Disability Law:
The basics: Section 504, the ADA, and Section 188

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Section 504

- **Section 504** of the Rehabilitation Act (1973) is a civil rights law.
  - It was the first civil rights law in the United States designed to protect individuals with disabilities from discrimination based on their disability status.
Section 504

Nondiscrimination under Federal grants and programs

(a) Promulgation of rules and regulations

• No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.
Section 504

- Section 504 of the Rehab Act makes it illegal for programs or activities that receive federal financial assistance to discriminate against qualified individuals with disabilities.
Requirements under Section 504

• reasonable accommodation for beneficiaries and employees with disabilities
• program accessibility
• effective communication with people who, for example, have hearing or vision disabilities
• accessible new construction and alterations
• Each federal agency has its own set of Section 504 regulations that apply to its programs
Section 504

• The standards for deciding if employment discrimination exists under the Rehabilitation Act are the same as those used in Title I of the Americans with Disabilities Act.
Americans with Disabilities Act (ADA)

• The ADA was enacted on July 26, 1990, and the majority of the ADA's provisions took effect in 1992.
ADA

• Prohibits discrimination against people with disabilities in:
  – Employment
  – State and local government
  – Public accommodations
  – Telecommunications
  – Transportation
The **five titles of the ADA** are:

- **Title I** - Employment
- **Title II** - State and Local Governments
- **Title III** - Public Accommodations
- **Title IV** - Telecommunications
- **Title V** - Miscellaneous
ADA Amendments Act

• The Americans with Disabilities Act Amendments Act of 2008 (ADAAA) was signed into law on September 25, 2008.

• The ADAAA made important changes to the ADA.
Disability

• In order to be protected by the ADA, a person must be an **individual with a disability** as defined by the law.

• The ADA has a three-part definition of disability.
Disability

• Under the ADA, an individual with a disability is a person who:

• Has a physical or mental impairment that substantially limits one or more major life activities;

• Has a record of such an impairment; or

• Is regarded as having such an impairment.
Major life activity

• An impairment is a "disability" under the ADA if it substantially limits one or more major life activities.

• A major life activity is an activity that most people in the general population can perform with little or no difficulty.
Major life activity

• Major life activities include:
  – caring for oneself
  – seeing
  – hearing
  – eating
  – walking
  – learning
  – communicating
Major life activity

• Major life activities also include “major bodily functions,” such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, circulatory, respiratory, endocrine, hemic, lymphatic, musculoskeletal, special sense organs and skin, genitourinary, and cardiovascular systems, and reproductive functions.
• The lists appearing in the regulations and the ADA are just examples of major life activities and not intended to be exhaustive.

• Mitigating measures exclusion -- The ADAAA added language stating that “an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.”
Examples of mitigating measures

• Medication
• Medical equipment and devices
• Prosthetics
• Hearing aids, cochlear implants and other implantable hearing devices
• Oxygen therapy
• Ordinary eyeglasses or contact lenses not covered under mitigating measures.
Record of such an impairment

• The second part of the ADA definition of disability addresses individuals who have a record of an impairment.
Regarded as having such an impairment

• The third part of the ADA definition of disability covers individuals who are regarded as having an impairment.

• This part of the definition protects people who are "perceived" as having disabilities from discriminatory decisions based on stereotypes, fears, or misconceptions about disability.
  – Not entitled to reasonable accommodations.
General ADA provisions: Integration

- **Integration** is central to the purpose of the ADA.
- Individuals with disabilities must be integrated to the maximum extent appropriate.
General ADA provisions: Separate programs

• Separate programs are permitted when necessary to ensure equal opportunities.

• However, people with disabilities cannot be required to participate in a separate program or to accept separate benefits.

• People with disabilities are entitled to participate in the regular program.
General ADA provisions: Eligibility criteria

• Eligibility criteria intended to screen out people with disabilities are prohibited unless the criteria are necessary for the provision of the service, program or activity.
Title II

• Title II of the ADA covers:
  • Any state or local government agency,
  • Any department or agency of state or local government, and
  • Certain commuter authorities.
• Title II also applies to the legislative and judicial branches of state and local governments.
Title II

• In addition to complying with the Title I employment provisions, under Title II, state and local government agencies must comply with respect to programs or activities that involve public contact and those for program beneficiaries and participants.
Title II: General requirements

• The basic mandates of Title II are that no qualified individual with a disability shall be
• Excluded from participation;
• Denied benefits, goods, or services;
• Denied access to programs or activities, or
• Subject to discrimination on the basis of his or her disability.
Qualified individual with a disability (employment)

• A qualified individual with a disability, as defined under Title I, is someone who “satisfies the skill, experience, education and other job-related requirements of the employment position, and, who with or without reasonable accommodation, can perform the essential functions of such position.”
Qualified individual with a disability (other than employment)

• For purposes of determining eligibility for participation in the services and programs offered by a public or private entity, a person with a disability is considered to be qualified if the individual meets the essential eligibility requirements with or without:
  • Reasonable modifications to rules, policies or practices;
  • Auxiliary (communications) aids or services; or
  • Removal of architectural, communications or transportation barriers.
Responsibilities of Title II entities

• Every qualified individual with a disability is entitled to access the programs, activities, services and benefits provided by a public entity.
Reasonable modifications

• Public entities must make reasonable modifications to their policies, practices, and procedures when necessary to ensure equal opportunity and avoid discrimination.
Reasonable modifications

- A public or private entity is **not required to** make the modification if it can demonstrate that a modification would fundamentally alter the nature of its service, program, or activity.
Effective communication

• Communication with individuals with disabilities must be as effective as communication with others.
Effective communication

• The obligation to communicate effectively with people who have disabilities applies to the presentation and exchange of information in all forms including sound, print, graphics and voice.
Auxiliary aids and services

• Auxiliary aids and services include a wide range of devices, techniques and procedures that enable persons with disabilities to participate fully in the exchange of information.

• The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the length and complexity of the communication involved.
Physical accessibility requirements under Title II

• Existing facilities -- program accessibility
  – includes relocating programs or activities or otherwise providing access in inaccessible older buildings.

• Alterations and new construction -- must follow specific architectural standards.
Section 188 Regulation Overview

• CRC is responsible for the regulations to implement the nondiscrimination and equal opportunity obligations under WIOA Section 188.

• Section 188 prohibits discrimination against individuals in any WIOA Title I–financially assisted program or activity, which includes job training for adults and youth and programs or activities provided by recipients at American Job Centers (one-stop centers).
Section 188 Regulation Overview

• These programs or activities may not refuse to offer or provide services to individuals because of their race, color, religion, sex, national origin, age, disability, or political affiliation or belief.

• Discrimination on these bases is also prohibited against employees who are employed in the administration of, or in connection with, any WIOA Title I-financially assisted program or activity.
Section 188 Regulation Overview

- The Rule applies to recipients of WIOA Title I financial assistance, including programs and activities that are operated by American Job Center partners (one-stop partners) as part of the American Job Center system (one-stop delivery system), such as Unemployment Insurance, Temporary Assistance for Needy Families, adult education, Trade Adjustment Assistance, and others.
§188 Regulation – Disability Provisions

• The Rule’s requirements concerning individuals with disabilities generally parallel the requirements under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act.
Need to know:
Including individuals with disabilities

• WIOA requires that AJCs serve individuals with disabilities, and not just automatically refer such individuals to the state vocational rehabilitation program.
  – AJCs may not refuse to serve individuals with disabilities because the AJC has made a referral to VR. Individuals with disabilities have the right to choose not to go to VR and if eligible, instead receive services from AJCs and other recipients. [29 C.F.R. 38.12(c)]

• WIOA/Section 188 (and other federal laws) require AJCs to be accessible to, and useable by, individuals with disabilities.
Need to know:
Definition of Disability

• Disability means, with respect to an individual:
  – A physical or mental impairment that substantially limits one of more major life activities of such individual;
  – A record of such an impairment; or
  – Being regarded as having such an impairment.

• “Substantially limits” is not meant to be a demanding standard.

• This is the same definition of disability as the ADA.
Need to know:
Definition of Disability

• This definition was broadened under the ADA Amendments Act of 2008.
• Determination of disability must be made without regard to the ameliorative effects of mitigating measures.
• Congress intended the focus to be on whether discrimination occurred, not an exhaustive analysis of whether the person has a disability.
Need to know:
Qualified individual with a disability

• With respect to employment, an individual who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position, and who, with or without reasonable accommodation, can perform the essential functions of such position;

• With respect to aid, benefits, services, or training, an individual who -- with or without auxiliary aids and services, reasonable accommodations, and/or reasonable modifications in policies, practices, and procedures -- meets the essential eligibility requirements for such aid/benefit/service/training.
Need to know:
Disability discrimination

• Discrimination prohibited based on disability:
  – Denying a qualified individual with a disability the opportunity to participate in or benefit from the aid/benefit/service/training.
  – Providing a qualified individual with a disability with any aid/benefit/service/training that is not equal to what is offered to others or that is not as effective.
Need to know: Disability discrimination

• Discrimination prohibited based on disability:
  – Providing different, segregated, or separate aid/benefit/service/training unless necessary to provide qualified individuals with disabilities with any aid/benefit/service/training that is as effective as those provided to others, and consistent with the requirements of the Rehabilitation Act as amended by WIOA, including those provisions that prioritize competitive integrated employment.
Need to know:
Disability discrimination

• Cannot require a qualified individual with a disability to participate in separate or different programs or activities instead of mainstream programs/activities.

• Must administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.
Need to know:
Specific requirements

• Reasonable Accommodations
• Reasonable Modifications
• Auxiliary Aids and Services
• Accessible electronic and information technology
• Physical accessibility
• Programmatic accessibility
Need to know:
Reasonable Accommodations

• With regard to any aid, benefit, service, training, and employment, a recipient must provide reasonable accommodations to qualified individuals with disabilities unless providing the accommodation would cause undue hardship.
Need to know:
Reasonable Accommodations

• **Reasonable accommodation** means:
  – Modifications or adjustments to an application/registration process that enables a qualified applicant/registrant with a disability to be considered for the aid/benefits/services/training/employment they desire; or
  – Modification or adjustments that enable a qualified individual with a disability to perform the essential functions of a job, or to receive aid/benefits/services/training equal to that provided to other individuals.
Need to know: Reasonable Modifications

• With regard to any aid, benefit, service, training, and employment, a recipient must make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination, unless making the modifications would fundamentally alter the nature of the service, program, or activity.
Need to know: Auxiliary aids and services

• A recipient must:
  – Take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others.
  – Furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities an equal opportunity to participate in/enjoy the benefits of a service, program, or activity.
  – In determining what types of auxiliary aids and services are necessary, the recipient must give primary consideration to the requests of individuals with disabilities.
Need to know:
Electronic and information technology

- When developing, procuring, maintaining, or using electronic and information technology, a recipient must use technology, applications, or adaptations which:
  - Incorporate accessibility features;
  - Are consistent with modern accessibility standards; and
  - Provide individuals with disabilities access to, and use of, information, resources, programs, and activities that are fully accessible, or ensure that the opportunities and benefits are provided in an equally effective and equally integrated manner.
Need to know: Physical accessibility

- No qualified individual with a disability may be excluded from participation in, or be denied the benefits of a recipient’s service, program or activity, or be subject to discrimination by any recipient because a recipient’s facilities are inaccessible or unusable by individuals with disabilities.
- Recipients that are subject to Title II of the ADA must also ensure that new facilities or alterations that began construction after 1/26/92 comply with applicable federal design standards.
- Recipients that receive federal financial assistance must meet the accessibility obligations under Section 504 of the Rehabilitation Act and 29 CFR part 32.
Need to know: Programmatic Accessibility

• Programmatic accessibility means:
  – Providing reasonable accommodations;
  – Making reasonable modifications to policies, practices, or procedures;
  – Administering programs in the most integrated setting appropriate;
  – Communicating with persons with disabilities as effectively as others, including providing appropriate auxiliary aids or services.
Parting Thoughts

• The Section 188 regulations are 29 CFR part 38.

• They can be found through the links on our website: www.dol.gov/crc.

• Questions and requests for technical assistance can be sent to: civilrightscenter@dol.gov
Section 188 – Practical tips


Found at: www.dol.gov/crc