



Americans with Disabilities Act (ADA)

Overview



Agenda



- ADA: Discrimination and Definition of Disability
- Title I: Employment
- Title II: State and Local Governments
- Title III: Public Accommodations and Commercial Facilities (Private Businesses)

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

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

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*?

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

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



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”



Disability-Related Inquiries and Medical Examinations

Three stages of employment

- Pre-offer
- Post-offer, before beginning work
- On the job



Reasonable Accommodation

Who, What, When, Where, How

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
- 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”

- 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

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 the Interactive Process Work?

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
- Investigate options
- Decide on option(s)
- Implement
- Monitor

Medical Documentation



Employer can require documentation from a **qualified professional** to verify **disability** and **need for accommodation**, *unless both things are obvious*

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”



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 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)
- Methods to achieve program accessibility
 - 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 II Enforcement

- Agency ADA Coordinator, grievance
- Complaints
 - Public transportation:
Federal Transit Administration (FTA),
U.S. Department of Transportation (DOT)
 - All other:
U.S. Department of Justice (DOJ)
- Private lawsuits



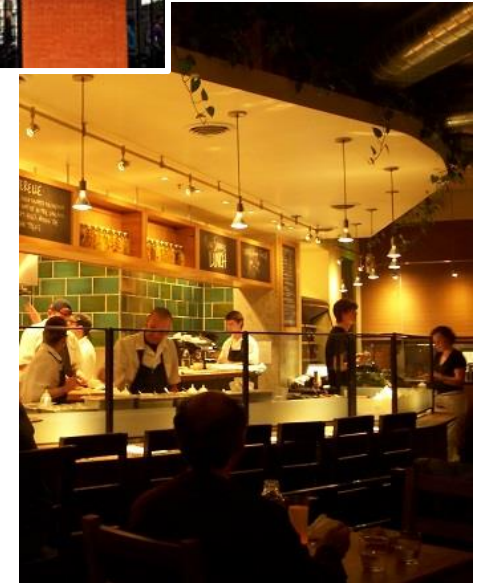
Title III

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**



Public Accommodations



- Private entities that **own, lease, lease to, or operate** one of the twelve types of places of public accommodation, which include:
 - Lodging
 - Food / drink service
 - Exhibition / entertainment
 - Public gathering
 - Sales / rental
 - Service
 - Specified public transportation stations
 - Public display / collection
 - Recreation
 - Education
 - Social service
 - Exercise / 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

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

Title II: Eligibility

- Businesses 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.

Title III Enforcement

Complaints:

- U.S. Department of Justice (DOJ)
- Private lawsuits





The Basics

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



Service Animals Defined



- DOT: Any **guide dog, signal dog, or other animal** individually trained to work or perform tasks for an individual with a disability
 - DOT's definition applies in vehicles and facilities of transportation services covered by Title II or Title III
- DOJ: Any **dog** that has been individually trained to do work or perform tasks for the benefit of an individual with a disability
 - DOJ's definition applies in all other types of programs and facilities covered by Title II or Title III

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

- 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

- For 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
- For 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

Remember

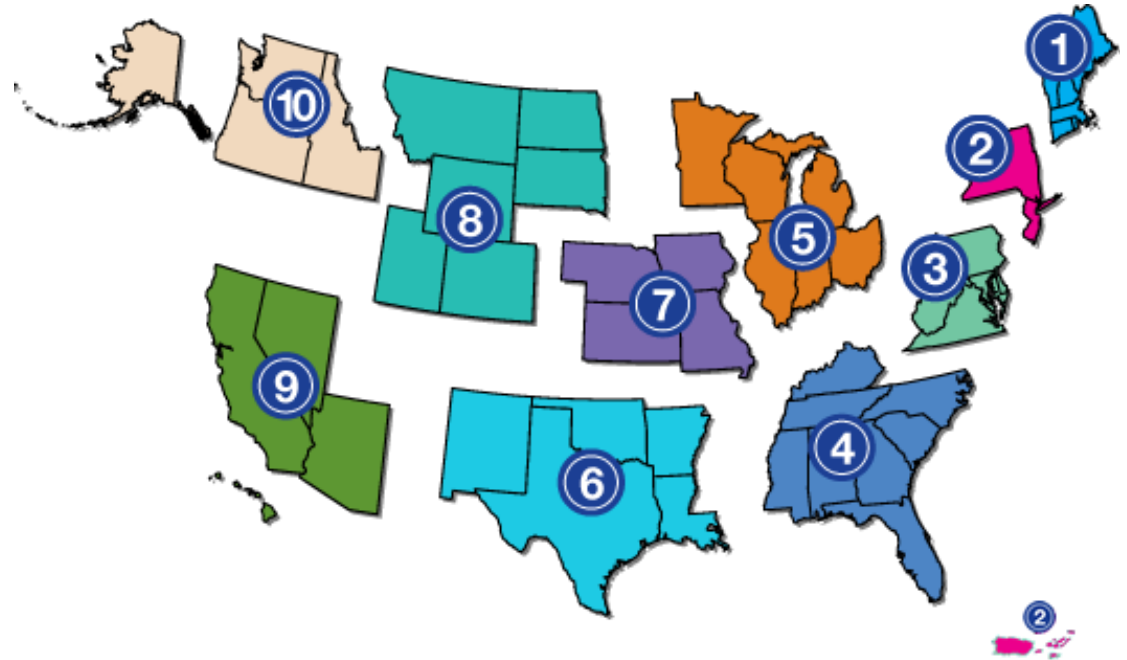
- People need to learn how to create an inclusive society because they have never lived in one
- The Americans with Disabilities Act is one tool we can use to teach people what this means
- The law is the minimum standard

ADA National Network

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

1-800-949-4232

ADAta.org



Mid-Atlantic ADA Center

- Operated by TransCen, Inc.
- Serves Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and the District of Columbia

800-949-4232

ADAinfo.org