



# Disability Rights and Non-Traditional Workers: Joint Employer and Covered Entity Liability



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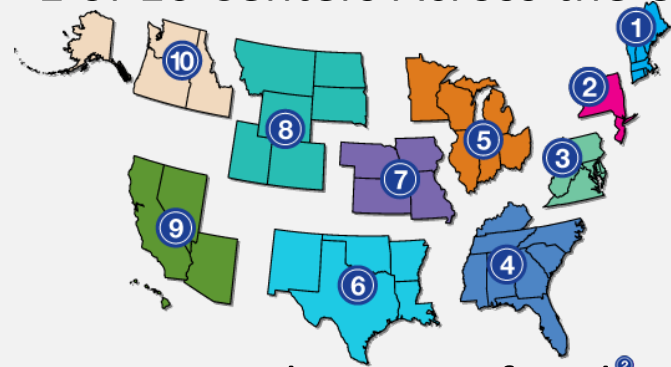
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Southwest ADA Center

# About Us



- 1 of 10 Centers Across the U.S.



- Serve a wide array of audiences including: employers, businesses, agencies, schools/universities, consumers and organizations
- Our mission to educate & inform
- Responding to inquiries, providing training, information and referral

# Training Objectives

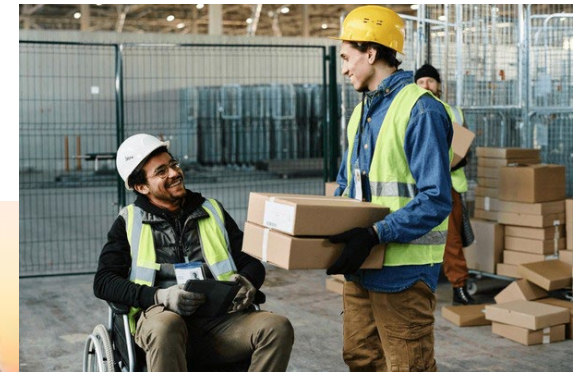
- Understand applicable laws -- ADA and Section 504;
- Identify protections for temp, seasonal, interns, volunteers;
- Review joint employer liability – re temp agencies, placement programs, volunteer programs;
- Review compliance best practices.

# Vast Legal Protections

- All forms of paid or unpaid workers, including employees, temp employees, seasonal workers, volunteers, undocumented or migrant workers, and contractors are protected from disability discrimination by a variety of State and Federal laws;
- ADA Titles I, II, and III;
- Section 504 of Rehabilitation Act;
- Fair Labor Standards Act (FLSA);
- National Labor Relations Act (NLRA) (union organizing, actual unions, and protection of “protected” work activity);
- OSHA occupational safety rules;
- EEOC Enforcement Guidance on Contingent Workers;
- A variety of State-based equivalent or greater protections.

# Types of Workers

- Paid employees full-time/part-time;
- Temp and seasonal workers;
- Staffing agencies and their placements;
- Undocumented or migrant workers;
- Paid/unpaid interns – case-by-case;
- Volunteers – partly under ADA Title III/II; broader coverage under §504.



# Paid Temporary & Seasonal Workers

- Covered as employees under Title I ADA;
- Duration of work, temp, seasonal, or undocumented status is irrelevant;
- Entitled to all Title I protections; e.g., reasonable accommodations, interactive process, etc.
- See, 42 U.S.C. § 12112(b)(5)(A)



# Staffing Agencies & Joint Employers

- Joint employer doctrine applies;
- Both placement agency and host employer are typically liable per Title I/504;
- Focus factors: extent of control, supervision, hiring/firing authority;
- See, [EEOC Guidance on Contingent Workers.](#)



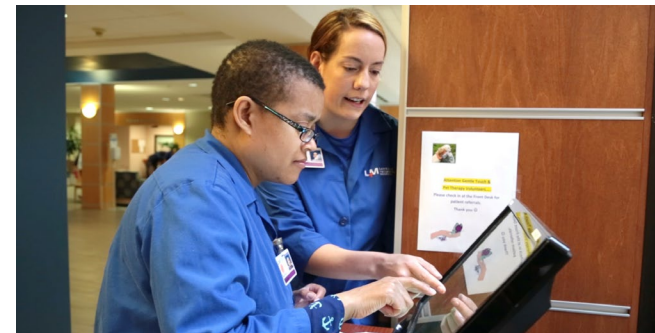
# Immigration Status Irrelevant



- Immigration status or absence of a work permit does not exempt employers from anti-discrimination laws.
- The Equal Employment Opportunity Commission (EEOC) enforces protections against discrimination based on race, color, national origin, sex, religion and disability.
- Various laws apply: e.g., ADA, FLSA, NLRA, OSHA, ACA, IRS Status (EIN registrations), Workers' Comp (state dependent), etc.
- IRS has for multiple decades welcome income tax filings from undocumented workers – even as SSA does not confer retirement or disability benefits.

# Interns & Trainees

- Paid interns are covered employees;
- Unpaid interns possibly covered under Title II/III/504 per special affiliations or programs, volunteer education intern programs, community service programs; e.g., court law school interns, high school or community college vocational training/education affiliations.



# Volunteers

- Generally not covered as “employees.”
- May be partly protected if they receive significant remuneration or benefits redefining them as “employee” or “independent contractor.”
- ADA Title II/III will likely cover them as program participants;
- Section 504 will likely cover them as program participants in Federally-funded programs;
- Analyze on a case-by-case basis.



# Section 504 Coverage

- Applies to federally funded programs – including Title I covered employers, Title II, and Title III covered entities; e.g., employees paid under federal grants.
- Also covers participants and beneficiaries – i.e., interns and volunteers;
- Provides broader than employment-only protections;
- See, [Alexander v. Choate \(1985\)](#)

# Broad Coverage Examples of Non-Employees



- Title II: public entity programs; e.g., city volunteer programs, ADA-parking monitors, ushers or hosts at public events, voting pole workers;
- Title III: public accommodation activities or programs; e.g., non-profit shelters, big brothers/sisters, Red Cross, volunteer worker placement agencies;
- More examples: unpaid internships, training, volunteer roles, court-mandated community service, hospital volunteers, high school vocational programs.

# Independent Contractors

- Independent contractor: an individual who, as a matter of economic reality, is in business for themselves rather than economically dependent on a hiring entity;
- They are not “employees,” they are not covered by the Fair Labor Standards Act (FLSA) wage-and-hour protections and not protected by the ADA in the employment context.
- Status is based on actual working conditions – not job titles or an actual contract.



# Contractor Determining Factors

Contractors typically:

- Control how they perform their work;
- Have an opportunity for profit or loss;
- Invest in their own tools or business;
- Market services to multiple clients;
- Lack employer-provided benefits, wage protections, and civil rights employment protections.
- Review: [Economic Realities Test](#).



# Economic Realities Test

- [Economic Realities Test](#): a judicial doctrine used to determine whether a worker qualifies as an “employee” and thus is protected by civil rights laws like the ADA) or is instead an independent contractor or non-employee; e.g., unpaid interns or volunteers.
- The test focuses on the substance of the working relationship -- not the label assigned by the parties.



# What to Ask in Economic Realities Test

- Is the worker economically dependent on the employer -- or in business for themselves?
- If economically dependent -- they are likely an employee; i.e., they rely on employer-provided supervision, tools, workplace amenities, benefits, etc.
- If they operate as independent business -- they are more likely an independent contractor; i.e., they rely on their own tools and are not closely supervised by the employer.

# ADA Generally Prohibits Discrimination in Various Relationships

- ADA generally protects members of the public accessing a public entity or business's offerings; e.g.:
- Vendor contracts or other affiliation agreements;
- Renting space;
- Selling goods or services through, or to, the public entity or business;
- Participating in a program or opportunity open to the public; i.e., opportunities to contract to perform services or sell goods on behalf of the entity; e.g., venue ticket sales or usher programs, security services, cleaning services, Uber drivers, office cleaners, maintenance work, other gig work.

# Discriminatory Contract Terms Violate the ADA



- Both Titles II and III prohibit discrimination in the terms, conditions, and privileges offered to the public;
- Covered entities may not include disability-based exclusions or restrictions in contracts; e.g.: Refusing to contract with someone because they have a disability;
- Imposing extra fees on a contractor with a disability;
- Requiring medical documentation not required of others;
- Denying reasonable modifications to policies when necessary for equal access;
- Failing to facilitate effective communication during negotiations or implementation of the contract.

# Legal Defenses to Decline Accommodations Available

- Interactive process required in all circumstances to timely and duly facilitate requested accommodations, modifications, or effective communication;
- Undue hardship, undue burden, and fundamental alteration defenses available; Business Necessity, Otherwise Qualified, and Direct Threat defenses are available;
- Consideration of accommodation alternatives are always required if any defenses are used to decline requested accommodations.

# Compliance Checklist (Employers)

- Identify all worker categories; i.e., employee, intern, contractor, or volunteer.
- Apply ADA non-discrimination policies in all aspects;
- Train supervisors and HR on ADA/504 employer and placement agency joint liability;
- Document the interactive accommodation process.

# Compliance Checklist (Staffing Agencies)

- Title II/III entities must closely monitor “downstream” ADA/504 compliance by staffing agencies and/or vendors;
- Avoid discriminatory placements; i.e., do not exclude candidates with disabilities.
- Coordinate accommodation requests with host employer;
- Maintain ADA-compliant policies and conduct regular staff-wide, including HR, training;
- Ensure ADA compliance communication with clients; i.e., joint liability applies.

# Compliance Checklist

## (Federally Funded Entities)

- Ensure Title II/504 program accessibility;
- Include volunteers, interns, and trainees in ADA/504 coverage policies;
- Timely consider and facilitate reasonable accommodations and effective communication requests;
- Monitor §504 compliance – especially relating to grant-paid staff and Federal labor contracts.

# High Legal Risk Areas

- Absent ADA or Civil Rights adherence language in contracts or agreements does not exempt compliance with any applicable law;
- Failure to accommodate workers due to misunderstanding of who is responsible in multi-organization labor or volunteer affiliations;
- Breakdown in agency-host compliance coordination;
- Misclassification of interns or employees as contractors;
- Erroneous wide-spread belief that temp workers, interns, volunteers, independent contractors, and undocumented workers have no protections.

# Some Key Case Law



- [EEOC v. Global Horizons, Inc. \(9th Cir. 2019\)](#)
- [Nationwide v. Darden \(1992\)](#)
- [Haavistola v. Community Fire Co. \(1993\)](#)
- [O'Connor v. Davis \(1997\)](#)

# Conclusion

- Disability protections extend beyond traditional employment;
- Multiple laws may apply simultaneously;
- Joint responsibility is common;
- Proactive compliance reduces risk.

# RESOURCES

- ADA National Network ([adata.org](http://adata.org)).
- Job Accommodation Network ([askjan.org](http://askjan.org)).
- Equal Employment Opportunity Commission ([eoc.gov](http://eoc.gov)).





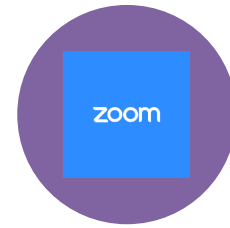
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