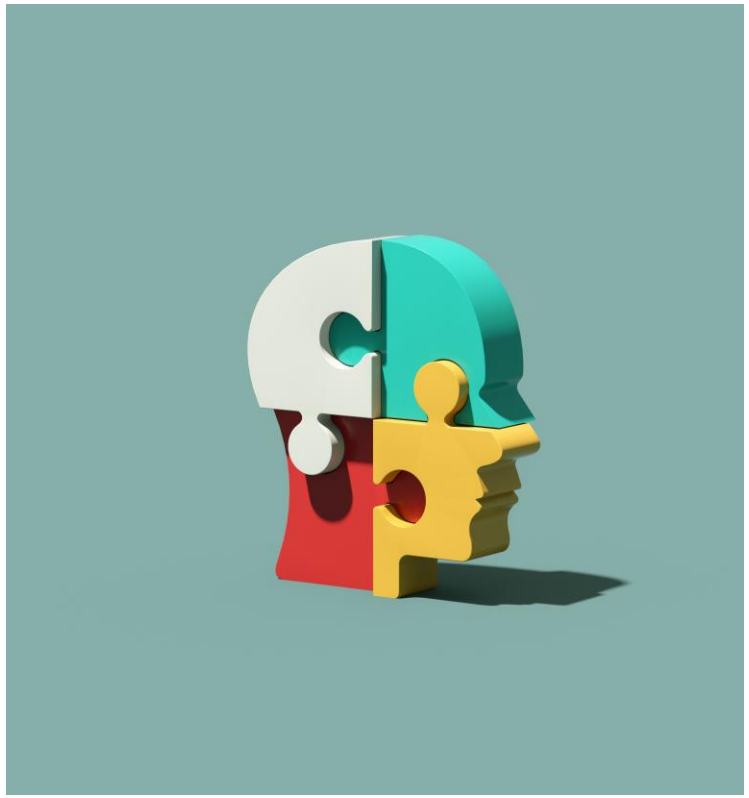
# Embracing the Neurodivergent Workforce

Julia S. Acken, Esq.
John Balitis, Esq.

## SHRM of Greater Tucson

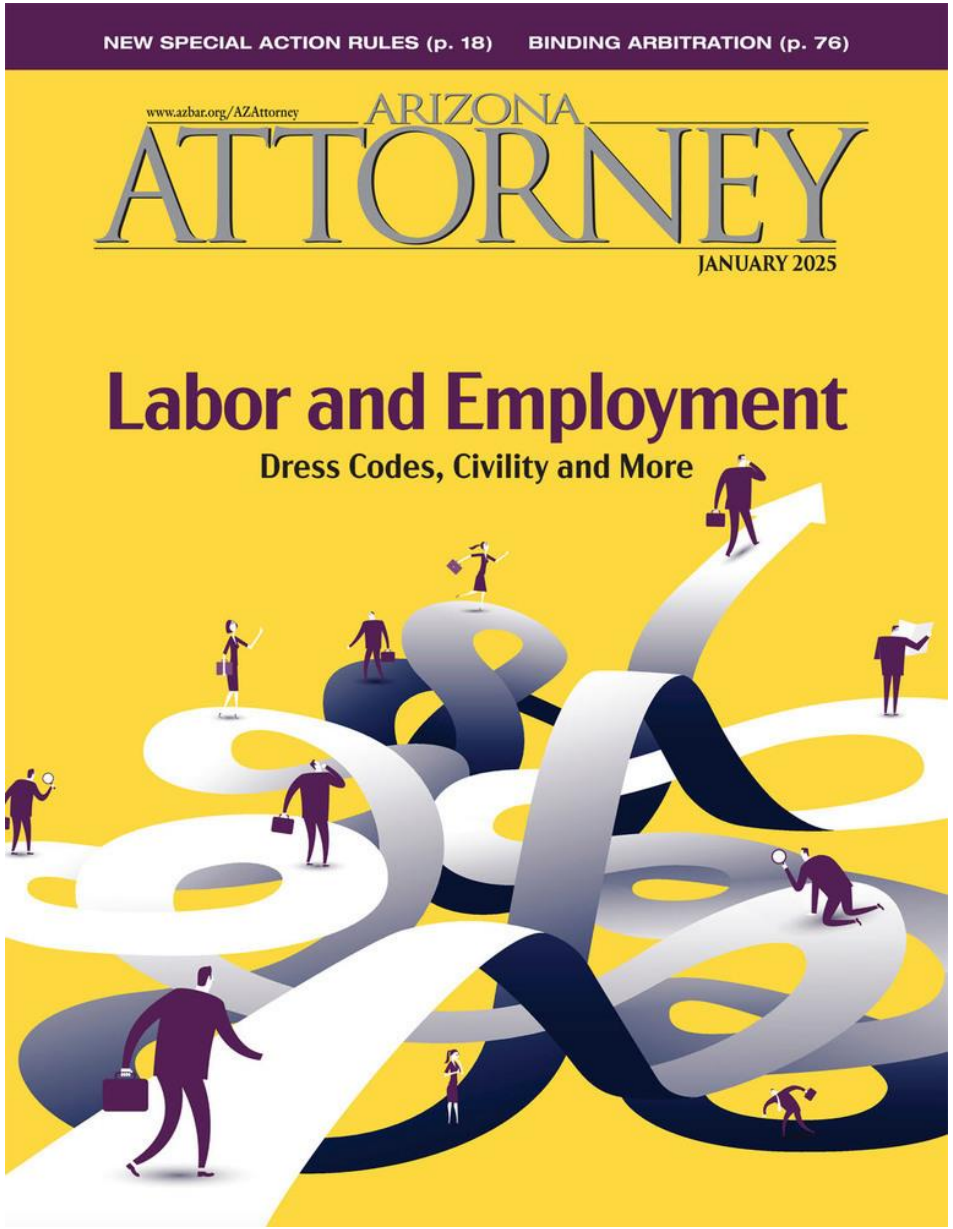
October 13, 2026

Aprio Legal



- Introduction
- Understanding Neurodiversity
  - Types of Disorders
  - Associated Traits
- The Legal Landscape
  - The Americans with Disabilities Act (“ADA”)
  - The Family and Medical Leave Act (“FMLA”)
  - The AZ Fair Wages and Healthy Families Act
- Creating an Inclusive Workplace
  - What is required?
  - What is available?


PRIVATE & CONFIDENTIAL
DO NOT DISTRIBUTE




FOCUS ON EMPLOYMENT LAW

# Embracing the Neurodivergent Workforce

BY JULIA ACKEN & JOHN BALITIS


PRIVATE & CONFIDENTIAL DO NOT DISTRIBUTE



# “NEURODIVERGENT”

“Neurodivergent is a nonmedical term that describes people whose brains develop or work differently for some reason. This means the person has different strengths and struggles from people whose brains develop or work more typically. While some people who are neurodivergent have medical conditions, it also happens to people where a medical condition or diagnosis hasn’t been identified.”

- Autism spectrum disorder (“ASD”)
- Attention-deficit hyperactivity disorder (“ADHD”)
- Down syndrome
- Dyslexia
- Sensory processing disorders
- Tourette syndrome [1]

Cleveland Clinic, Health Library/Symptoms/Neurodivergent, 3/03/2026 – last reviewed 6/02/2022, https://my.clevelandclinic.org/health/symptoms/23154-neurodivergent,



# “NEURODIVERGENT”

“Neurodivergent is a nonmedical term that describes people whose brains develop or work differently for some reason. This means the person has different strengths and struggles from people whose brains develop or work more typically. While some people who are neurodivergent have medical conditions, it also happens to people where a medical condition or diagnosis hasn’t been identified.”

- Autism spectrum disorder (“ASD”)
- Attention-deficit hyperactivity disorder (“ADHD”)
- Down syndrome
- Dyslexia
- Sensory processing disorders
- Tourette syndrome [1]

Cleveland Clinic, Health Library/Symptoms/Neurodivergent, 3/03/2026 – last reviewed 6/02/2022, https://my.clevelandclinic.org/health/symptoms/23154-neurodivergent,

# Autism Spectrum Disorder (“ASD”)

1. Traditional Method – Diagnosis using the  Diagnostic and Statistical Manual (DSM-IV)

2. Four biologically distinct subtypes

    - Divides autism based on appearance of core autism symptoms, developmental milestones, co-occurring conditions, and severity/moderation of each.
    - Each subtype shares biological and genetic factors

3. Monotropism

    - Developed by researchers with ASD – describes how autism is experienced by individuals with autism
    - “Single Focused Attention”

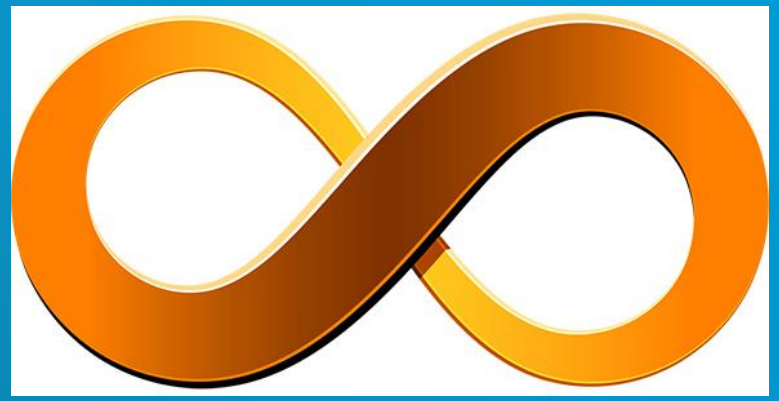


# ASD – What *might* this look like?

- Having difficulty forming social relationships with peers and coworkers;
- Rigid or seemingly obsessive behavior;
- Displaying facial expressions or using gestures that do not appear to match what is being said;
- Having unusual voice intonation when speaking;
- Difficulty understanding social cues, particularly during conversation, potentially leading to frequent interruptions or speaking on inappropriate or unrelated topics;
- Engaging in self-stimulatory or “stimming” behaviors, like flapping, pacing, repeating phrases, finger drumming, twirling;
- Maintaining rigid routines and struggling with sudden change;
- Hyper-sensitivity to loud noises or certain textures, potentially leading to emotional outbursts.

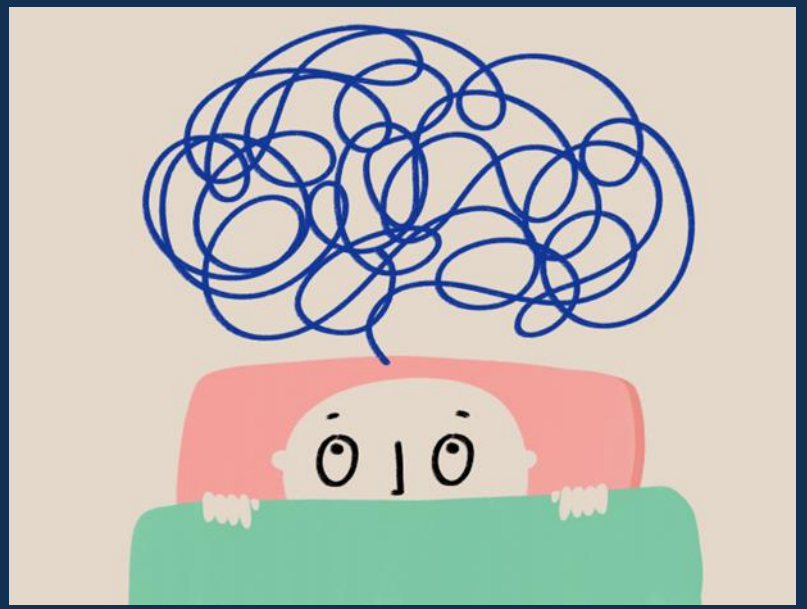


# Attention Deficit Hyperactivity Disorder ("ADHD")



This Photo by Unknown Author is licensed under CC BY-NC-ND

"…ADHD is a developmental disorder marked by persistent symptoms of inattention, hyperactivity, and impulsivity. Some people mostly have symptoms of inattention. Others mostly have symptoms of hyperactivity and impulsivity. Some people have both types of symptoms."*



U.S. Dept. of Health and Human Services, National Institute of Mental Health, 3/03/2026 (last revised 2024), https://www.nimh.nih.gov/health/publications/attention-deficit-hyperactivity-disorder-what-you-need-to-know#:~:text=Attention%2Ddeficit%2Fhyperactivity%20disorder%20(,symptoms%20of%20hyperactivity%20and%20impulsivity

# ADHD – What *might* this look like?

- Easily distracted by external stimuli, like noises and movement;
- Easily distracted by internal stimuli (daydreaming);
- Occasional displays of impulsivity or temper outbursts;
- Poor memory;
- Time management difficulties;
- Procrastination;
- Difficulty managing long-term projects;
- Social skill issues, such as interrupting, talking too much, or being too blunt.*

.

Children and Adults with Attention-Deficit/Hyperactivity Disorder ("CHADD"), *Workplace Issues*, 3/03/2026, https://chadd.org/for-adults/workplace-issues

# Myths about Neurodevelopmental Disorders

1. ASD and ADHD are *not* intellectual disabilities.

   - Some individuals with ASD or ADHD also have an intellectual disability (defined as an IQ of 70 or lower)
   - It is estimated that ~ 4.4% of children with ADHD aged 3-11 also have an ID.[1]
   - It is estimated that ~ 40% of children with ASD aged 4-8 also have an ID.[2]

*Remember – over half of the people in the world have less than average intelligence.*

. [1]CDC – Attn-Deficit Hyperactivity Disorder, 11/19/2024, https://www.cdc.gov/adhd/data/index.html
[2]M.J. Maenner et al., Prevalence and Characteristics of Autism Spectrum Disorder Among Children Aged 8 Years – Autism and Developmental Disabilities Monitoring Network, 11 Sites, United States, 2020. MMWR Surveill Summ 2023;72(No. SS-2):1–14. DOI: http://dx.doi.org/10.15585/mmwr.ss7202a1

# Myths about Neurodevelopmental Disorders

2. ASD and ADHD are *not* mental illnesses or diseases.

- Certain mental illnesses, such as anxiety, obsessive compulsive disorder (“OCD”), and depression are commonly concurrent with ASD and/or ADHD.

# Myths about Neurodevelopmental Disorders

3. People with ASD do *not* lack empathy or social skills.

- They may have difficulty identifying the emotional behavior of others (such as crying because one is happy, rather than sad);
- They may not follow social norms in the same manner as neurotypical individuals.[1]

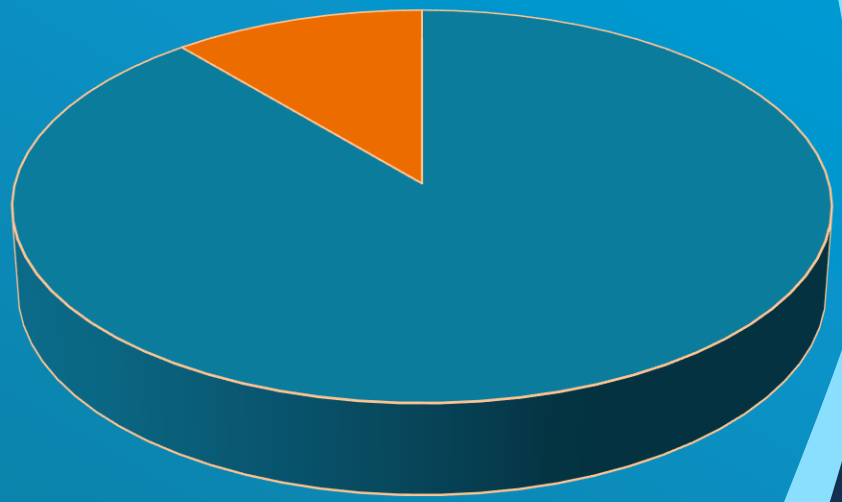
[1] Haghighi, Anna Smith, Medical News Today, March 30, 2023, https://www.medicalnewstoday.com/articles/do-autistic-people-have-empathy#empathy-and-autism

# Myths about Neurodevelopmental Disorders

4. People with ADHD are not all “hyper”.

    - Distinction between ADD and ADHD has been eliminated.

# How prevalent are Autism and ADHD in society?



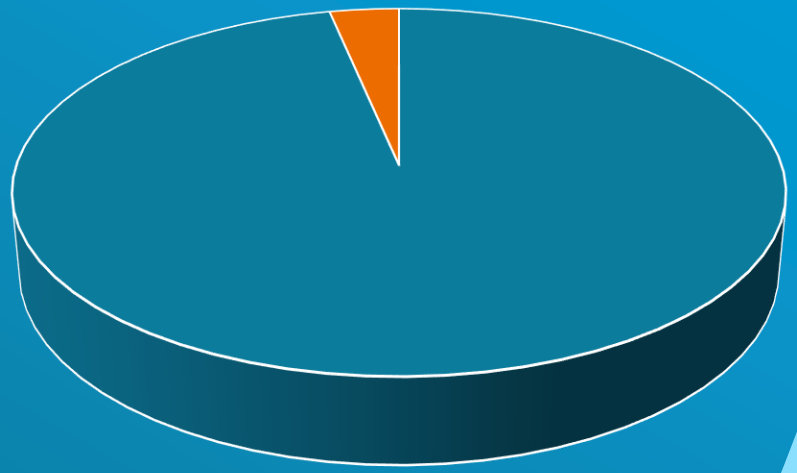
## ADHD

- As of 2022, it is estimated that 1 in 9 (11.4%) or ~ 7.1 mil. children in the U.S. between 3-17 years old have received an ADHD diagnosis at some point.[1]
- Approx. 10.5% (~6.5 mil.) have a current diagnosis.[1]
- As of 2023, it is estimated ~ 15.5 mil. adults have an ADHD diagnosis.[2]

[1] Danielson ML, Claussen AH, Bitsko RH, et al. ADHD Prevalence Among U.S. Children and Adolescents in 2022: Diagnosis, Severity, Co-Occurring Disorders, and Treatment. J Clin Child Adolesc Psychol. Published online May 22, 2024.

[2] U.S. Centers for Disease Control ("CDC"), Morbidity and Mortality Weekly Report, Attention-Deficit/Hyperactivity Disorder Diagnosis, Treatment, and Telehealth Use in Adults — National Center for Health Statistics Rapid Surveys System, United States, October–November 2023

# How prevalent are Autism and ADHD in society?



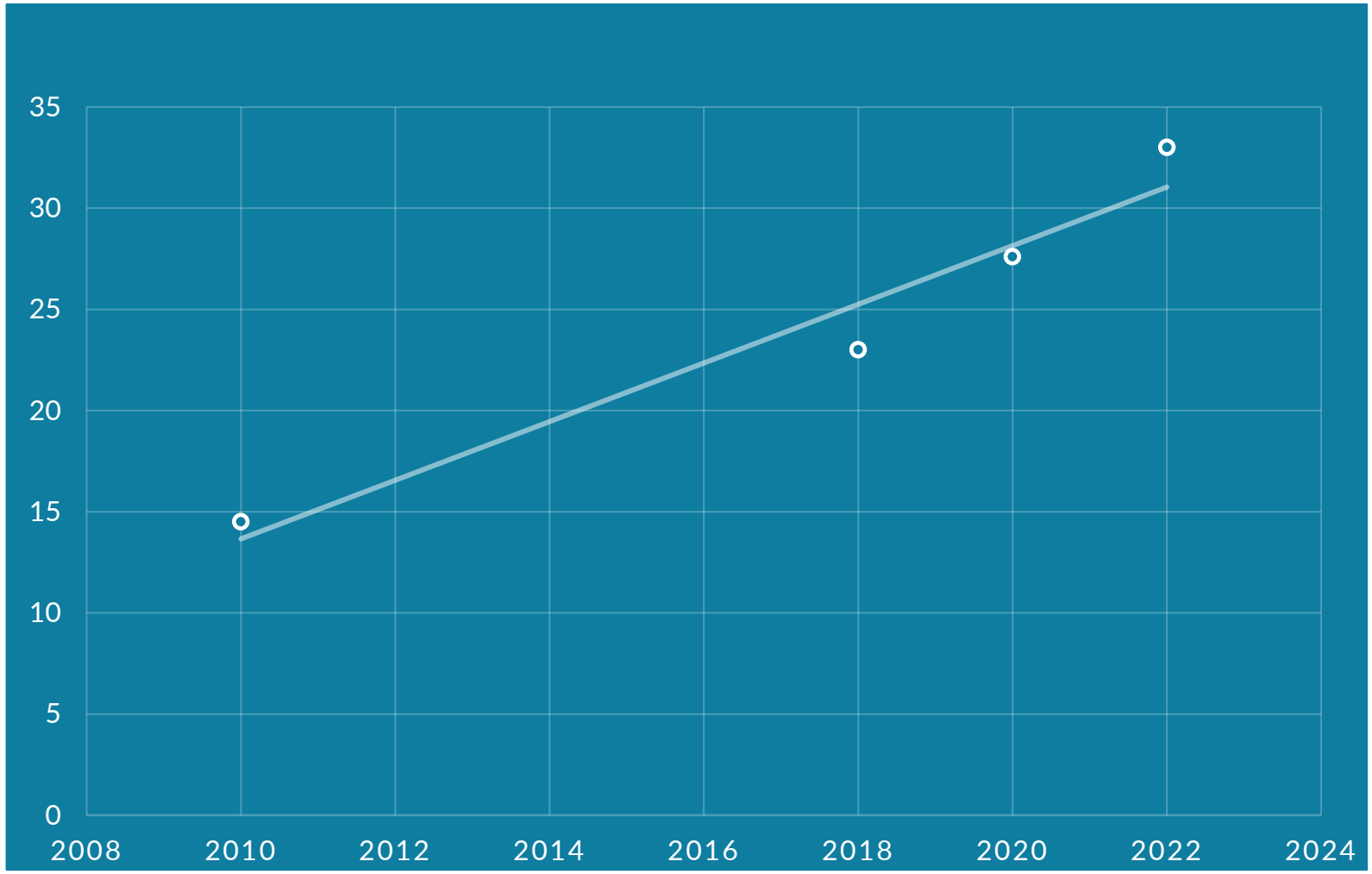
## Autism Spectrum Disorder

- Approx. 1 in 30 children in the U.S. (as of age 8)[1]
- It is estimated that 2.21% of American adults have ASD (according to data from 2017)[2]

[1]Shaw KA, Williams S, Patrick ME, et al. Prevalence and Early Identification of Autism Spectrum Disorder Among Children Aged 4 and 8 Years — Autism and Developmental Disabilities Monitoring Network, 16 Sites, United States, 2022. MMWR Surveill Summ 2025;74(No. SS-2):1–22. DOI: http://dx.doi.org/10.15585/mmwr.ss7402a1

[2]Dietz PM, Rose CE, McArthur D, Maenner M. National and State Estimates of Adults with Autism Spectrum Disorder. J Autism Dev Disord. 2020;50(12):4258-4266.

# Increasing Rates of ASD in Children Ages 4-8 in the U.S. (Number of Diagnosed with ASD per 1,000 Children)




PRIVATE & CONFIDENTIAL DO NOT DISTRIBUTE

# Increase in Diagnoses, Rather than Occurrences?

- Kim YS, Liu X, Chang J, et al., *Cumulative Incidence and Prevalence of Autism Spectrum Disorder: JAMA Pediatr.*, published on-line Sept. 14, 2026.
- doi:10.1001/jamapediatrics.2026.4066
- 12 consecutive birth cohorts 62,081 children born between 1998 and 2010 in South Korea
- Found **no** significant upward trend.

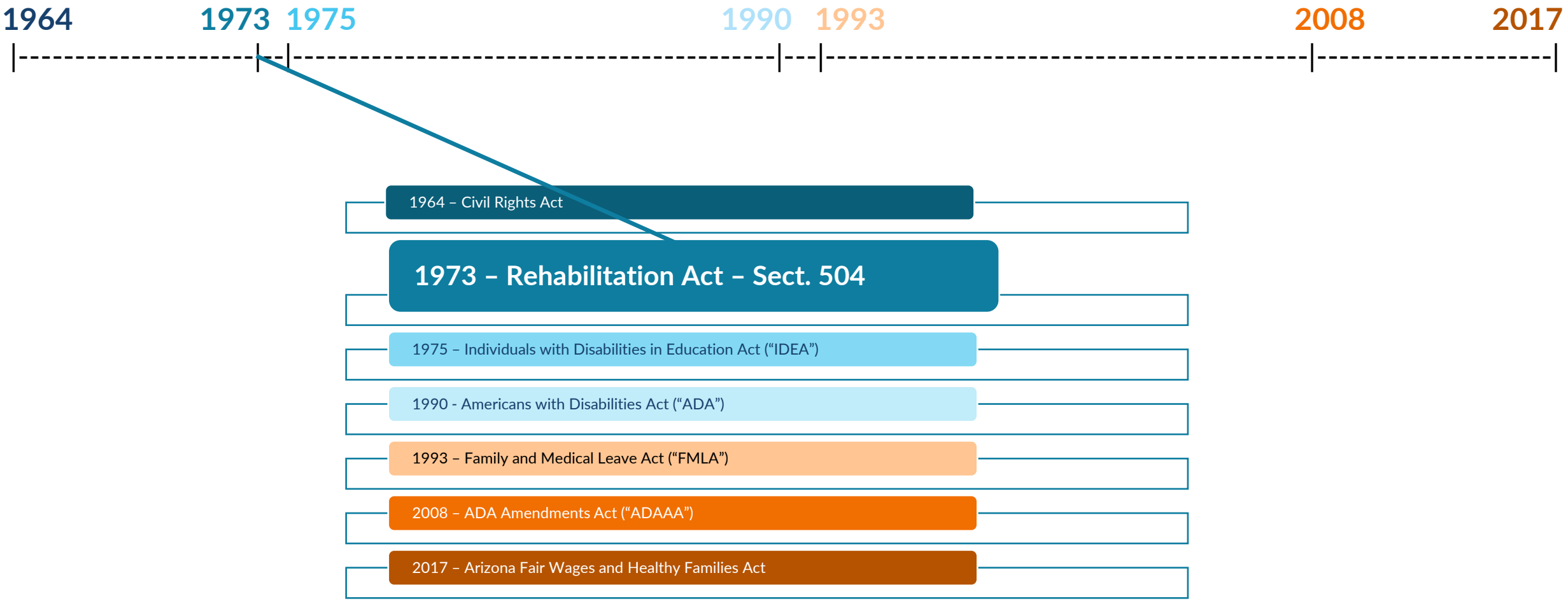
# THE LEGAL LANDSCAPE




- 1964 – Civil Rights Act
- 1973 – Rehabilitation Act – Sect. 504
- 1975 – Individuals with Disabilities in Education Act (“IDEA”)
- 1990 - Americans with Disabilities Act (“ADA”)
- 1993 – Family and Medical Leave Act (“FMLA”)
- 2008 – ADA Amendments Act (“ADAAA”)
- 2017 – Arizona Fair Wages and Healthy Families Act

PRIVATE & CONFIDENTIAL DO NOT DISTRIBUTE

# THE LEGAL LANDSCAPE




PRIVATE &
CONFIDENTIAL DO
NOT DISTRIBUTE

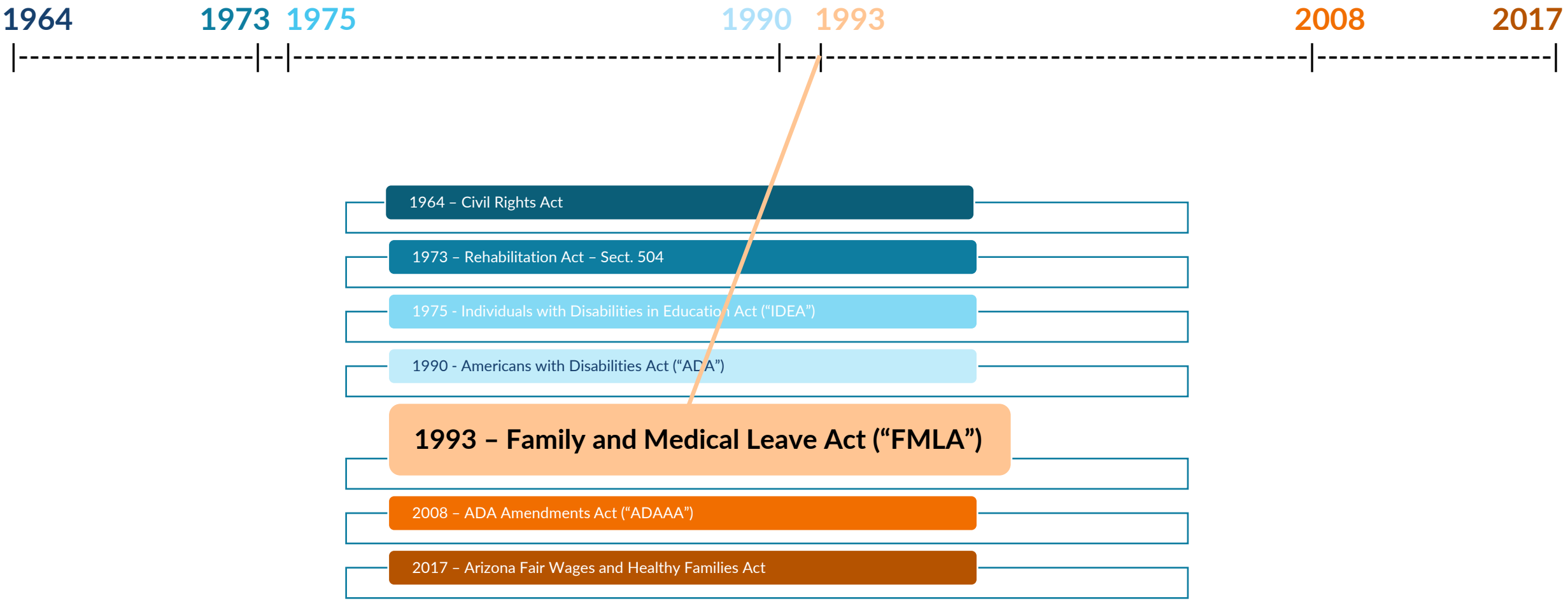
# THE LEGAL LANDSCAPE




- 1964 – Civil Rights Act
- 1973 – Rehabilitation Act – Sect. 504
- 1975 – Individuals with Disabilities in Education Act (“IDEA”)
- **1990 - Americans with Disabilities Act (“ADA”)**
- 1993 – Family and Medical Leave Act (“FMLA”)
- 2008 – ADA Amendments Act (“ADAAA”)
- 2017 – Arizona Fair Wages and Healthy Families Act

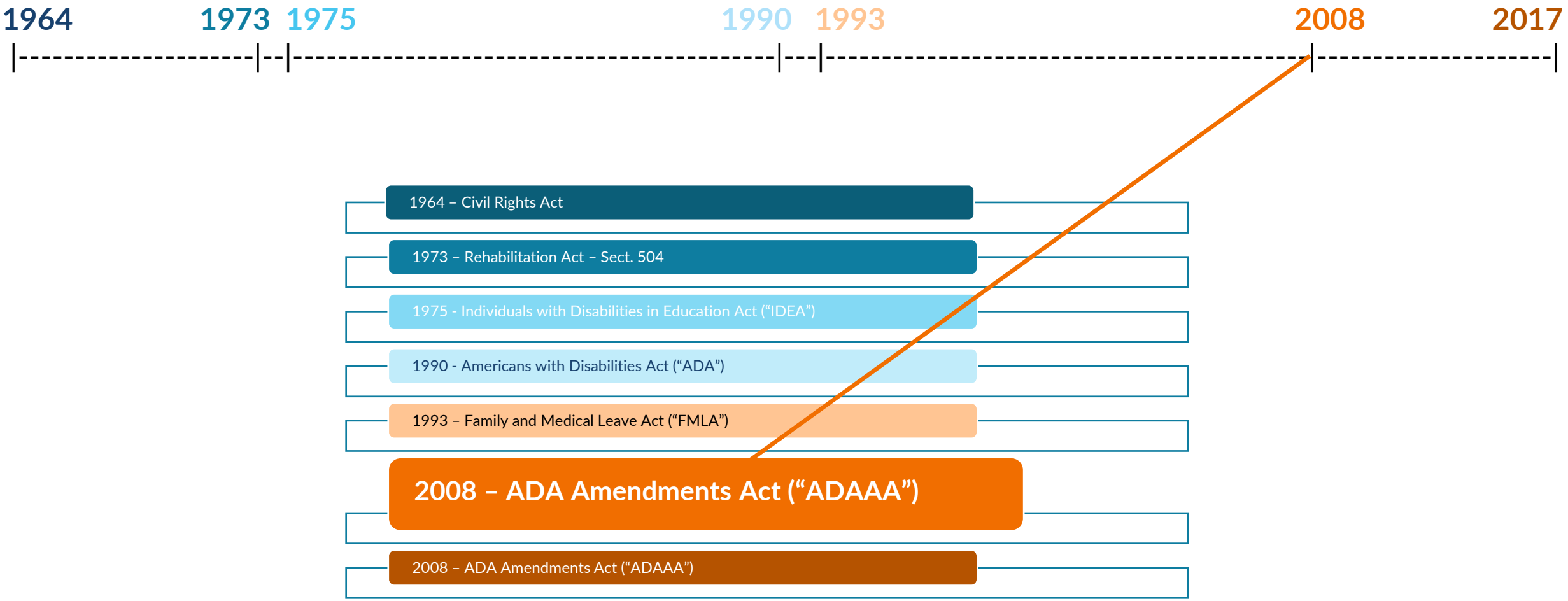
PRIVATE & CONFIDENTIAL DO NOT DISTRIBUTE

# THE LEGAL LANDSCAPE



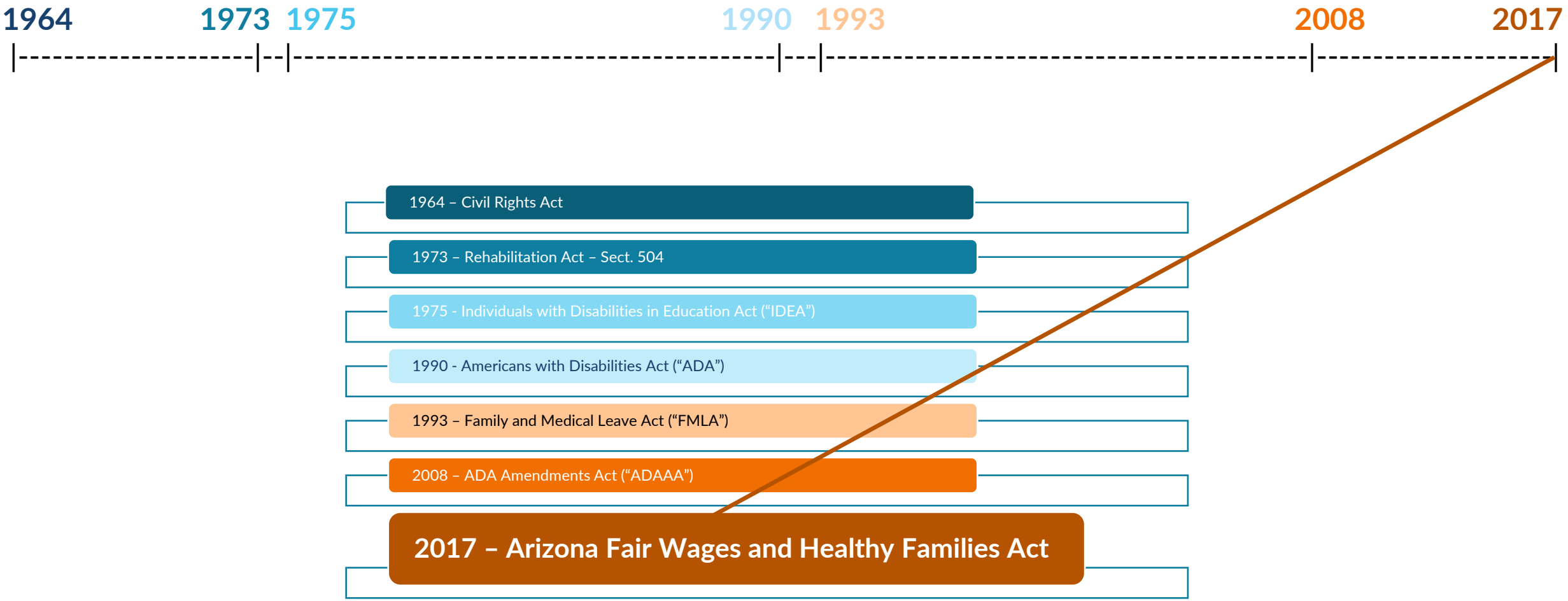

PRIVATE & CONFIDENTIAL DO NOT DISTRIBUTE

# THE LEGAL LANDSCAPE




PRIVATE &
CONFIDENTIAL DO
NOT DISTRIBUTE

# THE LEGAL LANDSCAPE




PRIVATE & CONFIDENTIAL DO NOT DISTRIBUTE

# Americans with Disabilities Act ("ADA"): 42 U.S.C. § 12101 *et seq.*



The ADA prohibits private employers with **15 or more employees** from discriminating against a **qualified individual with a disability** in regard to:

- Job application procedures;
- The hiring, advancement, or discharge of employees;
- Employee compensation;
- Job training; and
- Other terms, conditions, and privileges of employment.

42 U.S.C. § 12112 (a).

**"Disability"**

- (A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
- (B) a record of such an impairment; or
- (C) being regarded as having such an impairment.

42 U.S.C. § 12102(1).


PRIVATE & CONFIDENTIAL DO NOT DISTRIBUTE

# Americans with Disabilities Act ("ADA"): 42 U.S.C. § 12101 *et seq.*



## The Arizona Civil Rights Act ("ACRA")

"Makes it an unlawful employment practice for an employer to fail or refuse to hire , discharge, or otherwise discriminate against any individual with respect to the individual's compensation, terms, conditions or privileges of employment… on the basis of disability." A.R.S. § 41-1463 (B)(1).

The ACRA is modeled after the ADA, and Arizona courts apply the ADA standards to similar ACRA disability discrimination claims.
*Nadler v. City of Tucson,* 2022 WL 17960186, * 8 (D. Ariz. Dec. 27, 2022).

# Are ADHD and/or ASD's "disabilities"?

## ADHD

- Fact specific;
- Inquiry often turns on whether the employee has pled sufficiently that his or her ADHD impairs a major life activity

Example: *Weaving v. City of Hillsboro*, 763 F.3d 1106 (9th Cir. 2014).

- Diagnosed with ADHD as a child but did not believe it still affected him.
- Had a history of "personality conflicts" with coworkers.
- 2009: Plaintiff was placed on administrative leave following several incidents involving inappropriate and insulting communications with co-workers.



# Are ADHD and/or ASD's "disabilities"?

## ADHD

*Weaving v. City of Hillsboro*, 763 F.3d 1106 (9th Cir. 2014) (cont'd).

- While on leave, submitted a letter from a physician diagnosing him with ADHD, and requesting "all reasonable accommodations."
- Plaintiff was terminated after it was determined that he caused a hostile work environment.
- Plaintiff presented insufficient evidence that his ADHD "substantially impaired" his ability to interact with others.
- "Weaving's ADHD may well have limited his ability to *get along* with others. But that is not the same as a substantial limitation on the ability to *interact* with others." *Id.* At 1113.



# Are ADHD and/or ASD's "disabilities"?

## ADHD

But see *Jones v. Flagstaff Unified School District*, 2025 WL 997374, *5 (D. Ariz. Apr. 1, 2025)

- The court found a genuine issue of material fact as to whether a teacher's ADHD substantially impaired her ability to work and concentrate.
- Teacher had a documented diagnosis of ADHD.
- Teacher had accommodations in place for significant difficulty using technology and writing lesson plans.

*Noval v. Coast Products, Inc.*, 2026 WL 1948539 (D. Ore. 2026) (slip copy) – The Court appears to assume that ADHD is a "disability" under the ADA.





# Autism Spectrum Disorder?

Autism spectrum disorder is generally considered a disability under the ADA.

29 CFR 1630.2(j)(3)(iii).



# Reasonable Accommodations

*Under the ADA and ACRA, once an employer knows or has reason to know that an employee has a disability that may impact the employee's ability to perform the essential functions of his or her position, the employee must:*

*(a) Engage in the interactive process;*

*(b) Determine whether an accommodation exists that will allow the employee to perform the essential functions of his or her job.*

*29 CFR 1630.2(o)(3)*

*Exceptions: Undue hardship; direct threat.*

*29 C.F.R. 1630.2(p) & (r)*

# When do you have an obligation to accommodate ASD or ADHD?

1. Most often: Self disclosure

   - May occur prior to interview, if there is a request for an accommodation during the hiring process;
   - After receiving a conditional offer;
   - If/when symptoms become exacerbated
     - Could be due to trauma/major life event
     - Increased stress
     - Issue with medication

2. What should you do if you suspect an employee is neurodiverse, but s/he has not disclosed? What if s/he discloses ADHD or ASD, but does not request an accommodation?



# Types of Accommodations

## Interviews

- Job Coach
- Provide questions in advance and allow written response
- Trial day or days performing job functions
- Permit service animals
- Consider allowing a virtual interview



# Types of Accommodations

## After Hire

- Job Coach
- Flexible Schedule/Remote Work
- Noise canceling headphones/sensory free zones
- Visual (rather than verbal) instructions and supports, where possible
- Support person during stressful meetings
- Training for managers and the workforce
- FMLA leave and/or Paid Sick Leave
- Unpaid leave, when necessary



This Photo by Unknown Author is licensed under CC BY-SA-NC

# Parents and Caretakers of Individuals with ASD or ADHD



- Children with ASD frequently require several hours of therapeutic intervention per week. Some authorities recommended 25-40 hours of intensive therapy.
- Intermittent FMLA leave
- Paid Sick Leave



# Creating a More Inclusive Workplace

- Consider inclusive workplace social events, particularly when families participate;
- Partner with an agency that supports individuals with autism to identify how to make your specific workplace more inclusive;
- Provide training to your workforce and particularly to your managers;
- Lead by example.

# Questions

Julia S. Acken
julia.acken@aprio.com

John Balitis
john.balitis@aprio.com

