

## Approaching Safety from an ADA Perspective

Larry E. Mundy, CSP, OHST  
Safety/ADA/Workers' Compensation Administrator  
City of North Las Vegas  
North Las Vegas, NV

### Introduction

“We may remark in passing that to be blind and beloved may, in this world where nothing is perfect, be among the most strangely exquisite forms of happiness. The supreme happiness in life is the assurance of being loved; of being loved for oneself, even in the spite of oneself; and this assurance the blind man possesses. In his affliction, to be served is to be caressed. Does he lack anything? No. Possessing love he is not deprived of light. A love, moreover, that is wholly pure. There can be no blindness where there is this certainty.”

--Victor Hugo

What is the Americans with Disabilities Act (ADA)? The ADA is a comprehensive federal civil rights law that protects qualified individuals with disabilities from discrimination in the areas of employment, state and local government, places of public accommodation, telecommunications and transportation.

Furthermore, the Americans with Disabilities Act enacted by Congress in July of 1990 and signed into law by President Bush shortly thereafter, has been called the most far-reaching civil rights legislation since the Civil Rights Act of 1964.

As of 2008, nearly 55 million people make up the disability community within this country, approximately 1 in 5 persons. Generally, groups under disability can be classified as the following:

- **Physical:** being unable to have one's body/mind work as it once did; fatigue, muscle tremors, pain
- **Cognitive:** blaming someone, hyper-vigilance, increased or decreased awareness of surroundings; loss of time, place or person orientation, nightmares
- **Emotional:** anxiety, guilt, grief, denial, panic, uncertainty, fear, loss of emotional control, inappropriate emotions, apprehension, feeling overwhelmed, anger
- **Behavioral:** change in activity (withdrawal), emotional outbursts, change in usual communication, inability to rest, hyper-alert to environment, startle reflex, change in sexual functioning, loss/increase in appetite, alcohol or other drug consumption.

## ADA Amendment Act of 2008

According to Congress, the ADA Amendments Act was passed “to carry out the ADA’s objectives of providing ‘a clear and comprehensive national mandate for the elimination of discrimination’ by reinstating a broad scope of protection to be available under the ADA.” In other words, the purpose of the original ADA was to eliminate discrimination. However, if hardly anyone was covered, then hardly anyone was actually being protected from discrimination. So, in the Amendments Act Congress fixed the definition of disability to cover more people and as a result, prevent more discrimination. That means that once the Act went into effect, the question of who has a disability is no longer the main focus; instead, the focus is on whether discrimination occurred. The fundamental change is that proving a disability is much easier now. The word “broaden” appears five times in the findings and purpose sections of the Act. Here’s the translation: millions of individuals who could not meet the definition of disabled under the ADA will meet the definition of disabled under the ADAAA. The effective date of this Act is: January 1, 2009.

The four main changes outlined in the ADAAA of 2008 are as follows:

1. Broadened the interpretation of “substantially limits”
  - a) retains “substantially limits” as the standard, but rejects interpretations as too limiting
  - b) directs the EEOC to draft regulations redefining it; nor regulations exist as of yet
  - c) mitigating measures are no longer considered
  - d) adds disabilities that are episodic or in remission
2. Rejected the interpretation that mitigating measures should be taken into consideration when determining whether an individual is disabled
  - a) an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when the impairment is active
  - b) ordinary eyeglasses or contact lenses are NOT mitigating measures
3. Expanded the definition of “major life activities”
  - a) provides vastly expanded and nonexclusive list of major life activities
  - b) added “major bodily functions”
  - c) only one major activity need be substantially limited
4. Expanded the definition of “regarded as” disabled
  - a) no impairment of major life activity required
  - b) must be transitory (less than six months) and minor
  - c) no need to provide reasonable accommodation

For a more detailed explanation as to the contents of the ADA Amendments Act, go to the Job Accommodation Network or Americans with Disabilities Act websites.

My intention is to address the fundamental aspects of the laws regarding disabilities and also show the relationship between safety and ADA issues. Before I draw this parallel between

safety and ADA, I must begin by providing a brief explanation of the law regarding ADA.

## **ADA Overview**

The ADA defines a disability as:

- *a physical or mental impairment that substantially limits one or more major life activities;*
- *or having a record of such an impairment;*
- *or being regarded by others as having an impairment.*

The ADA encompasses five Titles:

- Title I: Employment
- Title II: State and Local Government
- Title III: Places of Public Accommodations
- Title IV: Telecommunications
- Title V: Miscellaneous Provisions

### Title I: Employment

Title I requires employers with 15 or more employees to provide equal employment opportunities for individuals with disabilities. Employers may hire, fire, and promote the most qualified individual, regardless of his/her disability. Title I covers all aspects of the hiring process, including posting of available positions, interviewing, job offers, and hiring. It requires all employers to make necessary, reasonable accommodations for known disabilities of a qualified applicant or employee, unless the accommodation would impose an undue hardship on the employer. Examples of reasonable accommodations include modifications of work schedules, altering a workspace, restructuring job duties, and reassignment.

Title I prohibits employers from giving pre-employment medical exams or inquiries to determine if an individual is disabled. It also prohibits the use of employment tests and other selection criteria that screen out or tend to screen out individuals with disabilities unless the tests are shown to be job-related and consistent with business necessity. Employers must also keep results of any medical exams confidential. The law permits employers to inquire about the ability of a job applicant or employee to perform essential job-related functions at any time. Title I complaints may be filed with the Equal Employment Opportunity Commission, the enforcement agency for Title I.

There appears to be quite a bit of concern and confusion in the area of “reasonable accommodation” within the workplace. A reasonable accommodation allows an employee with a disability an equal opportunity to enjoy the benefits and privileges of employment that employees without disabilities enjoy. Here are some examples:

**Example 1:** An employee with a hearing disability must be able to contact the public by telephone. The employee proposes that he use a TTY (teletypewriter) to call a relay service operator who can then place the telephone call and relay the conversation between the parties. This is “reasonable” because a TTY is a common device used to facilitate communication between hearing and hearing-impaired individuals. Moreover, it would be effective in enabling the

employee to perform his job.

**Example 2:** A cashier easily becomes fatigued because of lupus and, as a result, has difficulty making it through her shift. The employee requests a stool because sitting greatly reduces the fatigue. This accommodation is reasonable because it is a common-sense solution to remove a workplace barrier: being required to stand when the job can be effectively performed sitting down. This “reasonable” accommodation is effective because it addresses the employee’s fatigue and enables her to perform her job.

There are several modifications or adjustments that are not considered forms of reasonable accommodation. An employer does not have to eliminate an essential function, i.e., a fundamental duty of the position. This is because a person with a disability who is unable to perform the essential functions, with or without reasonable accommodation, is not a “qualified” individual with a disability within the meaning of the ADA. Nor is an employer required to lower production standards – whether qualitative or quantitative – that are applied uniformly to employees with and without disabilities. However, an employer may have to provide reasonable accommodation to enable an employee with a disability to meet the production standard.

Under reasonable accommodation, an employer does not have to provide personal use items needed in accomplishing daily activities both on and off the job. Thus, an employer is not required to provide an employee with a prosthetic limb, a wheelchair, eye glasses, hearing aids, or similar devices if they are also needed off the job. Furthermore, an employer is not required to provide personal use amenities, such as a hot pot or refrigerator, if those items are not provided to employees without disabilities. However, items that otherwise might be considered personal may be required as reasonable accommodations where they are specifically designed or required to meet job-related rather than personal needs.

An employer does not have to provide a reasonable accommodation that would cause an “undue hardship” to the employer. A determination of undue hardship should be based on several factors including:

- the nature and cost of the accommodation needed
- the overall financial resources of the facility making the reasonable accommodation; the number of persons employed at this facility; the effect on expenses and resources of the facility
- the type of operation of the employer, including the structure and functions of the work force, the geographic separateness, and the administrative or fiscal relationship of the facility involved in making the accommodation to the employees
- the impact of the accommodation on the operation of the facility.

If an employer determines that one particular reasonable accommodation will cause undue hardship, but a second type of reasonable accommodation will be effective and will not cause an undue hardship, then the employer must provide the second accommodation. An employer cannot claim undue hardship based on employees’ (or customers’) fears or prejudices toward the individual’s disability. Nor can undue hardship be based on the fact that provision of a reasonable accommodation might have a negative impact on the morale of other employees. Employers, however, may be able to show undue hardship where provision of a reasonable accommodation would be unduly disruptive to other employees’ ability to work.

**Example 1:** A convenience store clerk with multiple sclerosis requests that he be allowed to go from working full-time to part-time as a reasonable accommodation because of his disability. The store assigns two clerks per shift, and if the first clerk's hours are reduced, the second clerk's workload will increase significantly beyond his ability to handle his responsibilities. The store determines that such an arrangement will result in inadequate coverage to serve customers in a timely manner, keep the shelves stocked, and maintain store security. Thus, the employer can show undue hardship based on the significant disruption to its operations and, therefore, can refuse to reduce the employee's hours. The employer, however, should explore whether any other reasonable accommodation will assist the store clerk without causing undue hardship.

**Example 2:** A computer programmer works with a group of people to develop new software. There are certain tasks that the entire group must perform together, but each person also has individual assignments. It is through habit, not necessity, that they have often worked together first thing in the morning. The programmer, due to her disability, requests an adjustment in her work schedule so that she works from 10:00 a.m. - 7:00 p.m. rather than 9:00 a.m. - 6:00 p.m. In this situation, the employer could grant the adjustment in hours because it would not significantly disrupt the operations of the business. The effect of the reasonable accommodation would be to alter the time when the group worked together and when they performed their individual assignments.

## Title II: State and Local Governments

Title II regulations prohibit state and local government agencies, departments, special purpose districts, and other instrumentalities from discriminating against people with disabilities in their programs, services, and activities. Public entities must make reasonable modifications to their policies, practices, and procedures to allow equal opportunity for individuals with disabilities to participate, unless to do so would fundamentally alter the nature of the service, program, or activity. They must also provide auxiliary aids and services, integrated program access through nonstructural and architectural modifications, and meet Title I employment provisions with all employees and contractors. Public entities do not need to remove all physical barriers in existing buildings as long as programs provided in those buildings are readily accessible to users with disabilities in another facility. All new construction must be accessible.

The U.S. Department of Justice (DOJ) has enforcement responsibility for all State and local government entities not specifically assigned to other designated agencies. Title II also seeks to ensure that individuals with disabilities have equal access to existing public transportation services. All newly purchased busses and other vehicles must be accessible. In cases of inaccessible fixed route systems, public entities must provide para-transit services comparable to the level of service provided by the fixed route system. Individuals can file transportation complaints for violations under the ADA by contacting the Department of Transportation.

Let me digress for just a moment and provide you with an overview of the DOJ's "Project Civic Access" program.

Access to civic life is a fundamental part of American society. On August 23, 1999, the DOJ reached a settlement agreement with the City of Toledo, Ohio, in which the city agreed to remove barriers and relocate activities throughout its city government, including the municipal

courthouses, district and neighborhood police stations, a market-outlet complex, fire stations, parking garages, museums, community and social services, the city's parks and recreation centers, the health department, and other city administrative buildings. In order to build upon that settlement, Attorney General Janet Reno asked the Disability Rights Section (DRS) of the Department's Civil Rights Division to ensure that other cities address these important issues. DRS then began similar reviews of other local and state governments and to develop technical assistance materials so that communities could immediately begin to come into full compliance with the requirements of Title II of the ADA.

Our local officials have responded favorably and cooperated fully in the Department's reviews. They were timely in submitting records as requested, made themselves available to answer questions during on-site visits, and escorted investigators throughout their communities so that facilities surveys could be accomplished quickly and efficiently. Most importantly, our city officials have indicated a willingness to effect changes to make their programs and services accessible to persons with disabilities. Typical issues addressed during the Department's investigations include:

- physical modifications of facilities to improve accessibility.
  - \* accessible parking
  - \* accessible routes into and through facilities
  - \* accessible restrooms, drinking fountains, and telephones
  - \* accessible service counters and concession stands, or the provisions of services at alternate accessible locations
  - \* accessible bathing facilities at public pools
- physical modifications to polling places and/or the provision of curbside or absentee balloting
- permanent and conspicuous notice to the community of their ADA rights and the government's ADA obligations
- establishment of an ADA grievance procedure where none existed in communities employing more than 50 persons
- establishment of delivery systems and time frames for providing auxiliary aids (qualified sign language interpreters and alternate formats such as Braille, large print, cassette tapes, etc.)
- installation of assistive listening systems in assembly areas (e.g., legislative chambers, courtrooms and municipal auditoriums, etc.)
- strengthening of 9-1-1 emergency services through the acquisition of additional text telephones (TTY's) to achieve a 1-1 ratio of TTY's and answering positions
- better telephone communication between the government and citizens with hearing or speech impairments through the acquisition of additional TTY's and/or utilization of the state relay service, official publication of TTY/relay numbers, and training of employees
- adoption of procedures for relocating inaccessible activities to accessible locations upon request.

### Title III: Places of Public Accommodations

Privately owned businesses have obligations under Title III of the ADA. All places of public accommodation, including both for-profit and nonprofit establishments, that affect commerce must follow Title III guidelines. These businesses include sales and service establishments, restaurants,

theaters, hotels, libraries and doctors' offices. Title III also applies to all commercial facilities including office buildings, factories and warehouses.

Public accommodations must provide goods and services to individuals with disabilities in the most integrated setting possible. The law also requires businesses to eliminate eligibility requirements that exclude or segregate individuals with disabilities unless the requirements are necessary for the operation of the accommodation. These entities must make reasonable modifications to their policies, practices, and procedures that deny access unless the modification would fundamentally alter the nature of the goods or services provided. When necessary, public accommodations are required to provide auxiliary aids, such as Braille material, to ensure effective communication unless it would cause an undue burden for the business. Public accommodations must also remove all architectural and structural communication barriers in existing facilities where readily achievable. The DOJ enforces Title III of the ADA.

#### Title IV: Telecommunications

Title IV requires that telephone companies provide telecommunication relay services that allow individuals with hearing or speech impairments to communicate using a TTY or other non-voice device. Relay services may be accessed by dialing 7-1-1. Title IV also requires that all television public service announcements produced or funded, in whole or in part by the Federal government include closed captioning. The Federal Communications Commission (FCC) enforces Title IV of the ADA.

#### Title V: Miscellaneous Provisions

Title V includes information regarding the ADA's relationship with other federal and state laws, including the Rehabilitation Act of 1973, requirements relating to the provision of insurance, construction and design regulations by the U. S. Access Board, prohibition of state immunity, inclusion of Congress as a covered entity under the law, promotion of alternative means of dispute resolution and establishment of technical assistance.

ADA laws, much like the OSHA (Occupational Safety and Health Act) standards, have been developed to ensure the health, safety and well-being of individuals. However, according to John Henshaw, former OSHA Chief, "If you're just focusing on compliance, then you are not a true safety and health professional. All you are is a compliance specialist." This statement also holds true for ADA professionals. Compliance should not be the minimum level we strive for in order to avoid a penalty, but rather, we must strive to minimize the probability of a certain risk, not only do enough just to get by!

## **Risk Assessment: Ensuring the Health and Safety of Workers with Disabilities**

People with disabilities should receive equal treatment at work. This includes equality regarding health and safety at work. Health and safety should not be used as an excuse for not employing or not continuing to employ disabled people. In addition, a workplace that is accessible and safe for people with disabilities is also safe and more accessible for all employees, clients, and visitors.

A **risk assessment** means a careful examination of what, at work, could cause harm to people, in order to judge whether precautions are sufficient or if more should be done to prevent

harm. The aim is to make sure that no one gets hurt or becomes ill. A risk assessment involves identifying the hazards present and then evaluating the extent of the risks involved, taking into account existing precautions. The results are used to choose the most appropriate measures. Any risk assessment at the workplace should cover:

- the task, work activities
- the individual, any specific needs with respect to disability
- work equipment, whether work stations and equipment are adjusted to individual requirements
- the work environment, layout of premises, lighting, heating, access, exiting
- work organization, how work is organized and scheduled
- physical hazards, exposure to dangerous substances and equipment
- psycho social hazards such as stress, ridicule, harassment
- information and training needs, safety information and training in different mediums
- take account of people's abilities when planning work – disabled workers often have special skills, which should not be lost because of poorly adapted working conditions
- seek advice as necessary. This may be provided by OSHA representatives, SH&E professionals, Ergonomists, disability employment services or disability organizations.

For example, an employee, who, after doing a hand-intensive task successfully for several days, suddenly stopped working and refused to continue. At first, the worker's supervisor thought a behavioral problem caused the person's work stoppage. However, the real problem was that the worker knew no other way to express that his wrists hurt other than to stop work. As leaders we shouldn't automatically assume that workers are "slackers" or "negative" until we investigate the reason(s) for such behaviors.

Because of variation in individual susceptibility, some workers may experience adverse health effects when exposed to a substance at levels below its occupational exposure limits. Workers with developmental disabilities frequently have concomitant medical conditions. Some medical conditions and medications interact with occupational exposures and increase a person's susceptibility to adverse health effects. When evaluating exposures of workers with developmental disabilities, occupational exposure limits should be used carefully and with an understanding that they may not be adequately protected. The ADA places the ultimate responsibility for worker placement with the employer and provides guidance for determining when someone should be excluded from a job because the person poses a "direct threat" – a significant, likely, imminent, severe risk – to the health and safety of others in the work place.

For some workers with developmental disabilities, warning devices and alarms may cause adverse effects such as when powered industrial trucks or forklifts are used. There have been cases when workers with developmental disabilities had experienced epileptic seizures when alarms and warning devices activated. When a forklift without a warning device is in use, a signal person should help the driver warn nearby workers. In an emergency, such as tornadoes, hurricanes, flash flooding, fire, etc., staff members should be prepared to warn workers who are blind, deaf, or both blind and deaf for whom visual or audible warnings would be ineffective.



### OSHA/ADA Interaction

The ADA does not override federal health and safety requirements. If OSHA requires a standard, an employer must comply with it. However, an employer cannot just screen out a person with a disability as a result of health and safety testing. The ADA requires that the employer consider the possibility of reasonable accommodation to enable the employee to perform his or her current job in accordance with OSHA requirements. For example, if an audiometric test required by OSHA identifies that an employee has a hearing loss because of exposure to loud equipment, the employer might want to terminate the employee, seeing this as a potential risk, or perhaps transfer the person to another job. The ADA would require that the employer first consider an accommodation, such as sound abatement equipment, to enable the individual to continue in his/her current job as a last resort, the person may be reassigned to an equivalent, vacant position.

Since it is incumbent upon safety and health professionals to ensure that workplaces are intrinsically safe from danger now we must also consider those with mental and/or physical impairments that warrant special attention or assistance. Here are some types of remedies:

- insulate water pipes under sinks in restrooms for wheelchair users in order to prevent burns to the legs
- when there is a protrusion 4 " or more protruding in a path of travel mounted between 27"-80" above the ground surface, ensure tactile warnings are provided near ground level so those who are blind or visually-impaired won't impact the projectile.
- for persons with hand injuries or suffer severe deformity or arthritic conditions, ensure handle/lock on the accessible water closet is easy to grip and maneuver without any difficulty.
- ensure that a job is ergonomically safe is especially important to workers with cognitive impairments. Such workers may not associate their jobs with injuries to a wrist or leg, back fatigue or discomfort or pain.

Sometimes the OSHA regulations will not permit a particular type of accommodation. For example, OSHA's respirator requirements are clear and specific. The employer would not have to keep an employee in a position that requires a respirator if the worker is not able to wear a respirator. However, the ADA would still require that the employer consider transferring this employee to an equivalent, vacant position.

Accessibility does not just refer to access to buildings. At work, accessibility refers to the ease with which employees can use the premises, allowing them be as independent as possible. This applies to all disabilities, including mobility, learning, visual, or hearing impairments. Many measures that are basic and inexpensive can make a significant difference.

**Remember!** The needs of disabled workers should be considered at the design and planning stage, rather than waiting for a disabled worker to be employed and then having to make changes. For example, when a new alarm system is installed, a visual and audible system should be used. Measures to consider include:

#### Working Environment

- adjusting premises or workstations. For example: ramps, lifts, light switches,

tactile warning strips at the top of stairs, audio or warning sounds, automatic opening devices on heavy doors, door handles, bells, entry devices reachable by wheelchair users and locatable by the visually impaired, non-slip, smooth flooring

- assigning the person to a different work area. For example: ground floor, work room with more access or home
- acquiring or modifying equipment. For example: Braille keyboard, hands-free phone
- modifying instructions or reference manuals. For example: visual, pictorial instructions
- providing a reader or interpreter. For example: providing a text-phone for a deaf person and booking a sign language interpreter for particular meetings or occasions
- installing a voice recognition software on a computer for someone who has a musculoskeletal upper limb disorder or a visual impairment.

### **Signposting**

- providing notices in large clear print so that people who are partially sighted can see them clearly
- providing graphics and pictures, as signs may be easier for people with learning disabilities.

### **Communication**

- providing all health and safety information in accessible formats. This includes written materials and other ways of communicating, and accessibility for workers with visual or hearing impairments, dyslexia, and learning disabilities.

### **Working Hours**

- altering working hours, including the part time if appropriate, for example to enable the disabled person to travel outside rush hours
- allowing absence for rehabilitation, assessment or treatment.

### **Training**

- taking measures to ensure that a disabled person is not disadvantaged in regard to health and safety training, instruction and information, for example by:
  - \* altering the time or location of the training
  - \* providing course materials and information in a different medium
  - \* providing a reader or interpreter
  - \* providing individual, tailored training
  - \* ensuring written materials are in a simple language, which will make them more accessible to everyone
  - \* providing managers and staff with any specific information and training they need in how to support a worker with a disability.

### **Emergency Procedures**

**Remember! Many measures to improve workplace accessibility will also facilitate evacuation.** In your emergency planning, have you addressed the needs of disabled employees and/or customers in the unlikely event that evacuation of the facility is required?" Here are some important tips:

- Is there a need to **locate** disabled workers to parts of the building where they can leave the building more easily?
- Is any **special equipment** needed, such as an evacuation chair? (provide training in its use and ensure it is maintained)
- Are **storage areas** provided with necessary evacuation equipment? Are they easy to access?
- In the event of emergencies, are **specific members of staff designated** to alert and assist employees with visual impairments or others who have mobility problems?
- Are lighted fire strobes and other **visual or vibrating alerting devices** provided to supplement audible alarms? Are visual alarms installed in all areas, including restrooms?
- Do routes and procedures **take account of the potentially slower movement** of people with disabilities?
- Are all disabled people familiar with escape routes and provided with **instructions and training** in safety procedures?

Training areas include: evacuation techniques to use, particularly how to carry or assist individuals who use mobility aids; the use of any special evacuation equipment; and training in basic sign language to effectively communicate with individuals who are deaf, and the instructions for individuals who use service animals.

- Are employees encouraged to **make a list** of medications, allergies, special equipment, names, addresses and telephone numbers of doctors, pharmacies, family members and friends, and any other important information?
- Is there a **supply kit** available with suitable gloves (which are used to protect individuals' hands from debris when pushing their manual wheelchairs), patch kits to repair flat tires, and extra batteries for those who use motorized wheelchairs or scooters?

### **Consulting Workers**

Consultation with disabled workers is an important part of ensuring that health and safety issues for disabled workers are identified and prevented. If employers or worker safety representatives take steps without consulting disabled workers themselves, they may miss important information and disabled workers may have different but relevant experiences to take into account. For the same reasons, disabled people and worker representatives should be involved in the process of ensuring “reasonable accommodation” for disabled workers such as planning work, work environments, emergency procedures, etc., and the purchase and use of any special equipment.

Just like there is a “cost of doing business” when providing for a safe and healthful work environment, so it is also true when removing barriers for the disabled to ensuring accessibility to programs and services. Recent studies indicate that nearly 50 percent of all accessible equipment, processes, and barrier removal efforts cost companies anywhere between \$0 - \$500 in remedying a solution—a small cost to pay when investing in otherwise productive and capable workers. Here is a brief illustrating how to accommodate disabled workers:

**Situation:** garage mechanic with epilepsy was unable to drive vehicles.

**Solution:** employer negotiated with the employee's union and reached an agreement that any qualified employee, regardless of job held, could drive the vehicles to the mechanic's workstation. Cost: \$0.

**Situation:** saw operator with a learning disability had difficulty measuring to the fraction of an inch.

**Solution:** employee was provided with a wallet-sized card on which the fractions were listed on an enlarged picture of an inch. This allowed the employee to compare the card with the location on the ruler to identify the correct fraction. Cost: \$5.

**Situation:** a custodian with low vision was having difficulty seeing the carpeted area he was vacuuming.

**Solution:** a fluorescent lighting system was mounted on his industrial vacuum cleaner. Cost: \$240.

**Situation:** assembly/operator with a severe vision limitation had the job of wrapping hose-pipe fittings with special tape. This required close examination of the work materials. Quality of work was very important.

**Solution:** total view magnifier on an adjustable swivel base was installed. Cost: \$450.

**Situation:** electro-mechanical assembly crew member acquired a cumulative wrist/hand trauma disorder which affected handling and fingering. This decreased his ability to use hand tools for the assembly of electro-mechanical devices.

**Solution:** rechargeable electric screwdriver was purchased to reduce repetitious wrist twisting. These were subsequently purchased for all employees as a preventive measure. Cost: \$65.

## Disability Etiquette

"I am only one, but still I am one. I cannot do everything, but still I can do something. And because I cannot do everything, I will not refuse to do the something that I can do!"

--Helen Keller

People with disabilities face many barriers every day – from physical obstacles in buildings to systemic barriers in employment and civic programs.

Yet often the most difficult barriers to overcome are attitudes other people carry regarding people with disabilities. Whether born from ignorance, fear, misunderstanding or hate, these attitudes keep people from appreciating – and experiencing – the full potential a person with a disability can achieve. The most pervasive negative attitude is focusing on a person's disability rather than on an individual's abilities.

People with disabilities encounter many different forms of attitudinal barriers:

**Inferiority:** Because a person may be impaired in one of life's major functions, some people believe that individual is a "second-class citizen." However, most people with disabilities have skills that make the impairment moot in the workplace.

**Pity:** People feel sorry for the person with a disability, which tends to lead to patronizing attitudes. People with disabilities generally don't want pity and charity, just equal opportunity to earn their own way and live independently.

**Ignorance:** People with disabilities are often dismissed as incapable of accomplishing a task without the opportunity to display their skills. In fact, people with quadriplegia can drive cars and have children. People who are blind can tell time on a watch and visit museums. People who are deaf can play baseball and enjoy music. People with developmental disabilities can be creative and maintain strong work ethics.

**Backlash:** Many people believe individuals with disabilities are given unfair advantages, such as easier work environments. Employers need to hold people with disabilities to the same job standards as co-workers, though the means of accomplishing the tasks may differ from person to person. The ADA does not require special privileges for people with disabilities, just equal opportunities.

**Denial:** Many disabilities are "hidden," such as learning disabilities, psychiatric disabilities, epilepsy, cancer, arthritis and heart conditions. People tend to believe these are not bona fide disabilities needing accommodation. The ADA defines "disability" as an impairment that "substantially limits one or more of the major life activities." Accommodating "hidden" disabilities which meet the above definition can keep valued employees on the job and open doors for new employees.

**Breaking Down Barriers:** Unlike physical and systematic barriers, attitudinal barriers that often lead to illegal discrimination cannot be overcome simply through laws. The best remedy is familiarity, getting people with and without disabilities to mingle as coworkers, associates and social acquaintances. In time, most of the attitudes will give way to comfort, respect and friendship.

## Disability Awareness

Think and speak **PERSON FIRST**

First and foremost, an individual with a disability is a person, and not a condition or disease. Only secondarily does the individual have one or more disabling conditions. Hence, it is preferable to refer to the individual as a **person**, and, if important to the situation, a person with a disability. When it is necessary to refer to an individual's disability (and it is not usually necessary), the disability should not be emotionalized or sensationalized. For example, a person is not an epileptic, but rather, a person who has epilepsy.

### **What is a "disability?"**

A disability is a condition which could have been caused by an accident, trauma, heredity, or disease, and which may limit a person's mobility, hearing, vision, speech, or mental function. Some people have more than one disability.

### **What is a "handicap?"**

A handicap is a physical or attitudinal constraint that is imposed upon a person, regardless of whether that person has a disability. *Webster's New World Dictionary* defines handicap as something that hampers a person; a disadvantage.

**Example:** Some people with disabilities use wheelchairs. Stairs, narrow doorways, and curbs are handicaps to people with physical disabilities. So...people have disabilities, not handicaps, which is a word found offensive by many people with disabilities.

### Conversation Etiquette

When introduced to a person with a disability, it is appropriate to offer to shake hands. People with limited hand use or who wear an artificial limb can usually shake hands. Shaking hands with the left hand is acceptable. For those who cannot shake hands, touch the person lightly on the shoulder or arm to welcome and acknowledge their presence. Treat adults in a manner befitting adults. Call a person by his or her first name only when extending that familiarity to all others present. When talking to a person with a disability, look at and speak directly to that person, rather than through a companion who may be along.

### Individuals Who Have Severe Hearing Impairments:

To get the attention of a person with a hearing impairment, tap the person lightly on the shoulder, or wave your hand. Look directly at the person and speak clearly, naturally and slowly to establish whether the person can read lips. Not all persons with hearing impairments can lip-read. Those who can will rely on facial expression and other body language to help understanding. Show consideration by placing yourself facing the light source and keeping your hands and food away from your mouth when speaking. Shouting won't help. Written notes may. If an interpreter is present, speak to the person who is hearing impaired, not to the interpreter. Always maintain eye contact with the individual with the hearing impairment, not the interpreter. Do not shout at a hearing impaired person. Shouting distorts sounds accepted through hearing aids and inhibits lip reading.

### Individuals Who Use Wheelchairs:

When talking for more than a few minutes with a person who uses a wheelchair, sit down if possible, in order to place yourself at the person's eye level to facilitate conversation. Never patronize people using wheelchairs by patting them on the head or shoulder. When addressing a person who uses a wheelchair, never lean on the person's wheelchair. The chair is part of the space that belongs to the person who uses it.

### Individuals Who Have Severe Loss of Vision:

When greeting a person with a severe loss of vision, always identify yourself and others who may be with you. When conversing in a group, give a vocal cue by announcing the name of the person to whom you are speaking. Speak in a normal tone of voice, indicate in advance when you will be moving from one place to another and let it be known when the conversation is at an end. When walking with an individual with a severe loss of vision, allow the person to take your arm. This will enable you to guide rather than propel the person. Do not shout at a person who is blind or visually impaired – he/ she can hear you!

### Individuals Who Have Severe Speech Impediments:

Listen attentively when you're talking to a person who has a speech impediment. Exercise patience. Don't attempt to finish sentences for the individual. When necessary, ask short questions that require short answers, a nod, or a shake of the head. Never pretend to understand if you are having difficulty doing so. If you have difficulty communicating, be willing to repeat or rephrase a question.

**For All Persons with Disabilities:**

Offer assistance in a dignified manner with sensitivity and respect. Be prepared to have your offer declined. Do not proceed to assist if your offer to assist is declined. If the offer is accepted, listen to or accept instructions.

**Myths About People With Disabilities**

**Myth:** All people with disabilities are brave and courageous.

**Fact:** Having a disability does not make one brave or timid. Just like everyone, some people with disabilities are brave and some are not.

**Myth:** Wheelchair use is confining; those who use wheelchairs are “wheelchair bound.”

**Fact:** Wheelchairs actually liberate the people who use them, allowing them to participate in community affairs. Without their wheelchairs, these individuals would truly be “bound.”

**Myth:** People who are blind can read in Braille.

**Fact:** Fewer than 50% of the individuals who are blind can read Braille.

**Myth:** People who are blind have highly developed other senses.

**Fact:** While many people who are blind make greater use of their other senses to compensate for their loss of vision, these other senses do not develop any differently than those of people with vision.

**Myth:** People who are hearing impaired can read lips.

**Fact:** Very few people who are hearing impaired can read lips, and for those who can, only about 30% of “lip reading” can be understood.

**Myth:** People with disabilities are more comfortable “with their own kind.”

**Fact:** This is simply false. While people with disabilities may share a common dislike for those whose attitudes and actions impede them from fully participating in the community, they are most comfortable with family, friends, associates, and all those who value them and treat them as equals.

**Myth:** Curious children should never be allowed to ask people about their disabilities.

**Fact:** Children are naturally curious. Reasonable interest is to be expected, and most people with disabilities do not mind respectful questions. It is an opportunity to help our future generation understand and develop positive attitudes.

**Myth:** People with disabilities cannot/should not work.

**Fact:** While the general unemployment rate is around 4%, the unemployment rate for people who have disabilities is about 70%. Most adults with disabilities want to have meaningful jobs and contribute to society. It is the attitudes of others which usually stand in their way.

**Myth:** People with disabilities are different.

**Fact:** People with disabilities have much in common with those who do not have disabilities. Almost every person, whether or not they are perceived to have a disability,

wants to have love in his/her life, a family, meaningful work, and recreational opportunities. Only physical and attitudinal barriers cause differences in achieving these goals.

### A Final Word: Service Animals

Over 12,000 people with disabilities use the aid of service animals. Although the most familiar types of service animals are guide dogs used by people who are blind, service animals assist persons who have other disabilities as well. Many disabling conditions are invisible. Therefore, every person who is accompanied by a service animal may or may not “look” disabled. A service animal is **NOT** required to have any special certification.

#### **What is a Service Animal?**

A service animal is NOT a pet! According to the ADA, a service animal is any animal that has been individually trained to provide assistance or perform tasks for the benefit of a person with a physical or mental disability which substantially limits one or more major life functions.

#### **Service Dog Etiquette:**

- Do not touch the service animal, or the person it assists, without permission
- Do not make noises at the service animal; it may distract the animal from doing its job.
- Do not feed the service animal; it may disrupt his/her schedule.
- Do not be offended if the person does not feel like discussing his/her disability or the assistance the service animal provides. Not everyone wants to be a walking-talking “show and tell” exhibit.

## **Case Studies**

May an employer discipline an individual with a disability for violating a workplace conduct standard if the misconduct resulted from a disability? **Yes**, provided that the workplace conduct is job-related for the position in question and is consistent with business necessity. For example, nothing in the ADA prevents an employer from maintaining a workplace free of violence or threats of violence, or from disciplining an employee who steals or destroys property. Thus, an employer may discipline an employee with a disability for engaging in such misconduct if it would impose the same discipline on an employee without a disability. Other conduct standards, however, may not be job-related for the position in question and consistent with business necessity. If they are not, imposing discipline under them could violate the ADA.

**Example:** An employee with a psychiatric disability works in a warehouse loading boxes onto pallets for shipment. He has no customer contact and does not come into regular contact with other employees. Over the course of several weeks, he has come to work appearing increasingly disheveled. His clothes are ill-fitting and often have tears in them. He also has become increasingly anti-social. Coworkers have complained that when they try to engage him in casual conversation, he walks away or gives a curt reply. When he has to talk to a coworker, he is abrupt and rude. His work, however, has not suffered. The employer’s company handbook states that employees should have a neat appearance at all times. The handbook also states that employees should be courteous to each other. When told that he is being disciplined for his appearance and treatment of coworkers, the employee explains that his appearance and demeanor have deteriorated because of his



disability which was exacerbated during this time period. The dress code and coworker courtesy rules are not job-related for the position in question and consistent with business necessity because this employee has no customer contact and does not come into regular contact with other employees. Rigid application of these rules violates the ADA.

Does an individual pose a direct threat in operating machinery solely because he/she takes medication that may as a side effect diminish concentration and/or coordination for some people? **No**, an individual does not pose a direct threat solely because he/she takes a medication that may diminish coordination or concentration for some people as a side effect. Whether such an individual poses a direct threat must be determined on a case-by-case basis, based on a reasonable medical judgment relying on the most current medical knowledge and/or on the best available objective evidence.

**Example:** An individual receives an offer for a job in which she will operate an electric saw, conditioned on a post-offer medical examination. In response to questions at this medical examination, the individual discloses her psychiatric disability and states that she takes a medication to control it. This medication is known to sometimes affect coordination and concentration. The company doctor determines that the individual experiences negligible side effects from the medication because she takes a relatively low dosage. She also had an excellent safety record at a previous job, where she operated similar machinery while taking the same medication. This individual does not pose a direct threat.

## In Summary

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

As we forge into the 21<sup>st</sup> century, the challenges faced by SH &E professionals will be varied and many. My challenge to you is that we seize upon the opportunity to gain more knowledge of those with disability impairments in order that we may fully optimize a safer and healthier environment for all!

“Life is no straight and easy corridor along which we travel free and unhampered, but a maze of passages, through which we must seek our way, lost and confused, now and again checked in a blind alley. But always, if we have faith, a door will open for us, not perhaps one that we ourselves would ever have thought of, but one that will ultimately prove good for us.”

--A. J. Cronin

## Glossary of Terms

### 1. Direct Threat:

“Some employers are concerned that a worker with a disability could be a safety hazard, either to him or herself or to co-workers or customers. The ADA takes this concern into account, but only if it is founded upon clear, documented evidence that the individual is a “direct threat” to himself or others because of the nature of the job and the specific characteristics of that individual’s disability.”

“In determining whether an individual with a disability poses a direct threat, including an individual with a contagious disease, the factors to be considered include:

- a. the duration of the risk;
- b. the nature and severity of the potential harm;
- c. the likelihood that the potential harm will occur; and
- d. the imminence of the potential harm.

Even if the person is found to pose a significant risk of substantial harm, part of the reasonable accommodation is an analysis of whether the individual can be accommodated in a way that eliminates the direct threat or reduces it to an acceptable level.

### 2. Disability:

A person who:

- a. has a physical or mental impairment that substantially limits one or more major life activities;
- b. has a record of such an impairment; or
- c. is regarded as having such an impairment.

### 3. Essential Functions:

Those job duties that are so fundamental to the position and that the individual holds or desires that he/she cannot do the job without performing them. A function can be “essential” if, among other things:

- a. the position exists specifically to perform that function;
- b. there are a limited number of other employees who could perform the function;
- c. or the function is specialized and the individual is hired based on his/her ability to perform it.

### 4. Impairment:

There are three factors to consider in determining whether a person’s disability impairment substantially limits a major life activity:

- a. its nature and severity;
- b. how long it will last or is expected to last;

c. its permanent or long term impact, or expected impact.

**5. Major Life Activities:**

“The list includes: provide self-care; perform manual tasks; walk; see, hear and speak; reproduce; breathe; learn; work; sit or stand; lift or reach; think, concentrate and interact.”

**6. Mental Impairment:**

“[A]ny mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.”

**7. Physical Impairment:**

“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, genitourinary, hemic, and lymphatic, skin, and endocrine.”

**8. Qualified Individual with a Disability:**

An individual with a disability if:

- a. He/she satisfies the requisite skill, experience, education, and other job-related requirements of the position; and
- b. He/she can perform the essential functions of the position, with or without reasonable accommodation.

**9. Reasonable Accommodation:**

“Any change in the work environment or in the way things are customarily done that would enable a qualified individual with a disability to enjoy equal employment opportunities.”

**10. Undue Hardship:**

“If a specific type of reasonable accommodation causes significant difficulty or expense, then employers do not have to provide that particular accommodation. Determination of undue hardship is always made on a case-by-case basis, considering factors that included the nature and cost of the reasonable accommodation on the operations of the agency.

The following web sites are included for those of you who may be interested in learning more about the parameters and specifics of ADA issues:

[www.ada.gov](http://www.ada.gov)

[www.eeoc.gov](http://www.eeoc.gov)

[www.nod.gov](http://www.nod.gov)

<http://janweb.icdi.wvu.edu>

## **Bibliography**

Bruyere, Susanne B. *Occupational Safety and Health and Disability Non-Discrimination in the Workplace: Complying with Dual Requirements*. Cornell University, 2002.

*Disability Etiquette Handbook*. Baltimore County Commission on Disabilities, 2000.

*Emergency Procedures for Employees with Disabilities in Office Occupancies*. United States Fire Administration.

Heatherington, Gloria., PhD. Heatherington Consulting Group, *Personal Interview*, February 4, 2005.

*Section 504 Compliance Handbook, Vol. II*. Thompson Publishing Group, Inc., 1978-2003.

*The ADA: Your Responsibilities as an Employer*. Job Accommodation Network.