

The background of the top two-thirds of the slide is a close-up, slightly blurred image of the American flag, showing the stars and stripes in a diagonal perspective.

Americans with Disabilities Act Overview and Introduction



Office of Disability Rights
Government of the District of Columbia

Office of Disability Rights (ODR)



The mission of the Office of Disability Rights (ODR) is to ensure that every program, service, benefit, and activity operated or funded by the District of Columbia is fully accessible to, and usable by, people with disabilities.

ODR is responsible for oversight of the District's obligations under the Americans with Disabilities Act as well as other federal and local disability rights laws.

Services provided by ODR include...

- Investigation of discrimination complaints
- ADA training and technical assistance for District agencies
- Oversight of ADA Compliance within District government through monitoring of agencies' ADA plans
- Work with agencies' designated ADA Coordinator
- Olmstead (community integration) planning
- Policy and budget recommendations for improving District access to people with disabilities

Expected outcomes of our session today

- Become familiar with ADA background and requirements, definitions and concepts
- Understand the reasonable accommodation process and the role of the Supervisor and ADA Coordinator
- Employment interview do's and don'ts

What is a disability?

The term “disability” has a three-prong definition:

- A physical or mental impairment that substantially limits one or more major life activity (MLA) of an individual; or
- A record of such an impairment; or
- Being regarded as having such an impairment

Understanding “Substantially Limits”

A person is substantially limited in performing a major life activity if:

- *They are unable to perform the activity; or*
- *They are significantly restricted in the condition, manner or duration that they can perform one or more major life activities...*

as compared to the average person in the population

Consideration of Mitigating Measures

- Medication, coping mechanisms, and equipment must be taken into account when deciding how substantial the impairment's limitation is
- How much does the measure mitigate the impairment (all/most/some of the time)?

“Major Life Activities”

Examples of major life activities:

- Walking, lifting, performing manual tasks
- Sitting
- Breathing
- Speaking, hearing
- Learning
- Reading
- Personal care/grooming

Record of a Disability

- History of an impairment that substantially limited a major life activity;

or

- Person was misclassified as having an impairment that substantially limited a major life activity

Regard as Having a Disability

- Has an impairment that does not substantially limit a major life activity, but is treated as if it substantially limits
 - Association
 - Retaliation



Questions?



Regarding the Definition of a Disability



ADA Title I

Title I - Employment

“No employer shall discriminate against any **qualified person** with a disability in regard to any aspect of employment”

Who is a “qualified individual”?

A person who:

- Satisfies the requisite skills, experience, education and other job-related requirements of the position
- Can perform the **essential functions** of the job, with or without **reasonable accommodation**

What is a reasonable accommodation?

Any change or adjustment to the job, the work environment or the way work is customarily done which permits a qualified applicant or employee with a disability to perform the essential functions

Asking for Reasonable Accommodations

- Does not have to be in writing, be formal, or use any special language
- Does not have to be requested at beginning of employment
- Case-by-case determination: Accommodation can be anything needed to allow this person with this disability to perform the essential functions of this job

Reasonable Accommodation Process

- The ADA requires that the employer and employee engage in an interactive dialogue concerning reasonable accommodations
- The employee usually initiates – the employee may inquire about the process from the supervisor, HR or the ADA Coordinator at the agency
- If you, as the supervisor, are contacted first, bring in the **ADA Coordinator** early in the process
- The supervisor does not need to know the diagnosis or particulars of the medical condition, only the **limitations** or **restrictions** on the employee's ability to perform essential tasks and potential accommodations

What are “essential functions” of a position?

- **Essential functions** are those that are fundamental and central to the purpose of the position
- **Marginal functions** are useful responsibilities, but are not central to the purpose of the position

Determining Essential Functions

Courts have considered:

- Employer's judgment
- Position description written before the job was advertised and filled
- Functions performed by others in the same or similar job classifications
- Work performed by current and past incumbents
- Consequences if this position did not perform the function
- Number of available employees who could perform the function

Types of Reasonable Accommodations

- A “**no-tech**” accommodation costs little or no money...just time, support and creativity (*i.e., additional preparation time for an individual, or a color-coded filing system.*)
- A “**low-tech**” accommodation is any accommodation that is technologically simple or unsophisticated, and readily available in most offices (*i.e., a door handle as opposed to a door knob, to accommodate an individual with limited mobility.*)
- A “**high-tech**” accommodation is any accommodation that uses advanced or sophisticated devices (*i.e., screen reading software with synthesized speech.*)

Reasonable Accommodations

May Include:

- May require job restructuring
- May require time off (Does not require indefinite leave and; Not required if it imposes undue hardship on ER)
- Change in schedule
- Equipment (tape recorder, scanner, voice software, TTY)

Reasonable Accommodations

May Include *(continued)*:

- Change of workplace policy (allow food at workstation, allow service animal, allow personal items at desk)
- Adjusting methods of supervision (communicating assignments in different ways, providing additional training, more guidance...)
- May require allowing working at home
- Provision of a job coach

Reasonable Accommodations

Do Not Involve:

- Medication monitoring
- ER not required to lower production standards
- Does not require provision of personal use items (hearing aids, wheelchairs)
- Does not require change of supervisor
- Employer cannot force Employee to accept an accommodation

What is “undue hardship”?

An employer may decline to provide an accommodation such accommodation is:

- Unduly expensive
- Extensive
- Substantial
- Disruptive
- Would fundamentally alter the nature or operations of the business

Discipline & Conduct

- Employer may discipline Employee for violating a workplace conduct standard, even if the violation results from a disability
- If the conduct standard is job-related and consistent with business necessity
- If other Employees are held to the same standard
- Employer may have to provide reasonable accommodation to help Employee to meet the standard in the future, but does not have to excuse past conduct

Pre-Employment Inquiries

Pre-Offer...

- **May ask** about education, work history, and required certifications and licenses
- **May not ask** questions that are directly or indirectly intended to elicit information about a disability
- **May ask** the person to describe or to demonstrate how the essential tasks of the job would be performed if the disability is obvious or the person has disclosed a disability

Pre-Employment Inquiries (*continued*)

Pre-employment inquiries:

- Drug and polygraph tests are acceptable
- No medical tests
- Employer may ask if prospective Employee needs reasonable accommodations in application process
- Employer must provide reasonable accommodations upon request

Post-Offer Employment Inquiries

Post-Offer...

- **May ask** disability-related questions and have medical exams if all employees entering that job classification have the same exam/inquiry and the exam/inquiry is job-related
- **May ask** about a Workers' Compensation history
- **May ask** about prior sick leave use
- **May ask** about general health history

On-the-job Employment Inquiries

On-the-job inquiries are acceptable if they are:

- Job-related and consistent with business necessity; and
- when an employer has a reasonable belief, based on objective evidence, that: (1) an employee's ability to perform essential job functions will be impaired by a medical condition; or (2) an employee will pose a direct threat due to a medical condition.

Confidentiality

- Medical information must be kept confidential in files separate from personnel files
- Can't tell other Employees about medical condition or about reasonable accommodations.

Exceptions to the rule:

- Can tell supervisors who need to know of the necessary accommodations.
- Can tell safety personnel if Employee may need emergency treatment

ADA's Relationship with Family and Medical Leave Act (FMLA)

FMLA applies to "serious health condition", regardless of whether it substantially limits a major life activity, including the following:

- Inpatient care in hospital;
- Continuing treatment (with incapacity of > 3 consecutive days & continuing treatment);
- Pregnancy;
- Chronic health condition that requires periodic visits to doctor, continues over extended period, and is episodic; and
- Permanent or long-term incapacity

ADA's Relationship with FMLA

ADA requires as much leave as is necessary as a reasonable accommodation – may be more than 12 weeks

IF Employee requests time off:

- Treat as covered under ADA for the Employee unless s/he specifies FMLA leave
- Employer must grant whichever leave (ADA or FMLA) provides greatest right to Employee
- Employer can offer another reasonable accommodations under ADA, but under FMLA, Employee is entitled to 12 weeks leave
- ADA does not require leave for Employee to care for a relative with a disability

“Direct Threat”

A direct threat is:

- Current
- Significant risk of substantial harm to the health and safety of the person with the disability or others
- Supported by objective medical or other factual evidence
- Cannot be eliminated by any reasonable accommodation



Questions?



Regarding Title I of the ADA



ADA Title II



ADA Title II

State and Local Government

“No qualified individual with a disability shall, by reason of the disability, be excluded from participating in or be denied the benefits of the services, programs or activities provided by a public entity.”

Providing services and programs is the business of State agencies

Factors for Title II Coverage

- Is the organization/agency operated with public funds?
- Are its Employees considered government employees?
- Does the organization/agency receive significant assistance from the government?
- Is it governed by an independent board from a private organization or by an elected or appointed board?

Title II – State and Local Governments

- All programs, services, and activities are covered
- Government Services provided by Contractors
- Public Transportation
- Legislation
- Regulations
- Judicial Activities
- Everything the government entity does

Title II – State and Local Governments

Requirements...

- Inclusion
- Equal Benefit
- Integrated Benefit
- Non-discriminatory Eligibility Criteria
- Reasonable Modifications
- Effective Communication
- Program Access
- Administrative Requirements

Reasonable Modification of Policy

- Agency must reasonably modify any policy, practice or procedure when necessary to enable people with disabilities to participate
- A reasonable modification can be anything that makes it possible for this person with this disability to participate in this function

Examples of Reasonable Modifications

- Allowing a person with a disability to eat in a facility if they have diabetes
- Allowing a service animal in a building in spite of a no pets policy
- Providing someone to assist a person with a disability to fill out an application

Must prioritize reasonable modifications that provide the most integration (people with disabilities going through same processes/same places as people without disabilities)

Title II – Effective Communication

Effective Communication

- Must provide auxiliary aids and services to make communication with people with disabilities as effective as communication with non-disabled people
Examples: *sign language interpreter, TTY, taped text, Braille, reader, note taker...*
- Individualized standard –communication must be effective for *this* person in *this* situation
- Cannot surcharge for cost of compliance

Title II – Existing Buildings

Physical Access

Programs, Services & Activities in Existing Buildings...

- *Must be accessible when viewed in their entirety*
- *Does not necessarily require each facility to be accessible*
- *May use alternate means to make programs accessible*

Examples: curb service, home service, move meetings to accessible space on request

Title II – Existing Buildings *(continued)*

Alterations (after 1/26/92)

- Altered area must be fully accessible (ADA Standards of Accessible Design –ADAAG) 28 C.F.R. Pt. 36, App. A
- Path of Travel. *If alteration affects a Primary Function Area - must spend additional 20% on accessibility of path of travel to the area (including restrooms, phones, drinking fountains, etc.)*

Title II – New Buildings

New Construction (after /26/1992)

- Must be fully accessible according to ADA Standards of Accessible Design/ ADAAG
- Unless structurally impracticable

Title II – Transportation

Transportation

Buses...

- Newly purchased or leased buses must be accessible
- Para-transit service must be provided to all eligible individuals (cannot navigate public transport system, needs accessible bus, or has a specific impairment related condition)
- Comparable to public transport system in all service criteria (e.g. service area, response time, fare, service times, capacity constraints)

Title II – Defenses

Defenses

- Fundamental Alteration of program or service
- Undue Burden (significant expense/difficulty)
- Direct Threat (threat to health/safety of others)

Remedies

- Internal (not mandatory)
- Administrative (not mandatory)
Federal agencies (Dept. of Justice)
- Judicial



Duties of District Agencies

- Appoint an agency ADA Coordinator
- Complete an ADA self-evaluation to determine the status of ADA compliance
- Prepare an ADA implementation plan and annual self-evaluation
- Establish and publish uniform grievance procedures for prompt and equitable resolution of ADA complaints
- Submit the Self-Evaluation and ADA Implementation Plan for approval to ODR

Duties of District Agencies *(continued)*

- Provide reasonable accommodations to employees with disabilities to allow them to perform the essential functions of their jobs
- Make all programs, services, and activities accessible through physical access or other means
- Provide sign language interpretation, real time captioning, Braille, and other auxiliary aids and services when needed to communicate with people with hearing, vision, and speech disabilities

Duties of District Agencies *(continued)*

- Serve people with disabilities in the most integrated setting appropriate
- Reasonably modify policies, practices, and procedures when needed to serve a person with a disability



Questions?



Regarding Title II of the ADA



The Role of the ADA Coordinator

Role of the ADA Coordinator

The ADA Coordinator participates in collecting information regarding his/her department's ADA policies and practices; informs staff within the department of ADA requirements; participates in the overall planning and decision making to bring his/her department into compliance with the ADA; and serves as the contact person regarding ADA issues within the department.

Role of the ADA Coordinator

(continued)

The ADA Coordinator may come from a number of different professional backgrounds, services or programs from within an agency. The ADA Coordinator can be someone who comes to the position out of interest and may acquire information and expertise through ODR sponsored training, consultation with ODR, attendance at ADA conferences, etc.

ADA Coordinator Position Description

MAJOR DUTIES

- Comprehensive understanding of the Americans with Disabilities Act (ADA) requirements.
- Conduct an internal review of their agency or department *to include:*
 - policies, practices and activities including general nondiscrimination provisions such as equal opportunity to participate and benefit in the program(s);

ADA Coordinator Position Description

(continued)

MAJOR DUTIES

- eligibility criteria for the program;
- integration of the program;
- communication access such as the availability of auxiliary aids and services and the availability of printed materials in alternate formats such as Braille and large print;
- accessibility of programs, locations and facilities.

ADA Coordinator Position Description

(continued)

MAJOR DUTIES

- Participate in the development of an ADA Compliance Plan.
- Ensure that all employees are aware of their rights under the ADA.
- Serve as the initial contact person for ADA grievances and conducts informal investigations of compliance with the ADA.
- Maintain contact information, results and progress made regarding complaints, requests for technical assistance, information and referral.

Utilize Resources

- Establish an open and on-going dialogue with your ADA Coordinator
- Contact the Office of Disability Rights for technical assistance or additional training and/or resources





Thank you!



**For information and assistance, please contact
the Office of Disability Rights**

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