



# How COVID-19 Changed the World of Workers' Compensation and Disability Accommodation



**PARMA 2023 Conference**



# Your Sweet Speakers



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# The Sweet Topics

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Introduction



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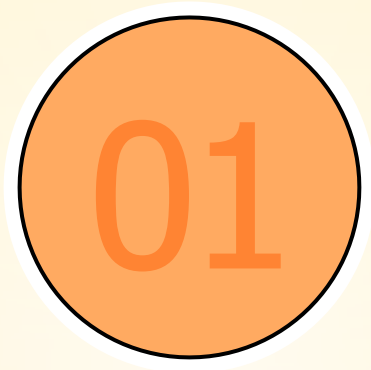
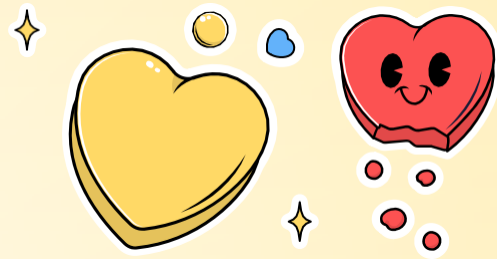
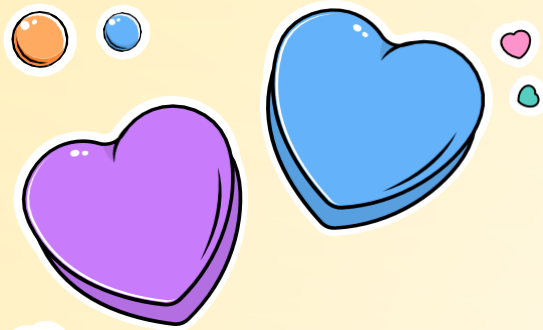
Workers Compensation



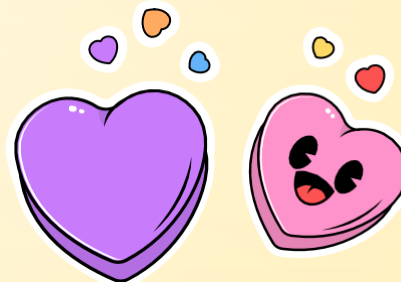
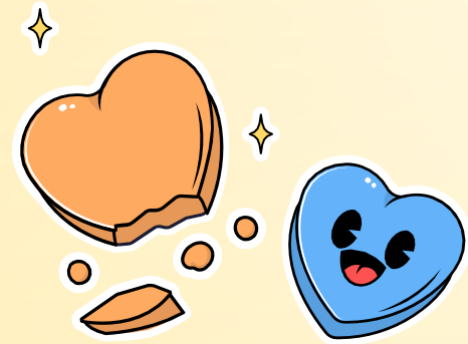
03

Disability Accommodation





# Introduction






# COVID-19 Isn't Going Anywhere



## Solve Long COVID-19 Initiative

April 2022 report documented the following:

- 22 million Americans (6.9% of population) with long COVID
- 7 million Americans (2.3% of population) with disabling long COVID
- Financial burden of \$386 million



## University of Minnesota Center for Infectious Disease and Policy

- Women are significantly more likely to experience long COVID



## Nature Medicine study

- 1/3 of older vaccinated veterans developed long COVID
- 



A collection of colorful, cartoonish hearts and stars in the top corners. On the left, a purple heart with a face and a yellow heart labeled 'Candy'. On the right, a red heart with a face and a pink heart with a face. There are also several small, multi-colored circles and starburst shapes scattered around.

# A few Long COVID anecdotes

A purple and pink striped lollipop on a wooden stick.



## 28 year old public works employee

- Despite employee's good health, he developed a collapsed lung
- Two years later, he continues to experience symptoms

A green starburst shape.A blue round candy with a snowflake design and purple wrapper.

## 50 year old police officer

- Developed COVID, which was complicated by other conditions
- Employee collected two years of benefits and has not returned

A green starburst shape.A red heart-shaped lollipop on a wooden stick.

## 58 year old maintenance worker

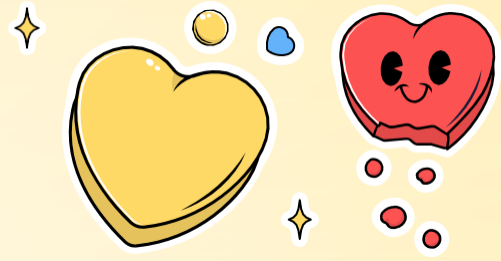
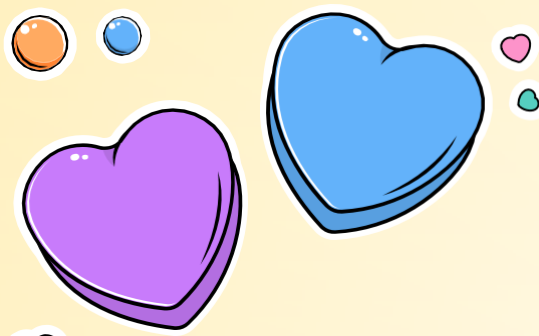
- Developed COVID as part of a major outbreak
- His son eventually developed COVID, as well

A collection of colorful, cartoonish hearts and stars in the bottom corners. On the left, a teal heart labeled 'Yumm'. On the right, a blue heart labeled 'Yum'. There are also several small, multi-colored circles and starburst shapes scattered around.

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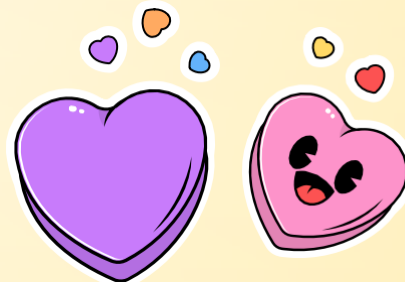
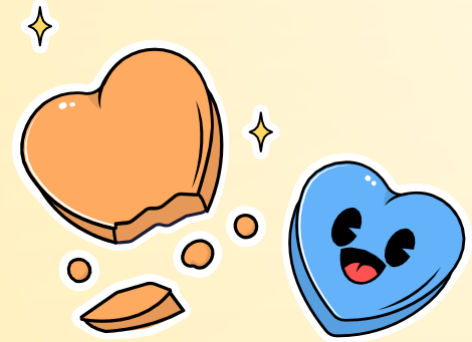
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# Workers' Compensation



03

# Disability Accommodation







# What We Learned About the Law

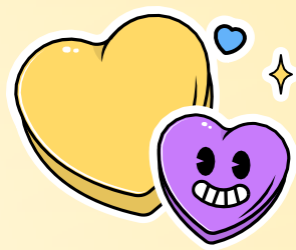


- Direct threat is a real defense and there are times when we should use it
  - Employee is considered a direct threat if employee presents an “imminent and substantial” risk of harm to health/ safety of employee or others that cannot be eliminated or reduced by reasonable accommodation
  - Must engage in an interactive process to show that there is no reasonable accommodation that would eliminate the threat
  - Direct threat analysis should be based on “reasonable medical judgment that relies on the most current medical knowledge and/ or the best available objective evidence.”





# What We Learned About the Law



- Medical examinations of employees can be permissible – but it is still a very high standard
  - Must be “job-related and consistent with business necessity”
  - Narrowly tailor any medical examination
  - Take steps to protect all confidential medical information and separate from the personnel file



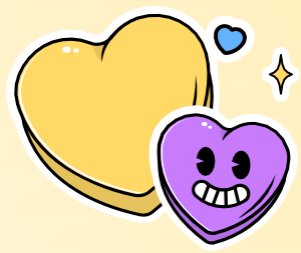
# What We Learned About the Law

- Sometimes COVID is a disability and sometimes it's not

- As a viral condition, COVID can qualify as a disability that requires reasonable accommodation in the workplace
- Depends on whether the employee's case of COVID limits a major life activity



# What We Learned About Logistics



- Awareness of existing accommodations
- Inability to meet in person
- Evaluating effectiveness when not in person
- Importance of evaluating effectiveness of accommodations based on current workplace



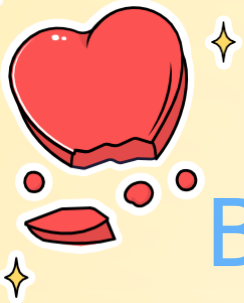


# What We Learned About Teleworking

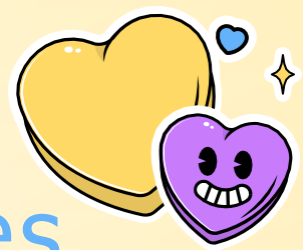


- Pre-COVID, teleworking was rarely offered as an accommodation
- Emergency teleworking highlighted how many jobs can be performed remotely
- Teleworking as a potential reasonable accommodation for a disability is analyzed differently than other requests for telework

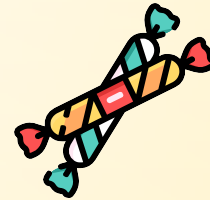




# What We Learned About Why Best Practices are Best Practices



- Every interactive process will be different
  - In person is always best, but video is a good back up
  - Fully engage every time; an individualized assessment is always required
  - Evaluate the current circumstances
  - It may take multiple meetings
  - You really don't need so many people at the meeting





# What We Learned About Why Best Practices are Best Practices

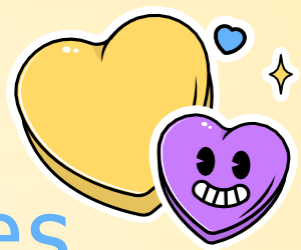


- Employer needs to consider and discuss all potential accommodations
  - Creative solutions come from talking it out
- Explain reasons for rejecting suggested accommodations
- Doctors give restrictions and suggestions; employers give reasonable accommodations





# What We Learned About Why Best Practices are Best Practices



- Grant accommodations in writing
- Build in periodic effectiveness evaluations with a specific point person
  - Monitors accommodations and is the point of contact for employee and supervisor to raise concerns
- Note when accommodations granted are temporary
  - Acceptable to have a test period to see how effective an accommodation will be



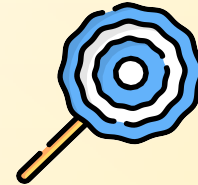
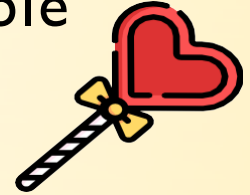




# What We Learned About Being Prepared

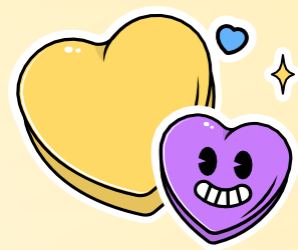


- Written policy on reasonable accommodations and the interactive process
- Consider a general policy on communicable diseases in the workplace
- Update your job descriptions
- Educate your supervisors



The background is a solid light yellow. It is decorated with various colorful heart shapes and stars. In the top left, there is a blue heart with a smiling face, surrounded by smaller pink, purple, and orange hearts and yellow stars. In the top right, there is a teal heart and an orange heart, both with smaller hearts and stars around them. In the bottom left, there is a large yellow heart and a red heart, with smaller hearts and stars. In the bottom right, there is an orange heart with a smiling face and a large purple heart, with smaller hearts and stars. A single red star is in the top center, and a single yellow star is in the bottom center.

Questions?  
Comments?



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