

The ADA and How We Work With It

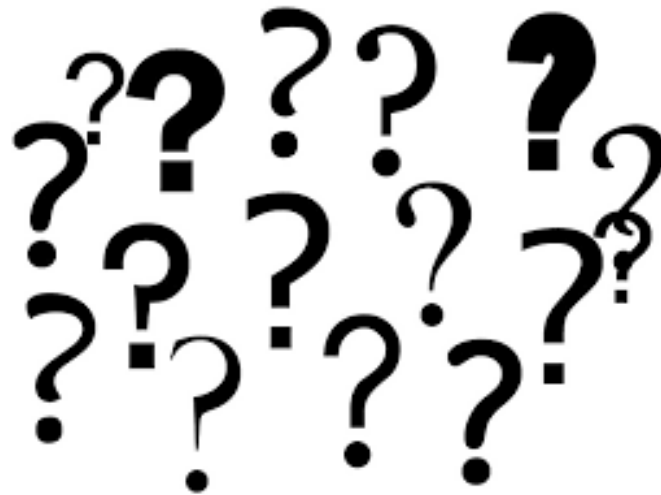


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Warm-up Exercise

Impairment vs. Disability

- **What is impairment?**
 - An injury, illness, or congenital condition that causes or is likely to cause a loss or difference of physiological or psychological function



Impairment vs. Disability in the ADA

- **What is disability?**

- Definition from Americans with Disabilities Act:
 1. has a physical or mental impairment that substantially limits a major life activity,
 2. has a record of such an impairment, or
 3. is regarded as having such an impairment
- 67 U.S. Acts/programs define disability; 35 have self-contained definitions (some contain more than one definition)
- Socially, the definition is very complex (community, experience, oppression, family, pride, history, civil rights, etc.)
- Disability Studies definition:
 - The loss or limitation of opportunities to take part in society on an equal level with others due to social and environmental barriers.

Exercise

- Using the Disability Studies definition of disability:
 - What is the impairment?
 - What is the disability?



Models of Disability

Moral

- WHO SINNED?



Medical

- YOU NEED TO BE “FIXED”



Social



Progress: From Charity to Rights



40 YEARS AGO

STAIRS

CURBS

HOME BOUND & TRANSFERS

TYPEWRITERS, PENS

WIDESPREAD DISCRIMINATION WITHOUT
REMEDY

ACCESSIBILITY AN AFTERTHOUGHT

TODAY

RAMPS & LIFTS

CURB CUTOUTS

MODIFIED VANS & BUSES

SPEECH-TO-TEXT

LEGAL PROTECTIONS

UNIVERSAL DESIGN



ADA “Myth-conceptions”

A few “interesting” examples of “access”...

1.



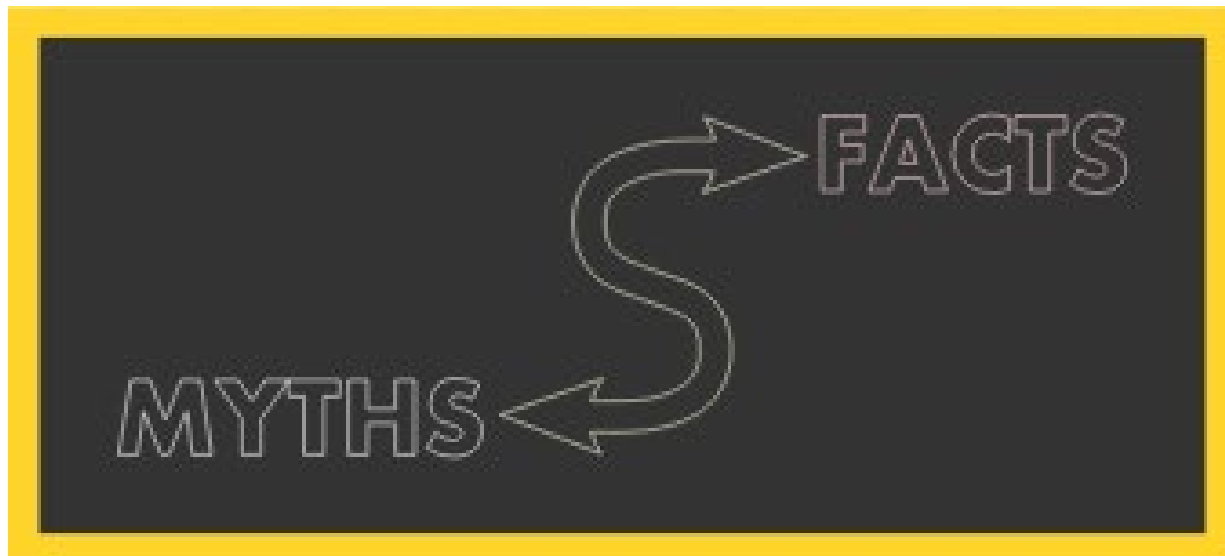
2.



3.



6 Common ADA Myths



1. MYTH: ADA employment suits are overwhelming the courts.



2. MYTH: People with disabilities win most of their cases against employers under the ADA, which results in employers paying out massive awards.



3. **MYTH: The ADA, along with other laws such as the FMLA and Workers Compensation, especially hurt small businesses who cannot afford HR staff to advise them on legal requirements.**



4. MYTH: The ADA is rigid and has excessive requirements for making existing facilities accessible.



5. MYTH: ADA requires that sign language interpreters for all situations that involve persons who are deaf and is inflexible.



6. MYTH: The ADA requires extensive renovations of all state and local government buildings to make them accessible and this is a heavy toll on budgets.



Why Myths Matter



Simone Becchetti via Getty Images

Spirit of the ADA

“Most importantly, ADA is a landmark commandment of fundamental human morality. It is the world’s first declaration of equality for people with disabilities by any nation. It will proclaim to America and to the world that people with disabilities are fully human; that paternalistic, discriminatory, segregationist attitudes are no longer acceptable; and that henceforth people with disabilities must be accorded the same personal respect and the same social and economic opportunities as other people.”

– Justin Dart, Jr.

Who and What Does the ADA Covers

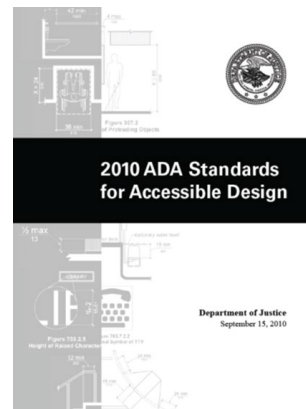
- Title I - Employment
- Title II - State and Local Governments and Transportation
- Title III - Public Accommodations (“Businesses”)
- Title IV - Telecommunications
- Title V - Miscellaneous



ADA and Accessibility

What about ADA requirements for existing facilities?

- Title II – State and Local Governments
 - must achieve program accessibility.
- Title III – Public Accommodations
 - must pursue barrier removal - or alternatives - in existing places of public accommodation.
- New Construction – must meet accessibility standards!



ADA Title I: Employment

- Who is covered?
- What is discrimination?



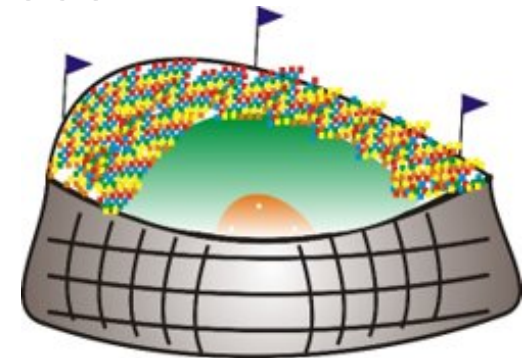
ADA Title II: Gov't Buildings/Services

- Who is covered?
- What is discrimination?



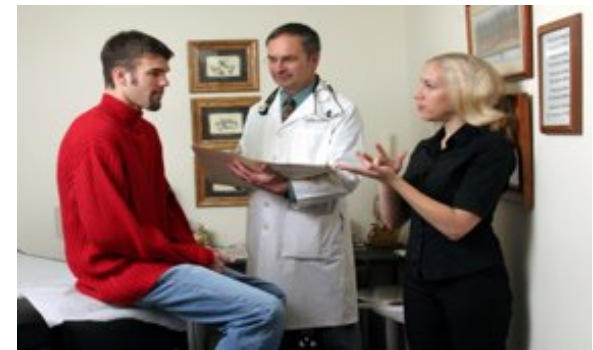
ADA Title III: Public Accommodations

- Places of public accommodation
- Commercial facilities
- Private entities that offer certain educational and occupational certification exams and classes
- Title III does not cover:
 - Religious organizations
 - Private clubs



Title III: Public Accommodations Cont.

- Three areas of “obligation”
 - 1. Same opportunity to participate.
 - 2. Effective communication.
 - 3. Provide accessibility
 - Removing barriers
 - Providing alternatives
 - New construction and alterations



Limitations on Title III Obligations

- Title III entities are not required to change their policies and/or procedures in any way that would “fundamentally alter” the nature of goods or services offered, would undermine safe operation, or would pose a “direct threat” to health/safety.
- Considerations:
 - What is a “fundamental alteration”?
 - What would undermine the “safe operation”?
 - What would qualify as a “direct threat”?
 - What would constitute an “undue burden”?



Fundamental Alteration

- A "fundamental alteration" is a change that that alters the essential nature of the goods, services, facilities, privileges, advantages, or accommodations offered.



Safe Operation

- People with disabilities cannot be excluded UNLESS:
 - Necessary for legitimate safety reasons
 - That are based on actual risks
 - NOT stereotypes or generalizations



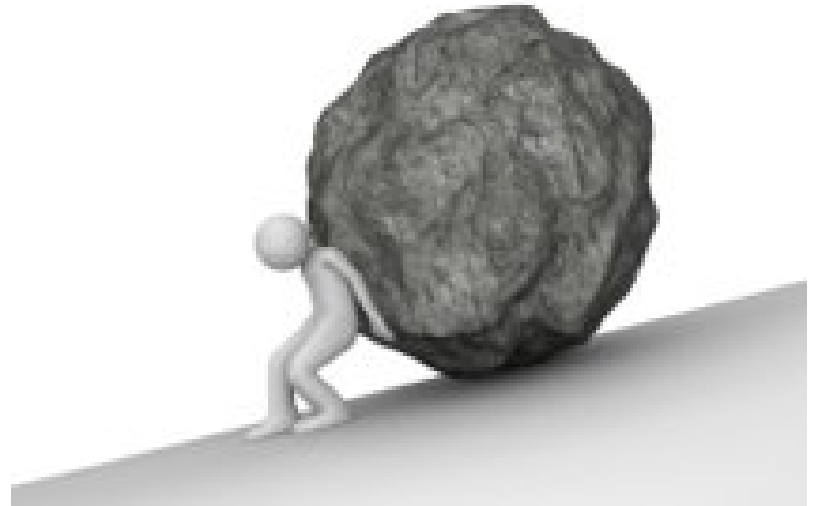
Direct Threat

- A "direct threat" is a significant risk to the health or safety of others that cannot be eliminated.



Undue Burden

- Defined as "significant difficulty or expense."
- Sometimes a challenging determination
- Depends on a variety of factors
- This standard is intended to be applied on a case-by-case basis.
- Not measured by the amount of income the business is receiving from the individual. Instead, undue burden is measured by the overall financial impact on the whole entity.



Washington Civil & Disability Advocate

How We Help

Washington Civil & Disability Advocate

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WACDA Mission

Washington Civil and Disability Advocate is guided by the simple but powerful proposition that all lives have equal dignity and worth. As a result, this organization is committed to providing legal services to people with disabilities without charging attorney fees.

WACDA Services

- Legal Representation
 - Accessibility
 - Employment discrimination
 - Civil rights
- Information and referral
 - Low and no cost legal services
 - Disability service providers
- Education and outreach
 - ADA
 - Disability awareness

WACDA Cases

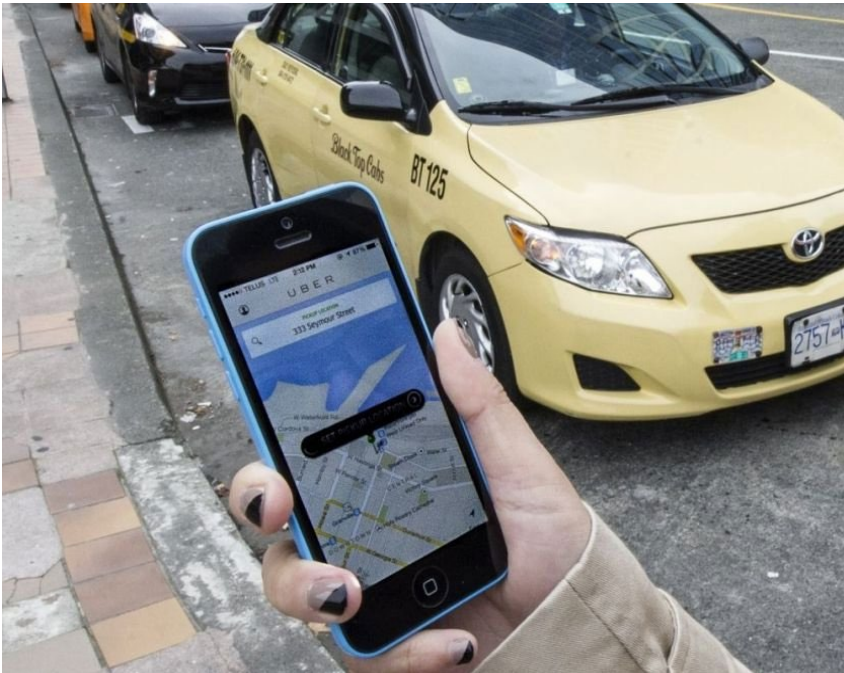
- Large scale accessibility cases
 - Work to fix a public accommodations issue that affects not just our clients but countless people with disabilities.
 - Stadiums, theatres, parking complexes.
- Employment Discrimination
 - Refusing to hire or promote, firing, or refusing reasonable accommodations
- Personal violations of civil rights under the ADA
 - Everyday access issues that deny equal access

Mariners and Large Scale Inaccessibility

- Representing several people with disabilities who have experienced wide spread inaccessibility
- Variety of issues experienced by differently by all clients
- Down to sightlines and distribution



Ecoservice and Employment Discrimination



- An employer's unwillingness to accommodate an employee who needed an ASL interpreter for training
- Helped client assert that a refusal to reasonably accommodate is a violation of their rights

Lincoln Towing and Individual ADA Violations

- Client faced access barriers trying to retrieve car from tow lot with conditions that were dangerous and degrading
- Achieved a settlement that demanded remediation and restitution for our client



Policy Agenda

- Personal Caregiver Admission
 - Working on passing city and state legislation
 - Prohibit the practice of charging double admission for people that use the assistance of a caretaker
 - It is an extra tax of people with disabilities and can disenfranchise people from their own communities



Resources

- **Legal Rights Questions and Complaints**

- Department of Education – Office of Civil Rights
- Washington State Human Rights Commission
- Office of Fair Housing and Equal Opportunity (HUD)
- Seattle Office for Civil Rights
- Equal Employment Opportunity Commission
- Department of Justice

- **Disability Rights Questions**

- Disability Rights Washington
- Northwest ADA Center
- Department of Justice - ADA Information Line

- **Other Resources**

- Disabilities, Opportunities, Internetworking, Technology (DO-IT)
- The American Association of People with Disabilities Career Center

Questions and Answers