

Advanced Functional Capacity Evaluation and Post-Offer Testing Best Practices Under Title I of the Americans with Disabilities Act and the Rehabilitation Act of 1973

A Matheson Essentials Workshop

Seattle – September 14 and 15, 2018

Omaha – October 12 and 13, 2018

Las Vegas - February 2019



Matheson Essentials

Advancing the practice of employment testing under Title I of the Americans with Disabilities Act and the Rehabilitation Act of 1973



Table of Contents

| | |
|--|---|
| The Course | 3 |
| Curriculum Progression..... | 3 |
| How Workers' Compensation, Stay-at-Work, and POET Testing is Judged | 3 |
| Your Work is Now a Medical Examination..... | 3 |
| The Importance of Selecting a Test Protocol Based on the Phase of Employment | 3 |
| Post-Offer Employment Testing Update..... | 3 |
| Functional Capacity Evaluation Update | 4 |
| Cognitive Essential Function Job Analysis..... | 4 |
| Expanding Your Practice | 4 |
| The Instructor | 5 |
| Course Registration..... | 6 |
| About Us | 7 |

The Course

The demand for Post-Offer Employment Testing continues to grow. The increase in requests for Cognitive Essential Function Job Analysis mirrors the expansion of Cognitive Functional Capacity Evaluation. High-level work evaluators have updated their clinical practices to keep pace with evolving best practices guidelines. The focus of this two-day training program is you: we intend to deliver the knowledge you did not receive in your original FCE or POET training. How do we know you need this knowledge and these skills: the foundation of employment testing has changed. Occupational therapists, physical therapists, and physicians who were not aware of current best practice have endured federal work discrimination investigations.

In some cases, investigations have resulted in charges. And charges have resulted in settlements running to \$5, 500,000. Their recent experience is a signal that now is the time to update your knowledge and skills.

Curriculum Progression

The course curriculum includes nine general areas of practice. The curriculum begins with an introduction to the federal guidelines for testing before discussing changes to pre-test clinical policies and procedures. After laying this foundation for practice, the course examines each of the changed aspects of the services you now offer. We then explore the role of physical and cognitive essential function job analysis on valid employment test practices. This section of the training will include a hands-on practicum of a cognitive essential function job analysis tool. This course focuses on increasing your clinical knowledge and set of skills. We will conclude with a discussion of how to begin offering selected services to your local community.

How Workers' Compensation, Stay-at-Work, and POET Testing is Judged

- Federal Rule of Evidence

- Your 'Opinion' Counts in Federal Court

Your Work is Now a Medical Examination

- Americans with Disabilities Act Title I (Employment)

- Title VII of the 1973 Rehabilitation Act

- Uniform Guidelines for Employee Selection Procedures

- Federal Court Guidelines for Testing

- Where State Guidelines Trump Federal Guidelines

The Importance of Selecting a Test Protocol Based on the Phase of Employment

- The Four Phases - Only One Protocol is Correct

Post-Offer Employment Testing Update

Post-Offer Disparate Impact Class Action Charges

The 'Safe for Testing' Protocol versus the 'Physical Abilities' Protocol

When to Deny Testing; When to Deny Employment

Functional Capacity Evaluation Update

Return-to-Work Functional Capacity Evaluation

Stay-at-Work Functional Capacity Evaluation

Physical Effort Analysis under the Law

Return to Work After Low Physical Effort During Testing

The 'Safe for Testing' Protocol versus the 'Physical Abilities' Protocol

When to Deny Testing; When to Deny Employment

How to Avoid the Risks of Reporting Self-Limiting Behavior

Using Iso Machines in FCE or POET

Responding to an Offensive Work Product Critique

Cognitive Essential Function Job Analysis

The Cognitive Essential Function Job Survey™

Physical Essential Function Job Analysis Update

Expanding Your Practice

Work Capacity Evaluation for Reasonable Accommodation

Functional Capacity Evaluation Direct Threat Analysis

ERISA Employment Testing

Medical vs. Non-Medical Fit-for-Duty

The Instructor

Roy Matheson, ADAC has a 30-year background in occupational rehabilitation and ergonomic evaluation training. His initial exposure to employment testing began at the Employment and Rehabilitation Institute of California (ERIC) in 1983. The rehabilitation and work evaluation philosophies at the heart of the medical examination section of Title I of the Americans with Disabilities Act originated at ERIC under its founder, Dr. Leonard Matheson.

Work tolerance screening, work capacity evaluation (now known as 'functional capacity evaluation'), and work hardening introduced to the world by Dr. Matheson at the ERIC clinic in the early '80's. Roy Matheson's contribution to the growth of employment testing under the Matheson philosophy spanned the spectrum of development of training programs, software, and equipment used by therapists around the globe.

In 1988, Roy Matheson formed 'Roy Matheson and Associates, Inc' (RMA). In 2014, after twenty-six years of hands-on work and constant travel, Roy and Karen Matheson sold the training and software assets of RMA to a trusted group of colleagues. The renamed company, Matheson Education and Training Solutions, LLC (METS) carries the Matheson banner forward today.

A significant factor in the history of RMA/METS was the 2009 publication of *Indergard v Georgia-Pacific* by the United States Court of Appeals for the Ninth Circuit. *Indergard* became a pivotal case for those who practice employment testing. In the ensuing years, Roy transitioned to what is now Reasonable Accommodation, LLC, and <https://reasonableaccommodation.com> and Matheson Essentials. His practice focuses on advising and training employers, government agencies, therapists, and legal counsel in the mechanics of medical examination and reasonable accommodation under ADA Title I, FEHA, and Title VII of the 1973 Rehabilitation Act.

Roy has presented as a keynote speaker, panelist, trainer, or workshop instructor at more than 400 public and private educational events, management training programs, and national conferences. His audience includes managers and staff of federal, state, county, and municipal government entities as well as the full spectrum of corporate entities across the United States, Canada, and six other countries.

Roy sees himself as a trusted adviser in situations requiring clear, well-thought-out guidance in the contentious environment of employment and disability-related civil rights law.

Course Registration

- To register via the internet, visit our website at <https://reasonableaccommodation.com>
- 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

First Name _____ Last Name _____

Professional Degree in Initials Format _____

Company Name _____

Address _____

City _____ State/Prov _____ Zip/Postal Code _____

Phone _____ Email _____

Name of Course _____

City _____ Date _____

Enclose your check. If you prefer to pay by credit card, you may mail this registration form; we will call you for your credit card information once we receive the form.

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.