

Everything You Always Wanted to Know About ADA/FEHA Litigation*



*...but were afraid to ask...

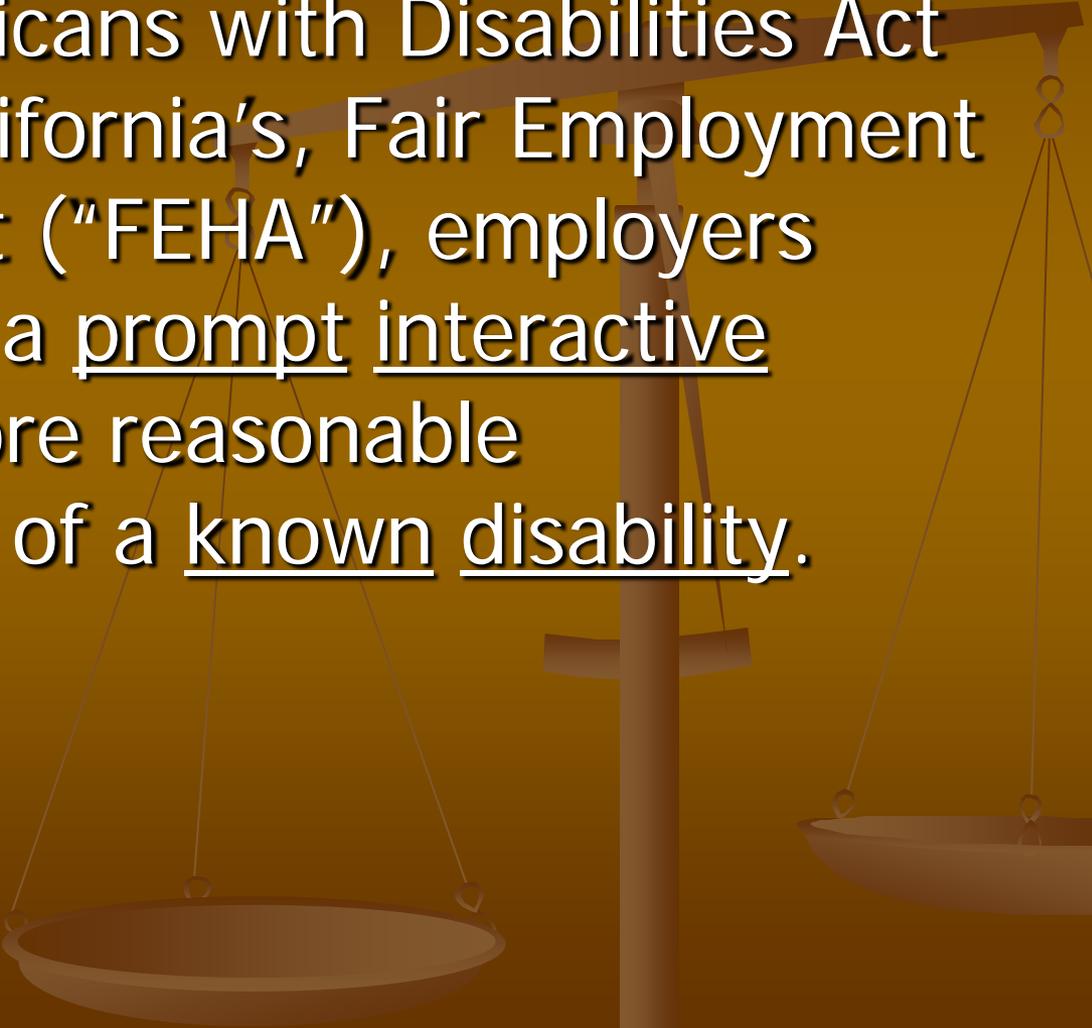
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An ADA Primer

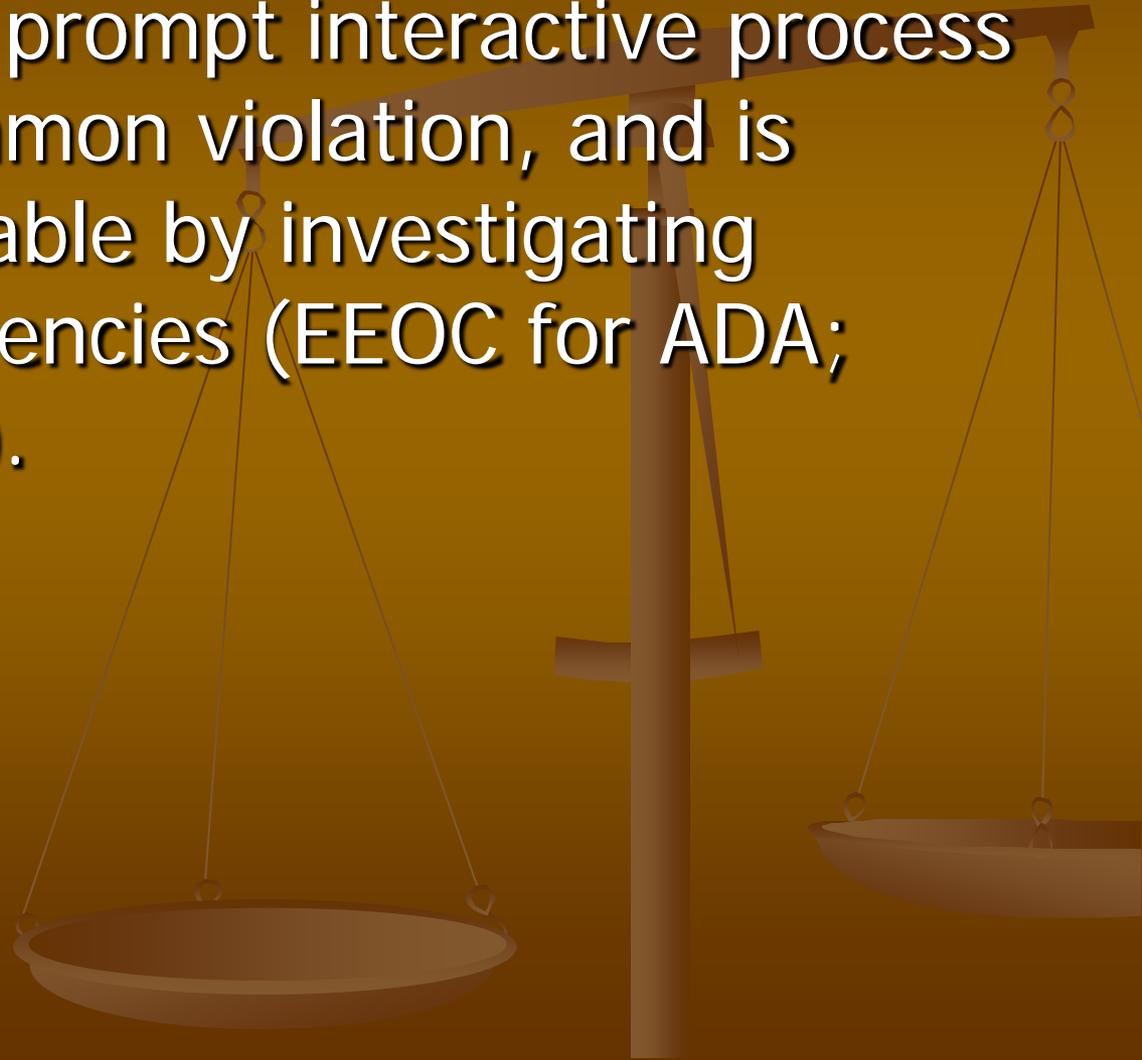


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- Under the Americans with Disabilities Act (“ADA”) and California’s, Fair Employment and Housing Act (“FEHA”), employers must engage in a prompt interactive process to explore reasonable accommodation of a known disability.

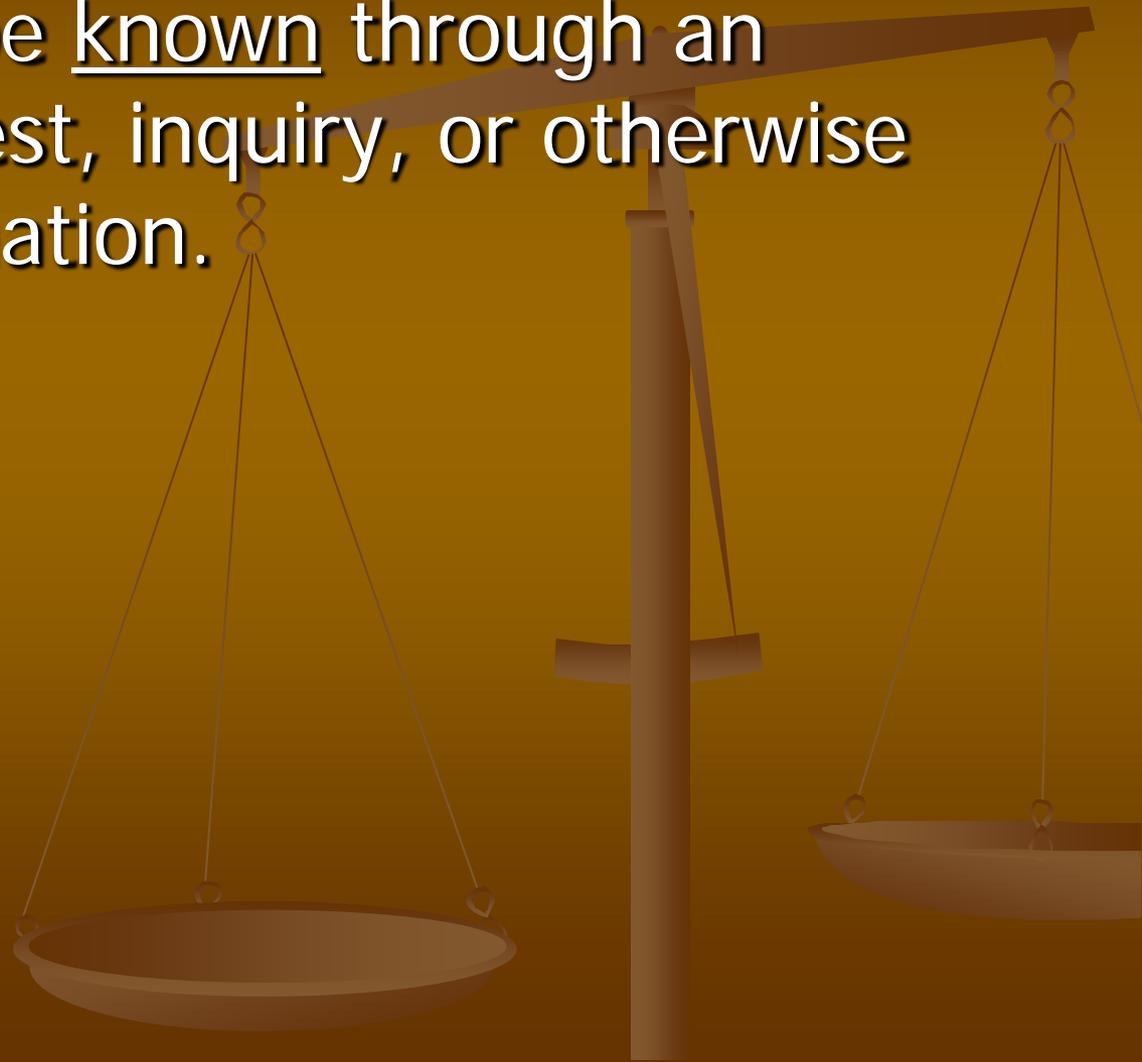
- This is an express requirement under FEHA.

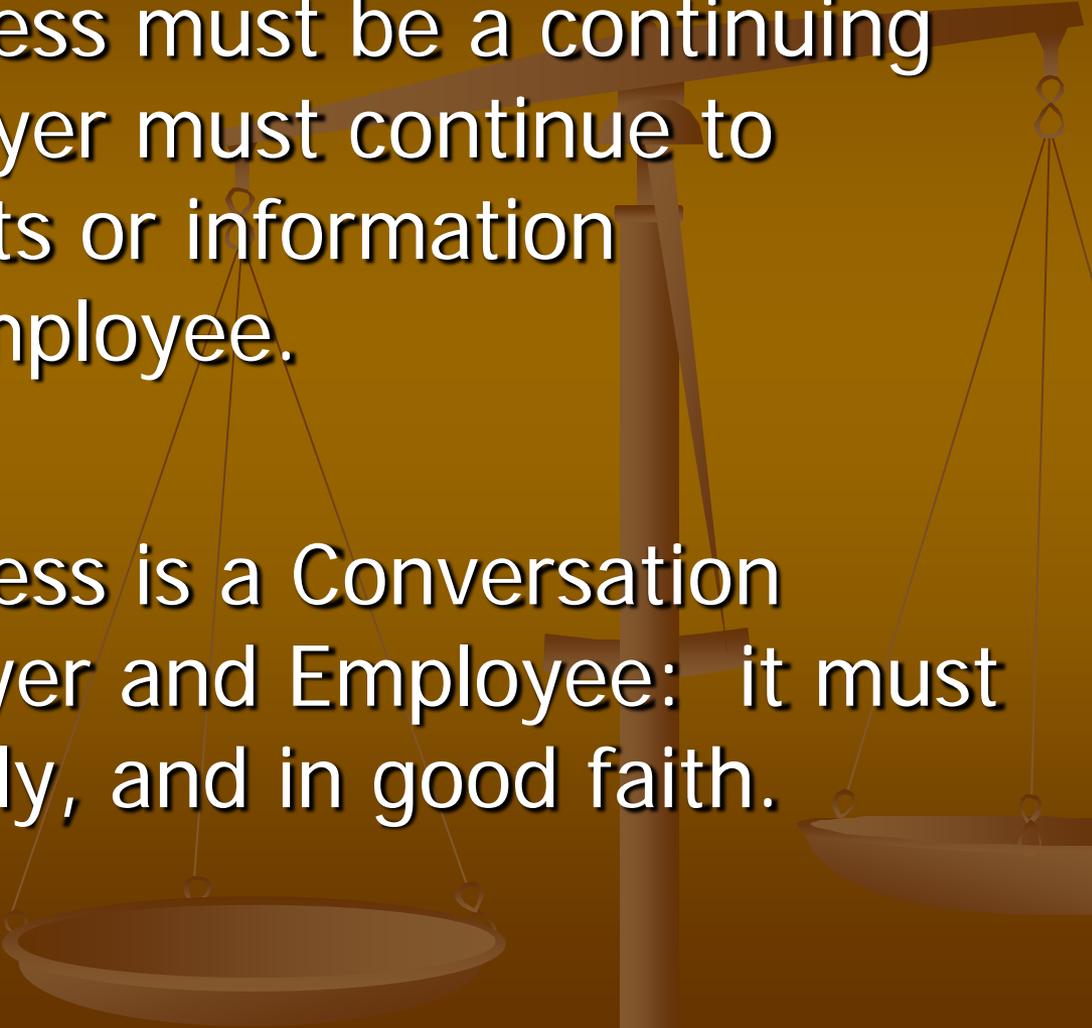


- Failure to show prompt interactive process is the most common violation, and is easily ascertainable by investigating enforcement agencies (EEOC for ADA; DFEH for FEHA).

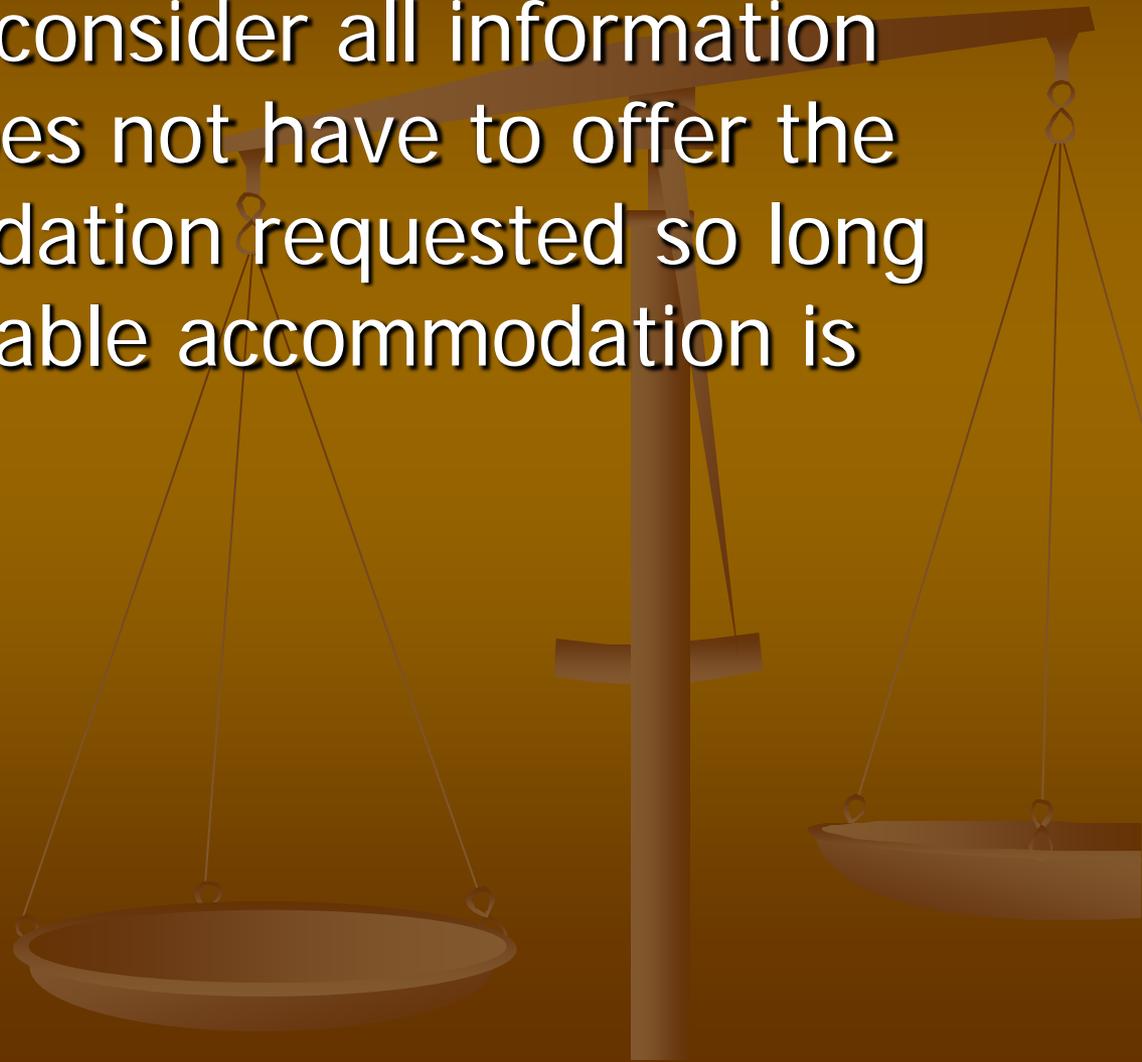


- Disability may be known through an employee request, inquiry, or otherwise available information.

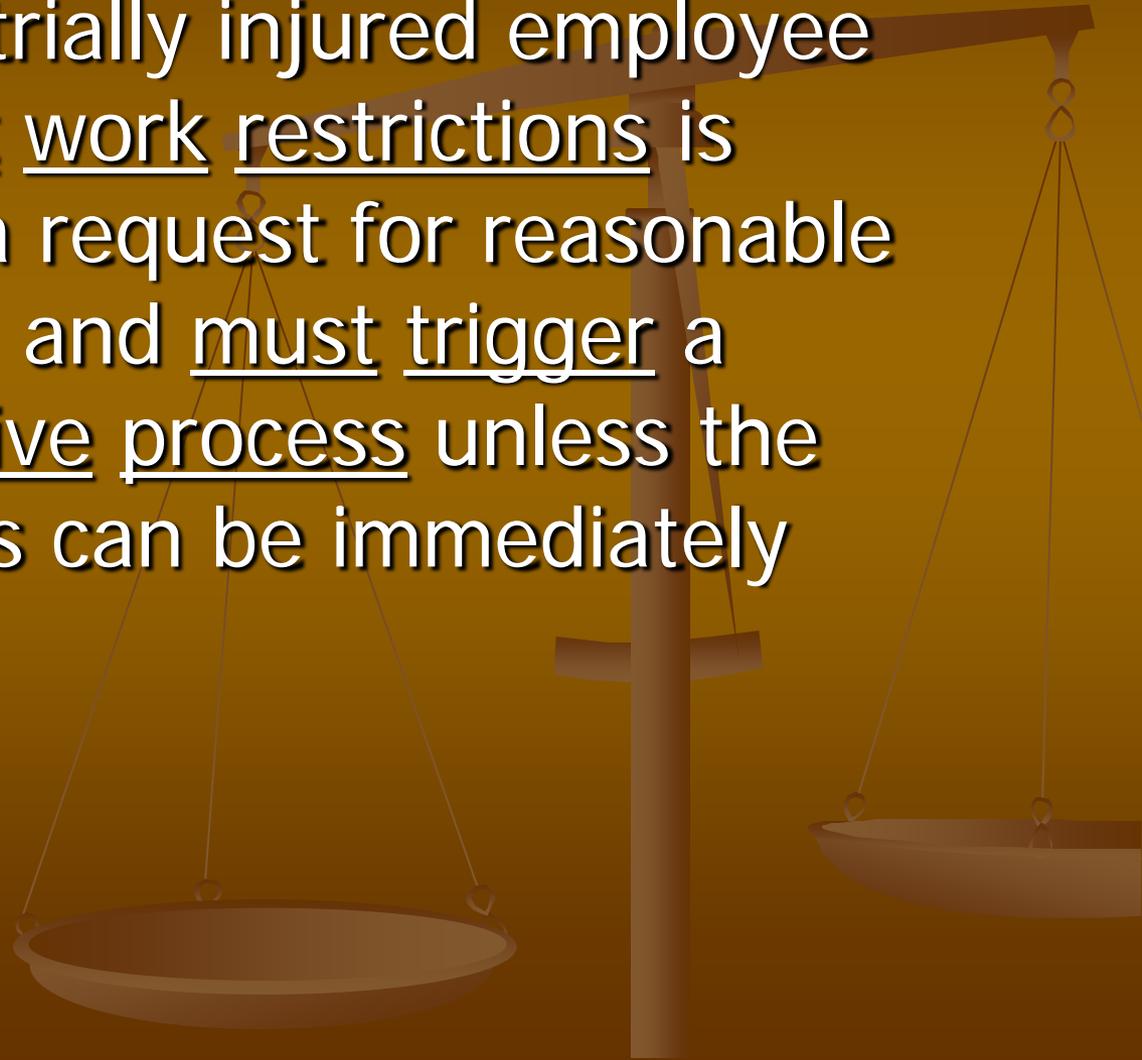


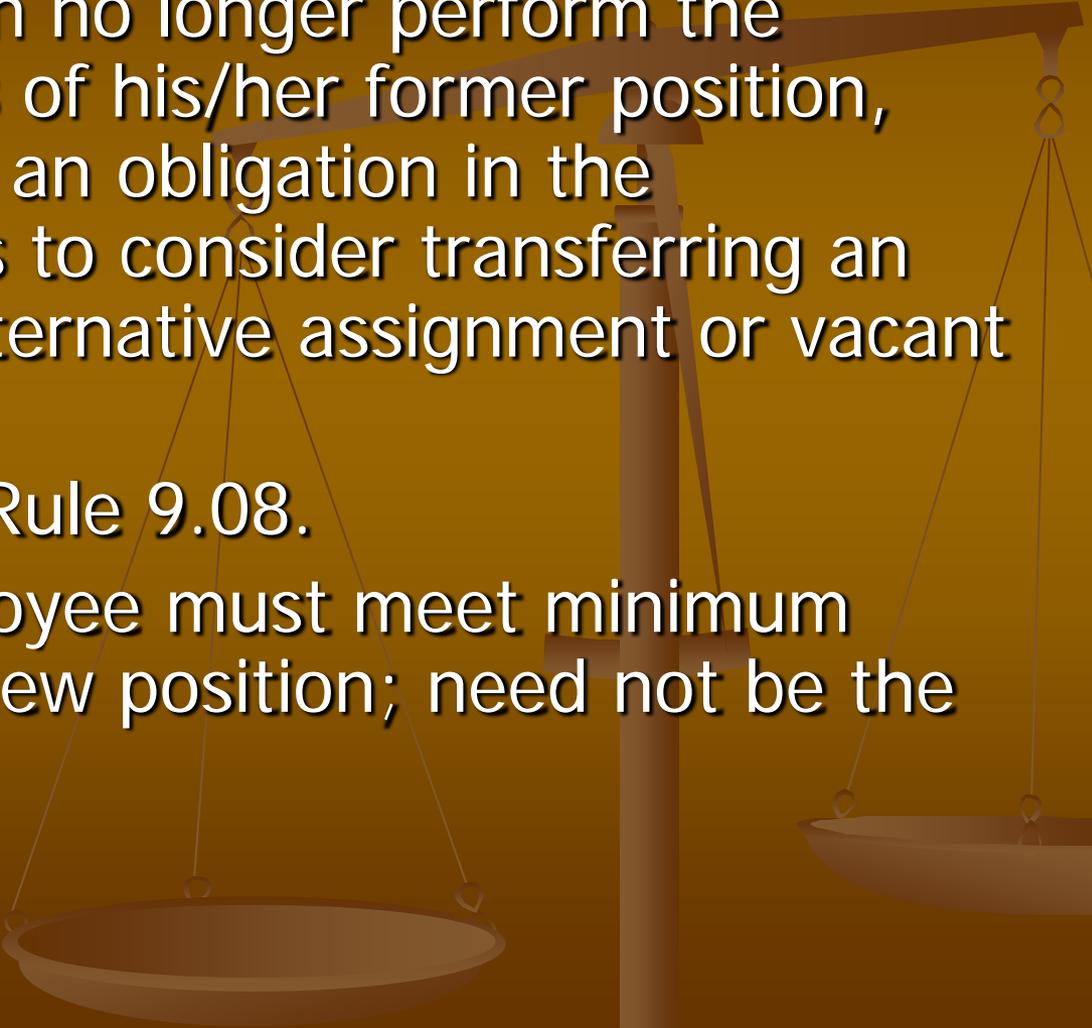
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- Interactive process must be a continuing process. Employer must continue to consider requests or information submitted by employee.
 - Interactive Process is a Conversation between Employer and Employee: it must be flexible, timely, and in good faith.

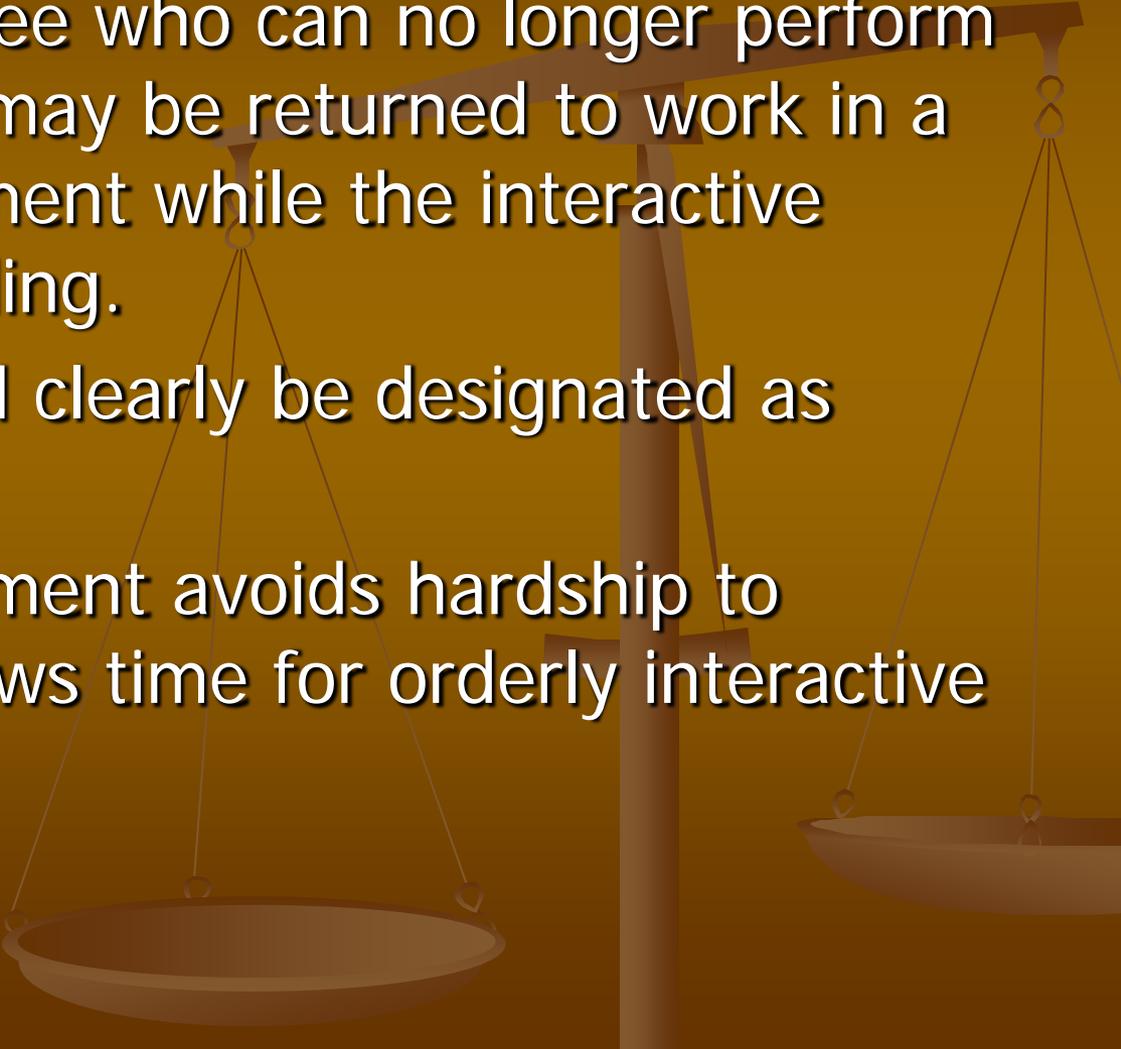
- Employer must consider all information provided but does not have to offer the exact accommodation requested so long as some reasonable accommodation is offered.



- Return of industrially injured employee with permanent work restrictions is tantamount to a request for reasonable accommodation and must trigger a prompt interactive process unless the work restrictions can be immediately accommodated.

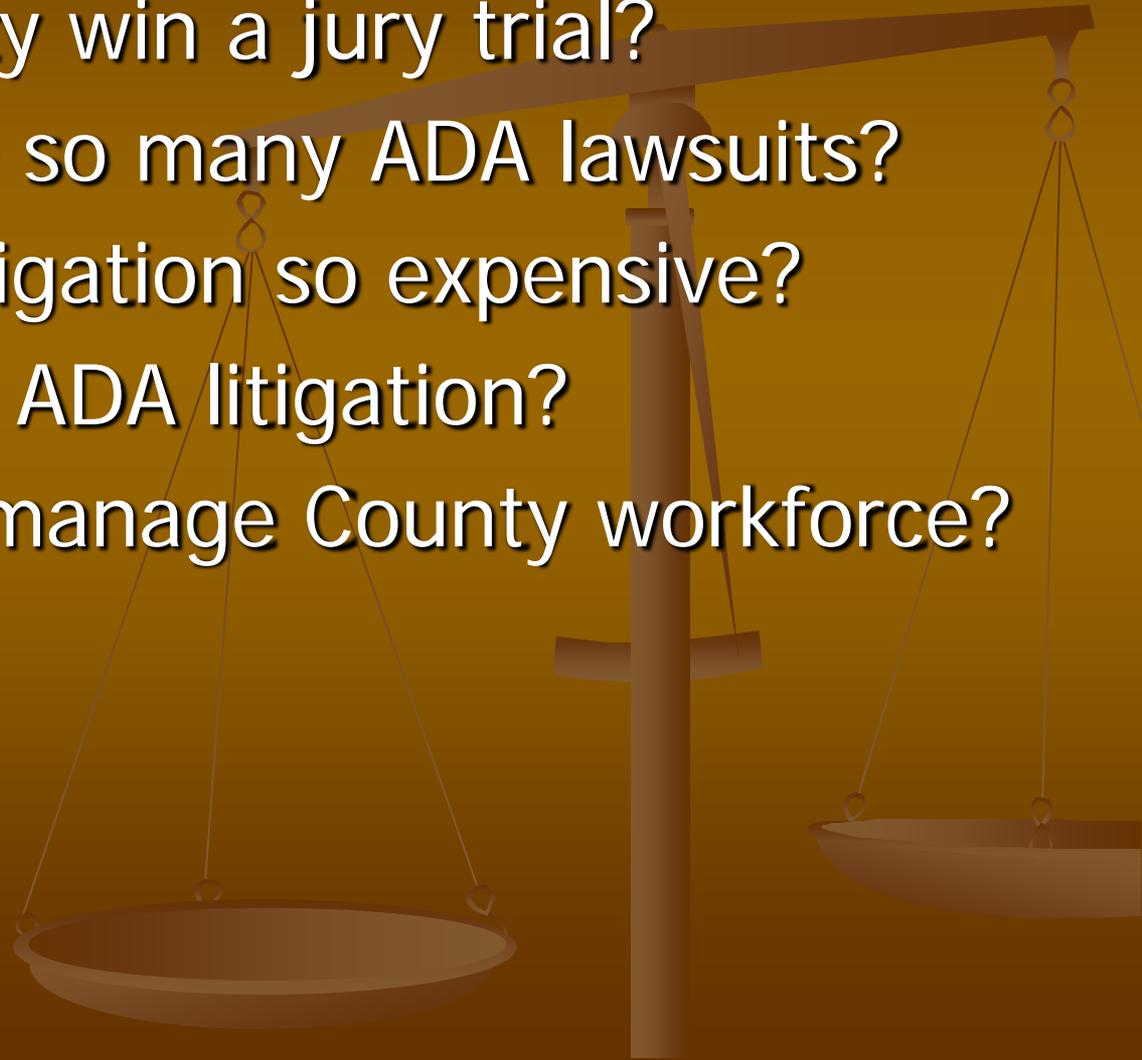


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- If an employee can no longer perform the essential functions of his/her former position, departments have an obligation in the interactive process to consider transferring an employee to an alternative assignment or vacant position.
 - See: Civil Service Rule 9.08.
 - For transfer, employee must meet minimum qualifications for new position; need not be the "most qualified."

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- A disabled employee who can no longer perform his or her old job may be returned to work in a temporary assignment while the interactive process is proceeding.
 - Assignment should clearly be designated as temporary.
 - Temporary assignment avoids hardship to employee and allows time for orderly interactive process.

5 Questions

1. Can the County win a jury trial?
2. Why are there so many ADA lawsuits?
3. Why is ADA litigation so expensive?
4. What's new in ADA litigation?
5. How can you manage County workforce?

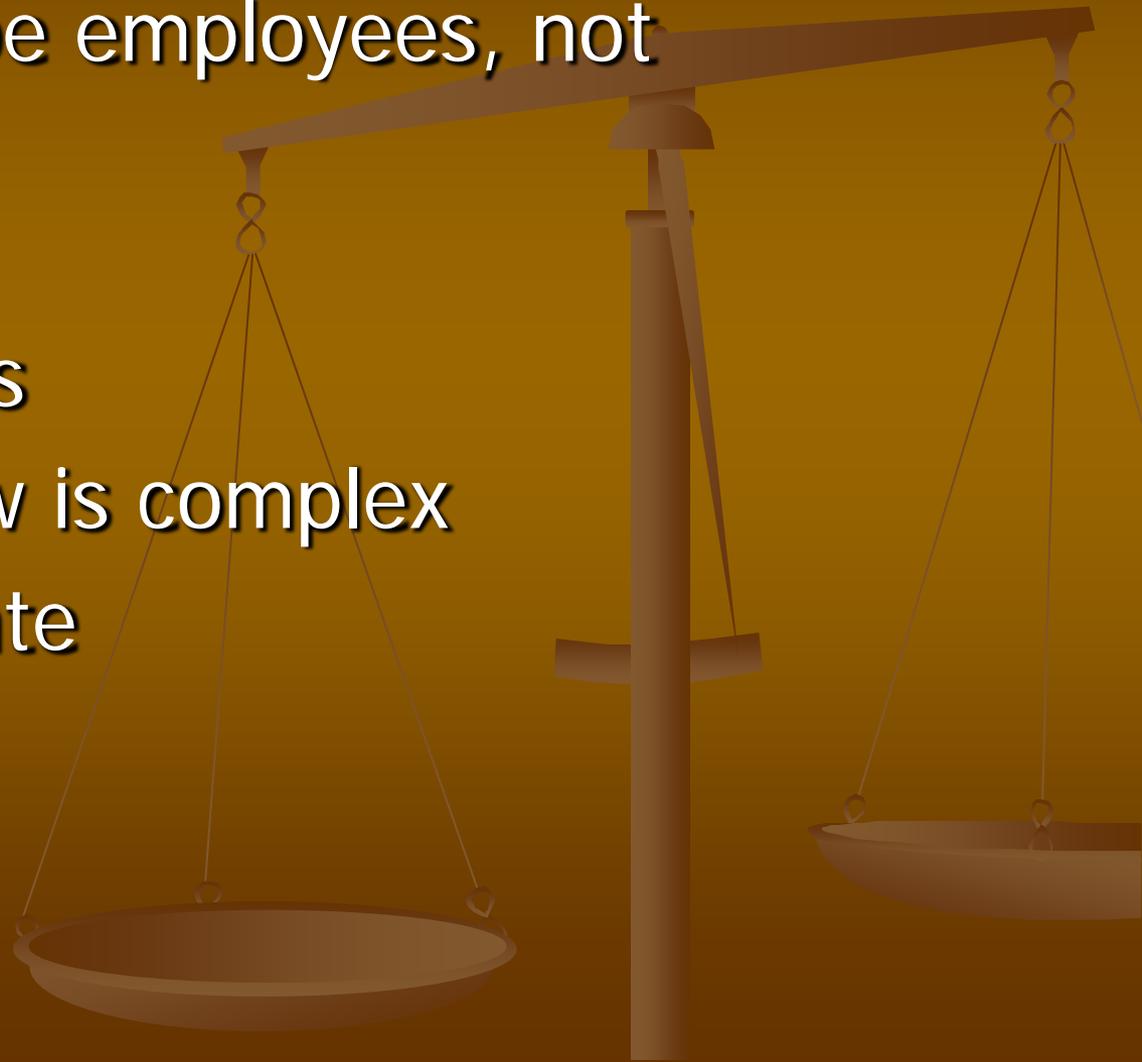




#18

Can the County win a jury trial?

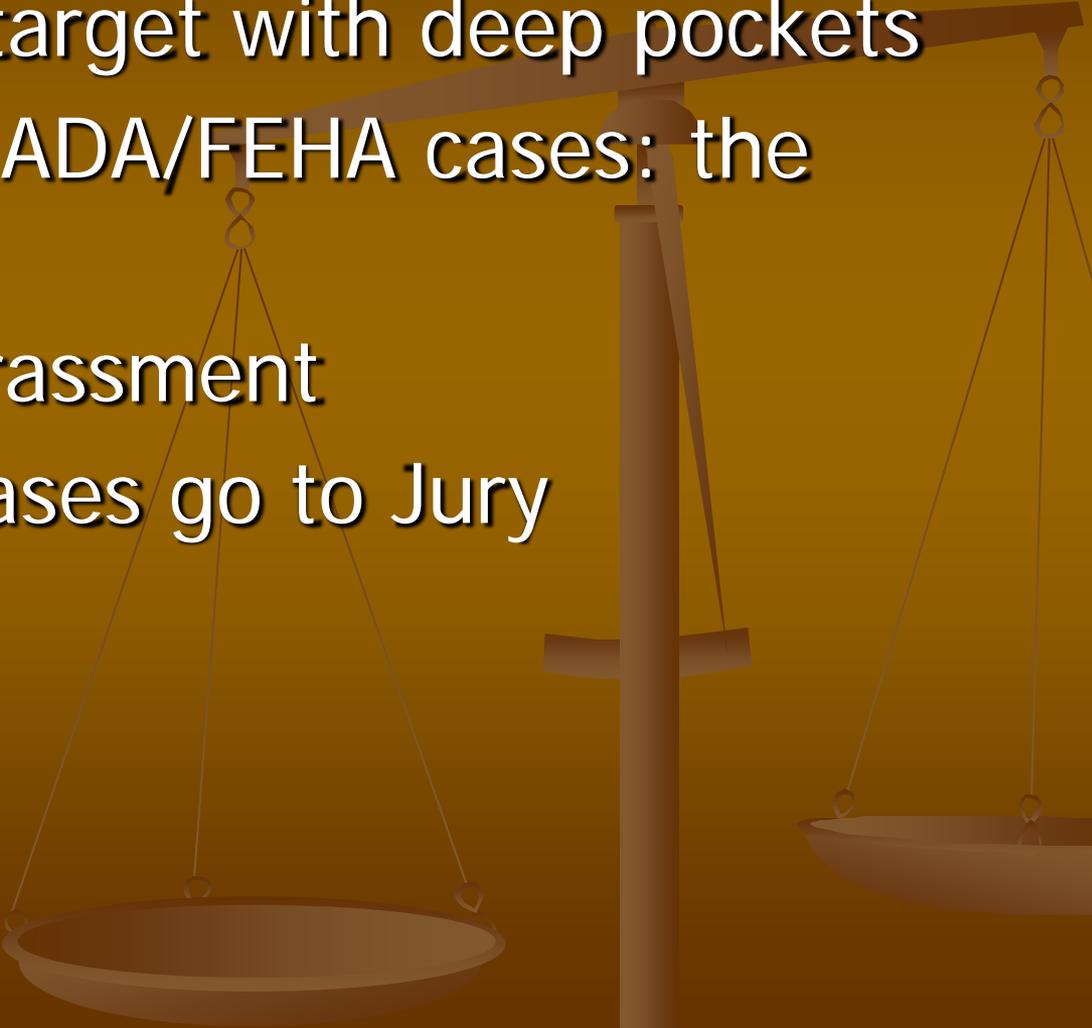
- Jurors tend to be employees, not employers
- Popular culture
- Negative images
- Employment law is complex
- Things juries hate





#2

Why are there so many ADA lawsuits?

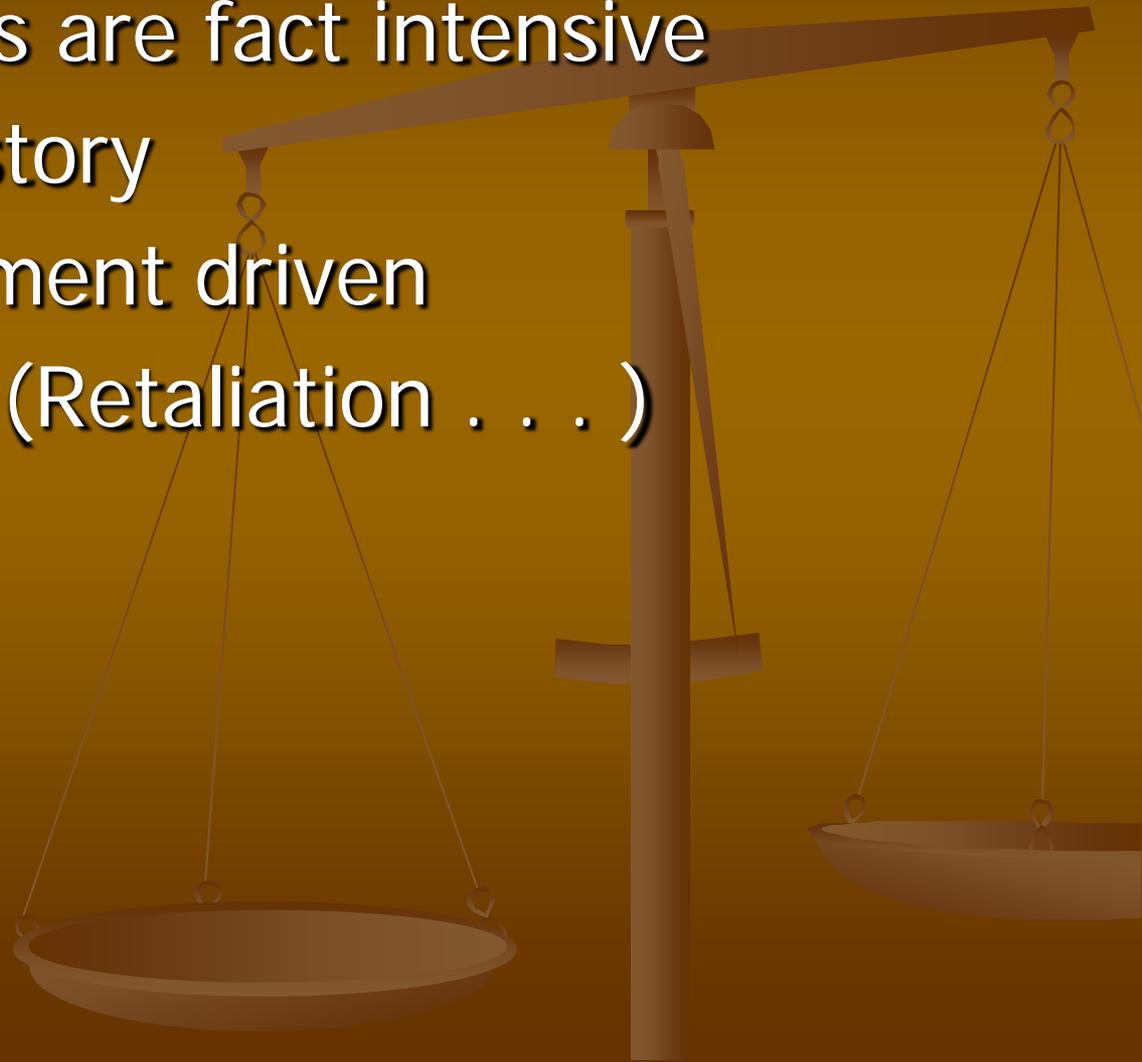
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- County is a big target with deep pockets
 - Huge growth in ADA/FEHA cases: the word is out!
 - Lawsuits for Harassment
 - Fact intensive cases go to Jury
 - Attorney's Fees



#3

Why is ADA/FEHA litigation so expensive?

- ADA/FEHA cases are fact intensive
- Employment history
- Cases are document driven
- Law is evolving (Retaliation)
- Attorney's Fees



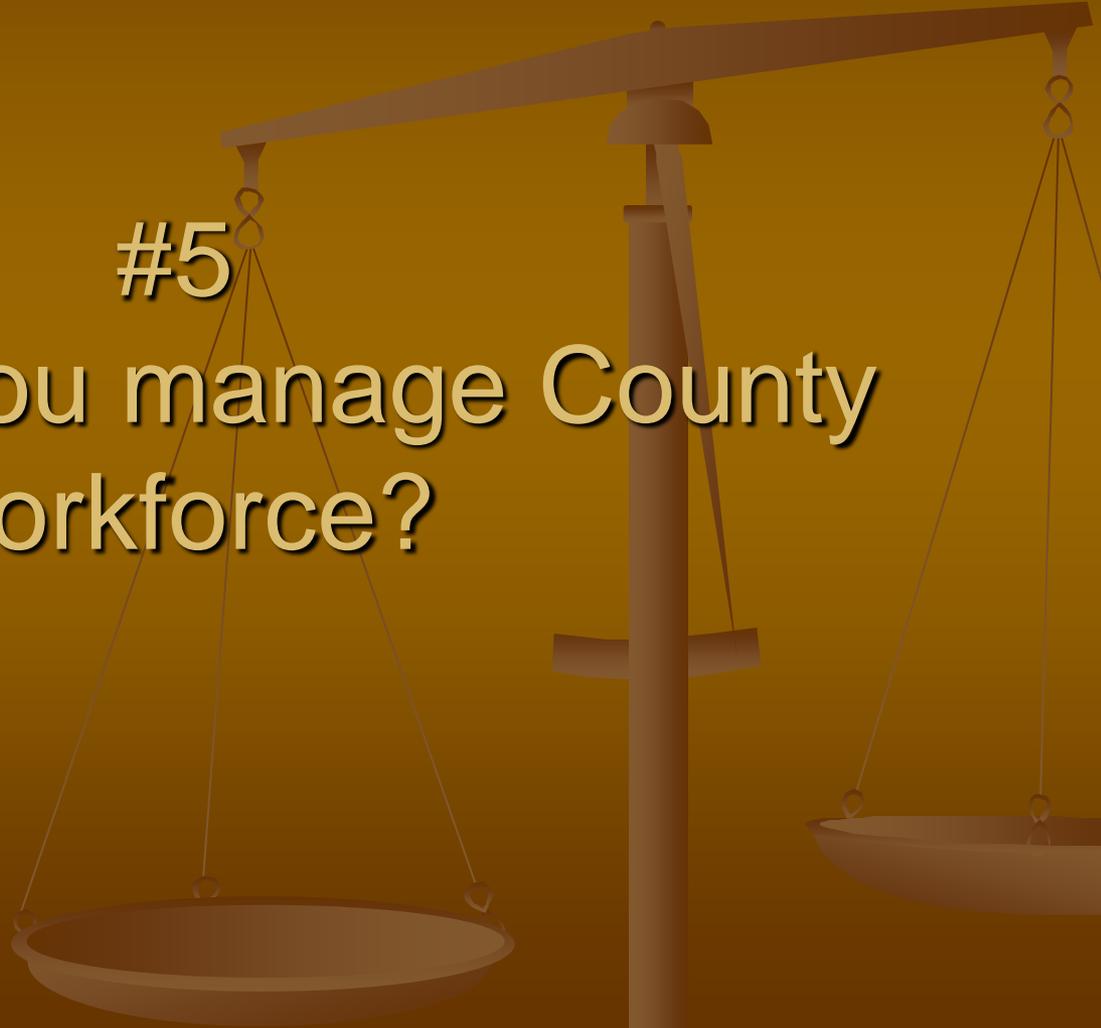


#4

What's New in ADA Litigation?

- E-discovery
- The Perils of E-mail





#5

How can you manage County
workforce?

- Document the Interactive Process
- Keep Them on the Job
- Tell a Story
- Be Prompt
- Be Nice
- Be Consistent
- Look for Early Resolution

