

For the Record

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Some Words About Disability,
Stigma, & Independence
From Someone Who Knows
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by Lorin Neikirk

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By Lorin Neikirk
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Autism. Understand it.

Forward

For the record, this document began as a letter to help a government agency. It was originally to help them understand a situation that could have been easily corrected, but instead became an enormous mess. A mess which, in case you were curious, has lasted for nearly six months, and has become what I believe is a reprehensible waste of taxpayers' money.

The sorting out process of the mess has begun, and my faith in The Process is struggling to restore itself. My optimism is resurfacing, and I see the fact that I am writing again as a very good sign for me, personally.

It is quite easy to misunderstand disabilities, and in this document, I have tried to limit my slant, so that what I say might help increase understanding of all people with disabilities, not only those who, like me, have autism. On the other hand, I believe very strongly that individuals with autism experience discrimination on an unparalleled level. While I hope this paper is a benefit to anyone with a disability, my personal wish is that this information finds itself in the hands of people who truly want to make a significant difference in the quality of life for people with autism, like me.

All my life I have striven to help others. I had no siblings, and so, as a young child, I used to dress my cat in clothes, and hold class for him, teach him about science and art, and whatever else I was interested in at the time. As a teenager, two friends and I formed a chapter of the National Charity League, a philanthropic organization dedicated to community service. As a Charter "Ticktock", I spent my Saturdays in the unit for terminally ill children at the Children's Medical Center in Dallas. I knew I couldn't heal them, but I knew that I could read to them (and help them learn), or do other creative things with them, like art projects. I knew I wasn't able to help them medically, but I did know I could help by showing them love and acceptance. During my teens and into my adulthood, my mother worked at a retirement community, and I enjoyed the times I spent there, talking to the residents and working on events which were designed to enrich the lives of these wonderful "old people" as we lovingly called them. I also worked with the Multiple Sclerosis Association on fundraising events. One particular event had a jungle theme, and I spent months painting a number of massive jungle scene murals, which were used in the room that displayed the children's items to be auctioned for the benefit of the MSA.

At twenty-four, my drive to help others shifted to my new family. When my second son was three, non-communicative, and his behavior became very difficult to manage, and in 2000 he was diagnosed with Autism Spectrum

Disorder. The diagnosis felt discouraging, so I stopped trying to change his behavior, and started to simply observe it. I learned that I had a strange gift that reached outside the “experts” abilities: I could truly understand his behavior. This meant not only could I help my son, but other families touched by autism. My drive to help others has always been powerful, so even when I re-entered the workforce in 2005, the first place where I sought employment was a retirement community.

My family became one of the divorce statistics that are especially prominent in families with an autistic child. In 2005, after being financially dependent on my husband for almost a decade, I was on my own, without financial support from my ex-husband and father of my children. I got a job, then promptly lost it, without much understanding of why. In just three years I lost seven jobs of different types, across a variety of fields. In May of 2008, a friend who thought I may be autistic, suggested I seek an evaluation, and I did. I wanted to understand why I could produce an exceptional work product, but not keep a job. The answer? “You have Aspergers. It’s on the autism spectrum.”

My life changed a lot that day. I began to trust my abilities. I learned that my challenges weren’t character flaws after all. I grew to understand why, even as an adult, I couldn’t defend myself against a bully who made it his mission to destroy all that I was, or could be. I began to express my own feelings about autism to help others understand “my kind”. I realized I could help neurotypicals understand that which seems so confusing about people with autism. I always loved helping others, but the scope of my help has evolved.

Like many people, I want to make a difference. I want to leave this world a better place. Many people have this goal, but don’t know how to do that. They have the drive, but not a mission. Because I understand my gift, I know what my mission is: to help make the world a friendlier place for people with autism. It’s no secret that everyone should “stop and smell the roses” from time to time. But while most people pass by the roses they see, individuals with autism often pass by the roses because of the thorns.

Individuals with autism aren’t the only people who are stigmatized, and this paper is not about autism. And in fact, stigma doesn’t only affect those with disabilities, either. Stigma is bad, no matter who is doing it, or who it affects. But the worst part is when stigma creates a culture that segregates an entire population which can actually be an asset to society; a society which, under the cloud of this stigma, suffers a destructive effect of the same stigmatization which it perpetuates. In this way, society cuts off its nose, despite its face.

My hope is that we can reduce, or maybe even eliminate stigma. Because, after all, how can we stop to smell the roses without the benefit of a nose?

For the Record...

Do you care about people with disabilities? You should. You might know people with disabilities, or assist them. You might not have any interaction whatsoever with people with disabilities, or at least you may think you don't. You may think that people with disabilities just don't affect you, so you don't think about it much. Or perhaps your very occupation exists to help them.

Whatever role disability plays, or doesn't play, in your life, do you care about people with disabilities? Not everyone does, in fact. It's not a "popular" position to take, to say one doesn't care about people who have disabilities. And so, when that actually is the case for someone, he or she isn't likely to admit it out loud. Understand that I'm not asking for your admission, but I ask that you be honest with yourself. Do you care about people with disabilities?

My hope is that these pages will open some eyes to things which not only impact those with disabilities, but everyone. For those who will relate to the words here, and wish others could understand the points which follow, I ask you to help those who don't. Give them a copy of this document, or explain these points to people who don't understand. Anything to help educate. We can not become a culture of acceptance without the help of those who understand that which the others do not.

Whatever your beliefs and feelings about people with disabilities, it's important for you, the reader, to understand that you need to hear what I have to say.

For the record, people with disabilities are vulnerable.

People with disabilities have barriers to living the kind of life that "non-disabled people" live. Some of the barriers are physical, such as being unable to see, hear, or ambulate. Some people have medical disabilities which affect their quality of life. Other people with disabilities have intellectual barriers, such as not being able to learn an employable skill, or not being able to care for him or herself. Others have developmental disabilities which affect their quality of life, such as being unable to meet social expectations, which interferes tremendously with their ability

to “fit into society”. People with disabilities have these and other barriers to being able to enjoy a “normal life” and the opportunities a “normal life” affords.

When people do not understand the barriers that having a disability creates, it can build new barriers for those people with disabilities. Stigma can be defined as “the process by which the reaction of others spoils normal identity¹”. In other words, the stigma disqualifies the stigmatized from full social acceptance.² When a person has negative feelings about an individual with disabilities, and/or negative feeling about those characteristics manifested by their disability, the result is stigma. The act of engaging in acts or omissions which reflect one’s stigma is called “stigmatizing”.

For the record, stigmatizing a person, for any reason, is discrimination.

It is human nature to reject those things that someone doesn’t understand. When people don’t understand something, it can be very frustrating. The frustration comes from the disconnect between not being able to understand, and wanting to (or believing one does) understand the thing. In the common situation where understanding something is a part of someone’s employment, the realization that someone doesn’t understanding something can feel like a very real threat to a person’s ability to earn a living. The overall feeling of frustration is exacerbated by the concern for one’s own financial future, and other financial obligations, even if that the connection isn’t a conscious one.

It is logical that when people do not understand something they feel uncomfortable and bad, and no one wants to feel uncomfortable and bad. For this reason, they reject the notion that they do not understand the item or situation, so they can feel better again. When people do not understand another person, it creates the same kind of disconnect that makes them feel bad. Again, because people seek to avoid feelings of discomfort, a person often subconsciously convinces him or herself that they really do understand that person.

A common example is when a person sees an individual who has a disability, and is unable to work, as a result. If the person’s disability is obvious, the person isn’t likely to

¹ *The Sociology of Health and Fitness* (Nettleton, Sarah 2006) Cambridge, U.K.; Polity Press pp. 95

² *Stigma: Notes On The Management of Spoiled Identity* (Goffman, Erving 1963)

disbelieve that the person is unable to work. On the other hand, if the disability is not obvious, such as is the case with many developmental disabilities, the person has a much more difficult time understanding how the person could be unable to work due to their disability. As a result, the doubter's brain subconsciously convinces itself that the disabled individual doesn't actually have a disability. If an individual "isn't disabled", but isn't working, and receives disability benefits, the perception is that the disabled individual is a lazy person who is not entitled to disability benefits. In this situation, the doubter believes something which isn't true: that a truly disabled person is simply lazy, and receiving undeserved benefits. This belief will have a significant affect on the way a person or group responds to the individual or group being doubted, even though, and especially because, the belief isn't true.

Believing something incorrect about a person, and judging that person on the basis of those beliefs, is pre-judging the person. The act of pre-judging is prejudice. When people are prejudiced against another person or group, it is discrimination. When people discriminate³ against a person or group, they create a stigma against that person or group. Stigmatizing behaviors can present in many different forms. Comments, actions, inactions, persuading others, and/or interfering with the actions or inactions of others, are just a few ways that a person or group may stigmatize another.

When a person's prejudice, stigmatization, and/or discrimination against a person or group is related to things which can not be controlled, such as race, nationality, gender, and disability, the discrimination becomes a violation of law.⁴

For the record, people with disabilities can be socially isolated

³ *The act of denying rights, benefits, justice, equitable treatment, or access to facilities available to all others, to an individual or group of people because of their race, age, gender, handicap or other defining characteristic.* discrimination. (n.d.). Retrieved February 9th, 2012, from <http://law.yourdictionary.com/discrimination>

⁴ Americans with Disabilities Act Questions and Answers (U.S. Department of Justice, Civil Rights Division; 2008) Retrieved February 19, 2012, from <http://www.ada.gov/qandaeng.htm>

People with disabilities live a different life than people who don't have a disability.⁵ According to figures from the National Council on Disability's recent progress report on the current state of people with disabilities in America:

"These indicators reveal vast disparities between people with and without disabilities in the United States. Overall, people with disabilities have lower employment rates, lower annual earnings, lower educational attainment and achievement; lack adequate access to housing, transportation, technology, and health care; and are more likely to live in poverty."⁶

While the quality of life varies, most live a vastly different, greatly reduced quality of life than those without disabilities.

Some people who have disabilities, such as those related to mental health, such as bipolar disorder, are able to take medication, which manages the symptoms of the bipolar disorder. Many who have disabilities which may be managed well with medication are able to live a fairly "normal life".

While some disabilities, or symptoms of the disability, can be managed with medication, some people have disabilities which can not be managed with medications. Autism, for example is a condition that can be defined by the way a person's mind processes information. Although medication can alter the brain's activity, medication can not change the logic and reasoning an individual with autism, or Spectrum Individual (SI) uses when they think. Medication can manage some symptoms that SIs may have, such as anxiety and depression, but medication can not make a person "un-autistic."

People with disabilities are frequently unable to participate and enjoy those opportunities which are available to people who do not have disabilities.

For the record, barriers created by stigma can be dangerous.

⁵ See *National Disability Policy: A Progress Report-October 2011* (National Council on Disability: Living, Learning & Earning) Appendix A: *Disability Tables* Retrieved February 19, 2012 from http://www.ncd.gov/progress_reports/Oct312011#_Toc304437158

⁶ National Disability Council (October 2011) retrieved February 19, 2012 from http://www.ncd.gov/progress_reports/Oct312011#_Toc304437133

Barriers, in general, make life more difficult for a person with disabilities. However, “Barriers to employment, transportation, public accommodations, public services, and telecommunications have imposed staggering economic and social costs on American society and have undermined our well-intentioned efforts to educate, rehabilitate, and employ individuals with disabilities.”⁷

Barriers take many forms, and barriers can be imposed, or they may be unintentional. For example, a person in a wheelchair can not enter a building if there is no ramp. This creates a challenge for the person in the wheelchair, which can not be easily remedied. (This is an example of what is likely to be an unintentional barrier.)

There are laws in place to help people with disabilities do the things that people without disabilities can do without help. Barriers may exist by inaction, such as not putting in a ramp, or an action, such as removing a ramp which previously existed. Barriers may be intentionally imposed, or unintentionally created by an action or inaction. For instance the ramp may have broken and was removed instead of replaced. This would be an unintentional cause of the barrier. On the other hand, the ramp may have been removed to prevent people in wheelchairs from entering the building. This is an intentional barrier. However, whether a barrier is intentional or not, or created by an action or inaction, barriers, as prohibited by the ADA, are against the law, regardless of knowledge of the law or the intent.⁸

Whether the barrier was created intentionally or unintentionally, barriers created by acts do not exist without the commission of the act. People who create a barrier or barriers for those with disabilities because he or she does not understand that person can create a dangerous situation for the individual, as well as financial and other liabilities for the entity that they represent.

While a person with a disability might be able to solve a barrier problem which is static and unchanging, a person with a disability has a much more difficult time solving a barrier problem which is dynamic, and changing. When barriers are created by people, and the attitudes

⁷ U.S. Department of Justice, Civil Rights Division (2008) Retrieved February 19, 2012, from <http://www.ada.gov/qandaeng.htm>

⁸ ADA 2010 Revised Requirements Effective Date & Compliance Date (U.S. Department of Justice, Civil Rights Division, February 2010) Retrieved February 19, 2012, from <http://www.ada.gov/qandaeng.htm> from http://www.ada.gov/revised_effective_dates-2010.htm

and beliefs they hold, those barriers have infinite potential to change. When barriers are created by those with influence over a disabled person's basic needs, or the individual's ability to meet those needs, the barriers which are created can be dangerous, and even life-threatening.

Stigmas create unique problems, because there is an undercurrent reflecting the element of intentional barriers.

For the record, most barriers created by discrimination are “invisible”.

When barriers are physical, they are often more obvious than barriers created by discrimination and stigma. By definition, stigma can not be created by a positive reaction. A person who stigmatizes an individual or group has negative thoughts or feelings, which are expressed in such a way which have a negative impact on whether or not the individual is accepted.

A good example of this is what will be referenced in this document as Case I.

In Case I, an employee of the Social Security Administration is working on the record of a disabled individual, and she dislikes elements about the individual which are also related to that individual's disability. In this example, the SSA's representative in Case I makes changes to the disabled individual's record based on the representative's faulty understanding of the individual, and the disability, and other elements material to the situation. As a result, the disabled person's basic needs are negatively impacted by the representative.

Since a person receiving benefits from the Social Security Administration is likely to have medical care based on the SSA's influence, let's assume that the individual's medical care is also negatively impacted by the SSA representative's stigmatizing behaviors. In this situation, not only are the disabled individual's basic needs being negatively impacted, but the medical care that the individual requires because of their disability is also negatively impacted.

Other agencies, such as food stamps administered by the Department of Health and Human Services, rely on the SSA representative's actions. Another consequence of the stigma is that the basic needs provided for through ancillary agencies are negatively impacted.

While the above example may seem far-fetched, it's not. Case I is only one example of the ways in which people with disabilities experience invisible barriers, as imposed by others with whom they interact.

Causing harm to those who are vulnerable is not something that people wish to be exposed, for a number of reasons. Because those who stigmatize the vulnerable do not wish to be exposed, they do so in such a way which conceals the reasons for their actions or inactions. When a person's actions clearly do not benefit a vulnerable individual, the person may conceal the reasons behind their barrier-causing actions.

It is the deception (whether by way of minimization, deflection or denial) by those who stigmatize, which makes their actions or inactions appear justified. For this reason, the barrier created by the discrimination is "invisible" to others who are not aware of the true thoughts, feelings, and motivations of the person who is creating a barrier. When a barrier is "invisible", it is impossible to recognize that there is a barrier which needs to be removed. Further, when a disabled individual attempts to remove an "invisible" barrier, the perception is that he or she is attempting to remove a barrier which does not exist. Efforts by individuals with disabilities to remove these barriers are too often met with resistance and further stigma.

For the record, misunderstanding autism destroys a reasonable quality of life

The logic and reasoning a Spectrum Individual (an individual on the autism spectrum) uses, is no more "incorrect" than a person without autism. However, because the autistic brain uses way of processing the information, it is often difficult for a person who does not have autism to comprehend the logic and reasoning.

When non-autistic, or "neurotypical" (NT) people do not understand information, he or she has a tendency to reject that information, especially when the information they attempted to understand conflicts with what the NT thinks they know or believes to be true.

For this reason, people who interact with individuals with autism often may dismiss the autistic person, as well as disregard the things the individual says. The autistic individual has three options: 1) accept the rejection; 2) attempt to clarify with the disbelieving person; and 3) locate another person to provide the information to.

When the issue at hand is reasonably insignificant, such as an individual trying to help an NT neighbor by explaining why it's often a good idea to thoroughly water plants immediately before a hard freeze, the SI may make a reasonable attempt to clarify his or her reasoning, but might not choose to go to others to explain the situation or further clarify. On the other hand, when

an SI lives independently, he or she will have many occasions in which an explanation, when rejected, has a negative impact on his or her ability to live independently, or affects other elements which have a direct impact on his or her life. In these cases, the SI is likely to seek to clarify necessary information with the person, to mitigate negative consequences.

When an individual seeks to clarify information, there is likely to be some overlap between the NT person who has rejected the information, and the next person the individual attempts to contact. For instance, a person with autism provides information to an SSA representative, which is critical to the continuation of his or her disability-related benefits. The NT person with the SSA happens to misinterpret the information, causing a negative financial impact for the Spectrum Individual. The SI would then likely attempt to clarify with the SSA representative, but because the SI and the NT process information differently, there is a communication barrier, and clarification is not achieved. Because the incorrect information interferes with the SI's ability to live independently, the SI will most certainly attempt to clarify the situation, and correct the information, with a different person at the SSA. The next person the SI talks to is likely to be a supervisor, and is also likely to be neurotypical. While there is still a slight communication barrier between the SI and the supervisor, the supervisor is likely to try to determine the problem and correct it. In doing so, the supervisor will almost certainly ask the SSA representative about the situation. The SSA and the supervisor are both NTs, so they have a better understanding of each other, than either does of the SI. The SSA representative is more than likely to maintain his or her position to the supervisor. This may be because the SSA representative does not understand how the information is misinterpreted, so they feel certain that they are correct about what they think they know. On the other hand, the SSA representative may experience what is called the *irrational primacy effect*⁹. The result of this effect is that the SSA representative is unwilling to change his or her position because they have already made an internal judgment about the situation. If, for instance, the representative misinterprets the information in such a way which puts the SI in a false light of engaging in improper behavior, the representative will maintain the faulty belief. These beliefs "...can survive and even be bolstered by evidence that most uncommitted observers would agree logically demands some weakening of such beliefs. They can

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even survive the total destruction of their original evidential bases¹⁰” As a result, when the SSA representative and the supervisor discuss the situation, the representative is likely to explain his or her very strong opinion which contradicts with the logical evidence to the contrary, which the SI is attempting to introduce. The more that the SI attempts to clarify, the stronger the SSA representative feels about his or her position, and conveys that opinion in such a way as to persuade other NTs, who relate to her thinking more easily than the thinking of the SI. This creates an “us against them” situation in which the SI is outnumbered by neurotypicals who have influence over his or her entitled benefits.

For the record, stigma has a lasting consequence for the vulnerable

Emotions affect a person’s decisions. They affect how a person decides to take action, or avoid action. They affect how a person talks to people, and the way a person talks about people to others. The emotions a person has is frequently caused by an incident. Even though the person experiencing the emotion may not realize it, the emotions produced by an incident continue to proliferate within decision-making processes, which guide someone’s behavior.

When a person is mad at another person, the angry person engages in various behaviors which reflect that anger. The angry person may raise his or her voice, choose to decline needed help, or take proactive measures to retaliate against the subject of their anger. Although it would seem that once the person is no longer angry, the behaviors will change, the reality is that future behaviors (which are based on the decisions we make, whether consciously or subconsciously) are also affected. According to behavioral experts Eduardo B. Andrade and Dan Ariely:

“...the influence of mild incidental emotions on decision making can live longer than the emotional experience itself. Given that people often do not realize they are being influenced by the incidental emotional state, decisions based on a fleeting incidental emotion can become the basis

¹⁰ Ross, Lee; Anderson, Craig A. (1982), “Shortcomings in the attribution process: On the origins and maintenance of erroneous social assessments”, in Kahneman, Daniel; Slovic, Paul; Tversky, Amos, *Judgment under uncertainty: Heuristics and biases*, Cambridge University Press, pp. 129-152, ISBN 978-0-521-28414-1, OCLC 7878020

for future decisions and hence outlive the original cause for the behavior (i.e., the emotion itself).”¹¹

In the social services world, a person receives assistance from a nucleus of providers. The Social Security Field Office generally has the same employees each time an individual requires services. Agencies such as the Department of Health and Human Services has representatives which remain in contact with their “customers”. People with disabilities interact with the same people and agencies over and over again.

When an agency representative becomes frustrated with a disabled person, that frustration is based on thoughts and opinions related to the interaction. Unfortunately, when an agency representative forms a negative opinion about someone they are supposed to assist, those negative emotions have a lasting impact on the decisions they make regarding the person who has “caused them frustration.”

When the representative has influence over things such as benefit eligibility, this means that decisions which are made about the eligibility are likely to reflect the previous emotions that the representative has against the disabled person.

Most often, these agencies interact or influence each other. A person’s eligibility for one benefit will affect their eligibility for another benefit. An individual’s entitlement to certain benefits which are designated as “need based”, help other agencies to establish eligibility for other benefits. When one person has feelings which negatively impact the eligibility of a disabled person, that non-eligible status is looked to, by other agencies, which, in turn, determine the disabled person is not eligible for assistance.

The most tragic part of this vicious cycle is that many times a disabled person is not equipped to break the chain of events, which was originally precipitated by an action or inaction which should not have occurred in the first place.

For the record, stigma can feel like a threat or an assault.

¹¹ *The enduring impact of transient emotions on decision making* (Andrade & Ariely, 2009) Retrieved February 19, 2012 from <http://duke.edu/~dandan/Papers/transientEmotions.pdf>

When kids' engage in behaviors which are cruel to other children, it is called "bullying". When a child experiences depression as a result of that bullying, and commits suicide as a result of that bullying, it is called "bullycide"¹²¹³." While "bullying" (f children) has gained significant attention in society, the experience is not unique to children. Adults who are "bullied" also fall victim to thoughts, and acts, of suicide as a result of the conduct of others.

People with disabilities are vulnerable in a number of ways. Some people with disabilities are vulnerable in ways that others, who do not have the disability, do not understand. People with disabilities may be more vulnerable to certain threats than others.

For example, individuals with autism can't always fully understand how or why a person would harm them. This makes the individual very vulnerable to those who engage in abusive behaviors. Because the SI is not always able to see that an act is a threat to their safety, he or she may not be able to recognize the red flags that may be "obvious" to others. Children with autism are more vulnerable to childhood sexual abuse, and are subsequently more likely to enter into a relationship with an abusive person.

Some children with autism are perceived by parents or caregivers to be "difficult and challenging". When parents and/or caregivers are not adequately equipped to cope with frustration, the result is often abusive acts or behaviors towards the child. Because individuals with autism often are, or feel, socially isolated, the individual may not be equipped to deal with the abusive behaviors in a way which ends the abuse. Acts of hostility can be considered forms of "bullying", even if the act or acts do not meet the social criteria of "abuse". Research has shown that bullying changes the brain chemistry of the person who is bullied.¹⁴ As a result, an individual who has been previously bullied, is less capable of defending him or herself against future acts of bullying.

When a person commits stigmatizing acts against a person with a disability, who is more than likely to have experienced acts of bullying and/or abuse, the stigmatizing acts have a volatile effect on the individual. Bullying or abuse is a situation with a beginning and end, which has an immediate negative impact, on a number of levels, as well as long-lasting emotional and

¹² *Depression: The inability to find joy in the journey* Brenda High Retrieved February 19, 2012 from <http://www.jaredstory.com/depression.html>

¹³ Definition of Bullycide Retrieved February 19, 2012 from <http://www.jaredstory.com/bullycide.html>

¹⁴ *Effects of chronic social defeat on behavioral and neural correlates of sociality: Vasopressin, oxytocin and the vasopressinergic V1b receptor.* Yoav Litvin, Gen Murakami, Donald W. Pfaff. [*Physiology & Behavior*](#) 2011; 103(3-4): 393-403. doi:10.1016/j.physbeh.2011.03.007

psychological consequences, including post-traumatic stress disorder and bullycide. Bullying disqualifies an individual from peer acceptance. However, because “bullying” generally refers to victims and perpetrators under age 18, the peer groups from which the bullied is disqualified from are restricted to those who are also age 18 and under, and the peer groups are transient, as the child grows.

Stigma, like bullying, causes the rejection of a peer group. However, when an individual becomes an adult, that peer group expands to other people who are 18 and over.

Stigmatizing is rendering a person or group is like unrelenting bullying, with no definable end point, because stigma disqualifies the stigmatized from full social acceptance. Because stigmatizing an individual leads to an ongoing negative impact, experiencing that negative impact is like being bullied or abused without end. It is well-documented that the prolonged emotional pressure an individual suffers, such as when one perceives he or she has no control, results in a release of corticosteroids. Over time, this release of corticosteroids can cause damage to an individual’s physical and mental health. (The duration of time required for this damage to occur is based on a number of individual factors.) When an individual is being stigmatized, she or he experiences prolonged stress, affecting his or her physical and mental health. When a person’s physical and mental health is harmed by an individual who is engaging in stigma, it feels like an assault. Just as the stigmatizing interactions between children can cause bullycide, so can the stigmatizing interactions of those who are adults. Although, adults are theoretically supposed to be accountable for inappropriate behaviors. Although, clearly, stigma and discrimination still exists in society at staggering levels. The result may be a myriad of consequences, not the least of which can include post-traumatic stress disorder (PTSD) and suicide.

Discrimination is an unlawful act. Discrimination by one against another, which results in physical and/or mental harm to the individual who has been discriminated against, can reasonably be considered an assault. Anyone who experiences the prolonged stigmatization and/or discrimination by another is likely to feel that their well-being is threatened. The reason they feel this way, is that their well-being is, in fact, in danger. Those who cause this kind of harm to individuals with disabilities are assaulting the vulnerable.

For the record, people stigmatize on the basis of their personal beliefs.

People have a tendency to seek consistency between their belief system and their actions. Cognitive dissonance is the tension which exists when a person's actions are not consistent with their belief system.¹⁵

In the Case I example, if the SSA representative falsely believes that a disabled individual is capable of working, he or she is not going to be comfortable with believing that the individual is entitled to disability benefits.

The tension of cognitive dissonance is like an "internal struggle" within a person. Only one "side" can win, either the belief system or the action. Typically, the person's belief system generally wins out. When an action does not "fit with" a person's belief system, they change their actions to reflect their beliefs. When there is no other legitimate reason to commit the act, the person will subconsciously create "reasons" to legitimize his or her actions. When the actions have to be accounted for, but are based on the person's personal feelings instead of other reasonable qualifiers, the person who commits the act will communicate the reasoning to others that he or she is accountable to. If the "reasons" seem viable on the surface, then the rationalization for the stigmatizing actions are not questioned, and the person's "reasons" become the prevailing opinion.

In Case I, the SSA representative may believe an individual is capable of working, so she will deny (or interfere with) benefits, and find reasons to support the decision based on her belief. It would be unflattering to assert, "I don't care what the doctor says, I believe the individual is capable of working. She doesn't deserve these benefits, so I will step in and stop them". So the SSA representative in this case may fabricate new reasoning, such as, "well, she is too smart to not work" or "she has worked before" to conceal the fact that actions on her part were made based on her personal beliefs.

If the SSA representative is questioned about her actions or inactions related to the individual's eligibility, the flawed reasoning is given. "She is too smart to not work. Plus, she has worked before." The second person who hears the explanation (perhaps a supervisor) may also be unfamiliar with the individual's disability. As a result, the second person may not understand that the disability is completely unrelated to intelligence, and that the individual was able to work at one times, but is not currently able. Due to this person's lack of understanding, they are likely to accept the representative's logic that the benefits warrant interference. The resulting impact of the stigmatizing behavior becomes pervasive.

¹⁵ W.C. Crain. (1985). *Theories of Development*. Prentice-Hall. pp. 118-136.

For the record, it isn't required to understand a disability, to prevent stigma.

Understanding a disability, or a person or group who has a disability, is one way to mitigate the consequences of misunderstanding the disability or the affected individuals. (Stigma being one such negative consequence.) However, it is not reasonable to assume that people can easily understand that which they are unable to relate to.

Sensitivity training is a beneficial part of diversity training. Although, due to each training participant's unique life experiences, and the opinions and beliefs he or she has, as a result, it is also not reasonable to assume that such training will help all people become more sensitive to individuals who are vulnerable to discrimination.

One effective way to mitigate the negative consequences of misunderstanding is for the person to understand instead that he or she does NOT understand. Discrimination is the result of a person's belief that he or she does understand that which they do not. As a result of thinking that he or she does understand, they allow their opinions and prejudices to affect the way they interact with the individual. (Stigmatizing.) Stigma can be prevented by helping people understand that which they do not; or, it can be prevented by teaching people that they do not understand. There are many barriers to effectively teaching a person to understand. However, there are fewer barriers to effectively teaching a person that he or she does not understand that which they think they do. When a person learns that he or she does not understand, they are less likely to commit acts which are consistent with the belief that they do understand.

Since the individual's disability is not related to intelligence, it could be possible that the disabled individual is more intelligent than the SSA representative. However, because the representative doesn't understand this, she may think, "if I can work, they can work!" The representative's belief, in this example, reflects a poor understanding of the individual's disability, which the representative does not have and can not relate to. If the SSA representative in this example were to effectively understand that she really doesn't understand the disability, then she is less likely to interfere with the individual's benefits. "Well, it seems like she should be able to work, but because I don't understand this disability, I won't interfere with her benefits."

While the best option is for people to better understand a disability, or the people who have the disability, a more practical goal is teaching people that they do not understand a disability, so their actions should not be a reflection of their beliefs or understanding.

For the record, those who stigmatize the disabled are a liability.

While it is harmful to an individual who has a disability to interact with a person who stigmatizes others, it is also a liability to the company or organization which employs the person, or for which the person is a representative in one way or another.

When a person is prejudiced against a person or group, they are going to seek to avoid cognitive dissonance by acting in a way that is consistent with their beliefs. Acts against a person or group which are based on a prejudiced belief or attitudes are acts of discrimination. Acts of discrimination, including those acts which create barriers and stigma, may be considered unlawful acts. The Americans with Disabilities Act (ADA) protects individuals with disabilities from acts of discrimination. Those companies, agencies, and other entities which are not compliant with the ADA are subjected to liabilities such as audits, and financial and legal consequences, including compensatory damages.¹⁶

The ADA also has provisions in place to prevent and correct disability-related barriers. According to the law, ignorance does not preclude the legal requirement to comply with disability laws. This means that if an entity has a representative who is effectually creating barriers and/or committing acts of discrimination, it is not relevant that the representative didn't realize that their acts were unlawful. The entity is still held accountable for the acts of those who represent the entity. According to the Department of Justice:

“The Department of Justice may file lawsuits in federal court to enforce the ADA, and courts may order compensatory damages and back pay to remedy discrimination if the Department prevails. Under title III, the Department of Justice may also obtain civil penalties of up to \$55,000 for the first violation and \$110,000 for any subsequent violation.”¹⁷

¹⁶ ADA Law and Accessibility - The Costs of Non-Compliance (Disabled World-Weiss, Thomas C., 2009) Retrieved February 19, 2012, from <http://www.disabled-world.com/disability/ada/ada-law-accessibility.php>

¹⁷ Department of Justice-ADA Enforcement Retrieved February 19, 2012 from <http://www.ada.gov/enforce.htm>

One recent example of unintended discrimination resulting in a financial consequence is the 2009 case, *United States of America v. Wal-Mart Stores, Inc*¹⁸.

In addition to legal liability, an ADA audit is likely to mean increased costs to implement required or suggested changes. A company with liability insurance is likely to see increased premiums if/when a representative creates a legal situation based on discriminatory acts. While an audit opens an entity up to public scrutiny, and possibly a negative media response, those companies which operate on a for-profit basis may experience a negative impact on their revenue and profit, when their compliance practices fall under scrutiny by their customer and potential customer base.

Even if the acts of those who discriminate, and the entities for which they work, are not held to legal scrutiny and financial liability, those who discriminate and create barriers are doing a disservice to those who are vulnerable, which is rarely consistent with the goals of companies, agencies, organizations and other entities. When an entity operates in the capacity of serving, assisting, selling to, or otherwise providing a good, service, or resource to the disabled community or individuals, the representative who discriminates is a liability to the strategic goals, and likely the revenue and/or profit, of the entity which they represent. While it may be considered “lawful” or even, to some, “morally correct” to ensure that an entity’s representatives are not engaging in acts or omission or acts based on their prejudicial beliefs, preventing discrimination is simply a smart business decision.

For the record, things can change.

Pervasive is the population of those who have prejudicial beliefs against people with disabilities, the individuals who have disabilities, or the ways in which a disability may manifest in an individual. Because this population is pervasive, so is the potential and actual damage to individuals with disabilities who are on the receiving end of discriminatory acts and stigmatization. However, companies, organizations and other entities are able to mitigate damage to the disabled, as well as limit their own liability, by taking some simple steps. Diversity training

¹⁸ *SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND WAL-MART STORES, INC.* (January 2009) Retrieved February 19, 2012 from <http://www.ada.gov/walmart.htm>

is a good and important role in training human resources. However, diversity training alone is not enough.

One key to mitigating the effects of prejudice is the effective implementation of a global understanding that a person can not fully understand the impact that a disability has on the life of the disabled, if they are not disabled. Even those who have one disability can't be fully aware of all of the ways in which another disability impacts the life of another. An entity's policy of Awareness Above Understanding can minimize the potential that an employee or representative makes an adverse decision based on his or her lack of understanding. Those decisions which impact the health, welfare and basic needs of individuals with disabilities must be determined, based on certain, measurable criteria. (E.g., an SSA representative should not be able to negatively impact the benefits a disabled individual is entitled to, based strictly on a "gut feeling" or opinion, instead of verifiable, specific data.) Decisions which affect the lives of people with disabilities on a critical level should be able to stand up to scrutiny, and those making the decisions should be held accountable for the reasons behind the decisions. (E.g., a decision to suspend benefits should be made by a representative who understands the disability.) It would be prudent for an entity to restrict such decisions to an employee or representative who does have an understanding of the disability and those affected by the disability, such as developing process management procedures for positions which have a direct impact on the quality of life of those with disabilities.

Those employees or other representatives of an entity who have been exposed for making prejudice-based decisions should be held accountable with strict disciplinary action. In situations where an employee or representative engages in stigmatizing conduct in a manner which has a direct effect on the health and well-being of individuals with disabilities, it is a benefit to the entity (and society as a whole) for the conduct to be dealt with in a manner which appropriately reflects the seriousness of the conduct. Entities which discover that harm has occurred to a disabled individual as a result of the conduct of an employee or representative of that entity are wise to take steps to not only correct the action internally, but proactively make restitution with the injured disabled individual. Regardless of the internal corrective action, when an entity does not take steps to repair the damage caused by their entity, or by a representative of their entity, it demonstrates a lack of remorse for the actions or inactions which did the harm in the first place. This "adds insult to injury".

Because incidental emotions can have a long-lasting effect on a person's decision making, consideration should be made, regarding the impact of those who are in roles which have a direct impact on a disabled person's quality of life. One important consideration should be made prior to hiring decisions for Direct Impact Positions (DIP). Positions which have a high risk of violating the rights of people with disabilities are those in which the duties include contact with the disabled person, as well as decision making ability in areas which have a direct impact on the individual's quality of life.

Positions considered to be DIPS roles would include roles such as Social Security Administration Claims Representatives, who have both direct contact with the disabled individual, as well as the ability to make decisions which impact the disabled person. Other DIPs would include Human Resources positions and supervisors who have employee-evaluation responsibilities.

Hiring determinations for DIP roles should carefully evaluate the prospective employee's ability to manage emotions, and whether or not they have a tendency to be easily frustrated. Another critical consideration is the prospective DIP's demonstrated history regarding their ability to be emotionally influenced, whether or not they can admit their mistakes, and the ease of which the potential employee may make corrections to their work or work process, when presented with information which illustrates that they may have made errors.

Individuals with a high level of emotional reactivity, or a low tolerance for stress are not acceptable candidates for DIP roles.

An important element to the success of an employee or representative in a DIP role is the entity's response to that representative if/when conflict arises between the representative and a disabled individual. Those who are placed in a DIP role should be afforded the ability to notify a supervisor that there is a conflict of interest with regard to the disabled individual, without the fear of negative consequences. Please note that this kind of change can be considered a request for a reasonable accommodation, in the area of effective communication, which a disabled person is entitled to, by law, under the Americans with Disabilities Act.¹⁹ Enabling a DIP to request a

¹⁹ ADA Best Practices Tool Kit for State and Local Governments-General Effective Communication Requirements Under Title II of the ADA-Chapter 3 Retrieved February 19, 2012, from <http://www.ada.gov/pcatoolkit/chap3toolkit.htm>

change and/or communication assistance, is not only a benefit for the population which agencies serve, but also supports ADA compliance.

For the record, people with disabilities can be powerful

It was stated earlier that people with disabilities are vulnerable. If individuals are vulnerable, then how can they also be powerful? One of the great misconceptions about the world is the too often, two things can not exist concurrently.

One illustration of the reality of this phenomenon is the term “twice exceptional”, which is used to describe children who have a disability, yet are also gifted. Many times people with autism are discriminated against because of this misconception. Because the words “gifted” and “disabled” seem completely opposite, when people are both, it causes problems on both ends. The groups which deal with the gifted side don’t recognize the disability, so the gifted individual is held liable for those elements over which he or she has no control, because the person, in his or her entirety, doesn’t meet the other expectations people have of those who are “gifted”. On the other hand, those who deal with disabilities see the giftedness, and hold the person accountable for their gifts, and don’t recognize the disability’s limitations. For people with autism, this means that employment (for example) is a challenge, because their disability gets in the way. It also means that disability-related benefits, such as the removal of barriers, is a challenge, because the giftedness gets in the way. The duality is not considered, because many people can’t see past their original belief.

If a person has seen some traits of an individual with autism, and they misjudge the individual based on their mis-perception of those traits, that person may be less likely to entrust that individual with a job which will have an effect on the company’s financial success. On the other hand, a person who sees the individual’s giftedness is more likely to see the individual’s autism-related traits as limitations, or even as character flaw.

To many, it would seem that a person can not be both powerful and vulnerable. And yet, this does happen to the case of people with disabilities.

People with disabilities, as individuals, are vulnerable to malicious behaviors. Their lives are easily affected by those who have more power than they have, because by definition, a disability affects a person's ability to enjoy the same opportunities as someone who is not disabled. But people with disabilities have many things to offer, which can not be offered by others without disabilities. There are many examples, but some are: a person who has had a leg amputated can determine the usefulness of different prosthetics; a person whose disability is controlled by medication can evaluate the effectiveness of a medication in development; a person with a disability which is life-threatening can talk to others with his or her same disability, and be a source of consolation and strength; a person who is blind can communicate the challenges that blind people experience to help create innovative new products; an adult with autism can help kids with autism understand techniques to help them be successfully independent; and so on.

Additionally, people with disabilities are powerful, as a group. For example, if an organization inadvertently puts up barriers that prevent people with autism from enjoying the same benefits that the organization offers others, a group of autistic people can work together to help that entity understand why their barrier is a problem for everyone. Or, if an entity demonstrates a culture of acceptance, the community of those with disabilities share this information, and the entity benefits. There is strength in numbers, and this is no less the case for people with disabilities. Individually, we all have power. Collectively, we have strength.

For the record, help others understand.

How do you feel about people with disabilities? If you are like most people, you probably haven't thought much about it. But how do you feel about those who are vulnerable? How do you feel about the child who is bullied, or the wife who is battered, or the helpless dog restricted to a cramped and filthy cage? These are examples of those who are vulnerable. Collectively, people with disabilities have strength, but what happens when a disability interferes with a person's ability to work collectively? It happens more than you know.

People with disabilities are not inherently lazy. People with disabilities aren't necessarily liars, and a disability is not an excuse to park in the best parking spaces. There are people with disabilities who can do "bad things", just like people without disabilities; no generalization is global. Although, the scrutiny that people with disabilities experience is usually unjustified.

The Obedience Experiment was conducted in 1962 by a Yale University psychologist, Stanley Milgram, who published his findings in 1963 in the *Journal of Abnormal and Social Psychology*, and later, in detail, in his 1974 book, *Obedience to Authority: An Experimental View*. In 2011, filmmaker Eli Roth²⁰ re-created the experiment for the Discovery Channel^{21 22}.

The original experiment examined how far subjects would go, when gently instructed by an authority figure to administer high-voltage electric shocks, which threatened the life of another the “learner”, a victim, who would cry out in pain, begging for relief from the shocks. The first part of the 2011 recreation mirrored the original Obedience Experiment. The second part of the recreation added a “catalyst”, an actor who would administer the shocks, but voice their uneasiness about the harm being caused to the victim. The subject observed the catalyst administering the shocks.

Both the 1962²³ and the first 2011 experiments demonstrated that the subject would follow the leader’s instruction to harm the victim, even when the subject felt uneasy about it, and believed that the harm would kill the victim. However, the addition of a catalyst had a significant impact on the subject. When the catalyst vocalized concern for the victim, the subject agreed with the catalyst, and would request to end the experiment.²⁴

The 2001 Obedience experiment’s results showed that an overwhelming majority of the subjects would administer shocks even after the “learner” begged for mercy, which was the conclusion of the subject’s part in the experiment. When another person was in the room, and vocalized concern, even more people would agree, and refuse to continue.

The Discovery Channel experiment in 2011 helps to explain why it is important to vocalize concerns when a person is being harmed. Without a catalyst, a person will harm another person, because they question their own judgment, if a figure of authority seems to see things another way. A person will engage in conduct which is not only harmful, but could even end the life of another human being that they have no issue with.

²⁰ Eli Roth is a filmmaker and actor, known for movies which include *Inglourious Basterds* and *Hostel*
<http://www.imdb.com/name/nm0744834/>

²¹ *ArtsBeat: Touch of Evil: Eli Roth Recreates Infamous Experiment for Discovery Channel* (Egner, Jeremy 2011)
Retrieved February 19, 2012, from <http://artsbeat.blogs.nytimes.com/2011/10/28/touch-of-evil-eli-roth-recreates-infamous-experiments-for-discovery-channel/>

²² To see a clip of the Discovery footage, go to <http://youtu.be/ZB8AMUHq2HY> (Retrieved February 19, 2012)

²³ Original footage from the 1962 experiment can be viewed at <http://youtu.be/ZB8AMUHq2HY> (Retrieved February 19, 2012)

²⁴ See a clip of the second part of the recreation at: <http://youtu.be/-etoa6vSiPQ>

However, when another person is brave enough to say “I don’t think this is right,” then a person will resist harming another person.

We all want to make a difference. You can, by setting a positive example. You don’t have to understand all of the details of a disability to understand that someone is getting hurt mentally, emotionally or physically. When something tells you “that doesn’t seem right”, say something. When one person stands up for the vulnerable, more people start to stand up, too.

Stigma is when a person’s beliefs get to a point that they affect the quality of life of the person who is stigmatized. When you see another person treating someone unfairly, be that catalyst. Do something differently. Say that you don’t think the situation is right. Somehow, some way, stand up for that vulnerable person.

We all want to fight the good fight, but nobody wants to lose the good fight, for fighting alone. Even if you are the first to stand up, be the catalyst that says “No more!” Because before long, you will see that you have a team behind you, and you won’t be fighting the good fight alone.

Appendix I

Telephone Numbers for ADA Information²⁵

This list contains the telephone numbers of Federal agencies that are responsible for providing information to the public about the Americans with Disabilities Act and organizations that have been funded by the Federal government to provide information through staffed information centers. The agencies and organizations listed are sources for obtaining information about the law's requirements and informal guidance in understanding and complying with the ADA.

ADA Information Line U.S. Department of Justice

For ADA documents and questions

800-514-0301 (voice)
800-514-0383 (TTY)

www.ada.gov

U.S. Equal Employment Opportunity Commission

For publications

800-669-3362 (voice)
800-800-3302 (TTY)

For questions

800-669-4000 (voice)
800-669-6820 (TTY)

²⁵ Americans with Disabilities Act Questions and Answers (U.S. Department of Justice, Civil Rights Division; 2008)
Retrieved February 19, 2012, from <http://www.ada.gov/qandaeng.htm>

www.eeoc.gov

U.S. Department of Transportation

ADA Assistance Line for
regulations and complaints

888-446-4511 (voice)
TTY: use relay service

www.fta.dot.gov/civilrights/civil_rights_2360.html

Federal Communications Commission

888-225-5322 (voice)
888-835-5322 (TTY)

www.fcc.gov/cib/dro

U.S. Architectural and Transportation Barriers Compliance Board

800-872-2253 (voice)
800-993-2822 (TTY)

www.access-board.gov

**U.S. Department of Labor
Job Accommodation Network**

800-526-7234 (voice & TTY)

www.jan.wvu.edu

**U.S. Department of Education
Regional Disability and Business Technical Assistance Centers**

800-949-4232 (voice & TTY)

www.adata.org

Addresses for ADA Information

U.S. Department of Justice
Civil Rights Division
Disability Rights Section
P.O. Box 66738
Washington, DC 20035-6738

U.S. Equal Employment Opportunity Commission
1801 L Street, NW
Washington, DC 20507

U.S. Department of Transportation
Federal Transit Administration
400 Seventh Street, SW
Washington, DC 20590

Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Architectural and Transportation Barriers Compliance Board
1331 F Street, NW Suite 1000
Washington, DC 20004-1111

This document is available in the following alternate formats:

- Braille
- Large print
- Audiocassette
- Electronic file on computer disk.
- Internet www.ada.gov

Appendix II

U.S. Equal Employment Opportunity Commission

**U.S. Department of Justice
Civil Rights Division**

Americans with Disabilities Act Questions and Answers

Barriers to employment, transportation, public accommodations, public services, and telecommunications have imposed staggering economic and social costs on American society and have undermined our well-intentioned efforts to educate, rehabilitate, and employ individuals with disabilities. By breaking down these barriers, the Americans with Disabilities Act (ADA) will enable society to benefit from the skills and talents of individuals with disabilities, will allow us all to gain from their increased purchasing power and ability to use it, and will lead to fuller, more productive lives for all Americans.

The Americans with Disabilities Act gives civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, State and local government services, and telecommunications.

Fair, swift, and effective enforcement of this landmark civil rights legislation is a high priority of the Federal Government. This booklet is designed to provide answers to some of the most often asked questions about the ADA.

For answers to additional questions, call the ADA Information Line

800-514-0301 (voice)

800-514-0383 (TTY)

Additional ADA resources are listed in the Resources section of this document, [page 29](#).²⁶

February 2001

Employment

Q. What employers are covered by title I of the ADA, and when is the coverage effective?

A. The title I employment provisions apply to private employers, State and local governments, employment agencies, and labor unions. Employers with 25 or more employees were covered as of July 26, 1992. Employers with 15 or more employees were covered two years later, beginning July 26, 1994.

Q. What practices and activities are covered by the employment nondiscrimination requirements?

A. The ADA prohibits discrimination in all employment practices, including job application procedures, hiring, firing, advancement, compensation, training, and other terms, conditions, and privileges of employment. It applies to recruitment, advertising, tenure, layoff, leave, fringe benefits, and all other employment-

²⁶ In this document, *For the Record: Some words about disability, stigma & independence from someone who knows*, the resources referenced are listed on page 29 in [Appendix I](#)

related activities.

Q. Who is protected from employment discrimination?

A. Employment discrimination is prohibited against "qualified individuals with disabilities." This includes applicants for employment and employees. An individual is considered to have a "disability" if s/he 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. Persons discriminated against because they have a known association or relationship with an individual with a disability also are protected.

The first part of the definition makes clear that the ADA applies to persons who have impairments and that these must substantially limit major life activities such as seeing, hearing, speaking, walking, breathing, performing manual tasks, learning, caring for oneself, and working. An individual with epilepsy, paralysis, HIV infection, AIDS, a substantial hearing or visual impairment, mental retardation, or a specific learning disability is covered, but an individual with a minor, nonchronic condition of short duration, such as a sprain, broken limb, or the flu, generally would not be covered.

The second part of the definition protecting individuals with a record of a disability would cover, for example, a person who has recovered from cancer or mental illness.

The third part of the definition protects individuals who are regarded as having a substantially limiting impairment, even though they may not have such an impairment. For example, this provision would protect a qualified individual with a severe facial disfigurement from being denied employment because an employer feared the "negative reactions" of customers or co-workers.

Q. Who is a "qualified individual with a disability?"

A. A qualified individual with a disability is a person who meets legitimate skill, experience, education, or other requirements of an employment position that s/he holds or seeks, and who can perform the essential functions of the position with or without reasonable accommodation. Requiring the ability to perform

"essential" functions assures that an individual with a disability will not be considered unqualified simply because of inability to perform marginal or incidental job functions. If the individual is qualified to perform essential job functions except for limitations caused by a disability, the employer must consider whether the individual could perform these functions with a reasonable accommodation. If a written job description has been prepared in advance of advertising or interviewing applicants for a job, this will be considered as evidence, although not conclusive evidence, of the essential functions of the job.

Q. Does an employer have to give preference to a qualified applicant with a disability over other applicants?

A. No. An employer is free to select the most qualified applicant available and to make decisions based on reasons unrelated to a disability. For example, suppose two persons apply for a job as a typist and an essential function of the job is to type 75 words per minute accurately. One applicant, an individual with a disability, who is provided with a reasonable accommodation for a typing test, types 50 words per minute; the other applicant who has no disability accurately types 75 words per minute. The employer can hire the applicant with the higher typing speed, if typing speed is needed for successful performance of the job.

Q. What limitations does the ADA impose on medical examinations and inquiries about disability?

A. An employer may not ask or require a job applicant to take a medical examination before making a job offer. It cannot make any pre-employment inquiry about a disability or the nature or severity of a disability. An employer may, however, ask questions about the ability to perform specific job functions and may, with certain limitations, ask an individual with a disability to describe or demonstrate how s/he would perform these functions.

An employer may condition a job offer on the satisfactory result of a post-offer medical examination or medical inquiry if this is required of all entering employees in the same job category. A post-offer examination or inquiry does not have to be job-related and consistent with business necessity.

However, if an individual is not hired because a post-offer medical examination

or inquiry reveals a disability, the reason(s) for not hiring must be job-related and consistent with business necessity. The employer also must show that no reasonable accommodation was available that would enable the individual to perform the essential job functions, or that accommodation would impose an undue hardship. A post-offer medical examination may disqualify an individual if the employer can demonstrate that the individual would pose a "direct threat" in the workplace (i.e., a significant risk of substantial harm to the health or safety of the individual or others) that cannot be eliminated or reduced below the oedirect threat level through reasonable accommodation. Such a disqualification is job-related and consistent with business necessity. A post-offer medical examination may not disqualify an individual with a disability who is currently able to perform essential job functions because of speculation that the disability may cause a risk of future injury.

After a person starts work, a medical examination or inquiry of an employee must be job-related and consistent with business necessity. Employers may conduct employee medical examinations where there is evidence of a job performance or safety problem, examinations required by other Federal laws, examinations to determine current oefitness to perform a particular job, and voluntary examinations that are part of employee health programs.

Information from all medical examinations and inquiries must be kept apart from general personnel files as a separate, confidential medical record, available only under limited conditions.

Tests for illegal use of drugs are not medical examinations under the ADA and are not subject to the restrictions of such examinations.

Q. When can an employer ask an applicant to "self-identify" as having a disability?

A. Federal contractors and subcontractors who are covered by the affirmative action requirements of section 503 of the Rehabilitation Act of 1973 may invite individuals with disabilities to identify themselves on a job application form or by other pre-employment inquiry, to satisfy the section 503 affirmative action requirements. Employers who request such information must observe section 503 requirements regarding the manner in which such information is requested and used, and the procedures for maintaining such information as a separate, confidential record, apart from regular personnel records.

A pre-employment inquiry about a disability is allowed if required by another Federal law or regulation such as those applicable to disabled veterans and veterans of the Vietnam era. Pre-employment inquiries about disabilities may be necessary under such laws to identify applicants or clients with disabilities in order to provide them with required special services.

Q. Does the ADA require employers to develop written job descriptions?

A. No. The ADA does not require employers to develop or maintain job descriptions. However, a written job description that is prepared before advertising or interviewing applicants for a job will be considered as evidence along with other relevant factors. If an employer uses job descriptions, they should be reviewed to make sure they accurately reflect the actual functions of a job. A job description will be most helpful if it focuses on the results or outcome of a job function, not solely on the way it customarily is performed. A reasonable accommodation may enable a person with a disability to accomplish a job function in a manner that is different from the way an employee who is not disabled may accomplish the same function.

Q. What is "reasonable accommodation?"

A. Reasonable accommodation is any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to participate in the application process or to perform essential job functions. Reasonable accommodation also includes adjustments to assure that a qualified individual with a disability has rights and privileges in employment equal to those of employees without disabilities.

Q. What are some of the accommodations applicants and employees may need?

A. Examples of reasonable accommodation include making existing facilities used by employees readily accessible to and usable by an individual with a disability; restructuring a job; modifying work schedules; acquiring or modifying equipment; providing qualified readers or interpreters; or appropriately modifying

examinations, training, or other programs. Reasonable accommodation also may include reassigning a current employee to a vacant position for which the individual is qualified, if the person is unable to do the original job because of a disability even with an accommodation. However, there is no obligation to find a position for an applicant who is not qualified for the position sought. Employers are not required to lower quality or quantity standards as an accommodation; nor are they obligated to provide personal use items such as glasses or hearing aids.

The decision as to the appropriate accommodation must be based on the particular facts of each case. In selecting the particular type of reasonable accommodation to provide, the principal test is that of effectiveness, i.e., whether the accommodation will provide an opportunity for a person with a disability to achieve the same level of performance and to enjoy benefits equal to those of an average, similarly situated person without a disability. However, the accommodation does not have to ensure equal results or provide exactly the same benefits.

Q. When is an employer required to make a reasonable accommodation?

A. An employer is only required to accommodate a "known" disability of a qualified applicant or employee. The requirement generally will be triggered by a request from an individual with a disability, who frequently will be able to suggest an appropriate accommodation. Accommodations must be made on an individual basis, because the nature and extent of a disabling condition and the requirements of a job will vary in each case. If the individual does not request an accommodation, the employer is not obligated to provide one except where an individual's known disability impairs his/her ability to know of, or effectively communicate a need for, an accommodation that is obvious to the employer. If a person with a disability requests, but cannot suggest, an appropriate accommodation, the employer and the individual should work together to identify one. There are also many public and private resources that can provide assistance without cost.

Q. What are the limitations on the obligation to make a reasonable accommodation?

A. The individual with a disability requiring the accommodation must be otherwise qualified, and the disability must be known to the employer. In

addition, an employer is not required to make an accommodation if it would impose an "undue hardship" on the operation of the employer's business. "Undue hardship" is defined as an "action requiring significant difficulty or expense" when considered in light of a number of factors. These factors include the nature and cost of the accommodation in relation to the size, resources, nature, and structure of the employer's operation. Undue hardship is determined on a case-by-case basis. Where the facility making the accommodation is part of a larger entity, the structure and overall resources of the larger organization would be considered, as well as the financial and administrative relationship of the facility to the larger organization. In general, a larger employer with greater resources would be expected to make accommodations requiring greater effort or expense than would be required of a smaller employer with fewer resources.

If a particular accommodation would be an undue hardship, the employer must try to identify another accommodation that will not pose such a hardship. Also, if the cost of an accommodation would impose an undue hardship on the employer, the individual with a disability should be given the option of paying that portion of the cost which would constitute an undue hardship or providing the accommodation.

Q. Must an employer modify existing facilities to make them accessible?

A. The employer's obligation under title I is to provide access for an *individual* applicant to participate in the job application process, and for an *individual* employee with a disability to perform the essential functions of his/her job, including access to a building, to the work site, to needed equipment, and to all facilities used by employees. For example, if an employee lounge is located in a place inaccessible to an employee using a wheelchair, the lounge might be modified or relocated, or comparable facilities might be provided in a location that would enable the individual to take a break with co-workers. The employer must provide such access unless it would cause an undue hardship.

Under title I, an employer is not required to make its existing facilities accessible until a particular applicant or employee with a particular disability needs an accommodation, and then the modifications should meet that individual's work needs. However, employers should consider initiating changes that will provide general accessibility, particularly for job applicants, since it is likely that people with disabilities will be applying for jobs. The employer does not have to make

changes to provide access in places or facilities that will not be used by that individual for employment-related activities or benefits.

Q. Can an employer be required to reallocate an essential function of a job to another employee as a reasonable accommodation?

A. No. An employer is not required to reallocate essential functions of a job as a reasonable accommodation.

Q. Can an employer be required to modify, adjust, or make other reasonable accommodations in the way a test is given to a qualified applicant or employee with a disability?

A. Yes. Accommodations may be needed to assure that tests or examinations measure the actual ability of an individual to perform job functions rather than reflect limitations caused by the disability. Tests should be given to people who have sensory, speaking, or manual impairments in a format that does not require the use of the impaired skill, unless it is a job-related skill that the test is designed to measure.

Q. Can an employer maintain existing production/performance standards for an employee with a disability?

A. An employer can hold employees with disabilities to the same standards of production/performance as other similarly situated employees without disabilities for performing essential job functions, with or without reasonable accommodation. An employer also can hold employees with disabilities to the same standards of production/performance as other employees regarding marginal functions unless the disability affects the person's ability to perform those marginal functions. If the ability to perform marginal functions is affected by the disability, the employer must provide some type of reasonable accommodation such as job restructuring but may not exclude an individual with a disability who is satisfactorily performing a jobs essential functions.

Q. Can an employer establish specific attendance and leave policies?

A. An employer can establish attendance and leave policies that are uniformly applied to all employees, regardless of disability, but may not refuse leave needed by an employee with a disability if other employees get such leave. An employer also may be required to make adjustments in leave policy as a reasonable accommodation. The employer is not obligated to provide additional paid leave, but accommodations may include leave flexibility and unpaid leave.

A uniformly applied leave policy does not violate the ADA because it has a more severe effect on an individual because of his/her disability. However, if an individual with a disability requests a modification of such a policy as a reasonable accommodation, an employer may be required to provide it, unless it would impose an undue hardship.

Q. Can an employer consider health and safety when deciding whether to hire an applicant or retain an employee with a disability?

A. Yes. The ADA permits employers to establish qualification standards that will exclude individuals who pose a direct threat -- i.e., a significant risk of substantial harm -- to the health or safety of the individual or of others, if that risk cannot be eliminated or reduced below the level of a direct threat by reasonable accommodation. However, an employer may not simply assume that a threat exists; the employer must establish through objective, medically supportable methods that there is significant risk that substantial harm could occur in the workplace. By requiring employers to make individualized judgments based on reliable medical or other objective evidence rather than on generalizations, ignorance, fear, patronizing attitudes, or stereotypes, the ADA recognizes the need to balance the interests of people with disabilities against the legitimate interests of employers in maintaining a safe workplace.

Q. Are applicants or employees who are currently illegally using drugs covered by the ADA?

A. No. Individuals who currently engage in the illegal use of drugs are specifically excluded from the definition of a "qualified individual with a disability" protected by the ADA when the employer takes action on the basis of their drug use.

Q. Is testing for the illegal use of drugs permissible under the ADA?

A. Yes. A test for the illegal use of drugs is not considered a medical examination under the ADA; therefore, employers may conduct such testing of applicants or employees and make employment decisions based on the results. The ADA does not encourage, prohibit, or authorize drug tests.

If the results of a drug test reveal the presence of a lawfully prescribed drug or other medical information, such information must be treated as a confidential medical record.

Q. Are alcoholics covered by the ADA?

A. Yes. While a current illegal user of drugs is not protected by the ADA if an employer acts on the basis of such use, a person who currently uses alcohol is not automatically denied protection. An alcoholic is a person with a disability and is protected by the ADA if s/he is qualified to perform the essential functions of the job. An employer may be required to provide an accommodation to an alcoholic. However, an employer can discipline, discharge or deny employment to an alcoholic whose use of alcohol adversely affects job performance or conduct. An employer also may prohibit the use of alcohol in the workplace and can require that employees not be under the influence of alcohol.

Q. Does the ADA override Federal and State health and safety laws?

A. The ADA does not override health and safety requirements established under other Federal laws even if a standard adversely affects the employment of an individual with a disability. If a standard is required by another Federal law, an employer must comply with it and does not have to show that the standard is job related and consistent with business necessity. For example, employers must conform to health and safety requirements of the U.S. Occupational Safety and Health Administration. However, an employer still has the obligation under the ADA to consider whether there is a reasonable accommodation, consistent with the standards of other Federal laws, that will prevent exclusion of qualified individuals with disabilities who can perform jobs without violating the standards

of those laws. If an employer can comply with both the ADA and another Federal law, then the employer must do so.

The ADA does not override State or local laws designed to protect public health and safety, except where such laws conflict with the ADA requirements. If there is a State or local law that would exclude an individual with a disability from a particular job or profession because of a health or safety risk, the employer still must assess whether a particular individual would pose a "direct threat" to health or safety under the ADA standard. If such a "direct threat" exists, the employer must consider whether it could be eliminated or reduced below the level of a "direct threat" by reasonable accommodation. An employer cannot rely on a State or local law that conflicts with ADA requirements as a defense to a charge of discrimination.

Q. How does the ADA affect workers' compensation programs?

A. Only injured workers who meet the ADA's definition of an "individual with a disability" will be considered disabled under the ADA, regardless of whether they satisfy criteria for receiving benefits under workers' compensation or other disability laws. A worker also must be "qualified" (with or without reasonable accommodation) to be protected by the ADA. Work-related injuries do not always cause physical or mental impairments severe enough to "substantially limit" a major life activity. Also, many on-the-job injuries cause temporary impairments which heal within a short period of time with little or no long-term or permanent impact. Therefore, many injured workers who qualify for benefits under workers' compensation or other disability benefits laws may not be protected by the ADA. An employer must consider work-related injuries on a case-by-case basis to know if a worker is protected by the ADA.

An employer may not inquire into an applicant's workers' compensation history before making a conditional offer of employment. After making a conditional job offer, an employer may inquire about a person's workers compensation history in a medical inquiry or examination that is required of all applicants in the same job category. However, even after a conditional offer has been made, an employer cannot require a potential employee to have a medical examination because a response to a medical inquiry (as opposed to results from a medical examination) shows a previous on-the-job injury unless all applicants in the same job category are required to have an examination. Also, an employer may not base an

employment decision on the speculation that an applicant may cause increased workers' compensation costs in the future. However, an employer may refuse to hire, or may discharge an individual who is not currently able to perform a job without posing a significant risk of substantial harm to the health or safety of the individual or others, if the risk cannot be eliminated or reduced by reasonable accommodation.

An employer may refuse to hire or may fire a person who knowingly provides a false answer to a lawful post-offer inquiry about his/her condition or worker's compensation history.

An employer also may submit medical information and records concerning employees and applicants (obtained after a conditional job offer) to state workers' compensation offices and "second injury" funds without violating ADA confidentiality requirements.

Q. What is discrimination based on "relationship or association" under the ADA?

A. The ADA prohibits discrimination based on relationship or association in order to protect individuals from actions based on unfounded assumptions that their relationship to a person with a disability would affect their job performance, and from actions caused by bias or misinformation concerning certain disabilities. For example, this provision would protect a person whose spouse has a disability from being denied employment because of an employer's unfounded assumption that the applicant would use excessive leave to care for the spouse. It also would protect an individual who does volunteer work for people with AIDS from a discriminatory employment action motivated by that relationship or association.

Q. How are the employment provisions enforced?

A. The employment provisions of the ADA are enforced under the same procedures now applicable to race, color, sex, national origin, and religious discrimination under title VII of the Civil Rights Act of 1964, as amended, and the Civil Rights Act of 1991. Complaints regarding actions that occurred on or after July 26, 1992, may be filed with the Equal Employment Opportunity Commission or designated State human rights agencies. Available remedies will

include hiring, reinstatement, promotion, back pay, front pay, restored benefits, reasonable accommodation, attorneys' fees, expert witness fees, and court costs. Compensatory and punitive damages also may be available in cases of intentional discrimination or where an employer fails to make a good faith effort to provide a reasonable accommodation.

Q. What financial assistance is available to employers to help them make reasonable accommodations and comply with the ADA?

A. A special tax credit is available to help smaller employers make accommodations required by the ADA. An eligible small business may take a tax credit of up to \$5,000 per year for accommodations made to comply with the ADA. The credit is available for one-half the cost of "eligible access expenditures" that are more than \$250 but less than \$10,250.

A full tax deduction, up to \$15,000 per year, also is available to any business for expenses of removing qualified architectural or transportation barriers. Expenses covered include costs of removing barriers created by steps, narrow doors, inaccessible parking spaces, restroom facilities, and transportation vehicles. Additional information discussing the tax credits and deductions is contained in the Department of Justice's ADA Tax Incentive Packet for Businesses available from the ADA Information Line, see page 29. Information about the tax credit and tax deduction can also be obtained from a local IRS office, or by contacting the Office of Chief Counsel, Internal Revenue Service.

Q. What are an employer's recordkeeping requirements under the employment provisions of the ADA?

A. An employer must maintain records such as application forms submitted by applicants and other records related to hiring, requests for reasonable accommodation, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship for one year after making the record or taking the action described (whichever occurs later). If a charge of discrimination is filed or an action is brought by EEOC, an employer must save all personnel records related to the charge until final disposition of the charge.

Q. Does the ADA require that an employer post a notice explaining its requirements?

A. The ADA requires that employers post a notice describing the provisions of the ADA. It must be made accessible, as needed, to individuals with disabilities. A poster is available from EEOC summarizing the requirements of the ADA and other Federal legal requirements for nondiscrimination for which EEOC has enforcement responsibility. EEOC also provides guidance on making this information available in accessible formats for people with disabilities.

Q. What resources does the Equal Employment Opportunity Commission have available to help employers and people with disabilities understand and comply with the employment requirements of the ADA?

A. The Equal Employment Opportunity Commission has developed several resources to help employers and people with disabilities understand and comply with the employment provisions of the ADA.

Resources include:

A Technical Assistance Manual that provides "how-to" guidance on the employment provisions of the ADA as well as a resource directory to help individuals find specific information.

A variety of brochures, booklets, and fact sheets.

For information on how to contact the Equal Employment Opportunity Commission, [see page 29](#).²⁷

State and Local Governments

²⁷ In this document, *For the Record: Some words about disability, stigma & independence from someone who knows*, the resources referenced on page 29 are listed in [Appendix I](#)

Q. Does the ADA apply to State and local governments?

A. Title II of the ADA prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities. It applies to all State and local governments, their departments and agencies, and any other instrumentalities or special purpose districts of State or local governments. It clarifies the requirements of section 504 of the Rehabilitation Act of 1973 for public transportation systems that receive Federal financial assistance, and extends coverage to all public entities that provide public transportation, whether or not they receive Federal financial assistance. It establishes detailed standards for the operation of public transit systems, including commuter and intercity rail (AMTRAK).

Q. When do the requirements for State and local governments become effective?

A. In general, they became effective on January 26, 1992.

Q. How does title II affect participation in a State or local government's programs, activities, and services?

A. A state or local government must eliminate any eligibility criteria for participation in programs, activities, and services that screen out or tend to screen out persons with disabilities, unless it can establish that the requirements are necessary for the provision of the service, program, or activity. The State or local government may, however, adopt legitimate safety requirements necessary for safe operation if they are based on real risks, not on stereotypes or generalizations about individuals with disabilities. Finally, a public entity must reasonably modify its policies, practices, or procedures to avoid discrimination. If the public entity can demonstrate that a particular modification would fundamentally alter the nature of its service, program, or activity, it is not required to make that modification.

Q. Does title II cover a public entity's employment policies and practices?

A. Yes. Title II prohibits all public entities, regardless of the size of their work force, from discriminating in employment against qualified individuals with disabilities. In addition to title II's employment coverage, title I of the ADA and section 504 of the Rehabilitation Act of 1973 prohibit employment discrimination against qualified individuals with disabilities by certain public entities

Q. What changes must a public entity make to its existing facilities to make them accessible?

A. A public entity must ensure that individuals with disabilities are not excluded from services, programs, and activities because existing buildings are inaccessible. A State or local government's programs, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. This standard, known as "program accessibility," applies to facilities of a public entity that existed on January 26, 1992. Public entities do not necessarily have to make each of their existing facilities accessible. They may provide program accessibility by a number of methods including alteration of existing facilities, acquisition or construction of additional facilities, relocation of a service or program to an accessible facility, or provision of services at alternate accessible sites.

Q. When must structural changes be made to attain program accessibility?

A. Structural changes needed for program accessibility must be made as expeditiously as possible, but no later than January 26, 1995. This three-year time period is not a grace period; all alterations must be accomplished as expeditiously as possible. A public entity that employs 50 or more persons must have developed a transition plan by July 26, 1992, setting forth the steps necessary to complete such changes.

Q. What is a self-evaluation?

A. A self-evaluation is a public entity's assessment of its current policies and practices. The self-evaluation identifies and corrects those policies and practices that are inconsistent with title II's requirements. All public entities must complete a self-evaluation by January 26, 1993. A public entity that employs 50 or more

employees must retain its self-evaluation for three years. Other public entities are not required to retain their self-evaluations, but are encouraged to do so because these documents evidence a public entity's good faith efforts to comply with title II's requirements.

Q. What does title II require for new construction and alterations?

A. The ADA requires that all new buildings constructed by a State or local government be accessible. In addition, when a State or local government undertakes alterations to a building, it must make the altered portions accessible.

Q. How will a State or local government know that a new building is accessible?

A. A State or local government will be in compliance with the ADA for new construction and alterations if it follows either of two accessibility standards. It can choose either the Uniform Federal Accessibility Standards or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities, which is the standard that must be used for public accommodations and commercial facilities under title III of the ADA. If the State or local government chooses the ADA Accessibility Guidelines, it is not entitled to the elevator exemption (which permits certain private buildings under three stories or under 3,000 square feet per floor to be constructed without an elevator).

Q. What requirements apply to a public entity's emergency telephone services, such as 911?

A. State and local agencies that provide emergency telephone services must provide "direct access" to individuals who rely on a TDD or computer modem for telephone communication. Telephone access through a third party or through a relay service does not satisfy the requirement for direct access. Where a public entity provides 911 telephone service, it may not substitute a separate seven-digit telephone line as the sole means for access to 911 services by nonvoice users. A public entity may, however, provide a separate seven-digit line for the exclusive use of nonvoice callers in addition to providing direct access for such calls to its 911 line.

Q. Does title II require that telephone emergency service systems be compatible with all formats used for nonvoice communications?

A. No. At present, telephone emergency services must only be compatible with the Baudot format. Until it can be technically proven that communications in another format can operate in a reliable and compatible manner in a given telephone emergency environment, a public entity would not be required to provide direct access to computer modems using formats other than Baudot.

Q. How will the ADA's requirements for State and local governments be enforced?

A. Private individuals may bring lawsuits to enforce their rights under title II and may receive the same remedies as those provided under section 504 of the Rehabilitation Act of 1973, including reasonable attorney's fees. Individuals may also file complaints with eight designated Federal agencies, including the Department of Justice and the Department of Transportation.

Public Accommodations

Q. What are public accommodations?

A. A public accommodation is a private entity that owns, operates, leases, or leases to, a place of public accommodation. Places of public accommodation include a wide range of entities, such as restaurants, hotels, theaters, doctors' offices, pharmacies, retail stores, museums, libraries, parks, private schools, and day care centers. Private clubs and religious organizations are exempt from the ADA's title III requirements for public accommodations.

Q. Will the ADA have any effect on the eligibility criteria used by public accommodations to determine who may receive services?

A. Yes. If a criterion screens out or tends to screen out individuals with disabilities, it may only be used if necessary for the provision of the services. For instance, it would be a violation for a retail store to have a rule excluding all deaf persons from entering the premises, or for a movie theater to exclude all individuals with cerebral palsy. More subtle forms of discrimination are also prohibited. For example, requiring presentation of a driver's license as the sole acceptable means of identification for purposes of paying by check could constitute discrimination against individuals with vision impairments. This would be true if such individuals are ineligible to receive licenses and the use of an alternative means of identification is feasible.

Q. Does the ADA allow public accommodations to take safety factors into consideration in providing services to individuals with disabilities?

A. The ADA expressly provides that a public accommodation may exclude an individual, if that individual poses a direct threat to the health or safety of others that cannot be mitigated by appropriate modifications in the public accommodation's policies or procedures, or by the provision of auxiliary aids. A public accommodation will be permitted to establish objective safety criteria for the operation of its business; however, any safety standard must be based on objective requirements rather than stereotypes or generalizations about the ability of persons with disabilities to participate in an activity.

Q. Are there any limits on the kinds of modifications in policies, practices, and procedures required by the ADA?

A. Yes. The ADA does not require modifications that would fundamentally alter the nature of the services provided by the public accommodation. For example, it would not be discriminatory for a physician specialist who treats only burn patients to refer a deaf individual to another physician for treatment of a broken limb or respiratory ailment. To require a physician to accept patients outside of his or her specialty would fundamentally alter the nature of the medical practice.

Q. What kinds of auxiliary aids and services are required by the ADA to ensure effective communication with individuals with hearing or vision impairments?

A. Appropriate auxiliary aids and services may include services and devices such as qualified interpreters, assistive listening devices, notetakers, and written materials for individuals with hearing impairments; and qualified readers, taped texts, and Brailled or large print materials for individuals with vision impairments.

Q. Are there any limitations on the ADA's auxiliary aids requirements?

A. Yes. The ADA does not require the provision of any auxiliary aid that would result in an undue burden or in a fundamental alteration in the nature of the goods or services provided by a public accommodation. However, the public accommodation is not relieved from the duty to furnish an alternative auxiliary aid, if available, that would not result in a fundamental alteration or undue burden. Both of these limitations are derived from existing regulations and caselaw under section 504 of the Rehabilitation Act and are to be determined on a case-by-case basis.

Q. Will restaurants be required to have brailled menus?

A. No, not if waiters or other employees are made available to read the menu to a blind customer.

Q. Will a clothing store be required to have brailled price tags?

A. No, not if sales personnel could provide price information orally upon request.

Q. Will a bookstore be required to maintain a sign language interpreter on its staff in order to communicate with deaf customers?

A. No, not if employees communicate by pen and notepad when necessary.

Q. Are there any limitations on the ADA's barrier removal requirements for existing facilities?

A. Yes. Barrier removal need be accomplished only when it is "readily achievable" to do so.

Q. What does the term "readily achievable" mean?

A. It means "easily accomplishable and able to be carried out without much difficulty or expense."

Q. What are examples of the types of modifications that would be readily achievable in most cases?

A. Examples include the simple ramping of a few steps, the installation of grab bars where only routine reinforcement of the wall is required, the lowering of telephones, and similar modest adjustments.

Q. Will businesses need to rearrange furniture and display racks?

A. Possibly. For example, restaurants may need to rearrange tables and department stores may need to adjust their layout of racks and shelves in order to permit access to wheelchair users.

Q. Will businesses need to install elevators?

A. Businesses are not required to retrofit their facilities to install elevators unless such installation is readily achievable, which is unlikely in most cases.

Q. When barrier removal is not readily achievable, what kinds of alternative steps are required by the ADA?

A. Alternatives may include such measures as in-store assistance for removing articles from inaccessible shelves, home delivery of groceries, or coming to the door to receive or return dry cleaning.

Q. Must alternative steps be taken without regard to cost?

A. No, only readily achievable alternative steps must be undertaken.

Q. How is "readily achievable" determined in a multisite business?

A. In determining whether an action to make a public accommodation accessible would be "readily achievable," the overall size of the parent corporation or entity is only one factor to be considered. The ADA also permits consideration of the financial resources of the particular facility or facilities involved and the administrative or fiscal relationship of the facility or facilities to the parent entity.

Q. Who has responsibility for ADA compliance in leased places of public accommodation, the landlord or the tenant?

A. The ADA places the legal obligation to remove barriers or provide auxiliary aids and services on both the landlord and the tenant. The landlord and the tenant may decide by lease who will actually make the changes and provide the aids and services, but both remain legally responsible.

Q. What does the ADA require in new construction?

A. The ADA requires that all new construction of places of public accommodation, as well as of "commercial facilities" such as office buildings, be accessible. Elevators are generally not required in facilities under three stories or with fewer than 3,000 square feet per floor, unless the building is a shopping center or mall; the professional office of a health care provider; a terminal, depot, or other public transit station; or an airport passenger terminal.

Q. Is it expensive to make all newly constructed places of public accommodation and commercial facilities accessible?

A. The cost of incorporating accessibility features in new construction is less than one percent of construction costs. This is a small price in relation to the economic benefits to be derived from full accessibility in the future, such as increased

employment and consumer spending and decreased welfare dependency.

Q. Must every feature of a new facility be accessible?

A. No, only a specified number of elements such as parking spaces and drinking fountains must be made accessible in order for a facility to be "readily accessible." Certain nonoccupiable spaces such as elevator pits, elevator penthouses, and piping or equipment catwalks need not be accessible.

Q. What are the ADA requirements for altering facilities?

A. All alterations that could affect the usability of a facility must be made in an accessible manner to the maximum extent feasible. For example, if during renovations a doorway is being relocated, the new doorway must be wide enough to meet the new construction standard for accessibility. When alterations are made to a primary function area, such as the lobby of a bank or the dining area of a cafeteria, an accessible path of travel to the altered area must also be provided. The bathrooms, telephones, and drinking fountains serving that area must also be made accessible. These additional accessibility alterations are only required to the extent that the added accessibility costs do not exceed 20% of the cost of the original alteration. Elevators are generally not required in facilities under three stories or with fewer than 3,000 square feet per floor, unless the building is a shopping center or mall; the professional office of a health care provider; a terminal, depot, or other public transit station; or an airport passenger terminal.

Q. Does the ADA permit an individual with a disability to sue a business when that individual believes that discrimination is about to occur, or must the individual wait for the discrimination to occur?

A. The ADA public accommodations provisions permit an individual to allege discrimination based on a reasonable belief that discrimination is about to occur. This provision, for example, allows a person who uses a wheelchair to challenge the planned construction of a new place of public accommodation, such as a shopping mall, that would not be accessible to individuals who use wheelchairs. The resolution of such challenges prior to the construction of an inaccessible facility would enable any necessary remedial measures to be incorporated in the

building at the planning stage, when such changes would be relatively inexpensive.

Q. How does the ADA affect existing State and local building codes?

A. Existing codes remain in effect. The ADA allows the Attorney General to certify that a State law, local building code, or similar ordinance that establishes accessibility requirements meets or exceeds the minimum accessibility requirements for public accommodations and commercial facilities. Any State or local government may apply for certification of its code or ordinance. The Attorney General can certify a code or ordinance only after prior notice and a public hearing at which interested people, including individuals with disabilities, are provided an opportunity to testify against the certification.

Q. What is the effect of certification of a State or local code or ordinance?

A. Certification can be advantageous if an entity has constructed or altered a facility according to a certified code or ordinance. If someone later brings an enforcement proceeding against the entity, the certification is considered "rebuttable evidence" that the State law or local ordinance meets or exceeds the minimum requirements of the ADA. In other words, the entity can argue that the construction or alteration met the requirements of the ADA because it was done in compliance with the State or local code that had been certified.

Q. When are the public accommodations provisions effective?

A. In general, they became effective on January 26, 1992.

Q. How will the public accommodations provisions be enforced?

A. Private individuals may bring lawsuits in which they can obtain court orders to stop discrimination. Individuals may also file complaints with the Attorney General, who is authorized to bring lawsuits in cases of general public importance or where a pattern or practice of discrimination is alleged. In these cases, the Attorney General may seek monetary damages and civil penalties. Civil penalties

may not exceed \$55,000 for a first violation or \$110,000 for any subsequent violation.

Miscellaneous

Q. Is the Federal government covered by the ADA?

A. The ADA does not cover the executive branch of the Federal government. The executive branch continues to be covered by title V of the Rehabilitation Act of 1973, which prohibits discrimination in services and employment on the basis of handicap and which is a model for the requirements of the ADA. The ADA, however, does cover Congress and other entities in the legislative branch of the Federal government.

Q. Does the ADA cover private apartments and private homes?

A. The ADA does not cover strictly residential private apartments and homes. If, however, a place of public accommodation, such as a doctor's office or day care center, is located in a private residence, those portions of the residence used for that purpose are subject to the ADA's requirements.

Q. Does the ADA cover air transportation?

A. Discrimination by air carriers in areas other than employment is not covered by the ADA but rather by the Air Carrier Access Act (49 U.S.C. 1374 (c)).

Q. What are the ADA's requirements for public transit buses?

A. The Department of Transportation has issued regulations mandating accessible public transit vehicles and facilities. The regulations include requirements that all new fixed-route, public transit buses be accessible and that supplementary paratransit services be provided for those individuals with disabilities who cannot use fixed-route bus service. For information on how to contact the Department of

Transportation, see page 29.

Q. How will the ADA make telecommunications accessible?

A. The ADA requires the establishment of telephone relay services for individuals who use telecommunications devices for deaf persons (TDD's) or similar devices. The Federal Communications Commission has issued regulations specifying standards for the operation of these services.

Q. Are businesses entitled to any tax benefit to help pay for the cost of compliance?

A. As amended in 1990, the Internal Revenue Code allows a deduction of up to \$15,000 per year for expenses associated with the removal of qualified architectural and transportation barriers. The 1990 amendment also permits eligible small businesses to receive a tax credit for certain costs of compliance with the ADA. An eligible small business is one whose gross receipts do not exceed \$1,000,000 or whose workforce does not consist of more than 30 full-time workers. Qualifying businesses may claim a credit of up to 50 percent of eligible access expenditures that exceed \$250 but do not exceed \$10,250. Examples of eligible access expenditures include the necessary and reasonable costs of removing architectural, physical, communications, and transportation barriers; providing readers, interpreters, and other auxiliary aids; and acquiring or modifying equipment or devices.

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- Internet www.ada.gov

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Appendix III

The Americans with Disabilities Act (ADA) of 1990, as amended

The ADA recognizes and protects the civil rights of people with disabilities and is modeled after earlier landmark laws prohibiting discrimination on the basis of race and gender. The ADA covers a wide range of disability, from physical conditions affecting mobility, stamina, sight, hearing, and speech to conditions such as emotional illness and learning disorders. The ADA addresses access to the workplace (title I), State and local government services (title II), and places of public accommodation and commercial facilities (title III). It also requires phone companies to provide telecommunications relay services for people who have hearing or speech impairments (title IV) and miscellaneous instructions to Federal agencies that enforce the law (title V). Regulations issued under the different titles by various Federal agencies set requirements and establish enforcement procedures. To understand and comply with the ADA, it is important to follow the appropriate regulations.

Under titles II and III of the ADA, the Board develops and maintains accessibility guidelines for buildings, facilities, and transit vehicles and provides technical assistance and training on these guidelines. The ADA Accessibility Guidelines (ADAAG) serve as the basis of standards issued by the departments of Justice (DOJ) and Transportation (DOT) to enforce the law. The building guidelines cover places of public accommodation, commercial facilities, and State and local government facilities. The vehicle guidelines address buses, vans, a variety of rail vehicles, trams, and other modes of public transportation. Regulations issued by DOJ and DOT contain standards based on ADAAG and also provide important information on which buildings and facilities are subject to the standards. It is important that the regulations be used along with the design standards they contain or reference.

ADA Amendments Act of 2008

Amendments to the ADA signed into law on September 25, 2008, clarify and reiterate who is covered by the law. The copy of the ADA provided below includes these [amendments](#), which became effective January 1, 2009.²⁸

An Overview of the ADA

²⁸ The full text of the ADA is not provided in this document. To read the ADA of 1990, as amended (effective January 1, 2009) in full, please go to: <http://access-board.gov/about/laws/ADA.htm#Text>

This information summarizes the provisions of the ADA and references the regulations issued by various agencies that are used to enforce them. Links are provided to these agencies. Regulations are referred to their location in the Code of Federal Regulations (CFR) and their publication in the Federal Register (FR).

[Title I - Employment](#)

[Title II - Public Services](#)

[Title III - Public Accommodations](#)

[Title IV - Telecommunications](#)

Title V - Miscellaneous (provides instructions to Federal agencies involved in regulating and enforcing the other titles)

Title I - Employment

Accessibility Requirements:

- Employers with 15 or more employees may not discriminate against qualified individuals with disabilities. 29 CFR 1630.4.
- Employers must reasonably accommodate the disabilities of qualified applicants or employees, including modifying work stations and equipment, unless undue hardship would result. 29 CFR 1630.2 (o) and 1630.9.

Effective Dates:

- July 26, 1992 for employers with 25 or more employees.
- July 26, 1994 for employers with 15 to 24 employees.

Enforcing Agency: [The Equal Employment Opportunity Commission](#) (EEOC)

Regulations: EEOC final rules are in 29 CFR Part 1630 (56 FR 35726, July 26, 1991).

Enforcement:

Individuals may file complaints with EEOC. Individuals may also file a private lawsuit after exhausting administrative remedies. Remedies are the same as available under Title VII of the Civil Rights Act of 1964. Courts may order an employer to hire or promote qualified individuals, reasonably accommodate their disabilities, and pay back wages and attorneys' fees. (The Civil Rights

Act of 1991 provides a new remedy for compensatory and punitive damages in cases of intentional discrimination in employment.)

Title II - Public Services

A. State and Local Government Services

(Note: Recipients of Federal financial assistance have similar obligations under Section 504 of the Rehabilitation Act of 1973. Most buildings constructed or altered with Federal funds are required to comply with the Architectural Barriers Act of 1968.)

Accessibility Requirements:

- State and local governments may not discriminate on the basis of disability. 28 CFR 35.130. Effective Date: January 26, 1992, unless otherwise noted below.
- Each service, program, or activity must be operated so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities, unless it would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. Structural changes to existing buildings may be required where other methods of achieving compliance are not effective. 28 CFR 35.150. Effective Dates: Structural changes to existing buildings to meet "program accessibility" requirement must be made by January 26, 1995. Public entities with 50 or more employees must develop "transition plans" for such changes by July 26, 1992. The disability community must be involved in developing the plan.
- Newly constructed State and local government buildings must be accessible. 28 CFR 35.151(a). Effective Date: Facilities must comply if bids are invited after January 26, 1992. 56 FR 35710 (July 26, 1991).
- Alterations to existing State and local government buildings must be done in an accessible manner. 28 CFR 35.151(b). Effective Dates: Alterations commenced after January 26, 1992.
- Newly constructed and altered streets and pedestrian walkways must contain curb cuts at intersections. 28 CFR 35.151(d).

Enforcing Agency: [Department of Justice](#) (DOJ)

Regulations:

DOJ final rules on State and local government services are in 28 CFR Part 35 (56 FR 35694, July 26, 1991). DOJ final rules permit State and local governments to use ADAAG or UFAS as the accessibility standard for new construction and alterations of buildings. 28 CFR 35.151(c).

Enforcement:

Individuals may file complaints with Federal agencies designated in 28 CFR 35.190. Individuals may also file a private lawsuit. Remedies are the same as available under Section 505 of the Rehabilitation Act of 1973. Courts may order public entities to make facilities accessible, provide auxiliary aids or services, modify policies, and pay attorneys' fees.

B. Transportation

(Note: Recipients of federal financial assistance have similar obligations under Section 504 of the Rehabilitation Act of 1973. Most buildings constructed or altered with Federal funds are required to comply with the Architectural Barriers Act of 1968.)

Accessibility Requirements:

- Newly constructed transit facilities by public entities must be accessible. 49 CFR 37.41. Effective Date: Transit facilities must comply if a "notice to proceed" is issued after January 25, 1992 (October 7, 1991 for Amtrak and commuter rail stations).
- Existing "key stations" in rapid rail, commuter rail, and light rail systems must be accessible. 49 CFR 37.47 and 37.51. Effective Dates: By July 26, 1993. Extensions may be granted up to July 26, 2010 (commuter rail) and July 26, 2020 (rapid and light rail) for stations needing extraordinarily expensive structural changes.
- All existing Amtrak stations must be accessible. 49 CFR 37.55. Effective Date: By July 26, 2010
- Alterations to existing transit facilities by public entities must be done in an accessible manner. When alterations affect usability of or access to "primary function" areas of a transit facility, an accessible path of travel must be provided to the altered areas and the restrooms, drinking fountains, and telephones serving the altered areas must also be accessible, to the extent that the cost of making these features accessible does not exceed 20%

of the planned alterations. 49 CFR 37.43. Effective Dates: Alterations for which "notice to proceed" or "work order" issued after January 25, 1992 (October 7, 1991 for Amtrak and commuter rail stations).

- New buses and rail vehicles acquired by public entities for fixed route systems must be accessible. 49 CFR 37.71, 37.79 and 37.85. Effective Dates: Vehicles must comply if closing date for submission of bids is after August 25, 1990. ADA Vehicle Guidelines are the applicable standard as of October 7, 1991. Interim standards apply before that date (56 FR 40762, October 4, 1990.)
- New vehicles acquired by public entities for demand responsive systems must be accessible unless the system provides individuals with disabilities a level of service equivalent to that provided to the general public. 49 CFR 37.77. Effective Dates: Vehicles must comply if the closing date for submission of bids is after August 25, 1990. The ADA Vehicle Guidelines are the applicable standard as of October 7, 1991. Interim standards apply before that date (56 FR 40762, October 4, 1990).
- Public entities have certain obligations when acquiring or remanufacturing used vehicles. 49 CFR 37.73, 37.75, 37.81, 37.83, 37.87, and 37.89. Effective Date: Acquired or remanufactured after August 25, 1990.
- One car per train must be accessible. 49 CFR 37.93. Effective Date: By July 26, 1995
- Amtrak trains must have the same number of wheelchair spaces and transfer seats for wheelchair users as would be available if every single level coach car in the train were accessible to wheelchair users. No more than two of each type of space or seat may be provided on each car. 49 CFR 37.91. Effective Dates: By July 26, 2000. Half of these spaces and seats must be available by July 26, 1995.
- Public entities operating fixed route bus, and rapid rail and light rail systems must provide comparable complementary paratransit service to individuals with disabilities who meet certain eligibility criteria to the extent that an undue financial burden is not imposed. 49 CFR 37.121 to 37.155. Effective Dates: Initial plans for providing service must be submitted to DOT by January 26, 1992 and updated annually thereafter. The disability community must be involved in developing the plans. Public entities must begin implementing plans on January 26, 1992 and achieve full compliance by January 26, 1997.

Enforcing Agency: [Department of Transportation](#) (DOT)

Regulations:

DOT final rules on transportation are in 49 CFR Parts 37 and 38 (56 FR 45584, September 6, 1991). DOT final rules require public entities to use ADAAG as the accessibility standard for new construction and alterations of transit facilities and for transit vehicles. 49 CFR 37.7 and 37.9.

Enforcement:

Individuals may file complaints with DOT concerning transportation. Individuals may also file a private lawsuit. Remedies are the same as available under Section 505 of the Rehabilitation Act of 1973. Courts may order public entities to make facilities accessible, provide auxiliary aids or services, modify policies, and pay attorneys' fees.

Title III - Public Accommodations

Accessibility Requirements:

- Restaurants, hotels, theaters, shopping centers and malls, retail stores, museums, libraries, parks, private schools, day care centers, and other similar places of public accommodation may not discriminate on the basis of disability. 28 CFR 36.201. Effective Date: January 26, 1992, unless otherwise noted below.
- Physical barriers in existing places of public accommodation must be removed if readily achievable (i.e., easily accomplishable and able to be carried out without much difficulty or expense). If not, alternative methods of providing services must be offered, if those methods are readily achievable. 28 CFR 36.304 and 36.305. Effective Dates: The obligation to engage in readily achievable barrier removal is a continuing one. 56 FR 35569 (July 26, 1991).
- New construction of places of public accommodation and commercial facilities (non-residential facilities affecting commerce) must be accessible. 28 CFR 35.401. Effective Dates: Facilities designed and constructed for first occupancy after January 26, 1993. A facility is designed and constructed for first occupancy after January 26, 1993, only if: (1) the last application for a building permit or permit extension is certified to be complete by a State, county, or local government after January 26, 1992; and (2) the first certificate of occupancy is issued after January 26, 1993.

- Alterations to existing places of public accommodation and commercial facilities must be done in an accessible manner. When alterations affect usability of or access to "primary function" areas of a facility, an accessible path of travel must be provided to the altered areas and the rest rooms, telephones, and drinking fountains serving the altered areas must also be accessible, to the extent that the cost of making these features accessible does not exceed 20% of the cost of the planned alterations. 28 CFR 36.402 and 36.403. The additional accessibility requirements for alterations to "primary function" areas do not apply to measures taken solely to comply with readily achievable barrier removal. 28 CFR 36.304(d). January 26, 1992 - unless otherwise noted below. Effective Date: Alterations commenced after January 26, 1992
- Elevators are not required in newly constructed or altered buildings under three stories or with less than 3,000 square feet per floor, unless the building is a shopping center; shopping mall; professional office of a health care provider; terminal, depot, or other station used for specific public transportation; or an airport passenger terminal. 28 CFR 36.401(d) and 36.404.
- Examinations and courses related to licensing or certification for professional and trade purposes must be held in accessible buildings or alternative accessible arrangements must be made. 28 CFR 36.309(b)(1)(iii) and (c)(4).
- New buses and other vehicles (except aircraft and automobiles) acquired by private entities to provide specified public transportation must be accessible or the system in which vehicles are used must provide individuals with disabilities a level of service equivalent to that provided to the general public depending on whether the entity is primarily engaged in the business of transporting people; whether the system is fixed route or demand responsive; and vehicle seating capacity. 49 CFR 37.101 to 37.107. Effective Dates: Vehicles must comply if the closing date for submission of bids is after August 25, 1990 (February 25, 1992 for rail passenger cars and vans with a capacity of less than 8 persons when operated by a private entity primarily engaged in the business of transporting people). ADAAG is the applicable standard as of October 7, 1991. Interim standards apply before that date (56 FR 40762, October 4, 1990).
- New over-the-road buses (buses with an elevated passenger deck located over a baggage compartment) must be accessible. 49 CFR 37.169, and 49 CFR 38.151 to 38.157. Effective Dates:

Structural changes in over-the-road buses to provide access to wheelchair users are not required until two years (three years for small companies) after DOT issues regulations.

Enforcing Agencies: [Department of Justice](#) (DOJ), [Department of Transportation](#) (DOT)

Regulations:

DOJ final rules on public accommodations and commercial facilities are in 28 CFR Part 36 (56 FR 35544, July 26, 1991). DOT final rules on transportation vehicles acquired by private entities are in 48 CFR Parts 37 and 38 (56 FR 45584, September 6, 1991). DOJ and DOT final rules require private entities covered by title III to use ADAAG as the accessibility standard for new construction and alterations of buildings and for transit vehicles. 28 CFR 36.310 and 36.406; 49 CFR 37.7.

Measures taken to comply with readily achievable barrier removal must comply with ADAAG unless it would not be readily achievable in which case other readily achievable measures that do not fully comply with ADAAG may be taken. However, no measure shall be taken that poses a significant risk to the health or safety of individuals with disabilities or others. 28 CFR 36.304 (d).

Enforcement:

On application by State or local government, the Assistant Attorney General for Civil Rights, in consultation with the Access Board, may certify that State or local building codes meet or exceed ADAAG. 28 CFR 36.601 to 36.608.

Individuals may file complaints with the Attorney General. Individuals may also file a private lawsuit. Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution is encouraged. Remedies are the same as available under Title II of the Civil Rights Act of 1964. Courts may order a private entity to make facilities accessible, provide auxiliary aids or services, modify policies, and pay attorneys' fees.

Courts may award money damages and impose civil penalties in lawsuits filed by the Attorney General but not in private lawsuit by individuals. Small businesses with 25 or fewer employees and gross receipts of \$1 million or less may not be sued for violations occurring before July 26, 1992; and small businesses with 10 or fewer employees and gross receipts of \$500,000 or less may not be sued for violations occurring before January 26, 1993. However,

such small businesses may be sued for violations relating to new construction and alterations to facilities occurring after January 26, 1992.

Title IV - Telecommunications

Accessibility Requirements:

Telephone companies must provide telecommunications relay services for hearing-impaired and speech-impaired individuals 24 hours per day. 47 CFR 64.603 and 64.604.

Effective Date: By July 26, 1993.

Enforcing Agency: [Federal Communications Commission](#) (FCC)

Regulations: FCC final rules are in 47 CFR Part 64 (56 FR 36729, August 1, 1991).

Enforcement: Individuals may file complaints with the FCC.

Text of the Americans with Disabilities Act (ADA) of 1990²⁹

P.L. 101-336 (July 26, 1990), as amended by P.L. 110-325 (September 25, 2008)

§1. SHORT TITLE; TABLE OF CONTENTS.

Short Title. This Act may be cited as the "Americans with Disabilities Act of 1990".

Table of Contents. The table of contents is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Definition of disability.
- Sec. 4. Additional definitions.

TITLE I - EMPLOYMENT

²⁹ Table of Contents, only. The full text of the ADA is not provided in this document. To read the ADA of 1990, as amended (effective January 1, 2009) please go to: <http://access-board.gov/about/laws/ADA.htm#Text>

- Sec. 101. Definitions.
- Sec. 102. Discrimination.
- Sec. 103. Defenses.
- Sec. 104. Illegal use of drugs and alcohol.
- Sec. 105. Posting notices.
- Sec. 106. Regulations.
- Sec. 107. Enforcement.
- Sec. 108. Effective date.

TITLE II - PUBLIC SERVICES

Subtitle A Prohibition Against Discrimination and Other Generally Applicable Provisions

- Sec. 201. Definition.
- Sec. 202. Discrimination.
- Sec. 203. Enforcement.
- Sec. 204. Regulations.
- Sec. 205. Effective date.

Subtitle B Actions Applicable to Public Transportation Provided by Public Entities Considered Discriminatory

Part I Public Transportation Other Than by Aircraft or Certain Rail Operations

- Sec. 221. Definitions.
- Sec. 222. Public entities operating fixed route systems.
- Sec. 223. Paratransit as a complement to fixed route service.
- Sec. 224. Public entity operating a demand responsive system.
- Sec. 225. Temporary relief where lifts are unavailable.
- Sec. 226. New facilities.
- Sec. 227. Alterations of existing facilities.
- Sec. 228. Public transportation programs and activities in existing facilities and one car per train rule.
- Sec. 229. Regulations.
- Sec. 230. Interim accessibility requirements.
- Sec. 231. Effective date.

Part II Public Transportation by Intercity and Commuter Rail

- Sec. 241. Definitions.
- Sec. 242. Intercity and commuter rail actions considered discriminatory.
- Sec. 243. Conformance of accessibility standards.
- Sec. 244. Regulations.
- Sec. 245. Interim accessibility requirements.
- Sec. 246. Effective date.

TITLE III - PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

- Sec. 301. Definitions.
- Sec. 302. Prohibition of discrimination by public accommodations.
- Sec. 303. New construction and alterations in public accommodations and commercial facilities.
- Sec. 304. Prohibition of discrimination in specified public transportation services provided by private entities.
- Sec. 305. Study.
- Sec. 306. Regulations.
- Sec. 307. Exemptions for private clubs and religious organizations.
- Sec. 308. Enforcement.
- Sec. 309. Examinations and courses.
- Sec. 310. Effective date.

TITLE IV - TELECOMMUNICATIONS

- Sec. 401. Telecommunications relay services for hearing-impaired and speech-impaired individuals.
- Sec. 402. Closed-captioning of public service announcements.

TITLE V - MISCELLANEOUS PROVISIONS

- Sec. 501. Construction.
- Sec. 502. State immunity.
- Sec. 503. Prohibition against retaliation and coercion.
- Sec. 504. Regulations by the Architectural and Transportation Barriers Compliance Board.
- Sec. 505. Attorney's fees.

- Sec. 506. Rule of construction regarding regulatory authority.
- Sec. 507. Technical assistance.
- Sec. 508. Federal wilderness areas.
- Sec. 509. Transvestites.
- Sec. 510. Coverage of Congress and the agencies of the legislative branch.
- Sec. 511. Illegal use of drugs.
- Sec. 512. Definitions.
- Sec. 513. Amendments to the Rehabilitation Act.
- Sec. 514. Alternative means of dispute resolution.
- Sec. 515. Severability.

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