



# Matheson ADA Title I Training Denver, Colorado

June 14 to 19, 2018

- Reasonable Accommodation Workshop for Human Resource and Workers' Comp Case Management Professionals
- Cognitive and Physical Essential Function Job Analysis
- Fix Your FCE and POET Practice: Reduce Your ADA Title I Litigation Profile
- Identifying Malingerers and Mitigating Damages in Workers' Compensation under ADA Title I



**Reasonable Accommodation** *and* **Matheson Elements**



Answering the How, When and Why of ADA Title I

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## About Us

### **Reasonable Accommodation, LLC**

Reasonable Accommodation, LLC is an advisory and training firm immersed in the mechanics of Title I (Employment) of the Americans with Disabilities Act (ADA). Roy Matheson is an Americans with Disabilities Act Coordinator (ADAC) with thirty-five years of pioneering and training experience in the field of occupational rehabilitation.

The Reasonable Accommodation team supports private employers, local government agencies, legal counsel, and aggrieved employees in the areas of employment testing and reasonable accommodation. Our specialized management training programs meet the annual training requirements of cities and counties that belong to risk compacts. Our ADA Title I medical examination training programs for work evaluators, physicians, and legal counsel offer essential insights into employment testing clinical practices under the law.

### **The Employment and Rehabilitation Institute of California**

Roy and Len Matheson, Ph.D., were co-founders of the Employment and Rehabilitation Institute of California (ERIC) in 1984, the nation's first full-service industrial rehabilitation center. Providing work capacity evaluation, functional capacity evaluation, and work hardening services, the clinic became a model for hundreds of similar programs throughout the United States and Canada. In 1988, the ERIC clinical program and the growing training programs were organized as separate business entities with Len directing the clinical work and Roy directing the training.

### **Roy Matheson and Associates, Inc.**

Roy Matheson and Associates, Inc. (now 'Matheson Education and Training Solutions, LLC') provided post-graduate training to more than 15,000 occupational therapists, physical therapists, ergonomic evaluators, physicians, and psychologists. As the resident 'guru,' Roy developed a highly respected cadre of trainers and mentors. This renowned group of expert work evaluators and ergonomic evaluation professionals reside in the highest echelon of expert witness providers in the United States and Canada. Their on-going training programs share the Matheson philosophy and Dr. Matheson's evaluation standards in countries across the free world.

Since 1983, Roy Matheson and Dr. Leonard Matheson have earned excellent reputations as teachers, professional mentors, and program development consultants as they remain actively involved in moving forward their fields of practice.

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## Reasonable Accommodation Workshop for Human Resource and Workers' Comp Case Management Professionals

Thursday, June 14<sup>th</sup> (**Thursday, June 14<sup>th</sup> is sold out**)

Monday, June 18<sup>th</sup>, hosted by:

Midtown Occupational Health Services

9:00 a.m. to 4:30 p.m.

Contact Hours: 6.0

Tuition: \$275



### Reasonable Accommodation Training Overview

Title I of the Americans with Disabilities Act gives employers important tools for hiring and retaining safe and effective team members but also creates new responsibilities for workers' compensation case managers. This powerful workshop raises and answers the questions encountered in the daily blend of on-boarding, termination, and return-to-work situations.

Review of current ADA Title I scenarios and recent federal court settlements lead off and conclude the training.

### Course Content

- ADA Title 1 is a “process” law – follow the process!
- ADA Title 1 does not consider the source of impairment (accident, on-the-job injury, genetic)
- What is a reasonable accommodation?
- Overview of the interactive process
- The key to navigating the process: focus on hiring or retaining a safe, qualified individual
- Who and what triggers the process?
  - Frontline supervisor
  - Physician
  - Union representative
  - Co-worker
  - Designated disability or reasonable accommodation manager
- Managing a successful initial interview
- Implementing a request for medical documentation
  - Find the nexus of disability, medical restriction, essential functions and reasonable accommodation
  - If a medical restriction does not connect to a physical demand of the job, do I have to accommodate the individual?
- Tools to manage identification of a safe and effective accommodation
- Undue Hardship
- The trial period concept

- Long-term follow-up — changes in the job or the worker
- Direct Threat
- Responding to an official employment discrimination inquiry
  - Failure to accommodate
  - Non-compliance with the process

### **Reasonable Accommodation Question and Answer**

We respond to a lot of interesting and challenging questions fielded through our very active training, support and blogging work. Here is an example of the types of questions we will respond to during the reasonable accommodation training program:

- What do I do when a physician demands a specific accommodation solution such as an expensive chair or sit-stand station?
- What is the role of reasonable accommodation in a workers' compensation case?
- I receive medical reports that say the worker did not try hard when tested and therefore cannot do his job? Do I still have to entertain reasonable accommodation?
- We don't have job descriptions. How do I know if a disability is related to a job function?
- I heard there was a \$155,000 settlement in Colorado involving lack of follow through with an agreed-upon accommodation. What does that mean?
- My nurses have to lift 400 pounds. How do I accommodate them?
- I don't feel comfortable during difficult conversations. Any tips on how to navigate the interactive conversation for an unusual request for accommodation?
- What is the latest thinking about unpaid leave as an accommodation?
- Why is a transfer to an open position called, "the accommodation of last resort"?
- When a medical restriction is not linked to a physical demand of the worker's job, do I have to accommodate the individual?
- I work with an individual who labels most workers' compensation clients as "malingers." How does that affect the reasonable accommodation process?

### **ADA Title I Scenarios**

One of the touchstone concepts in ADA Title I is the "qualified individual." In fact, the entire concept of Title I is to protect the qualified individual who may or may not have a disability from adverse employment decision. This course uses a combination of real-life Title I scenarios to bring to life the concepts and skills we teach in the course. The full scenarios are available on our website at [goo.gl/NWB6Pm](http://goo.gl/NWB6Pm). Click on the "ADA Title 1 Scenarios" tab to read more about these case studies:

- Qualified Individual #1: Long-Term Propane Truck Driver
- Qualified Individual #2: Experienced Custodian
- Qualified Individual #3: Nurse, General Duty



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## Cognitive and Physical Essential Function Job Analysis

Friday, June 15, 2018

9:00 a.m. to 4:30 p.m.

Contact Hours: 6.0

Tuition: \$275

Hosted by and held at: Industrial Rehabilitation & Evaluation Services, LLC, Englewood, Colorado

The growing technology-dependence and complexity of the workplace has resulted in the far greater need for cognitive skill at all levels of employment. Unfortunately, cognitive skill can be impacted by some factors ranging from accident (traumatic brain injury) to addiction, to simple aging. Insurers, employers, and legal counsel across the United States are coming face-to-face with the need for more comprehensive essential function job analyses. Developed jointly by Dr. Leonard Matheson and Roy Matheson, the intent of this learning experience is to train you to include the analysis of both the cognitive and physical demands of a target job in your essential job analysis work product.

### **The Importance of a Comprehensive Job Analysis**

As compared to work evaluation practices before ADA Title I, the first step in rendering a workability opinion is now a thorough identification of the essential functions of the target job. (Keep in mind that today the *essential functions* of a job are rarely lifting, carrying, standing, dexterity, etc.) Once the identification of the essential functions is complete, step two, analysis and measurement of the cognitive and physical demands supporting the essential functions, can be conducted.

The third step in this process is to render an opinion of the individual's ability to *safely and effectively* execute the cognitive and physical demands of the job with or without reasonable accommodation. This opinion must be the result of a sensitive comparison of the demands of the position and the worker's accommodated ability. A negative opinion rendered without the support of accurately measured cognitive job demands may not survive scrutiny.

### **What You Will Learn**

You will learn to distinguish the essential functions of a job from the cognitive or physical demands of job tasks. While job analyses for State workers' compensation systems and the Social Security system use the Physical Demand Characteristics of Work system (Sedentary, Light, Medium, Heavy, or Very Heavy levels of the Occasional, Frequent, or Constant frequency categories), the federal ADA Title I system requires a more precise method. Work evaluators, physicians, and insurers now face the need for analyses that provide both types of task description and measurement. The course curriculum develops these skills:

- How to select which cognitive demands to analyze
- How to write compliant essential function task statements
- How to approach measurement of physical demands tied to essential functions
- How to establish valid job-relatedness of work tasks and essential function statements
- How to conduct the pre-analysis interview
- How to use OSHA 300 log data, loss-run reports, and requests for reasonable accommodation to select jobs for analysis
- How to update the structure of your report to produce a contemporary work product

These skills will contribute to your competency with the legal and professional boundaries of the new essential function job analysis requirements.

### **ADA Title I Scenarios**

One of the touchstone concepts in ADA Title I is the “qualified individual.” In fact, the entire concept of Title I is to protect the qualified individual who may or may not have a disability from adverse employment decision. This course uses a combination of real-life Title I scenarios to bring to life the concepts and skills we teach in the course. The full scenarios are available on our website at [goo.gl/YPAfVA](http://goo.gl/YPAfVA). Click on the “ADA Title 1 Scenarios” tab to read more about these case studies:

- Qualified Individual #1: Long-Term Propane Truck Driver
- Qualified Individual #2: Experienced Custodian
- Qualified Individual #3: Nurse, General Duty

### **Course Materials**

Each participant in the cognitive and physical essential function job analysis course will receive a set of cognitive demands analysis worksheets and a sample of a cognitive and physical essential function job analysis. The participants will also receive a copy of Roy Matheson’s Spring 2018 *“The Americans with Disabilities Act – Title I Compendium.”* The compendium includes:

- Selected sections of ADA Title I
- Landmark federal court employment discrimination opinions
- EEOC press releases announcing the settlement of employment discrimination charges
- Julie Brandfield’s *“Undue Hardship: Title I of the Americans with Disabilities Act”*

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## Fix Your FCE and POET Practice: Reduce Your ADA Title I Litigation Profile

Saturday, June 16th

9:00 a.m. to 4:30 p.m.

Contact Hours: 6.0

Tuition: \$275

Hosted by and held at: Industrial Rehabilitation & Evaluation Services, LLC, Englewood, Colorado

Each day across America hundreds of new hire post-offer employment tests, worker's compensation return-to-work functional capacity evaluations, and work-related physician physicals are conducted. A very large number of these work readiness assessments are administered outside of compliance with Title I of the Americans with Disabilities Act.

It is imperative that each medical professional who performs functional capacity evaluation or POET services is up-to-date with the test administration guidelines emanating from recent Equal Employment Opportunity Commission (EEOC) and federal court settlements. The work evaluation methods of a physician and a therapist were at the heart of a recent \$5.5M settlement.

This course takes a "deep dive" into a new world of work evaluation under ADA Title I. Beginning with a clear definition of "medical examination and inquiry" under Title I, we will examine the new guidelines for these medical examinations:

- Functional Capacity Evaluation (FCE) for stay-at-work
- Functional Capacity Evaluation (FCE) for reasonable accommodation determination
- Post-Offer Testing (POET) and Pre-Placement Testing (PPT)
- Return-to-work Functional Capacity Evaluation (FCE) for workers' compensation

### Medical Examination Topics Addressed

- A work product which defines physical abilities in terms of Sedentary, Light, Medium, Heavy, Very Heavy
- A work product which defines physical demands in terms of Occasional, Frequent, or Constant
- A work product which states the individual cannot perform the physical demands of the essential functions because of inconsistent effort
- Co-mingling "unsafe for testing" protocols with "unsafe for work" decisions
- Incorrectly defining essential functions as including lifting, carrying, pushing, pulling
- Interchanging important terms such as *impairment* and *disability*
- Learning why "qualified individual" is the key phrase in ADA Title I testing
- Performing endurance tests not connected to an essential function of the job

- The ADA Title I workability decision without reference to a job description
- The all-important physical or cognitive job demand link to an essential function
- The cost of ignoring an in-place reasonable accommodation
- The difference between an essential function and a physical or cognitive work demand
- The inadequacy of functional capacity evaluation systems which attempt to “catch” inconsistent effort
- The need to address reasonable accommodation issues during testing
- The power of recognizing qualification standards as the foundation of the workability decision
- The presence of work disability at the nexus of impairment and disability
- The procedures for employment agency new hires
- The work evaluator's product that does not address reasonable accommodation
- The work evaluator's workability decision affected by the presence of signs of low effort
- The work product that discusses low effort but does not discuss potential causes
- When coverage under ADA Title I is triggered
- Why using a large patient outcome database is a major error under Title I
- Your defenses to a charge of employment discrimination

Workshop participants are encouraged to bring a Functional Capacity Evaluation report that includes a statement about low levels of physical effort (or malingering) to compare to today's material.

### **ADA Title I Scenarios**

One of the touchstone concepts in ADA Title I is the “qualified individual.” In fact, the entire concept of Title I is to protect the qualified individual who may or may not have a disability from adverse employment decision. This course uses a combination of real-life Title I scenarios to bring to life the concepts and skills we teach in the course. The full scenarios are available on our website at [goo.gl/ANqwCa](http://goo.gl/ANqwCa). Click on the “ADA Title 1 Scenarios” tab to read more about these case studies:

- Qualified Individual #1: Long-Term Propane Truck Driver
- Qualified Individual #2: Experienced Custodian
- Qualified Individual #3: Nurse, General Duty

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## Identifying Malingerers and Mitigating Damages in Workers' Compensation under ADA Title I

Tuesday, June 19<sup>th</sup>

9:00 a.m. to 12:15 p.m.

Contact hours: 3.0

Tuition: \$195

Hosted By: Industrial Rehabilitation & Evaluation Services, LLC, Denver, Colorado

This course was originally designed for legal counsel and physicians who practice in Colorado's workers' compensation or employment testing arenas. In response to demand, the course is open to all interested parties including worker evaluators and rehabilitation counselors.

### Legal Counsel

Legal counsel, when deciding to pursue (or defend) a charge of discrimination under the medical examination section of ADA Title I (42 U.S. Code § 12112 (d)), must navigate a world of new clinical jargon and often unfamiliar work evaluation practices. This program ties clinical jargon and evaluation practices to the matching legal principles in the law.

### Occupational Health and Primary Care Physicians

Occupational health and primary care physicians, whose practices include workers' compensation, hiring, or general disability employability decisions, are at risk of exposure to liability under ADA Title I. Legacy issues such as identifying malingerers may distract physicians from more immediate legal issues. We guarantee that this 1/2 day of training will result in important changes to the way you think about your occupational medicine and workers' compensation practices.

### The Course Content

#### ***Gucker v U.S. Steel***

This intense 3-hour session features a practical analysis of two ADA Title 1 medical examinations. The first, *Gucker v U.S. Steel* begins on the day a long-time employee returns to work after unremarkable gallbladder surgery. A new regional manager's belief about medical restrictions triggers a federal court lawsuit. The local FCE service provider, a medical doctor and a doctor of physical therapy compound the company's legal exposure by performing a non-compliant functional capacity evaluation. This ADA Title I actions result in an initial \$5.5 million settlement. Colorado practitioners will recognize similarities between *Gucker* and regional medical examination practices.

### Iso-Kinetic Evaluation Equipment, Catching Malingerers, Reasonable Accommodation

Our second example looks at the use of an iso-kinetic testing apparatus to perform a stay-at-work functional capacity evaluation under ADA Title I. This evaluation is a cautionary tale about trading technology for the skills of well-trained human work evaluator.

- The practice of focusing on identifying “malingerers.”
- The failure of workability examinations performed without knowledge of the demands of the job.
- The failure of worker evaluators and physicians to include reasonable accommodation when answering the ability to work question.
- The reliance on high-tech equipment to make human decisions.

Fortunately, this potential charge of employment discrimination never saw the litigated light of day as the employer wisely withdrew the functional capacity evaluation after a brief review by an expert in ADA Title I medical examination.

### **Areas of Risk and Exposure**

The fast-moving nature of this course will not get in the way of discussing important issues. Participants in the training are encouraged to select from this list of topics for review as time allows:

- A work product which states the individual cannot perform the physical demands of the essential functions because of inconsistent effort.
- A work product which uses physical demands defined in terms of Occasional, Frequent, or Constant
- Defense to a charge of employment discrimination
- Employment agency exposure
- Endurance requirement not connected to disability and physical demand
- Physical or cognitive job demands not linked to an essential function
- Essential function versus physical or cognitive work demand
- Essential functions incorrectly defined as including lifting, carrying, pushing, pulling
- Functional capacity evaluation systems which attempt to “catch” inconsistent effort
- Job description indicating a lifting requirement higher than NIOSH limits
- Medical examinations and inquiries as defined in ADA Title 1
- Interchanging important terms such as impairment and disability
- ADA Title 1 workability decision without reference to a job description
- Post-Offer, Pre-Placement Testing (PPT or POET)
- Qualification standards as the foundation for the workability decision
- Qualified individual as the key phrase in ADA Title 1
- Reliance on a large patient outcome database rather than the demands of the specific job
- Return-to-work medical examination (functional capacity evaluation) – STD
- Return-to-work medical examination (functional capacity evaluation) – Workers’

## Compensation

- Stay-at-work medical examination (functional capacity evaluation) – ADA Title 1
- The cost of ignoring an in-place reasonable accommodation
- The physician’s workability decision affected by the presence of signs of low effort
- The physician’s workability decision that does not address reasonable accommodation
- The work product that discusses low effort but does not discuss potential causes
- Impairment versus work disability as the barrier to the “qualified individual” status

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## Workshop Location and Host Information

### Cognitive and Physical Essential Function Job Analysis

**Friday**

June 15, 2018

9:00 a.m. to 4:30 p.m.

For more information on this event, enter this link in your browser [goo.gl/iywW3J](https://goo.gl/iywW3J)

Hosted by and held at Industrial Rehabilitation & Evaluation Services, LLC  
770 W. Hampden Avenue #300  
Englewood, Colorado Telephone 303-618-5111

### Fix Your FCE and POET Practice: Reduce Your ADA Title 1 Litigation Profile

**Saturday**

June 16m 2018

9:00 a.m. to 4:30 p.m.

For more information on this event, enter this link in your browser [goo.gl/ANqwCa](https://goo.gl/ANqwCa)

Hosted by and held at Industrial Rehabilitation & Evaluation Services, LLC  
770 W. Hampden Avenue #300  
Englewood, Colorado Telephone 303-618-5111

### The Reasonable Accommodation Workshop for Human Resource and Workers' Comp Case Management Professionals

**Monday**

June 18, 2018

9:00 a.m. to 4:30 p.m.

For more information on this event, enter this link in your browser [goo.gl/qL4XPM](https://goo.gl/qL4XPM)

Hosted by Midtown Occupational Health Services  
2490 West 26<sup>th</sup> Avenue  
Building A, Suite 300  
Denver, Colorado  
303-831-9393



Midtown Occupational  
Health Services

### Identifying Malingerers and Mitigating Damages in Workers' Compensation under ADA Title I

**Tuesday**

Tuesday, June 19<sup>th</sup>

9:00 a.m. to 12:15 p.m.

For more information on this event, enter this link in your browser [goo.gl/i4cCq1](https://goo.gl/i4cCq1)

Hosted by and held at Industrial Rehabilitation & Evaluation Services, LLC  
770 W. Hampden Avenue #300  
Englewood, Colorado Telephone 303-618-5111

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## Course Registration

- To register via the internet, visit our website at <https://reasonableaccommodation.com> or use this short link to our home page [goo.gl/egtcCj](https://goo.gl/egtcCj)
- To register by phone, call **603-358-6633**. We will ask for the information below. To register by mail, complete this form and mail it to:

Reasonable Accommodation, LLC  
165 Martell Court  
Keene, NH 03431  
TIN 47-4705706  
[info@mathesonra.com](mailto:info@mathesonra.com)

First Name \_\_\_\_\_ Last Name \_\_\_\_\_

Company Name \_\_\_\_\_

Address \_\_\_\_\_ Circle Company or Home

Town/City \_\_\_\_\_ State/Prov \_\_\_ Zip/Postal Code \_\_\_\_\_

Phone \_\_\_\_\_ Email: \_\_\_\_\_

Name of Course: \_\_\_\_\_ Date: \_\_\_\_\_

Name of Course: \_\_\_\_\_ Date: \_\_\_\_\_

**IF NEED BE, WE WILL CONTACT YOU BY PHONE FOR YOUR CREDIT CARD INFORMATION.**