

Audio Conference Series

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ADA Enforcement and Steps You Can Take Before You File an ADA Complaint

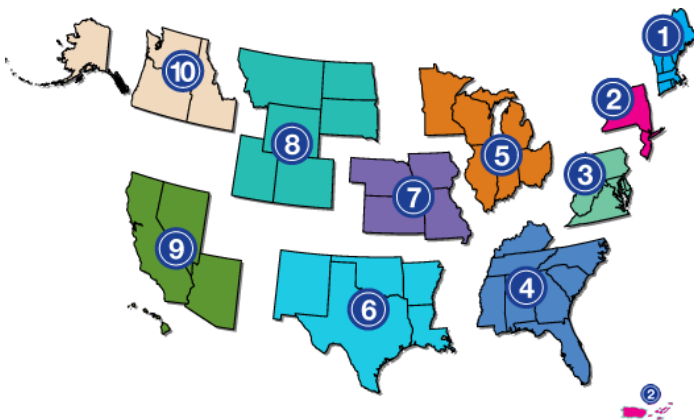
September 20, 2022



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The ADA National Network

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The ADA National Network consists of 10 Regional ADA Centers.

- 800-949-4232 (V/TTY)
- www.adata.org



Funded by the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR).

Presenter

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Disclaimer

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Learning Objectives

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Participants will be able to:

1. Identify the components for change.
2. List the actions that can be taken prior to filing an ADA complaint.
3. Understand the steps to filing an ADA complaint with each federal enforcement agency.

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A Quick Review: Structure of the ADA

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Title I	Employment
Title II	State and Local Government (includes public transportation)
Title III	Public Accommodations (includes private transportation)
Title IV	Telecommunications
Title V	Technical Provisions

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Setting the Stage: What Are Civil Rights?

Civil Rights Definition

*The term civil rights refers to the basic rights afforded, by laws of the government, to every person, regardless of race, nationality, color, gender, age, religion, or disability. This refers to such rights as **equal citizenship, equal protection under the law, and due process.***

Source: legaldictionary.net
(link: legaldictionary.net/civil-rights/)

Characteristics of Civil Rights Laws

Emotionalism

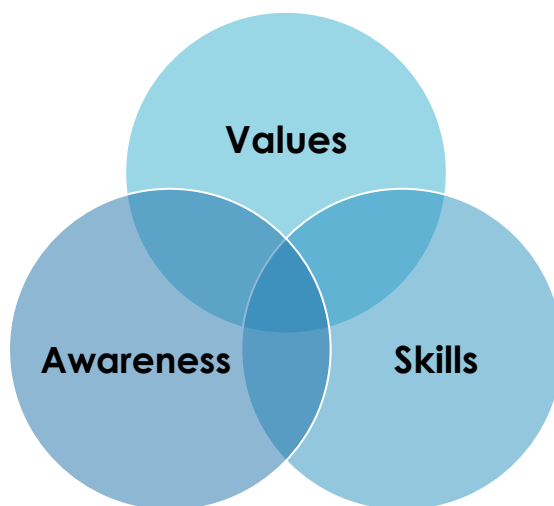
Balance and Compromise

Case-by-Case Analysis

Need a Context

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Components for Change



Disability Rights are Civil Rights

DISABILITY RIGHTS
ARE CIVIL RIGHTS

Steps You Can Take Before Filing an ADA Complaint

Document

Discuss

Write

Negotiate

Mediate

Document

- Document, document, document!
- Put all requests in writing.
- Take pictures, if appropriate.
- Organize documentation.

Discuss

- Discuss the issue with the business owner, manager, corporate office, or employer.
- Stick to the facts.
- Provide solutions to the identified issue.

Write

Write a letter or email to:

- Business owner or manager
- Employer
- Media
- Elected officials

[How To Request an Accommodation: Accommodation Form Letter](#)

Source: Job Accommodation Network

Web: askjan.org/media/accommrequestltr.cfm

Negotiate

Negotiation is a:

- type of discussion used to settle disputes and reach agreements between two or more sides.
- process of "give and take" resulting in a compromise where each side makes a concession for the benefit of everyone involved.

Source: [12 Important Negotiation Skills \(With Definition and Examples\)](#)

Web Link: indeed.com/career-advice/career-development/negotiation-skills

Mediation or Alternative Dispute Resolution

- **U.S. Equal Employment Opportunity Commission**
(slides 26 - 30)
- **U.S. Department of Justice**
(slides 48 - 51)

Federal Agency Enforcement

Review of ADA Title I: Employment

Title I of the ADA prohibits employment discrimination by:

- **private employers** with fifteen (15) or more employees; and
- **state and local governments** regardless of number of employees.

ADA Title I: Employment

Primary Enforcement Agency

U.S. Equal Employment
Opportunity Commission (EEOC)

U.S. Equal Employment Opportunity Commission (EEOC) Responsibilities

- Issuing ADA Title I regulations.
- Issuing policy guidance on the ADA.
- Handling and resolving complaints of employment discrimination.
- In some instances, the EEOC files a lawsuit for ADA Title I violations.
- EEOC may also file an amicus or "friend of the court" brief in cases related to the interpretation of the ADA.

EEOC Referrals to the U.S. Department of Justice

- EEOC refers some employment-related complaints to the U.S. Department of Justice when the employer is a state or local government entity covered by Title II, and the EEOC has been unable to reach a conclusion to the case.

EEOC Complaint Process (slide 1 of 2)

[Filing a Charge of Discrimination with the EEOC](#)

web: eeoc.gov/filing-charge-discrimination

[EEOC Public Portal](#)

web: publicportal.eeoc.gov/Portal/Login.aspx

EEOC Complaint Process (slide 2 of 2)

- After the individual with a disability (or "charging party") files a complaint with the EEOC within 180 or 300 days of the alleged discrimination...
 - An **investigation is conducted** through the local EEOC field office using a variety of options.
 - The EEOC sends a **notice of the charge to the employer** and, in some cases, seeks to have both parties participate in **mediation**.

EEOC Complaint Process: Fair Employment Practices Agencies (FEPAs) and Dual Filing

- Many states, counties, cities, and towns have their own laws prohibiting discrimination, as well as agencies responsible for enforcing those laws.
- [Fair Employment Practices Agencies \(FEPAs\)](#)
web: [eeoc.gov/fair-employment-practices-agencies-fepas-and-dual-filing](https://www.eeoc.gov/fair-employment-practices-agencies-fepas-and-dual-filing)

FEPAs and Filing a Charge

- You may file your charge with either the EEOC or with a Fair Employment Practices Agency.
- [List of Fair Employment Practices Agencies \(FEPAs\)](#)
web: [tinyurl.com/eeoc-fepa-list](https://www.tinyurl.com/eeoc-fepa-list)
- Worksharing agreement with EEOC
- Dual Filing

EEOC Review of FEPA Decisions

- If a FEPA has a **contract with EEOC**, a Charging Party may request that the **EEOC review the determination of the FEPA.**
- Request must be submitted in **writing** within **15 days of receipt of FEPA's determination.**

Mediation

- An **informal and confidential way for people to resolve disputes** with the help of a neutral mediator who is trained to help people discuss their differences.
- The mediator does not decide who is right or wrong or issue a decision.
- Instead, the mediator helps the parties work out their own solutions to problems.

EEOC Mediation Overview (slide 1 of 5)

- **Mediation Overview**
Source: U.S. Equal Employment Opportunity Commission
web link: [eeoc.gov/mediation](https://www.eeoc.gov/mediation)
- In some instances, the EEOC or **an appropriate state agency**, may visit the employer to hold interviews and gather documents.
- In other instances, the EEOC interviews witnesses and asks for documents.

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EEOC Mediation Overview (slide 2 of 5)

- The EEOC may, through a work-sharing arrangement, **refer the case to an appropriate state agency** for handling.
- Or, if the charge is found to be legally sound, the EEOC may **seek a settlement with the employer**, or may **offer mediation** to the employer and the charging party.

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EEOC Mediation Overview (slide 3 of 5)

- **If a settlement cannot be reached with the employer, a lawsuit may be filed** by the EEOC on behalf of the charging party.
- EEOC legal staff (or the Department of Justice, in certain cases) will decide whether the agency should file a lawsuit.

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EEOC Mediation Overview (slide 4 of 5)

- The EEOC may choose to **end its investigation** if the agency decides that the law was not violated or if settlement efforts are not successful.
- If the EEOC ends its investigation, the agency will issue a "**right to sue letter**" that informs the charging party the investigation has ended and states that, regardless of what the EEOC has determined, the charging party has the right to file a lawsuit against the employer.

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EEOC Mediation Overview (slide 5 of 5)

- **The charging party then has 90 days to file a lawsuit.**
- If a lawsuit is not filed within that period, the charging party is barred from filing a future lawsuit against that employer.

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Important Points to Remember (slide 1 of 3)

- Title I of the ADA applies to **private employers if they have 15 or more employees.**
- Title I of the ADA applies to **employees of state and local governments, regardless of how many employees work for the government entity.**
- An **administrative complaint must be filed with the EEOC or FEPA before** a civil action (i.e., filing a lawsuit) can be started.

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Important Points to Remember (slide 2 of 3)

- Pay close attention to the established **timeframes**.
- EEOC complaints against employers **must be filed within specific timeframes** after the alleged discrimination.
- The **time frame varies** based upon whether or not there is a local or state agency that can handle a discrimination complaint.

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Important Points to Remember (slide 3 of 3)

- The time frames are:
 - **180 days** to file in states **without a local or state agency** to handle a discrimination complaint; or
 - **300 days** to file in states where **there is a local or state agency** (also known as [Fair Employment Practices Agencies \[FEPAs\]](#)) that can handle a discrimination complaint.

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Review of ADA Title II and ADA Title III

- **Title II of the ADA** prohibits discrimination by state and local government agencies.
- **Title III of the ADA** prohibits discrimination by public accommodations (private businesses).

ADA Title II and ADA Title III: Primary Enforcement Agency

- U.S. Department of Justice (DOJ) has the authority to enforce all parts of the ADA.
- Agency focuses **primarily on ADA Title II: State and Local Government** and **ADA Title III: Public Accommodations**.
- DOJ refers employment complaints to the EEOC unless the employer is a state or local government agency directly funded by DOJ.

ADA Title II and ADA Title III:

**U.S.
Department
of Justice
(slide 1 of 2)**

- **issues the regulations implementing Title II and Title III of the ADA and the ADA Amendments Act of 2008 (ADAAA).**
- **reviews state building codes for ADA equivalency** and works with the U.S. Access Board, an independent Federal agency, to issue accessibility regulations.

ADA Title II and ADA Title III:

**U.S.
Department
of Justice
(slide 2 of 2)**

- **Answers some ADA questions directly in the form of letters,** usually addressed to U.S. Representatives and Senators. These letters do not have the force of law. They do represent the DOJ's opinion on certain matters.
- **Publishes material** about the Americans with Disabilities Act.
- **Works closely with the ADA National Network** to answer questions about the law.

How to File an ADA Complaint with the U.S. Department of Justice

- Most DOJ enforcement is conducted by the [Disability Rights Section of the DOJ Civil Rights Division](#).
- However, **local U.S. Attorneys** may participate in enforcement.
- DOJ may resolve some complaints using a **mediator**.

ADA Title II Referrals, as appropriate

- (1) Department of Agriculture
- (2) Department of Education
- (3) Department of Health and Human Services
- (4) Department of Housing and Urban Development
- (5) Department of Interior
- (6) Department of Justice
- (7) Department of Labor
- (8) Department of Transportation

Filing an ADA Complaint with the U.S. Department of Justice – Online and Fax

Complaints can be filed in three ways:

1. **File an ADA Complaint Online**
[U.S. Department of Justice Civil Rights Violation Online Complaint Form](https://www.civilrights.justice.gov/report/)
web: [civilrights.justice.gov/report/](https://www.civilrights.justice.gov/report/)
2. **File a DOJ ADA Complaint by Fax**
202-307-1197 (fax)

Filing an ADA Complaint with the U.S. Department of Justice – U.S. Mail

3. File a DOJ ADA Complaint by U.S. Mail

U.S. Department of Justice
950 Pennsylvania Avenue, NW
Civil Rights Division
Disability Rights Section – 1425
NYAV
Washington, D.C. 20530

What happens when a complaint is filed with the DOJ? (slide 1 of 4)

Settlement Agreements

- An agreement, which does not have the force of law, between the DOJ and a covered entity to settle a lawsuit before it goes to trial.
- The DOJ and the covered entity agree to dismiss the lawsuit, with the covered entity usually agreeing to take certain steps to reach ADA compliance.

What happens when a complaint is filed with the DOJ? (slide 2 of 4)

Consent Decrees

- A formal settlement agreement, which has the force of law, between the DOJ and a covered entity that is subject to a court's approval and supervision.

What happens when a complaint is filed with the DOJ? (slide 3 of 4)

Court Decisions

- If an ADA case where DOJ is a party, or has submitted an amicus brief, goes to trial or is appealed, a Court may issue a decision on the merits of the case. These court decisions have the force of law.

What happens when a complaint is filed with the DOJ? (slide 4 of 4)

Court Decisions (continued)

- However, unless the decision is made by the U.S. Supreme Court, the decision only applies in the states within that particular area covered by one of the 12 federal circuit courts.
- The U.S. Supreme Court decisions, however, become the law of the land on that particular issue.

ADA Title II: Timelines for filing a complaint with the U.S. DOJ

- A complaint must be filed within **180 days of the date of the alleged act(s) of discrimination**, unless the time for filing is extended by the Federal agency for good cause.
- As long as the complaint is filed with any Federal agency, the 180-day requirement will be considered satisfied.

ADA Title III: Timeline for filing a complaint with the U.S. DOJ

- There is **no timeline for filing a complaint under ADA Title III**.
- However, best practice is to file a complaint as soon as you experience the discrimination.
- Using the timeline established under the ADA Title II regulations (180 days) is a good guideline.

U.S. Department of Justice's ADA Mediation Program

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- DOJ refers appropriate ADA disputes to mediators **at no cost** to the parties.
- DOJ are professional mediators who have been **trained** in the legal requirements of the ADA.
- Since its inception, the Program has mediated more than **5,000 complaints nationwide**, with more than **75% of them resulting in successful resolutions.**

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DOJ Mediation and the ADA (slide 1 of 2)

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- Mediation is a **process** that brings parties together with a neutral mediator to resolve their differences through discussion and problem-solving.
- **Complaints under both ADA Title II** (State and local government services) and **ADA Title III** (public accommodations) can be mediated.

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DOJ Mediation and the ADA (slide 2 of 2)

- Disputes where **potential remedies are flexible** are most appropriate for mediation and include providing effective communication, eliminating architectural barriers, or eliminating discriminatory policies.

Why Consider Mediation?

- Free
- Party-Driven
- Confidential
- Quick
- Preserves Relationships
- Successful

Filing a Private Civil Suit under ADA Title II or ADA Title III

The procedures for enforcing Titles II and III of the ADA are different from those for Title I of the ADA.

Under Titles II and III of the ADA, individuals can file private civil lawsuits to enforce the provisions without filing an administrative complaint with the DOJ.


In these cases, the DOJ may decide to intervene in the lawsuit if it will address a major ADA issue.

DOJ may also choose to file an amicus or "friend of the court" brief to address important legal issues in a private ADA lawsuit.

ADA Title IV: Enforcement Agency

The **Federal Communications Commission (FCC):**


- enforces Title IV of the ADA.
- monitors enforcement through a complaint driven process.
- also developed the regulations for ADA Title IV that established the functional requirements, guidelines, and operations procedures for telecommunications relay services.



Federal Communication Commission – Other disability- related matters (slide 1 of 2)

The FCC's Disability Rights Office addresses disability- related matters, including:

- access to telecommunications services and equipment;
- hearing aid compatibility;
- access to advanced communications services and equipment;
- access to Internet browsers built into mobile phones;



Federal Communication Commission – Other disability- related matters (slide 2 of 2)


- telecommunications relay services;
- the National Deaf-Blind Equipment Distribution Program; and
- accessible video programming and video programming apparatus (e.g., access to televised emergency information, closed captioning on television and television programs on the Internet, video description, and accessible user interfaces, text menus, and program guides).

FCC Complaint Process

- File a complaint in the [FCC Consumer Complaint Center](https://consumercomplaints.fcc.gov/hc/en-us) at consumercomplaints.fcc.gov/hc/en-us.
- If the complaint is about a telecommunications billing or service issue, it will be processed by the FCC's Consumer Inquiries and Complaints Division.


What happens when a complaint is filed with the FCC? (slide 1 of 3)

- An email will be sent confirming that the complaint is received.
- Periodic updates are sent for certain types of complaints.
- You can respond directly to one of those emails to update your complaint.
- An FCC consumer representative may contact the person who filed the complaint for more information, if necessary, to complete the complaint.



What happens when a complaint is filed with the FCC? (slide 2 of 3)

- The complaint will be reviewed by the FCC. Complaints may not be something that the FCC can address or violate a rule.
- When all required information has been gathered, the FCC sends the complaint to the service provider.



What happens when a complaint is filed with the FCC? (slide 3 of 3)


- The provider is required to respond in writing to the complaint within 30 days of receipt of the complaint.
- The provider must provide a copy of the response to the person who filed the complaint.

ADA Title V: Enforcement Agency

- Since most ADA Title V provisions apply to all titles of the ADA, they are **enforced by the federal agencies responsible for each title.**

Title V of the ADA (slide 1 of 2)

- allows courts or federal enforcement agencies, at their discretion, **to award a reasonable attorney's fee, including litigation expenses and costs to the prevailing (or winning) party;** and



Title V of the ADA (slide 2 of 2)

- encourages the use of **alternative dispute resolution (ADR)**, including settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration.



Tips for Success

- Ask for help, if you need it.
- Document, document, document!
- Keep a copy of your complaint and the original documents for your own records.
- Pay attention to timelines.
- Stay calm.
- Be patient.

QUESTIONS



**You may type and submit questions in the
Q&A Area of the Zoom Platform**



Still Have Questions?

Contact your Regional ADA Center



800-949-4232 (V/TTY)



www.adata.org



Audio Conference Series

Session Evaluation

Your feedback is important to us

You will receive an email following the session
with a link to the on-line evaluation



Audio Conference Series

Next Session:

Tuesday, October 18, 2022

**Disability and DEI
(Diversity, Equity, and Inclusion)
Panel Discussion**

Registration available at: www.ada-audio.org

