

ADA Compliance and What You Need to Know

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Learning Objectives

- Participants will identify key components of the ADA that affect their work with individuals.
- Participants will learn how gaps in ADA compliance affect the daily lives of individuals.
- Participants will be able to name at least three resources for helping their clients get accommodations

What the ADA Says vs What You Think it Says or Means!

OVERVIEW AND STRUCTURE OF THE ADA

Definition of a Disability

- 1) Physical or mental impairment
- 2) History or record of impairment
- 3) Assumption of impairment

Major Life Activities

- Activities that the general population can perform with little to no difficulty (running, jumping, bending, lifting, interacting with others, caring for oneself, major bodily functions including proper cell growth)

Title I

Title I of the Americans with Disabilities Act of 1990 prohibits private employers, State and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment. The ADA covers employers with 15 or more employees, including State and local governments. It also applies to employment agencies and to labor organizations.

Employment Accommodations

- Must be effective
- Must re-evaluate as necessary
- Must consider essential job functions

Employment Accommodations

1. Disclosure
2. Documentation (current, relevant, from certified professional)
3. Interactive accommodation process
4. Assignment of accommodations
5. Monitoring of success
6. Repeat steps 3-5 continually

Title II

Title II applies to State and local government entities, and, in subtitle A, protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by State and local government entities. Title II extends the prohibition on discrimination established by section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, to all activities of State and local governments regardless of whether these entities receive Federal financial assistance

Title III

Public Accommodation

Public accommodations" include most places of lodging (such as inns and hotels), recreation, transportation, education, and dining, along with stores, care providers, and residential facilities providing social or medical services, such as nursing homes

Titles IV and V

- IV – Telecommunications
- V – Miscellaneous provisions (attorney fees, etc.)

Application of the ADA to SMI and SED Populations

The ADA and psychiatric disability in the workplace

Definitions. The ADA defines disability as *a physical or mental impairment that substantially limits one or more major life activities*. When job applicants or employees have a mental health condition that meets this criteria, they have **workplace rights** under the ADA. The ADA Amendments Act of 2008 (ADAAA) recently broadened the definition of disability to provide legal protections against employment discrimination for more individuals with disabilities, including people with psychiatric disabilities.

Record of psychiatric disability. The ADA also prohibits discrimination against individuals who have a record (history) of a psychiatric disability or are regarded as having a psychiatric disability. This means, for example, that qualified individuals who have a history of psychiatric disability cannot be discriminated against just because of that history. Also, employers can't take actions (such as failing to hire, demoting or denying training opportunities) because they believe a qualified applicant or employee might have a psychiatric disability.

Rights under the ADA. Applicants and employees with psychiatric disabilities have two main rights under the ADA. First, they have a right to privacy. Except when asking for an accommodation, they can choose whether to tell the employer about their disability. Second, they have a right to a job accommodation unless this causes undue hardship for the employer.
(<https://adata.org/factsheet/health>)

Application of the ADA to Alcoholics

- **Addiction to Alcohol**
- Regardless of whether the addiction to alcohol is current or in the past, it is generally considered a disability because it is an impairment that affects brain and neurological functions.
- **Scenario:** Michael is often late for work. His supervisor warns him about his tardiness. The third time Michael is late, his supervisor gives him a written warning, stating that one more late arrival will result in termination. Michael tells his supervisor that he is addicted to alcohol. He says his late arrivals are due to his drinking and that he needs immediate time off for treatment.
- **Is Michael protected under Title I of the ADA?** Yes, he is a person with a disability (addiction to alcohol), but it is complicated. The employer does not have to withdraw the written warning nor grant an accommodation that supports Michael's drinking, like allowing him to arrive late in the morning. The employer can require an employee with addiction to alcohol to meet the same standards of performance and behavior as other employees. The employer must grant Michael's request to take leave to enter a rehab program, unless the employer can prove that Michael's absence would cause a great difficulty or expense (undue hardship).
- **Scenario:** Isabella's manager hears a rumor that she is addicted to alcohol, and reassigns her to a less stressful job with lower pay because of concerns that work stress contributes to her drinking, despite the fact that she has not had any work-related problems.
- **Is Isabella protected under the ADA?** Yes, she is being **regarded as** having a disability, and has been negatively affected. Isabella's manager violated the ADA when he reassigned Isabella to a lower paying job.

Application of the ADA to Those Using Illegal Drugs

Illegal Use of Drugs

The ADA protects a person in recovery who is no longer currently engaging in the illegal use of drugs, **and** who can show that they meet one of the three definitions of disability

Illegal use of drugs means:

Use of illegal drugs such as heroin or cocaine.

Use of prescription medications such as OxyContin or Morphine

BUT the person has no prescription;

OR is using more than is prescribed;

OR has a fraudulent prescription.

In recovery means:

Is in recovery from a substance use disorder;

Has ceased engaging in the illegal use of drugs;

Is either participating in a supervised rehabilitation program; or

Has been successfully rehabilitated.

What does “current” mean?

“Illegal use occurred recently enough to justify a reasonable belief that a person’s drug use is a real and ongoing problem.”

Under the ADA, whether someone is currently using drugs illegally is decided on a case-by-case basis.

Medication Assisted Treatment (MAT)

Medication-Assisted Treatment

In medication-assisted treatment (MAT), a person is prescribed medication such as Suboxone, Methadone, or Vivitrol to treat their addiction.

Scenario: Tom is in MAT. He appeared in family court and requested that he begin to see his children on the weekend. The judge responded to his request saying, “You’ll see your children when you get off Suboxone”.

Is Tom protected under Title II of the ADA? Yes, he has a **history** of addiction. MAT participants usually have a history of addiction to controlled substances. Family court is regarding the use of Suboxone as though it is an illegal drug. Suboxone is a legally prescribed medication to help Tom function just like insulin is prescribed for the health and function of a person with diabetes. Tom’s use of Suboxone cannot, by itself, justify a refusal to let Tom see his children on the weekend.

What if the court found out that he recently used cocaine while in MAT? Would he have protections under the ADA? No, Title II does not protect individuals who are “currently engaging in the illegal use of drugs.”

Scenario: Alex had a double hip replacement and needs to go into a private rehabilitation facility for physical therapy for a month. When the rehabilitation facility finds out he is being prescribed methadone, they refuse to accept him as a patient.

Is Alex protected under Title III of the ADA? Yes, methadone is a legally prescribed drug used to treat addiction. The rehab facility violated Title III of the ADA when it denied Alex admission based upon his medical assisted treatment. <https://adata.org/factsheet/ada-addiction-and-recovery>

Intersectionality of Diagnoses and Disabilities

- An individual you serve may qualify based on multiple definitions that meet criteria for the ADA.
- **ASK** the individual what accommodations they need and want.
- **Empower** the individual to make the requests for accommodations themselves whenever possible.
 - Utilize role play, list making, and practicing skills
 - “With” vs. “For”
- **IF a Complaint is Needed, Teach** the individual how to file the complaint themselves or with assistance. Do not do it all for them!

REMINDERS OF INTERACTING WITH INDIVIDUALS WHO HAVE DISABILITIES

Etiquette

- Person-first language
- “Retarded” is not to be used. “Developmental or Intellectual Disability” is preferred.
- Likewise, “Deaf or Hard of Hearing” is more sensitive than “Hearing Impaired, Deaf and Dumb, Mute, or Deaf-Mute”
- Follow the individual’s lead.
- Ask how to proceed before assuming.
- Do not touch wheelchairs
- Do not be afraid to ask someone to repeat themselves
- Do not make assumptions about other disabilities

Service Animals



- Covered under ADA
- Only dogs (and miniature horses!)
- Must perform a task
- Must be on a leash
- Must be under the control of the owner
- Must be potty-trained
- Do not need to be marked (vests, collars, etc.)
- Do not need to carry proof of vaccinations
- Do not need to be officially trained

Emotional Support Animals (Comfort Animals)

- Covered by Fair Housing, Department of Transportation
- Allows for comfort animals in apartments, dorms and on airplanes
- Animals other than dogs may be covered
- Not Covered by Titles II or III of the ADA

<https://adata.org/publication/service-animals-booklet>



Considerations Regarding Physical Access

- It doesn't have to be difficult
- It doesn't have to be expensive
- There is no grandfathering for older structures
- Creativity is the key to solving most access issues
- Accessible features must be maintained

Physical Access Request Examples

- New desk to accommodate wheelchair
- Access to manager's office to refrigerate meds
- Elevator restriction not allowing access to 2nd floor
- Service animals in buffet line at restaurant
- Chair to accommodate spine injuries

Considerations Regarding Effective Communication / Language Access

- Every person is unique
- The individual should be consulted on what works best for them
- Document language access needs and preferences in the medical record
- A person's receptive needs and expressive needs may be different



Determining Language Access Approach

Over the Phone Interpreter

- Short and/or simple conversations or assessments
- Non-sensitive issues
- When a face to face interpreter is not available
- While waiting for a face to face interpreter to arrive
- Phone calls to patients/family members

Face to Face Interpreter

- Complex conversations or treatment plans
- Delivering difficult news/poor diagnosis
- Conversations involving the patient's loved ones
- Informed consent/procedures
- Discharge Instructions
- End of life discussions

Video Remote Interpreter (VRI)

- For patients who use American Sign Language and are NOT visually impaired
- Short and/or simple conversations
- Non-sensitive issues
- When a face to face interpreter is not available
- While waiting for a face to face interpreter to arrive

Friend/Family 21+ May be Used for:

- Basic comfort measures and non-medical/non-critical needs
- In an emergency for information that it is needed immediately to understand what is going on with the patient, if a qualified interpreter is not available.
- Once an interpreter is available, be sure to confirm that the information you gathered through the adult friend/family member is accurate.

The Definition of a Qualified Interpreter from the ADA

A qualified interpreter is one who is able to interpret effectively, accurately, and impartially both receptively and expressively using any necessary specialized vocabulary.



Extreme Interpreting

Finding A Qualified Interpreter

- Not all interpreters are qualified to work with children or in mental health settings
 - Qualified Mental Health Interpreters
 - Graduates of Mental Health Interpreter Training (MHIT)
- Vet the interpreters for their experience. If this is an ongoing assignment, be consistent with interpreters / team.
 - Team??? If the session will go longer than 90 minutes or...
- Do not use the educational interpreter, a family member, or friend. WHY??
- Resources for Finding an Interpreter:
 - www.kbi.ky.gov
 - MCOs – remember choice; Use of Extended Session and Interactive Complexity Codes
 - Referral Agencies
 - DBHDID

Pre-Sessions and Other Strategies for Working with ASL Interpreters

- Allow extra time for the session or meeting and for a pre-session with the interpreter
- Have a space for the interpreter to wait prior to the assignment. Do not expect them to go into a home or stay in a room without you!
- Provide any written material like intake paperwork or curriculum ahead of time
- Avoid jargon and acronyms
- Remember that EVERYONE in the room is responsible for effective communication
- Wait....What is a Pre-Session???
- Room Set Up and Lighting
- What has worked (or not) in your experience?

Imagine you have a new person on your caseload. They come in to your office and ask that you make some phone calls for them. The individual wants to return to work but has been told that they can't "until they are stable on their medicine." A co-worker told HR that they had a recent hospitalization. What parts of the ADA may be in play? How can you advocate and empower your consumer?

PRACTICE TIME! SCENARIO #1

A fifteen year old Deaf youth is placed in a specialized treatment center out of state. The program provides treatment directly in American Sign Language (ASL), his primary language. The MCO de-certifies him for treatment and the Children's Review Program sends out referrals to therapeutic foster care and PCC settings throughout Kentucky. Several deny him a bed stating things such as "we don't serve people who are Deaf" and "we don't have the money to pay for interpreters." One agency agrees to accept him stating that they will meet his communication needs by giving him a dry erase board that he can use for writing back and forth to staff. What concerns do you have about this situation?

Would he qualify for protection under the ADA? If so, under what basis or bases?

PRACTICE TIME: SCENARIO #2

RESOURCES ON FINDING ACCOMMODATIONS OR FILING COMPLAINTS

[https://www.olmsteadrights.org/self-helptools/advocacy-resources/item.6987-](https://www.olmsteadrights.org/self-helptools/advocacy-resources/item.6987-Kentucky_Disability_Resources_and_Advocacy_Organizations)

Kentucky_Disability_Resources_and_Advocacy_Organizations



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KENTUCKY DISABILITY RESOURCES AND ADVOCACY ORGANIZATIONS

Scroll down for links to government agencies and disability rights organizations in Kentucky. They may be able assist you with:

- disability advocacy
- home health services
- home care
- nursing aide services
- Medicaid
- accessing other community resources to help people with disabilities.



Many of these organizations work to address the unique needs associated with different disabilities, including but not limited to physical, intellectual, and developmental disabilities, and mental illness. Others focus on issues such as access to housing and legal assistance based on the Americans with Disabilities Act (ADA).

If you live in Kentucky and are a person with a disability, learning about state-specific resources to support people with disabilities can help you advocate for yourself. If you are a friend, family member, or caregiver of a person with disabilities in Kentucky, these resources can help you in supporting your loved one.

Note: this website attempts to use people first language and thus uses the term "person with a disability" rather than disabled or handicapped.

We hope you will check out the rest of [OlmsteadRights.org](https://www.olmsteadrights.org) to learn about critical rights of people with disabilities.



Where do you go to find physical or communication access resources in your area?

RESOURCE BRAINSTORM!

Sharing Our “Go To” Resources!



?????



Aging and Disability Resource Centers

Kentucky Office of the ADA:

<https://personnel.ky.gov/pages/ADA.aspx>

Americans with Disabilities Act (ADA)



The Americans with Disabilities Act bans discrimination based on disability and requires employers, businesses and state and local governments to take reasonable steps to accommodate people with disabilities.

 General Information	 Key Resources	 State Employees
<p>General Information</p> <p>ADA Fact Sheets</p> <p>ADA and Postsecondary Education</p> <p>Department of Justice Standards for Accessible Design</p>	<p>Job Accomodation Network</p> <p>EEOC</p> <p>U.S. Department of Justice</p> <p>Commission on Human Rights</p> <p>Helpful Links/Resources</p>	<p>State ADA Plan</p> <p>State Agency ADA Coordinators</p> <p>Diversity, Equality, and Training</p> <p>Employee Assistance Program</p> <p>Employee Mediation Program</p>

Contact Information:

Donna Shelton, State ADA Coordinator

502.564.1835

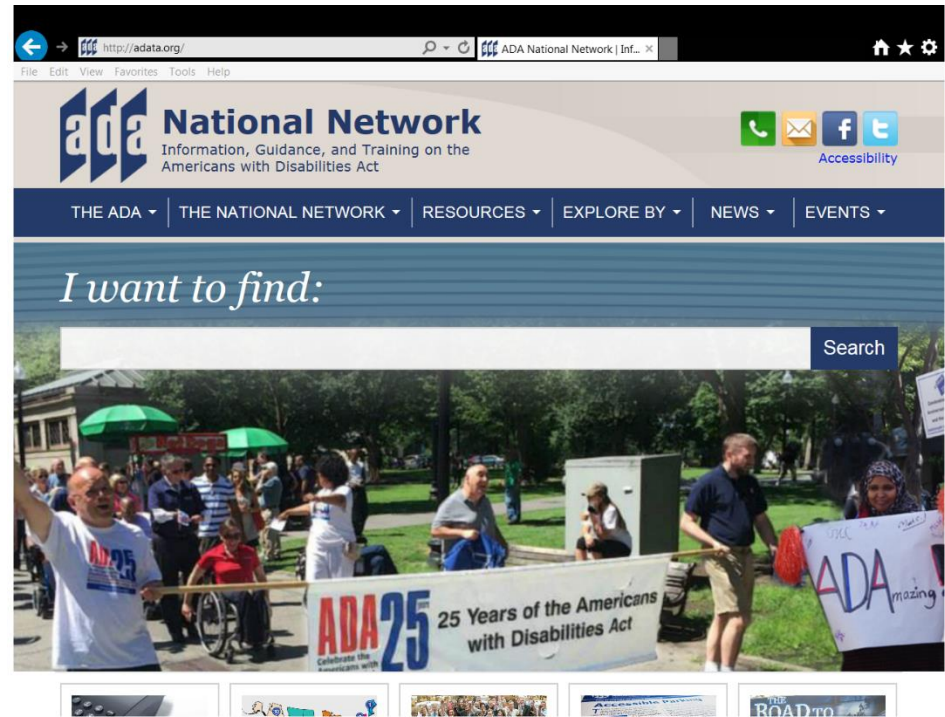


Where to Go When Rights are Violated

- KY Division of Protection and Advocacy:
 - <http://www.kypa.net/>; 5 Mill Creek Pk, Frankfort, KY 40601; 502-564-2967
- U.S. Department of Justice:
 - www.ada.gov, ADA info line: 800-514-0301 (voice) 800-514-0383 (TTY), 2010
 - Design Standards: <https://www.ada.gov/regs2010/2010ADAStandards/2010ADAstandards.htm>

For More Information: www.adata.org

- Their resources include....
 - Toll Free Hotline
 - ADA Publications
 - Web-Based Training and Information
 - Customized In-Person Training
 - ADA Webinars and Podcasts
 - National, Regional, and State Trainings and Conferences



Practice with the Checklist as Time Allows

HAVING AN “EYE FOR ACCESS”

Keep the Conversation Going!

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