

ADA Audio Conference Series June 28, 2016

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2:00pm Eastern Time

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Customize Your View *continued*



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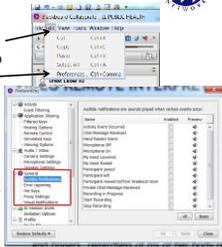
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 2. **By Email** webinars@ada-audio.org; or
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Rights of Veterans with Disabilities in Employment, Housing, and Transportation

Presenters: Sharon Alexander, Susan Prokop, and Heather Ansley

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Special Topics for Veterans With Disabilities

EMPLOYMENT PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT (ADA)

SHARON ALEXANDER
ADMINISTRATIVE JUDGE
EEOC WASHINGTON FIELD OFFICE

What is the ADA?

- The ADA is a **federal law** that prohibits discrimination and guarantees people with disabilities the **same opportunities** as everyone else.
- The Equal Employment Opportunity Commission (**EEOC**) enforces the **employment** provisions of the ADA.

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What is a disability for the ADA?

- an impairment that “**substantially limits a major life activity,**” including a **major bodily function**
- the impairment can be **physiological, anatomical, mental or psychological, or cosmetic disfigurement**

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Examples of combat injuries that are almost always disabilities:

- blindness, deafness
- partial and complete amputations,
- mobility impairments requiring the use of a wheelchair
- post-traumatic stress disorder
- major depressive disorder
- obsessive compulsive disorder
- epilepsy (seizures)

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ADA Coverage

Even if a veteran does not think of herself as “disabled,” the ADA provides coverage for anyone who:

- Has a **physical or mental impairment** that substantially limits one or more of your major life activities
- Has a **record** of such an impairment; or
- Is **regarded**, or treated by an employer, as having an impairment

AND

- Is **qualified** for the he/she wants or holds.

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“Disability” – Many Definitions

Important note – the ADA’s definition of disability is completely separate from the VA and DOD definitions. A veteran’s VA rating (or lack of a rating) has nothing to do with whether he or she is covered under the ADA.

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How does the ADA apply to employment?

- prohibits disability discrimination
- limits medical examination and inquiries
- requires reasonable accommodations for people with disabilities.

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Discrimination Prohibited

- The ADA **prohibits discrimination (including harassment)** in ALL aspects of employment – for example, hiring, pay, performance reviews, promotions
- The ADA **prohibits retaliation** against an employee for exercising rights under the ADA.
- The ADA prohibits discrimination based on **“association”** with someone with a disability – like a spouse

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Limits on Medical Exams and Questions

The ADA also **limits the medical information** an employer can obtain from applicants and employees

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Limits on Medical Exams and Questions

- **Pre-Offer:** No questions or exams allowed
- **Post Offer (Conditional Offer, Pending a Medical Exam):** exams and inquiries allowed if required of all applicants for that kind of job; denial of job based on medical exam must be job-related and consistent with business necessity
- **During Employment:** No questions or exams allowed EXCEPT when job-related and consistent with business necessity

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Confidentiality of Medical Information

The law requires that employers keep all **medical records and information confidential** and in **separate medical files**.

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Reasonable Accommodation

The ADA requires employers to make adjustments, or **reasonable accommodations**, to allow persons with disabilities to perform a job, unless doing so would cause the employer significant difficulty or expense.

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Reasonable Accommodation

A reasonable accommodation is any change in the work environment (or in the way things are usually done) that helps a person with a disability apply for a job, perform the duties of a job, or enjoy the benefits of employment.

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What kinds of accommodations can help a veteran work?

- written materials in accessible formats, such as large print, Braille, or on computer disk
- extra time to complete a test if you have difficulty concentrating or have a learning disability or traumatic brain injury (TBI)
- interviews, tests, and training held in accessible locations

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What kinds of accommodations can help a veteran work?

- assistive technology that would allow you to use a computer if you are blind or to use a telephone if you are deaf or hearing impaired;
- a glare guard for a computer monitor if you have a TBI;
- modified keyboard for people with hand injuries or amputations

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How to ask for a reasonable accommodation

- You just have to say that you need an **adjustment or change** in the application process or at work for a reason related to a medical condition. You do not have to mention the ADA or use the term "reasonable accommodation." **"No magic words."**
- You can ask in writing or in person.
- The request can be made by a family member, rehab counselor, health professional, or other person assisting you.

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When to ask for a reasonable accommodation

- A person with a disability can request an accommodation at any time during the application process or during employment
- No duty to disclose before or at the start of employment
- Important to request accommodation **BEFORE** performance issues develop

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USERRA

- Uniformed Services Employment and Reemployment Rights Act
- USERRA has requirements for reemploying veterans with and without service-connected disabilities and is enforced by the U. S. Department of Labor (DOL) and the U.S. Department of Justice (DOJ)
- Stronger accommodation provisions include obligation to retrain a returning employee if needed due to a disability

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Hiring Preferences for Veterans

- **Some employers voluntarily preference veterans with disabilities.**
- **Veterans preference laws require preference for veterans with and without disabilities** seeking employment with the **federal government.**
- **Federal contractors** may also be subject to affirmative action requirements for veterans with disabilities.

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Resources

- Understanding your Employment Rights Under the ADA: A Guide for Veterans:
http://www.eeoc.gov/eeoc/publications/ada_veterans.cfm
- Veterans and the ADA: A Guide for Employers:
http://www.eeoc.gov/eeoc/publications/ada_veterans_employers.cfm

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Resources

- The Family and Medical Leave Act, the Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964:
<http://www.eeoc.gov/policy/docs/fmlaada.html>
- Frequently Asked Questions about the Family and Medical Leave Act's military provisions:
http://www.dol.gov/whd/fmla/2013rule/military_FR_FAQs.htm

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Resources

- The Mental Health Provider's Role in a Client's Request for a Reasonable Accommodation at Work:
http://www.eeoc.gov/eeoc/publications/ada_mental_health_provider.cfm
- Job Accommodation Network – excellent resources on accommodating PTSD and other conditions: www.askjan.org

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To learn more about the employment provisions of the Americans With Disabilities Act, visit www.eeoc.gov.

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Fair Housing Act & Veterans with Disabilities



Veterans with Disabilities

- 5 ½ million veterans with disabilities
- 3 million with service-connected disabilities
- 600,000 with significant service-related disabilities

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Veterans with Disabilities

- 42,000 - spinal cord injury
- 16,000 - multiple sclerosis
- 156,000 legally blind veterans - 1.1 million with visual impairments.
- 1,572 with major limb amputations - 486 with multiple amputations.
- 2,500 - traumatic burns.
- 5,000 severe blast eye injuries
- 336,000 - hearing loss
- 253,330 - traumatic brain injury - 3,949 with penetrating head wounds - 44,610 with severe or moderate brain injury.
- [Army] - 73,674 soldiers with combat-related PTSD.

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FHA Application to Veterans with Disabilities

- Fair Housing Accessibility Guidelines
- Reasonable Modifications

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FHA Application to Veterans with Disabilities

- Service animal policies apply to:
 - Guide Dogs
 - Hearing Assistance Dogs
 - Emotional support animals



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FHA Application to Veterans with Disabilities



- Prohibitions in the sale and rental of housing
- Refusals to rent or sell housing
- Refusals to negotiate for housing
- Making housing unavailable
- Setting different terms, conditions or privileges for sale or rental of a dwelling
- Providing different housing services or facilities
- Falsely denying that housing is available for inspection, sale, or rental
- Denying access to or membership in a facility or service related to the sale or rental of housing.

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Housing Problems Veterans with Disabilities Encounter

- Rural areas – noncompliant multifamily housing developments
- Affordable, accessible housing
- GAO Report – 2.3 million low income veteran renter households
- 14 PHAs offered veterans preference

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Dept. of Justice Protects Veterans with Disabilities

- 2004 –Buffalo NY -- lawsuit filed by Eastern PVA against a builder and architect of carriage house units that failed to comply with the Fair Housing Act.
- 2012 - consent decree - Park City Utah condominium -- Gulf War veteran with emotional support dog denied waiver of pet fees and insurance requirements. Fines led to non-renewal of lease. HUD Assistant Secretary John Trasvina said “No veteran should be denied the right to have a support animal when they return home with mobility impairments or other conditions.”

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Housing Modification Resources for Veterans with Disabilities

- Specially Adapted Housing Program
 - Grants to modify home owned by veteran
 - Eligibility depends on nature of Vet's disability
 - Temporary Residence Adaptation grants
 - Three time use maximum; Maximum amounts
- 1000 grants annually
- \$650 million grants given to more than 34000 veterans with significant disabilities since 1948

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Specially Adapted Housing Grant

- Eligibility – veterans with certain total and permanent service-connected disabilities that impair mobility
- Goal - provide a barrier-free living environment - generally used to create a wheelchair accessible home.
- Used to :
 - Construct a specially adapted home
 - Remodel an existing home
 - Reduce unpaid principal mortgage balance of an adapted home already acquired
- Maximum amount in 2016 is \$73,768.

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Special Housing Adaptation Grant

- Assist veterans with service-connected mobility issues due to blindness or loss or loss of use of both hands or severe burns.
- Use SHA grants to:
 - Adapt veteran's or family member existing home
 - Adapt home being purchased
 - Help veteran/family purchase home already adapted
- The maximum amount allowable for SHA grants is currently \$14,754.

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Temporary Residence Adaptation [TRA] Grant

- For veterans or seriously injured active duty service members temporarily residing in home owned by family member.
- Up to \$32,384 for SAH eligible
- Up to \$5,782 for SHA eligible
- Counts against the 3 times use
- 8/6/13 –TRA grants don't count against allowable grant total.



Home Improvements and Structural Alterations Grant

- Service-connected or non-service-connected veterans
- HISA grant can be used with SAH or SHA grant
- **\$6,800** for S/C veteran; **\$2,000 for non-S/C veteran**
- Necessary for the continuation of treatment or for access to home & essential lavatory and sanitary facilities.
- Medical determination needed from doctor.
- Uses of grant – build accessible entrance, improve bathroom or kitchen access, install handrails, lower electrical outlets and switches, improve paths or driveways, improve plumbing/electrical work for dialysis patients



Adaptive Housing Grant Info

- SAH [PH] Program Website – <http://benefits.va.gov/HOMELOANS/adaptedhousing.asp>
- SAH [PH] Minimum Property Requirements – www.benefits.va.gov/WARMS/docs/admin26/m26_12/ch07.doc
- Ebenefits Website – to apply for SAH [PH] program – <https://www.ebenefits.va.gov/ebenefits-portal/ebenefits.portal>

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Other Housing Resources

- Homes For Our Troops -- no cost to veterans with disabilities. Completed or in process completing @ 170 homes across the country. Covers costs of construction above the \$64,000 grant. WWW.Homesforourtroops.org
- Rebuilding Together – www.rebuildingtogether.org
- "Accessible Home Design" Book developed by PVA's Architecture Department



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Thank You!

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Veterans with Disabilities

ACCESS TO TRAVEL

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Overview of Travel

- Americans with Disabilities Act
 - Buses
 - Trains
 - Subways
 - Ferries
- Air Carrier Access Act
 - Airplanes

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Americans with Disabilities Act (ADA) and Public Transportation

- Prohibits discrimination against individuals with disabilities in public transportation services.
- Requires:
 - Transit facilities and vehicles or rail cars to be accessible.
 - Personnel to be aware of accessibility features, such as lifts on buses, and trained on how to use them.
 - Announcements and other service-related information to be available in accessible formats.
 - Service animals to be permitted access.

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Accessing Public Buses as a Wheelchair User

- Buses operated by public transit entities must be accessible to passengers who use wheelchairs.
 - Ramps or lifts.
 - Securement devices for wheelchairs.
- Personnel must be trained in using access features, which must be kept in working order.
- Reasonable modifications to service, if requested.

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Accessing Transit as a Service Animal User

- The Department of Transportation's (DOT) regulations allow access for service animals that are individually trained to work or perform tasks for an individual with a disability.
- Unlike the Department of Justice's regulations, DOT allows access for other species of service animals beyond dogs.
- Emotional support animals have no access rights.

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Paratransit Services

- Public transit agencies that provide fixed-route services must provide paratransit services for passengers with disabilities.
- These services must meet certain requirements related to areas of service and provision of service.
- Paratransit trips may not be limited by trip purpose or frequency.

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Resolving Transit Complaints

- Public transit agencies must have complaint processes that allow them to promptly resolve disability-related complaints. These processes must be advertised and accessible to passengers with disabilities.
- Passengers with disabilities may also file ADA-related complaints with the Department of Transportation's Federal Transit Administration, which is responsible for reviewing these complaints.

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ADA and Private Transportation Providers

- Providers such as over-the-road bus and airport shuttle companies must provide accessible service to passengers with disabilities.
- This may include accessible vehicles or the provision of equivalent service.
- Airlines are not covered by the ADA.
- Disability-related complaints should be filed with the Department of Justice.

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Air Carrier Access Act (ACAA)

- Introduced in response to a United States Supreme Court decision holding that Section 504 of the Rehabilitation Act of 1973 did not apply to air carriers.
- Signed into law on October 2, 1986 (PL 99-435).
- Prohibited disability-based discrimination in domestic air travel.
- Amended to include foreign air carriers in April 2000.

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ACAA Protections

- Guide assistance in the airport and in the aircraft.
- Seating accommodations.
- Service animals and emotional support animals allowed.
- Stowage of assistive devices.

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Guide Assistance

- Air carriers must provide assistance, if requested, to the terminal.
- Air carriers must provide assistance, if requested in boarding and deplaning the aircraft. Such assistance includes the opportunity to preboard.

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Seating Accommodations

- Airlines must provide passengers with a seat that meets their disability-related needs within the class of service of the ticket purchased.
- Any additional fees for accommodations such as aisle seats must be waived.
- Passengers with disabilities who use service animals or have fused or fixed legs must have priority access to a bulkhead seat, if requested.

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Service Animals

- Species other than dogs allowed.
- Documentation may be required for psychiatric service animals and emotional support animals. Generally not required for other types of service animals.
- Must be trained to behave in a public setting, including bowel and bladder control.
- Must be trained or able to provide assistance to a passenger with a disability. Or, in the case of an emotional support animal, be necessary for the passenger's well-being.

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Stowage of Assistive Devices

- An air carrier must allow manual wheelchairs, canes, crutches, walkers, and other similar devices on board the aircraft.
- Assistive devices are exempt from carry-on baggage limits.
- Wheelchairs may be stowed in an on-cabin stowage area, if available, or strapped to a seat.
- Lost, damaged, or destroyed assistive devices are exempt from standard damage limits.

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Problems Encountered in Air Travel

- Broken assistive devices.
- Inability to obtain needed seating accommodations.
- Delays in receiving requested assistance.
- Lack of accessible lavatories.
- Airline and contractor training deficiencies.
- Inaccessible in-flight entertainment and communications.

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ACAA Remedies

- Passengers with disability-related complaints may work directly with the air carrier.
- Disability-related complaints may also be filed with the Department of Transportation (DOT).
 - Referred to the air carrier for response.
 - Responses are reviewed and additional action is taken as needed.
 - DOT can levy civil penalties and most often does so in situations involving a pattern of problems.

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No Private Right of Action

- No express right to sue to remedy incidents of discrimination in air travel.
- Many courts originally implied a private right of action.
- Following a United States Supreme Court decision in a non-ACAA case, many courts have subsequently been reluctant to infer a private right of action.

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Pending Changes to the ACAA

- The Department of Transportation initiated a negotiated rulemaking (Reg Neg) in 2016.
- Advisory Committee on Accessible Air Transportation (ACCESS Advisory Committee) appointed to engage in the Reg Neg.
- Issues under review:
 - Definition of service animal.
 - Access to lavatories on single-aisle aircraft.
 - Access to in-flight entertainment and communications.

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QUESTIONS?

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Thank you for participating in today's
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The next scheduled session is:
"ADA Anniversary Update: Celebrating 26 Years"
July 19, 2016

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