

MTAS/CTAS ADA Coordinator Course

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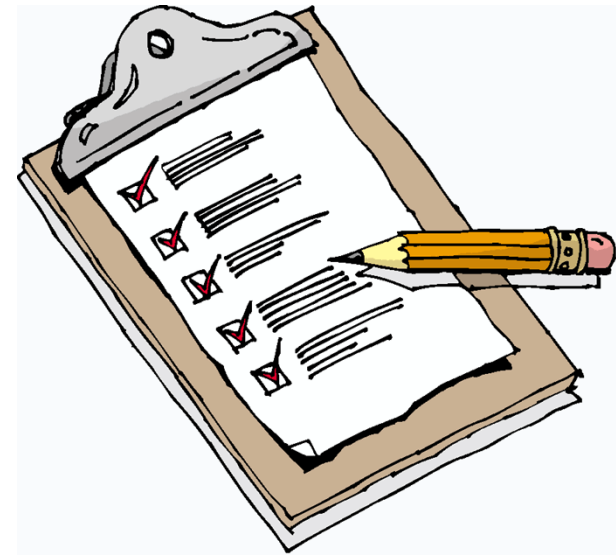
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Agenda

- History of ADA
- Basic Requirements
- Facilities
- Programs and Services
- Open Meetings
- Open Records
- Employment
- Transition Plans
- Website Accessibility



The History of ADA

Stephanie Brewer Cook

City of Knoxville

ADA Coordinator



<https://www.youtube.com/watch?v=Gv1aDEFIXq8>

History



The Basics of ADA

Stephanie O'Hara

MTAS Attorney

ADA Basics and Structure

- Original law signed in 1990
- Protections divided into 5 titles:
 - Title I: Employment
 - Title II: Public Services
 - Title III: Public Accommodations
 - Title IV: Telecommunications
 - Title V: Miscellaneous



ADA Structure

- Title II Subparts:
 - Subpart A – General
 - Subpart B – General Requirements
 - Subpart C – Employment
 - Subpart D – Program Accessibility
 - Subpart E – Communications
 - Subpart F – Compliance Procedures



Basic Requirements

- ADA protects individual with physical or mental impairment that substantially limits their ability to perform major life activities
- Entities cannot discriminate based on disability.

Examples of Prohibited Acts:



Refer to Class Handout p. 2-3 for more information on examples of prohibited acts.

Basic Requirements

- Public entities may implement rules for safety if based on objective assessment of actual risk.

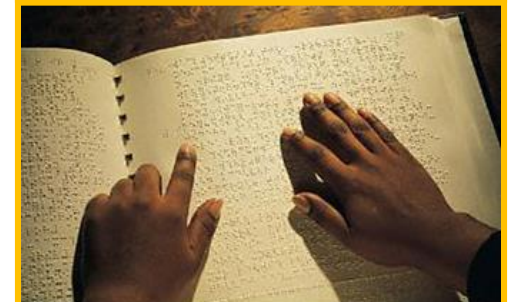
Examples of Safety Policies:



Refer to Class Handout
p.3 for discussion of
safety policy examples.

Basic Requirements

- Reasonable Accommodations:
 - Service Animals Admitted
 - Mobility Devices, such as wheelchairs
 - Auxiliary aids
 - Text phones
 - Braille
 - Sign language translators



Basic Requirements

- All public entities must:
 - Provide public notice of ADA, which must consider:
 - Target Audience
 - Information to be Included
 - Where and how notice is to be provided
 - Evaluate all services, policies, and practices and make modifications as needed
- Public entities with 50+ employees
 - ADA Coordinator
 - Grievance Procedure
 - Transition Plan



Basic Requirements



1. Who is the target audience for the ADA notice?

The target audience for public notice includes applicants, beneficiaries, and other people interested in the state or local government's programs, activities, or services. **The audience is expansive, and includes everyone who interacts – or would potentially interact – with the state or local government.**

Examples of the Target Audience for the ADA Notice

- a recipient of social services, food stamps, or financial assistance provided by the state or local government
- an applicant for a public library card
- a public transit user
- a person who uses the county recreation center
- a grandmother attending her grandchild's high school graduation in a city park
- a member of a citizen's advisory committee
- a recipient of a grant from the state or local government
- a citizen who wants to participate in a town council meeting
- a person adopting a dog from the local public animal shelter

Basic Requirements



2. What information shall the notice include?

The notice is required to include relevant information regarding Title II of the ADA, and how it applies to the programs, services, and activities of the public entity.

The notice should not be overwhelming. **An effective notice states the basics of what the ADA requires of the state or local government without being too lengthy, legalistic, or complicated. It should include the name and contact information of the ADA Coordinator.**

For example, a one page document in a standard font to include brief statements about:

- employment,
- effective communication,
- making reasonable modifications to policies and programs,
- not placing surcharges on modifications or auxiliary aids and services, and
- filing complaints.

Basic Requirements

3. How and where should the notice be provided?

It is the obligation of the head of the public entity to determine the most effective way of providing notice to the public about their rights and the public entity's responsibilities under the ADA.

Publishing and publicizing the ADA notice is not a one-time requirement. State and local governments should provide the information on an ongoing basis, whenever necessary. If you use the radio, newspaper, television, or mailings, re-publish and re-broadcast the notice periodically.

Some Ways to Provide Notice to Interested Persons

- Include the notice with **job applications**
- Publish the notice periodically in **local newspapers**
- Broadcast the notice in public service announcements on **local radio and television stations**
- Publish the notice on the government entity's **website** (ensure that the website is accessible)
- Post the notice **at all facilities**
- Include the notice in **program handbooks**
- Include the notice in **activity schedules**
- Announce the notice at **meetings** of programs, services, and activities
- Publish the notice as a **legal notice** in local newspapers
- Post the notice in bus shelters or other **public transit stops**



Basic Requirements

3. How and where should the notice be provided?

The information must be presented so that it is accessible to all. Therefore, it must be available in alternative formats.

Examples of Alternative Formats

- Audio tape or other recordings
- Radio announcements
- Large print notice
- Braille notice
- Use of a **qualified sign language interpreter** at meetings
- Open or closed-captioned public service announcements on television
- ASCII, HTML, or word processing format on a computer diskette or CD
- HTML format on an accessible website
- Advertisements in publications with **large print versions**



Grievance Procedures



- a description of how and where a complaint under Title II may be filed with the government entity;
- if a written complaint is required, a statement notifying potential complainants that alternative means of filing will be available to people with disabilities who require such an alternative;
- a description of the time frames and processes to be followed by the complainant and the government entity;
- information on how to appeal an adverse decision; and
- a statement of how long complaint files will be retained.

ADA Coordinator Qualifications

- familiarity with city/county structure, activities, and employees
- knowledge of the ADA and other laws addressing the rights of people with disabilities, such as Section 504 of the Rehabilitation Act, 29 U.S.C. § 794
- experience with people with a broad range of disabilities
- knowledge of various alternative formats and alternative technologies that enable people with disabilities to communicate, participate, and perform tasks
- ability to work cooperatively with the local government and people with disabilities
- familiarity with any local disability advocacy groups or other disability groups
- skills and training in negotiation and mediation
- organizational and analytical skills



Facilities

- Any building built or altered after 01/26/1992 must be “readily accessible to and usable by” persons with disabilities.
- Requirements differ for existing versus altered or new facilities.
- Structural changes are not required when other accommodations are feasible.
- Entities are not required to take any action that would result in undue financial and administrative burdens. Undue hardship is determined on a case-by-case basis.
- While all government services must be accessible, but not all facilities must be (e.g. if city cannot afford to make all pools assessable, the entity may choose to only make some accessible, which must depend on access, public transportation, etc.



Facilities

- As of March 15, 2012, public entities must comply with the 2010 ADA Standards for Accessible Design for new construction and alterations and barrier removal.
- Safe Harbor: If a facility was in compliance with the 1991 Standards or Uniform Federal Accessibility Standards as of March 15, 2012, a public entity is not required to make changes to meet the 2010 Standards until a planned alteration.
- Some areas were not addressed in 1991 Standards and are not protected by the safe harbor, including:
 - swimming pools
 - play areas
 - exercise machines and equipment
 - court sport facilities, and
 - boating and fishing piers.



Facilities

- When a public entity alters a facility, the facility must comply with the 2010 Standards.
 - “Alteration” is defined as remodeling, renovating, rehabilitating, reconstructing, changing or rearranging structural parts or elements, changing or rearranging plan configuration of walls and full-height or other fixed partitions, or making other changes that affect (or could affect) the usability of the facility.
- New construction must meet 2010 Standards.



<https://www.nytimes.com/2017/03/29/opinion/new-york-has-a-great-subway-if-youre-not-in-a-wheelchair.html>

<http://www.rightthisminute.com/video/struggles-getting-around-new-york-city-wheelchair>

Historic Building with Good Signage to Accessible Entrance



Knox County Court House, Knoxville TN

Historic Building with Good Signage to Accessible Entrance



Knox County Court House,
Knoxville, TN



Historic Building with Good Signage to Accessible Entrance



Knox County Court House, Knoxville TN

Case Studies

1. *The county clerk has five offices across the county – two are accessible, but three are not. If the same services/programs are available in all 5 offices, do the 3 inaccessible ones need to be made accessible?*

- It depends. The agency does not have to make structural changes to those inaccessible offices as long as the accessible offices operate the same hours and business/services. However, in a large county where there is significant distance between facilities, this can create barriers to program access; then structural changes may be necessary in order to achieve program access for everyone.



Case Studies

2. *A person with a mobility disability wants to apply to city council. The application office at the election commission is inaccessible. Now what?*

- A election commission may need to meet the individual at an alternative location such as an accessible part of City Hall or the applicant’s home, to process the necessary paperwork. Another option might be to allow the applicant to complete and submit the paperwork electronically.



Case Studies

3. *There are two historic properties in town – one is a house on the List of Historic Preservation that is used as a museum. The other is a historic building, not in a preservation program, that houses city offices. What are the accessibility requirements, for each?*



- The historic house museum does not need to do anything that would destroy architectural or historic features of the museum; however they still need to provide program access to the upstairs part of the building such as providing an audio-visual display of the contents of the upstairs rooms in an accessible location on the first floor. In the case of the office building, there is no historical building protection and the office must attempt nonstructural methods of providing program accessibility, such as assuring public access to the services offered by the agency elsewhere. If this is not possible, then structural accessibility may need to be initiated unless it causes undue financial or administrative burden. Remember, too, that employees with disabilities working in that city office building are protected under Title I of the ADA, so the city might also have to make structural changes to provide them with access, including access to the benefits provided to other employees.

Programs and Services

Gary Jaeckel

Municipal Management Consultant

University of TN - MTAS

Solid Waste Pickup

- Residential Services:
- **I AM ELDERLY AND/OR HAVE SPECIAL NEEDS AND CAN'T MANEUVER A CART.**
- For residents who meet ADA requirements or have special needs and cannot use a 96-gallon cart, smaller carts will be available.

Solid Waste Pickup

- **WHAT IS THE PROCESS FOR ADA TRASH COLLECTION?**
- With ADA trash collection services a walk-up service will be provided if a resident meets the requirements and needs assistance moving their cart. Please contact the Mayor's Office.

Parks and Recreation

- Chapter 10 of the 2010 Americans with Disabilities Act Accessibility Guidelines (ADAAG) includes nine recreation areas:
- amusement rides, boating facilities, exercise equipment, fishing piers, golf and mini-golf facilities, play areas, swimming pools, spas and shooting facilities.

Parks and Recreation

- New policies are required as well, in particular, a Service Animal Policy and Other Power-Driven Mobility Devices (OPDMD) Policy, which relates to the use of devices other than motorized wheelchairs and electronic convenience vehicles (scooters) for mobility in public areas, including Trails.

Parks and Recreation

- The most meaningful step, is moving from presence as a spectator to having program access sufficient to be a participant. This can positively affect family and friends, as well as the person with a disability.

Parks and Recreation

“This past summer, the Parks Department conducted a softball game for children with disabilities. There were multiple wheelchairs and walkers on the field. Over 500 people came to watch their children or friends do something that had never been available to them before – playing ball for the pure joy of participation.”

Wichita, Kansas Parks

Parks and Recreation

“Hi and welcome to EXPAND! We work to enhance the lives of people with disabilities through the fun of recreation while promoting development and growth through our programs. Our full time staff consists of five Certified Therapeutic Recreation Specialists (CTRS) who are dedicated to help people of all abilities enjoy life.”

<https://bouldercolorado.gov/parks-rec/expand-program-for-people-with-disabilities>

Parks and Recreation

“We use recreation and leisure activities to help our participants learn and practice:

- Social skills, community integration and making new friends
- Physical fitness and emotional health
- Independence and self-confidence
- Connect people and families with their community resources”

<https://bouldercolorado.gov/parks-rec/expand-program-for-people-with-disabilities>

Parks and Recreation

“Below are some examples of accommodations the EXPAND program has supported in the past:

- Creating a picture schedule to be used during a program
- Creating an incentive program using star or sticker charts and prizes for positive behavior
- Hiring a sign language interpreter for a program or meeting”

<https://bouldercolorado.gov/parks-rec/expand-program-for-people-with-disabilities>

Parks and Recreation

Additional Boulder, CO EXPAND program accommodations:

- Providing additional training for the general recreation staff
- Having staff use a microphone to make the noise level louder for people with hearing impairments
- Putting Braille on our workout machines

<https://bouldercolorado.gov/parks-rec/expand-program-for-people-with-disabilities>

Parks and Recreation



Source: *Parks and Recreation Inclusion Report*. NRPA 2018

ADA and Emergency Services

- Receiving citizen complaints
- Enforcing laws
- Interrogating witnesses
- Arresting, booking, and holding suspects
- Operating telephone (911) emergency centers
- Providing emergency medical services

ADA and Emergency Services

What do you think happened?

An officer yells "freeze" to an individual who is running from an area in which a crime has been reported. The individual, who is deaf, cannot hear the officer and continues to run. The officer mistakenly believes that the individual is fleeing from the scene.

ADA and Emergency Services

- **What are the ADA's Requirements for Emergency Communications Systems?**
 - The ADA requires that all Public Safety Answering Points (PSAPs) provide direct and equal access to their services for people with disabilities who use teletypewriters (TTYs).

ADA and Emergency Services

- Training, Sensitivity and Awareness
 - Police Training Videos:
<https://www.ada.gov/videogallery.htm>)
- Policy
- ADA Coordinator in Law Enforcement Department
- Resources

Open Records and Meetings

Stephanie O'Hara
MTAS Attorney

Open Records and Meetings

1. ADA Title II requires local governments to provide effective communication with disabled persons. Persons with disabilities must be able to receive information from local governments and convey information to local governments.
2. Local governments must provide auxiliary aids and services (examples include providing a reader, large print or an interpreter) to enable effective communication.
3. Local governments may require reasonable advance notice of the need for aids or services.

Open Records and Meetings

4. Local governments are permitted to utilize an alternative aid or service if the entity can demonstrate that the alternative is equally effective or that the requested aid or service would result in a fundamental alteration of the goods or services provided to the public or in an undue financial and administrative burden. “Undue burden” is defined as a significant difficulty or expense. This determination should be made by a high level official—no lower than a department head and the determination must be in writing and state the reasons for the decision.

Auxiliary Aids and Services

- qualified interpreters
- note takers
- screen readers
- computer-aided real-time transcription (CART)
- written materials
- telephone handset amplifiers
- assistive listening systems
- hearing aid-compatible telephones
- computer terminals
- speech synthesizers
- communication boards
- text telephones (TTYs)
- open or closed captioning
- closed caption decoders
- video interpreting services
- videotext displays
- description of visually presented materials
- exchange of written notes
- TTY or video relay service
- email
- text messaging
- instant messaging
- qualified readers
- assistance filling out forms
- taped texts
- audio recordings
- Brailled materials
- large print materials
- materials in electronic format (compact disc with materials in plain text or word processor format)

Case Studies

1. *A county recreation program requires that all participants in its scuba program pass a swimming test. Is this legal?*
 - YES. If the county can demonstrate that being able to swim is necessary for safe participation in the class. This is permitted even if requiring such a test would tend to screen out people with certain kinds of disabilities.

2. *A city day camp for kids requires children who use wheelchairs to be accompanied by an attendant for safety reasons. Is this legal?*
 - NO. A blanket requirement is a violation of the law as many wheelchair users would not need special assistance to safely participate in the camp.

Case Studies

3. *Janice, a plaintiff in a civil suit, has a respiratory condition that prevents her from climbing steps. The courtroom is on the second floor of the courthouse that has no elevator. Now what?*
 - The public entity must relocate the proceedings to an accessible ground floor courtroom or another building if necessary, in order to allow Janice to participate in the civil suit.

Case Studies

4. The clerk's office has a new brochure about municipal resources for the community. Someone has called and requested a copy in Braille. Does the clerk's office have to provide this type of accommodation? Why or Why not? What are some other alternative formats?

- This municipal office is required to provide appropriate auxiliary aids and services to ensure effective communication for individuals with disabilities. When providing effective communication, the complexity and length of the information needs to be taken in to account. Since the clerk's office is a Title II entity, "primary consideration" should be given to the individual's choice of auxiliary aid or service. This means that the clerk's office must honor the choice, unless it can demonstrate that another equally effective means of communication is available, or that use of the means chosen would result in a fundamental alteration in the service, program, or activity or in undue financial and administrative burdens. If the clerk's office were instead a private law office, then it would not have to give primary consideration to the individual's preferred method as long as equally effective communication was assured.

Case Studies

5. A woman has come to a public meeting about a town issue. She has a service animal with her. Upon entering, she is told that service animals are not allowed since there is food at the meeting. Is this consistent with the ADA?

- 2010 ADA Revised Requirements define a service animal as any dog or miniature horse that has been individually trained to perform tasks for an individual with a disability, for which he or she requires assistance because of a disability. Assuming her service animal meets this definition, the woman has a right to bring the animal into the meeting. Service animals are to be allowed in all areas of a facility where the public is normally allowed to go.

Employment Issues

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<https://www.youtube.com/watch?v=qPVRhHB9fXs>



EEOC and Reasonable Accommodations

- Title I of the Americans With Disabilities Act of 1990
 - Prohibits discrimination
 - Hiring, advancement, discharge, compensation, and training
 - Any other terms, conditions and privileges
 - Requires reasonable accommodations
- Title II of the Americans With Disabilities Act of 1990

Reasonable Accommodation

...any change in the workplace or the way things are customarily done



Accommodations and HR Issues

- Facilities
- Applications
- Interviews
- HR Activities
 - Testing
 - Benefits



Examples of Reasonable Accommodations

Example A: *An employee with a hearing disability must be able to contact the public by telephone. The employee proposes that he use a TTY(11) to call a relay service operator who can then place the telephone call and relay the conversation between the parties.*

This is "reasonable" because a TTY is a common device used to facilitate communication between hearing and hearing-impaired individuals. Moreover, it would be effective in enabling the employee to perform his job.



Examples of Reasonable Accommodations

***Example B:** A cashier easily becomes fatigued because of lupus and, as a result, has difficulty making it through her shift. The employee requests a stool because sitting greatly reduces the fatigue. This accommodation is reasonable because it is a common-sense solution to remove a workplace barrier being required to stand when the job can be effectively performed sitting down.*

This "reasonable" accommodation is effective because it addresses the employee's fatigue and enables her to perform her job.



Examples of Reasonable Accommodations

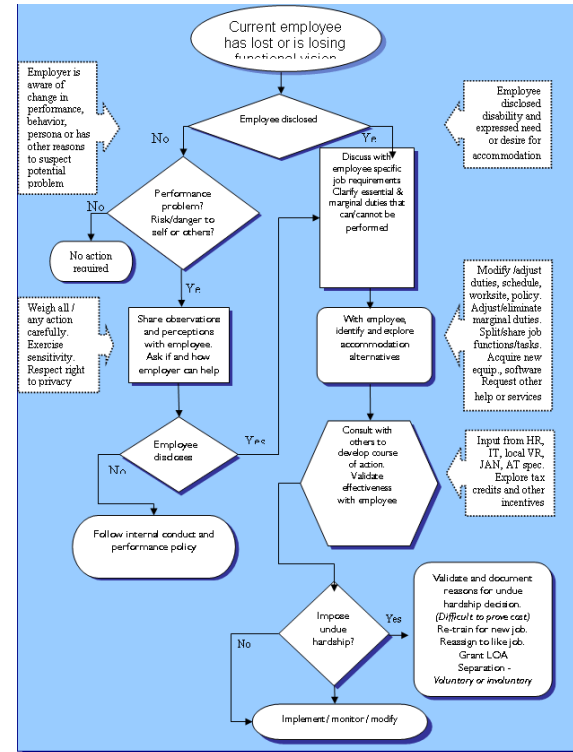
Example C: A cleaning company rotates its staff to different floors on a monthly basis. One crew member has a psychiatric disability. While his mental illness does not affect his ability to perform the various cleaning functions, it does make it difficult to adjust to alterations in his daily routine. The employee has had significant difficulty adjusting to the monthly changes in floor assignments. He asks for a reasonable accommodation and proposes three options: staying on one floor permanently, staying on one floor for two months and then rotating, or allowing a transition period to adjust to a change in floor assignments.



These accommodations are reasonable because they appear to be feasible solutions to this employee's problems dealing with changes to his routine. They also appear to be effective because they would enable him to perform his cleaning duties.

Reasonable Accommodation Procedures

- Requesting Reasonable Accommodations
- Processing the Request
- Interactive Process
- Request for Medical Information
- Confidentiality Requirements
- Time Frame
- Resolution of the Request



Requesting a Reasonable Accommodation

- Who?
 - By the individual
 - By a family member, friend
 - By a health provider or other representative



Requesting a Reasonable Accommodation

- Who?

- When an individual decides to request accommodation, the individual or his/her representative must let the employer know that s/he needs an adjustment or change at work for a reason related to a medical condition. To request accommodation, an individual may use "plain English" and need not mention the ADA or use the phrase "reasonable accommodation."
 - **Example A:** An employee tells her supervisor, "I'm having trouble getting to work at my scheduled starting time because of medical treatments I'm undergoing." This is a request for a reasonable accommodation.
 - **Example B:** An employee tells his supervisor, "I need six weeks off to get treatment for a back problem." This is a request for a reasonable accommodation.
 - **Example C:** A new employee, who uses a wheelchair, informs the employer that her wheelchair cannot fit under the desk in her office. This is a request for reasonable accommodation.
 - **Example D:** An employee tells his supervisor that he would like a new chair because his present one is uncomfortable. Although this is a request for a change at work, his statement is insufficient to put the employer on notice that he is requesting reasonable accommodation. He does not link his need for the new chair with a medical condition.

Requesting a Reasonable Accommodation

- Who?

- A family member, friend, health professional, or other representative may request a reasonable accommodation on behalf of an individual with a disability.⁽²¹⁾ Of course, the individual with a disability may refuse to accept an accommodation that is not needed.
 - **Example A:** An employee's spouse phones the employee's supervisor on Monday morning to inform her that the employee had a medical emergency due to multiple sclerosis, needed to be hospitalized, and thus requires time off. This discussion constitutes a request for reasonable accommodation.
 - **Example B:** An employee has been out of work for six months with a workers' compensation injury. The employee's doctor sends the employer a letter, stating that the employee is released to return to work, but with certain work restrictions. (Alternatively, the letter may state that the employee is released to return to a light duty position.) The letter constitutes a request for reasonable accommodation.

Requesting a Reasonable Accommodation

- What?



Requesting a Reasonable Accommodation

What?

- There are three categories of "reasonable accommodations":
 - "(i) modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or
 - (ii) modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or
 - (iii) modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities."⁽⁴⁾

Accommodation Cost

According to ergonomic and job accommodation experts, the costs of reasonable accommodations for an employee with a disability are fairly low:

- 31% of accommodations cost nothing
- 50% cost less than \$50.
- 69% cost less than \$500.
- 88% cost less than \$1,000.



Not Reasonable Accommodations

- Eliminating the essential functions
- Lowering productivity standards
- Personal use items
- Personal use amenities



Requesting a Reasonable Accommodation

- When?



When should an individual with a disability request a reasonable accommodation?

An individual with a disability may request a reasonable accommodation at any time during the application process or during the period of employment. **The ADA does not preclude an employee with a disability from requesting a reasonable accommodation because s/he did not ask for one when applying for a job or after receiving a job offer. Rather, an individual with a disability should request a reasonable accommodation when s/he knows that there is a workplace barrier that is preventing him/her, due to a disability, from effectively competing for a position, performing a job, or gaining equal access to a benefit of employment.** As a practical matter, it may be in an employee's interest to request a reasonable accommodation before performance suffers or conduct problems occur.

Requesting a Reasonable Accommodation

- How?

Do requests for reasonable accommodation need to be in writing?

- No. Requests for reasonable accommodation do not need to be in writing. Individuals may request accommodations in conversation or may use any other mode of communication. An employer may choose to write a memorandum or letter confirming the individual's request. Alternatively, an employer may ask the individual to fill out a form or submit the request in written form, but the employer cannot ignore the initial request. An employer also may request reasonable documentation that the individual has an ADA disability and needs a reasonable accommodation.
- When an individual decides to request accommodation, the individual or his/her representative must let the employer know that s/he needs an adjustment or change at work for a reason related to a medical condition.

Processing the Request



Processing the Request

- **What must an employer do after receiving a request for reasonable accommodation?**
 - The employer and the individual with a disability should engage in an informal process to clarify what the individual needs and identify the appropriate reasonable accommodation. The employer may ask the individual relevant questions that will enable it to make an informed decision about the request. This includes asking what type of reasonable accommodation is needed.

The Interactive Process



The Interactive Process

- The exact nature of the dialogue will vary. In many instances, both the disability and the type of accommodation required will be obvious, and thus there may be little or no need to engage in any discussion. In other situations, the employer may need to ask questions concerning the nature of the disability and the individual's functional limitations in order to identify an effective accommodation. While the individual with a disability does not have to be able to specify the precise accommodation, s/he does need to describe the problems posed by the workplace barrier.
- Additionally, suggestions from the individual with a disability may assist the employer in determining the type of reasonable accommodation to provide. Where the individual or the employer are not familiar with possible accommodations, there are extensive public and private resources to help the employer identify reasonable accommodations once the specific limitations and workplace barriers have been ascertained.

Request for Medical Information

MEDICAL CERTIFICATE

Signature of the Applicant

I, Dr. after careful personal examination of the case hereby certify that whose signature is given above, is suffering from that I consider that a period of absence from duty for with effect from to is absolutely necessary for the restoration of his/her health.

MEDICAL OFFICER

Station: _____
Date : _____

CERTIFICATE OF MEDICAL FITNESS

Signature of Applicant :

I, Dr. do hereby certify that I have carefully examined Sri./Smt. of the who was suffering from and whose signature is given above, and find that he/she has recovered from his/her illness and is now fit to resume duties in Government service. I also certify that before arriving at this decision I have examined the original medical certificate(s) and statement(s) of the case (or certified copies thereof) on which leave was granted or extending, and have taken these in consideration in arriving at my decision.

MEDICAL OFFICER

Station: _____
Date : _____

Request for Medical Information

May an employer ask an individual for documentation when the individual requests reasonable accommodation?

- Yes. When the disability and/or the need for accommodation is not obvious, the employer may ask the individual for reasonable documentation about his/her disability and functional limitations. The employer is entitled to know that the individual has a covered disability for which s/he needs a reasonable accommodation.
 - Reasonable documentation means that the employer may require only the documentation that is needed to establish that a person has an ADA disability, and that the disability necessitates a reasonable accommodation. Thus, an employer, in response to a request for reasonable accommodation, cannot ask for documentation that is unrelated to determining the existence of a disability and the necessity for an accommodation. This means that in most situations an employer cannot request a person's complete medical records because they are likely to contain information unrelated to the disability at issue and the need for accommodation. If an individual has more than one disability, an employer can request information pertaining only to the disability that requires a reasonable accommodation.

Request for Medical Information

- An employer may require that the documentation about the disability and the functional limitations come from an appropriate health care or rehabilitation professional. The appropriate professional in any particular situation will depend on the disability and the type of functional limitation it imposes. Appropriate professionals include, but are not limited to, doctors (including psychiatrists), psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, and licensed mental health professionals.
- In requesting documentation, employers should specify what types of information they are seeking regarding the disability, its functional limitations, and the need for reasonable accommodation. The individual can be asked to sign a limited release allowing the employer to submit a list of specific questions to the health care or vocational professional.
- As an alternative to requesting documentation, an employer may simply discuss with the person the nature of his/her disability and functional limitations. It would be useful for the employer to make clear to the individual why it is requesting information, i.e., to verify the existence of an ADA disability and the need for a reasonable accommodation.

Confidentiality Requirements

- Employees
- Supervisors/Manager
- First Aid/Safety Personnel
- Government Officials Investigating ADA
- State Departments
 - Workers compensation offices
 - State second injury funds
 - workers compensation insurance carriers
- Insurance purposes



Confidentiality Requirements

- An employer may not disclose that an employee is receiving a reasonable accommodation because this usually amounts to a disclosure that the individual has a disability. The ADA specifically prohibits the disclosure of medical information except in certain limited situations, which do not include disclosure to coworkers.
- The limited exceptions to the ADA confidentiality requirements are:
(1) supervisors and managers may be told about necessary restrictions on the work or duties of the employee and about necessary accommodations; (2) first aid and safety personnel may be told if the disability might require emergency treatment; and (3) government officials investigating compliance with the ADA must be given relevant information on request.
- In addition, the Commission has interpreted the ADA to allow employers to disclose medical information in the following circumstances: (1) in accordance with state workers' compensation laws, employers may disclose information to state workers' compensation offices, state second injury funds, or workers' compensation insurance carriers; and (2) employers are permitted to use medical information for insurance purposes. See 29 C.F.R. pt. 1630 app. §1630.14(b) (1997); Preemployment Questions and Medical Examinations, *supra* note 27, at 23, 8 FEP Manual (BNA) 405:7201; Workers' Compensation and the ADA, *supra* note 52, at 7, 8 FEP Manual (BNA) 405:7394.

Resolution of the Reasonable Accommodation Request

An employer should respond expeditiously to a request for reasonable accommodation. If the employer and the individual with a disability need to engage in an interactive process, this too should proceed as quickly as possible. Similarly, the employer should act promptly to provide the reasonable accommodation. Unnecessary delays can result in a violation of the ADA.

The duty to provide reasonable accommodation is an ongoing one. Certain individuals require only one reasonable accommodation, while others may need more than one. Still others may need one reasonable accommodation for a period of time, and then at a later date, require another type of reasonable accommodation. If an individual requests multiple reasonable accommodations, s/he is entitled only to those accommodations that are necessitated by a disability and that will provide an equal employment opportunity.



Undue Hardship

- Undue hardship is “*a significant difficulty or expense – a financial burdensome accommodation or one that would fundamentally alter the way the employer conducts business*”.
- Financial hardship depends on financial resources.



Factor to Determine Undue Hardship

- the size (number of employees, number and type of facilities, financial resources);
- the size, type, and financial resources of the specific facility where the accommodation would be;
- the nature and cost of the accommodation (In determining cost, exclude outside funding);
- the impact of the accommodation on the facility's operation; and
- the number of employees or applicants potentially benefiting from the particular accommodation

Case Studies and Discussion

An employer is impressed with an applicant's resume and contacts the individual to come in for an interview. The applicant, who is deaf, requests a sign language interpreter for the interview. The employer cancels the interview and refuses to consider further this applicant because it believes it would have to hire a full-time interpreter.

Has the employer violated the ADA? What should the employer have done?

The employer has violated the ADA. The employer should have proceeded with the interview, using a sign language interpreter (absent undue hardship), and at the interview inquired to what extent the individual would need a sign language interpreter to perform any essential functions requiring communication with other people

Case Studies and Discussion

The Town of Smallville has signed a contract with Super Trainers, Inc., to provide mediation training at its facility to all of the Town's Department Managers. One manager is blind and requests that materials be provided in braille. Super Trainers refuses to provide the materials in braille. The Town maintains that it is the responsibility of Super Trainers and sees no reason why it should have to arrange and pay for the braille copy.

Has the employer violated the ADA? What should the employer have done?

Both XYZ (as an employer covered under Title I of the ADA) and Super Trainers (as a public accommodation covered under Title III of the ADA)⁽⁴⁵⁾ have obligations to provide materials in alternative formats. This fact, however, does not excuse either one from their respective obligations. If Super Trainers refuses to provide the braille version, despite its Title III obligations, XYZ still retains its obligation to provide it as a reasonable accommodation, absent undue hardship.

Employers arranging with an outside entity to provide training may wish to avoid such problems by specifying in the contract who has the responsibility to provide appropriate reasonable accommodations. Similarly, employers should ensure that any offsite training will be held in an accessible facility if they have an employee who, because of a disability, requires such an accommodation.

In Conclusion



- Create/Update Your Policy
- Review Your Job Descriptions
- Train Supervisors
- Conduct Interactive Process
- Medical Information Needed
- Continue the Dialog
- Document the Process

Transition Plans

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MTAS Attorney

Transition Plans

- All: evaluate all of their services, policies, and practices and to make modifications to any such services, policies, and practices that did not meet ADA requirements
- 50+ Employees: required to develop a transition plan outlining any structural changes that must be completed in order to achieve access and specifying a time frame for completion of each modification.



Transition Plans – Self-evaluation

- i. Programs, Policies and Practices
- ii. Design standards
- iii. All sidewalks, curb ramps and intersections
- iv. Public Rights of Way
- v. Pedestrian facilities including Accessible Pedestrian Signals (APS)
- vi. Transit stops/operations
- vii. Buildings/facilities
- viii. Parks and all park programs and amenities
- ix. including swimming pools, playgrounds, areas of sports activity
- x. Parking lots
- xi. Housing Programs
- xii. Emergency Planning
- xiii. Hiring/firing practices and Job Descriptions
- xiv. Boards and Commissions
- xv. Website
- xvi. Other forms of communication

Transition Plans Process

1. Schedule actions to be taken each year to remove barriers until all barriers are addressed.
2. Develop cost projections and approve a budget
3. Monitor progress and update plan regularly
(recommendation would be to update on an annual basis)
4. Identify person responsible for implementing plan
5. Public participation



Transition Plans Process

- Dec 2016 – ADA Coordinator & Grievance Procedure
- Dec 2017 – Official letter outlining process to develop your Transition Plan
- Sept 2018 – Submit self-certification form to TDOT
- Dec 2019 – Submit completed Transition Plans or risk losing TDOT funding

Website Accessibility

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Website Accessibility

- Does My Website Need to Be Accessible?
- What is an “accessible” website?
- WCAG



What is WCAG?

- W3C
 - Worldwide Web Consortium
- WAI
 - W3C Web Accessibility Initiative
- WCAG
 - W3C Web Accessibility Initiative – Web Content Accessibility Guidelines
 - (Latest version is 2.0, 2.1 in development)

What is “Website Accessibility”?

- Introduction to Web Accessibility Standards: VIDEO from W3C



<https://www.w3.org/WAI/videos/standards-and-benefits.html>

So, Does Your City/County's Website Need to be Accessible?

- Do you provide the following services on your site?
 - Board meeting minutes?
 - Employment information?
 - Forms to pay fees, taxes, etc.?
 - Notices of public meetings?

Yes, Your Website Needs to Be Accessible

- If so, then YES, you need to make these services accessible on your website
- OR be willing to provide a realistic, accessible alternative to accessing those services

Disabilities to Consider for Website Accessibility?

- Blindness or low vision
- Deafness and hearing loss
- Learning disabilities
- Cognitive limitations
- Limited movement
- Speech disabilities
- Photosensitivity
- Or a combination

Disabilities to Consider for Website Accessibility?

- Something else to consider is that as your citizen population ages, the percentage of people with disabilities increases. With the aging of the baby boomers, there will be more people accustomed to using resources on the web, trying to use your website for services.

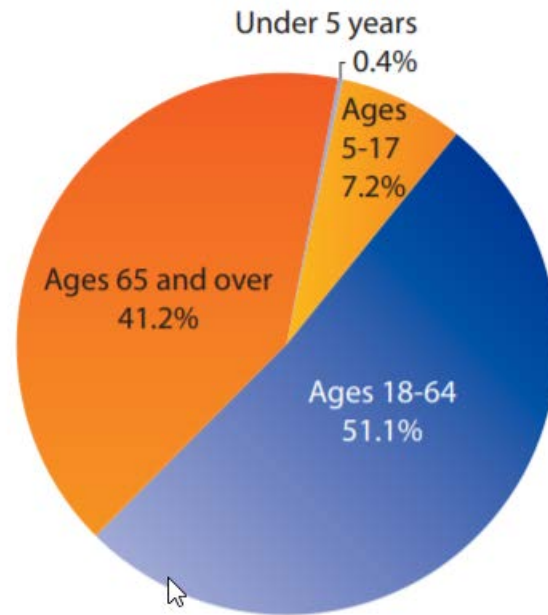


Chart source: 2016 Disability Statistics Annual Report (University of New Hampshire, Institute on Disability. Jan 2017)

How Do You Make Your Site Accessible?

- Examples of considerations:
 - Web page titles that provide clear description of the page
 - Meaningful descriptive text for service related images
 - Contrast between foreground and background
- Evaluate your current site
- Standards? WCAG!

What is an “Accessible” Website?

- Can someone with vision or mobility challenges navigate your site?
 - Can a text reader easily interpret the site?
 - Is there a way to navigate without a mouse?
 - Are the headers, labels, captions complete and easily understood?

WCAG 2.0 Guideline Principles

- **Perceivable**

- Perceivable standards are related to text alternatives, captions, content being presented in ways that assistive technologies can interpret and ease of seeing and hearing content.

- **Operable**

- Operable content is available with keyboard commands, not just the mouse, length of time the text available for reading, content that does not cause seizures, and content that helps users navigate and find content.

- **Understandable**

- Understandable content is both readable clear in meaning and purpose

- **Robust**

- Robust sites maximize compatibility with current and FUTURE tools.

<https://www.w3.org/WAI/standards-guidelines/>

Remember ...

...for a person with certain disabilities, being able to access local government services from home, on your website, might be the **ONLY** way they can get to your services on their own.

Recap

- What Every City/County Needs:
 - ADA Policy
 - Public Notice
 - Training; Sensitivity and Awareness
 - Resources
- In Addition, What Cities/Counties with 50+ Employees Need:
 - ADA Coordinator Designated
 - Grievance Procedures
 - Transition Plan



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