

*where the focus is on **you**.*



Business | Employment | Intellectual Property | Wills & Trusts

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Welcome to Your Business!

- You run a business selling widgets
- Office in Atlanta
- 25-30 employees



Susan

- Receptionist
- Standard duties
- Desk located in front part of office
- Working a few months

Everything seemed fine until...



"Someone is here to discuss our paper usage."

Americans with Disabilities Act



To Justin Dart. Without your drive, your 'believing' and your leadership this day would not have been possible. With respect & friendship Cap Bunk

- 15+ employees
- Prohibits discrimination, harassment, or retaliation
 - (1) Qualified individual
 - (2) With a disability
 - (3) Because of the disability
- All aspects of employment

Covered Disabilities

Physical/mental impairment

- Non-transitory (6+ months)
- Substantially limits
- 1+ major life activity

History/record of such impairment

Perceived by others as having such impairment

**ADA
Accommodation
Requirements**

```
graph LR; A[ADA Accommodation Requirements] --- B[Reasonable]; A --- C[Qualified employees]; A --- D[Needed to perform essential job functions];
```

Reasonable

Qualified
employees

Needed to perform
essential job functions

ADA Examples of *Reasonable Accommodations*

- Making existing facilities readily accessible to and usable by individuals with disabilities
- Job restructuring
- Part-time or modified work schedules
- Reassigning to a vacant position
- Acquiring/modifying equipment or devices
- Appropriate adjustment or modifications of exams, training materials, or policies
- Providing qualified readers or interpreters



ADA
Accommodation
Exceptions

```
graph LR; A[ADA Accommodation Exceptions] --- B[Undue hardship to business]; A --- C["'Regarded as' having disability"]
```

Undue hardship to
business

“Regarded as” having
disability

Step 1

- Notice to employer

Step 2

- Actively communicate with employee
- Supervisor-level or higher

Step 3

- Not sure? *Reasonable* accommodation

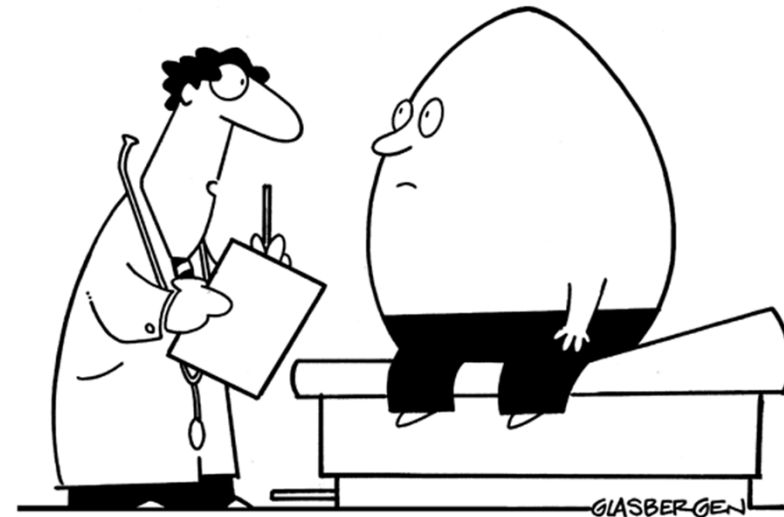
Step 4

- Document, document, document

Medical Exams and Information

- CANNOT
 - Require a medical examination
 - Ask employee if he/she is an individual with a disability
 - Ask employee about the nature or severity of the disability
 - *Unless*
 - Job-related and
 - Consistent with business necessity
- CAN
 - Employee health program available to employees at that work site
 - Ask about employee's ability to perform job-related functions

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"I'd like to order some tests, Mr. Dumpty. You look pale."

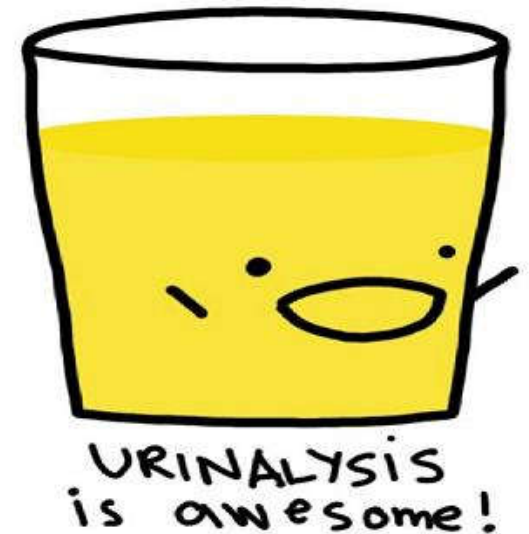
Back to Susan...

1. Individual with a disability?
2. Qualified for her position as a receptionist?
3. What information do you need from Susan, if any, to identify a potential accommodation?
4. Potential accommodations?
5. Undue hardship?

Mary Jane



- Employment offer to Mary Jane
- Outside sales
- Drug test results – positive for THC
- Uses THC oil to treat her PTSD



Georgia

Pothead Status: Meds (Barely) Ok

- 2009: Controlled Substances Therapeutic Research Act
 - Established research program
 - Cancer or glaucoma patients only
- 2015: Haleigh's Hope Act
 - Low THC oil only
 - Must register with and obtain card from the Department of Public Health
- 2017 and 2018: Act expanded



The Feds Pothead Status: Buzzkill



- Still No Pot for You
- Remember, Feds > State
- Recent attempts to allow marijuana:
 - Respect State Marijuana Laws Act of 2015
 - Respect State Marijuana Laws Act of 2017
 - The VA Medicinal Cannabis Research Act of 2018



ADA and Drug Use



Illegal use of drugs

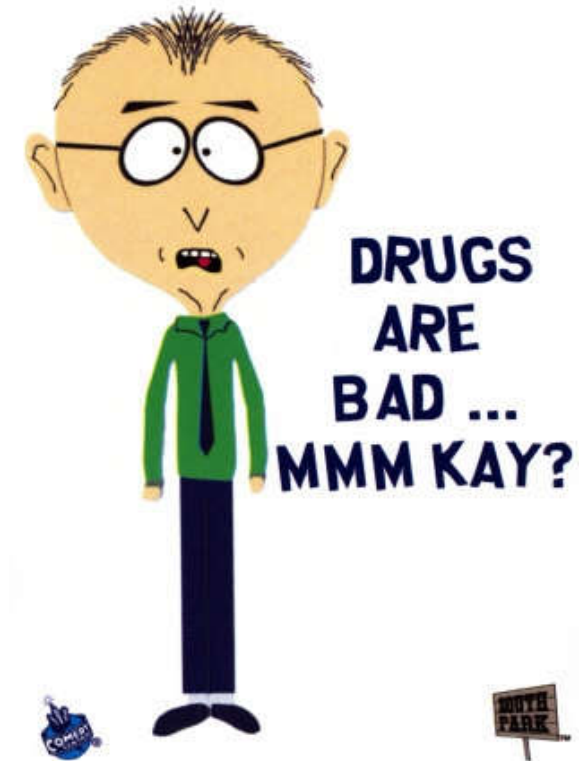
- Includes drugs unlawful under the Controlled Substance Act,
- Does NOT include drugs “taken under supervision by a licensed health care professional.”

**HUGS
NOT
DRUGS**



ADA Accommodations

- Illegal use of drugs
 - Includes drugs unlawful under the Controlled Substance Act,
 - Does NOT include drugs “taken under supervision by a licensed health care professional.”
- NO accommodations required



Nick the Nephew, Part I

Sibling asks if your 19 year-old nephew, Nick, can work for you for the summer.

You agree.

What does this mean for your onboarding process?



SORRY, SON...THERE'S NO APP FOR THAT

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Immigration and Reform Control Act of 1986

Recent Updates

- 2017: Executive Order – Buy and Hire American
- 2017: Protecting U.S. Workers’ Initiative
- 2018: Georgia SC 452

2017-2018: Partnerships between federal agencies

- 2010: USCIS and DOJ collaboration re: E-Verify
- 2017: DOJ Civil Rights Division and DOL Wage and Hour Division
- May 2018: USCIS and DOJ
- July 2018: DOJ Civil Rights Division and DOL

Form I-9: the Basics

Required

Not Required

All employees

Volunteers

Independent Contractors

EMPLOYEE
chooses forms

Limited casual
domestic
services

Nick the Nephew, Part II



- Receive nephew's completed Form I-9
- You do not
 - Mail to USCIS or
 - Submit information through E-Verify



Is this a problem?

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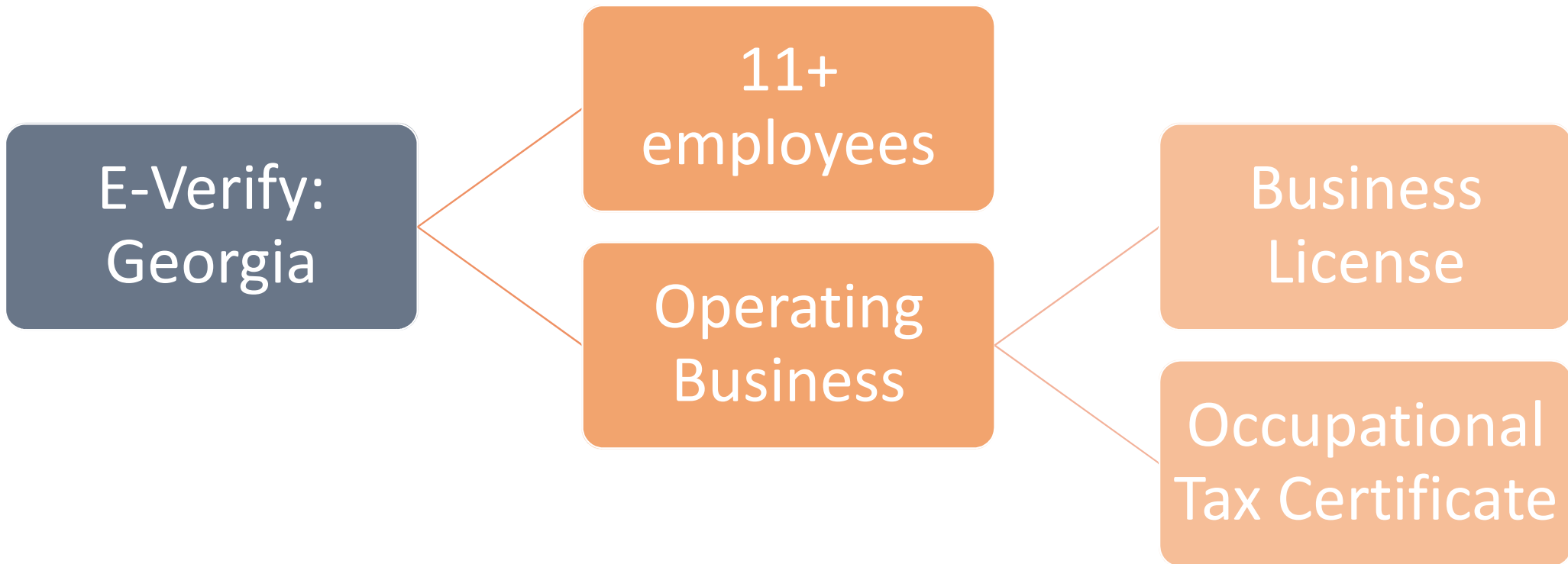
E-Verify: The Feds

Contracts with
FAR clause

State
Legislation

Court ruling





Issue #1: Failure to use E-Verify



The Feds

- Monitoring/compliance
- Discrimination
- Poster requirements

Georgia

- Attorney General investigation
- Aggravated identity fraud
- Good-faith relief

Issue #2: Georgia Business License



Criminal Penalties

- Misdemeanor
- If knowingly, then additional penalties

Defense

- Good-faith attempt to comply

Safeguarding Information



- Form I-9 and medical documents/information
- Secure location
 - ADA: ensure confidentiality
- Restrict access to documents
- Form I-9: additional requirements for electronic storage

Protecting U.S.
Workers
Initiative

Increased
harassment or
retaliation



Disparate Impact
Claims

Delays for
qualified, foreign
employees

Employee
Training



Questions?



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Erin Easley, a partner with the law firm Morgan Easley, specializes in advising and representing businesses in labor and employment issues, including drafting handbooks, conducting internal investigations, disciplining and terminating employees, and defending employers against administrative proceedings, investigations, and lawsuits based on discrimination, harassment, retaliation, and unpaid wages. She has been selected to the 2018 and 2019 Georgia *Super Lawyers* list, featured in Atlanta Business Chronicle's article on the #MeToo movement and sexual harassment cases, and published multiple articles on labor and employment issues, including Titles I and III of the Americans with Disabilities Act.