

Overview of the ADA

Video transcript

- [Rebecca] Hello. Good morning. We're happy to have you here today. Just give me a moment here. Just let everybody get in. I think we're good, and we'll get started.

My name is Rebecca Martin, and I'm with the grant facilitation team here at Rutgers University, Edward J. Bloustein School of Planning and Public Policy. Throughout my time with IHC, grantees have often wanted to have a better understanding of the ADA and how to increase accessibility for their programs, municipalities, organizations, and communities.

We are very fortunate to have engaged Joe Zesski and Jen Perry from the Northeast ADA Center for a series of three training sessions on these topics, starting with today's presentation, which is an ADA overview. Before we begin, I have a few housekeeping notes. I'd like to make everyone aware that we're recording today's training. We have enabled captions for today's event, and the ASL interpreters will be spotlighted for all users.

If you should want to save the transcript at the end, you can use it in the transcript pane on the right and hit the Save button. That way, you'll have access to the transcript. Also, there will be a time for questions and answers toward the end of the conversation today, so please feel free to add any questions that come up in the chat or hold them until the end, and you can also unmute and ask directly at the end if you'd like, or I can ask for you.

And a PDF of today's slides will be sent out following the training today, along with some links for registrations for the following two trainings that the Northeast ADA Center will be providing for us. And then finally, I'd like to take a moment to express our deep appreciation and gratitude to Perry Neron and

her team from the New Jersey division of disability services for making this training series and the IHC grant program possible.

And now, without further ado, I will turn it over to Joe and Jen.

- [Joe] Thank you very much, Rebecca. We appreciate it. The voice you're hearing is Joe Zesski. I am the program manager at the Northeast ADA, and joining me today is my colleague, Jennifer Perry.

- [Jennifer] Hi, everybody.

- And for the next, oh, 75 minutes or so, we'll be doing an overview of the ADA, its different parts, and some of the different things that relate to it. As we get started, though, there's a few things that we do want to address and cover.

So, let's go to slide two, please. First, as I'll be explaining in just a moment, we're part of Cornell University, and so, something that's always important to keep in mind is that our organization, we're not part of the government. We also don't provide legal advice.

What we provide is technical assistance and information, so keep in mind that the information we hear today should not be considered legal advice. Let's go to our next slide. So, what is the Northeast ADA? Some of you may be familiar with the organization, some of you likely are not. The Northeast ADA Center is headquartered within Cornell University's Yang-Tan Institute for Industrial Labor Relations.

We are a center that provides training, technical assistance, and research on the Americans with Disabilities Act and other related disability laws. We can be reached by the phone number that is on the slide. I will voice it in case some people have difficulty viewing the slides. The phone number is 1-800-949-4232.

You can visit our website at northeastada.org, where you can email us and find out some information about the Americans with Disabilities Act. So, we are

one of 10 centers around the country. Ours serves New York, New Jersey, Puerto Rico, and the U.S.

Virgin Islands. There actually are 10 ADA centers in total, all with the same general mission, that each serve a specific territory. So, we're considered region two, which is why we are the center that serves New Jersey. All that being said, let's start talking about today's presentation a little bit more and go to our next slide.

And I'm not going to stop right now to take people's responses to this, but on this slide, there is a prompt. And, again, typically, I won't read the slides out, but in case anyone has difficulty reading the slides, I would like to read it here. The prompt on the slide says, "As I think about the ADA, one concern, question, or challenge I have is..."

Now, like I said, I'm not going to stop right now to take suggestions but think about this as we go along. Some of you may have things that easily come to mind. Others of you may not. So, that being said, if you think of some things along the way, either feel free to jot them down or perhaps, if you want to put them in the chat, we will come back to this at the end of our time together today.

Let's go to our next slide, please. And on this slide, there is a picture. It is a picture of the signing of the Americans with Disabilities Act. And in this photo, there's a disability advocate whose name is Justin Dart. There's George H.

Walker Bush, president, and there are other individuals as well. The ADA was signed on July 26, in 1990. So hard to believe we are coming up next year on the 35th anniversary of the law. And let's start to talk a little bit more about it and go to our next slide.

So, what exactly is the ADA? The first thing to keep in mind is that it is a civil rights law. It's a law intended to protect the civil rights of people with disabilities. It's intended to provide equal opportunity for individuals with disabilities.

It's intended to help promote the inclusion of people with disabilities into the community. And it was really a landmark piece of legislation because, prior to the ADA, there wasn't a federal law that was so sweeping in nature in terms of protecting the rights of individuals with disabilities.

It provided guarantees in different areas that you'll hear about today, or protections in different areas that you'll hear about today, and it really marked a change in what had come before and the extent of protections it provided. So that gives a very brief introduction to what the ADA is.

Let's now talk about, on our next slide, what the ADA is not. And we always like to address this when we're providing a general overview of the ADA because, as someone who, myself, who has responded to technical assistance questions that we've received at the center, and certainly Jennifer, you know, presenting with me today has, and the rest of our technical assistance team, we can all tell you that there's a lot of misunderstanding in the public about what the ADA, in fact, is.

You know, some people think of it as an agency, so they may call our technical assistance line and say, "I would like to talk to the ADA." Well, you can't do that because it's a law. It's not a federal agency within the government. It's also not, you know, a physical place.

You can't "reach the ADA" or "send a question to the ADA." Again, it's a civil rights law. Also, the ADA simply doesn't cover every single situation and circumstance that a person with a disability is going to encounter, and that's also an area that you'll hear a little bit more about today.

One area in particular that we get many, many questions about that technically, for the most part, is not covered by the ADA, is housing. But as I said, we'll talk about that more later today during the presentation. So, let's go to our next slide, please.

And on this slide, we have some stick figures that are standing and some that are using wheelchairs. And we're using this point just to touch on the fact that

the ADA is made up of five different sections. They're called titles, and they each address something different.

We're going to go through these in depth during the rest of our time together. But in brief summary, there's Title I, which addresses employment, particularly private employers with 15 or more employees. And that section of the ADA protects the rights of individuals with disabilities in employment, in reasonable accommodations, and in other rights to equal opportunity that are involved in employment.

That part of the law is enforced by the Equal Employment Opportunities Commission. Title II deals with state and local government and related entities and accessing those programs and services, and activities. That part of the law is going to be enforced by the Department of Justice. Title III deals with what are termed "public accommodations," and those are, like, businesses and nonprofits that fit into 1 of 12 very broad categories and ensuring people with disabilities have the right to access their goods and services.

That part of the law is enforced by the Department of Justice as well. Title IV, which helped to establish the relay system to provide equal access in telecommunications for people who may use sign language to communicate or who may have a hearing or speech-related disability. And Title V, which is a part of the law that has provisions that either apply across the entire law or that defines some particular legal matters related to the law.

So, again, we'll be going into all these in more detail as we move throughout the day. Let's go to our next slide. And before we dive into the more complicated discussion of what each of these different titles is and what does it mean and who does it cover and what rights are protected, let's first look at, well, who is exactly protected by the ADA, and let's dig more deeply into that.

Next slide, please. One of the things that we often talk with individuals about who happen to contact us is that disability means different things to different people when you're talking about different situations.

And with the ADA, we're talking about a civil rights law. It has its own very specific definition of disability, which is going to be very different from the definition of disability that you would find, say, for Social Security disability or for veterans' benefits.

They all may use the term "disability," but they mean different things. In terms of the ADA, we have here on this slide the definition of disability under the law. So, I'd like to briefly go over it because it's important to understand what disability means under this law.

So, a disability is a physical or mental impairment that substantially limits a major life activity, a record of such an impairment, or being considered to have such an impairment. And you'll notice there are three sort of major pieces or parts to this definition. And in discussion of the ADA, you'll hear those referred to as "prongs," sort of like a fork has, you know, three or four prongs depending on the use of the fork.

The definition has three different prongs. And the first part is that someone has an impairment, whether it's physical or mental in nature, that substantially limits a major life activity. In a moment, I'll talk more in depth about what major life activities are. But for the moment, it means that someone has an existing condition that is impacting their ability to function.

Having a record of such an impairment refers to the fact that people may have had a condition that has limited them in the past, but it may not be doing so at the current moment. So, for example, if someone has a form of cancer, but it is treated, it's in remission, that form of cancer, even though it may not be affecting a person currently, could be seen as a record of having such an impairment, even though it may not be affecting them currently.

The third prong of the definition, the "regarded as" prong, is about how someone is perceived, whether or not they have a limiting impairment. So, if someone in an employment situation is treated as if they have a disability and receives negative treatment because of that perception, they are protected as being regarded as having a disability.

So, you may, in fact, not actually have a disability, but the circumstance that you're in, an employer or another organization might view you as having a disability and take some negative action against you because of that perception. You'll note that one of the key terms in that definition is major life activities, and on our next slide, you'll see some different examples of what major life activities are.

And, you know, some of these are ones that may be more obvious to a lot of people. A lot of times, the sensory-related major life activities are ones that people think of, right? Hearing, seeing, walking, speaking. People often, you know, think about, "Oh, these are major life activities," but it goes far beyond that.

It covers things like bodily function or learning, the ability to care for yourself, or the ability to perform manual tasks. There are many different types of major life activities, and there's no single exhaustive list. If you went and read the ADA itself or read all of the regulations from all the different federal agencies that are designed to implement the ADA, you will not find a single exhaustive list of what major life activities are.

And that's because the idea of major life activities is so expansive. You'll find illustrated lists like the one on this slide, but you won't find a single list. And you also won't find a list of all conditions that are considered disabilities. Again, the ADA requires people to think about the definition and to apply it as it's a civil right meant to protect as many people as possible and to be interpreted broadly.

And so, with that, the definition of disability, under the law, tries to build in a lot of flexibility. So, let's go to our next slide. And, you know, that's sort of the legal definition in terms of the ADA. Let's quickly look at, you know, how other ideas around disabilities are formed.

And, obviously, there are a lot of sources where people get their perceptions or understandings of disabilities from as we grow up, and it can be cultural. It could be from different religious backgrounds or perspectives. And often,

these ideas of disabilities are going to be very distinct and very different than the one that is actually under the law itself, not much less it's under other laws with different definitions for what is or is not a disability.

So, again, keep in mind, as I mentioned previously, that the definition for disability under the ADA, it's going to be different than other laws. So, it'll be different than disability unemployment or Social Security, as I mentioned earlier. But these ideas around disabilities are changing.

They're evolving. And we go to our next slide, you'll see some things related to that. I mean, historically, disability has had a very negative connotation to it. Certainly, in past history here in the U.S., disability has had a, you know, very mixed or stigmatized, at least history where people may have been institutionalized if they had disabilities or disabilities...

The word disability is associated with, you know, a weakness or deficit, you know, very negative portrayal. You know, if you think of, for example, in literature, the character of Tiny Tim in The Christmas Carol, a lot of times when people think about disabilities, they still may have some association with that type of character, you know, who is very passive and who was more about pity and wasn't about seeing the person as their own agent, you know, if someone who was stigmatized or needed assistance.

But that view has changed over time, and it's continuing to evolve today, you know. Certainly, now it's seen...disability is seen much more as part of the experience that we may all have to one degree or another, or at least part of the human experience. And, certainly, it's now seen, as we've talked about, as a civil right.

Some people see it as part of their identity, and so the negativity around disability is changing. Let's go to our next slide, please. These are just some examples of what are almost always considered to be disabilities. As I mentioned, some of them are more obvious, if you will, ones that people may more typically think of such as someone who is blind or who is deaf or

someone who may have an intellectual disability, or perhaps something that causes mobility-related disabilities.

But as I mentioned also, there are things like having cancer or diabetes, or perhaps depression. These are also types of disabilities and ones that aren't seen, but no less can be considered disabilities under the ADA.

Let's go to our next slide, please. So, what makes something not a disability? Because, obviously, I mentioned a lot of the definition of disability is about applying it to a particular circumstance, someone's particular situation.

First of all, disability, it isn't minor, and it isn't transitory, meaning that it's something that's not likely to change quickly or it will last for, at least several months, perhaps up to six months, something that will last for a while. It's not, "Oh, I broke my arm, therefore I have a disability."

That is not considered to be a disability. Or if you have laryngitis. Yes, it's an illness. It's certainly affecting your ability to speak. However, it is not considered to be a disability. The ADA itself also does highlight some specific conditions that are not disability, and you can see those on the slide.

Ones that are particularly of interest, I would say illegal drug use. If someone is using illegal drugs, they are not considered to have a disability. If someone has stopped using illegal drugs and is in treatment, that person will be considered to have a disability.

However, if they're actively abusing drugs, that individual is not protected under the ADA. And, also, things like poor judgment or lack of education, while certainly, are recognized as barriers, those are not considered to be disabilities under the law and are explicitly written as such not to be disabilities.

So, when does this all matter, this definition of disability? So, it matters in some specific context only where the ADA itself applies. So, if you're looking at an issue around private housing, that is something that's typically not going to be covered by the ADA.

So, whether you have a disability or not under the definition provided by this law, it doesn't matter. Now that there is a different federal law that will cover that situation, protecting the rights of people with disabilities, but that's a separate law. The ADA is going to cover the areas that we talked about in the five different titles, and so we're going to dive into all of those starting, actually, pretty much now.

So, with that being said, let's go to our next slide, please. Actually, I apologize, Jen. If we go back to the previous slide, I did want to say, specifically, that's on this slide. I did want to note that the ADA does not apply to situations between two individuals.

The ADA protects civil rights in terms of an individual with a disability and an organization. It does not apply between two private individuals, so be aware of that. And, also, religious entities are not typically covered by the ADA except perhaps under Title I, which deals with employment.

So, I did want to mention that before moving forward. Now let's go forward to talk about Title I. And Title I is the part of the law that protects the rights of people with disabilities, as I said, in employment. What's important to keep in mind, as we see on our next slide, is that employers cannot discriminate against an applicant or an employee on the basis of their disability.

So that really will cover all the different aspects of the employment process. So, if someone is recruiting, that means that the person doing the recruiting, whether it's a headhunter or your organization itself, can't list things that is required for the job that actually aren't essential but may tend to screen out people with disabilities.

So, for example, if you require that someone have a driver's license for a clerical position, that is likely not actually going to be related to a job responsibility, having a driver's license, and that may tend to screen out people with disabilities who may or may not be able to have a driver's license.

Now, that being said, you could require having a form of state identification, but a driver's license, as being part of a job requirement, would not be

appropriate. Other things to keep in mind that...through the process are that medical inquiries generally cannot be asked until someone is offered the job.

So, you, as an employer, can't fish for information about someone's disability. You can ask, "Are you able to perform the essential functions of this job with or without a reasonable accommodation?" But you cannot ask, "Do you require a reasonable accommodation?"

You cannot ask, "Do you have a history of mental illness? Do you have a history of Workers' Compensation?" These are things to keep in mind that before you hire someone, are going to be questions that are generally off-limits.

So, disability inquiries should be avoided, especially during the hiring process, as things that are not appropriate. And once someone is offered a job, then things change a bit. But, in terms of being able to ask some questions related to disability and a few other things change as well.

So, we'll come back to that in a moment. Let's go to our next slide, please. So, part of the intent of Title I is to make sure that not only are people not discriminated against, but they also have an equal opportunity to enjoy the benefits of applying for a position. So that means that if there are employee benefits, like being able to access a lunchroom, a break area, or if there are benefits such as, you know, having off-site events, those all need to be accessible to and usable for people with disabilities.

The law does require that employers be able to provide reasonable accommodations. That is an interactive process to make sure that an individual who has a disability can either have changes done in order to be able to do their job or to be able to access those benefits.

I apologize. I realized I was jumping ahead. Let's go to slide 20, please, Jennifer.

- Joe, this is Jen. I'm sorry. I was trying to keep up. I thought you were on slide 21.

- I realized that. I jumped over talking about qualified individual. I just realized that...

- So, you want me to go back?

- Yes. I'm sorry.

- Sure.

- So, when we're talking about the reasonable accommodation process, being protected in terms of these questions, and so forth, someone has to be qualified. In other words, people who have disabilities need to have the skills and requisite experience, and knowledge to be able to do a job. Why is that included in the law? It's so that someone who may not be qualified cannot claim discrimination on the basis of disability.

So, if someone applied to be, as an extreme example, a doctor but didn't receive their MD, they didn't complete medical school, a hospital couldn't say to that person, you know, "We're not hiring you," then the individual claim, "Well, you're discriminating against me because of my disability."

Rather, it's because the person lacked the qualifications for being a doctor. And that's obviously a very extreme example, but it's important to note that someone needs the skills and background for a job in order to apply for it, and can't say that they're being discriminated against if they lack the proper qualifications to do a job. Let's go now to slide 21.

I'm sorry about that, Jennifer.

- Oh, no worries.

- So, with reasonable modifications, it can happen at any time in employment. A person can ask any time, from recruitment to while they're on the job, and reasonable accommodations can take different forms. It can be a change in the environment itself or perhaps in the way the job is done. It could be slightly altering a task, but it allows a person with a disability to either be able to do their job or to enjoy the benefits of their job.

So, what's involved in the process? Now, our next slide, please. First, a person with a disability has to let an employer know that they have a disability. If someone chooses not to disclose, they have a disability, they typically will not have rights to a reasonable accommodation.

Now, if a disability is very obvious, for example, let's say someone uses a wheelchair for mobility, then if they ask for an accommodation, an employer has a slightly different level of obligation and understanding that this person has a disability.

But typically, if someone doesn't disclose, you know, the employer has no obligation to accommodate them. So once a person says, you know, "I have a condition. I have something going on." You know, "I need a change in the way I do things," then the employer has the right to confirm that person has a disability.

That can be often through medical documentation. Whatever is required, however, shouldn't be overly burdensome or too extensive, but the employer does have the right to verify a person's condition. And once that condition is identified or confirmed, then the employer needs to work with the individual about how to identify the appropriate accommodation.

And I say work with the individual because this process is interactive. It is intended to be between both the individual with a disability, the employee, and their employer. So, keep in mind, there should be communication back and forth between the employee and the employer. Ultimately, however, it is the employer's decision that sort of carries the day.

So, the employer does get to decide what will be the reasonable accommodation. However, it has to be effective. Whatever is decided as the accommodation must meet the accommodation need that has been identified. So, it's important to keep that in mind. While the decision is the employer's, there are guidelines to ensure that an accommodation is effective.

Let's go to our next slide. Just briefly, the Title I is enforced by the Equal Employment Opportunity Commission. People can file a complaint. It can be a

lengthy process, or people can contact the New Jersey Division of Civil Rights, in our case here, to file an employment-related complaint.

There can be advantages to going through the state versus the federal government in terms of the volume of complaints that are received. There is no right or wrong way to go. However, there's a complaint process with the EEOC. Someone files a complaint, it is investigated, the person then may either have one of three outcomes.

They may be given a right-to-sue letter, in which case the individual has to find a private attorney to file a lawsuit against their employer. The second scenario is that the EEOC will file a complaint or lawsuit on behalf of the individual. Or third, the EEOC will find that there isn't grounds to file a complaint.

So, it may depend on those. Again, we can talk about those more in depth if people have further questions. That being said, we talked a lot about Title I, and there's a lot to talk about in Title II. And, Jennifer, I'll let you talk about Title II, I think.

I'll step aside.

- Thanks, Joe. Hi, everybody. So, Joe just gave you a really good overview of the employment provisions of the ADA, you know, again, in Title I. So, we're going to kind of shift gears now and give you an overview of Titles II and III of the ADA. And this really is important because it speaks to what Joe highlighted earlier, which is we get so many calls on our technical assistance line from people who are having true issues, you know, and they are almost always related to disability.

And, unfortunately, there's a lack of understanding that the ADA doesn't apply to all of these situations, which is why we thought it was important to kind of drill down on where does the ADA apply, and where does it protect the civil rights of people with disabilities. In Title II, on this slide, there's a photograph looking down, you know, street view.

And at the end of the street is what appears to be a courthouse, a kind of local government building, kind of the hallmark, you know, of American society, and giving people with disabilities the same access to civic participation, of course, is one of the hallmarks of the ADA. And along that vein, Title II, here are some examples on this slide of "what is covered."

I'm using air quotes. What is covered under Title II of ADA. And it basically applies to anything that is operated by a state or local government entity, any program, service, or activity that is done. So, some examples of Title II entities are things like public transportation providers, including public transportation facilities.

So, things like New Jersey transit as well as the paratransit system, certainly subways and other forms of public transportation. There is certainly a tie to local and state tax dollars there. Very clearly, that's a Title II entity, as are things like correctional facilities, court houses, any local government or county building or county agency, public schools, polling sites.

Even if on election day, you may use a private site for voting purposes, on election day, that polling location, even though it might not be in a public school, for instance, if it's on a private site, on that day during the elections when it's being used as a polling site, it has to comply with Title II of the ADA.

Public libraries are another example, and there are many more examples. I just wanted to try to give you a sense of some of those agencies and organizations that have to comply with these obligations that we're going to talk about for Title II entities. So, the general requirement, if we take, you know, a very broad look at, you know, what does the ADA require for all these state and local governments, what are they required to do?

They have to provide what's known as "full program accessibility" to people with disabilities. And there's a photograph on this slide of what, you know, appears to be a field trip of individuals with and without disabilities taking a photograph in front of a city hall, perhaps a courthouse, you know,

highlighting the importance of people with disabilities being involved in local and state government activities and services.

Now, program accessibility is one of the hallmark terms of Title II, and it's important because what you need to remember is that all of the activities carried out by state and local governments have to be as accessible to people with disabilities as they are to those people without disabilities. Now, Congress knew when the ADA was signed into law in 1990 that so many of our state and local government facilities brick-and-mortar buildings were already built, right?

They were already there. And many of them very likely had barriers to accessibility because the ADA wasn't around yet to say, "You have to have a ramp at your entrance," or, "Your toilet rooms have to be accessible." So recognizing that this was going to be an issue, what the ADA states is that what's important is that you look at all of the services and activities that are provided by that state or local government entity, even if they are taking place in a facility that is physically inaccessible, ADA tells you that you have to figure out a way to make sure that people with disabilities have equal access to those services, to those activities.

In essence, you can't say that physical barriers mean that you don't have to provide services. The way you do that is sometimes requires a little bit of creativity, and local governments and state governments have some options in how they achieve this program access. For example, if you have a, you know, borough hall that is inaccessible, you might be able to relocate some of those services to either an accessible part of the same building or to another nearby building, part of local government, that is accessible.

If your tax assessor's office is on the second floor of city hall and there's no elevator to get to the second floor, again, that's assuming it was built pre-ADA, one way you could achieve program accessibility would be for the tax assessor to say, "If a resident wants to meet with me and they have a disability, I'm happy to come and meet with you on the first floor in the accessible conference room."

And they would have privacy. They could sit down and discuss their tax bill, answer any questions they have. That's one example of achieving program access. So, some other options are, you know, delivery of services at alternate sites, modifying your policies and procedures. An example of this might be your public library.

If you, you know, are new to town and you want to go and sign up and get a library card, and the way that's normally done is the librarian says, "Okay. Well, here's the application for a library card." Or, "Go on our website, and the application is there. And you can complete it.

Well, some individuals with disabilities may require assistance, you know, to complete that form. And even though the library's policy might be that you hand someone an application, or you direct them to the website, if you modify that policy by offering assistance to somebody with a disability should they need it, that's another example of providing program access so that somebody with a disability has equal access to obtaining that library card.

Now, to many of you, that's just going to sound like common sense, right, or good customer service. And what you'll find in many cases is that good customer service really, really is directly tied to providing program access. It's important that state and local governments also give priority to providing these services in the most integrated setting appropriate.

That's one of the hallmarks of the ADA. So, in terms of public schools that are required to comply with the ADA, you know, everyone wants to make sure, particularly in the educational systems, that as much as possible, children with disabilities, are not segregated, that they are provided an education along with other able-bodied students as much as possible.

Now, in some cases, it may be a requirement to provide a service in an alternate way in order to provide equal access. An example of that might be you have...a town as a recreation department, and they have a basketball league.

But there are some individuals who use wheelchairs that also want to play basketball and participate in this league. That is a scenario where it may actually be appropriate to have a separate program for wheelchair users that play basketball to compete against one another as opposed to, you know, participating with other individuals, which could potentially lead to some safety hazards as well.

But that's a really good example of, you know, an instance where you might not be able to provide the most integrating setting appropriate, but in doing so, you're providing equal access to the sport of wheelchair basketball in competition by creating a separate program. So, another thing that state and local governments are required to do is reasonably modify their policies and procedures when necessary to avoid discrimination.

The library card example that I provided is one example, again, of a reasonable modification of a policy or procedure. And one of the things to be aware of is that almost any time, whether it's a private business or a local government entity, anytime you have a policy that you are absolutely unwilling to deviate from can potentially be a problem under the ADA.

No matter which title we're talking about, having those very firm and fast policies of, "Well, this is how it's done. This is how we've always done it. This is what we do, and we're not going to change that process because you have a disability." That's almost always not the way to go. And it's also going to deny people with disabilities access to your services or your activities. So, we wanted to throw this out there, and feel free to enter something in the chat box if you want to.

But in thinking through modifying your policies or procedures, you know, what are some ways that state and local government agencies have made their services accessible? And, Rebecca, if you don't mind helping me out here, you can let me know because I can't see the chat box, if anyone has put anything in the box. There's a photograph on this slide, two photographs, excuse me.

One on the left showing, again, a downtown area with some municipal buildings and some on-street parking in front of it. And on the right, there's a photograph of a library showing a ramp that is going up to, like, a mezzanine area.

- I didn't... Oh, I see one now. We have ramps and special entrances as a response. Does anybody else...responses?

- Well, while we wait, Rebecca, please let me know if anything else comes in, but I'll share that, you know, that's certainly ramps, you know, changes to the physical environment certainly are one major way. So, if you have only on-street parking, you know, where your municipal buildings or departments are located, certainly carving out some on-street spaces as accessible parking, that would be one example of increasing access to your services, and there are other things like ramps.

It also may be, you know, just being willing to sit down and meet with people that are trying to access your services and provide that one-on-one assistance with whatever they're seeking. You know, some court houses, when you go into them, they still have the glass panes. Unfortunately, the society we live in today, to protect people, and you may only be able to communicate with a teller or a clerk via a telephone handset, which is not going to be accessible, right, for many people who have hearing disabilities, individuals who are deaf.

So being willing to modify that policy of making someone, if they need to come and file paperwork with the courthouse as a modification of having to use that telephone handset, saying, "Okay. We can have somebody come down and meet with you face-to-face so you can exchange that paperwork." That's another example of a reasonable modification that would allow that person to access and go ahead and file that paperwork with the court.

- And we've had a few more come in.

- Oh, great.

- We have wheelchair-loading chairs, elevators, signs in braille. Holding town meetings in easily-accessible areas, clearly indicating that staff is available to assist, whether with completing forms or to get items, meet in a different area, such as an office that's not accessible, large print documents, and virtual meetings.

- Great. Those are all wonderful, wonderful examples. Thank you, Rebecca. And we're going to ask you a few more questions here, see what your thoughts are on what are some accommodations that you could provide for a participant, someone trying to access your goods or services that have different types of disabilities?

So just think through it for a second. Again, feel free to throw anything in the chat that you'd like to. But if somebody has limited reading comprehension, what are some possible ways that you could accommodate them? As well as somebody who perhaps has difficulty processing verbal communication, or somebody who uses a mobility device, cane, or a wheelchair.

Does anyone have any thoughts on those?

- We have a few coming in. We have reader services, going over paperwork with them one-on-one, using visual aids, audio readers, going over documents in multiple ways, ASL interpreters, and limited reading, use a reader, either a person or a computer.

- Those are all excellent. Excellent. And I love that. You know, also taking frequent breaks might be another, you know, helpful tool in those situations. Also, being aware if you're meeting with someone or providing services for somebody, particularly somebody with a mobility disability, being aware of, again, where you're meeting with them. Also, be aware, you know, if they are using public transportation, some of the restrictions or limitations that they may be bound by, particularly if they're relying on a service like paratransit, that their meeting times might not be as flexible.

So being willing to modify that and use accessible locations, allowing people who have difficulty processing verbal communication, frequent breaks,

perhaps, and I love the visual cues as well. And using plain language, those are all excellent, excellent ideas. And, again, a lot of them really are reflective of good customer service for everybody as well.

- So, we did get one last one, allowing individuals to utilize their own personal care assistant who knows their individual needs.

- Yes. Yes. That's also a very good one. So, I wish we could spend some more time on Title II, but we don't have that time today. So, I'm going to continue on, and we're going to talk about Title III. And Title III of the ADA applies to what are known as "places of public accommodation."

And what the ADA says is that a place of public accommodation cannot deny people with disabilities access to their goods or services. And that term, "place of public accommodation," is really used to describe businesses that provide goods or services to the public.

So, some of the most common examples of Title III or public accommodations are things like retail stores, restaurants, bars, service establishments, theaters, hotels, rec facilities, those that aren't affiliated with the state or local government, private museums, doctors' offices, shopping malls, and other types of businesses.

And there are more examples, but this just gives you a sense. So those kind of private entities that somehow affect commerce and they're open to the public have to comply with the ADA and make sure that they don't deny people with disabilities access to their goods and services. And similar to Title II, these private businesses have an obligation to modify their policies and procedures to provide, of course, physical accessibility as well as to remove barriers in pre-ADA sites and facilities.

And that's actually going to be the focus of the next webinar that we're doing on April 10th. We're solely going to focus on, really, the built environment and removing those types of barriers to accessibility at the April 10th webinar. But I do know that a lot of the IHC grantees very likely might be working in leased

facilities, or they may occasionally lease sites for certain types of programming or certain types of events.

So, one of the most common questions that comes up is, you know, under the ADA, who's responsible for providing access and for complying with the ADA? And what the ADA regulations state is that it's both the obligation of the landlord as well as the tenant when this situation arises.

So, anytime you are doing programming or certainly purchasing a site or leasing a space, you really want to make sure that accessibility is at the forefront of your mind, because both landlords and tenants are held equally responsible in the eyes of the Department of Justice. Having said that, many times, I'm not an attorney, but I do know that during a lease negotiation process, it's often parsed out between the landlord and the tenant, who will be responsible between those two parties.

But to reiterate, in the eyes of the Department of Justice, both parties are held responsible for complying with ADA. Again, I don't want to make it... My background is in physical accessibility, so I can talk all day, and I normally do, about physical accessibility, but it cannot be stressed enough how important the ability to reasonably modify your policies, your practices, and procedures, how critical that is to providing access to people with disabilities.

So, Title III entities are required to modify those policies, doing things a little bit differently than they normally would, unless it would arise to what's known as a "fundamental alteration," which is changing something in such a way that it alters the nature of the goods or services that you are providing to the public.

So, one of the most classic examples of a reasonable modification of a policy is actually related to a very hot topic under the ADA right now, which is service animals. So many businesses, offices, places of recreation have a no-pets policy. That's the policy.

But even though service animals are not pets, they are required to modify this policy related to animals to permit individuals with disabilities that have

service animals with them. So, it's a classic, you know, example of a reasonable modification of a policy would be admitting individuals with service animals. And, you know, the ADA standards now, only dogs, and in some cases, miniature horses, are protected under the ADA regulations.

And if someone does come into your place of business with a service dog, you can ask them these two questions, which are, "Is this animal required because of a disability?" and, "What work or task has the animal been trained to perform?" If an individual answers both of these questions, and as long as the service animal is under the control of their handler, it's not misbehaving or barking or growling, or making a mess, then that individual must be permitted access with their service dog.

If there is an instance where that service dog is misbehaving, at that point, the business owner can ask the individual with a disability to remove the service animal from the premises, but they would have to permit the individual with a disability to come back, you know, without their service animal.

So, this is a whole other topic that we get so many questions about. I would encourage you, if you have questions about service animals, to call our technical assistance line. We'd be happy to talk to you about service animal regulations. We even have a whole special part of our website dedicated to service animals with scenarios that could be very helpful.

Now, in terms of enforcement, Joe mentioned how the Equal Employment Opportunity Commission enforces Title I of the ADA. Titles II and Title III are both primarily enforced by the United States Department of Justice. The exception to that would be for public transportation. Those regulations are enforced by the U.S.

Department of Transportation. But under Title III, it's the Department of Justice, and same thing for Title II, again, except for DOT. The path to enforcement begins with either filing a complaint directly with the Department of Justice or with DOT, and people can do that pretty easily. The

Department of Justice has an online complaint form that you can access at ada.gov.

We have resources at the end of this where you'll see that. And you could go there and file the complaint online, same thing with the Department of Transportation. The other option individuals have is to file a private lawsuit, and that would be done in federal court because the ADA is a federal civil rights law.

Or sometimes you may get referred to mediation, either through DOJ or DOT. Rebecca did say that there was a question about, can you sue for damages under the ADA? So, if somebody were to file a lawsuit in federal court, if there's a federal lawsuit filed, the prevailing party gets their attorney's fees covered.

But there is no punitive or compensatory damages under the ADA. Some states have different regulations. I know California is one of those where there may be awards for damages. But under the ADA, the federal law, there is not. In some cases, if the Department of Justice pursues legal action against an organization or against a county or a town, in some cases, the Department of Justice does have the right to ask for compensatory damages.

So that is possible. That's only when the Department of Justice intervenes in a complaint.

- Jennifer?

- Yes.

- In the chat, someone asked, is that true even if there are lost income damages, [inaudible] prevent discrimination.

- I'm assuming it's related to employment.

- Yes.

- So, Title I, again, each of these federal... I was specifically talking about Titles II and III. Under Title I, I do think there's an opportunity to get damages, but I think that is capped based on the size of the employer. That's different than Titles II and III with the Department of Justice. So, the EEOC, I believe, depending on the size of the employer, there may be an opportunity for damages in the employment context.

Were there any other questions, Rebecca?

- Not at the moment. We do have a number of them for the end of the presentation, though. We have about 15 minutes left.

- Okay. So, Joe did mention earlier, private housing. This is something that is obviously a very major issue, particularly for people with disabilities looking for accessible housing. The ADA applies to housing in a very limited context. So, if you're strictly private, residential apartments and homes do not have to comply with ADA, the ADA would apply if you had a public entity.

So that funds from a state or local government entity, if those are involved, like at a public housing authority or at a state university, then the ADA would apply to that housing. But if it's private housing, the Fair Housing Act is the law that really protects the rights of people with disabilities.

So, if you have questions about that, feel free to give us a call. Now, in Titles IV and Titles V of the ADA, I'm going to go through that rather quickly, but what you should really know about Title IV is that it requires access to telecommunications by people with disabilities. So, Title IV requires telecommunications companies to provide access to telephone services and the operation of relay operators, which enables individuals who are deaf to communicate over the telephone with individuals who are speaking, you know, via an intermediary operator.

It also requires things like closed captioning for federal public service announcements, and so, equal access to these different types of services by people who have hearing disabilities. And Title V, it's kind of the catchall of the titles. As Joe mentioned, it has provisions that apply across Titles I through IV.

One of the most important things that Title V says is that it protects people with disabilities from being retaliated against for enforcing their rights under the ADA. So, you know, you've probably caught on by now that the ADA really is a complaint-driven law. Meaning, in order to have your rights enforced, by design, you have to take some kind of action via filing a complaint or filing a lawsuit.

So, the fear of retaliation that many people with disabilities, you know, are honestly afraid of is very real. So, Title V makes it clear. If you take that step of filing a complaint, you cannot be retaliated against. Okay, Joe. I know we don't have a lot of time, but I just moved forward to the effective communication slide for you, slide 46.

- Thank you. Perfect. And this is one key concept that we did just want to touch on. It crosses both Titles II and III, and it's a concept that, as you can see on the slide, essentially, is intended to provide or ensure equal communication access. So, the idea is that people who have communication-related disabilities should have as clear and equal opportunity to communicate as someone without a communication-related disability.

So, communication-related disabilities are ones that may affect hearing, speech, or sight or, in some way, sensory disabilities. As you think about effective communication, again, we're trying to apply equal communication. That applies to individuals with communication-related disabilities, but also to people who have companions who may also have communication-related disabilities.

And, generally, an organization would need to provide that effective communication unless it would cause an undue burden, which means, you know, significant difficulty or expense. Even if it's determined that providing a particular form of effective communication would be an undue burden, some other alternative must be found.

So, where does this concept apply? Besides the broad Titles II and III, where does it specifically apply? Effective communication basically relates to all

forms of communication of an organization, whether it's documents that you may hand to people, if it's electronic, those documents, if it is advertising, any communication with the public is going to be covered by the concept of effective communication.

And when you are providing effective communication, it may mean that you need to provide what's known as an "auxiliary aid or service" to make sure the communication is, in fact, effective. An auxiliary service, it is a tool. It's a device or service that would facilitate that equal level of communication for the individual, that same level.

So, on the slide we have here, there are some examples, and some are ones that you may more commonly think of, a sign language interpreter, perhaps you think of captioning, like in today's webinar, as an example, for someone who has hearing-related disabilities, perhaps communicating by notes or assistive listening devices, but for people who have vision-related disabilities, you might need to provide accessible alternate formats, a qualified reader to assist with paperwork.

You know, certainly, there are plenty of other services. Note also that physical guidance is considered an auxiliary aid or service. So, if someone is blind or visually impaired and needs help navigating a facility, assisting that individual is an auxiliary aid or service under the ADA, assisting that individual to locate where they are trying to go.

Let's talk about how do you figure out what is the right auxiliary aid or service to provide? And, really, that's going to depend on the situation. The ADA is very much a circumstance and situation-specific law. So, when you're looking at effective communication, it's going to depend on how long the conversation is, how many people are involved, what's the importance of the conversation, how complex is it.

Ensuring effective communication, let's say, for a doctor working with someone who may use American Sign Language, discussing a diagnosis for them is going to be quite different than if that same individual came in the

office to drop something off or to pay a bill. If they're coming in to discuss a diagnosis, you know, a sign language interpreter is likely going to be the appropriate auxiliary aid or service.

But if someone was coming in simply to drop off materials or to pay a bill, that same individual probably could communicate by written notes. So, again, it depends on the circumstance. And there are some differences between Titles II and III. Title II places a greater responsibility on the organization to provide the individual with a disability their primary choice of a communication method.

Where Title III, there's a little more flexibility. However, it must be effective and appropriate to the situation. Note also that, you know, a lot of times, these things may cost some money. That cannot be passed on to the individual. That's known as a surcharge under the ADA.

That cost has to be absorbed by the organization, whether a Title II or a Title III organization. In the same spirit of effective communication, but taking it in a very specific direction, let's briefly look at websites next.

Keep in mind that in June, we'll be doing a webinar on this in much, much more detail and depth, but be aware that websites, as a form of communication, do need to be accessible and equally accessible to people with disabilities. Often, people viewing websites might be using assistive technology, so things like having a lack of keyboard access to all elements of a website might be a barrier, or having images without any descriptive text, or perhaps lacking transcripts for video content or having no captions.

These are all examples of different forms of potential barriers on a website. The brief way to think about looking into the accessibility of your website would be to reach out to individuals who have disabilities.

They might be able to provide live feedback. For example, perhaps a local center for independent living might be able to help provide feedback on the accessibility of your website. Right now, there are no official regulations from

the Department of Justice for either Titles II or III. However, currently, there is what's known as a "notice for proposed rulemaking" in process for Title II.

Will that come into effect? We will have to wait and see. It's very difficult to judge how fast or slowly the federal government may or may not move. But even so, in the absence of the official rules, know that there's a general consensus because, regardless of the lack of official regulations, the Department of Justice holds websites to be covered, whether Titles II or III.

They have provided general guidance through settlement agreements for complaints that have been filed. Also, private lawsuits have pointed to a standard known as the web content accessibility guidelines, level AA. There's three different levels of access, from A, which is the lowest, to AAA, the highest. AA is sort of a middle ground, and so that is where access is sort of targeted, in general terms.

But, again, this is an area that we'll explore much more in depth in June. So, please feel free to join us for that webinar, and you'll hear quite a bit about this area. We'll go now to our next slide and talk about concerns that you may have or questions that you've thought of along the way.

We've tried to answer some of them as we've been talking, but I know, Rebecca, we probably have some more that we haven't had a chance to get to.

- Yes. Thank you so much for all of that. This has been very, very informative. I do have a couple of questions in the chat. So, one was placed in the chat when you were talking about employment and being unable to ask about disability status in interviews, etc. And they asked whether they can ask things when they're getting new volunteers, like, about what people would like to do, particularly, like, I'd like a position where I can sit in one location, where I can move around a lot, things like that that might be kind of geared towards people with disabilities without asking their status.

- Sure. You can always ask what people...if people prefer to do. Note that if we're talking volunteers, though, not actual employees, technically, the ADA doesn't cover them, just as a reference. But you can always ask people for

their feedback, "What is, you know, effective for you? What is most comfortable for you?"

Jen, I don't know if you wanted to add anything to that.

- No. I mean, reasonable accommodations can certainly take many forms. Yeah. There's so many forms. I think the important thing is that the employer is willing to engage in that. It's called the interactive process. And to try to...

You know, if someone, you know, wants a position that doesn't require a lot of movement, that certainly can be one example of a reasonable accommodation.

- Thank you. And then, another question was, with regard to accessing the court, are there any guidelines for modifying procedures, namely deadlines, to allow access for people with cognitive impairments?

- See, so that's the challenge. And the courts can be... We've had our fair share of calls from individuals with disabilities going through the court system and having challenges, frankly, obtaining the right accommodations that work for them. Unfortunately, under the ADA, there is no list of, here's an accommodation the court has to provide. So, I can't say that extending time is always going to be an accommodation.

It certainly can be an example of an accommodation. But remember, accommodations don't have to fundamentally alter the core services that the court is providing. So, in some cases, I can't say that all of the time extending, you know, the time due for a response in a court matter is an accommodation.

It certainly can be, but I can't say that it could be in every single court case. It's a very fact-specific question, unfortunately. The New Jersey court system does have a very good website that lists a lot of the accommodations, and every court is supposed to have an ADA coordinator, that is the person that works within that court that you should contact if you require an accommodation.

And they can be very, very helpful. So, I would recommend as a first step, if you are looking for an accommodation in the court system, that you would

find out who the ADA coordinator is and reach out to them. Remember, if you're talking about federal court, then that would not be the ADA. The ADA only applies to state and local government courts, not federal. In that case, they're still required to write accommodations, but it falls under another law, Section 504, or potentially the Architectural Barriers Act.

- Thank you. There's also a clarifying question. In the beginning, when you were talking about things that are not covered, wanting clarity about whether illegal drug use not being covered means that you're not covered for other disabilities or if it means that that is not considered a disability.

- That means that if you're someone using illegal drugs, you are not covered. That is not considered a disability if it provides a physical or mental impairment. Once you stop using illegal drugs and are in treatment, then you are protected as someone with a disability.

- Okay. Thank you. And I think... Well, we are over our time, so I think we'll have to stop there. But thank you both so much. I really appreciate it. I think that you've provided such a great basis for us to understand the beginnings of the ADA, and certainly, we could have done this for 20 hours and still have more we could talk about, right, with the ADA.

But it's been really great to have you. So, thank you both. And I also want to thank our interpreters for being here today to make this more accessible. Thank you so much. And, again, I'd like to thank the Division of Disability Services for supporting the Inclusive Healthy Communities grant program and providing the opportunity for us to give these trainings.

Thank you so much, everyone. Have a wonderful day.

- Thank you, everybody.

- Thank you.

- Thanks so much.