ADA Compliance: What That Truly Means for You

Stacy Hart, ADA Trainer
New England ADA Center

Elisabeth Hubbard
Assistant ADA Coordinator for Employment

Institute for Human Centered Design 560 Harrison Ave. Boston MA

Governor's Commission on Disabilities 2 Cherry Dale Court Cranston, RI

adainfo@ihcdesign.org 800-949-4232 401-462-0100







New England ADA Center

member of





1-800-949-4232

Funded by

National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR)







A Project of Institute for Human Centered Design



An international design & education non-profit dedicated to enhancing the experiences of people of all ages and abilities through excellence in design









Rhode Island Governor's Commission on Disabilities

What does the RI GCD do?

- Provide technical assistance to individuals, business and groups about the Americans with Disabilities Act and related laws
- Provide a complaint process for individuals believe they have been discriminated against based on their disability
 - Access to a public accommodation
 - Access to a state service
 - In employment (state employees and private employers)
- Provide assistance with funding for home modifications for individuals with disabilities.

What else does the RI GCD do?

- Approve construction of all buildings funded with state funds, including schools.
- Act as a resource to municiplalites:
 - questions about accessibility in buildings
 - questions about accessibility in programs
 - how to provide reasonable accommodations to residents

We are here to help!

Topics of the Day

- Brief Overview of the ADA
 - Disability Statistics
 - Reasonable Modifications of Policies
 - Effective Communication
- Emerging Issues
 - Web Access
 - Artificial Access
 - Transgender Dysphoria







Civil Rights Laws



Section 504 of the Rehabilitation Act, 1973



Americans with Disabilities Act, 1990



Don Galloway and Ed Roberts





Americans with Disabilities Act

Title I Employment

Title II State and Local Governments

Title III Public Accommodations and Commercial Facilities

Title IV Telecommunications

Title V Miscellaneous







ADA Definition of Disability

- A physical or mental impairment that substantially limits one or more major life activities
 - This includes disabilities that are episodic in nature (depression, autoimmue)
- 2. A record of such an impairment
- 3. Being regarded as having such an impairment







ADA and Major Bodily Functions-

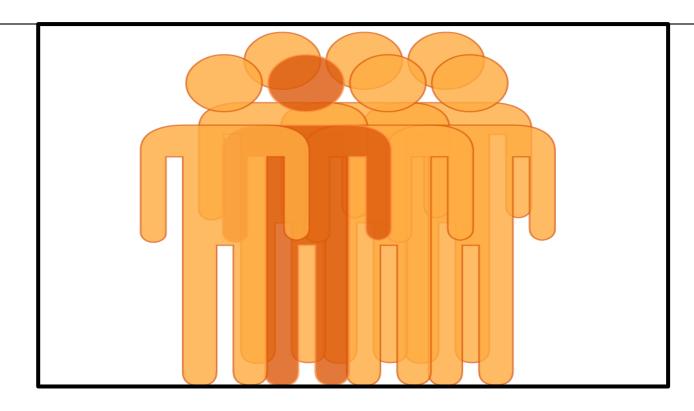
- Immune system: HIV/AIDS, auto-immune disorders, lupus
- Normal cell growth: cancer
- Digestive: Crohn's disease, celiac disease
- Bowel: ulcerative colitis
- Bladder: kidney disease
- Reproductive functions: infertility
- Neurological: multiple sclerosis, epilepsy
- Brain: schizophrenia, intellectual disabilities, mental illness
- Respiratory: asthma
- Circulatory: heart disease, high blood pressure
- Endocrine: diabetes







Global Prevalence of Disability



1.3 Billion – 16% of people on the planet have a disability, the world's largest minority





US Prevalence of Disability

61 M US adults

1 in 4 adults

Largest minority in the US

40% of people 65+

Why is the US prevalence of disability so much higher?

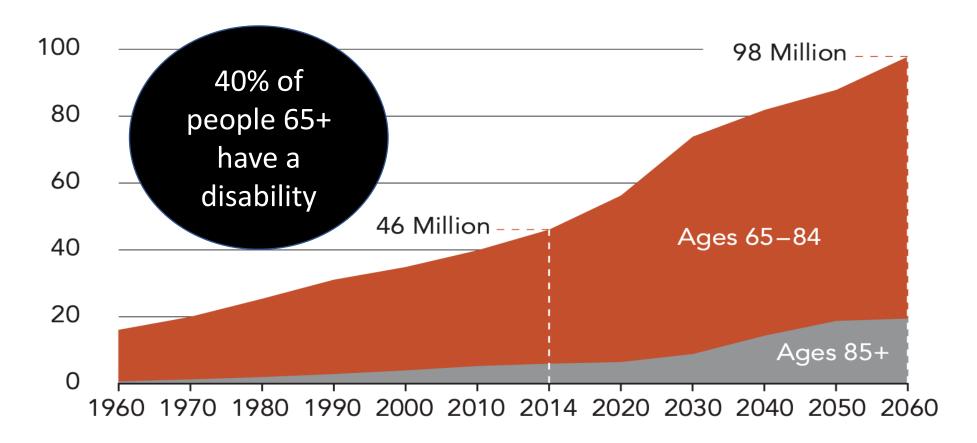
- US committed to gathering data on disability
- ■Counts adults from age 22 to the end of life
- ■Counts the spectrum of brain-based conditions which many parts of the world don't
- Counts chronic health conditions which many parts of the world don't





The Number of Americans Ages 65 and Older Will More Than Double by 2060.

U.S. Population Ages 65 and Older, 1960 to 2060 (Millions)

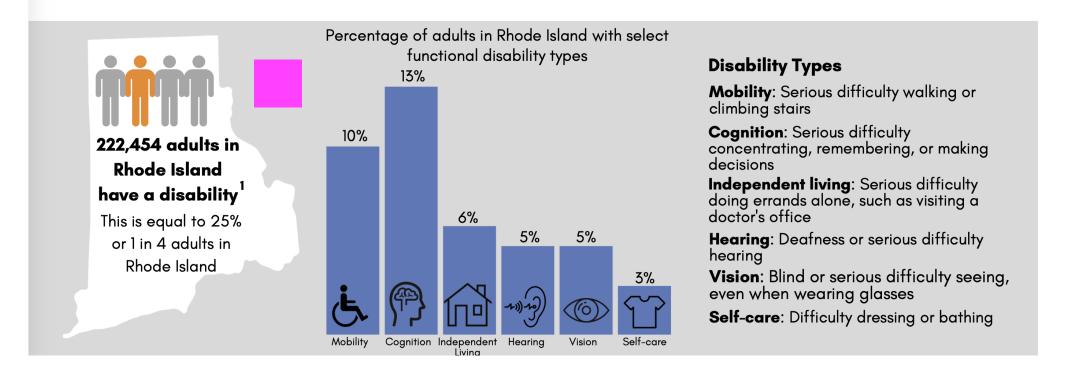


Source: PRB analysis of data from the U.S. Census Bureau.

CDC's National Center on Birth Defects and Developmental Disabilities DISABILITY IMPACTS RHODE ISLAND



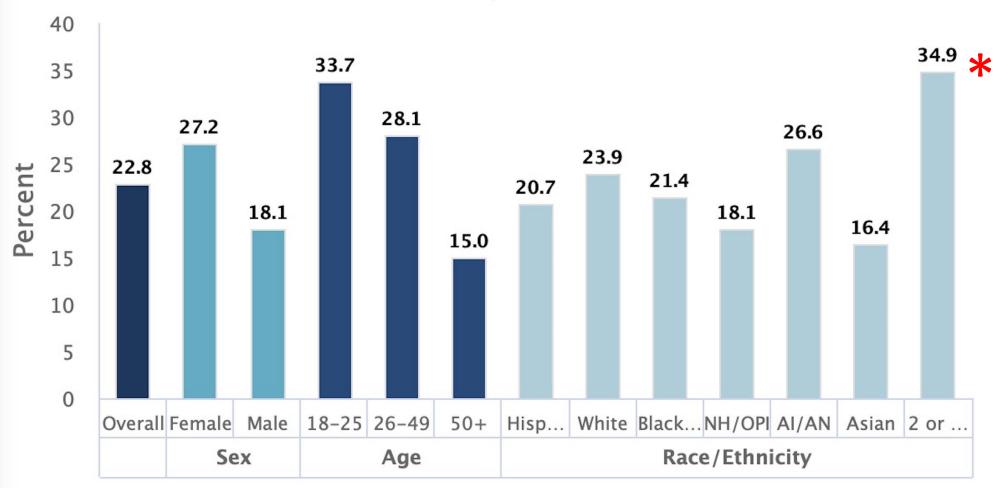
Everyone can play a role in supporting more inclusive state programs, communities, and health care to help people with, or at risk for, disabilities be well and active in their communities. Join CDC and its partners as we work together to improve the health of people with disabilities.



- * Mobility 1.4 % of adults use wheelchairs. Ten times that number have difficulty walking.
- * Brain-based ("cognitive") is the leading reason for disability in all six New England States!

Past Year Prevalence of Any Mental Illness Among U.S. Adults (2021)

Data Courtesy of SAMHSA



^{*} People who identify with 2 or more races – now 10+% of population



A new understanding of "Neurodiversity"

Being neurodivergent means having a brain that works differently from the average or "neurotypical" person.

- Among adults, dyslexia is the most common type of neurodivergent condition. Approximately 10% of adults are diagnosed with dyslexia.
- > Around 4-5% of the population has attention deficit hyperactivity disorder (ADHD).
- A further 1-2% of adults has an autism spectrum disorder (ASD).

Together, those three syndromes constitute around 70 percent of all neurodevelopmental disorder diagnoses. There is a trend led by people with mental health conditions to choose neurodiversity as a preferred way to describe their experience.

Chronic Diseases in America

CDC's National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP)

CHRONIC DISEASES IN AMERICA

Highest rates among Black Americans

(Social Determinants of Health)

6 IN 10

Adults in the US have a chronic disease



4 IN 10

Adults in the US have two or more

THE LEADING CAUSES OF DEATH AND DISABILITY and Leading Drivers of the Nation's \$4.1 Trillion in Annual Health Care Costs



If you don't serve people with disabilities, you don't serve many other audiences completely either.





https://www.lgbtmap.org/file/LGBT-People-With-Disabilities.pdf https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html





Hearing & Sight limitations in the US

Number of adults with hearing trouble: 40 million

Percent of adults - 15.5%

.22% (about 750,000) are culturally Deaf (ASL as primary

language)

[National Health Interview Survey (NHIS) 2023]

Number of adults with vision trouble: 24.8 million

Percent of adults - 7.7%

85% of adults with vision limitations have low vision

Less than 10% of legally blind Americans read braille





3 broad categories of functional limitation:

Physical

Mobility
Reach
Dexterity
Strength
Stamina

Sensory

Sight Hearing Speech Touch

Brain-based

Learning
Neurological
Developmental
Mental health
Cognitive
Brain injury
Substance Use
Dementia

General Nondiscrimination

Ensure an equal opportunity to participate and benefit.

Prohibit exclusion, segregation, and unequal treatment.

 Prohibit eligibility criteria that screen out persons with disability unless criteria are <u>necessary</u>.







General Nondiscrimination

 Administer services, programs, and activities in the most integrated setting appropriate.

 May not place a surcharge to cover the costs of measures, such as auxiliary aids, that are required to provide nondiscriminatory treatment.







General Nondiscrimination Reasonable Modifications

When necessary to ensure equal opportunity to participate, "reasonable modifications" must be made to policies, practices, procedures.







ADA Service Animal Definition

Any <u>dog</u> individually trained to do work or provide tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability











Not considered work or tasks

The crime deterrent effects of animal's presence

The provision of

- emotional support
- well-being
- comfort
- companionship









Questions That May be Asked:

Is the dog a service animal required because of a disability?

2. What work or task has the animal been trained to provide?









Service Animals

Must be under control of handler at all times (on leash except in narrow circumstances)









Reasonable Modifications Cont.



- Allow someone to participate virtually.
- Use unscented cleaning products.
- Hold scent free or nut free events.
- Allow someone to bring an assistant (Can't require).
- Change the way you present information.
- Allow more time/longer appointment.
- Provide help completing forms.
- Ask staff to mask.







End of General Nondiscrimination and Reasonable Modifications

Next: Ensuring Effective Communication







ADA Effective Communication

Ensure that communication with people who have disabilities is as effective as communication with others













Effective Communication

People who:

are blind or visually impaired are deaf or hard of hearing or have a speech disability









Effective Communication

Auxiliary Aids and Services

Must provide "auxiliary aids and services" if necessary to ensure effective communication.







Auxiliary Aids and Services

- Sign Language Interpreters
- Note takers/exchange of written notes
- Written Materials/Large Print
- Closed Captioning
- Audio Recording
- Screen Reader
- Optical Reader
- Secondary Auditory Programs (SAP)
- Large Screen
- CCTV

- Video Remote Interpreting
- Computer-aided Transcription Services (CART)
- Assistive Listening Devices (ALD)
- Qualified Readers
- Braille Materials
- Magnifier Software
- Software Zoom, Dragon, Jaws
- Staff Assistance
- Telephone Headset





Choosing an Auxiliary Aid or Service





Factors that help in determining the appropriate auxiliary aid or service:

- Individual's preferred communication method.
- Nature, length and complexity of communication.
- Context and location where the communication is taking place.







Choosing an Auxiliary Aid or Service



To be effective, auxiliary aids and services must be provided:

- In accessible formats.
- In a timely manner.
- Protect the privacy and independence of the individual...







End of Effective Communication

Next: Emerging Issue – Website Access





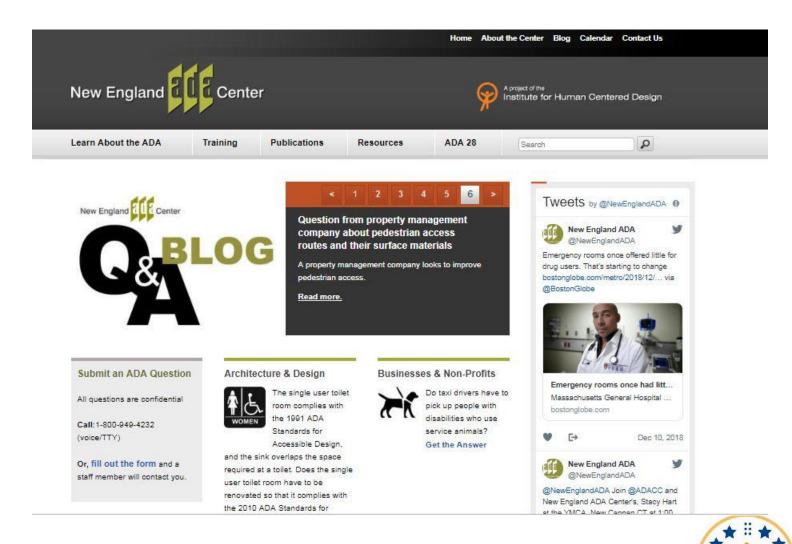


Web Accessibility

Example of accessible website

World-Wide Web's Web Content Accessibility Guidelines (WCAG)?

www.w3.org/WAI







Barriers for people with disabilities:

- Conveys content visually through a graphic, image or chart without labeling with "alternative text"
- PDFs appear as images are often missing a text description.
- Content not organized to allow users to navigate effectively examples-lack of clear titles, section headings, ways to bypass blocks of content that are repeated on multiple pages
- Requiring the use of a mouse without keyboard alternatives
- Displaying content that cannot be adjusted by font, size, or color contrast
- Audio information without captioning
- Flashing visual content that can trigger seizures
- Poor color contrast
- Overlays
- 3rd party content that is inaccessible







Web Accessibility

What does access mean:

- Be able to use website without a mouse (use the site with tabbing and keyboard controls).
- Be able to submit a form with the Enter key, not just a mouse click.
- Describe what hitting 'Enter' means beyond click here.
- Provide a text description for images.
- Provide captioning on videos.







Defining Web Accessibility

- No ADA standard; WCAG is considered industry standard
- Web Content Accessibility Guidelines (WCAG)
 - Developed by Web Accessibility Initiative (WAI) of the World Wide Web Consortium (W3C)
 - Contain 12 guidelines for web access
 - *Has three levels of success criteria, A, AA, AAA
 - ❖WCAG 2.0: Updated in Dec 2008
 - **❖** WCAG 2.1: Updated in June 2018
 - **❖** WCAG 2.2: Expected out in 2022
- WCAG 2.0 is incorporated into other federal standards
 - Section 508 (federal agencies)







DOJ Guidance & Enforcement

<u>2022 DOJ guidance</u>: Existing technical standards provide helpful guidance – reference WCAG and Section 508

Generally speaking, courts have declined to equate failure to comply with WCAG as a basis for liability – though finding it informative







Lessons from Settlement Agreements

- Draft/implement website accessibility policies
- Maintain an employee as web accessibility coordinator
 - Train website content personnel on how to conform content and services to WCAG 2.1 AA
 - Add accessibility to performance review of employees
 - Automated + manual + user testing
 - Retain an independent consultant to evaluate website and online services and do annual evaluations
- Ensure website has an accessible link for feedback; have a set period of time to take reasonable steps to remediate issues
- Focus on accessibility during procurement process
 Lessons from DOJ Settlement with <u>H&R Block</u>; DOJ Settlement with <u>Hy-Vee</u>; Private settlement with <u>Sweetgreen</u>

Resources

- Accessible Procurement Toolbox: https://private.disabilityin.org/procurementtoolkit/
- The World Wide Web Consortium compiled a list of various sites that assess website accessibility:
 - www.w3.org/WAI/ER/tools/complete
 - https://www.w3.org/WAI/test-evaluate/preliminary/ DIY Easy Check audits
- Caution: No online tool is perfect. First step only.
 - Example: Can tell if "alt text" is missing but the auto generated captions not accurate





End of Website Access

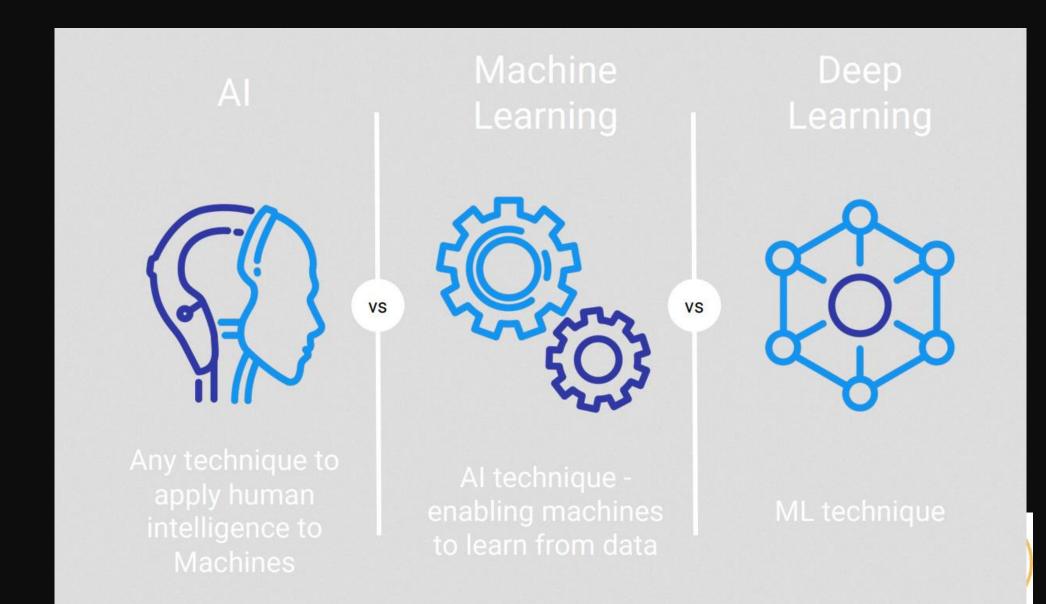
Next: Emerging Issue – Artificial Intelligence







What Do We Mean By Al



EEOC Defines AI and ML

- EEOC defines an "algorithm" as a set of instructions that can be followed by a computer to accomplish some end. National Artificial Intelligence Initiative Act of 2020 at section 5002(3).
- The <u>National Artificial Intelligence Initiative</u> Act (NAIIA) defines AI as a "machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments."
- EEOC also references the <u>National Institute of Standards and</u>

 <u>Technology Special Publication 1270</u>, Towards a Standard for Identifying and Managing Bias in Artificial Intelligence.







noun

bet

a thing predicted; a forecast.

"a prediction that the Greeks would destroy the Persian empire"

prognostication Similar: forecast prophecy divination prognosis augury

projection conjecture auspication

guess

vaticination

· the action of predicting something.

"the prediction of future behavior"





prognostic



What's Wrong with Artificial Intelligence and Machine Learning (ML)

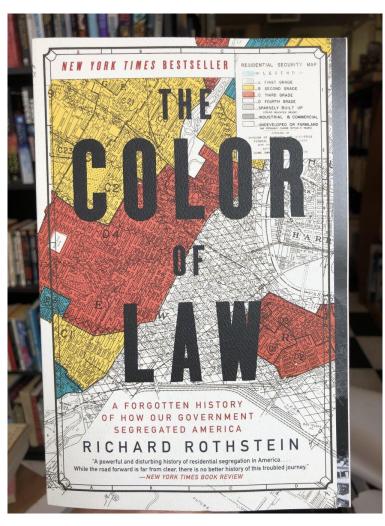
- The predictive strength of any AI or ML algorithm is based on the information it is fed by human sources.
- Concern: the technology could perpetuate existing biases whether against people applying for jobs, home loans, or unemployment insurance.
- Any issue surrounding the adoption of artificial intelligence to perform business functions normally performed by humans is uncharted ethical and legal territory.







What's Wrong with Artificial Intelligence and Machine Learning (ML)



Like any service that anchors on zip code as a decision factor, a machine learning model can encode many biases - based on history, sampling and limited scope of the model creators knowledge.







Who is liable when a robot discriminates?

- In 2019 Amazon scrapped a resume screening model that penalized resumes with the word "women's"—as in "women's chess club captain"—and downgraded graduates of two all-women's colleges. The spurious correlation the screening model relied on was attributed to training data that was heavily skewed toward male applicants.
- <u>2021 Bloomberg Fired by Bot at Amazon</u> Contract drivers say algorithms terminate them by email—even when they have done nothing wrong.
- The AI penalized drivers for issues beyond their control; e.g., bad traffic, gates not opening, vehicle breakdowns, etc.

No recourse for contract gig drivers – must pay \$200 to seek mandated Binding Arbitration





EEOC-DOJ Joint Guidance -1

- Title: <u>The Americans with Disabilities Act and the Use of Software</u>, <u>Algorithms</u>, and <u>Artificial Intelligence to Assess Job Applicants and Employees</u>.
- Advises employers that the use of artificial intelligence (AI) and algorithmic decision-making processes to make employment decisions could result in unlawful discrimination against applicants and employees with disabilities;
- The guidance clarifies that employers are responsible for ensuring their hiring technologies—including embedded AI—comply fully with the ADA--even if the technology is administered by a third party vendor.

EEOC-DOJ Joint Guidance -2

- If the use of an AI or ML technology has the effect of screening out applicants with disabilities, or adversely impacting individuals with a disability, the employer may violate the ADA—regardless of intent.
- If the technology is not accessible to an applicant due to a disability, the employer has an obligation to make a reasonable accommodation--even if the request is made in connection with the third party vender who sells and manages the technology.







Examples of AI in hiring

- Advertising jobs to targeted applicants;
- Application screening software prioritizing applicants using keywords or automatically screening out individuals without certain qualifications;
- Testing software that grades job applicants or employees on personality traits, aptitudes, or cognitive skills—including time spent taking the test;
- Online interviewing "chat" boxes or "chat-bots;"
- Scoring resumes based on vague or unexplained criteria.
- Chat Bot
- Online Chat Bot







Examples of AI During Employment

- Automated AI-ML tools that organize work schedules and select which employees work in a given schedule.
- Al that monitors employee location, productivity and performance.
- Other AI-ML tools used to make pay, disciplinary, and termination decisions.







Common barriers to access present in web or computer-based tools

- Incompatible with screen-reading software used by blind and visually impaired users;
- Color contrast issues posing barriers for individuals with color deficiencies or epilepsy;
- Videos lacking alternative text or closed captions for individuals with hearing impairments;
- Use of timers or timing schemes that impose barriers for individuals with intellectual or dexterity disabilities preventing use of keyboard or mouse.
- Employee task measuring platform







Potential Problems 1

- Al decision-making tool unable to distinguish limitations created by a disability; i.e., the tool measures the extent of the disability instead of what it purports to measure.
- If an application or resume of an applicant is rejected because a disability caused a low or unacceptable rating, the applicant will be effectively screened out because of the disability; e.g., visually impaired applicants who require longer testing or form completion times because text-to-speech screen readers can only read on a line-by-line basis or because the web-based process is inaccessible.





Potential Problems 2

- Video interviewing software that analyzes applicants' speech
 patterns to reach conclusions about their ability to solve problems is
 not likely to score an applicant fairly if the applicant has a speech
 impediment that causes significant differences in speech patterns."
- Video interviewing tools that measure facial expressions and/or eye contact—e.g., how many smiles, winks, blinks, frowns, and/or neutral or blank expressions. Many individuals have disabilities that affect facial and physical expressions.







Recommendations for Employers

- Examine computerized hiring tools to ensure algorithms in the AI do not unfairly screen out individuals with disabilities;
- Ensure the technology is accessible to individuals with disabilities;
- Provide clear information and procedures to job applicants for requesting a reasonable accommodation and ensure that asking or getting an accommodation does not decrease an applicant's chances of being hired;
- Screen technology vendors carefully to ensure compliance with the ADA;
- Keep accommodation requests or "chat" dialogues confidential in a confidential file separate from any application or job performance files.







Recommendations for Employers 2

- Employers using AI, ML, and other job-screening and performance-measuring software should ensure that applicants and employees are notified of options to request accommodations—including alternative methods to gain equal participation in a given process of hiring or job performance measurement.
- Staff should be trained to recognize and respond to requests for accommodations (which often do not use the word "accommodation; e.g., requests to take a test in an alternative format or to be assessed in an alternative way.





Recommendations for Employers 3

- Employers should minimize the chances that tools used disadvantage individuals
 with disabilities--including looking for software that has been tested by users
 with disabilities, providing clear instructions for accommodations, and avoiding
 screening for traits that may reveal disabilities.
- Use AI tools only to measure qualifications that are truly necessary for the job and to measure those qualifications directly--rather than through characteristics or scores on personality assessments.
- The vendor should be able to verify that the tool does not solicit information regarding an applicant's medical conditions or disabilities; e.g., do you experience mood changes?





Tentative Proposed Bill of AI Rights

- The right to know when and how AI is influencing a decision that affects civil rights and civil liberties,
- Freedom from being subjected to AI that has not been carefully audited to ensure that it is accurate, unbiased, and has been trained on sufficiently representative data sets.

Freedom from pervasive or discriminatory surveillance and monitoring in your home, community, and workplace,

• The right to meaningful recourse if the use of an algorithm results in harm.







Recent Articles - Disability & Al

Generative AI & Disability Webinar (June, 13 2023)

EU AI Act & Disabilities (OECD)

How cognitive diversity in AI can help close the disability inclusion gap

Digital equity gap, coding for all and generative Al

How ChatGPT Could Help or Hurt Students With Disabilities

The role of AI in making CX more accessible and inclusive







End of Artificial Intelligence

Next: Emerging Issue – Gender Dysphoria







Gender Dysphoria

- On May 18, 2017, in <u>Blatt v. Cabela's Retail, Inc.</u>, the United States District Court for the Eastern District of Pennsylvania
- Gender dysphoria—a new diagnosis (2013) that describes the clinically significant distress that some transgender people experience—is not excluded by the ADA.
- Significantly, the U.S. DOJ has reached the same conclusion in statements of interest filed in <u>Blatt</u> and a second federal district court case.







Gender Dysphoria

- Discriminatory employment practices termination, the failure to provide reasonable accommodations and the denial of genderappropriate uniforms, nametags, and bathroom access;
- Discriminatory government services state prison policies that deny access to proper medical care and gender-appropriate facilities and uniforms; public and private school policies that deny access to gender-appropriate facilities and other services, birth certificate laws that require proof of gender confirmation surgery in order to change the gender marker on one's birth certificate, and state laws like North Carolina's H.B. 2 that deny access to gender-appropriate facilities; and
- Discrimination in places of public accommodation (e.g., hotels, restaurants, theaters, and retail stores) denial of admission or refusal, of services.

 New England Fire Center Institute for Human Centered Design

The ADA Treats AUD and SUD Differently

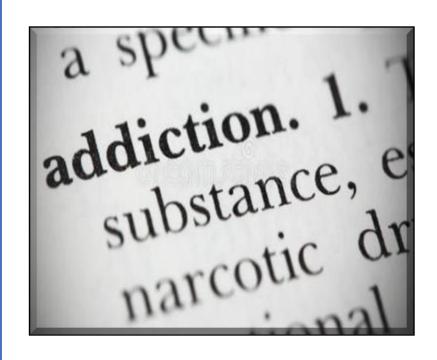




People with Alcohol Use Disorder (AUD) have ADA protections in recovery and while using alcohol.

People with Substance Use Disorders (SUD) have ADA protections in recovery, and when not engaging in the illegal using drugs.

Alcohol Use Disorder



- Is generally a "disability" regardless of whether the person is in recovery or currently drinking alcohol.
- The addiction must substantially limit a major life activity, like learning, working, sleeping, or thinking, etc.



What Does "In Recovery" Mean?



Boston Common 2022 Celebrating Recovery Month September Massachusetts Organization for Recovery

The ADA's Definition of Recovery:

- Is in recovery from substance use disorder
- 2. Has ceased engaging in the current illegal use of drugs
- 3. Is participating in a supervised rehabilitation program, *or*
- 4. Has been successfully rehabilitated.

Americans with Disabilities Act, As Amended Section 12114 **Web:** https://www.ada.gov/pubs/adastatute08.pdf





What Does "Illegal Use of Drugs" Mean?



- 1. Use of **illegal drugs** such as heroin or cocaine
- Use of legal drugs such as opioids:
 BUT person has no prescription
 OR has a fraudulent prescription
 OR is using more than prescribed



What Does "Current" Mean?



Current illegal use of drugs means:

- "Illegal use occurred recently enough to justify a reasonable belief that a person's drug use is a real and ongoing problem."
- "Current" is not limited to the number of weeks or days, but is determined on a case-by-case basis or an individualized assessment.



Medical Cannabis is Illegal under the ADA



 Even when used to treat a medical condition with a card, certificate or medical prescription.

*However, check your state law





State Law May Provide Protections for Medical Use of Cannabis



- If medical cannabis is legal under state law, employers may need to consider reasonable accommodations for employees with disabilities for offsite use of medical marijuana.
- However, an employee who uses or is high at work has NO protections under either federal or state law.





Resources

1. Questions About the Americans with Disabilities Act

Phone: 1-800-949-4232 or Email: ADAinfo@IHCDesign.org

Web: https://www.newenglandada.org/

2. ADA, Addiction and Recovery Fact Sheets and Frequently Asked Questions

Web: https://www.newenglandada.org/addiction-and-recovery

3. National Association for Addiction Professionals

Harrison, O. (Spring, 2020) *How the ADA Addresses Addiction and Recovery* Advances in Addiction and Recovery Magazine, Spring 2020, V8 No.2 (p. 24-27).

Web: https://www.newenglandada.org/addiction-and-recovery

4. Dorchak, G. and Sinkman, D. (2022). Using the Americans with Disabilities Act to Reduce Overdose Deaths. *Journal of Federal Law and Practice* (Vol 1) p.113.

Web: https://www.justice.gov/file/1467861/download

More Resources

1. STAT Reporting From the Frontiers of Heath and Medicine

Web: <u>To Protect People with Addiction from Discrimination, the Justice Dept. Turns to a Long-</u> Overlooked Tool: The ADA

2. Equal Employment Opportunity Commission Releases Technical Assistance Documents on Opioid Addiction and Employment

Web: <u>Q&As Provide Helpful Guidance to Employees and Health Care Providers</u>

3. Department of Justice Civil Rights Division

Web: The Americans with Disabilities Act and the Opioid Crisis: Combating Discrimination Against People in Treatment or Recovery

4. Big Ideas: Advancing Solutions to Reduce Fatal Overdoses in the US

The ADA And Substance Use Disorders: Rights and Responsibilities

Web:

https://oneill.law.georgetown.edu/wp-content/uploads/2022/09/ONL_BI20_ADA_SUD_P10.pdf







How to File an ADA Complaint

US Equal Employment Opportunity Commission (EEOC)

Web: https://www.eeoc.gov/employees/howtofile.cfm

Phone: 1-800-669-4000 or **Email**: <u>info@eeoc.gov</u>

US Attorney's Office of Civil Rights

Web: https://www.justice.gov/usao

Civil Rights Complaint Portal: https://civilrights.justice.gov/

Department of Justice

Web: https://www.ada.gov/filing complaint.htm

Phone: 1-800-514-0301

Contact Us With Any Questions

Thank You!!

Stacy Hart, ADA Trainers

New England ADA Center

Elisabeth Hubbard

Assistant ADA Coordinator for Employment

Institute for Human Centered Design

560 Harrison Ave. Boston MA

Governor's Commission on Disabilities

2 Cherry Dale Court Cranston, RI

adainfo@ihcdesign.org

800-949-4232

401-462-0100

Feedback Survey







