Americans with Disabilities Act (ADA)

Overview
Your Presenters

• Claire Stanley and Nancy Horton
  – Mid-Atlantic ADA Center
Agenda

• Background: Highlights of Disability Law
• ADA: Definition of Disability
• Title I: Employment
• Title II: State and Local Governments
• Title III: Public Accommodations and Commercial Facilities (Private Businesses)
• Title IV: Telecommunications
• Title V: Miscellaneous
• Resources
QUICK QUIZ

Three Questions
Question #1: Multiple Choice

•The chance of having a disability for those who reach the age of 65:
  A. 12%
  B. 23%
  C. 36%
  D. 82%
Answer #1

C. 36%

Question #2: Multiple Choice

• Most accommodations for workers with disabilities cost:
  A. Nothing
  B. Between $500 and $1,000
  C. Between $1,000 and $5,000
  D. More than $5,000
Answer #2

B. NOTHING

• In Job Accommodation Network (JAN) studies, employers reported that more than half (58%) of accommodations cost nothing (Workplace Accommodations: Low Cost, High Impact; http://askjan.org/media/lowcosthighimpact.html)
Question #3: True or False

• The ADA is an affirmative action law for individuals with disabilities.
Answer #3

False

• The ADA is an anti-discrimination law.
ADA = Civil Rights
DISABILITY AND THE LAW

Background and Context of the ADA: Highlights
Disability and the Law: 
Early 20\textsuperscript{th} Century

• **1907**: First state forced sterilization law enacted
  – Similar laws were enacted in more than 30 states, typically targeting people with disabilities (especially intellectual disabilities, psychiatric conditions, and epilepsy), as well as “degenerates” and members of other “undesirable” groups

• **1927**: *Buck v Bell* (state of Virginia)
  – Supreme Court finds forced sterilization of “mental defectives” constitutional and appropriate (Virginia ended its sterilization program in 1979)

• **1935**: League of the Physically Handicapped
  – Protests exclusion from Works Progress Administration (WPA) jobs
Disability and the Law: Mid-20th Century

• **1964**: Civil Rights Act
  - Protections *not* extended to people with disabilities
• **1968**: Civil Rights Act (Fair Housing Act)
  - Protections *not* extended to people with disabilities
• **1968**: Architectural Barriers Act (ABA)
  - Accessibility standards for federal buildings (*not* civil rights)
Disability and the Law: Late 20th Century

• **1973**: Rehabilitation Act
  – Prohibits disability discrimination by federal executive agencies and federal funding recipients

• **1974**: Last “ugly law” repealed
  – 19th century “ugly laws” typically subjected people with “unsightly” or “disgusting” disabilities to arrest, detainment, and/or fines

• **1975**: Education for Handicapped Children Act
  – Renamed the Individuals with Disabilities Education Act (IDEA)

• **1980**: Civil Rights of Institutionalized Persons Act (CRIPA)

• **1984**: Voting Accessibility for the Elderly and Handicapped Act
Disability and the Law: Late 20th Century (cont.)

- **1986**: Air Carrier Access Act (ACAA)
- **1988**: Fair Housing Amendments Act (FHAA)
- **1990**: Americans with Disabilities Act
- **1996**: Telecommunications Act (Section 255)
  - Access requirements for telecommunications products and services
Disability and the Law: 21st Century

- **2008**: ADA Amendments Act
- **2010**: 21st Century Communications and Video Accessibility Act (CVAA)
  - Updates and expands requirements related to closed captioning and audio description of media, including Internet-based
THE ADA

Definition of Disability
ADA: Definition of Disability

• Based on 1973 Rehabilitation Act

1. An individual *who has* a physical or mental impairment that substantially limits one or more major life activities

2. An individual *who has a record of* such an impairment

3. An individual *who is regarded as* having such an impairment
ADA Amendments Act (ADAAA)

- Effective January 1, 2009
  - Rejected Supreme Court’s narrow interpretation of the definition of disability
  - Restored broad protections intended by Congress
  - Revised and clarified terminology used in defining disability
ADAAA

• ADAAA: “... whether an individual's impairment is a disability under the ADA should not demand extensive analysis”

• EEOC: “Nonetheless, not every impairment will constitute a disability ...”
Physical or Mental Impairments

• Not defined in statute, but similarly defined by U.S. Department of Justice (DOJ) in Title II and Title III regulations, and by U.S. Equal Employment Opportunity Commission (EEOC) in Title I regulations
Impairments

• Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems (such as neurological, musculoskeletal, respiratory, cardiovascular, and many others)

• Any mental or psychological disorder, such as an intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities
NOT Impairments

- Simple physical characteristics (e.g., hair color, left-handedness)
- Common personality traits (e.g., poor judgment, quick temper) not the result of mental or psychological disorders
- Environmental, cultural, economic, or other disadvantages (e.g., poverty, a prison record, lack of education)
- Age
- Pregnancy
- Homosexuality or bisexuality
Major Life Activities

• Activities such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working

• Operations of major bodily functions, including functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions
Substantial Limitation

• Consider if or how a person performs a major life activity, compared to most people

• Does an individual use any *mitigating measures*?
  – What are mitigating measures?
Mitigating Measures

- Reduce or eliminate limitations of impairment, for example ...
  - Medications
  - Therapies
  - Learned behavior
  - Assistive technologies
  - Equipment
  - Medical supplies
  - Prosthetics
  - Devices (but *not including* ordinary eyeglasses or contact lenses)
Mitigating Measures: Out with the Good, In with the Bad

• Determining substantial limitation
  – DON’T consider *positive* effects of mitigating measures (except ordinary eyeglasses or contact lenses)
  – DO consider *negative* effects (for example, negative side effects of medications)
Example: Mitigated Disability

• Jared has epilepsy. He takes medication that has virtually eliminated the frequent and severe seizures he used to have; he hasn’t had a seizure in years. His medication does cause blurred vision, but on balance, Jared thinks it’s worth it.

• We view Jared without the positive effects of his medication, and with the negative effects – as if he has frequent, severe seizures and blurred vision.
On-Again Off-Again Impairments

- ADAAA: “An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active”
Can You Think of Some Episodic Impairments?

• Multiple sclerosis
• Cancer
• Schizophrenia
• Diabetes
• Hypertension
• Asthma
Individualized Assessment

• Determining disability requires individualized assessment
  – Two people with the same impairment may be affected in different ways

• Some impairments will invariably meet the definition of disability
“Predictable Assessments”

Impairments
- HIV/AIDS
- Deafness
- Cancer
- Quadriplegia
- Diabetes
- Blindness
- Schizophrenia

Major Live Activities
- Immune system function
- Hearing
- Normal cell growth
- Walking
- Endocrine system function
- Seeing
- Brain function
“Record Of”

• An individual with a record or history of a substantially limiting impairment
“Regarded As”

• An individual who is discriminated against based on an actual or perceived impairment, regardless of whether the impairment substantially limits, or is perceived to substantially limit, a major life activity
  – Unless the impairment is both transitory and minor
“Transitory and Minor”

• Only relevant under the “regarded as” prong of the definition
• Impairment (actual or perceived) must be BOTH transitory (duration of 6 months or less) AND minor
Current Illegal Drug Use

• People currently engaged in illegal drug use, when they are denied opportunities *on that basis*, are not protected under the ADA
DISABILITY: YOU DECIDE

Let’s Get Analytical
Amrita
• Amrita has dyslexia, a type of learning impairment that affects her ability to read and spell. To get through school she used a variety of mainstream and assistive technologies, such as audio-books and text-to-speech software, and spent a lot of extra time on her school work, often twice as many hours as most of her classmates. She has been successful and earned a college degree.
  – Do you think Amrita has a disability?
Kathy

• Kathy was born with one arm. She doesn’t feel like it limits her in any way. She manages to do everything she wants to do, she just does some things a little differently than her friends.

  – Do you think Kathy has a disability?
Carlo

- Carlo is 25 years old and has recently immigrated to the United States. He understands very little English. In his native country, he dropped out of school when he was 12 years old, but has many years of experience working as a laborer on a farm. Carlo is having a hard time finding any kind of job; he feels like no one will give him a chance.

- Do you think Carlo has a disability?
TITLE I

Employment
Title I: Coverage

• State and local government agencies and private employers
  – 15 or more employees

• Employment agencies

• Labor unions
  – Hiring hall or at least 15 members

• Joint labor management committees
  – Apprenticeship and job training programs
The Employment Relationship

• Title I covers all aspects of employment
  • Recruitment, application, interviews, pre-employment tests
  • Hiring, training, assignments
  • Evaluation, discipline
  • Compensation, promotion
  • Layoff and recall, termination
  • Benefits and privileges (leave, health insurance, transportation, fitness facilities, etc., *if provided*)
Qualified Individual with a Disability

• A qualified individual with a disability “satisfies the requisite skill, experience, education and other job-related requirements of the employment position ... and, with or without reasonable accommodation, can perform the essential functions”
Essential Job Functions

• What makes a job function essential?
  – Job exists to perform the function
  – Limited number of workers to perform the function
  – Level or type of expertise or skill needed
Evidence that Job Functions are Essential

- Employer’s judgment
- Written job descriptions prepared before advertising or interviewing
- Time spent performing function
- Consequences of not performing function
- Terms of collective bargaining agreement
- Experience of past workers in the job
- Experience of current workers in similar jobs
DISABILITY-RELATED QUESTIONS AND MEDICAL EXAMINATIONS

Title I: Employment
Disability-Related Inquiries and Medical Examinations

• Three stages of employment
  – Pre-offer
  – Post-offer, before beginning work
  – On the job
What Are Disability-Related Questions?

• Examples
  – Have you ever been hospitalized? If so, for what condition?
  – Have you ever been treated for a mental condition? If so, what condition?
  – Do you have any health related conditions which would preclude you from doing certain kinds of work?
  – Have you ever been treated for drug addiction or alcoholism?
  – Are you taking any prescription drugs?
  – How many days were you absent from work last year because of illness?
  – Have you ever filed a workers’ compensation claim?
What Are Medical Exams?

• Procedures or tests that seek information about physical or mental impairments or health
Factors Indicating a Procedure or Test is Medical

• Administered by a health care professional
• Results interpreted by a health care professional
• Takes place in a health care setting (e.g., office of health care professional)
• Uses medical equipment
• Invasive (e.g., requires drawing blood, breath, or urine)
• Measures physiological responses
• Designed to reveal impairments
NOT Medical

• Polygraph exam or test designed to measure traits such as honesty
  – If impairments are identified, it’s a medical exam

• Fitness or agility test (e.g., measuring ability to run or lift)
  – If physiological or biological responses (e.g., heart rate, blood pressure) are measured before, during, and/or after the tasks, it’s a medical exam
Also NOT Medical

• Tests for illegal drug use
  – However, testing and test results cannot be used to discriminate on other bases

  • Example: A test for illegal drug use reveals an individual’s legal use of a controlled substance; this information should be treated as confidential and the individual should not be subject to the same consequences as one who tested positive for illegal drug use
Pre-Offer Questions and Medical Exams

• Employers may **not** generally ask disability-related questions or require medical exams before making a conditional job offer
  – On application forms
  – In interviews
  – In background or reference checks
Narrow Exceptions

• When an employer *reasonably believes* an applicant will not be able to perform a job function because of a *known* disability, employer may ask applicant
  • To describe or demonstrate how she would perform the function
  • If she will need a reasonable accommodation to perform the function
– Employer may **not** ask addition questions (questions about the underlying condition, prognosis, treatments, medications, etc.)
Affirmative Action

• Employers may invite applicants to self-identify for purposes of affirmative action, as long as it is clearly stated ...
  – Response is voluntary; no adverse action will result from declining to respond
  – Information will only be used for affirmative action (i.e., to benefit applicants with disabilities)
  – Information will be kept confidential
    • Forms or information recorded must be kept separate from other application materials
Post-Offer, Before Beginning Work

• Employers may ask any disability-related questions and require any medical exams as long as all entering employees in the same job category are subjected to the same questions/exams
  – Questions/exams do not have to be related to the job
Withdrawing a Job Offer

• If a job offer is withdrawn because post-offer disability questions or medical exams show an individual does not meet job requirements due to disability
  – The job requirements must be job-related and consistent with business necessity and
  – There is no reasonable accommodation that will enable the individual to meet the requirements
On the Job

• Employers may ask specific individual employees *limited* disability-related questions and/or require *limited* medical exams in certain circumstances ...
Examining Employees: Individual Concern

• Employer has *reasonable belief*, based on *objective information or evidence* that employee
  – May be unable to perform essential functions due to disability
  – May pose a direct threat to health or safety of herself or others
Direct Threat

• **Significant risk of substantial harm** that cannot be reduced or eliminated by reasonable accommodation

• **Individualized assessment** based on current medical knowledge and objective evidence
Examining Employees: Periodic Monitoring

• Narrow allowances permit period testing or monitoring
  – Safety sensitive jobs (e.g., law enforcement, fire fighters)
  – Jobs regulated by other laws
    • Medical standards (e.g., airline pilots, truck drivers)
    • Health concerns (e.g., coal miners)
Confidentiality

• Medical information obtained by employers must be kept confidential and separate from other personnel records.
REASONABLE ACCOMMODATION

Title I: Employment
Reasonable Accommodation

• What is it?
• Who is entitled to it?
• What triggers an employer’s obligation to consider it?
• How does an employer decide what to do?
What Is Reasonable Accommodation?

• A modification, adjustment, allowance, or provision that facilitates an equal employment opportunity for a worker with a disability
  – Applying for a job
  – Performing essential job duties
  – Accessing benefits and privileges of the job
Reasonable Accommodation: Examples

• Schedule adjustments
• Equipment, furnishings, or assistive technologies
• Making facilities accessible
• Exchanging marginal job tasks
Reasonable Accommodation: More Examples

• Adjustments in communication or supervisory methods
• Adjustments in the work environment (e.g., lighting, temperature, air quality, noise)
• Changing location, including working from home
• Time off for disability-related needs
• Reassignment to vacant job (usually last resort; only available for employees, not applicants)
Reasonable Accommodation: What Is It NOT?

• Eliminating essential functions of the job
• Lowering productions standards
• Providing personal items (items that an employee uses on and/or off the job)
• Indefinite leave
• Allowing direct threat
• Undue hardship
Undue Hardship

• Means “significant difficulty or expense in, or resulting from, the provision of the accommodation,” including “any accommodation that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation” of the covered entity.
Undue Hardship Factors

• Nature and net cost, considering tax credits and deductions, and/or outside funding, if available
• Overall financial resources and size, type of operation, and number of employees of the covered entity
• Impact on operations, including impact on ability of other employees to perform their work
Reassignment

What is it?
• Existing job
• Vacant, or employer knows it will be soon
• Lateral move, if possible
• Employee is qualified

What is it NOT?
• Created job
• Promotion
• Co-worker’s job (bumping)
• Violation of seniority system (unless exceptions are routinely made)
• Maintaining old job’s rate of pay when new job’s rate is lower
Who is Entitled to Reasonable Accommodation?

• A **qualified applicant or employee** (full- or part-time, seasonal, temporary, etc.) with ...
  – A disability
  – A record/history of disability

• Individuals who are *regarded as* having a disability are *not* entitled to reasonable accommodation
How Does It Work?

Applicant/Employee

INTERACT

Employer
The Interactive Process

Applicant/Employee

- Make request
- Provide medical documentation if needed
- If possible, offer accommodation ideas and options
- Implement
- Revisit if necessary

Employer

- Review request
- Request medical documentation if needed
- Determine disability
- Explore/investigate options
- Decide on option(s)
- Implement
- Monitor
Individual Solutions

• Reasonable accommodation depends on the nature of ...
  – The job
    • Application process
    • Essential functions
    • Benefits and privileges
  – The specific limitations and needs of the individual applicant or employee
Let’s Get this Process Started

• Individual must request accommodation
  – Formal request or specific language is not necessary, but the individual must let employer know he needs something from the employer because of a disability, health condition, etc.
Medical Documentation

• Employer can require documentation from a qualified professional to verify disability and need for accommodation, unless both things are obvious.
  - Including during the pre-offer stage, if an applicant requests accommodation for the job application process, pre-offer tests, etc.
Sharing Medical Information

• Who really needs to know?
  – Decision maker(s)
  – Supervisors and managers may need to know about accommodations that must be provided or about an individual’s restrictions
  – First aid/safety personnel *if* the individual’s disability might require emergency treatment
  – Government compliance investigators
  – Workers’ compensation offices and insurance carriers
Sometimes It’s Simple

• Many requests for accommodations come from workers with known or obvious disabilities, who ask for simple, common-sense things, and such requests are often quickly and easily implemented.

• Some situations are more complex ...
Jamal

• Jamal is an accountant at a large firm. He was in a car accident several months ago and now has quadriplegia and uses a power wheelchair. He thinks he will be ready to return to work soon, but he’s afraid his workplace is not very accessible, and he’s worried about having difficulty using things like the telephone and computer efficiently. Jamal’s employer is worried about the same things. What should they do?
Interact!
Communicate and Collaborate

Employee

Rehab. Professional

Workplace Manager

Accessibility Consultant

Assistive Tech. Specialist

Employer/Decision Maker
What About Bob?

• Bob is a nurse who’s worked in a public hospital for about four months. He experiences depression and anxiety. He has used up all his sick days and other leave time, occasionally staying home when he feels unable to come to work. He is now asking for more time off for counseling appointments. What should Bob’s employer do?
Bob’s Employer

• May determine if Bob has a disability
• If so ...
  – Identify the disability-related limitations that are making it difficult for Bob to work
  – Explore strategies and tools to address these difficulties
Bob’s Limitations

• Bob has limitations in **sleeping** and **concentrating**, which cause difficulty with ...
  – Arriving on time for early shifts
  – Completing required record-keeping duties
Accommodation Ideas for Bob

• Schedule adjustments
• Flexible or adjusted break times
• Task lists, check lists
• Mentor or supervisor check-ins, reminder apps
• Additional unpaid leave time
Title I Enforcement

• EEOC complaint OR
• Fair Employment Practices Agency (FEPA)
  – State or local human rights, human relations, or civil rights agency
TITLE II

State and Local Governments
Title II: Coverage

• Title II covers all programs, services, and activities of state and local government agencies, also called “public entities”
What Kinds of Programs and Activities Are Covered?

• All of them!
  - School systems and educational programs, library services
  - Law enforcement activities, including detention and correction
  - Court systems
  - Transportation services
  - Recreational programs and events
  - Emergency and disaster planning and response activities
  - Public health and social services
  - Licensing, zoning, community development
  - Opportunities to volunteer, including opportunities to serve on boards, committees, etc.
Administrative Requirements

• Notice
  – *All* public entities must make information about the ADA available to the public

• Public entities with 50 or more employees
  – Designate at least one employee responsible for coordinating compliance efforts
  – Adopt and publish a grievance procedure to offer a way to resolve problems
Qualified Individuals

• People with disabilities must be “qualified” to participate in programs, services, or activities
  – They must meet valid, essential eligibility requirements, just like everyone else, though they may need reasonable adjustments in policies, barriers removed, or communication assistance to do so
Qualified?

• Big City offers a swimming class in its heated pool; the class is open to Big City residents only. Li Ming, a resident of nearby Smalltown, asks Big City to make an exception to the rule so she can participate in the class; she says she really needs it because she has arthritis and there is no heated pool available in Smalltown. Does Big City need to waive its rule for Li Ming?
Program Access

• Programs offered in **existing facilities** must be accessible when “viewed in their entirety”
  – Consider programs *as a whole* (e.g., many programs are offered in more than one location)
  – Various methods to achieve program access
    • Acquire equipment
    • Provide assistance
    • Relocate activities to accessible facilities
    • Make structural improvements to existing facilities
    • Build new facilities
Priority: Integration

• Methods used should enable people with disabilities, whenever possible, to participate in programs and receive services in the same locations and in the same ways as other people
Program Access?

- County B has 45 public playgrounds. 25 of them are fully accessible – accessible parking, routes, and play equipment comparable to the types of equipment available at the inaccessible locations. The accessible playgrounds are scattered conveniently throughout the county and all playgrounds are open the same hours and days.

- County Q has 45 playgrounds; 3 are accessible, and they are comparable to the inaccessible ones (equipment, days/hours, etc.), but some county residents would have to travel up to 35 miles to get to an accessible playground (average distance from any home in the county to the nearest playground is 5 miles).
TITLE III
Public Accommodations and Commercial Facilities
Title III: Coverage

• Title III covers private businesses
  – Public accommodations
    • Private businesses that operate places that serve the general public
  – Commercial facilities
Commercial Facilities

• Private factories, warehouses, and similar facilities, *not open to the general public*
  – Subject to Standards for Accessible Design in newly constructed or altered facilities
Public Accommodations

• Private entities that own, lease, lease to, or operate a place of public accommodation
  – Twelve types of places of public accommodation
Twelve Types (1 – 2)

1. Inn, hotel, motel, or other place of lodging
2. Restaurant, bar, or other establishment serving food or drink
Twelve Types (3 - 4)

3. Motion picture house, theater, concert hall, or other place of exhibition or entertainment
4. Auditorium, convention center, lecture hall, or other place of public gathering
Twelve Types (5 - 6)

5. Bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment

6. Laundromat, dry-cleaner, bank, barber shop, beauty shop, gas station, professional offices, hospital, or other service establishment
Twelve Types (7 - 8)

7. Terminal, depot, or other station used for specified public transportation
8. Museum, library, gallery, or other place of public display or collection
Twelve Types (9)

9. Park, zoo, amusement park, or other place of recreation
Twelve Types (10 - 11)

10. Nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education

11. Day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment
Twelve Types (12)

12. Gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation
Private Clubs

- Private membership clubs are exempt from Title III, unless they are open to the general public
  - Factors that indicate exempt status
    - Members have control of club operations
    - Highly selective membership process
    - Substantial membership fees
    - Operated on a nonprofit basis
    - Club was not founded to avoid compliance with federal civil rights laws
Private Club: Examples of Limited Exemption

• Private club operates a day care center for club members only; the club and the day care center are exempt from Title III

• Private club rents space to a private day care center open to the general public; the day care center is covered by Title III because it leases and operates a place of public accommodation; the club is covered by Title III only in relation to the day care center facility, because the club leases to a place of public accommodation
Religious Entities

• Religious entities are broadly exempt from Title III
  – Religious or secular activities
    • Exempt even if facilities/activities are open to the general public

• If religious entities receive federal funds they are subject to Section 504 of the Rehabilitation Act
Religious Entities:
Examples of Broad Exemption

- Religious entity operates a day care center open to the general public, the religious entity and the day care center are exempt from Title III

- Religious entity rents space to a private day care center (not a religious entity) open to the general public; the day care center is covered by Title III because it leases and operates a place of public accommodation; the religious entity is not covered by Title III even though it leases to a place of public accommodation
at your service
THE BASICS

Title II: State and Local Governments
Title III: Public Accommodations
Discrimination

• Discrimination prohibited
  – Disparate treatment: *intentional* exclusion or denial of opportunities based on disability
  – Disparate impact: exclusion or segregation that may result from architectural, transportation, and communication barriers, paternalistic rules, unnecessary eligibility criteria, and failure to take steps to make improvements
Limitations on Obligations

• Covered entities are not required to take any action that would result in ...
  – Fundamental alteration
    • Changing the essential nature of goods, services, activities
  – Undue burden
    • Significant difficulty or expense

• When fundamental alteration or undue burden arises, consider/explore alternatives!
Personal Devices and Services

• Covered entities are not required to provide personal devices and services
  – Wheelchairs
  – Individually prescribed devices such as eyeglasses or hearing aids
  – Assistance with eating, toileting, dressing
POLICIES, PRACTICES, PROCEDURES

Title II: State and Local Governments
Title III: Public Accommodations
Reasonable Modifications

• Covered entities need to make reasonable modifications in policies, practices, and procedures to ensure equal opportunities for people with disabilities.
POLICIES, PRACTICES, PROCEDURES: SERVICE ANIMALS

Title II: State and Local Governments
Title III: Public Accommodations
Service Animal Defined

• Any **dog** that has been individually trained to do work or perform tasks for the benefit of an individual with a disability

  – Other animals, wild or domestic, trained or untrained, do not meet this definition
Examples of Animals’ Work

• Providing physical support and help with balance and stability for people with mobility disabilities
• Guiding individuals who are blind or have low vision
• Providing non-violent protection or rescue work
• Pulling wheelchairs
More Examples of Animals’ Work

• Retrieving items
• Alerting individuals who are deaf or hard of hearing to sounds
• Helping people with psychiatric or neurological disabilities by preventing or interrupting impulsive or destructive behaviors
• Alerting individuals to oncoming seizures
Miniature Horses

• Reasonable policy modifications may be needed to allow the use of trained miniature horses, subject to certain additional considerations, such as the miniature horse’s size and weight
Active Animals

• Service dogs or miniature horses must be trained to perform specific actions, tasks, or work

  – Many animals, simply by being present, provide comfort, companionship, emotional support, or other benefits, but they are not trained to do anything specific – they are not service animals under Title II or Title III of the ADA (they may be covered by other laws, such as the Fair Housing Act, Air Carrier Access Act, or state laws)
Example:

Service dog
• Marge has a psychiatric disability; her dog Bumper can tell when Marge’s anxiety level rises, and Bumper is trained to respond by moving himself in front of Marge and nudging her away from her current location.

Pet or emotional support dog
• Aaron has a psychiatric disability, too; his dog Floppy is well-behaved and good-natured, and sometimes he can even tell that Aaron is becoming anxious, but Floppy isn’t trained to do anything to help Aaron.
Questions about Animals

• Covered entities can ask only **two questions** when a person is accompanied by a dog or miniature horse

  1. Is this a service animal required because of a disability?
  2. What work or task has the animal been trained to perform?
What to Expect from Service Animal Handlers

- Care and supervision of a service animal is the responsibility of the owner/handler.
- Service animals must be under control, housebroken, and well-behaved.
- Service animals may be excluded if they are out of control or pose a direct threat to health or safety.
POLICIES, PRACTICES, PROCEDURES: PLACES OF LODGING

Title II: State and Local Governments
Title III: Public Accommodations
Reasonable Modifications: Places of Lodging

- Reservation systems
  - Individuals with disabilities must be able to make reservations for accessible guest rooms in the *same ways* and during the *same times* as other people
  - Places of lodging must be able to *describe accessible features* of the facility and the guest rooms
  - Accessible guest rooms must be *held back for people with disabilities* until all other rooms of that type have been rented, then accessible rooms can be rented to anyone
  - *Specific* reserved accessible guest rooms must be held for the individuals who reserved them
POLICIES, PRACTICES, PROCEDURES: TICKET SALES

Title II: State and Local Governments
Title III: Public Accommodations
Assigned Seats

• Requirements to ensure opportunities for people with disabilities to purchase tickets for accessible seats at events where seats are assigned
Accessible Seats

• Accessible seating locations are for ...
  – People who use wheelchairs or other mobility devices
  – People who cannot climb steps or walk long distances
  – People whose service dogs cannot fit under a non-accessible seat or lie safely in the aisle

• “People with disabilities who do not require the specific features of accessible seating but merely have a preference for them are not entitled to purchase accessible seats”
Accessible Ticketing

- *Information* about accessible seats must be comparable to information available about non-accessible seats

- *Ability to purchase* tickets for accessible seats must be comparable
  - Hours and methods available (e.g., telephone, on site, website, third-party vendors)
  - Stages of sales (e.g., pre-sales, promotions, general sales, wait lists, lotteries)
EFFECTIVE COMMUNICATION

Title II: State and Local Governments
Title III: Public Accommodations
Auxiliary Aids and Services

• Covered entities must provide auxiliary aids and services when necessary to communicate effectively with people who have hearing, vision, and/or speech disabilities
  – Program participants, customers, patients, members of the public, etc., as well as their companions (family members, friends, etc.) with whom the entity would normally communicate
Examples of Auxiliary Aids and Services

• People who are deaf or hard of hearing
  – Written notes or printed materials
  – Assistive listening systems and devices
  – Qualified interpreters
  – Captioned media or real-time captioning

• People who are blind or have low vision
  – Large print, Braille, or electronic materials
  – Qualified readers
  – Audio recordings
  – Audio-described media or describing visual elements
Interpreters

- Interpreters use sign language or other manual systems (hand codes or cues)
- Oral interpreters silently move their mouths, repeating a speaker’s words for the benefit of a speech-reader (lip reader)
A Word about Language

• American Sign Language (ASL) is a *true* language; it evolved naturally over time, just like spoken languages do
  – ASL is distinct from English, with different syntax, vocabulary, etc.

• Other systems are not languages, but systems invented or designed to convey English “word-for-word”
Qualified Interpreter

• A qualified interpreter conveys information effectively, accurately, and impartially, receptively and expressively (e.g., speech-to-sign and sign-to-speech)
Video Remote Interpreting

• Video Remote Interpreting (VRI) uses technology (Internet connection, webcams, etc.) to enable an interpreter to work from a remote location
Captioning and CART

• Captioning and CART (computer-aided real-time transcription) are similar because they use technology to display a typed record (word-for-word) of spoken communication and sounds.
Using CART

• Meetings or other in-person activities, with a screen to display the text
Using Captions

• Audio-visual material (DVDs, etc.); typically pre-recorded
• Television broadcasts; captions may be pre-recorded or done in “real time” (e.g., a televised weather alert)
Assistive Listening

• Assistive Listening Systems (ALS) and Assistive Listening Devices (ALDs) use equipment to **amplify** and **transmit** sound directly to individuals with receivers
  – Some types of systems enable individuals to use their own personal hearing aids as receivers
ALS/ALDs

• Assistive Listening Systems/Assistive Listening Devices are required to be available on-site in many assembly areas, such as theaters, arenas, or courtrooms
  – They may also be needed in more individualized situations (e.g., a parent-teacher meeting)
Choose Wisely: The Right Aid or Service

• Consider
  – Nature, length, and complexity of communication
  – Individual’s usual way of communicating
    • For example, many people who are blind do not read Braille; many people who are deaf or hard of hearing do not use sign language
Same Person, Different Day

• A person will not always need the same aid or service in every situation
  – *Example*: John is deaf and uses American Sign Language (ASL) as his usual way of communicating, but he also understands written English pretty well. To participate in an all-day seminar with multiple speakers and group discussions, he will probably need an ASL interpreter, but to *register* for the seminar, exchanging written notes may work fine.
Same Day, Different Person

• People with similar disabilities in the same situation will not necessarily need the same aid or service, either
  – *Example*: John and Marla are both deaf and both are attending the all-day seminar. John uses ASL, but Marla lost her hearing later in life and never learned it; her primary language is English. She may need CART (computer-aided real-time transcription) services to participate effectively in the seminar.
MOBILITY DEVICES

Title II: State and Local Governments
Title III: Public Accommodations
Traditional Mobility Devices

• Covered entities must allow people with mobility disabilities to use wheelchairs and manually-powered mobility aids, such as walkers, crutches, canes, braces, or other similar devices designed for use by individuals with mobility disabilities, in any areas open to pedestrians.
Non-Traditional Devices

• Many individuals with disabilities choose to use powered devices that were not necessarily designed for people with disabilities
  – Examples: golf cars, electronic personal assistance mobility devices (EPAMDs), such as the Segway® PT
OPDMDs

• These non-traditional devices are known as “other power-driven mobility devices,” or OPDMDs
  – Covered entities must allow people with mobility disabilities to use OPDMDs unless a particular class of devices cannot be safely operated, in the context of the specific site, facility, program, etc.
OPDMD Factors to Consider

- Type, size, weight, dimensions, and speed of device
- Facility’s volume of pedestrian traffic (may vary at different times of day, week, month, or year)
- Facility’s design and operational characteristics (space/room configurations, availability of storage for device, if needed)
- Whether legitimate safety requirements can be established to permit safe operation (e.g., speed limit)
- Whether the use of the OPDMD creates a substantial risk of serious harm
OPDMD Policies

• Covered entities may want to develop and publicize policies regarding OPDMDs, for example ...
  – Requiring users to operate devices at the speed of pedestrian traffic
  – Identifying specific locations or circumstances (if any) where devices cannot be used
  – Instructions for going through security screening machines
  – Specifying whether or not storage is available for devices when not in use
ARCHITECTURAL ACCESS

Title II: State and Local Governments
Title III: Public Accommodations
“The Three Levels” of Access

• New construction
  – Must comply with Standards for Accessible Design

• Alterations
  – Must comply with Standards to the maximum extent technically feasible

• Existing facilities
  – Title II: program access
  – Title III: readily achievable barrier removal
Title III: Readily Achievable Barrier Removal

• “Easily accomplishable and able to be carried out without much difficulty or expense”
  – Consider
    • Nature and cost of action needed
    • Overall financial resources of site or sites involved
    • Impact on resources and operations
    • Safety
Suggested Barrier Removal Priorities

1. Getting in (parking, exterior routes, entrance, etc.)
2. Accessing goods and services (sales/service areas)
3. Restrooms (if there are any)
4. Other
Alternatives to Barrier Removal

• When it is not readily achievable to remove barriers, consider readily achievable alternatives, for example ...

  – Delivering goods or services at alternate locations, including home delivery or curb service; relocating activities (e.g., classes, meetings) to accessible locations
  – Retrieving merchandise from inaccessible shelves or racks
Continuing Obligation

• Obligation to remove barriers is on-going
  – Factors affecting what is readily achievable may change over time
  – Projects may be completed in stages
    • Minimize disruption
    • Maximize tax incentives
ADA STANDARDS FOR ACCESSIBLE DESIGN

Highlights
Safe Harbor

• ADA Standards updated in 2010
  – Spaces or elements that comply with 1991 ADA Standards do not have to be upgraded unless/until they undergo alterations
  – Where 2010 Standards reduce access requirements, existing accessible elements can be reduced accordingly
Accessible Parking

• Requirements apply *where parking is provided*

• Number of accessible spaces required is based on total number of spaces in lot or garage
  – At least 1 out of every 6 accessible spaces must be van-accessible

• Accessible spaces can be subject to same restrictions as other spaces in lot/garage or area (cost, “customers only,” etc.)
Accessible Parking Spaces

• Features:

  – At least 8 feet wide for car spaces, at least 11 feet wide for van-accessible spaces
  – Adjacent access aisle at least 5 feet wide (two spaces may share an aisle between them)
  – Firm, stable, level surface
  – Signage (including “van-accessible” sign to designate van spaces)
  – Vertical clearance at least 98 inches high at van-accessible spaces and access aisles, as well as vehicular routes serving them
  – Connection to accessible route that leads to facility entrance/destination served by parking
Accessible Parking Spaces Dimensions

(a) car

(b) van

96 min
2440

132 min
3350

Temporary Accessible Parking

Accessible Parking Spaces Access Aisle Dimensions

60 min
1525

full length of parking space

area to be marked
Recreation

- Just for fun, check out the new requirements for recreation facilities in the 2010 ADA Standards
  - Amusement rides
  - Recreational boating facilities
  - Fishing piers and platforms
  - Golf and miniature golf courses
  - Fitness facilities
  - Play areas for children
  - Swimming pools, wading pools, and spas
  - And more!
Title II and Title III Enforcement

• Complaints
  – Public transportation: U.S. Department of Transportation (DOT)
  – All other: U.S. Department of Justice (DOJ)

• Private lawsuits
TITLE IV

Telecommunications
Title IV: Coverage

• Providers of telephone voice transmission services must provide functionally equivalent relay services for people with hearing and/or speech disabilities
Types of Relay Services

• Communications Assistant (CA) or interpreter relays conversation between parties by typing/captioning, speaking, signing, or some combination
  – TTY (text-to-voice/voice-to-text)
  – Voice carry over (person with hearing disability uses own voice)
  – Hearing carry over (person with speech disability uses own hearing)
  – Speech-to-speech (CA repeats for person with speech disability)
  – Captioned (person uses captions to supplement residual hearing)
  – Video (sign language)
Title IV Enforcement

• Federal Communications Commission (FCC)
TITLE V

Miscellaneous
Title V: Coverage

• Covers *instrumentalities of Congress*

• Covers *individuals* who
  
  – Coerce, intimidate, threaten, or interfere with people who exercise rights under the ADA (and/or those who support or assist them)
  
  – Retaliate against people who oppose unlawful acts (and/or those who support or assist them)
FEDERAL RULEMAKING

What’s in Development
Guidelines

- Access Board
  - Public rights-of-way
  - Classroom acoustics
  - Medical diagnostic equipment
  - Emergency transportable housing
  - Outdoor developed areas (trails, camping facilities, beach access routes, etc.)
  - Passenger vessels (ferries, cruise ships, excursion boats, etc.)
Regulations

• DOJ

  – Movie captioning and audio description
  – Web information and services
  – Next-generation 9-1-1
  – Equipment and furniture
RESOURCES

Information and Organizations
IRS Tax Credit

• Disabled Access Tax Credit for small businesses (gross receipts of $1 million or less in previous tax year OR 30 or fewer full-time employees)
  – Credit for 50% of eligible access expenditures; maximum credit of $5,000
  – Examples of eligible expenses: barrier removal, hiring qualified interpreters or readers, producing accessible materials (e.g. large print)
IRS Tax Deduction

- Businesses of any size can deduct up to $15,000 for costs of removing architectural or transportation barriers in existing facilities or vehicles.
U.S. Department of Justice (DOJ)

- Disability Rights Section ADA Home page (www.ada.gov)
U.S. Department of Transportation

U.S. Equal Employment Opportunity Commission (EEOC)

• **EEOC** ([www.eeoc.gov](http://www.eeoc.gov))
Federal Communications Commission

- Disability Rights Office (DRO) (www.fcc.gov/general/disability-rights-office)
U. S. Access Board

• **Access Board** ([www.access-board.gov](http://www.access-board.gov))
Job Accommodation Network (JAN)

• JAN (www.askjan.org)
State
Assistive Technology (AT) Programs

- Rehabilitation Engineering and Assistive Technology Society of North America (RESNA) list of state programs
  (www.resnaprojects.org/allcontacts/statewidecontacts.html)
ADA National Network

• Ten regional centers

• www.ADAتنا.org

• 1-800-949-4232
Mid-Atlantic ADA Center

• Information
• Guidance
• Training
• Materials
• Newsletter and E-Bulletin
• Speak to an ADA Information Specialist
  – Toll-free: **800-949-4232**
• Website: [www.ADAinfo.org](http://www.ADAinfo.org)
Resource Networks

• Learn, share, and connect through the Mid-Atlantic ADA Center’s networks
  – Leadership Network for ADA trainers
  – Community Partners share information
  – Title II Network for state and local government professionals
Social Media

• **Facebook** (www.facebook.com/midatlanticadacenter/)
• **Twitter** (https://twitter.com/adainfo)
• **Pinterest** (www.pinterest.com/midatlanticadac/)
• **LinkedIn** (https://www.linkedin.com/company/mid-atlantic-ada-center)
• **YouTube** (https://www.youtube.com/channel/UCDKDVmeTWktLDbplAXoHItQ)
Accessible Meeting Guide

*Accessible Meetings, Events, and Conferences Guide*  
Questions?