Workplace Safety and the Americans with Disabilities Act

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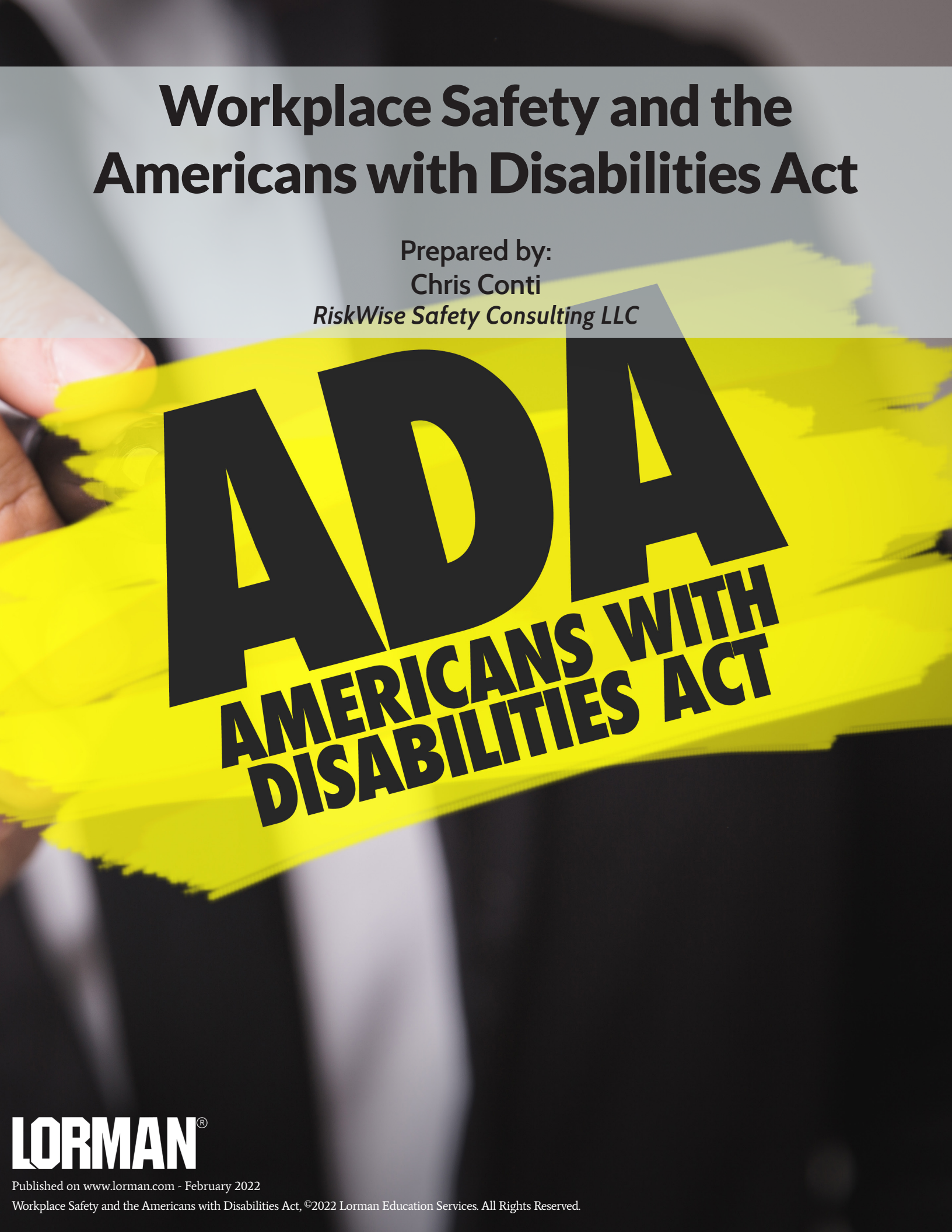

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Published on www.lorman.com - February 2022

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Workplace Safety and the Americans with Disabilities Act

The U.S. Supreme Court has ruled that an employer does not have to hire a job applicant if the essential duties of the job would pose a direct threat to the health or safety of the applicant. Such an applicant would not be a "qualified individual" under the Americans with Disabilities Act (ADA). Mario Echazabal claimed that the Chevron Corporation unlawfully denied him employment. He had been working at the company's refinery for one of its subcontractors. When he applied for direct employment, company doctors found a liver condition that would be aggravated by continued exposure to refinery chemicals. He then lost his job with the subcontractor when Chevron requested that Echazabal be reassigned to a job that avoided further exposure. Echazabal claimed that the ADA allows employers to screen out applicants only if they pose a threat to the health or safety of others. However, the Equal Employment Opportunity Commission's (EEOC) regulation goes further, disqualifying an applicant when a disability poses a threat to his or her own health or safety or that of others. The Supreme Court said it was reasonable for the EEOC to clarify the ADA regarding applicants who may themselves sustain harm from a particular job. The Court cautioned that its decision does not allow employers to draw broad conclusions about the employability of applicants with particular disabilities. Employers must base the threat-to-self defense on a reasonable medical judgment regarding the

specific applicant and an individualized assessment of the risks and harm.

(Chevron U.S.A. v. Echazabal (US Supreme Court, June 10, 2002) No. 00-1406.)

What Should You Do?

Prior to offering employment, you may only inquire whether the applicant is able to perform the essential functions of the job.

If you learn of a disability, you may inquire only whether the applicant is able to perform the essential functions of the job with reasonable accommodation. You may make an employment offer contingent upon satisfactory completion of a post-offer medical examination.

Be prepared to discuss ways to reasonably accommodate applicants who request assistance for disabilities that allow them to perform the essential functions of the job. Make "threat-to-self" decisions involving disabled applicants only on advice from qualified medical advisors concerning the risks and severity of harm to the particular applicant. Then consult legal counsel to evaluate your obligations and risks. In another work-related case the 7th US Circuit Court of Appeals held that an employer does not have to create a permanent light duty position for an employee who cannot perform, with or without accommodation, one of the companies "regular" jobs. While it is a good practice to provide light duty, modified, and transitional employment to

reduce the cost of claims which impact insurance cost, the maintenance of such a position may become a cost liability to the organization. In this case, an assembly line worker named Tamara Watson suffered a shoulder injury that restricted her ability to perform her job. The employer provided a job that she could perform. Later the employer terminated Watson because no manual jobs were available with her restrictions. Watson sued the employer alleging a violation of the ADA arguing that the employer had a duty to provide light duty on a permanent basis. District Court Agreed and Watson appealed. The Appeals Court discovered that the employer would have to create a new position on a permanent basis which is not demanded of an employer who is attempting to provide light-duty and accommodate physical limitations.

(Watson vs. Lithonia Lighting and National Services Company, 7th Circuit No 02-1423, September 20, 2002)

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