

# CHAPTER 21

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## BRIDGING THE DISABILITY GAP

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## Chapter 21

# BRIDGING THE DISABILITY GAP – MAKING YOUR WORKPLACE MORE ACCESSIBLE, IMPROVING YOUR COMMUNICATION WITH CLIENTS AND COLLEAGUES

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To view these chapter materials and the additional resources below on or before October 30, go to [www.osbplf.org](http://www.osbplf.org), select Upcoming CLE, select Learning The Ropes, and click on program materials, under Quick Links. After October 30, select Past CLE, Learning The Ropes, and click on program materials, under Quick Links.

### Additional Resources

Disability Etiquette: Tips on Interacting with People with Disabilities.  
<https://www.unitedspinal.org/disability-etiquette/>

The Biggest Hurdle for Lawyers with Disabilities: Preconceptions  
[http://www.abajournal.com/magazine/article/the\\_biggest\\_hurdle\\_for\\_lawyers\\_with\\_disabilities\\_preconceptions](http://www.abajournal.com/magazine/article/the_biggest_hurdle_for_lawyers_with_disabilities_preconceptions)

ADA at 25: Americans with Disabilities Act Continues to Elevate Civil Rights, with Mental Health Now at the Forefront  
<https://www.osbar.org/publications/bulletin/14nov/ada25.html>

# BRIDGING THE ADA GAP

## DISABILITY POLICY: A “NEW PARADIGM”

- Disability considered as a natural and normal part of the human experience.
- Rather than focusing on “fixing” the individual, it takes actions to “fix” or modify the natural, constructed, cultural, and social environment.
- It acts to eliminate attitudinal and institutional barriers that preclude persons with disabilities from participating fully in society’s mainstream.

Emerging Disability Policy Framework: A Guidepost for Analyzing Public Policy Robert Silverstein 85 Iowa L. Rev. 1691 (2000).

## GOALS OF DISABILITY POLICY IN THE ADA

- Equality of Opportunity
- Full Participation—Empowering Individuals and Families
- Independent Living
- Economic Self-Sufficiency

## WHO IS PROTECTED BY THE ADA?

A *qualified individual* with a disability. An individual with a disability is a person who:

- has a physical or mental impairment that substantially limits one or more *major life activities*;
- has a record of such an impairment; or
- is regarded as having such an impairment.

A *qualified individual* with a disability is a person who

- With or without *reasonable modifications* to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of *auxiliary aids and services*,
- Meets the ***essential eligibility requirements*** for the receipt of services or participation in programs or activities.

Examples of *major life activities* from ORS 659A.104:

Caring for oneself; Performing manual tasks; Seeing; Hearing; Eating; Sleeping; Walking; Standing; Lifting; Bending; Speaking; Breathing; Learning; Reading; Concentrating; Thinking; Communicating; Working; Socializing; Sitting; Reaching; Interacting with others; Employment; Ambulation; Transportation; Operation of a major bodily function, including: Functions of the immune system; Normal cell growth; and Digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions; and Ability to acquire, rent or maintain property.

### **ADA TITLE III – PUBLIC ACCOMMODATIONS**

- Governs a “facility” operated by a private entity whose operations affect commerce, including an “office of an accountant or lawyer.” 28 CFR Sec. 36.104(6)
- Prohibits discrimination based on disability against individual or class of individuals in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations by any person who owns, leases (or leases to), or operates a place of public accommodation.
- Prohibits the denial of opportunity to participate in or benefit from services, affording an opportunity that is unequal to that afforded others, or providing services that are different or separate from those provided others unless necessary to be as effective as others.
- Services shall be afforded in “the most integrated setting appropriate to the needs of the individual”
- If separate programs are provided, individual shall not be denied opportunity to participate in those that are not separate
- Administrative methods may not have effect of discriminating or perpetuate discrimination
- May not discriminate on basis of association
- Prohibits discriminatory eligibility criteria unless necessary
- Prohibits failure to make *reasonable modifications* unless entity can demonstrate *fundamental alteration*
- Prohibits failure to provide *auxiliary aids and services* unless *fundamental alteration*
- Must remove architectural barriers in existing facilities where removal is *readily achievable*
- If not barrier removal is not readily achievable, must provide service through alternative method
- Must design and construct facilities for first occupancy that are accessible unless *structurally impracticable*
- Must make alterations that, to the *maximum extent feasible*, are accessible
- In barrier removal, prioritize access from public sidewalks, parking or public transportation, access to goods and service available to the public, access to restroom facilities.

## Auxiliary Aids and Services

Public Accommodation must provide AA&S to assure equal treatment unless the public accommodation can demonstrate a fundamental alteration or undue burden (significant difficulty or expense)

Examples: Qualified interpreters, Qualified readers, Equipment or devices.

## ELEVATORS

ORS 447.247: Elevators are required in all shopping centers and malls, offices of health care providers, government buildings, commercial facilities, private entities and places of public accommodation covered by Title III of the ADA that have more than one floor level and more than 3,000 square feet in ground area or that are more than 20 feet in height.

## COMMUNICATION

Communications with applicants, participants, and members of the public must be equally effective.

Appropriate auxiliary aids and services must be provided giving primary consideration to request of the individual. Should consider Video Relay Service, Telecommunication devices for the deaf (TTD), Telephone emergency services (911), accessible information and signage.

Attorneys must provide sign language interpreters when necessary to provide effective communication, which is the case when the client uses sign language as his or her primary means of communication. When an interpreter is required, the lawyer should provide a qualified interpreter. Family members, friends, and close associates are not qualified interpreters in most cases, and generally should not be used to interpret.

One form of alternate format is to provide written materials on the agency's website. The website itself must be accessible. These sites provide information on making websites accessible: [ww.section508.gov](http://ww.section508.gov), [www.washington.edu/accessit](http://www.washington.edu/accessit), [www.w3.org/wai](http://www.w3.org/wai), <http://webaim.org/intro/>.

## RESOURCES

USDOJ Home Page: <http://www.ada.gov/>

Equal Employment Opportunity Commission (EEOC) - REASONABLE ACCOMMODATIONS FOR ATTORNEYS WITH DISABILITIES <https://www.eeoc.gov/facts/accommodations-attorneys.html>

Oregon's Deaf and Hard of Hearing Services <http://www.oregon.gov/DHS/BUSINESS-SERVICES/ODHHS/Pages/index.aspx>

The Court ADA Coordinator: Each county court has a designated ADA Coordinator. The ADA Coordinator is responsible for coordinating the court's compliance efforts. Having a designated ADA Coordinator ensures that members of the public can identify a person who is familiar with the requirements of the ADA. The ADA Coordinator's name, office address and number (TTY and voice) must be made public.

ADA Accessibility Guidelines for Buildings and Facilities (ADAAG) <https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/background/ada-aba-accessibility-guidelines-2004>

Northwest ADA Center <http://nwadacenter.org/>

Access Services Northwest - <http://asnwonline.com/>