

# ADA Title I Employment

by Mell Toy

Northwest  Center

800-949-4232

[www.nwadacenter.org](http://www.nwadacenter.org)

[nwadactr@uw.edu](mailto:nwadactr@uw.edu)

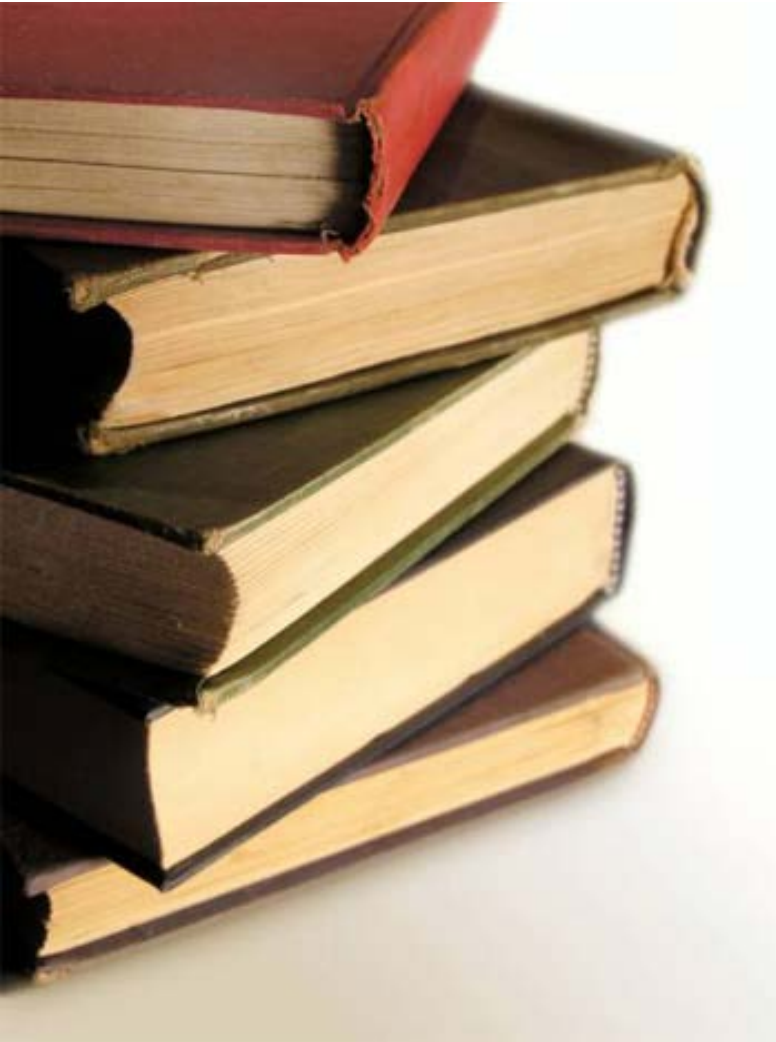


# Disclaimer

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# Five Titles of the ADA



1. Employment
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2. Public Services

3. Public Accommodation

4. Telecommunication

5. Miscellaneous

# Objectives of this presentation

Under Title I of the ADA...

- Which employees are protected and what are their rights?
- Which employers are obliged and what are their responsibilities?
- Where do I go for more information?

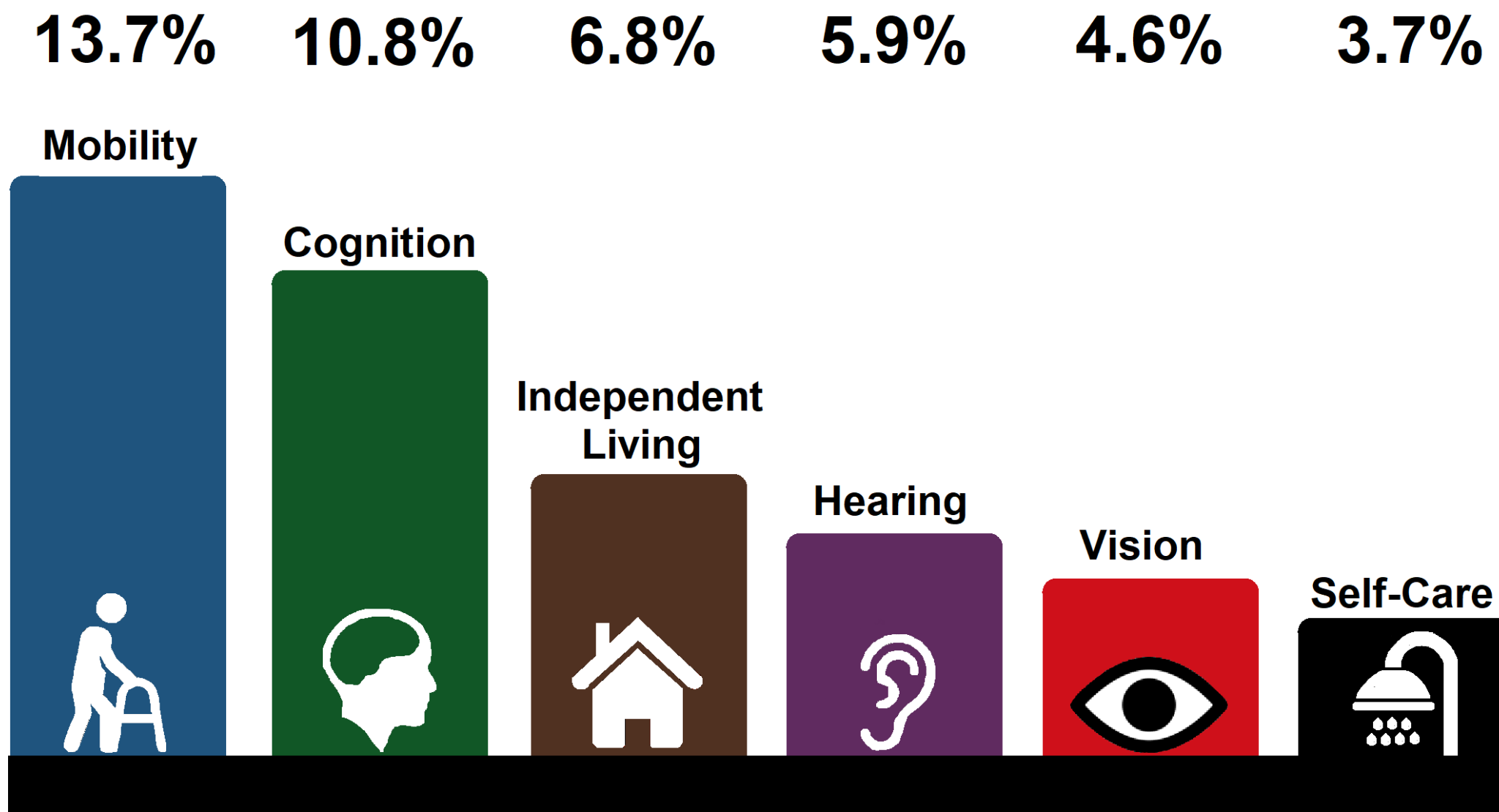


# Three-prong definition of disability

(To be protected by the ADA, a person must meet at least 1 prong.)

1. Has a physical or mental impairment that substantially limits one or more major life activities
2. Has a record of such impairment
3. Is regarded as having such an impairment

# % of disability types among US adults



# Who is protected?

Someone who:

- has a history of cancer
- has a cosmetic disfigurement
- has dyslexia
- has a family member with a disability

Someone who:

- is left-handed
- who has a gambling compulsion
- cannot read because they dropped out of school
- is using illegal drugs

# 1099 vs W-2 Employees

“In most circumstances, individuals are only protected if they were an ‘employee’ at the time of the alleged discrimination, rather than an independent contractor, partner, or other non-employee.” (EEOC)

15 factors, for example:

- Does employer controls the means and manner of the worker's work performance?
- The worker is considered an employee of the employer for tax purposes (i.e., the employer withholds federal, state, and Social Security taxes).



# Example 1: Am I your employee or contractor?

Raheel provides computer consulting services to businesses. You contract with him to produce a computer data base for a flat rate. He produces the data base at his own place of business, on his own equipment, and delivers the finished product to you.

EEOC: Raheel is a contract worker. (Your company has no ADA Title I obligation because he is not an employee or job applicant.)



# Example 2: Am I your employee or contractor?

A staffing firm hires Jazzle and sends her to perform a long-term accounting project for you. Her contract with the staffing firm states that she is an independent contractor. Jazzle retains the right to work for others, but spends substantially all of her work time performing services for you, on your premises. You supervise Jazzle, you set her work schedule, provide the necessary equipment and supplies, and specify how the work is to be accomplished. Jazzle reports the number of hours she has worked to the staffing firm, which pays her and bills you.

EEOC: She is both your employee and an employee of the staffing company.



# Title I – Employment

Private employers with 15 (or more) employees

State and local governments

Employment agencies

Labor unions

Joint labor-management committees

Enforced by the US Equal Employment Opportunity Commission





# Rights of a person with a disability

- Request a **reasonable accommodation**
- Protection from discrimination
- Freedom from harassment
- Protection from retaliation





# Definition of reasonable accommodation

any change or adjustment to a job, the work environment, or the way things usually are done that would allow a qualified individual with a disability to perform the **essential functions of the job**



# What are essential job functions?

Basic job duties that an employee must be able to perform, with or without reasonable accommodation



# Examples of reasonable accommodation

Installing a ramp

Modifying a restroom

Providing a sign language interpreter for someone who is deaf

Providing a reader for someone who is blind

Providing written materials in alternative format (such as large print or braille)

Providing time off for someone who needs treatment for a disability




# Requesting reasonable accommodation

- Verbally or in writing
- Don't have to use the words "reasonable accommodation"
- Request must be tied to some type of medical need
- Only disclose medical or disability info that is needed by the employer





# Review of reasonable accommodation

I'm having trouble getting to work at my scheduled starting time because of medical treatments I'm undergoing.  Yes

I need six weeks off to get treatment for a back problem.  Yes

I need a new chair because my current one is uncomfortable.  No

My wheelchair doesn't fit under my desk.  Yes

# The Interactive Process

Timely meetings  
between the  
employer and the  
employee to  
determine the  
appropriate  
accommodation



# Professional verification

Employers can ask for written verification of disability when:

1. The job applicant or employee has requested a reasonable accommodation, AND
2. The person's disability is not obvious

Licensed medical provider, rehab specialist, or rehab counselor

The nature of the disability, the duration, the severity, and specific tasks that are limited by the disabilities to warrant the accommodation

# Deciding the accommodation

Employer should consider the employee's choice.

Employer may choose a lower-cost option that is equally as effective.





# Identifying the accommodation

## **Job Accommodation Network**

[www.AskJAN.org](http://www.AskJAN.org)

800-526-7234

**State vocational  
rehabilitation  
programs**



# AskJAN.org

Quickly search and find information about various accommodation options.

## SOAR

Searchable Online Accommodation Resource

JAN's Searchable Online Accommodation Resource (SOAR) system is designed to let users explore various accommodation options for people with disabilities in work and educational settings. These accommodation ideas are not all inclusive. If you do not find answers to your questions, please contact JAN directly. The staff of experienced consultants is happy to discuss specific accommodation needs in a confidential manner.

## Start your SOAR search

SEARCH THE DATABASE

Search

## Most Popular Searches

Limitations Work Related Functions Disabilities Other

Accommodation ADA Addiction ADHD Aging **Air Quality/Irritants** Anxiety

Back Impairment Body Odor Cancer **Commute** Cumulative Trauma Conditions

Decreased Stamina/Fatigue Depression Diabetes Fibromyalgia

Live Chat



Show Reader

# JAN's SOAR

Current Search

SEARCH TERMS:

low vision

Q

Narrow Results

Disability

+

Click + to narrow results by Disability.

Limitation

+

Click + to narrow results by Limitation.

Work Related Function

+

Featured Results:

Blindness

Accommodation and Compliance: Blindness

12 November 2018

Low Vision

Accommodation and Compliance: Low Vision

28 November 2018

Colorblind/Color Vision Deficiency

Accommodation and Compliance: Colorblind/Color Vision Deficiency

12 November 2018

Vision Impairment

An individual with a vision impairment may be blind or have vision loss. These limitations vary depending on the individual. Vision impairment is a term that encompasses various limitations in eye function. This can include low vision, blindness, limited visual...

27 August 2018

Service Animals

Accommodation and Compliance: Service Animals as Workplace Accommodations

06 August 2018

# True or false? Testing accommodations

During the interactive process, the employer may try out accommodations and stop them if they don't work.

**TRUE**





# True or false? Reassignment

Reassigning the employee to another position could be a reasonable accommodation.

**TRUE**

1. Lateral transfer
2. Downward transfer



# Limits on accommodations

- Personal-use items
- Lower productivity standards
- Change or eliminate essential job functions



# Accommodations that are NOT required

I need new eyeglasses.

 No

My computer screen reader program isn't reading all of the elements of our website.

 Yes

Even though everyone here is expected to make at least 50 phone calls a day, I'm not going to be able to because I have to take more breaks due to my disability.

 No

Even though I was hired to greet people as they approach our customer service counter, I can't do this because of my anxiety.

 No

# Additional limits on accommodation

1. Disability is not obvious and medical information did not show that there was a disability
2. **Undue hardship**
3. **Fundamental alteration**
4. **Direct threat**



# “Not a disability” case

Employee: I wasn't promoted because of my knee injury

Employer: We didn't have adequate proof of a disability

Court:

- injury status can be determined without detailed medical evidence or expert testimony
- employee did not submit sufficient proof of substantial impairment of a major life activity





# Undue hardship case

## Employee:

- Severe depression and extreme anxiety
- Granted periodic leave based on treatment records

## Employer:

- After a 5-month leave, expected the employee to show up for work
- Received another request for 1 year of leave from the employee's doctor
- Denied the request, and told the employee to return to work
- No word from employee, so fired the employee 2 months later

## Courts:

- Employees must show how the requested accommodation enable them to perform essential job functions. This employee failed to do this.
- Covering another year of leave would be a substantial burden on the employer



# Best practices for employers

During the interactive process:

- be proactive, be willing
- document all efforts

Consider “meaningful measures:”

- ADA coordinator
- written ADA policies & procedures
- accommodation log
- train all employees



# Review and wrap-up: ADA Title I

True or false? An employee must use the words “reasonable accommodation” in order to formally make a reasonable accommodation request.

How soon should an employer respond to a reasonable accommodation request?

True or false? Employers always have the right to review all medical history of the employee so they can verify disability or need for accommodation.

What are the hard limits employers should know about providing accommodations?

Who enforces employment rights under the ADA?

Did you learn anything new or re-affirm something you already knew?



# ADA Title III Public Accommodation

by Mell Toy

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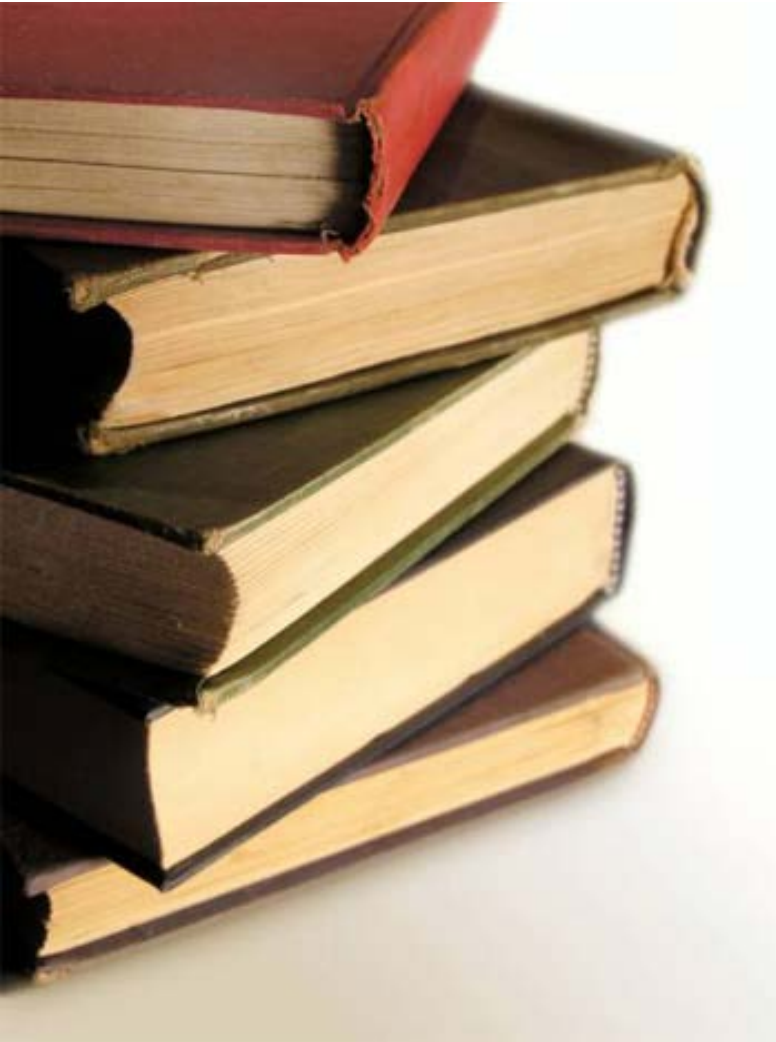


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# Objectives of this presentation

Under Title III of the ADA...

- What is a public accommodation?
- What are some common examples of reasonable modification for brokers?
- What do businesses need to know about website accessibility?
- Where do I go for more information?



# Title III – Places of public accommodation

Places that affect commerce and are open to the public, such as

- Hotels
- Restaurants, bars
- Theaters, stadiums
- Stores, gas stations
- Banks
- Gyms
- Laundromats
- Hospitals, clinics
- Museums



Enforced by the US Department of Justice (DOJ)



# General requirements of Title III

- Make **reasonable modifications**
- Ensure **effective communication**
- Remove barriers that are **readily achievable** even when no alterations or renovations are planned



# Examples of Title III reasonable modification

Service animals are permitted in an business that has a no-pets policy.

A realtor guides a person who is blind on a tour of a home or apartment building.

Because the office is inaccessible, a realtor and client who uses a wheelchair meet at a coffee shop that is accessible.

Over-the-phone, a realtor describes the walking route from the bus stop to the front door of the business (or home) to a client who is blind.



# Websites

- No ADA standards at this time
- Use WCAG
- Text alternatives for graphics
- Captions for multimedia
- Easier to see and hear
- Keyboard functionality
- Users have enough time to read and use content
- Content does not cause seizures
- [www.w3.org/WAI/standards-guidelines/wcag](http://www.w3.org/WAI/standards-guidelines/wcag)



# Limitations of reasonable modifications

Do not have to provide if it results in:

- Undue hardship,
- Fundamental alteration, or
- Direct threat

Do not have to provide personal use items





# Examples of limitations

A realtor determines that it is an **undue hardship** to purchase a wheelchair-accessible van to transport clients who would use these.

It would be a **fundamental alteration** for a realtor to assist a client in running errands around town.

A realtor could bar a service dog from entering an open house if there are free-roaming cats in the home. **(direct threat)**





# Effective communication defined

- must communicate effectively with people who have communication disabilities
- must provide **auxiliary aids and services** when needed
- consider the nature, length, complexity, and context of the communication and the person's normal method(s) of communication



# Examples of auxiliary aids & services

1

2

3

5

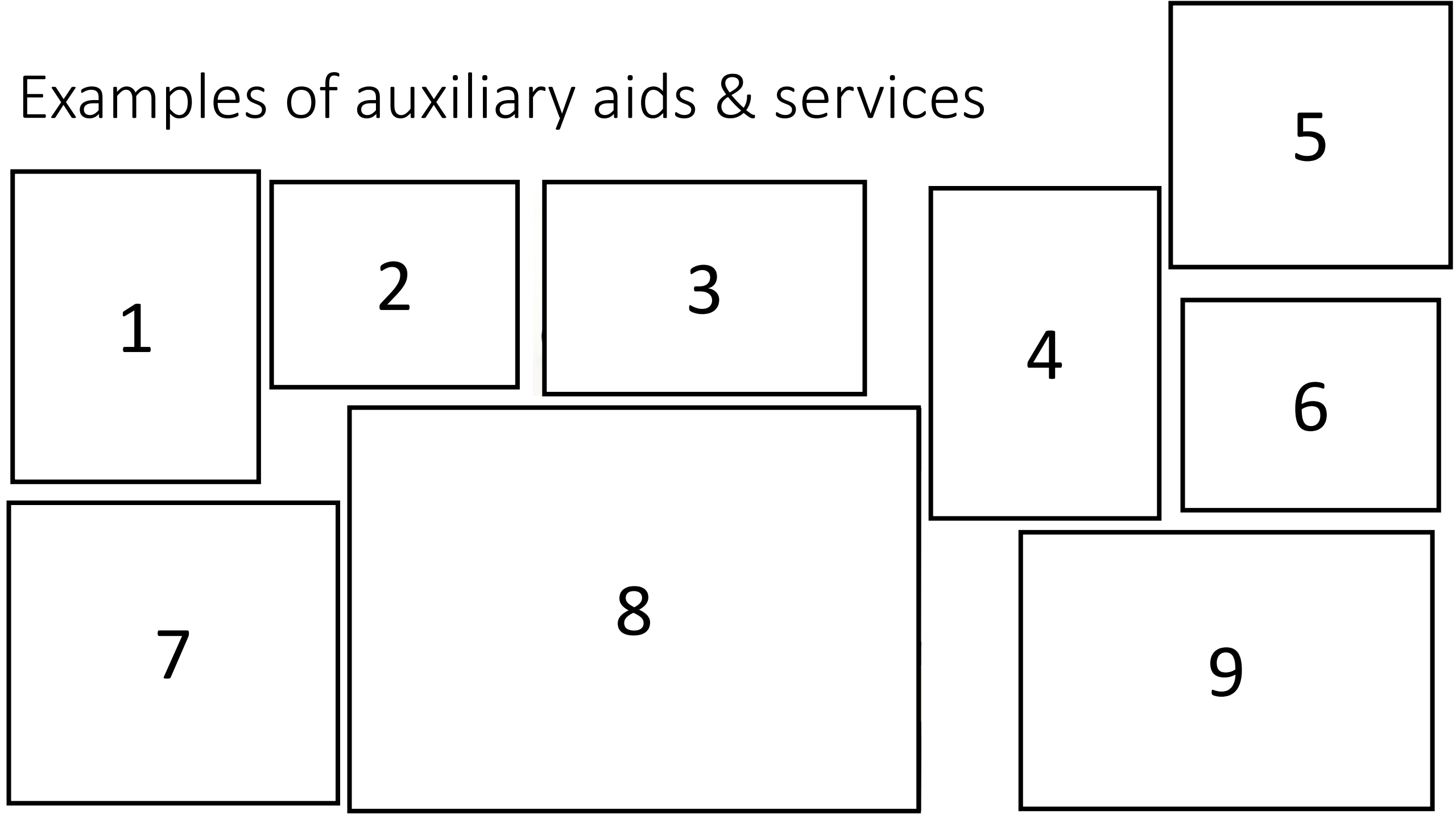
4

6

7

8

9



# Readily achievable defined

easily accomplishable  
and able to be carried  
out without much  
difficulty or expense



# Examples of readily achievable

- Installing ramps
- Making curb cuts in sidewalks and entrances
- Rearranging vending machines, display racks, and other furniture
- Adding raised markings on elevator control buttons
- Installing flashing alarm lights
- Widening doors
- Installing offset hinges to widen doorways
- Eliminating a turnstile or providing an alternative accessible path
- Installing accessible door hardware
- Installing grab bars in toilet stalls
- Rearranging toilet partitions to increase maneuvering space
- Insulating lavatory pipes under sinks to prevent burns
- Installing a raised toilet seat
- Installing a full-length bathroom mirror
- Repositioning the paper towel dispenser in a bathroom
- Creating designated accessible parking spaces
- Installing an accessible paper cup dispenser at an existing inaccessible water fountain
- Removing high pile, low density carpeting

# Order of priority for barrier removal

Priority 1:  
Exterior route



Priority 2:  
Interior route



Priority 3:  
Restrooms





# Tax incentives

## **Architectural / Transportation Tax Deduction**

- Code Section 190: Barrier Removal. IRS Publication 535, Chapter 7
- removal of physical, structural, and transportation barriers
- \$15,000 max

## **Small Business Tax Credit**

- Code section 44, Disabled Access Credit IRS Form 8826
- expenses related to ADA compliance (barrier removal, auxiliary aids and services, accommodating employees)
- 50% of expenses between \$250 and \$10,250 (max of \$5,000)

# Review and wrap-up: ADA Title III

True or false? ADA Title III (public accommodation) only applies to businesses with 15 or more employees.

Give an example of reasonable modification, effective communication, and removing barriers when readily achievable.

True or false? ASL is the only way a person who is deaf can communicate with businesses.

What are the hard limits businesses should know about providing modifications and effective communication?

Who enforces ADA Title III?

Did you learn anything new or re-affirm something you already knew?

# Disability Language & Etiquette

by Mell Toy

PMAR Educational Seminar

Tigard, OR

June 26, 2019



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When it comes to disability language, the thing to do is...

**Never assume.  
Ask!**





# Person First language

Person with...

Person who...

Person of...



# Recap using person first language

Don't use	Use
Differently-abled, impaired, handicapped	Person with disability
Insane, crazy, mental	Person with a psychiatric disability
Lame	Person with a mobility disability
Hearing impaired	Person who is deaf or hard of hearing, person with a hearing disability
Retard, retarded	Person with an intellectual disability

# More examples of person first language

Don't use	Use
Wheelchair bound	Person who uses a wheelchair, person with a mobility disability
Mute	Person with speech disability, person who uses a communication device
Sight impaired	Person who is blind or has low vision, person with a visual disability
Dwarf	Person of short stature, person with dwarfism
Vegetable	Person with involved disabilities, person with severe disabilities, person with multiple disabilities

# Final examples of person first language

Don't use	Use
Paraplegic	Person with paraplegia
Epileptic	Person with epilepsy
Slow learner	Person with a learning disability
Special education student	Student receiving special education services
Brain-damaged	Person with a brain injury
Burn victim	Person with a burn injury

# Recent headlines using person first language

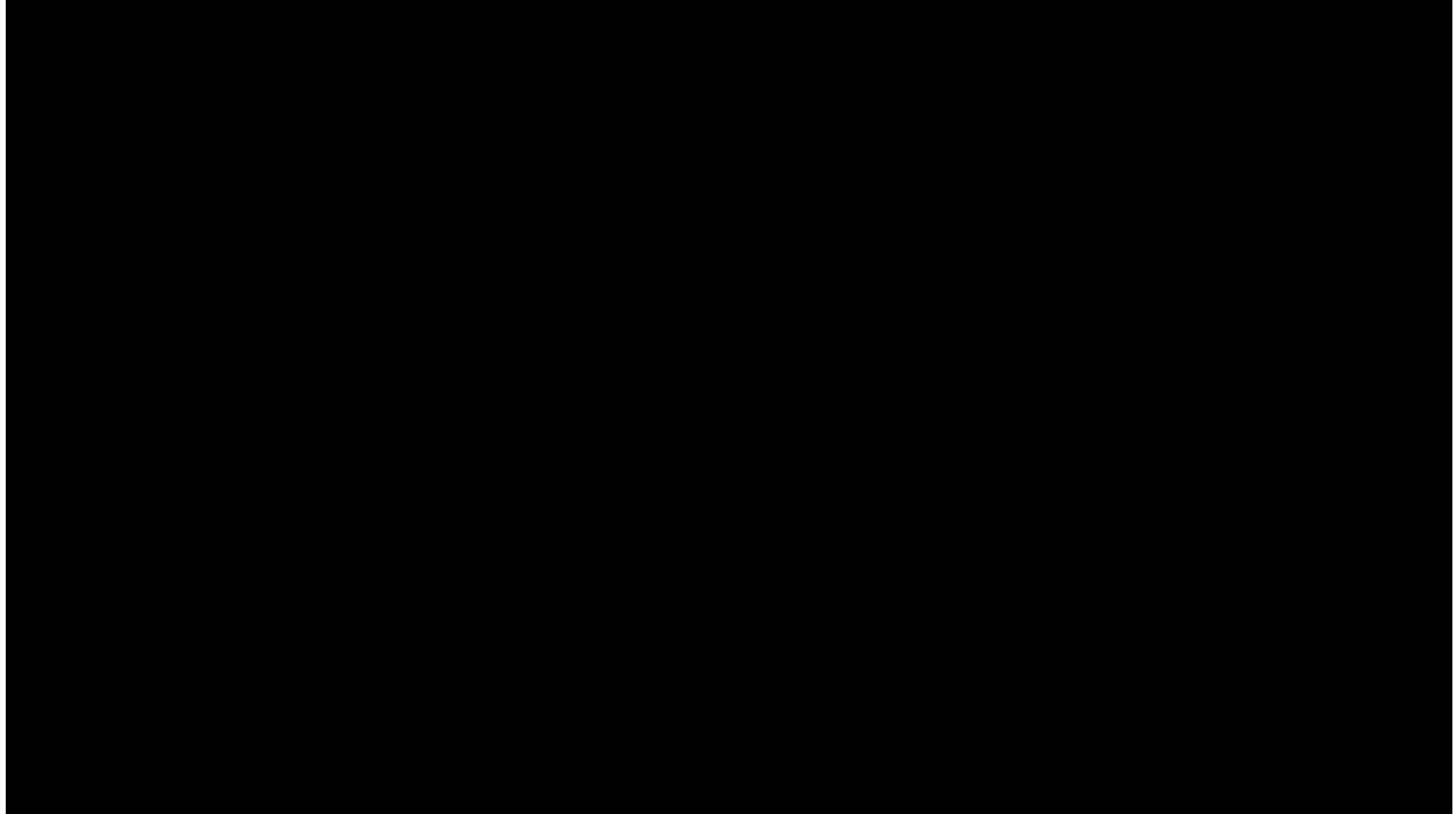
Robotic Exoskeletons May Provide Health Benefits for People with Spinal Cord Injuries (1/30/2019)

Picturing Work: A New Program for Vocational Empowerment May Help People with Psychiatric Disabilities Pursue Work (1/23/2019)

Ready Player One: With Some Design Tweaks, People with Physical Disabilities Could Join in Active Video Gaming Using an Adapted Balance Board (10/31/2018)



# Person First vs. Identity First language



# Identity First language

#CripTheVote



CAPITAL D  
DEAF

EPISODE 107  
**Chris Venter**  
The Blind Scooter Guy



When it comes to disability etiquette, the thing to do is...

**Never assume.  
Ask!**



# General tips

- Treat adults as adults
  - Speak directly to the person, rather than the family member
  - Don't baby-talk
  - Offer a shake hand (touch hand/prosthesis, use left hand)
- Don't over-assist, don't interrupt
- Okay to say "I don't know" or "let me check on that"
- Don't pretend to understand. Instead say, "Can you repeat that?"
- Don't interact with service animals until you have permission
- Unless you have the disability, you cannot relate
- Be flexible. Be prepared to provide info in different formats



People with visual disabilities



# Stereotypes about blindness



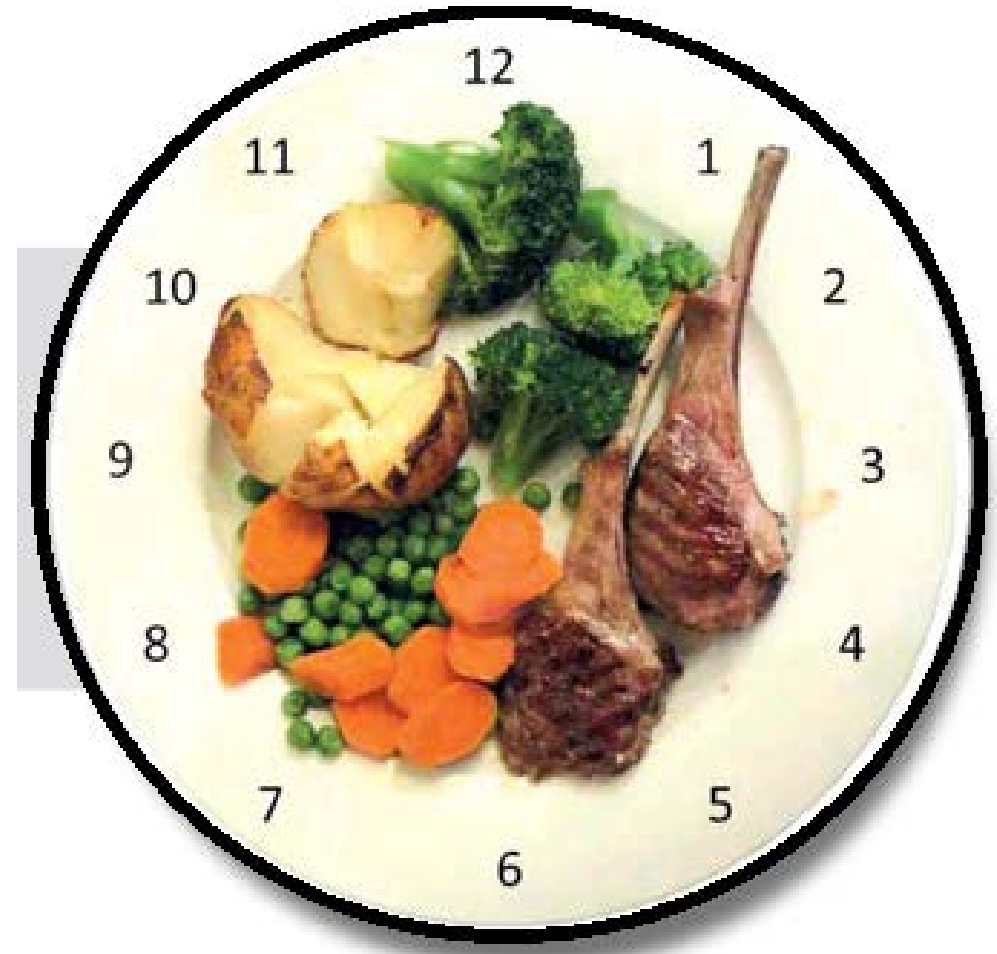
# Simple courtesies in blindness etiquette



- Identify yourself when in range (both entering and exiting)
- Okay to say “See ya later,” “Did you watch that movie last night?”
- Get permission before touching (this includes dog guides)
- Discretely point out a stain, etc.

# Descriptive language for people who are blind

- Handshake
- Giving directions for routes of travel, location of items, open seats
- Location of food on plate
- Counting paper money



# Safety guidelines

- Keep doors fully open or fully closed
- Don't leave cupboard doors or drawers open
- Push in empty chairs
- Keep aisles clear
- Give alerts about head-level objects in the environment, indoors and outside
- Notify of any furniture changes, new objects in the environment, wet paint signs, etc.



# Human guide technique

- Get permission before touching
- Usually, person with visual disability holds on the guide's arm, and travels behind the guide
- Other skills of this technique include narrow passage, taking stairs, and closed doorways





# Dog guide etiquette

- Never interact with the dog, unless you have permission from the handler
- Travel alongside the handler, not the dog
- Ask the handler how best to travel with them



People with hearing disabilities

# Deaf etiquette

- OK to wave or lightly touch/tap on shoulder to get attention
- Maintain eye contact
- For lip-reading, speak normally, keep beards neatly trimmed, keep fingers away from mouth, don't eat or chew gum
- Provide high quality captioning on all videos with speech
- If you learn sign language, your sign name should be given to you by a person who is deaf
- If there is an ASL interpreter, pause briefly between sentences



# ASL Interpreters

- Ask if there is a preferred, qualified interpreter
- Directly address the person who is deaf
- Pause briefly between sentences
- Typically, schedule 2 interpreters for events > 1 hr
- A solid dark wall makes a great backdrop for the interpreter

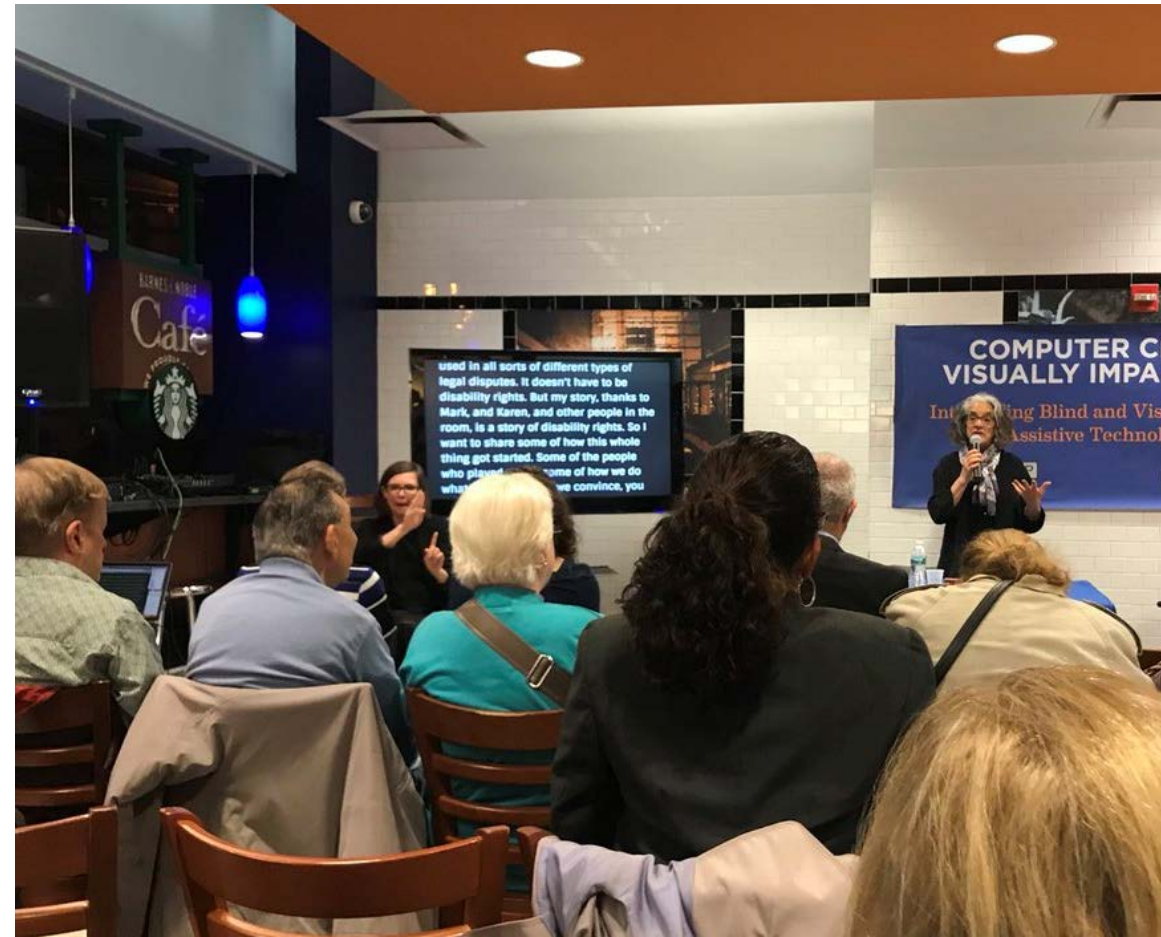


# Meeting with a person who uses an ASL interpreter



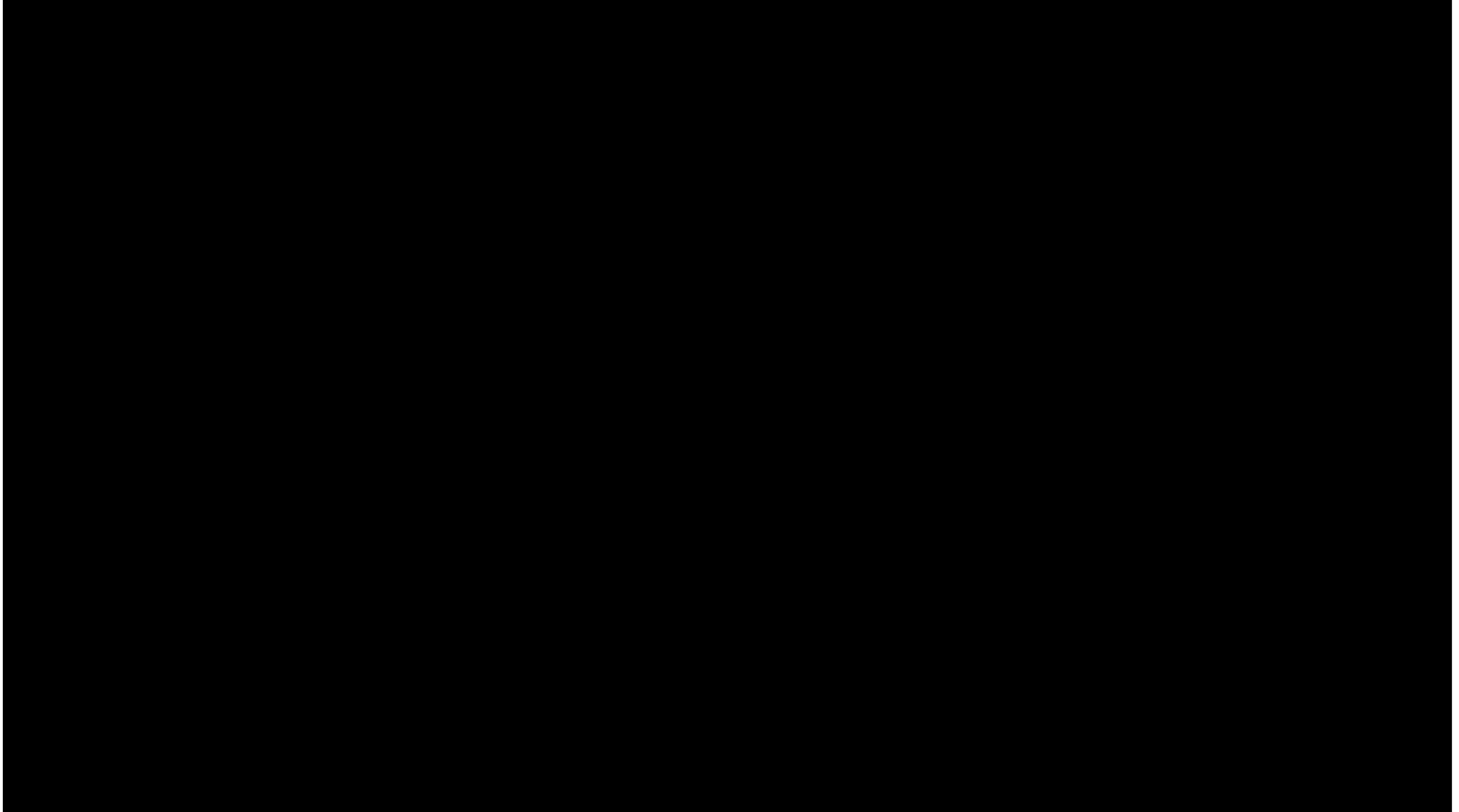


# ASL interpreters and CART at large meetings



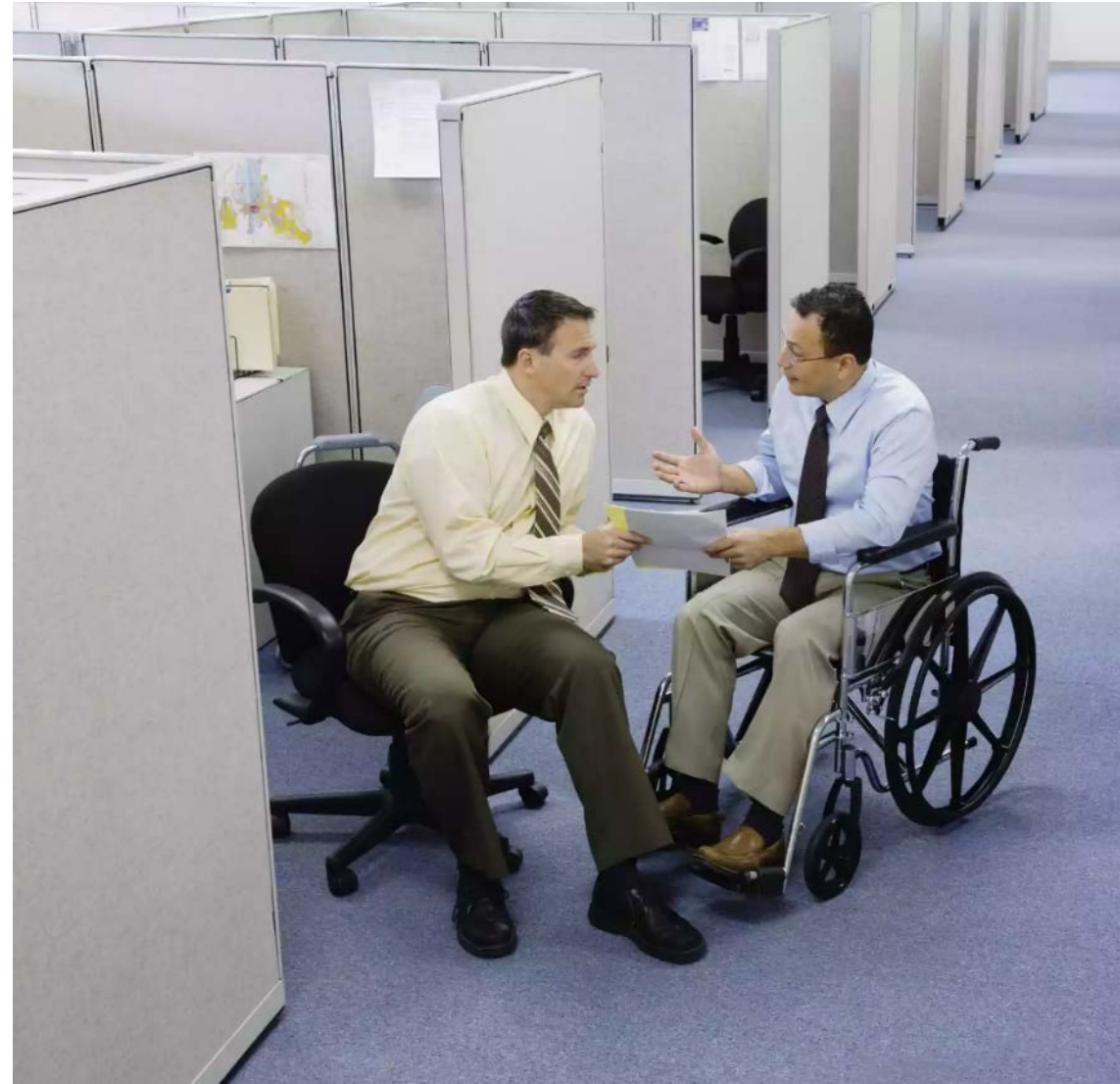
People who use wheelchairs

# Wheelchair etiquette



# A few more tips on wheelchair etiquette

- When communicating face-to-face:
  - stand back a little
  - kneel
  - pull up a chair
- Okay to say “Wanna go for a walk?”
- Ignore the wheelchair
- Don’t ask “What caused you to be in a wheelchair?”



# Review and recap: Disability language & etiquette

When it comes to disability language and etiquette, the thing to do is \_\_\_\_\_?

Instead of saying “He is a dwarf,” what would you say to employ person first language?

Explain identify first language and why it is important, and give an example.

True or false: Whenever there is an ASL interpreter involved in the communication with a person who is deaf, you should face and talk to the ASL interpreter only so the interpreter can best understand you.

Give an etiquette example for each of these disability groups – visual, hearing, speech, and mobility.

Did you learn anything new or re-affirm something you already knew?



# Free ADA information & technical assistance



800-949-4232



nwadactr@uw.edu



425-233-8913  
for ASL



nwadacenter.org