



Americans with Disabilities Act (ADA)

Overview



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

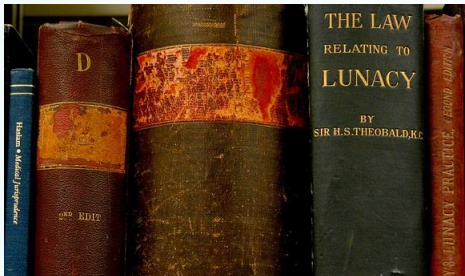
Agenda

- 1.
- 2.
- 3.



ADA = Civil Rights





DISABILITY AND THE LAW

Background and Context of the ADA: Highlights



Disability and the Law: Early 20th 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 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- **1974:** Last “ugly law” repealed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

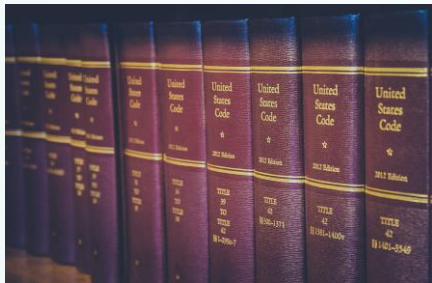


Disability and the Law: 21st Century



- **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



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



- Jason has diabetes. He takes medication that helps stabilize his blood sugar, but the medication does cause some digestive problems.
- We view Jason *without* the positive effects of his medication, and *with* the negative effects – as if he has uncontrolled blood sugar levels *and* digestive problems.



On-Again Off-Again Impairments



- Impairments that are episodic may be disabilities if substantially limiting 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

Substantially limits



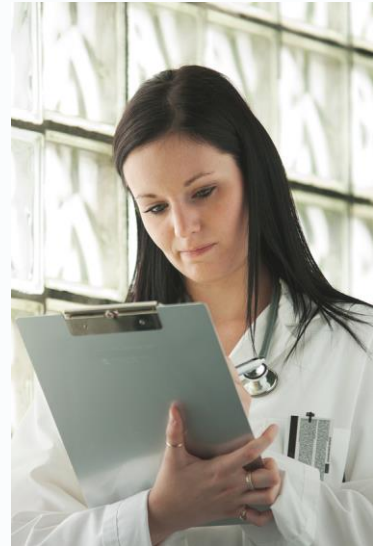
Major Live Activities

- 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





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
 - Specific expertise or high level of 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
- Experience of past workers in the job
- Experience of current workers in similar jobs
- Terms of collective bargaining agreement





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?

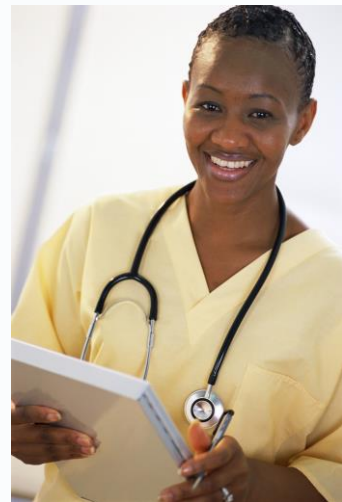
- Procedures or tests that seek information about physical or mental impairments or health



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 someone 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 additional 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 production standards
- Providing personal items (items that an employee uses on and/or *off* the job)
- Indefinite or unlimited leave
- Allowing direct threat
- Undue hardship



Undue Hardship



- Means “significant difficulty or expense,” including “any accommodation that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation” of the employer





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



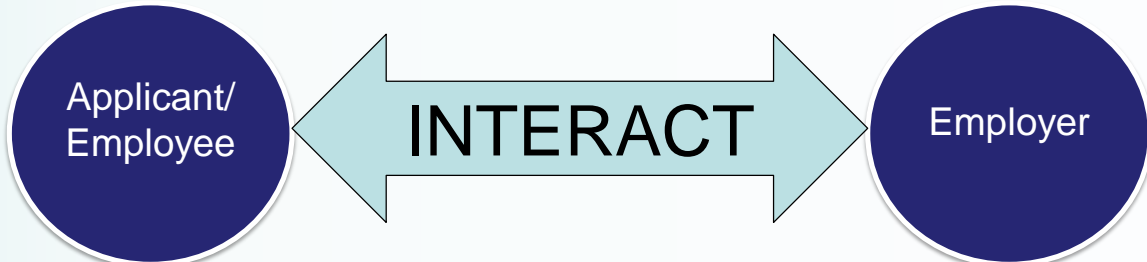
Who is Entitled to Reasonable Accommodation?



- 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?





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 ...



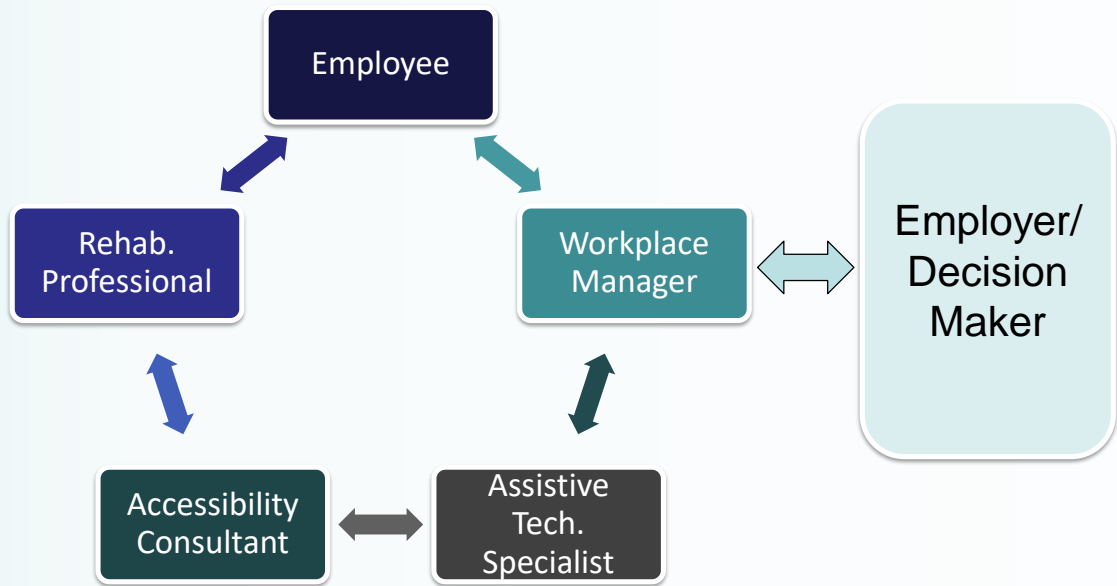
Adriana



- Adriana is a telephone customer service representative at a large company. She has multiple sclerosis, which her employer has known since she was diagnosed about a year ago. Adriana is beginning to experience increased muscle weakness and vision problems. Adriana went to the HR department and told them she is having difficulty using her computer. What should Adriana and her employer do?



Interact! Communicate and Collaborate



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





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 – 3)

1. Place of lodging (inn, hotel, etc.)
2. Establishment serving food or drink (restaurant, bar, etc.)
3. Place of exhibition or entertainment (movie theater, concert hall, etc.)



Twelve Types (4 - 6)

4. Place of public gathering (lecture hall, convention center, etc.)
5. Sales or rental establishment (bakery, grocery store, clothing store, shopping center, etc.)
6. Service establishment (dry-cleaner, bank, barber shop, gas station, professional offices, etc.)



Twelve Types (7 - 9)

7. Station used for specified public transportation (terminal, depot, etc.)
8. Place of public display or collection (museum, library, gallery, etc.)
9. Place of recreation (zoo, amusement park, etc.)



Twelve Types (10 - 12)

10. Place of education (nursery, elementary, secondary, or postsecondary private school)
11. Social service establishment (day care center, food bank, adoption agency, etc.)
12. Place of exercise or recreation (fitness facility, bowling alley, golf course, etc.)





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*





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





Title II: Qualification

- 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





Title III: Eligibility

- Business may establish neutral eligibility criteria and necessary safety requirements
 - Eligibility criteria that screen out individuals with disabilities must be **necessary** for provision of goods, services, activities, etc.



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?





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





TRANSPORTATION

Title II: State and Local Governments

Title III: Public Accommodations



Transportation Regulations



- Department of Transportation (DOT)
 - Coverage
 - Non-discriminatory service
 - Reasonable policy modifications
 - Accessible information
 - Staff training





Facilities and Vehicles

- Procedures for acquiring vehicles
 - Requirements vary depending on type of entity, service, and vehicle
- Standards for vehicles
 - Buses, vans, over-the-road buses, rail vehicles and cars, automated guideway transit (AGT) vehicles, trams
- Standards for public transportation facilities



Transportation: Public Entities



- Designated public transportation
 - Bus, rail, or other systems (but NOT aircraft)
 - NOT including public elementary or secondary school transportation
- Intercity (Amtrak) or commuter rail systems



Transportation: Private Entities



- Specified public transportation
 - Bus, rail, or other systems (but NOT aircraft)
 - NOT including private elementary or secondary school transportation as long as **equivalency** is assured for students with disabilities
- Transportation provided by entities *not primarily engaged* in transportation business (e.g., hotel shuttle)



Public Entities: Paratransit



- Public entities operating a **fixed route** system (*other than* commuter bus, commuter rail, or intercity rail) must provide paratransit to individuals with disabilities who are *unable* to use the fixed route



Paratransit



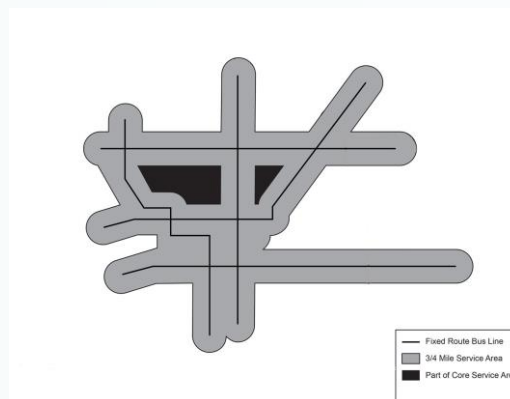
- Available same days and hours as fixed route
- Next day service
- Fares no more than double the fixed route full fare
- One personal assistant may ride free
 - Other companions (same origin and destination) may ride with individual if space permits; companions pay same fare as paratransit-eligible individual



Paratransit: Bus Route Service Area



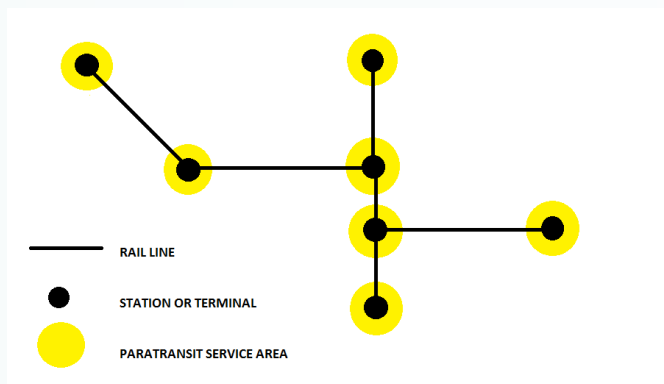
- $\frac{3}{4}$ mile corridor on each side of fixed route
- $\frac{3}{4}$ mile radius around ends of routes
- Small areas enclosed by corridors (core service area)



Paratransit: Rail Route Service Area



- $\frac{3}{4}$ mile around each station





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 (DOT)



- Any **guide dog, signal dog, or other animal** individually trained to work or perform tasks for an individual with a disability
 - Applies in vehicles and facilities of any transportation service covered by Title II or Title III





Service Animal Defined (DOJ)

- 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 (DOJ)

- 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 animals (and miniature horses under DOJ's rule) 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)





Questions about Animals

- Covered entities may ask only **two questions** when a person is accompanied by a dog or miniature horse (or other animal in a transportation setting)
 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





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 typically use American Sign Language (ASL) to translate between spoken language and visual language

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

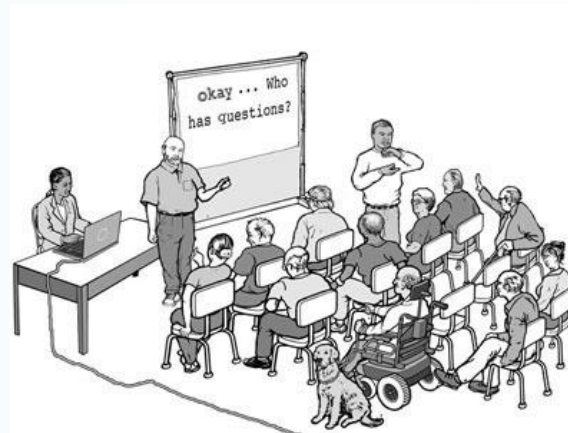


- Captioning and CART (computer-aided real-time transcription) are similar because they use technology to display a typed record (word-for-word) of spoken communication and sounds



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)

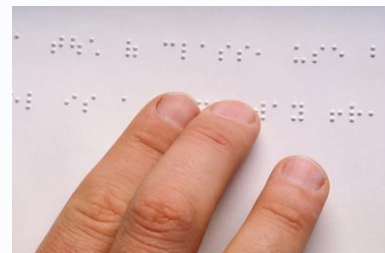


Choose Wisely: The Right Aid or Service



•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 effectively 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.





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 of existing facilities
 - Must comply with Standards to the maximum extent *technically feasible*
- Existing facilities (not being altered)
 - Title II: program access
 - Title III: readily achievable barrier removal



Existing Facilities



- DOJ's ADA Standards updated in 2010
 - “Safe Harbor”
 - Spaces or elements that **comply with previous standards** *do not have to be upgraded unless/until they are altered*
 - Where 2010 Standards *reduce* access requirements, existing accessible elements can be reduced accordingly



Title II: 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)





Achieving 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



Title III: Readily Achievable Barrier Removal



- Barriers in **existing facilities** must be removed when it is *readily achievable* (“easily accomplishable and able to be carried out **without much difficulty or expense**”



Readily Achievable?



- 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 curbside service; relocating activities (e.g., classes, meetings) to accessible locations
 - Retrieving merchandise from inaccessible shelves or racks





Continuing Obligation

- The 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



Title II and Title III Enforcement

- Complaints

- Public transportation:
Federal Transit Administration (FTA),
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

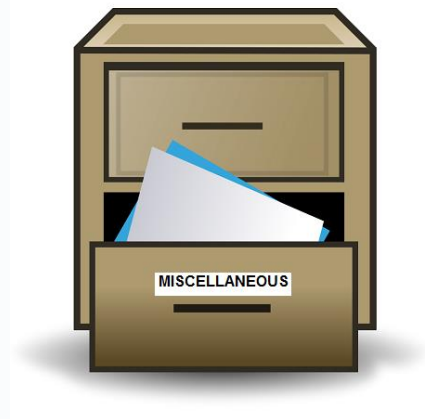
- Federal Communications Commission (FCC)





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)





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



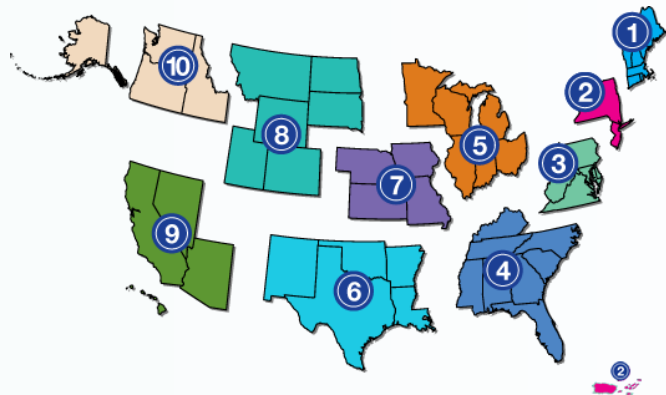
ADA National Network



- Ten regional centers provide guidance, training, and materials on the ADA

– **1-800-949-4232**

– www.ADAta.org



Mid-Atlantic ADA Center



- Serves Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and the District of Columbia

– **800-949-4232**

– www.ADAinfo.org

- Operated by TransCen, Inc.

