

Issue Spotting for Potential Disability Rights Violations

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Outline

- Overview of the Americans with Disabilities Act (ADA)
 - Who is protected by the ADA
 - What the ADA covers
- Common issues in ADA Enforcement
 - Physical access
 - Service animals
 - Communications
- Filing an ADA complaint
 - Filing a complaint with DOJ
 - DOJ's ADA mediation program

Overview of the ADA

What does the ADA do?

- Prohibits discrimination on the basis of disability in employment, State and local government, public accommodations, commercial facilities, transportation, and telecommunications.
- Response to the Disability Rights Movement
- Federal laws protecting disability rights
 - Architectural Barriers Act (1968)
 - Rehabilitation Act (1973)
 - Education for All Handicapped Children Act (1975) – now the IDEA
 - Fair Housing Act Amendments (1988)
 - Americans with Disabilities Act (1990)
 - ADA Amendments Act (2008)

Who is protected by the ADA?

- Person who has a disability or has a relationship or association with an individual with a disability. 42 U.S.C. § 12102 and 28 C.F.R. § 36.105.
- “Disability” means:
 - A physical or mental impairment that substantially limits one or more major life activities;
 - A record of having such impairment; or
 - Being regarded as having such an impairment
- “Physical or mental impairment” means:
 - Physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, or a mental or psychological disorder
 - The ADA does not specifically name all of the impairments that are covered
- “Major life activity” includes:
 - Caring for oneself, performing tasks, seeing, hearing, eating, sleeping, walking, breathing, speaking, learning, reading, concentrating, thinking, writing, communicating, interacting with others, etc.
 - Operation of a major bodily function or system (neurological, respiratory, cardiovascular, endocrine, etc.)

Who is protected by the ADA?

- “Substantially limits” a major life activity:
 - Requires an individualized determination
 - An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active
 - Substantial limitation should be determined without considering “ameliorative mitigating measures” (e.g., medication, prosthetics, hearing aids, mobility devices, but not ordinary eyeglasses or contact lenses)
- Predictable assessments:
 - Applying these principles, some impairments will virtually always qualify as substantially limiting a major life activity. Examples:
 - Deafness
 - Blindness
 - Intellectual disability
 - Cancer (substantially limits normal cell growth)
 - Diabetes
 - Epilepsy

Where does the ADA apply?

- ADA Title I: Employment
 - Applies to employers with 15 or more employees.
 - Prohibits, among other things, discrimination against persons with disabilities in recruitment, hiring, promotions, training, pay, social activities, and other privileges of employment.
 - Requires provision of reasonable accommodations to job applicants and employees
 - Title I complaints must be filed with the EEOC, typically within 180 days
 - Must receive a “right to sue” letter before proceeding to federal court

Where does the ADA apply?

- ADA Title II: State and Local Government Activities
 - Requires that State and local governments give people with disabilities an equal opportunity to benefit from all of their programs, services, and activities (e.g., public education, employment, transportation, recreation, health care, social services, courts, voting, and town meetings).
 - Example: State and local governments are required to follow specific architectural standards in the new construction and alteration of their buildings.
 - Can file a complaint with DOJ and/or the USAO Civil Rights Team. Complaints must be filed within 180 days of the date of discrimination.
 - Private enforcement is also an option. No need to receive a “right to sue” letter before going to court.

Where does the ADA apply?

- ADA Title III: Public Accommodations
 - Covers businesses and nonprofit service providers that are public accommodations, privately operated entities offering certain types of courses and examinations, privately operated transportation, and commercial facilities.
 - Public accommodations are private entities who own, lease, lease to, or operate facilities such as restaurants, retail stores, hotels, movie theaters, private schools, convention centers, doctors' offices, homeless shelters, transportation depots, zoos, funeral homes, day care centers, and recreation facilities including sports stadiums and fitness clubs. 12 categories of places of public accommodation under the ADA.
 - Public accommodations must comply with basic nondiscrimination requirements that prohibit exclusion, segregation, and unequal treatment. They also must comply with specific requirements related to architectural standards for new and altered buildings; reasonable modifications to policies, practices, and procedures; effective communication with people with hearing, vision, or speech disabilities; and other access requirements.
 - Can file a complaint with DOJ and/or the USAO Civil Rights Team; private enforcement also an option.

Where does the ADA apply?

- ADA Title IV: Telecommunications Relay Services
 - Addresses telephone and television access for people with hearing and speech disabilities.
- ADA Title V: Misc. Provisions
 - Retaliation

Common Issues in ADA Enforcement

Physical Accessibility

- Which type of claim?
 - Title II applies to public facilities; Title III applies to private facilities
- ADA Standards for Accessible Design
 - Sets minimum requirements for new construction or alterations
 - Available online at ADA.gov
 - Different standards apply based on date of construction or alteration
 - Construction or alterations made on or after March 15, 2012, are subject to the “2010 Standards”
- Common physical accessibility barriers
 - Parking spaces, steps at an entrance, narrow aisles, high countertops, or small restrooms
- Questions to ask to determine the applicable legal standard for a physical access case:
 - Is this a public or private entity?
 - When was the facility built?
 - Have changes been made to the facility, and if so, when?

Service Animals

- Allowing a service animal into a business or public entity is a reasonable modification under the ADA
- A service animal is a dog that is individually trained to do work or perform tasks for the benefit of a person with a disability
 - Reasonable accommodations can also be made for trained miniature horses
- An emotional support animal is not a service animal under the ADA
 - An animal that provides comfort through its presence has not been trained to perform a specific task for the benefit of the person with a disability
 - Emotional support animals are protected under the Air Carrier Access Act and the Fair Housing Act, but not the ADA
- Questions that can be asked about a service animal:
 - Is the animal required because of a disability?
 - What work or task has the animal been trained to perform?
- Service animals must be permitted to accompany people with disabilities in all areas where members of the public are allowed to go

Communications

- ADA requires “effective communication” for people with disabilities
 - Must be as effective as communication with others
- Covered entities must furnish appropriate auxiliary aids and services where necessary and at no charge for effective communication
- Examples of auxiliary aids and services:
 - Sign language interpreting, real-time captioning, videophones, assistive listening devices, audio recordings, screen reader software, large print material, Braille materials and displays
- Type of auxiliary aid or service required depends on:
 - Person’s usual method of communication and the nature, length, and complexity of the communication
 - The covered entity gets to choose the type of aid and/or service, so long as effective communication is provided

Enforcing the ADA

Filing an ADA Complaint

- Can file directly with the Department of Justice Civil Rights Division, Disability Rights Section
 - [https://www.ada.gov/fact_on_complaint.htm#:~:text=Contact%20the%20ADA%20Information%20Line,TTY\)%20to%20schedule%20an%20appointment.](https://www.ada.gov/fact_on_complaint.htm#:~:text=Contact%20the%20ADA%20Information%20Line,TTY)%20to%20schedule%20an%20appointment.)
 - You can also contact the ADA Information Line at 1-800-514-0301 (voice) or 1-800-514-0383 (TTY) to schedule an appointment. Please be advised that it may take two weeks or more for Department staff to contact you.
 - The process:
 - May be contacted by DOJ personnel for more information and investigated by DOJ or referred to a more appropriate agency or division; or
 - May be referred to ADA Mediation Program; or
 - May be referred to the USAO EDWA.

DOJ's ADA Mediation Program

- Title II and Title III complaints can be mediated through DOJ's mediation program
- Over 5,000 complaints mediated nationwide
- Over 75% of mediated complaints result in successful resolutions
- Participation is free and confidential
- Parties not required to have a lawyer to participate in mediation

Contacting EDWA

- You can also always contact the USAO Civil Rights Team <https://www.justice.gov/usao-edwa/edwa-civil-rights-webpage> and submitting directly via email to USAWAE.CivilRights@usdoj.gov

QUESTIONS?

