

Welcome to Session 7 of the Disability Awareness and Sensitivity Series Legal Consideration – The ADA

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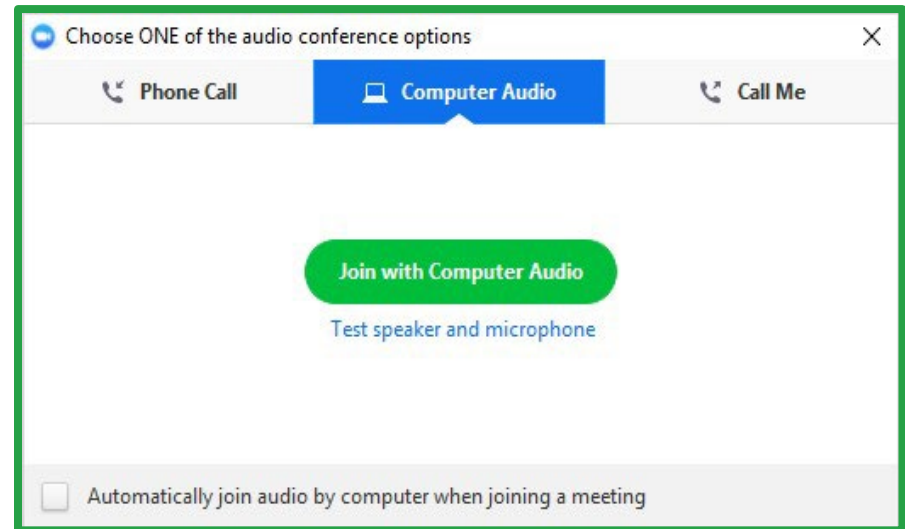
Cornell University



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Future Sessions

Register for Upcoming Sessions

- [Session 8: Creating Accessible Content for Content Creators: The Basics](#) – November 30 2-3pm EST
- [Session 9: Social Media and Accessibility](#) - December 7th 2-3pm EST
- [Session 10: Creating Accessible PDF's](#) – December 14th 2-3pm EST
- [Session 11: The Integrated Resource Team Approach](#) – December 21st, 2-3pm EST

All sessions will be recorded and available here within a week of the completion of the session: [Disability Small Business Past Events](#)



LEGAL CONSIDERATIONS – THE ADA



Meet our Special Guests



DONOVAN ANDERSON, ESQ.

- Private practice at the Law Office of Donovan Anderson PC.
- Disability advocate and expert.
- Attorney Advisor with the District of Columbia Public Schools
- Graduated from Colgate University with a BA in 1986 and from Georgetown University School of Law in 1989 with his JD.



CHERLYN FREEMAN-WATKINS, ESQ.

- Trial Attorney with 20-plus years of litigation experience
- 10 plus years of training experience
- Certified ADA Trainer
- DEIA Certified Trainer
- Juris Doctorate - Howard University School of Law
- BA- Political Science –
- Virginia Commonwealth University
Licensed to practice law, D.C. and MD

Agenda

1. Understand the purpose of the ADA
2. Define Disability under the ADA
3. Identify and understand the five titles of the ADA
4. Understand the law regarding Service Animals in the Workplace



The ADA (1990)

- **Enacted in 1990**
 - Congress passed the ADA in 1990 "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."
- Four key goals of the American Disabilities Act 1990
 1. Equal opportunity
 2. Full participation
 3. Independent living
 4. Economic self-sufficiency
- **Amended in 2009**
 - Redefined the term "disability," including by defining "major life activities" and "being regarded as having such an impairment."

Who is must comply with the ADA?

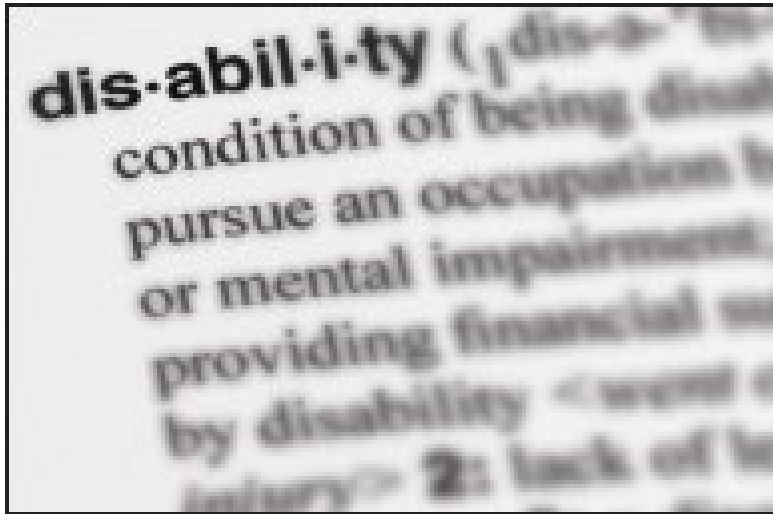


- Entities with 15 or more employees
- Public (government) agencies regardless of whether they receive federal assistance
- Privately operated commercial entities
- Exempt: Private clubs and religious organizations

ADA Disability Definition

A Qualified “individual with a disability” is a person who:

1. Has a physical or mental impairment that substantially limits one or more major life activities - OR
2. Has a record of such an impairment – OR
3. An individual who is regarded as having such an impairment.



Determining Whether an Individual has a Disability

1. Does the individual have an impairment?
2. Does the impairment limit any major life activities?
3. Is the limitation on any major life activity substantial?

Categories of Disabilities



Major Life Activities

Under the ADAAA, 'major life activities' is expanded to include "major bodily functions."

- Immune system
- Normal cell growth
- Digestive
- Bowel
- Bladder
- Brain
- Circulatory
- Cardiovascular systems
- Neurological
- Respiratory
- Endocrine
- Lymphatic
- Musculoskeletal
- Special sense organs and skin
- Genitourinary
- Reproductive functions

Five Titles of the ADA

Title 1. Employment

Prohibits disability discrimination in all employment processes

Title 2. Accessibility in public entities

Physical and program accessibility in state/local govt. entities

Title 3. Accessibility in businesses

Physical and program accessibility in restaurants, hotels, stores, places of business

Title 4. Telecommunications

Telephone and communications systems for the public

Title 5. Miscellaneous

Protection from retaliation



Title I - Employment

Title I - Employment

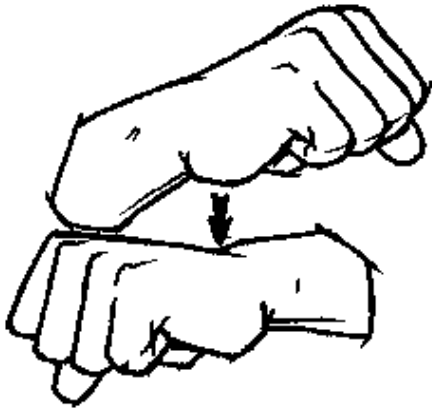
- ✓ Protects against disability discrimination in all employment processes
 - ✓ Applies to private sector workplaces with 15 or more employees
 - ✓ Applies to all state/local government employers
 - ✓ Prohibits covered entities from discriminating *on the basis of disability*, in all employment practices, and during all stages
 - ✓ Requires reasonable accommodation for known disability of an applicant or employee who is qualified, barring undue hardship
- ✓ Goal: **The full inclusion of people with disabilities in all aspects of American society.**

About Hiring (Pre-employment)...



- The hiring process must be made accessible and accommodations must be provided if requested
- No disability inquiry during recruitment, screening or hiring
- No medical inquiries or “indirect” questions about disability
- Many disabilities covered under the ADA are not apparent to others
- The decision to not tell about a disability during hiring is not a “lie.” It is a legally protected right

Reasonable Accommodation



ASL sign for “work”

*“...Any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities.”**

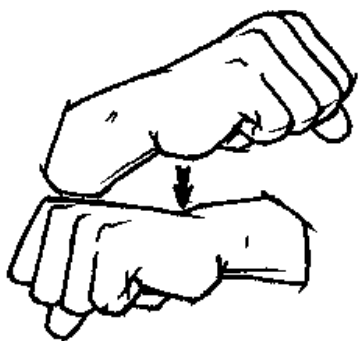
- Applies to both hiring and employment
- Must be provided for known disabilities
- Determined through an interactive process
- Medical information can be collected related to the accommodation need and must be kept confidential

*(EEOC: www.eeoc.gov/policy/docs/accommodation.html)

Accommodations are dependent upon:

- The specific requirements of the job.
- The particular need(s) of the employee or applicant.
- The extent to which modifications or aids are available without causing an undue hardship on the employing organization.

Examples of Reasonable Accommodations



ASL sign for “work”

- Changes in work schedules
- Job-aids: Reminders, checklists, or picture-based tools
- Changes in break times
- Work from home
- Voice-to-text software
- Screen readers or magnifiers
- Sign language interpreters (for key workplace interactions)
- Changes in furniture or equipment
- Leave
- Job re-structuring
- Re-assignment to a different job

Employers can discipline and/or terminate an employee with a disability.

If the performance of an employee with a disability warrants discipline or termination based on a fair and equally applied performance standard, then this employee can be disciplined or terminated (But consider whether an accommodation is needed first).





*The average cost of an accommodation is about \$500.**

About half of all accommodations cost nothing.

**Job Accommodation Network (Updated 2011).
Workplace accommodations: Low cost, high impact.
<http://AskJAN.org/media/LowCostHighImpact.doc>

Title II - State & Local Government



Title II - State and Local Governments

Every type of state and local government entity, including:

- All types of state agencies
- Counties
- Municipalities and
- Cities
 - executive, legislative, and judicial branches of state and local government



GOVERNMENT

Title II - State and Local Governments

- **Subtitle A:** Protects qualified individuals with disabilities from discrimination on the basis of disability in the services, programs, or activities of all state and local governments.
 - Extends the prohibition of discrimination on the basis of disability to all activities of state and local governments, including those that do not receive Federal financial assistance.
- **Subtitle B:** Clarifies the requirements of Section 504 for public transportation entities that receive Federal financial assistance.
 - Extends coverage to all public entities that provide public transportation, whether or not they receive Federal financial assistance.
 - The Department of Transportation is responsible for the implementation of Subtitle B of Title II and has issued the regulations implementing that subtitle.

Title III

Places of Public Accommodations



Title III - Places of Public Accommodations

- The ADA defines public accommodations as private entities that own, operate, or lease places of public accommodation.
- Prohibits discrimination on the basis of disabilities in places of public accommodations, commercial facilities, and private entities that offer certain examinations and courses related to educational and occupational certification.

Title III -

Places of Public Accommodations

- Sets the minimum standards for accessibility for alterations and new construction of commercial facilities and privately owned public accommodations.
- Requires public accommodations to remove barriers in existing buildings where it is easy to do so without much difficulty or expense.
- Directs businesses to make "reasonable modifications" to their usual ways of doing things when serving people with disabilities.
- Requires that businesses take steps necessary to communicate effectively with customers with vision, hearing, and speech disabilities.
- Regulated and enforced by the [U.S. Department of Justice](#).

What is a Public Accommodation?

Places of...

1. Lodging
2. Dining
3. Exhibition or entertainment
4. Public Gathering
5. Sales or Rental
6. Service Delivery
7. Public transportation
8. Public display or collection
9. Recreation
10. Education
11. Private Social Services
12. Exercise or recreation

Who is covered by Title III of the ADA?

- Public accommodations
- Commercial facilities: A private business that is *not* open to the general public (e.g. factories, warehouses)
- Private entities that offer examinations and courses related to educational and occupational certification

Title IV

Telecommunications



Title IV - Telecommunications

- Requires telephone and Internet companies to provide a nationwide system of interstate and intrastate telecommunications relay services that allows individuals with hearing or speech disabilities to communicate over the telephone.
- Requires closed captioning of federally funded public service announcements.
- Regulated by the [Federal Communication Commission\(link is external\)](#).



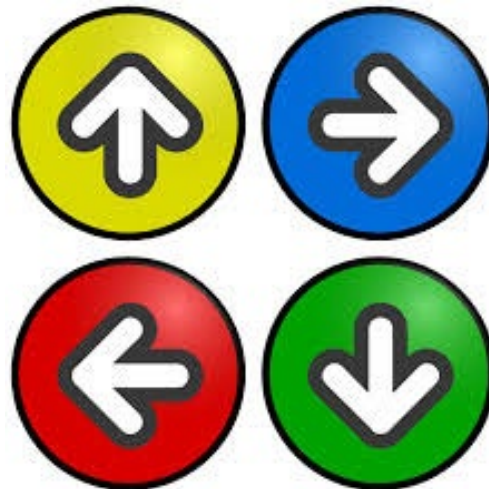
Title IV - Telecommunications

- A TTY is a special device that lets people who are deaf, hard of hearing, or speech-impaired use the telephone to communicate, by allowing them to type text messages.
- A TTY is required at both ends of the conversation in order to communicate. It can be used with both land lines and cell phones.



Title V

Miscellaneous Provisions



Title V - Miscellaneous Provisions

- Contains a variety of provisions relating to the ADA as a whole.
- Supports individuals with disabilities who need legal recourse to uphold their civil rights.
- Provides a list of certain conditions that are not considered disabilities.
- Title V emphasizes:

“No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this Act or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.”

Service Animals

- The Americans with Disabilities Act defines service animals as those that are individually **trained to do work or perform tasks for the benefit of an individual with a disability**, including a physical, sensory, psychiatric, intellectual, or other mental disability.
- **Only dogs and miniature horses are recognized as service animals.**



Laws that Cover Service Animals

- Title II and III of the ADA has regulations that specifically cover the right to use service animals in public places.
- Fair Housing Act gives people with disabilities the right to have service animals in housing (includes emotional support animals).
- Air Carriers Access Act covers service animals in air travel.

Difference Between a Service Animal and Emotional Support Animal

- Although emotional support animals, comfort animals and therapy dogs alleviate symptoms related to disability, because they do not perform a “task,” they are **not covered by the ADA.**
- Emotional support animals, comfort animals, and therapy dogs are not service animals under Title II and Title III of the **ADA.**

Examples of animals that fit the ADA's definition of "service animal"

1. **Guide Dog or Seeing Eye® Dog¹** is a carefully trained dog that serves as a travel tool for persons who have severe visual impairments or are blind.
2. **Hearing or Signal Dog** is a dog that has been trained to alert a person who has a significant hearing loss or is deaf when a sound occurs, such as a knock on the door.
3. **Psychiatric Service Dog** is a dog that has been trained to perform tasks that assist individuals with disabilities to detect the onset of psychiatric episodes and lessen their effects.
4. **SSigDOG** (sensory signal dogs or social signal dog) is a dog trained to assist a person with autism.
5. **Seizure Response Dog** is a dog trained to assist a person with a seizure disorder.

When Can an Employee Use a Service Animal in the Workplace?

- An employee can request to use a service animal in the workplace as a **reasonable accommodation**.
- The criteria for determining if a service animal request is “reasonable” is the same as for any other reasonable accommodation request.

Service Animal Inquiries

When it is not obvious what service an animal provides, only limited inquiries are allowed.

May ask ONLY two questions:

(1) is the dog a service animal required because of a disability,

and

(2) what work or task has the dog been trained to perform.

QUESTIONS *NOT* ALLOWED

- You may not ask about the following:
 - ✓ The person's disability
 - ✓ For medical documentation of a disability
 - ✓ For a special training card or documentation
 - ✓ For the dog to demonstrate how it performs its task
- There is no national registry of service dogs or ID cards recognized by the federal government.

Common Tasks associated with Service Animals

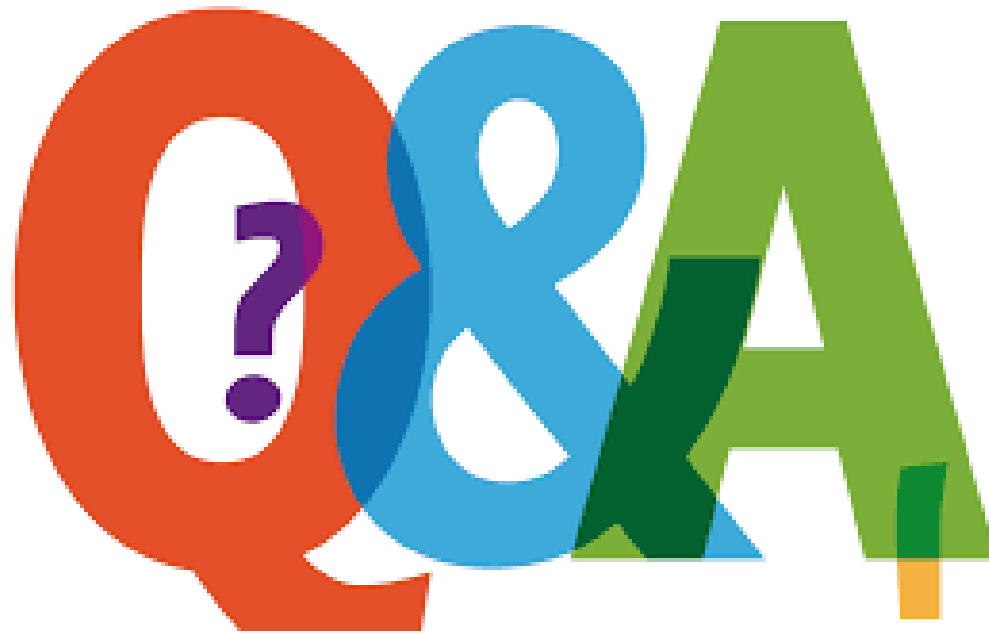
- Open and close drawers, cabinets
- Helping with mobility/balance.
- Easing depression/anxiety.
- Alerting a person to PTSD behaviors/nudging them to safe place.
- Picking up and giving objects.



Common Tasks associated with Service Animals

- Detecting high blood sugar.
- Turn lights on and off.
- Pull a wheelchair.
- Guide a blind individual.
- Bring or retrieve items such as mail, medicine or a phone.





THANK YOU



Extra Slides

Steps to Determining if a Service Animal Request is Reasonable

Step 1

Engage in the interactive process of reasonable accommodation just like any other type of request.

- Do not deny a service animal on face value or as a matter of policy. Consider each request on a case-by-case basis.

Step 2

Documentation to determine if an employee is a “qualified person with a disability” under the ADA.

- Employer has the right to request medical documentation of disability (unless disability is “readily apparent”, or the employee has already disclosed disability).

Steps to Determining if a Service Animal Request is Reasonable

Step 3

Determine Need For and Type of Accommodation

- **Emotional support animal**-letter from doctor confirming that presence of an emotional support animal would alleviate symptoms of disability or improve functioning.
- **Service animal**- information about the type of task or work the animal will perform.
- Establish that need is for work-related tasks, or necessary to get to work, or function at work.

Steps to Determining if a Service Animal Request is Reasonable

Step 4

Criteria for denial.

- Would cause an undo financial hardship or administrative burden.
- Would change the fundamental nature of the business or interfere with operation/ability to make a profit.
- Cause a direct threat to health or safety.
- If no criteria for denial is met, then consider how the accommodation may be provided.

Steps to Determining if a Service Animal Request is Reasonable

Step 5

Implementation of the Accommodation

- The employer and employee need to establish clear guidelines regarding the service animal. **Examples:**
 - Where animal can and can't go.
 - When and where animal can eat, potty breaks, etc.
 - Vet records of vaccinations, good health.
- Follow-up to evaluate effectiveness should be built into implementation.