

National Association of ADA Coordinators

Conference Notes (Draft)

April 20-23, 2009

Baltimore, Maryland

Disclaimer: The information contained in this document is not, and should not be considered legal advice, nor is it binding upon the State of Alaska or presenters at the conference. These notes are informal and unofficial; they are abbreviated and paraphrased for clarity. Please direct comments or inquiries to Jason Burke, State of Alaska ADA Coordinator at jason.burke@alaska.gov or 465-6929.

Opening Remarks – Paul Hagle, Executive Director of National Conference of ADA Coordinators

This conference is significant because of the degree of change in disability rights and the caliber of presenters.

Everyone should now be aware of the imperative to train people on the new laws, regulations, and guidance. These include the ADA Amendments Act (ADAAA), Genetic Information Nondiscrimination Act (GINA), Family and Medical Leave Act (FMLA), Lily Ledbetter Fair Pay Act, Proposed ADA Regulations, ADAAA Regulations, GINA Regulations, and US Department of Justice and US Access Board standards and guidance.

- Get this message back to your organizations: train or litigate
- It is more costly to litigate than to build/do things right the first time
- People will appreciate that ADA is not just civil rights, but makes sense practically

Lead Presenter - John Woodatch – Acting Deputy Assistant Attorney General

New Administration

- Policies and approaches likely to change
- Attorney General Holder was a career lawyer in DOJ and understands its process and issues
- Tom Perez is the new nominee for the Civil Rights Division – from MD regulatory commission
- AG Holder's visit to US DOJ provided the following message –
 - o We are “open for business” - be appropriately aggressive in pursuing civil rights issues
 - o “Renaissance” of civil rights in this country

- Economic cost should not prohibit compliance
 - Statute has cost limitations built into it (readily accessible, undue burden)
 - New construction made accessible
 - Alternatives should be provided to the maximum extent feasible
 - Reasonable accommodation
 - Don't do nothing, but may put off a year or two

2004 Advance Notice of Proposed Rulemaking (ANPRM)

- US DOJ adopts US Access Board changes (see more notes on this process further along)
 - Largely pertaining to play areas, recreation areas, boating, fishing piers, harbors, hotels, miniature golf, golf, residential and transient housing, state and local government, courts, and other facilities as well as regulations concerning mobility devices, service animals, and other items
 - There were 4400 comments – a push to adopt before administration left – week before end of administration decision was made not to go forward
 - 1500 comments on service animals – type and purpose
 - FHA covers comfort animals for housing so confusing – ACAA also allows for air travel
 - Certified v. qualified (nobody really certifies)
 - USDOJ will make recommendations made to President – then goes to all agencies – so regulations concerning comfort animals could change
 - President Obama is reconsidering pending regulations – Civil Rights Division withdrew from OMB
 - Question as to whether there is enough info to go final (by fall) if proposed, would be issued same time
 - Disability community wanted more time to review since 60 days was given at first
 - Does not cover equipment – Doctors offices and hospitals and provisions to supply modifications warrant consideration, so worth another review to administer
- If new leadership wants, there will be proposals for voting, web access, and emergency preparedness

- Safe Harbors incremental changes for new ADAAG – under new, reach is 48 in. – how soon to switch? – if complied, would consider compliance until alteration – disability comm. Hated this
 - o If small bus spent 1-2% in 1st and 2nd year, would be compliant – both hated this
- Segway – Iraqi war victims use a lot – so mostly let in, advise entities to adopt policies to regulate speed, etc.

Amicus Briefs

- Not a lot done in last 8 years
- Will participate when courts should hear their views
- Disney World Segway issue v. Ault
 - o Regulating done outside Justice
 - o Violation of surcharge (can't force people to pay)
 - o Groups to intervene – will be a breuhaha in June
 - o Will cover Disneyland as well
- Court may decide differently than USDOJ, but it's still USDOJ's position – and that will hold the law in whatever jurisdiction
 - o Could have one rule for Disney and another for everyone else
- Harkins Amusement Enterprises v. AZ – Attorney General sued cause no captioning – court decided altered product, filed appeal to 9th circuit – DOJ said another way of delivering the product, that closed captioning does not alter in any way
 - o Airplanes now use the cup holder type captioner under Access Act
- Will be getting more involved in Olmstead cases: 56 yr old need assistance with daily living, nursing home – asked for waiver, found acc apt, applied for support – 4 hrs a day, state of Florida only allowed in institution
 - o Olmstead decision – now a priority for USDOJ, bc also ensures enough communication based programs and services in an integrated fashion
 - o Usually don't have to provide personal services under regs – ***unless you are in the business of providing them***

ARRA

- Monies for facilities must contribute to accessibility – does not absolve of obligations under 504/ADA. Every agency should be aware. Contractors and architects should know. Be vigilant in enforcement efforts to ensure it supports people in generations to come. If problems, have to go back and fix with state's own money.

UNCHR United Nations Convention on Civil Rights

- 650mm people with disabilities worldwide
- Weren't going to sign prior to Obama – who now said we should
- Moving to ratify to make sure consistent with laws enough so won't affect ours too greatly
 - o 139 nations signed and 50 ratified so far

ADAAA

- Process, definitional change
- Does have impact under TII and TIII
 - o Mitigating measures – diabetes, psychiatric, epilepsy
 - o Look more broadly, sweeping people in
 - o Learning disability and testing – people inclined to ask if students really have a limitation at that level since becoming lawyers, etc. and need to know more for modifications
 - o Certifying agencies: look at balance in rules – EEOC/Justice will be putting out – needs clarification and own regs need to change – will replace existing ones
 - o Coverage broader so review policies pertaining to employment and services
 - LD, diabetes,
 - Nature of disability expanded
 - o Regarded as if have impairment discriminated is actionable unless they ask for modifications and reasonable accommodation
- ADA.gov has clean and strikeouts for ADA, as amended
- Ask for paper copy of just changes

- Compare to average person most difficult issue for EEOC and DOJ – will be important for regs to come out as quickly as possible

Cases

- Last Thursday polling in Philadelphia, PA - most of 1653 not accessible, said they took steps, but they did not – no training – a lot are parking issues that can be adjusted and alternate location on the same day
 - o OR only votes by mail – same kind of access on same day for people who need to use alternate access when pp not accessible
 - o most integrated setting
 - o Nothing done to make churches comply with ADA but govt should not use them if they aren't accessible
- DC and DOJ agreement – mostly about physical access – look at shelters over next several years – having accessible transportation between shelters – not turning away people who couldn't do tasks – not turning away service animals, and families when one uses a SA
 - o When receive funds, should be aware - training and educational outreach, notice of access features important
- Wal~Mart service animal cases – 80 complainants from blind patrons – needs to learn how to get employees to know the rules – have a website course and posters – only certain people make decisions, higher training – PSA

Correctional Facilities and Jails

- Inmates have “time on their hands” to point out shortcomings in ADA. Facilities are becoming more like nursing homes as populations mature. Since personal assistance is part of the program, corrections will be obligated to provide assistance for covered persons.
- Cases where deaf and hard of hearing were disciplined because they didn't know how to respond to an officer's request.
- Cells access required under new regulations, and US DOJ guidance is available.
- There will be more modifications – programs will have to know how people who are blind, use wheelchairs, and receive medications will receive modifications.

- Go to “Enforcing the ADA” – provides descriptions of voluntary, certain agreements around country – settlements not advertised elsewhere for correctional programs.
- Inmate placement in jobs an issue since no accommodations = no job = less chance of parole and early release
- Identifications of deaf – armbands, etc. considered useful in avoiding unnecessary conflicts
- Alternate means to accommodate – double celling, assistance for person who needed seeing eye dog
- Establish policy – people to take care of someone’s animal, not to euthanize – establishing training facility –helps inmates

Sally Conway, ADA Director of Technical Assistance, USDOJ

- Population Aging Quickly
 - o Affects how people hear, see, ambulate, and process mentally
 - o Medical technology helps us stay alive, live longer with disabilities
 - o Now 18% of population – 51 mm
 - o 2007 more than 10mm survived cancer
 - o 35mm over 65, half self-identify as having disability
 - 71mm in this group by 2020
 - o 10000 per day turn 65, 15000 pd by ____ (2015?)
- This will have an impact on services and how we deliver them
- You need to reduce arguments about ADA to civil rights – alongside TVII, TIV, TVI
- Provide people with disabilities inclusion in planning
- Wrong to think “if we do it wrong, we can use program access”
- Provide the same terms and conditions as other employees – private interview for benefits – same confidentiality and dignity (same experience) as best you can
- Kinds of questions about the “viewed in entirety” depend on the “edifice complex” – what’s in the building
 - o How do people access

- Services offered at each locations – one exhibit among many to an accessible location, whereas there is a lot of the same exhibit at a variety of locations
- Less flexible now in terms of making things accessible – onus on entity to make accessible in first case, then look at undue burden
- Can't change unless you get people's attention (Barbara from JAN mentioned during signing of award for handicapped person of year the winner couldn't access the stage, which prompted Congress to consider ADA – same thing happens when others aren't able to access outside meetings, parties, and office events)
- Program access is a last resort – you should aim toward integrated settings
- Figure out how much alternate access is going to cost – look at as a cost of doing business
 - Aids in program, specialized equipment for outdoor activities and meetings
- Budget available to the program may be broader than the program itself
 - Reasonable accommodations?
 - Captioning for public hearings – decide which are more important

Chris Kuczynski – EEOC Assistant Legal Counsel

ADAAA

- 90% used to be on coverage, not cases
- Architecture and attitude have changed, but narrowing of act
- Circuits were talking about narrowing definition prior to Sutton – that was the end of the process –
- Bragdon v. Abbott – Year before Sutton, although qualified took an impairment under REHAB ACT, and said this is a very close analysis – they scrutinized what was once assumed – was indication that they would narrow
- Sutton Rejected 9 or 10 Courts of Appeal that agreed with EEOC regs by taking mitigating measures (mm) into account
 - Reviewed side effects – higher bar EEOC
 - Narrowed Regarded As coverage

- Supreme Court in Toyota set not broad standard, as in most civil rights laws, but a strict, demanding standard that involves manual tasks people do everyday
 - o Congress thought broad – 43mm at signing – severely restricted set bar higher – this is what they reacted to under ADA
- ADA Restoration Act ADORA presented to Congress – businesses didn’t like the phrasing allowing “any impairment” so became ADAAA (Same phrasing in CA and other states)
- House/Senate reconciled in an amazingly rapid fashion
 - o Business and coalition acting
 - o Chambers said “don’t mess with” to Congress, as well as NRA, SHRM, AAPD, Epilepsy Foundation, American Diabetes Association among others
 - Because it was a compromise “settlement agreement”
- Congressional Findings – sought similar feel to the Arline v. Nassau County 504 case in its approach to the “regarded as” function in undoing myths, fears and stereotypes
- Same definition part of compromise
 - o Same as Vocational Rehabilitation Act
 - o Different “rules of construction” (Chris’ term)
 - Broadly construed (like Arline)
 - Episodic (Like MS, Epilepsy, diabetes, and psychiatric disabilities like bipolar disorder) – same as EEOC interpreted this was in 1997
 - Cancer in remission - Alabama v. Garrett disallowed, since she was in remission
 - Ellisonberd (?) case by Supreme Court in 1997 should provide a useful guide
 - o Mitigating measures (MM) in statute
 - Sutton addressed by having employers take into account
 - Supreme court also addressed MM as a major life activity of working and disregarded EEOC regulations and guidance. Said EEOC regulated on items of “general applicability” (first three provisions of law) because Congress didn’t give EEOC or DOJ authority in setting them. EEOC not mentioned in ADA Title I ☺. So when congress amended, they added a provision on general applicability that EEOC has explicit statutory right, as does DOJ and DOT.

- Learned behavioral modifications and adaptations – see Albertsons v. Kirkinburg – driver saw poor in one, good in the other eye and improved depth perception by turning head, etc. to lessen effect of impairment
 - Same is true of Sutton, will see what happens with glasses exclusions under ADA – plaintiffs can challenge employer standards
 - New Major Life Activities
 - Reading, thinking communicating recognized in some circuit courts, EEOC did not state either way
 - Reaching, sitting and interacting with others are arguable, and plaintiffs will have better traction in some circuits
 - Bodily functions - Endocrine functions for insulin system in diabetes
 - More significant than anything else to date, cleansing blood and eliminating waste were beginning to be considered
 - Reproductive – HIV – infertility; separate from coverage in employment
 - If imposes other limitations that exist in workplace, plaintiffs will use reasonable accommodation (RA) defense
- There will be consultation about regulations among DOJ, EEOC, and DOT before proposing them
- FMLA Overlap: guarantees eligibility for leave if person needs additional leave – ADA obligation may kick in for unpaid leave – as with collective bargaining limitations on sick leave, absent undue hardship
- Chemical sensitivity – episodic – triggered by environment – affected by small amounts of lots of things – compounded by employers and contact with public since hard to regulate – and with more exposure is harder to control
 - Moving, air filters, telework – should be taken seriously, do not unnecessarily limit accommodation options
- Telework – Be clear about work to be done – Woodrow v. Peters great case – but don't worry about policy; since this could be a policy modification under ADA treat as RA and avoid differential treatment
 - Different kind of telework, or more might be a modification to a policy

ADAAA changes to Regarded as functions: Chris thinks is a significant change, but perhaps not the most significant

- Trying to minimize legal liability would already be trying to be proactive
- More of a return to the way things were before Sutton
- Major bodily functions new, but the list was always not exhaustive
- If prohibited activity occurs on basis of impairment, not good – Sutton allowed this activity (allowed discrimination on the basis of lesser v. greater impairment and MM) – and also set a higher bar under working that a person would be excluded from a whole lot of jobs class or broad range of jobs
 - o Revisit Murphy v. UPS – Employers had a lot of options (not regarded, lots of jobs person can do) – also applies to the individual and job, not across a range of jobs – Employers should be prepared to defend on the basis of the standard
- Sutton based on uncorrected vision would have to defend that standard, and they could regard them as

ADAAA “on the basis” of disability refers to disability itself, and not whether the person qualifies - which applies to agencies and general policies and practices

So far the courts are saying not complaints are not retroactive

Getting along v. interacting with others – Swaloie v. U....

- Debate still alive as to whether certain conditions permit poor interactions
- Underlying disability and performance still require consideration

May have to reexamine driving as a major life activity – but wouldn’t be surprised if not accepted in courts that didn’t

- Epilepsy covered, so focus changes – she’s now covered

Employee use of service animal often occurs in an ongoing relationship – document disability and need for accommodation to see how helps person

- Psychiatric use of service animal may help person get out of way – but if the person had worked without the animal, it may prove that it wasn't needed
- There may be insufficient evidence to demonstrate a need

Areas of overlap between GINA and ADA

- March 2 NPRM released for 60 day comment
- November start for employers
- Has remedies similar to TVII – 300k limit, no punitive damages against state and local govt
- Complementary statutes – “impairment, regarded as” – GINA mainly applies before a condition manifests – although there are circumstances where qualifies under neither (already manifest, but not substantial) but far fewer since more people qualify under ADA
- Makes it more possible for people to benefit from detected disorders in genetic testing
- Extends relationships to great great relatives and first cousins once removed
- Genetic monitoring may be used

GINA Prohibitions

- Not make decision based on confidential genetic info
- Not classify or segregate – change job based on (e.g. heart disease) history in family.
- Unlike ADA, does not allow for defenses under direct threat, non-qualifying or job related and consistent with business necessity

Exceptions:

- Water cooler – what's overheard in the workplace is not so much an issue for confidentiality as misuse of information for employment decisions
- Voluntary wellness testing – written request and documentation – but info only returned in an aggregate (and sample size is not too small)
- FMLA

- Purchases or documents that are publically available (not legal or court records) obits are an example, social networking sites are under consideration (would likely be okay)
- Genetic monitoring toxins in workplace (with written notice)
- And more – see law

Cannot ask for genetic family medical history

Can refer to supervisor for handling of FMLA

If action taken to violate insurance under GINA title I they can't also sue under GINA title ii

Early on may see people characterize ADA as GINA

May see procedural issues as a result of not knowing

May be a best practice or regulatory requirement for employer to specify what they do not want from the doctor (family/genetic history, etc....). If can't "unsee" it, should limit exposure to it – place separately

- See Pickard v. U New Orleans

A lot of what will happen with ADA has been done save for what has been said

Recent Lilly Ledbetter (fair pay act) applies to ADA in the same way that the 91' Civil Right Act amendment affects ADA

ADAAA current case law as expected is not coverage oriented

- Rohr v. Salt river - Type II diabetes – more retroactive, but looked to ADAAA to inform (did not see as using the ADAAA even though they thought so)
- Brady v. Wal~Mart they said if er knows or has reason to know, it has an obligation to initiate the interactive process (applies to 2nd circuit, not EEOC view) – seems like more of a disparate treatment case
- Make a new request after Jan 1 if need to
- Buholtz – disagrees with – faults for limited vision when she says she has devices she can use – they said __ not what have and how help
- EEOC v. FedEx – need interpreter for meeting

End General Session Day One

Day Two

Title II Fundamentals – This you have to know cold!

Irene Bowen, Dan Holder, Sally Conway

Kudos to San Diego Airport for developing Braille and large print security cards

History of Attitudes toward Disability

- Aunt in the attic
- Bless those poor people
- Cure your flaw
- Society's attitude toward people that are different
- Providing protections like other protected classes
- Rehab Act Sections cover federal activities
- Business issues better understood
- Emancipation under ADA – it's a *civil rights* law, not a code
- Now – ADAAA – throws bad case law out the window

Don't deny access, even in existing buildings – barrier removal not necessarily an alteration

Little understood fact: ADA Standards for Accessible Design are attached to TIII Regs

Among federal agencies only HUD regulations are markedly different; other agencies similar; DOT has some Education stuff from 1977.

Appendix A is the same as the ADA Accessibility Guidelines (ADAAG) developed by the US Access Board for buildings. These have been the standards since 1991. This course shows what's expected to happen in updates.

There still aren't standards for dwelling units when altered

GSA requires auto doors

DOD, HUD, UPS, GSA four other federal agencies that set standards under ABA of Access Board

Otherwise DOT, DOJ set standards – all sit on Access Board

IBC triggers ANSI

For each provision find out which is strictest – IBC, ANSI, HUD, Updated or ADAAG, ABA, etc.

Look in Standards for Accessible Design for asterisks

Everything we do is covered without exception

How customers change

- Graying of America
- Technology
- Medical advances keeping people alive longer
- What people can do as a result of access
- More veterans who use new mobility devices
- Size of people
- More people are mobile – paratransit and devices

How programs change

- Different programs
- Different facilities
- Websites (started a year later)
- Kiosks
- Tough times
- ARRA
- DOJ New Rules
- Renewing the focus of access issues along with the new regs – secure monies to ensure training

If you alter a primary function area you have to meet Path of Travel (POT) requirements – spend additional money 20% - access, telephone, restroom, and drinking fountains

Can currently ignore elevator exception if a ADA Title II entity

Looks like there will be a new rule this year

- Scoping for seating in assembly areas reduced, but line of site etc changes
- Fewer assistive listening devices (ALDs) 2% in new v. 4% in old – new is one kind
 - o May need more for effective communication
 - o New are hearing aid compatible

Good practice for making sure maintenance does not move a detectable item for a cane user is to place X on floor where equip and storage are to be kept

See notifications on updates from www.ada.gov

Florida and federal access requirements

Look at state and federal

See if state went through US DOJ to be certified

(Note: See if housing in Building Code)

UFAS will fade from picture

TII program access depends on demand and need, not minimum

- May need more accessible spaces
- May need a TDD in a public park

Facilities built after Jan 26, 1993 should meet new ADAAG requirements

Alterations to new standards triggered if alteration affects usability

20 percent rule does not mean only 20 percent to access

- Does not matter what the cost is
- Survey path of travel (POT) first
- Should serve area altered
- Over a three year period
- Cannot be incremental to avoid having to pay
- Try to make good faith effort – budget to include upgrades as part of alteration – do what you can

If we have tenant space and alterations occur (e.g. store in building) landlord does not have to meet POT – but if we use it POT obligations apply.

Approach, enter and exit required then when hire make accessible – look at making accessible as a Reasonable accommodation

Key decision points are really important for signage because the hotel/service exhausts good will so that people want to file a complaint even though the facility is generally accessible

Parking space hazards – properly designed accessible parking prevents “roadkill” – no access behind – use bumper blocks for forward access

No tag – does it have a lift, modifications, etc? People may not display permit since they don't want others to know they are vulnerable

TIII “planned communities” look more “public” in orientation – Reston Town center – Seaside neighborhood requirements, etc, should be reviewed for ADA and livability

- ADA requires crosswalks and curb cuts and level landings
- There are no PROW requirements under ADA for USDOJ

- This will be an issue in near future

Shaving is more effective than fill on uneven sidewalks

- ¼ to ½ in

Wood Chips are not firm, stable, and slip resistant

Same requirements apply to signs

Tripods are unusually bad

27 in stanchions

Artwork – stairs don't usually afford cane detection

Handrail extensions lower than 27 in.

Note – see FL Design Standards

Security is required to assist people in getting up ramps

Ramps should be 1:16 and never steeper than 1:14

Access Board is coming up with measurement practices guidance

1 ½ standard to keep arms from breaking if a person slips

Remember a maximum rise is 30 inches before a flat and level landing area

Effective Communication – Sally Conway, Irene Bowen, Dan Holder

- TII has to give primary consideration – if a family member, that's primary consideration
 - o Don't have to use if there is another way to provide effective communication
 - o Fundamental alteration is a really high standard –
 - Ballet audio described for person is blind – it wouldn't allow time for an interpreter
 - Spelling bee
 - o Undue burden standard applies to agencies as a whole – see preamble 35.150 re: Program Access – TII is significantly higher than TIII – participants in services benefit from all but
 - Process to make determination

- Preplan how much cost, who makes decision
- ABE – alternatives, mix of services
- At a minimum a lawsuit costs 50k – a public entity will likely lose, so it will cost more, and include more than ADA
 - Documentation should be made at the top of the agency
- Denials must include a written statement from agency head with all alternative resources (Appendix 3)

Self-evaluations should point at barriers to civil rights – proactive, especially in sensory to offset need as population ages

TTY encouraged with extensive contact – practice to get ready when a request comes in.

Needs voice mail for TTY and options to select branches for calling and 0 opt out or rollover

VRS, VIS conversation:

VRS Federal is free, half video, half voice

VIS interpreter is remote and visible to both

Sign language is primary language and note taking may not be equally effective. Make sure each understand the other. Interpreter impartial, is expressive, effective with technical terms.

- Amplifiers
- Phones hearing aid
- Closed open captioning
- 18 pt Arial works well

Defenses and Consequences, Irene Bowen

- Build it, people will come
- Funds built in to programs
- Will cost money (different from other state laws)

Fixture counts could make technically infeasible – may not be able to remove lavatory

Equivalent facilitation refers to new methods and technologies to achieve the same end (e.g. folding counter, portable alarms).

Access Board coming up with construction tolerances - -see handout on deviations from Irene for examples

Industry needs to have a standard – ramps don't apply – should be the least possible slope but 1:12 – on contract put in tolerances that are acceptable to you – have up front since contractors are tolerant

- Florida says 2.0% is pretty critical on side slope for drainage – will accept a 2.5% in contracts
 - o AK should indicate 1.5% and tolerate 2.0%

Get state code certified so in theory it also complies unless you get waiver or variance – but this may not apply to the ADA

If you call DOJ it's a good faith effort to seek technical assistance but it is not a shield

Our expert – complaints and litigation will tell

Publicize successes and public participation

You don't want more than one point of contact in your agency for USDOJ

USDOJ mediation program generally does not address new construction or alterations; generally accepts existing buildings....

- 2500 complaints to ADR/mediation – about 80% successful – use professional mediators
- They work with TII entities and will fly someone in to work with the state
- US v. U of M Settlement – stadium redesign is a good example of a mediation agreement
- Pay attention, listen for new settlement agreements. They look different than ADA requirements because they are often a compromise

Project Civic Access (PCA) settlement agreements are an extension of a review of the Philadelphia access issues under Janet Reno. They work with the community to assess barriers and provide technical assistance. There have been 171 in 147 localities (libraries). Juneau and Fairbanks were reviewed. Will continue PCA even though it is a very labor intensive process. Project commode America dubbed for measurements. Helpful for lawsuits because makes harder for private groups to come in. Usually brief 3 year time frame for compliance. Looks at representative sample.

Emergency Planning – Plan to support people during emergencies that are not aware of how to cope with their disabilities

Barrier Removal – Jim Terry

ADA implemented in 93 just for title III – title II in 92

Prioritize transition planning where you have a complaint

Budget for barrier removal upon request – at least ten percent of budget to dynamically allocate

New barriers are created everyday

Notify that State ADA Coordinator is designated contact with USDOJ

Indicate requirements and recommendations when identifying barriers on plans, etc.

Schedule barrier removal for schools – e.g. proper doors

Think through make alternative access

See if libraries are accessible – should check every so often to be sure

Belief and budget primary reasons why transition plans weren't completed by 95

- Now having a database helps

Evan Terry text line by line ADA/ABA Excel (250000 items) at www.evanterry.com

- 3000 hours of work into it

DOT adopted standards – supplements: see Access Board Site; also adopted by GSA and USPS

Construction work planning enforced by the agencies themselves; can complain to the Access Board

Follow the standards adopted by the agency – see ABA, new guidelines

ARRA program officer supposed to oversee how monies are disbursed, and agencies enforce civil rights compliance as appropriate

No special programs at inaccessible locations – can't usually make this happen in pools and auditoriums

Barrier removal pertains to TIII readily achievable; TII is program access

Note accessible facilities; but politicians want to know which are inaccessible – notify which are there

Photos in summary – building and barriers

If you get a complaint you can explain what you've done and ways provided alternate access

Place in relative scheme of where something is

Wednesday April 21

Employment and Reasonable Accommodation – Counsel for USDOJ, EEOC, Costco, State ADA Coordinator for Utah, and Lead Trail Attorney for EEOC in the SW Region

ER=employer; EE=employee; RA=reasonable accommodation; CBA=collective bargaining agreement

Notice of Proposed Rulemaking (NPRM) for GINA would disallow family medical history in assessing impairment for leave and employment purposes. Current impairments are not at issue, since they pertain to the condition to be assessed to do the job.

Fitness to do the job is the allowable consideration. So are diagnosis and treatment for people who aren't being assessed for employment.

Collective Bargaining Agreements (CBA) rules, etc. subject to ADA by EEOC's position – 3rd circuit may rule otherwise

No fault leave policies "dropped from the rolls" is termination, and would not disqualify CBA and employer from modifying leave policies under ADA

Flexible start time is a reasonable accommodation – see Convergess case

Naomi Levin – developed regulatory language under the ADA – asked about her reaction to the ADAAA and what it means –

Really angry at Supreme Court; thought it was really disingenuous in rulings on ADA - motivated to view ADA as special treatment and not a civil rights issue

This law ADAAA has overdone it with regarded as

Statute cops out on substantially limits – referred to EEOC again. Congress was unfair to agencies. Now years and years of litigation that will affect accommodation. Can't cover the universe of disability, because resources are limited. Should not establish hierarchy, but need something like this to make sure people get what they need and marginal functions are satisfied.

EEOC will work out – will be lower, but don't know what it is. Bodily functions new. Would have argued for coverage of the disabilities not covered under ADA, such as diabetes, MD, MS – and people testified to the injustice experienced.

See committee notes – Wal~Mart v. Littleton, MR able to work – things can't do aren't enough to qualify – it was not a Sutton oriented case, but was wrong.

I wish I could rule differently but the SC precludes me from ruling otherwise

EEOC argued that eating is a MLA activity

“Most people in the general population” shouldn’t really alter the “average person” standard; this does not mean comparison to the subset based on age

Reinforces the need for an individualized assessment

Whether supports or denies RA, should not be used to exclude people from coverage

Should not generalize accommodation; screen out based on direct threat or undue burden

Process itself – what changes, how ensure good faith

Determining disability now not demand extensive analysis? Will still in some cases.

Shifts to undue hardship, to see if RA will be effective

Focus still on documentation of disability, but will change to not include MM – should focus on what’s really needed to overcome workplace barriers

Courts still looking at disability but in a much shorter way, e.g. “insulin dependent diabetic” would qualify – instead of asking what it does for them, and “what is your sex life”. Should make life easier since you’ll get more people you’ll get nexus between disability and RA

Mary Jo sees no change in litigating yet – advice in training changes – won’t have to ask intrusive questions – still see disparate treatment

Happy re: as stronger cause people are fired or not hired based on a condition. People assume incapacity based on a relative’s similar condition

Auto Zone Ret Pig – argued not disabled not promoted, no guide dog

Down Syndrome cases

Takes game away of “what was in their mind” when clients are “lawyered up”

Naomi thinks the same groups qualify as in original ADA as interpreted since limitations could also be argued, and now the bar is lower

CA, WA generally accept limitation as disability – saves time and money arguing about coverage

Fewer Dr’s notes – as a best practice, provide RA to make productive workers

Costco hasn't run across limitation of resources, and already applies the definition broadly

Better to buy a new chair

Opened up inmate for RA and the current leadership won't do since "never done that way"

Chris TII and TIII – issues of coverage are really those that come up in TI context

TII and TIII not about coverage – access and types of stuff avail. – entity usually very clear

Clarkson case in NY said ADA has major impact on correctional facilities – person is trying to manipulate system for preferential treatment

Naomi - Back and knee problems exempts inmate from kitchen duty, etc. and they will be covered now

MJ no flood gate opening – in general people hesitant to come forward, takes a lot of courage

Certain things don't have stigma – back, etc...

Should be more an issue about the people who really do need coverage who couldn't get it before

Supposedly Worker's Comp issues will benefit most from new ADA

Chris says there was no testimony from states that have lower bar regarding increase in cost for RA and number of claims.

Mike Sullivan: Absent changes to bullet resistant vests, using suspenders to support the gun holster will offset back problems – which cost \$53 as opposed to 15,000 under workers compensation

Naomi - Sub limit will be more at issue

Paul – CA no cap on damages – 150k settlement for police officer not provided Workers Compensation

Drives companies to be more accommodating (Costco)

Brian – Utah started 4 10 hour shifts as an essential function then retracted it

Mary Jo noted they'd have a hard time claiming undue hardship since still have to keep the building heated

Naomi some work can't be done at home

Ultimately UT got real flexible about it

Accommodate in remission? (cancer, reconstructive surgery, recovering arm)

Don't need to accommodate when there is no limitation

Flexible schedule when going to Dr.

When something is variable (depends on weather) good to make accommodation (parking year round) to eliminate barrier rather than create one

Don't micromanage, harass

Also accommodation varies by situation, so should make appropriate according to principle

Telecommuting

Establish policy

Determine if RA is necessary

Supervised/Supervisor responsibility could preclude telecommuting; 7th circuit (very conservative) 14 years ago said rarely is this an appropriate accommodation – need to overcome this predisposition attitude, especially for work that can be done from home

Could be measurable – all about what job is

If there is a problem at office, problem at home

Any policy could be modified as a RA

Humphrey v. Mem Hosp (9th) transcriptionist – OCD not able to get into office; she dresses all morning/day – forgot to call in as proposed – disciplined – ER said no telework because policy says can't offer when under disciplinary action – 9th circuit said this was not a good enough reason not to modify policy

Once decision is made to telework as a RA, then not use to limit seg, classify, on basis of disability – not promoting, type of work, etc. – guard against stereotypes – harder to feel part of the office – part of the office, meetings

Can change essential functions, e.g. supervisory responsibility in the event the person agrees and it's acceptable to people

Emotional support animals

Chris: Will more than likely come down to need – can ask if there is a function

Naomi thinks courts will do what DOJ does about functions

Mary Jo thinks if there is a demonstrated need and will work as a RA,

Chris – meaning without it really can't work

Requests for extended leave

Wrongly perceived as a request for indefinite leave

Peyton v/ Fred Stores – ovarian cancer – don't know how to accommodate when request was made on pain medication – 8th circuit court bought argument that

Another case cited - revised return date – Mar to Apr – then ER second time denied,

She engaged to let know time off, nature, appraised of extensions

ER and EE should engage

Needs to be a good reason for a person to extend and know that it's not indefinite

Multiple Chemical Sensitivity – MCS

Kaufman case ER did more than required, and followed up when someone was wearing a scent

Relocating, filtration, good steps

UDH more compelling when action taken

More difficult when person was using a scent in small amounts

Personal hygiene items hard to prevent

Job brings into contact with the public

Reassignment

Seniority provisions of CBA control whether person gets unless there are special circumstances (ER or special provision in CBA)

Really only CBA change

ADAAA makes interactive process and part of determination of disability easier, but will be more requests and entitlements, but amount of time saved (from no extensive analysis) will have a beneficial effect. Re: as simplifies analysis –don't have impairment based standards, will have to do individualized analysis to see if person can do the job.

Public Rights-of-Way Access (PROWA) - Lois Thibault, Dennis Cannon, Dan Holder

(CD Handout)

Wheelchair technology lifts hot issues

Fewer than 30 employees access specifically for new construction – other agencies with more clout (save for transportation authority) adopt and set standards. 13 agencies sit on the Board. Has federal accessibility authority. File a complaint with them.

Buffalo project will result in new standards that provide wider access for larger people (and their chairs). This may result in new standards for the ADAAG.

Look to TII and TIII regs first, they may reference the design standards est. by access board. Regulations larger and wider – guide what everyone does.

Subtitle A – state & local governments; Subtitle B – transportation to DOT

Tension bet. 504 and title II because interpretation between DOJ and DOT – PROWA design guidance should be followed

Memo authorized DOT to handle Title II for transportation issues – John Woodatch says they can do what they want

FHWA losing some of its key technical support – may change who supports

Technically infeasible alterations – look at ea provision separately and make it work – one element (cross slope, width) and make it work to the degree possible

“Accessible” meeting guidelines; “usable” even though no standard, can consult and research; phrase has been used since 1968.

Standards are generally thought of as minimums since the manufacturer will need to know when compliance is achieved; this way they aren’t always working at it. Universal design is a similar issue – never know when met.

Resurfacing is an alteration to a street and you need to upgrade to include curb ramps.

Detectable warning replaces the cue you were taking away (the curb). It lets people know entering traffic or sidewalk areas. Does not necessarily go anywhere.

Manual Uniform Traffic Control Devices – crosswalk defined by curblines and sidewalk – if not marked – no crossing – if sidewalks on all streets must have curbs. Engineers know that – barriers should be erected where there are potential safety routes. In the case where not safe, add cuts and erect barriers

for everyone. Sign is not sufficient. Blind people can't see it. You can have a chain across for no one to cross. People still will. You can erect barriers to redirect people as well (roundabouts).

Clearwater roundabouts successful. Signals are successful – a hawk signal works real well. Also greater pedestrian traffic reduces accidents since people look for them.

Scope of project should include repairs and accessible elements.

Less of a sense that you need to do something under TII since you are deemed to comply – not follow ADAAG as in TIII. You can use other guidance. DOT should follow 2004 ADAAG for transport facilities.

DOT allows for Segways – can be adapted as mobility devices – DOJ does not.

Slower time to cross, closer parking, and adding a stop sign would be good reasonable accommodations for known traffic situations.

Maintenance – don't park in the sidewalk area, trash day,

DOJ toolkit good for curb ramps, as the curb ramp transition plan for a municipal authority.

Snow removal – see FHWA, DOJ guidance – levy fines

See difference bet ADAAG and PROWAG in presentation

Pedestrian access route is a 4 ft. wide clear – not poles, cans, etc.

Better to have horizontal and vertical separation – keeps stuff from flying at people

Never design with more than 5 percent grade – won't need a flat and level landing

Protruding objects no more than a 4 in projection under PROWAG – more stringent

See ideal curb cuts in Vancouver, WA and Lawrence, KS

See 20 reasons to design sidewalk with a planting strip

Can't get momentum on ramps with no level turning area onto sidewalks

Grading on directional should not be perpendicular with the curbing – set back a bit

Working on since 1992 - Comment 2005 – preamble ready to go, cost benefit still under way – the new ADAAG needs to go through beforehand

NPRM later this year

Should be few changes in cross slope and cross walks on sloping streets in the revised release for comment

Trying to convey correctly with engineers

Curbscuts close to rocket science – need assess area, cross streets arterial routes at different heights, will have to redo if just send construction crew out.

Looking Ahead: How to Prepare for the New ADA Regulations: Irene Bowen, James Terry

View – TII regulation (thin) TIII reg (book) and the new proposed regulation is a bigger book without the adopted standards and the 2004 ADAAG. Can view the comments, analysis and other materials as well.

TI changes under ADAAA and its amendments; TII/TIII changes with regulations, and proposed regs; US Access Board has more changes

DRDF said not enough time, cut back on – Dennis said there are other things that could be conflicts in the final rule.

Final by end of year and published

Not included – web access, voting, emergency preparedness – Justice could issue final rule, then another NPRM on the areas unaddressed..

If the Attorney General moves forward with the new regs, OMB could sit on them because of objections from other agencies, and then the Chief of Staff would take a look.

Effective usually 30 days after published

Dorms and apartments differ from each other

Reasonable number or at least one of accessible parks – confused on how to measure

Read preamble soon to know how to “hit the ground running” when the new rules come out

Read 111 questions alongside regulations to get sense for how to apply

Questions with cost benefit:

Some are straightforward in new construction, or alterations – such as how to set side reach of 48 in.

Intangible cost might be – how much would you pay to see your child “walk” at graduation

Etc. (see handout)

Service Animals

See New York Times service animal article in past couple months – has an excellent treatment

Service animals come under reasonable modifications to policies and practices

Public entity has to make RM

DOJ Accommodate but not comfort animal

New regs also indicate (including psychiatric, cognitive and mental issues) which makes one think they might need to allow comfort animals

There are some functions for epilepsy, PTSD

ACAA – FHA – state and local – employment are different laws, allow for differently

Segways - Also reasonable modification see presentation and

New constructions follow new standards

Section IX pertains to hotels and dorms, and individual apartments are residential dwellings

Safe Harbors - If building complies with current requirements does not apply; if there are no standards (recreation, etc) they aren't applicable

TIII Cheap and easy changes over time to include more

Maintenance – DOJ always sad must always; now says isolated and temp excused, and preamble shows how important

Equipment and furniture – tables, etc. – they said this was covered by barrier removal mods to policy

Seek new guidance on medical equipment from DOJ

Effective communication

Special meeting on the operator

If public TII requirement – organizing with people coming in

Captioning DRAC v. LV Rodeo; Feldman v. FedEx Field – obligations on private entities how make accessible but in many cases will be a joint obligation

Could be a 504 issue – retract if aiding in discrimination

Spell out as much as you can up front

Blackberry not an alternative – people want to see stuff at same time

Don't comply with requirements that aren't there

Ex, ALDs

Put money aside – new plan for new requirements

Does not excuse from web access

Looking ahead part 2 - James Terry

DOT adopted new regs for transit facilities

DOD adopted with memo

GSA and USPS adopted as well

All adopted with some variations

Still have to see how all these fit together

Relationships

ICC/ANSI is the one IBC refers to

25 slides of less restrictive new standards pulled from this presentation until adopted

Multiple height drinking fountains are a favorite option

DOT does not have an equivalent facilitation option, have to get approval from someone

Tolerances

Be careful, there are too many oops incidences with trades people not paying attention

New language defines tolerances better but there is an exception allows for tolerances to meet/on the maximum end – which may not make clear that there is a fixed range (ex. sink height, 34 in minimum 0 = can build too low!) Therefore there truly is no tolerance for range where there is no lower range set.

Construction and manufacturing tolerances do not apply to design, which should be correct

Buy book by David B... – Handbook of Construction Tolerances, weighed in on various industry tolerances

Nothing in tolerances relate to usability

Can specify higher quality controls to get tighter tolerances – (“finishing controls”)

Scoping sections for ADA ABA different but technical sections the same

Needed to address groups targeted (leases, etc.)

NO exception to provide lift/elevator at announcement/press boxes – and coffee stands. (Exemption applies to 500 sq ft or less in aggregate)

Get pocket guide for the proposed standards

Much more involved work requirements, especially small areas – more so under ABA than ADA – see these

Approach, enter, exit – door does not need to close

Entrances 60% - must round up where applicable

Once altered, new requirements will apply to the alteration project

LULAs cannot replace lifts – cant put where elevator required

Vertical application device between a lift in an elevator

Big changes under van accessible spaces

Changes from one in eight to one in six

Accessible loading zones (airports, sports facilities) with more than 100 feet required accessible, people who use walkers and wheelchairs can wait

Presently elevator provided, stairs don't have to meet standards – now stairs will have to meet – movement to more predictable, uniform, and safe

UD solution to 36 in width stair

Sinks and lavatories going to be the same thing – restaurants, break rooms, kitchenettes, hospitals (surgical an issue need hot as possible water) , exceptions to mop sinks and side approach to sink.

Reasonable modification: You can modify shelving underneath to allow wheelchair access.

If no cooktop, just side approach can work

Clustered toilet rooms – Unisex new half accessible

If only one urinal only one needs to be lower, leg bag users can use toilet

ADA exceeds NFPA and most installers didn't know – ADA now refers to NFPA 72

Have wiring in place to at least add visual later

Since lowers alteration changes, may take out of readily achievable barrier removal list

If have exits, tell people where to go –

NO sign required for accessible parking less than 4 – still need access aisle

Determine where ALDs needed

Rooms that require hearing aid compatible ALS

25% makes difficult to monitor (gee, in other building!)

Clear scoping and dispersion of accessible seating – to provide equal or better seats in assembly and stadiums

Operationally there are some costs of seating considerations

Movie theater first row is not acceptable, as are the ends

Can't put all the armrest seats and folding seats

Hospital number beds now clear, as are self-storage and lockers

ABA fed fund work areas accessible work areas, not under ADA

Windows were reserved, now glazed, "openable"

Secured access entry devices wherever necessary in TII and TIII areas

Easily 500 changes in proposed standards, looks at requirements of each standard and melds together

Huge number of changes, no point in doing comparison

TECHINICAL

Knee and toe off front, not off front and back

Reach 9' to 15' side reach

Door and alcove now clearly stated

Don't see why only 36 t 48 for level landing, other than accessible route –

Parallel dot pattern of detectable warning now overtaking diamond

Curb ramps not necessary onsite in proposed regs; DOT debating whether to do the sidewalks

Copywriting – if want to use, don't change anything – but if using for state call Evan Terry – then say adapted from...

Toilet room width – now can lavatory in clear floor space of water closet, with 36 in – new is side approach – need 60 in

In accessible unisex rooms can place lavatory behind door

If want to see minimum toilet clearances, see evan terry site – has BWG

Need to do that now in new construction and alterations, in the event you have to alter later

Until final regs out, don't know how treat current construction, could be called a barrier and present problems – Bush proposed that it wouldn't be called one, but may change

Constructions starting 6 months after adoption date will need to comply – even if design is in effect for two years prior.

Clearer, cleaner, better – old ADA pulled together by access board in lightning speed from various sources.

As long as approved would be acceptable – under UFAS, with one year to comply, and drawings complete – but now it disappeared in proposed standards.

Design build may be done before – solves problem.

Navigating the Bermuda Triangle

Mary Jo, Barbara Judy, Phong Nyuen

No one trains doctors on the ADA, WC, FMLA – you need to

Most WC injuries come to the ER. Even so, very few physicians know about ADA.

Occupational medicine was offered ADA training. They were upset since the other docs weren't given authority for return to work decisions.

Mary Jo trained lawyers, now deposes against lawyers and doctors. Almost invariably doctors do not have an awareness of ADA. First opportunity to train occupational/medical drs. Coming up for her this fall in the southwest. Have cause agreement against PD which includes training for contract doctors. Then invited to regional conference. Plaintiffs can sue PD but not department.

Brian met with medical director of labor commission in Utah – didn't think the drs. Would come to training, unless benefits involved for drs. (vacation, etc). Even if paid for, no interest. Prefers to have a checklist of some sort.

Angela Costco has specifically trained doctors in FMLA, ADA, WC to train other doctors.

All WC words don't have relevance in ADA; WC says what you can't do; ADA says what you can do. See Chevron case that shows doctors make medical and not employment decisions. CA now defines what is meant by reach, bend, etc.

Unless you tell the Dr. something specific they will provide only basic feedback.

What should the report contain?

Is there anything you want the doctor to report back to you?

What if additional information is disclosed that shouldn't be? (Assume preemployment – post offer, prestart, to ensure fitness for duty)

If a person discloses during a general medical physical that they have bipolar conditions that resulted in hospitalization six months ago, and are applying for a customer service position the employer would want to know.

Many people would interpret the job differently – AS WOULD A DOCTOR.

Costco provides more than Job functions presented – form provided but not required – and states in understandable terms what the person can do – like work with the public in a calm, reasonable manner,

Oftentimes drs. will not complete forms – they turn them over to a nurse. They won't want to fill out much more than a few lines. Try to be brief and get to what 's essential.

This kind of info will be used in court, in terms of “did you consider doing ___ in helping the person's job?”

Occupational health physicians are better at understanding what the needs of an employer are. Personal GP may be less understanding, more liberal.

In any case, person with a disability and dr should consult on RA to perform essential functions.

If the same person is a correctional officer, you need to know what things mean – why were they hospitalized, nature and severity, medications – and how this affects the job. Some officers function well with PTSD, bipolar, depression, etc.

Essential job functions include thought processes that help the dr. understand what the ER is looking at. When to shoot, how to take down, etc...

Doctors can't say anything about psychiatric conditions and fitness for duty if they are sent

If firefighter has physical limitation need to review as a safety issue

Can have Health Care Provider perform job evaluations for physical and emotional stresses, especially with jobs that have preemployment screening. This will help in the long run on ADA, FMLA issues, because you can forward with the person's request.

Qualified/unqualified analysis from dr; State should pay for any additional screening.

Likely that fewer employers are performing pre -employment screening unless it's a health and safety occupation. Preemployment allows ER to ask anything and everything, since you already offered the job and are screening for job related disability issues. It all depends on what the ER wants to know. Be careful what you ask for, exposes ER to risk. Since ERs don't want to assume risk, they perform more

Credit checks (increases likelihood for National Origin discrimination)

Background Checks

HIV or HEP B are not reportable back to ER, but there is a potential for direct threat.

Drs can't be sued under the ADA – only the ER – and you have to wonder whether the employer wants to know

How does this affect the job – is there a threat? Foodborne illness, etc...

Summary

Physician needs job description

You need to figure out what you need to know

Why do you need a pre-employment physical?

OSHA Pulmonary function test

CDL

Law Enforcement

Train people in state to know where resources are – courts, police, safety, homeland security, emergency

Fact that this is a civil rights law gets lost in discussion

20 hour course, continuing every 2 years with an 8 hour course

See that PDs don't use medical model – diagnosis locks people in on what's supposed to happen

If it doesn't fit the box on your first once over, it might be a disability

Officers assess people and situations quickly

How do you interrogate, Mirandize, etc. a person with a disability

Deaf person needs understand verbatim, interpreter must know

MIRANDA does not always happen (people don't always respond or can't in the affirmative, or information required does not necessitate rights).

Training police officers: If you don't know, ask – ADA coordinator

If you're aware of disability issues you're responsible – different from sensitivity training

Signing a statement/violation – if can't say can't because of "physical disability"

Does AK's hate crime statute include disability?

Noted movement in 1998 called Stormfront White Pride Worldwide – 1998, based on 1930 Nazi movement – cruel testing on people with disabilities (book: Forgotten People)

Do not compromise officer safety - real issue

Shooting police – usually happens within 7 secs, 55 percent in close range, 59% w/in 10 feet

Can't take elevator for a person with a wheelchair – they ride, police take stairs

Maintains Intranet site specific to disability rights. Training occurs in sensitivity and tactical separately and provides updates on weekly basis.

People with disabilities wheelchair bank robber in SFO

Psych evaluations go to hospital first before jail – in SFO 5150s – about 6200 last year

How to help people know

DOJ officer safety video

Parolee at large stopped shot – allowed to get out of car and didn't get a pat down

Not disability but let guard down

Person using wheelchair arrested – video shows close range contact (safety issue) instead of direct in front cone from the side and behind.

Search person – take bag, give to partner

Search for bag underneath the chair

Women search women

Put hand on chair – telegraphs that you know movement (similar to belt grab for person standing)

Don't lean in front or stand behind the chair, lean to the behind, and back; deflect with free arm

“Can you get out of the chair?”

“can you lean forward, lift feet, transfer, etc?...”

After initial contact, you can sit down.

Video makes deaf people look perhaps different than who they are

Move cuffs around in front, schackle feet to chair

Street fairs should have a disability checklist as part of the sign off for an event

Parking

Accessible Porta-potty

Disability awareness guide

Community room accessibility

Police station – no public restroom if not accessible

Don't park in accessible parking unless need to and move as soon as can

Can ask disability related question – especially about service animals

AA service animals - asthma – 3 different ones in one week – held in church – cited bc person was pissed – national group policy back east

Tasering and heart issues – may be necessary to prevent deadly force, but falling out of favor

Can't assume that someone will know you are

People will likely tell you what people are experiencing – when someone says another person is “crazy” you can decode what they mean.

Sullivan method: If you have someone with CP, they will be deliberate in speech and action, will know how to produce ID. You can't mistake them for being drunk.

Yes no questions and 1-10 is a great way to get people to answer questions

Works for deaf as well

Look at policies and see how they view ADA issues

Note any admin orders, memos

Transportation procedures – wheelchair

Can't take away as a punishment

Escort training program (NY) – Correction officers

Armstrong case shows about removing medical devices

Medical staff needs to be consulted

Communications

Other I/M can sign?

Service animals – call someone to take animal, housed separately, additional segregation, or animal control – preventing them could be a violation of ADA

Depends on situation – can you provide alternate service

Kennel in jail, another im as mobility guide

Can create a debt between individuals – watch dynamic.

Training, academy training, DVDs

Don't subtly reinforce stereotypical behavior – deaf people aren't stupid

EMT training provide modified stuff

How officers should slow down and not make assumptions

Take cane away? Yes! Stuff inside, extends reach 6 ft. and could be a weapon. Sit down and lay it down. They should respond.

Guy in Tampa dropped off w/o wheelchair - should wonder why there is an environment where someone would even think that inappropriate behavior was alright. Civil rights issues are legal. Professionals need to know what they need to do.

E.g., Violent reaction for person with autism who has an aversion to being touched. How should police react when they have to touch them?

See You Tube version of the Tampa episode

Get medical evaluation

People want to trust medical and law professions, and you cannot make the assumption that people are in the profession have the "right" motivations and will follow ADA.

Developmental disabilities may not prevent physical development. A person who functions as an 8 year old may have the urges of a 14-18 year old, and not know what to do with them. There are inappropriate and illegal behaviors that will demand review.

A deaf person can benefit from a video of what happens in the jail, and trial settings. Have arrangement to ensure interpreter, etc. to ensure person isn't incarcerated longer than necessary. ALDs not equally effective.

Youth detention facilities mandate group counseling, etc. If provided without interpreter this is a violation and could result in worse behavior and valid claims of mistreatment.

Violation of law: allowing early release for good behavior, when there are no alternate and equally effective means of communication, etc. This can happen even in traffic schools.

Communication issues far and away the highest degree of USDOJ violations.

How people “get away with” program violations is it’s a civil rights law and complaint driven. When we find out, do whatever we can. Training will help, but people need to “care”.

Need to know whose program it is, and the ADA coordinator assigned to assist individuals. It’s required by law.

Summary

Tap into existing policy

Community policing – might have missed this disability populations

Get away from medical model

Tap into people in the community who have expertise

Do awareness rather than sensitivity

Learn investigative techniques for people with disabilities

what a blind person saw

Portable (non recording) UbiDuo

Get permission from the administration that police have a chance to slow things down

3-4 minutes before shooting

SFO not resulted in a shooting of a person who’s mentally ill since 2001

People who come in for refresher training are shown to retain 95% of their knowledge from the original shooting

3rd and 4th circuit rulings speak to the impropriety of shooting deaths of mentally ill – and how impulsivity contributes to it.

ADA Coordinator Session

Miami Dade Networked with Munis ADA Coordinators

Worked because had support and connections from the top

Started in the Personnel – then affirmative action – community affairs – managers officer – none really worked, when had to report to a different director, always in conflict because they had a much broader perspective – mostly had to go through director, who really didn’t and couldn’t know –

Has to report directly to the top and get word that the top really wants to comply with the ADA

Attitude of people above you is important – unrealistic to assume that you don't spend money or inconvenience people

Our job is to make sure that the entity complies, and get approval from manager

Not an advocate but one of the few sources to departments on the needs of people with disabilities and what they can do to meet those needs

Position papers:

Law requires

Can do to meet need

Brian state Utah used to be ADA/504 but now Risk control manager, works closely with claims section, is self insurer for state. Written into code injunctive relief – exclude coverage for that – when disregard guidance, not insuring, and not defending – the DOT office once had to pay 10mm bc didn't receive guidance

Employs 3 staff – access, RA, and Higher Ed

Covers WC cases with HR staff as well

Covered entities must have risk coordinator, committee meetings required

Compliance meetings Higher ed student, employee, and program issues

If fails to consult and concur on ADA RA request, will not pay for the claim – will have to hire private council

Best way to keep them out of trouble on ADA

Mia also required review of all denials, and wouldn't support

Salt Lake ADA Advisory Council is more enriching

Barbara Higher Ed – University ADA Coordinator, founder of JAN, and took on State ADA Coordinator job

Have to have allies to get job done

Was given a budget for massive transition issues

Programs should manage own access upgrades, not tap state budget

Given an open checkbook to handle any issue that arose since she was good with the budget

Michael - Sacramento all departments but Bardon (PROW) settlement who sits in DOT – coordinates across 23 departments – Program Access Coordinator

Dept reps trained, understands ongoing effort

9 member advisory commission appointed through council and mayor

Advises mayor and council on ADA

Appreciates vision and insight, and shaping of mayor/council

Ongoing liaison at various levels with people in community

Disaster management

Changes to make Sacramento most livable city

Reports to EO Manager who reports to the HR director

SFO 160 departments ea had to appoint ADA coordinator – what was TI became TII as well

Credibility as a cop and good rep bc he did something

Identified issues people called about as complaints

No cost solutions – doors off of cabinets in community rooms, etc., ALDs, sinage,

People started to believe in him, they assume who you're working for – talking with people

EEOC perception of ADA Coordinator role – Mary Jo

If in charge, have a good relation with local EEOC office

Program analysts can provide outreach

Advice on charges:

Cooperation is key – don't obstruct – they'll think something's up

Ask about why things are needed (Requests for Information)

Ask for extensions

Provide alternatives

Be professional

They will increase litigation this year because they are now able to hire more lawyers and investigators

People are tapped out and don't need to look for more info

Anything to resolve quickly helps

Would mediate every case if could

Supervisor ignorant or racists

People may not have understood issues (no show 12 times)

Make sure your lawyer is good – they're just trying to bill you

Could force subpoena by not responding to requests

Places you in a more compromising situation

Cause conciliate rate 5-15% nationwide

If can conciliate, do it!

Confidential – can work out a deal

Consent Decree

ID'ed Wal~Mart 20 years ago, working on

Application process often an indicator – asking for disability information

Required Wal~Mart to have an ADA Coordinator

Too complicated a law for most HR/EEO people to mess with

Understands ADA in a complex, and intuitive way

Too important for people with other responsibilities

Has to be the right person as well

Perfect attendance is not a qualifier

Once understood not other duties as assigned

Person has to be respected and listened to

Executive committee power will carry

Formally as high as possible so people understand

HR is usually not the place

Overlooked

Having a separate budget, and if costs budget, there are incentives and disincentives

Miami had central budget so departmental budgets not charged on major RA items

Really important to have a person who stands up to power, has right moral compass

Having people in HR who defer to management is a “big problem”

Sacramento – recognizes conflict as a means to compliance, and is now seeing a switch in the way people are looking at

Maintain IAP and what’s feasible for return to work, fact based feedback

ADA Coordinator for DoP could handle employment issues, but there should be a referral to a higher level ADA coordinator for the state

DOJ

Failure to communicate results in compliance issues

Increases misperception of bias

Respond to complaints (small c)

When you say you’ll get back to someone be rational, realistic – even if you don’t have all the information

Forestalls multiple phone calls and irritability

Increases credibility

No requirement to exhaust Administrative remedy – can go direct to DOJ

So many complaints are – couldn’t get interpreter, no meeting, no access – and no one knows who ADA Coordinator is

Investigation will ask people to name names

Need to have adequate notification internally and externally

Person needs to know what responsibilities entail

Don't be afraid to ask questions ask DOJ investigator

Need to be forthcoming

When you call there is a record

(aside: JAN also keeps records)

Goal is to stop a discriminatory practice

Be sure atty clears who's talking to who – ADA coordinator may be designated but not the contact person

Internal state procedure is to have State ADA Coordinator as liaison with USDOJ
– the state needs to ensure this procedure internally DOJ will not enforce

Mediation occurs by non-DOJ entity and there is high value in resolving it this way – take it! They come to you, and 80% are successfully resolved – saves relations in small communities

Keep up relations with DOT, DOJ regional contacts in the same manner as EEOC

Will help if first contact is not an investigation....

Use Help Line, ADA website

Answering 1100 calls a week

More desperate people with economic issues

Core letters, policy letters help ADA coordinators, cleared through FOIA Office, set out interpretations of USDOJ policies

Print and pass out on a position

Outside consultant – Irene Bowen

New experience with law and regs – getting out and doing this is different

Need to see what every department does and how they interact with PWDs and what is required

Many people want to know and do what supposed to

Manuals, internet, programs and policies

Space issues, volunteer activities – assistance with applications

Transportation

Meetings and maintenance of features

What makes a program – activity or cluster of activities

Not too heavy on process but need to have sign off

People are eager to do the right thing, perhaps too eager

Referrals to one person

Jim Terry – use of Architectural consultants

Open Session

ADA Coordinator Training

1. Understanding of issues
 - a. That affect people with disabilities, barrier issues, ways to ask
 - b. For employer, types of technical issues to support program and architectural issues
2. Building relationships
 - a. With disability community for backing, support and trust
 - b. With agencies for funding, people who do detail work, know codes
3. Organizing information
 - a. Thousands of pieces of information to manage – electronically and in print
 - b. Knowing who contractors are
 - c. Having project listings in electronic format – done/doing/will do/legal actions
4. Spending money wisely
 - a. Fix when can – triage when possible
 - b. Spend money on training

- c. Avoiding errors - go to evantery site for powerpoint
- 5. Find money for fixes
 - a. Look at what hasn't been given
 - b. Be opportunistic – there are never enough resources
 - c. Train with others
- 6. Don't schedule training as much to keep up with requests for training as a result of noncompliance
 - a. Can't just assign people in office to handle tasks – work with what they can do

Question re: length of time used for reassignment

Denver City and County uses three months in policy, will arrange with agencies to hold potential openings, and uses attorneys to back up

Utah has a policy of 60 days, but takes three months

San Francisco does 60 days – during this period reviews essential functions of new PD with workers, to see what can and can't do – sometimes people come up with alternate communications and accommodations that work for the present job.

Florida found hardest problem with bus drivers since they are usually more highly paid so it is hard to replace with equal wage. They put holds on jobs as well.

University of West Virginia used a four month period – ADA coordinator held meetings with HR, supervisor, and employee- place in an ADA monitoring program – took a fresh skills inventory – provided weekly message with job openings, etc – kept on list for one year as eligible for rehire

A two week period, even if advance provided makes Mary Jo nervous

Burden is on employer to find best job for the person – must think of potential openings

East Carolina University – DSS lead also ADA Coordinator, except complaints which go to HR

Architectural survey notes

Do survey when ready to do project

Use pocket PCs for surveys

There are three or four survey packages that don't collect enough to know what to do with the barrier

Evan Terry package allows for these functions, prioritizes work, and tracks over the Internet

Contact Mike O'Sullivan re: law enforcement training – mikejosull@yahoo.com