis and rewriting job descriptions for companies, what I see a lot are the simple things, you know, the line in the qualifications that, that say, you must be able to sit, stand, walk, stoop. In reality, those aren't necessarily essential to complete that function. You know, when you think about individuals with disabilities, they have learned to adjust and find ways to do things. And it's easy for those without disability to not even think twice about saying someone's gotta be able to walk, or stoop, or whatever, but they have found alternative solutions to do that. I think a great example of that, you know, I have a friend that I've known for over 20 years that's wheelchair bound. And if anyone were to to pass him on the street, they'd have no idea what he does for a living. And he's actually an elementary school gym teacher. And that's just so, you know, you don't think about that. But it's so fabulous that, that he's able to do that and he's learned how to do things differently, but still be able to get it done.

- I love that. And I totally agree that I think gone are the days when every job description had that must be able to lift 10 pounds when you didn't even lift anything in your job.

- Yes.

- I absolutely love that example. You know, another term that we kind of hear is qualified individuals, which sounds like it has some hidden layers. What are some misconceptions about this definition, specifically underneath the ADA?

- Yeah, so I think the first thing is that employers think that if they hired someone, then they have to be qualified. If I've hired them, then I've already determined they're qualified. And if I find that, that someone can't do the role or needs accommodations, I've gotta figure out how to make them qualified, and that's not the case. You know, with ADA, there are certain things that you have to look at to determine if someone is qualified or not qualified. You know, a lot of times employers try to fit a square peg into a round hole, and that's not, you don't have to do that. You know, you take those steps, you look at, you know, what the ADA says you need to look at, and if

you can't make it work, you can't make it work. You know, and you do have the option. And, and this is another, you know, myth around ADA is, well, I can't terminate someone with a disability. But in truth, you know, if you determine they're not a qualified individual, you can move forward with terminating them.

- I think that's probably good for some people to hear. That being said, it's important that you go through the process, Right?

- Absolutely. You know, we've heard those ADA non-compliances, you can come with a hefty price tag if you're in non-compliance. What are some kind of cautionary tales that underscore really that importance of understanding and applying ADA correctly?

- Yeah, absolutely. So there's a fairly recent case that was decided in 2016 where the EEOC sued on behalf of a single claimant and they sued Chuck E. Cheese. Yeah, poor Chuck E. Cheese, right? Chuck E. Cheese terminated this employee because he was mentally handicapped, and the EEOC decided that they felt he had a strong case and so they did sue Chuck E. Cheese and the court ruled in favor of this individual and they awarded over \$13 million.

- Wow.

- Yeah, to one individual.

- So you definitely have to cross your T's and dot your i's when it comes to this.

- Absolutely. Absolutely.

- You know, you have a background in psychology and law, which is really intriguing. How does your background play into your understanding and approach of some of the nuances we've seen with ADA?

- Sure. So yeah, a lot of people laugh at me for having a psych degree and, and a law degree, but, you know, I use my psych degree every day in HR. You know, and when it comes to working with individuals with disabilities and thinking through the accommodation process for clients. You know, I think my background really helps me understand learning styles and looking at alternative learning methods. You know, and when you're, you're working with individuals with disabilities and you're trying to figure out accommodations and how to help them do tasks, there's a lot of learning in that on both sides. You know, I learn as much from those individuals that I work with as they can potentially learn from me. I think, you know, also being able to think outside of the box and problem solve and try, you know, one of the things that you learn in psychology is the whole scientific method of testing and retesting and coming up with hypotheses. You know, and in some of these cases you have to do that. You have to go back to the

drawing board. If the first accommodation you provide doesn't work, you've gotta be able to go back to the drawing board, go back into that interactive dialogue with that individual and say, okay, what can we try next? You know, and I've run into multiple situations where I've had to do that. I had one instance with an employee that had a head injury, and it caused a lot of issues for him. And we tried about four or five different accommodations to be able to keep him in his position and kept going back to that drawing board. Unfortunately, in that situation, nothing we could do worked, and we did have to terminate that individual. But it's having the patience and the understanding to be able to do that and to problem solve and think through things with people.

- And that interactive conversation is so important. I had a conversation with an employee once where they were asking to work remote as the accommodation that they needed due to anxiety. And when we kind of dug into that conversation, what came to light is that this employee didn't feel like they were trained appropriately, and that was giving them anxiety, and when they were by themselves at home, they felt like they could kinda slow down and not have that anxiety level. So the accommodation we actually ended up doing is we put them back through training, and we extended their training opportunity. And I remember just the impact that had because if that interactive conversation hadn't happened, right, maybe would've just let that person work remote once a day, that didn't really solve kind of the root of what we were seeing, which was they didn't feel like they were capable because we hadn't made them capable to do their jobs. So that interactive process is so important.

- Yeah, absolutely. Absolutely.

- So as you think about conducting HR audits when it comes to ADA related things, what are some of the ADA related oversights that you've encountered as you've worked with HR departments?

- Sure. So, you know, I've done a lot of HR audits and honestly, the biggest obstacle I come across are organizations that just haven't thought about it. They don't have a process in place. You know, they either have never had an employee come and ask for an accommodation or they just haven't handled them properly in the past. And so it's, you know, helping those organizations set up a solid process, understanding the steps, understanding, you know, when an accommodation is requested, you know, a lot of employers think that in order to start that accommodation process, an employee has to come and physically say, Hey, I need an accommodation. And that's not the case. And so it's, it's working with employers to just, you know, walk through that step, create a process, and understand how to implement that process.

- What should be the trigger for an HR professional to say, oh, I

think we might need to have an accommodation conversation?

- Sure, absolutely. So, you know, a lot of times, you are made aware of an accommodation through an informal conversation with an employee. You may have an employee who you're sitting in the break room with and they just happen to mention to you, or you ever hear them mention to someone else that they're about to go out and have surgery or that they have migraines or, you know, whatever the case may be. You know, a lot of times disabilities, when you hear the word disability, you initially think of physical, something you can see and a lot of disabilities you can't see. They're invisible. And so, you know, when you're triggered by that and you hear that, that can start that conversation. It doesn't have to be that formal recognition by the employee to you. You may have another employee come to you and say, "Hey, I was having a conversation with Joe, and Joe mentioned this and I think you need to know."

- Yeah, I love that. You know, if you are listening and you're just in the process of designing or implementing a process for ADA and you're like, I don't even know where to start, where do they start in setting up, you know, really good compliance process for this?

- Sure. So I think the first thing is making sure that you understand the roles in your organization and what those roles do. That, you know, really goes a long way to helping you understand what the essential functions of each role are. Creating job descriptions that, you know, are ADA compliant that outline what those essential functions are. So I definitely think that's the first step, is making sure that you understand, and looking at those roles, too, from a what can I potentially do to accommodate an individual? The second step of that would be to get that process and that policy in place so that employees understand that if they need an accommodation, they can come to you.

- As workplaces evolve, I'm curious, you know, the nature of jobs is going to change. It is changing, right? We have all these buzz buzzwords out there, right? The future of work, the new world of work, right? I think we're all kind of talking about it. How do you see that interpretation of essential functions shifting in the coming years?

- Sure. So we have started to see it, and I think Covid was a huge push for that. You know, moving a lot of organizations to remote workforces. I think that has changed a lot of things in the world of essential functions and accommodations. You know, a lot of employers are starting to have people come back to the office, but still keeping some of what they learned throughout covid. You know, a couple other things that I think are gonna have a huge impact in the near future is artificial intelligence and the way that that's gonna change the workforce as well as automation. Automation is going to be huge in redesigning jobs completely. You know, I don't necessarily think that

it's going to take away jobs, but it's really gonna change how employees do their job.

- I totally agree. I think we've talked a lot about that when it comes to AI, that there might be some rules that it replaces, but a lot of things, even some information we heard coming out of the EEOC is there has to be human intervention. So we're always gonna need humans. They're not going away. So as we kind of wrap up our conversation, and for those who are still feeling a little jittery about ADA, you know, what's one piece of, you know, maybe calming advice or an action step that you'd recommend that they can take today to feel better about the whole ADA accommodation process?

- So I think the biggest thing that I have found is employers don't realize the amount of resources that are out there and available to them. So that's my, you know, my big takeaway for, for anyone is there are so many different groups and organizations and state and federal agencies that are designed to help you. Some of them, like I said earlier, even provide, you know, assistance with the cost of things. So, you know, if you're not sure where to go to look for those, my first step would be to tell you to reach out to your Chamber of Commerce and talk to them, and they should be able to help guide you to those resources in your area.

- That's a really good example. I haven't heard of that one as like a go-to resource. You know, one of the things that have come up a lot in my career is Jan, right? The job, a combination network. If you don't know about that, that's something you should have bookmarked in your browser. Such a great resource because it can give you ideas that maybe you haven't even considered. Absolutely. Well, this has been a great conversation. Hopefully you'll have a great session tomorrow here at the SHRM Inclusion Conference, and I'm just, I'm excited to learn more about ADA. So definitely, we'll stay in touch. Thank you for your time.

- Sounds great. Thank you.

- I hope you enjoy today's episode. You can find show notes and links at thehrmixtape.com. Come back often and please subscribe, rate, and review.