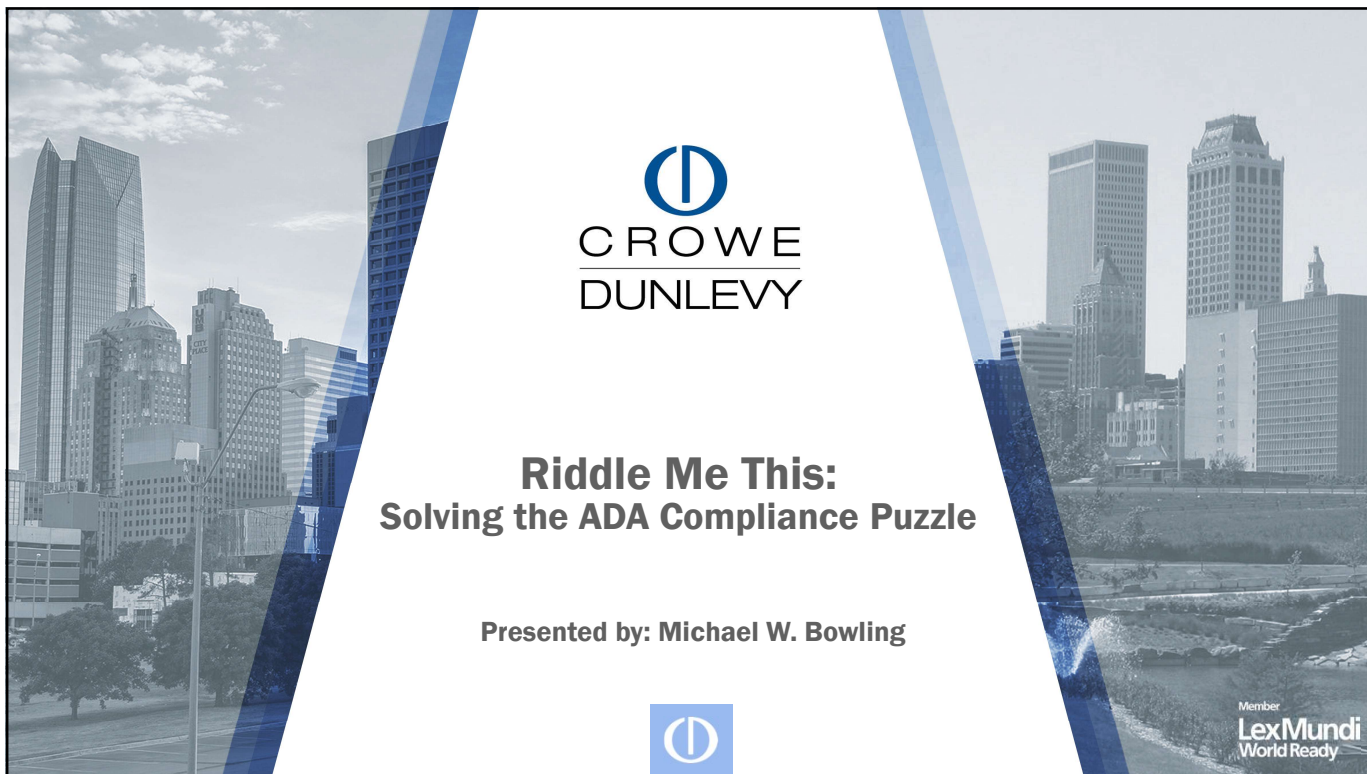




1

Michael W. Bowling



- Director in the firm's Oklahoma City office
- Chair of Immigration Practice Group and member of the Labor & Employment Practice Group
- *Subsequent information should not be understood as, or considered a substitute for, specific legal advice. For inquiries, please contact Michael W. Bowling, or another licensed attorney.

© Crowe Dunlevy 2026

2

Scenario #1

Two-Face Industries has suffered a wave of layoffs over the years and now has only nine employees. Two-Face recently terminated an employee, telling her that her intermittent absences for migraines were problematic.

Is Two-Face Industries covered by a law that requires it to accommodate disabilities?



3

ADA: Who Is Covered?

Under ADA Title I, “employer” means:

- Having 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year
- Does not include U.S. government, Indian tribes, or “bona fide private membership club”

Under Oklahoma Anti-Discrimination Act, “employer” includes every employer (no matter size) except Indian tribes and “bona fide membership clubs”



ADA
Americans with
Disabilities Act



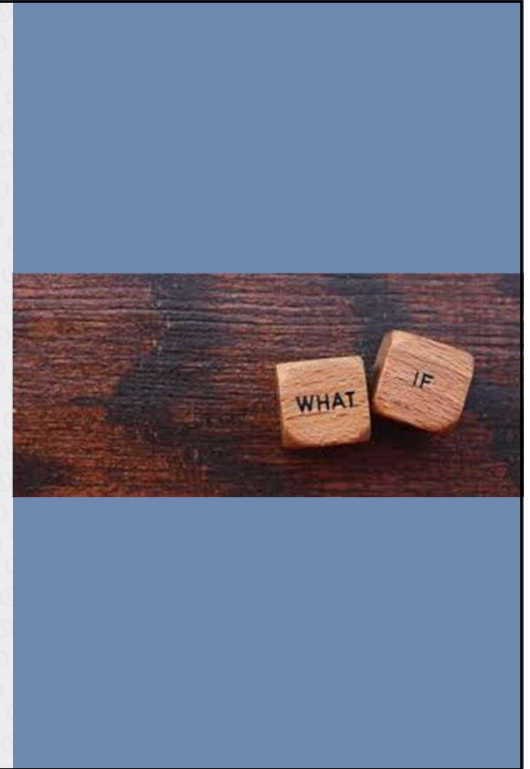
4

Scenario #2

Kate Kane was an emergency room nurse during the day. She was exposed to Hepatitis C due to an accidental needle prick and ultimately tested positive. Kate was treated and pronounced cured by her physician.

Does Kate have a disability within the meaning of the ADA?

If Kate's employer, Penguin Enterprises, will not allow her to return to work, what is her "disability" under the ADA?



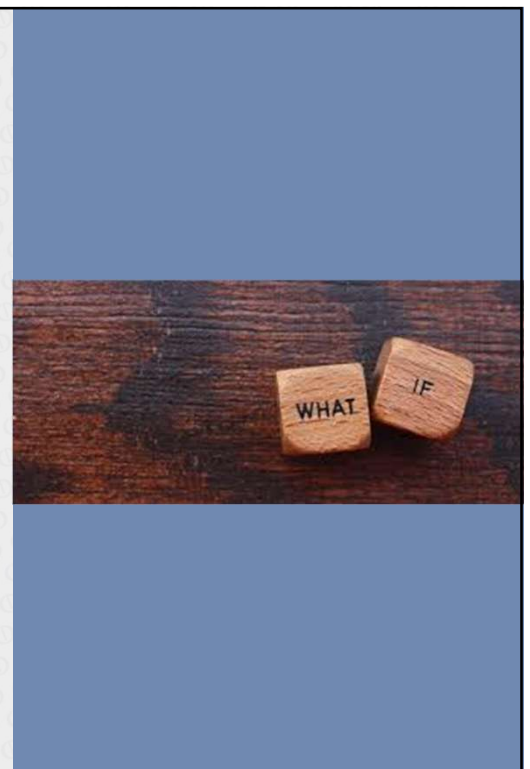
5

Scenario #3

Vic Sage ("The Question") experienced cognitive symptoms as he went through chemotherapy treatments. This "chemo brain" made it difficult for him to remember basic tasks at work, and he ultimately resigned from his job. Vic confided about these issues in his crime fighters' small group.

Vic's resume has now come across Dick Grayson's desk. Dick is a member of the same crime fighting organization as Vic, and he heard of Vic's health issues. Dick is worried that Vic's cognitive issues would make it difficult for him to do the job, so he declines his application.

Has Dick discriminated against Vic on the basis of a disability? If so, which kind?



6

ADA: What Is a Disability? (I)

“Disability” means:

- physical or mental impairment that substantially limits one or more major life activities of such individual;
- record of such an impairment
- being regarded as having such an impairment



ADA
Americans with
Disabilities Act



7

ADA: What Is a Disability? (II)

- Impairment includes any physiological, mental, or psychological disorder
- Impairment can be disability even if episodic or in remission, so long as it substantially limits a major life activity when active
- Major life activity includes caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working, or operation of major bodily function



ADA
Americans with
Disabilities Act



8

Scenario #4

Bruce Wayne suffered serious injuries to both legs while attempting a takedown of a ninja gang on the streets of Gotham City. Bruce's impairment is temporary. He is expected to be unable to walk for about seven months and will require surgery and physical therapy. (Bruce believes that his superior mental toughness will allow him to be fully functional in four months.)

Does Bruce have a disability as defined by the ADA?



9

ADA: What Is a Disability? (III)

- In 2008, ADA was substantially amended
- Under the amendments, “the definition of disability . . . shall be construed in favor of broad coverage of individuals . . . to the maximum extent permitted by the terms of this chapter



ADA
Americans with
Disabilities Act



10

ADA: Who Is a Qualified Individual?

- Individual who, with or without reasonable accommodation, can perform essential functions of job
- Deference as to essential functions given to employer judgment and written job descriptions

ADA
Americans with
Disabilities Act



11

ADA: What Does ADA Prohibit? (I)

- Disparate treatment that adversely affects opportunities or status of applicant or employee because of disability
- Using standards or criteria that have effect of discrimination based on disability
- Excluding or otherwise denying equal jobs or benefits to qualified individual because of known disability of individual with whom qualified individual is known to have relationship or association
- Not making reasonable accommodations to known physical or mental limitations of otherwise qualified individual with disability who is applicant or employee, unless employer can demonstrate that accommodation would impose undue hardship on the operation of the business of such covered entity

ADA
Americans with
Disabilities Act



12

ADA: What Does ADA Prohibit? (I)

- Denying employment opportunities to applicant or employee who is otherwise qualified individual with disability based on need to make reasonable accommodation
- Using selection criteria that screen out or tend to screen out individual with a disability or a class of individuals with disabilities unless selection criteria are shown to be job-related and consistent with business necessity
- Failing to select and administer tests concerning employment in most effective manner to ensure that test taking is accessible to disabled individual (rather than reflecting impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are factors that test purports to measure).



ADA
Americans with
Disabilities Act



13

ADA: What Are Reasonable Accommodations?

- Making existing facilities used by employees readily accessible to and usable by individuals with disabilities
- Job restructuring; part-time or modified work schedules; reassignment to vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities
- Determining appropriate reasonable accommodation general requires “informal, **interactive process**” to identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations



ADA
Americans with
Disabilities Act



14

Scenario #5

After hiring Renee Montoya at the Gotham City Police Department in a role focused on crime analytics, the Police Commissioner overhears Renee telling a coworker that she has dyslexia. He was immediately concerned that, due to her dyslexia, Renee may make critical errors in her work.

What should the Police Commissioner do?



15

Scenario #6

Crispus Allen was recently hired by WayneCorp about four months ago. Crispus recently developed migraines and is sometimes unable to continue at work when a migraine develops. So, he has begun leaving early about once a week. You know that he is not eligible for FMLA.

What should you do?

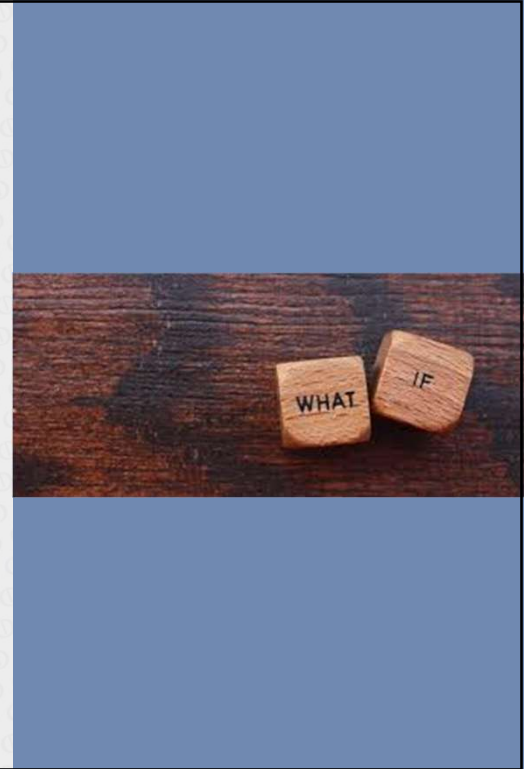


16

Scenario #7

Jason Peter Todd emerged from the Lazarus Pit with severe leg impairments. He cannot perform the essential functions of his current job as Robin. Jason provided a note from his provider that he needed “desk work” while he heals. WayneCorp has rejected this documentation and stated that Jason must provide a “full release” to return to work.

Can WayneCorp demand a “full release”?



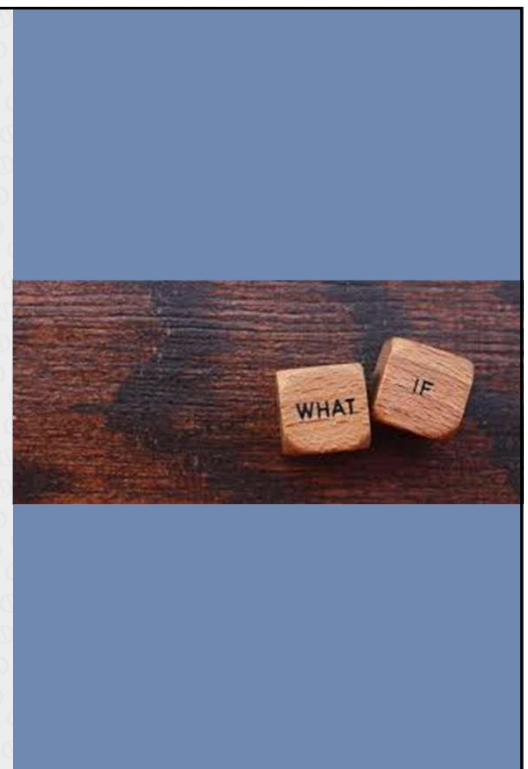
17

Scenario #8

Jason Peter Todd emerged from the Lazarus Pit with severe leg impairments. He will not be able to perform the essential functions of his current job as Robin for seven months or more. Jason provided a note from his provider that he needed “desk work” while he heals.

WayneCorp has realized that it cannot demand a “full release” but it has again rejected Jason’s documentation as unclear and demanded additional medical documentation to clarify his condition.

Is WayneCorp right to ask for additional documentation?



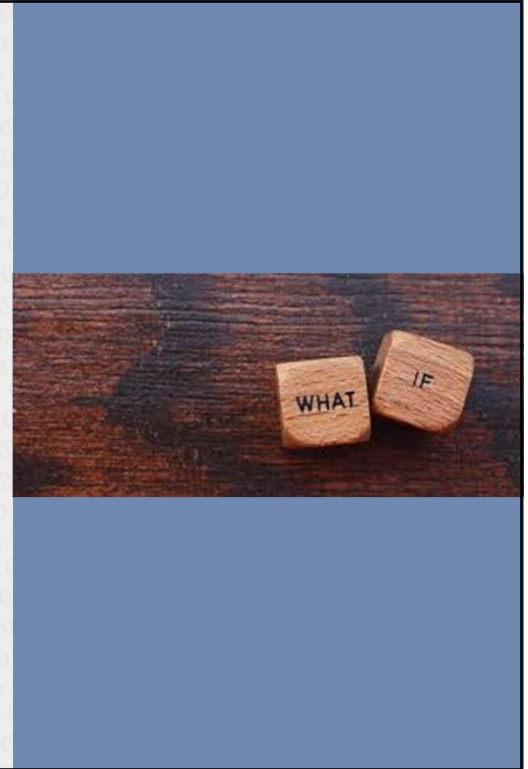
18

Scenario #9

Jason Peter Todd emerged from the Lazarus Pit with severe leg impairments. He will not be able to perform the essential functions of his current job as Robin for seven months or more. Jason provided a note from his provider that he needed “desk work” while he heals.

WayneCorp has realized that it should not have demanded additional documentation. Jason has requested an interactive process to explore alternative positions. WayneCorp has offered him an unpaid leave of absence.

Is this the right accommodation to offer Jason?

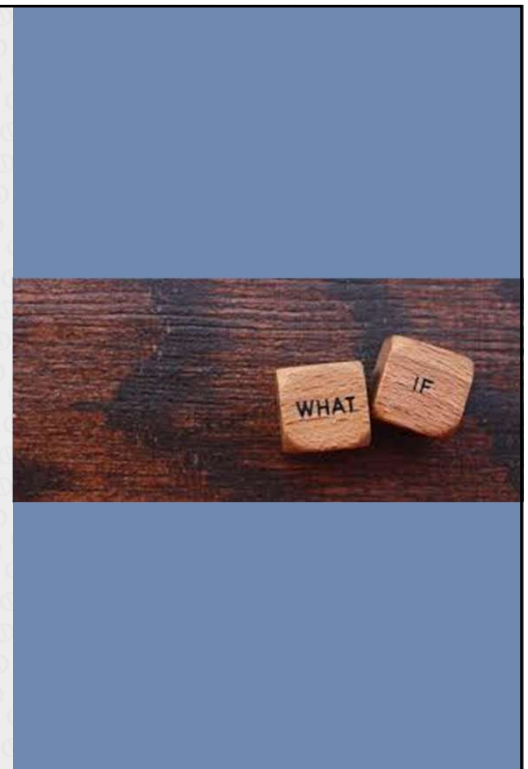


19

Scenario #10

Stephanie Brown (aka “The Spoiler”) has developed some neurological complications after nearly being killed by Black Mask. She cannot tolerate bright fluorescent lights, as they trigger migraines. Unfortunately, her cover job is in the cubicle farm at WayneCorp. She has requested to be placed in an office where she can better control the lighting. She has provided documentation from her provider to support this request.

What options does WayneCorp have as it considers this accommodation?

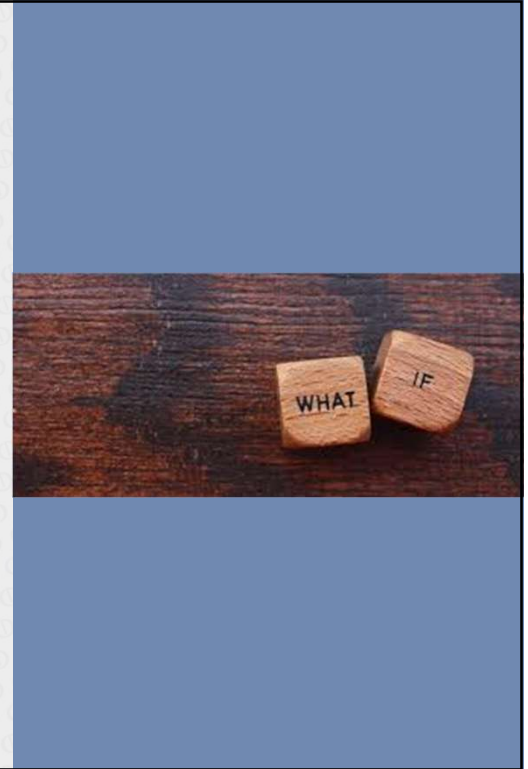


20

Scenario #11

After an attack by Joker, Barbara Gordon is now a paraplegic. WayneCorp does not have a currently open position that can accommodate Barbara's restrictions. Barbara has asked if she can work light duty, and Barbara's supervisor advocates for this option, as she feels terrible for everything Barbara is going through.

What should WayneCorp do?

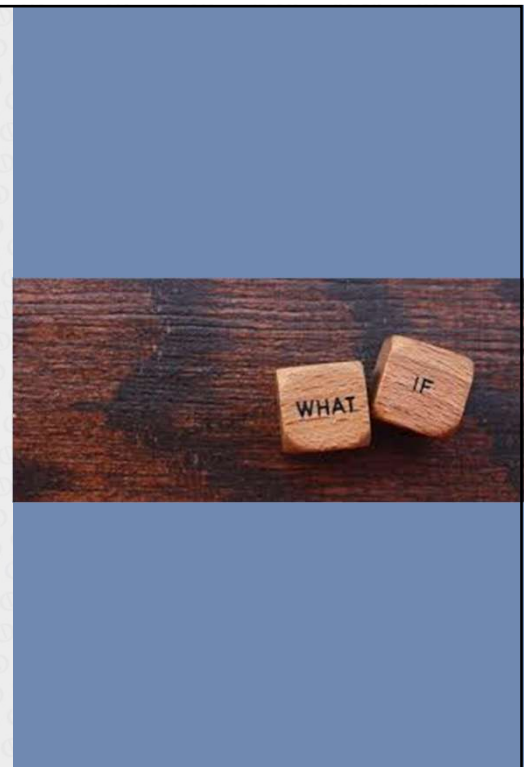


21

Scenario #12

Hiro Okamura ("The Toyman") is concerned about the impact of chronic pain treatment within his equipment manufacturing lab. Many of his workers have chronic injuries and use opioids to treat them. The work done in Hiro's lab is safety-sensitive. Last week, one of his workers had an accident that appears to have been caused by inattention and that resulted in a multimillion dollar property loss. Hiro is convinced that the opioids are to blame. He believes they pose a direct threat to the safety of his team.

Is Hiro's direct threat analysis sound? Can he dismiss the workers who are using opioids?



22

ADA: Mistakes to Avoid

- Equating disability with inability. Key consideration is whether employee can perform essential duties—not whether s/he has a disability.
- Assuming employee has a disability. Some disabilities are obvious, but many are not. In some cases, employees label correctable condition or temporary impairment as disability when it's not. So, pay close attention, and ask for help.
- Tolerating unacceptable performance or conduct. Employees with disabilities must live up to the same standards of conduct and performance as other employees. There is no reason for you to accept less.



ADA
Americans with
Disabilities Act



23

ADA: Mistakes to Avoid

- Tolerating unacceptable health or safety risks. Accommodation is neither reasonable nor responsible if it would result in allowing employee with disabilities or co-workers to be placed at health or safety risk
- Telling other employees that employee is receiving accommodation. Federal law prohibits supervisors from disclosing an employee's "medical" information (with limited exceptions). Disclosing that someone is being provided reasonable accommodation is therefore disclosing that the person has a disability.
 - If asked, simply say that the same would be done for any employee in a similar situation.



ADA
Americans with
Disabilities Act



24



CROWE&DUNLEVY

ATTORNEYS AND COUNSELORS AT LAW



Contact
Michael W. Bowling
405.239.6697
michael.bowling@crowedunlevy.com
crowedunlevy.com



Oklahoma City
Braniff Building
324 North Robinson Avenue
405.235.7700



Tulsa
500 Kennedy Building
321 South Boston Avenue
918.592.9800



Dallas
Spaces McKinney Avenue
1919 McKinney Avenue
214.420.2163



Houston
3663 N. Sam Houston
Parkway East, Suite 628

To sign up for Crowe Dunlevy news, legal updates and seminars, please visit crowedunlevy.com/subscribe

© Crowe Dunlevy 2026



