

An Introduction to the **Americans with Disabilities Act (ADA)**

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Please note: Some original slides about OAH's 1999 ADA policy and PRISM have been removed. Slides were updated in 2018.



What Laws Govern This Subject?

- The federal Americans with Disabilities Act (ADA), adopted by Congress in 1990---
25 years ago. [42 U.S.C. § 12101 et. seq.](#)
- Federal Rules Implementing Title II of the ADA, which applies to state and local governments: [28 C.F.R. Part 35.](#)
 - Section 504 of the Rehabilitation Act of **1973**
 - Title VI of the Civil Rights Act of **1964**
- The state Washington Law Against Discrimination, adopted by the Washington Legislature originally in 1949—66 years ago.
[Chapter 49.60 RCW.](#)
- **2015 Law-[Chapter 204, Laws of 2015](#)** requires agencies with 100 + employees to annually report to OFM and Governor’s Task Force the number of employees with disabilities

(2018 update: the citation is [RCW 43.41.275](#))

The Capitol Crawl

The [Capitol Crawl](#): people crawling up 83 steps of the U.S. Capitol on March 12, 1990 to protest slow movement of the ADA before adoption by Congress



On left, 8 yr. old Jennifer Keelan, said *"I'll take all night if I have to!"*

The Americans with Disabilities Act

[42 U.S.C. § 12101 et. seq.](#)

- Title I: Employment
- Title II: State and Local Government Activities and Public Transportation
 - *This CLE focuses on this title.*

There are 142 pages of Federal Regulations and comments related to this title, found in [28 C.F.R. Part 35](#).

- Title III: Public Accommodations
- Title IV: Telecommunications Relay Services
- Title V: Miscellaneous Provisions

An estimated 55 million Americans—18% of our population, have disabilities and are covered by the ADA.

Title II of the ADA: State and Local Government Activities

Title II covers all activities of State and local governments regardless of the government entity's size or receipt of Federal funding.

Title II requires that State and local governments give people with disabilities an equal opportunity to benefit from all of their programs, services, and activities (e.g. public education, employment, transportation, recreation, health care, social services, courts, voting, and town meetings).

State and local governments are required to follow specific architectural standards in the new construction and alteration of their buildings. They also must relocate programs or otherwise provide access in inaccessible older buildings, and communicate effectively with people who have hearing, vision, or speech disabilities.

Public entities are not required to take actions that would result in undue financial and administrative burdens. They are required to make reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination, unless they can demonstrate that doing so would fundamentally alter the nature of the service, program, or activity being provided.

-- [**A Guide to Disability Rights Laws, U.S. Department of Justice**](#)

Washington State Law Against Discrimination (WLAD) adopted in 1949 and amended a number of times since then

[RCW 49.60.010](#) This chapter shall be known as the "law against discrimination."

- A state agency [the Human Rights Commission] is herein created with powers with respect to elimination and prevention of discrimination *in employment, in credit and insurance transactions, in places of public resort, accommodation, or amusement, and in real property transactions* because of **race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability**; and the commission established hereunder is hereby given general jurisdiction and power for such purposes.
- The WLAD is not limited to employment discrimination. It guarantees the right to be free of discrimination in non-employment settings. *Galbraith v. TAPCO Credit Union*, 88 Wn. App. 939, 946 P. 2d 1242 (1997).
- *See also: Blair v. Washington State University*, 108 Wn.2d 558, 740 P. 2d 1379 (1987), in which the Supreme Court found sex discrimination under chapter 49.60 RCW, and specifically RCW 49.60.030, in the funding of women's athletic programs compared with men's programs.

ADA Requirements for Public Services

Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42 U.S.C. § 12132.

What are the basic requirements of the ADA as they apply to the OAH in our Hearings?

- We are required to provide equal access to government buildings and services to people with disabilities.
- OAH must provide reasonable accommodations to people with disabilities.

Legal Obligation to Provide Reasonable Accommodations

A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

28 C.F.R. § 35.130(b)(7).

Other reasons to support denial of a specific accommodation request:

- Undue financial or administrative burden
- Direct threat to the safety or wellbeing of the requester or others

Even if one of these applies to a specific accommodation requested, we must provide another reasonable accommodation.

Definition of Reasonable Accommodation in Washington Law

"Reasonable accommodation" means action, reasonably possible in the circumstances, to make the regular services of a place of public accommodation accessible to persons who otherwise could not use or fully enjoy the services because of the person's sensory, mental, or physical disability.

[WAC 162-26-040\(2\)](#).

Determining the Reasonableness of a Request for Accommodation

Whether a possible accommodation is reasonable or not depends on:

- the cost of making the accommodation,
- the size of the place of public accommodation,
- the availability of staff to make the accommodation,
- the importance of the service to the person with a disability,
- and other factors bearing on reasonableness in the particular situation.

[WAC 162-26-080\(2\)](#).

Examples of Some Reasonable Accommodations OAH has Provided

- Large font for a person with a visual impairment
- Braille for a person who is blind
- Frequent breaks in hearings for persons with various disabilities
- Computer Aided Real Time Transcription (CART) for a person who is deaf
- A person to take notes for a person with quadriplegia
- Hearing conducted at the home of a person with a disability

Auxiliary Aids and Services for Communication

Public entities, including state agencies, must:
furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity.

[28 C.F.R. § 35.160\(b\)\(1\)](#).

Auxiliary Aids and Services for Communication

In determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities.

In order to be effective, auxiliary aids and services must be provided in:

- accessible formats,
- in a timely manner, and
- in such a way as to protect the privacy and independence of the individual with a disability.

[28 C.F.R. § 35.160\(b\)\(2\)](#).

Auxiliary Aids and Services for Communication

Examples of “auxiliary aids and services” to provide reasonable accommodations for effective communication from the Northwest ADA Center:

See [28 C.F.R. § 35.104](#)

- qualified interpreters
- note-takers
- screen readers
- computer-aided real-time transcription (CART)
- large font written materials
- written materials in Braille
- telephone handset amplifiers
- assistive listening systems

Auxiliary Aids and Services for Communication

- hearing aid-compatible telephones
- computer terminals
- speech synthesizers
- communication boards
- text telephones (TTYs)
- open or closed captioning
- closed caption decoders

Auxiliary Aids and Services for Communication

- video interpreting services
- videotext displays
- description of visually presented materials
- exchange of written notes
- TTY or video relay service
- email
- text messaging

Auxiliary Aids and Services for Communication

- qualified readers
- assistance filling out forms
- taped texts
- audio recordings
- materials in Braille
- large print materials
- materials in electronic format (compact disc with materials in plain text or word processor format)

Advice from the Northwest ADA Center

Remember, not all ways work for all people with disabilities or even for people with the same type of disability.

You must consult with the individual to determine what is effective for him or her.

[----Northwest ADA Center, Providing information, training and guidance on the Americans with Disabilities Act to Alaska, Idaho, Oregon and Washington.](#)

Representational Accommodation

In 2007, the Washington State Supreme Court adopted [General Rule \(GR\) 33](#) which addresses Requests for Accommodation by Persons with Disabilities. This rule applies in Washington Courts.

[GR 33 \(a\)\(1\)\(C\)](#) includes the following in the definition of Accommodation:

“as to otherwise unrepresented parties to the proceedings, representation by counsel, as appropriate or necessary to making each service, program, or activity, when viewed in its entirety, readily accessible to and usable by a person with a disability.”

Representational Accommodation

The Office of Administrative Hearings was ordered in 2006, to appoint a suitable representative to represent an Appellant, if, on remand, the ALJ found the Appellant did not have sufficient capacity to understand her administrative hearing. **Bussing v. DSHS**, Thurston County Superior Court, Cause # 05-2-00985-3, Findings of Fact, Conclusions of Law and Order of Remand (March 26, 2006).

The Board of Industrial Insurance Appeals was ordered in 2015 to appoint counsel at public expense, after finding that the plaintiff was disabled. **Weems v. Board of Industrial Insurance Appeals**, Thurston County Superior Court, Cause #12-2-00382-1, Finding of Fact and Conclusions of Law (May 22, 2015)

(2018 update: OAH adopted [WAC 10-24-010](#) Aug. 17, 2017)

Ensuring Equal Access for People with Disabilities: A Guide for Washington Administrative Proceedings

Ensuring Equal Access for People with Disabilities: A Guide for Washington Administrative Proceedings was published in 2011 by the Washington State Access to Justice Board, Justice without Barriers Committee.

- The “Guide” was endorsed by the Washington State Bar Association (WSBA) Administrative Law Section, all 3 Law Schools in Washington and by the Washington State Office of Administrative Hearings.
- Funding for the “Guide” was provided by the WSBA Administrative Law Section.
- The “Guide” contains a suggested Model Rule on Representational Accommodation.

(2018 update: OAH did not adopt the Model Rule. After a 2 year rule-making process, including stakeholder input, adopted [WAC 10-24-010](#) effective 1/1/2018.)

What is a Disability under the ADA?

- Disability is defined in the ADA as:
 - a physical (includes sensory) *or* mental impairment that
 - Substantially limits one or more major life activities.

42 U.S.C. § 12102(1).

Definition of Disability- continued

A person is also considered disabled if she or he:

- (1) has a record of an impairment which substantially limits one or more major life activities or
- (2) is “regarded” or perceived as having such an impairment, even if he or she does not have an impairment. 42 U.S.C. § 12102(1).

How does the ADA define “Major Life Activities”?

Major life activities include, but are not limited to: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

A major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

42 U.S.C. § 12102 (2).

How does the Washington Law Against Discrimination Define “Disability”?

- I. "Disability" means the presence of a sensory, mental, or physical impairment that:
 - (i) Is medically cognizable or diagnosable; *or*
 - (ii) Exists as a record or history; *or*
 - (iii) Is perceived to exist, whether or not it exists in fact.
- II. A disability exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated, or whether or not it limits the ability to work generally or work at a particular job or whether or not it limits any other activity within the scope of this chapter.

[RCW 49.60.040 \(7\).](#)

How does the Washington Law Against Discrimination Define “Disability”?

- c) For purposes of the definition of disability “impairment” includes, but is not limited to:
- (i) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitor-urinary, hemic and lymphatic, skin, and endocrine; or
 - (ii) Any mental, developmental, traumatic, or psychological disorder, including but not limited to cognitive limitation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. [RCW 49.60.040\(7\)\(c\).](#)

How does the Washington Law Compare to the federal ADA?

According to the Washington Human Rights Commission:

- The Washington State definition is broader and covers a greater number of impairments and medical, mental, or psychological conditions.
- Temporary conditions are covered under the Washington State definition, but are not covered under the ADA.
- Conditions that are ameliorated or mitigated by medication or other means are disabilities under the Washington State definition, but are often not considered to be disabilities under the ADA.
- Under the Washington State definition, there is no requirement that a condition must have an impact on a major life activity, or that the impact of the condition be substantially limiting.

--[Washington Human Rights Commission, Guide to Disability in Washington State and Nondiscrimination Laws](#)

One Man's Ability and Disability

Jim Abbott was a professional league baseball pitcher.

- Jim was the 15th player to ever debut in the major leagues and never play in the minor leagues.
- Jim had a 3.92 earned run average in his rookie year and played professional baseball for 10 years.
- Jim threw a 4-0 no-hitter for the New York Yankees on September 4, 1993.
- Jim Abbott was born with one hand.

If his home town had a requirement that all little league players must have two hands or if he had been told by the local little league coach that he could not play on the baseball team, Jim Abbott might not have had the chance to develop into the professional athlete that he became.

People First Language

People are not defined by their disability.

Use People First Language!

DO SAY

Person with a disability

Person without a disability

Person with epilepsy

Person who is a stroke survivor

Person who uses a wheelchair

Do NOT Say

The disabled

Normal person

Epileptic

Stroke victim

Confined to a wheelchair

OAH Notice of Nondiscrimination- continued

- **If you feel that you or someone else has been treated unequally, or denied equal access to the Office of Administrative Hearings services or facilities,** or if you desire additional information about accommodations for persons with disabilities, the Office of Administrative Hearings encourages you to contact its Americans with Disabilities Act Coordinator at the address/telephone number below:

Office of Administrative Hearings

Attn: Americans with Disabilities Act Coordinator

PO Box 42488

Olympia, WA 98504-2488

(360) 407-2700

- **Please note:** The address and telephone number above is only for contacting the Americans with Disabilities Act Coordinator with questions or concerns about equal treatment and access to OAH services and facilities. **All questions concerning the hearing process and other questions should be directed to the OAH office listed on your Notice of Hearing.**
- TTY (hearing impaired) users please dial through the Washington relay operator at 1-800-833-6388.

(2018 update: current notice may be found on oah.wa.gov)

Denials of Requests for Accommodation-continued

- If a person with a disability believes that the OAH has failed to comply with the ADA or Sec. 504, he or she may file a “complaint” with the OAH ADA Coordinator.
- The ADA Coordinator must respond in writing within 30 calendar days of the filing of a complaint.

Links to Resources

- [OAH ADA Policy](#)
- U.S. Dept. of Justice, Civil Rights Division:
www.ada.gov
- [Northwest ADA Center](#) (University of Washington,
Dept. of Rehabilitation Medicine)
- [OAH IT Accessibility Policy](#)
- [OAH Reasonable Accommodation Policy](#)

(2018 updated list of links)