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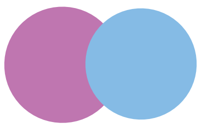
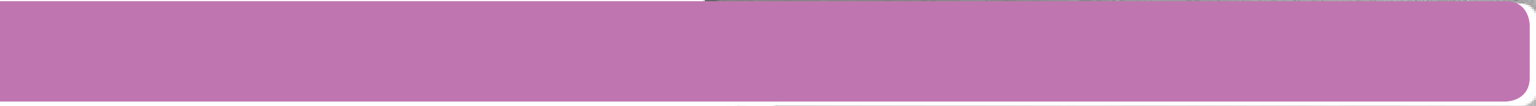


DISABILITY
Etiquette Guide



My humanity is bound up in yours, for we can only be human together.

ARCHBISHOP DESMOND MPILO TUTU

THANK YOU TO OUR PUBLICATION SPONSORS

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"Our vision at Merck is to be the #1 trusted health care partner to all people globally. We view people with disabilities as differently able, and as key customers who have in many cases out of necessity become uniquely adept at navigating the health care system, no matter where they live in the world. We are pleased to contribute to the contents of this guide, and hope it will be utilized to work towards full inclusion of people with disabilities, across industries, our workforce, workplace and marketplace. We look forward to future editions of the guide that will cover a broader range of disabilities, and applaud the approach that Cook Ross adopted to developing this content with partners from across various advocacy organizations for people with different types of conditions. This exemplifies the wishes of the disabled community that anything meant to serve us is, 'Not about us without us.'"

DEBORAH DAGIT
Chief Diversity Officer
Merck

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People with disabilities are first and foremost people.

Aol.

"At AOL, our mission is to 'connect, inform and entertain our world.' One of our core value statements is: 'We are in the business of helping people. Period.' Our sponsorship of projects such as this Disability Etiquette Guide marry our mission and values and remind all of us of the positive impact education and innovation can have on the lives of people with disabilities and the lives of their family members, friends and professional colleagues. This is a guide for everyone. We are proud to be associated with efforts that enhance people's skill to relate across ability and the wide range of human strengths and differences. Innovations like Instant Messaging can serve as a reminder to all of us of the positive impact accessible mainstream technologies have on the lives of people with disabilities. Instant messaging revolutionized communication, but more importantly it enabled independent conversation between people who are deaf and their hearing family members and friends anywhere, anytime without the need of assistive technology like a TTY device. Here's to expanding our collective commitment by continuing to leverage the power of people, innovation and technology to create a more inclusive culture for everyone."

TOM WLODKOWSKI
Director of Accessibility
AOL

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"At Booz Allen, we believe in empowering our staff—regardless of background or physical ability—to achieve his or her full potential. With a deep foundation in diversity and inclusion, we know that our people make the difference in our ability to serve clients. To us, diversity means all the ways we are unique. Inclusion is how we value that uniqueness at every level. As one of our Core Values, diversity is reflected in our policies. Our fundamental Equal Employment policy is 'to identify, attract, retain, and advance the most qualified persons, without regard to their race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity and expression, disability, veteran's status, genetic information, or any other status protected by law.' In addition, we have implemented policies on Acquired Immune Deficiency Syndrome, Flexible Work Arrangements, Persons with Disabilities, U.S. Domestic Partner Benefits, Sexual Harassment, and Workplace Harassment, among others. It's important to us that we not only recognize and understand differences, but that we leverage innovation born through difference to bring the very best solutions to our clients. At Booz Allen we hire people based on their skills and we provide the work environment necessary to enable our people to be productive and grow their careers."

MARK MCLANE
Director of Diversity and Inclusion
Booz Allen Hamilton

DISABILITY ETIQUETTE GUIDE

INTRODUCTION

How do you shake hands with someone who doesn't have hands? Or has a prosthetic hand? Should a team member with a stutter be discouraged from leading verbal client presentations? Is it acceptable to offer to reach a high elevator button for a person using a wheelchair?

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We all want to do "the right thing." We all struggle to treat everyone with dignity, respect, and courtesy. But when it comes to dealing with people with disabilities, we sometimes allow our apprehension about doing "something wrong" to prevent us from authentically and fully engaging with people with disabilities.

"Etiquette" indicates a set of written and unwritten rules that articulate what constitutes socially acceptable behavior in a broad array of circumstances. Breaking these rules can sometimes cause personal and professional embarrassment and discomfort, and has the potential to alienate important clients, customers, and colleagues.

Our concern about doing something accidentally inappropriate can sometimes cause us to behave awkwardly, be tentative, make unintentional mistakes, and cause injury or insult.

This *Disability Etiquette Guide* is intended to not only convey critical information, but also to increase your confidence that you are being courteous and not condescending. Always remember that a person with a disability is a person. He or she is like and unlike anyone else.

Top-performing businesses and organizations know that the demands of global commerce require mature diversity management skills. Customers and co-workers come from a variety of backgrounds, and their customs, thinking, behavior, values, and communication styles vary accordingly. Our cultural understanding and literacy, along with our assumptions about business etiquette, are being challenged by major demographic shifts that bring us face-to-face with new people and unfamiliar ideas. Successfully navigating the ever-evolving workforce and marketplace requires effective and respectful communication between people with different linguistic, cultural, and individual backgrounds.

People with disabilities currently represent the largest minority in the world. Nearly 20 percent of Americans (54 million people) qualify as disabled. Disabilities can occur across the whole life span and vary in duration,

degree, and location of impact. Because people's experiences with and attitudes toward their disabilities also range widely, communication and interaction sometimes appear particularly complicated.

In recent decades legal, social, cultural, and economic changes have drawn attention to the reality that disability is often less about physical or mental impairments than it is about how society responds to real or perceived physical, mental, and cognitive differences. As disability becomes a more common factor in the workplace, the need for inclusive approaches to communication and interaction increases.

The *Disability Etiquette Guide* identifies key barriers that, when unknown, may compromise inclusion, trust, and cooperation. Too often we make "automatic" or "snap" decisions about the capacities, abilities, and preferences of others. The guide highlights tools and information for fostering interactions that are comfortable, meaningful, and inclusive. We hope, as a result of reading this guide, that people will begin to ask more questions, gather more information, and relate to each other in a more honest fashion. We also believe this guide will support all readers in questioning their assumptions and judgments about all people—not just people with disabilities.

It is very important to note that this guide provides information about broad-based disability cultural frameworks and archetypes.

People with disabilities are first and foremost people. These categories are intended to dispel common misconceptions, foster greater understanding, and enhance access between people. Archetypes are deeply imprinted (learned or inherited) unconscious ideas, patterns of thought, beliefs, or behaviors that broadly apply to a large group of people. They are not assumed to apply to each individual group member.

Remember that cultural patterns are *not* universal. We all must be vigilant to avoid generalizations and stereotypes about groups of people. Variation within and among cultures and communities always exists. In addition to these variations, millions of people in our multicultural world identify with multiple identities. It is important to maintain respect for the infinite complexity of each unique human being, which always defies simple categorization.

NOTE: *In establishing the categories for this guide, we have used a combination of those established by the 2007 U.S. Disability Status Report, the World Health Organization, and common American disability terms. We do so for ease of navigation, and acknowledge that these may be controversial to some readers.*

MULTIPLE DEFINITIONS OF DISABILITY

Since there are so many definitions of disability (including those covered by the Americans with Disabilities Act), we want to thoroughly discuss them in the guide's first section. Proper disability etiquette is not possible without a good understanding all of the various meanings of disability.

Medical model. In Western biomedicine, disability generally refers to physical and mental impairments that limit the typical ways and range of a person's ability to perform activities. This often is referred to as a

"medical model" of disability.

The medical model is based on a strong notion of what is "normal"; *abnormality* generally is viewed negatively.

The medical model holds that there are identifiable and fixed "norms" for human beings. In this model, all complications related to disability reside *within* the individual.

As a component of biomedicine, this model values cures and rehabilitation as the best response to physical and mental disabilities.

Social-cultural model. Emerging with the disability civil rights movement by the mid-20th century, the "social-cultural model" places disability in a social, political, environmental, and economic context. This model holds that the meaning and experience of disability and normalcy are neither fixed nor strictly biological, but instead are dynamic and socially constructed.

This interpretation of disability rejects the assumption that people with disabilities are inherently "defective" and it challenges the assumption that rehabilitation and cures represent the only valid response to bodily or mental difference.

According to the social-cultural model, disability is often less about physical or mental impairments than it is about how society responds to impairments. For example, negative attitudes toward people with disabilities, and physical barriers that impede access, strongly shape the meaning and experiences of disability.

STRATEGIES FOR AVOIDING STEREOTYPING AND EMPHASIZING ABILITY

- ***Put people first, not their disability.*** Say woman with arthritis, a child who has a learning disability, or person with a disability. This puts the focus on the individual, not the particular functional capability. Labeling the person as the disability (for example, a quadriplegic) dehumanizes the individual and equates the condition with the person. (However, note that some disability advocates use the term "disabled person" as a way to articulate their disability pride.) It is people first, too, for indicating disability groups. Say people with cystic fibrosis or people who have cancer. Terms such as "the_____ (for example, "the blind") imply a homogenous group separate from society as a whole.
- ***When communicating about disability, do not focus on ability level unless it is crucial to the situation at hand.*** Do not portray successful people with disabilities as heroic overachievers or long suffering saints. Even though some people may find these portrayals inspirational, these stereotypes raise false expectations that all people—with and without disabilities— should be such "super humans."
- ***Avoid sensationalizing and negative labeling.*** Saying afflicted with, crippled with, victim of, or suffers from devalues individuals with disabilities by portraying them as helpless objects of pity and charity. It is more neutral to say an individual with AIDS than a person who suffers from AIDS. Similarly, do not use emotional descriptors such as "unfortunate" or "pitiful."
- ***Emphasize abilities, not limitations.*** For example, uses leg braces or walks with crutches, is more accurate than confined to a wheelchair or wheelchair bound. For, in reality, wheelchairs and crutches represent independence, not a burden. To emphasize capabilities, avoid words that start with *in*, *dis*, *un*, or *de* that imply lacking or inferiority such as invalid or defective.
- ***Bypass condescending euphemisms.*** Many disability groups strongly object to the use of euphemisms to describe disabilities. Terms such as "handicapable," "differently abled," "special," and "challenged" reinforce the idea that people cannot deal honestly with their disabilities.
- ***Maintain the integrity of each individual.*** Do not use words or phrases regarded as offensive or patronizing such as "freak," "subnormal," "vegetable," "misshapen," "feeble-minded," or "imbecile."
- ***Do not imply disease when discussing disabilities that result from a prior disease episode.*** People who had polio and experienced after effects have post-polio syndrome. They are not currently experiencing the disease. Do not imply disease with people whose disability has resulted from anatomical or physiological damage (for example, person with spina bifida or cerebral palsy). Reference to disease associated with a disability is acceptable only with chronic diseases, such as arthritis, Parkinson's disease, or multiple sclerosis. Individuals with disabilities should never be referred to as patients or cases unless their relationship with their doctor is under discussion, or if they are referenced in the context of a hospital or clinical setting.

(Adapted and used with permission from Research and Training Center on Independent Living at the University of Kansas.)

BLINDNESS/LOW VISION

The terms “blindness” and “low vision” describe a wide range of conditions and experiences. This may include loss of peripheral vision, blurred vision, and the inability to distinguish colors. According to the National Center for Health Statistics, approximately 21.2 million Americans (as of 2006) experience visual impairments.

When, how, and to what extent an individual experiences a visual impairment ranges widely and may influence a person’s sense of identity in different ways. People may experience vision loss that varies over time and it can vary widely based on environmental factors. A blind person’s eyes may or may not show any observable signs of blindness.

Like most people with disabilities, people who are blind or have low vision commonly do not consider their impairments to be the primary feature of their identity.

General note on language: Emphasize the person rather than the disabling condition; many individuals with disabilities prefer people-first language (i.e., “person with a cognitive/intellectual/developmental disability” rather than “mentally retarded person”). Some within the blind and low vision community may prefer labels such as “person who is blind,” “person who has low vision,” or “person with a visual impairment.” However, the terms “blind person” or “blind individual” often are acceptable.

DEMOGRAPHICS

- An estimated 6.2 million Americans over the age of 65 who live outside of institutions have reported a visual impairment.
- 9 million people between the ages of 45 and 64 experience vision loss.
- Many individuals (9.2 million) with vision loss live in large urban areas while 7.5 million live in areas with fewer than a million residents.
- 17.5 million blind and low-vision individuals identified themselves as white.
- 2.5 million identified as black or African-American.
- 2.3 million identified as Hispanic or Latino.
- 580,000 identified as Asian.
- 274,000 identified as American Indian or Alaska Native.
- 319,000 claimed two or more races.

TERMINOLOGY

Because individuals are the experts of their experiences, it is important always to ask them how they identify and which terms they prefer for themselves.

BLINDNESS/LOW VISION

Blind. "Legally blind" involves an impairment that results in 10 percent or less normal vision. In popular culture, blind typically refers to total blindness, which in reality represents only a small population. Many people with significant visual impairments consider "blind" to be a neutral or positive term.

Low vision. This term refers to a severe, uncorrectable vision loss in distance and near vision.

Vision impairment. A broad term referring to reduced or limited vision. This term reflects an exclusively biomedical condition rather than one involving cultural understanding or condition.

COMMUNICATION

- Communication needs vary among people who are blind or have low vision.
- Most blind people do not have speech or hearing disabilities.
- Talking with persons directly at a regular volume and asking about their communication preferences, particularly typed text or print or digital communication, usually fosters greater trust and access.
- Large print (16-point font or larger) may be accessible to some people who are blind or who have low vision. Remember that not everyone can use this format.
- Some individuals prefer to read text in Braille, but most people with these conditions do not know how to read Braille.

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ETIQUETTE

- Immediately greet a blind person who has entered the room. This lets the individual know you are present and ready to assist.
- Introduce yourself by sharing your name and role/position and introduce the person to others who are present.
- When possible, address people who are blind or have low vision by name so that they know you are speaking to them in particular.
- Speak at a natural pace and volume.
- Talk directly to people who are blind or who have low vision. Avoid talking through third parties, and introduce others who might be joining your conversation.
- Look directly at the person. The individual usually will turn in your direction when responding.

BLINDNESS/LOW VISION

- Let the person know when you are leaving the room.
- Supplement your visual cues with verbal cues.

  Example: In addition to nodding your head or waving goodbye, say "yes" or "goodbye."
- You may use phrases and visual references such as "I'll see you later" and "watching television" without offense.
- Before offering assistance, always ask the person whether and what kind of assistance is welcome.

  Note: Grabbing a blind person's arm or pulling them can be confusing and insulting. Ask individuals whether they would appreciate your assistance.

  Example: "May I help?" "What would be the best way to assist you?"
- Ask whether a person would like for you to provide visually descriptive information. This can include colors, patterns, designs, and shapes.
- Some people prefer the clock position to describe where items are located.

  Example: "Your water bottle is at four o'clock; the remote control is at nine o'clock."
- It helps to be very specific when providing directions to a location unfamiliar to the individual.

  Example: "Walk about 15 feet and then turn right to reach the stairway."
- If you need to alert the individual to a dangerous situation, offer a calm and understandable warning.

  Example: "Wait just a moment—there's a stack of boxes in front of you."

PROMOTING ACCESS

- Lighting may be important for some individuals. Avoid environments with glaring or flashing lights.
- When possible and appropriate, provide visually detailed descriptions of visual materials.

  Example: "In this photo, a young Latina girl is walking along an empty street."

  Example: "The graph on this PowerPoint slide shows that consumer spending between 1980 and 1990 rose by 17 percent."

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- Providing verbal cues often provides greater opportunities for the person who is blind or has low vision to feel included.

  Example: Introducing yourself by sharing your name and role/position and introducing the person to others who are present may reduce confusion and feelings of exclusion.
- Many blind people prefer not to be left in "empty space." Proximity to physical objects (for instance, a wall, chair, or table) helps them stay oriented.

- It is important not to pet, feed, or otherwise distract service animals such as guide dogs. They are working, and their ability to provide effective mobility assistance depends on their ability to concentrate.

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TECHNOLOGY

Keep in mind that not all people who are blind or who have low vision use assistive devices or adaptive technology. Some individuals may use them only intermittently.

Here are some of the most common examples of assistive technology for people with visual impairments:

Magnifying and telescopic lenses. These are devices that enlarge the image of something. These come in various shapes and sizes.

White canes (long canes). There are multiple varieties of this mobility tool. Many are used primarily to navigate while traveling. The white cane also serves to alert others of a person's identity as a blind person. Some canes also may provide physical support. Many blind and low-vision users consider the long cane a symbol of independence.

White cane with a red stripe. Usually indicates that the user is deaf-blind.

Service animals. These animals perform tasks for individuals with disabilities. Guide dogs (also known as "seeing eye" dogs) are the most common type of service animal. Some individuals now use miniature horses instead of dogs. Under the Americans with Disabilities Act, all service animals must be granted access to transportation vehicles and to public facilities.

Other animals, such as monkeys, cats, and pigs, commonly provide other services for people with disabilities. A person who is blind or who has low vision may use a service animal for purposes other than mobility.

Audio description (also called video description). This narration service is commonly used for television, theater, film, museum exhibits, and other visual media. It describes visual features to expand access. Descriptions tend to be objective and succinct. Many people use this service to enjoy TV shows. Various Internet sites offer updates on programming that offers audio descriptions.

BLINDNESS/LOW VISION

Computers and smart phones. Like most Americans in the 21st century, many blind people use computers and smart phones. Advances in software and computer technology that enlarge text or convert text to synthesized speech, for example, have enabled blind and low-vision users to have increased access. While these popular forms of technology may offer additional options for communication, it is important to realize that some programs and devices may be inaccessible and some individuals may not prefer to use them. Always check with the person first about these options.

THINGS TO REMEMBER

- Most people (approximately 80 percent) who are legally blind have some degree of vision and thus are not totally blind.
- Many people who are legally blind are able to read large print.
- People who use a white cane or guide dog are not always totally blind.
- Blind people do not inherently have exceptional hearing, sense of smell, or touch. They commonly focus on and develop their other senses to perform daily life activities.
- Not all blind people know how to read Braille.
- Approximately 5 -10 percent of the blind population can read Braille.
- Most people who are blind or who have low vision do not wear dark sunglasses daily.
- Most visually impaired eyes appear "normal" to observers. Very few impaired eyes look deformed or significantly different from typical eyes.

CONTROVERSIAL TOPICS

Opinions vary among blind and low-vision persons over the use and types of service animals. People who are blind and low vision may hold different opinions over the use of canes and types of canes.

DEAF/HARD OF HEARING

Hearing loss is the second most common disability in America and is experienced by almost one out of ten Americans.

Approximately 53 million people qualify as hard-of-hearing and nearly one million are functionally deaf. When, how, and to what extent an individual experiences a hearing impairment range widely and may influence a person's sense of identity in different ways.

Persons who are considered *hearing* are those with no difficulty hearing normal conversation and who do not use a hearing aid. Persons who are *hard-of-hearing* are those who either have no difficulty hearing normal conversation but do wear a hearing aid or have some difficulty hearing normal conversation (regardless of hearing aid use). Persons who are *functionally deaf* are either deaf or unable to hear normal conversation at all (even when using a hearing aid).

Some deaf people identify as "culturally deaf." Culturally deaf people value social and cultural experiences as deaf. They share a common (signed) language, folklore, humor, educational experiences, tendency to marry other deaf people, and participation in associations of, by, and for deaf people. Many do not view themselves as disabled; instead they consider themselves a linguistic minority, akin to an ethnic group. Cultural deaf communities exist in America and around the world.

DEMOGRAPHICS

- Statistics indicate that there are a total of 54 million deaf and hard-of-hearing individuals in the United States, with nearly one million who identify themselves as functionally deaf.
- About two to four of every 1,000 people in the United States are "functionally deaf," though more than half became deaf relatively late in life; fewer than one out of every 1,000 people in the United States became deaf before 18 years of age.
- Anywhere from nine to 22 out of every 1,000 people have a severe hearing impairment or are deaf. Again, at least half of these people reported their hearing loss after 64 years of age.
- A total of 37 to 140 out of every 1,000 people in the United States have some kind of hearing loss, with a large share being at least 65 years of age.
- Individuals over the age of 65 comprise more than half of the deaf and hard-of-hearing population while youth under the age of 18 account for less than four percent.
- Adult men are more likely than women to have significant hearing loss.

DEAF/HARD OF HEARING

- Roughly 7.1 percent of the American Indian and Alaska Native population experience hearing impairments while 2 percent of Hispanics, 1.9 percent of Asians, and 1.4 percent of blacks reported significant hearing loss. Some 3.7 percent of the Anglo European population has a serious hearing impairment.
- Most deaf people (roughly 90 percent) have hearing parents and siblings.

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TERMINOLOGY

Deaf. Commonly identifies a cultural identity, people who share common values and experiences. May also refer to individuals who have an audiological impairment (they cannot hear).

Hard-of-hearing person. Commonly describes an individual with mild to moderate hearing loss.

Oralism. Promotes lip reading and speech for deaf people. Often oral practices exclude any signed communication. Many culturally deaf people oppose strict oralism.

Oral deaf. Commonly refers to deaf people who have lip reading and oral speech skills and who primarily use these techniques for communication. Many oral deaf do not know or communicate extensively in sign language.

Pre-lingually deaf individuals. These are people who become deaf before acquiring language. This generally includes people who are born deaf or who become deaf before the age of three. Many pre-lingual deaf identify as culturally deaf.

Late-deafened person. Describes those who became deaf later in life, after they learned to speak orally. Also called *post-lingually deaf*, many from this group may not identify as culturally deaf.

Children of deaf adults (CODAs). Most offspring of deaf parents are hearing but many identify as culturally deaf.

TERMS TO AVOID

Hearing handicapped. Many find this term inaccurate and offensive.

Hearing impaired. Generally refers to all people who experience some kind of hearing loss. Many may find this term offensive.

Deaf and dumb/deaf-mute. Outmoded labels for people with hearing impairments that often are seen as insulting.

COMMUNICATION

Communication represents a particularly important part of individual and group identities as well as an access issue for many deaf and hard-of-hearing people.

Deaf and hard-of-hearing people commonly use one or more of the following modes of communication:

- Spoken and/or written languages, such as English.
- Signed languages, such as American Sign Language, or systems of visual communication such as Signed English or cued speech.
- American Sign Language (ASL) is the third most commonly used language in the United States. ASL is not a universal language, as many countries have their own signed language.
- If you do not know the person's preferred communication, ask the person.

INTERPRETERS

- Professional interpreters facilitate communication between spoken and sign language users and follow a standard protocol and a code of professional conduct.
- When an interpreter is present, stay focused on the deaf or hard-of-hearing person—not the interpreter.
- Look directly at and speak directly to the deaf or hard-of-hearing person, not at the interpreter.
- The interpreter cannot add or delete information expressed. It is critical that interpreters convey exactly what is expressed and not insert their own ideas or interpretations, or exclude portions of what is communicated.
- In order to process dialogue accurately, interpreters often will be a few words behind the speaker; being mindful of this lag time and waiting for responses may allow the person to participate more fully in your conversations.
- There are various kinds of professional interpreters. Most are trained to interpret between two languages (for example, American Sign Language and standard English).
- Oral interpreters (also known as oral transliterators) silently replicate the speaker's words on their lips in order to enhance speech reading access for oral deaf people.

LIP READING

- This communication technique interprets lip and facial movements to understand oral communication.
- Contrary to popular belief, lip reading is extremely difficult to master. Success rates for lip reading varies,

but studies generally confirm that only between 25 percent and 45 percent of spoken English can be understood through this technique.

- Some individuals may rely on a combination of lip reading and residual hearing.

WRITING

- This technique involves writing notes back and forth to communicate. This may offer an immediate solution to communication barriers, but writing can be time-consuming and may not be fully accessible to deaf and hard-of-hearing people for whom standard English presents challenges.
- Because of common historical and stigmatized experiences around language acquisition, it is highly recommended that you first ask whether a person is able and willing to engage in written communication.
- Writing is not a very efficient way to communicate in complex situations, such as those involving medical or legal matters.

REAL-TIME CAPTIONING

- Also called Communication Access Realtime Translation, or CART, this technology provides immediate translation of spoken words into text using a stenotype machine, computer, and specialized software. The text often is displayed on a computer monitor or projected onto a screen.
- This communication option currently is used mostly by hard-of-hearing individuals and in large meeting settings.

COMMON BARRIERS TO CLEAR COMMUNICATION

- Engaging in side conversations with interpreters or asking for their opinion typically inspires distrust from deaf and hard-of-hearing people. Because of their code of professional conduct, interpreters also are not allowed to engage in these kinds of conversations.
- Watching an interpreter rather than the deaf or hard-of-hearing person during conversations breaks eye contact, impairs effective dialogue, and may be interpreted as insulting or confusing.
- Becoming impatient or dismissing the person if communication takes longer or requires more clarification may confuse or frustrate a deaf person.

  Example: Responding to a person with “never mind” generally is considered insulting to many deaf and hard-of-hearing people.

- Shouting often undermines clear communication, too. It is harder to lip read and understand shouted information.

ACOUSTICS

- For some deaf and hard-of-hearing people, particularly those who communicate orally, wear hearing aids or use a cochlear implant, it may be helpful to have conversations in a quiet area.
- Background noise, such as that created by a loud radiator or other equipment, may be amplified by

hearing aids and other devices, and can make oral communication more difficult.

- Do not assume that a person will be undisturbed by background noise simply because he or she is deaf.

ETIQUETTE

- To get attention, first call the person's name. If there is no response, wave your hand or gently touch the person on the arm or shoulder.
- Flickering the lights is a common way of getting attention.
- Invite the individual to decide the arrangement of people to best promote accessible communication.
- Look directly at and speak directly to the deaf or hard-of-hearing person, not the interpreter or others who accompanied the individual.
- Clarify which mode of communication and which language(s) the person prefers.
- Not all individuals know American Sign Language or spoken English. The person might use a different national sign language, spoken language, etc.
- Maintain eye contact as much as possible.
- Facial expressions and natural gestures reinforce and enhance communication.
- Watch for indications that the person wishes to contribute information.
- During conversations, deaf and hard-of-hearing people commonly nod in affirmation or refutation. This does not always mean that they fully understand what is being said. When appropriate, clarify whether the individual comprehends what you have said.
- Noting explicitly when you are changing topics may help deaf and hard-of-hearing people follow your conversation more fully.

    Example: "My next question is" or "I want to change the subject now to...."

TECHNOLOGY

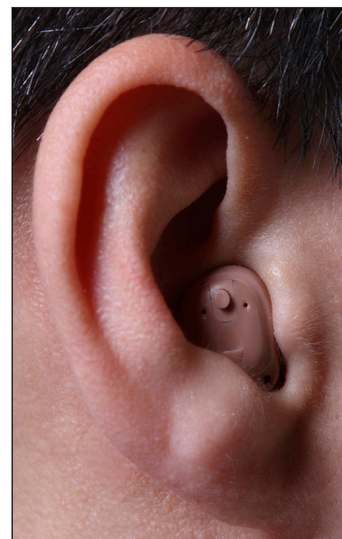
Hearing aids. These are primarily electronic devices that amplify sound. Sizes, designs, and shapes vary, and these devices may be worn in either one or both ears.

Note: Don't assume that a hearing aid eliminates hearing impairments.

Cochlear implants. These are surgically implanted electronic devices that electrically stimulate the auditory nerve, producing sounds. External parts, which typically include a battery, microphone, micro-computer, and a headpiece, can be removed. **Note:** Don't assume that cochlear implants "fix" hearing, as the ability to interpret sounds varies from individual to individual.

Wireless communication (e.g., pagers, cell phones). Like many people in America, deaf individuals increasingly use handheld communication devices like pagers and cell phones. Text messaging (instant messaging) may provide a viable option for some deaf and hard-of-hearing people to communicate directly

with you. Always investigate whether this is an accessible option.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Video relay service (VRS) enables people to communicate through a videophone, webcam, or other video device in real time through a video interpreter (VI). People who use visual languages (e.g., American Sign Language or cued speech) communicate with the VI through a video device so they can see one another. People who use spoken language communicate orally with the VI through the phone.

Real-Time Captioning (also called Communication Access Realtime Translation, or CART) provides immediate translation of spoken words into text using a stenotype machine, computer, and specialized software. The text often is displayed on a computer monitor or projected onto a screen. This technology tends to be used by individuals who are hard-of-hearing, who have cochlear implants, and who are late-deafened.

Instant Messaging provides instantaneous, real-time text access between deaf and hard-of-hearing individuals who wish to communicate with each other or with persons who can hear. Such software is typically provided through computers and mobile phones.

TTY (also called teletypewriter, TDD, or telecommunications device for the deaf) enables typed communication through telephone lines. Some users view this technology as obsolete with the advent of mobile phones that also are text based. Individuals can communicate directly with other TTY users or to non-TTY users through a relay service. The device includes a keyboard, a display to read the typed text, and a modem.

(It is important to note that access to technology is not universal. Some technologies are more affordable than others. Not all technologies are widely available to low-income and uninsured people.)

ACCESS

- Quieter settings are more accessible. Avoid crowded and loud environments.
- Communication typically is easier in a one-on-one setting rather than group meetings.
- Make sure there is ample lighting, no glare, and backgrounds that are not distracting. Make sure you are not standing with your back to a window when you talk to a deaf or hard-of-hearing person.
- Examples of distracting backgrounds include colorful, patterned walls, or filled bookcases.
- As much as possible, face the person directly so that your whole front is visible.
- Proximity may affect communication.

- Inquire where you should stand or sit so that you are visually accessible.
- Remember that the person cannot read lips or watch an interpreter and simultaneously read written information. Pause to allow the person to access written material.
- Make sure that only one person is talking at a time. This aids both interpreters and individuals who rely on lip reading and residual hearing.
- Captioning for films and television provides access for deaf and hard-of-hearing viewers. Most televisions, video recorders, and other digital media currently have captioning or subtitling options, although not all TV programs, films, or websites offer captioning.
- If various communication options are unsuccessful, you might try writing with pen and paper, or typing on a computer. However, do not assume that the individual can or wishes to write.
- Providing written notes and other printed material may be useful since it is difficult to take notes while reading lips or watching an interpreter.
- Using a manual alphabet chart or finger spelling may foster direct language connections but does not constitute full communication access.
- If you are ever unsure about ways of promoting access, politely investigate alternatives.

COMMON ACCESS BARRIERS

- Chewing food or gum while talking makes it difficult for the person to understand what is being said during the conversation.
- Communication is undermined when objects obstruct the person's view of you or an interpreter's communication.
- Covering or otherwise obstructing your mouth while conversing inhibits a person's ability to lip read. Also, exaggerating your speech with lip readers typically makes it harder to understand what you're saying.
- Extended conversations can be draining for individuals and for interpreters. It can be helpful to occasionally ask whether people would benefit from a break.

CULTURAL DISTINCTIONS

- Deaf culture generally includes communication in American Sign Language (ASL), participation in deaf organizations, and association with other deaf people. In recent years, political activism, demographic changes, and greater awareness of pluralistic identities have expanded the concept of cultural deaf identity. For example, today some hearing and hard-of-hearing people may identify as culturally deaf. Others have rejected the d/Deaf distinctions and merely clarify social features with the label "deaf culture."
- Common deaf cultural behaviors include stamping feet, waving arms, and touching (shoulders and arms to get people's attention).

COMMON CULTURAL VALUES

- Culturally deaf people are part of a close-knit community that typically shares information openly.

Members typically consider secrets or withholding information rude, even if the information may not be directly relevant.

- Among other culturally deaf people, individuals often engage in extended goodbyes and greetings. Hugs and patting backs and arms are common rituals when deaf people meet and say their goodbyes.

THINGS TO REMEMBER

- Not all deaf and hard-of-hearing people can read lips.
- Very few people are totally deaf. Most deaf individuals have some hearing but may not be able to understand or make use of their hearing.
- The vast majority of deaf people are not mute. Vocal organs usually function, but various factors, including intensity of hearing loss and age when hearing loss occurs, strongly influence an individual's ability and success with oral speech.
- Not all deaf people use sign language. Sign language is not universal. Most nations have their own sign languages (e.g., French Sign Language, Russian Sign Language, Colombian Sign Language). Gestuno, a standardized system of international signs, is not an authentic language akin to Esperanto. Most deaf people are not fluent in Gestuno.
- American Sign Language is an authentic, complete language with its own grammatical structure, syntax, and linguistic features.
- Hearing aids and cochlear implants do not eliminate deafness. The effectiveness of hearing-assistive devices varies widely. Not all deaf people can read and write fluently, or they prefer to read and write as a way of communicating with others.
- Since deaf persons cannot hear themselves, some may make noticeable noises, including audible breathing. But not all do this sort of thing.

CONTROVERSIAL TOPICS

- Cochlear implants: Opponents of CIs often question the ethics of implants in children. Some reject the assumption that deaf individuals should be "cured" and assert that culturally deaf people enjoy full, rewarding lives without the ability to hear language.
- Definitions of "deaf culture" and "deaf identity" continue to evolve. For example, opinions differ widely over the value of various communication modes and the role of technology.
- Some deaf and hard-of-hearing people do not identify as disabled and consider the term "disability" to be offensive. Many value the deaf cultural community as a linguistic minority, akin to an ethnic group.

PHYSICAL DISABILITIES

The category "physical disability" includes many impairments that affect mobility, but physical disability also might mean a physical difference that does not affect mobility, but instead affects arm or hand use, for example.

Approximately 26 million people in America over the age of five have a physical disability.

Most persons with physical disabilities identify themselves as disabled but tend not to consider their impairments the primary feature of their identity.

Having a disability is a personal matter, and the effect and meaning of disability varies by individual and setting.

TERMINOLOGY

Some people with disabilities find terms like "the disabled" offensive, but others consider this an accurate and acceptable label. It is useful to ask the individual about preferred labels and ways of identifying.

Disabled and disability. According to the World Health Organization, a "disability" is an: "umbrella term for impairments, activity limitations or participation restrictions," that also considers "a person's functioning and disability... as a dynamic interaction between health conditions (diseases, disorders, injuries, traumas, etc.) and contextual factors (such as physical, social, and attitudinal factors).

Physical disabilities and mobility disabilities. These two labels often are used interchangeably to describe physical attributes that impair typical functionality. However, some people may prefer the term "mobility impairment."

Impaired and impairment. "Impairment" typically describes the physical or mental conditions that limit the typical ways and range of a person's ability to perform activities. "Impaired" refers to people who have disabling conditions (such as "hearing impaired"). Because many people disagree about whether this term is appropriate or stigmatizing, it may be useful to ask the individual about preferred labels and ways of identifying.

Handicapped and handicap. "Handicap" generally refers to the disadvantages that may result from having a disability rather than the actual physical or mental condition of disability. "Handicapped" often is used to

describe a person with an impairment, but today, this term is viewed by many as outdated and insulting.

Some examples of non-stigmatizing terms:

- People with disabilities
- Person with a mobility impairment:
    - "person who uses a wheelchair" or "wheelchair user"
    - "person who uses crutches," "crutch user," or "person who uses a cane"

TERMS TO AVOID

Terms and expressions that are generally viewed as stigmatizing:

- Confined to a wheelchair or scooter
- Restricted to a wheelchair or scooter
- Wheelchair bound
- Cripple/crippled
- Handicapped
- Invalid
- "Sticks" (when referring to canes or crutches)
- Afflicted with (any disabling condition)
- Stricken with (any disabling condition)
- Sufferer with (any disabling condition)
- Victim of (any disabling condition)
- Physically challenged

COMMUNICATION

- Don't assume that a person with a physical disability has impaired communication skills.
- To facilitate communication, try to place yourself at the eye level of the person with a mobility impairment.

    Example: Sit facing the individual who uses a wheelchair or stand slightly away rather than stand in front of the person.

ETIQUETTE

- Be mindful that your perceptions of a person's impairment(s) may or may not be accurate. Rather than making assumptions, be prepared to ask the individual about conditions that may be pertinent.
- Look directly at and speak directly to the person with the physical disability, not to others who may have accompanied the person.
- Speak at a natural pace and volume.
- You may use common phrases that refer to mobility.

Examples: "Sorry I'm running late" and "Walking a fine line."

- Sit down when speaking for more than a few minutes with a person who uses a wheelchair so you are at eye level. If this isn't feasible, stand at a slight distance. For many people, this reduces neck strain and encourages more respectful engagement. Some people may be offended if you kneel in order to speak to them.
- Be mindful of the individual's reach limits. Placing as many items as possible within a person's grasp promotes access.
- Some people rely on their arms to help them balance. Before attempting to touch or grab an arm it is strongly recommended that you ask for permission to do so.
- Patting a person on the head or touching the person's assistive devices may be viewed as insulting.
- Before offering assistance, always ask the person whether and what kind of assistance is welcome.

  Example: "May I help?" or "What would be the best way to assist you?"

COMMON ACCESS BARRIERS

- Pushing, moving, or leaning on a person's mobility device (e.g., wheelchair, crutches, walker) may confuse, frighten, or offend individuals. Obtaining permission to do so first generally fosters respect and improved access.
- Be mindful of your assumptions based on appearance or the use of assistive devices. People's experiences with mobility impairments range widely as do individual needs for and use of assistive devices.
- Crowding the space of a person who uses a wheelchair can appear threatening or offensive to some people. Giving the individual space to move may reduce stress and concern.

TECHNOLOGY

People with mobility impairments may use assistive technology. There are many kinds of assistive and adaptive devices. It is helpful to keep in mind that not everyone with a physical disability uses an assistive device; assistive device use also may be intermittent depending on individual needs.

Common examples of assistive devices:

Wheelchairs. Users sit on this wheeled mobility device, which can be moved manually (by the individual or someone else) or electrically if it has a motor and battery (known as a power or electric wheelchair). There are numerous kinds of wheelchairs, including sports wheelchairs, pediatric wheelchairs sized for children, and standing wheelchairs that support users as they shift from seated to standing position. Segway vehicles also may be used by some individuals with disabilities.

Scooters. These are similar to wheelchairs but designed more like a motor scooter, with a seat, handle-steering bar, and flat area on which to place feet. These tend to be battery-powered.

PHYSICAL DISABILITIES

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Walkers. As their name implies, walkers provide assistance for ambulation.

- The Standard Walker has four legs tipped with rubber and offers the most stability.
- Front-Wheeled Walkers allow individuals faster mobility than the standard walker but less stability.
- Four-Wheeled Walkers offer the least weight-bearing support and accommodate those who only require relatively minimal support.

Service animals. Such animals may be used for mobility assistance by various kinds of people with disabilities. Guide dogs (also known as "seeing eye" dogs) are the most common type of service animal. Some individuals now use miniature horses instead of dogs. Other people with mobility impairments may use service animals to pull wheelchairs or perform other tasks.

Canes. There are many different types and purposes of canes. Standard canes tend to provide balance support and canes with multiple legs generally provide weight-bearing support.

White canes. Also known as long canes, these are used by blind and low-vision travelers. There are multiple varieties of this mobility tool. Many are used primarily to navigate while traveling. The white cane also serves to alert others of a person's identity as blind. Some canes also may provide physical support. Many blind and low-vision users consider the long cane a symbol of independence.

White cane with a red stripe. Usually indicates that the user is deaf-blind.

Crutches. These come in various types and serve different purposes.

- Axillary Crutches. Primarily are used as temporary assistive technology for individuals with a mobility impairment in one or both legs.
- Forearm Crutches. These also are known as a Canadian crutch or Lofstrand crutch, and they tend to be used by individuals with longer-term lower-body impairments or weakness.

Prosthetics. These generally are used by individuals who are born without or later in life have lost one or more upper or lower extremities. Sometimes called artificial limbs, these devices tend to be custom-made to fit an individual, and different sorts of prosthetics may provide basic to highly advanced types of functionality.

ACCESS

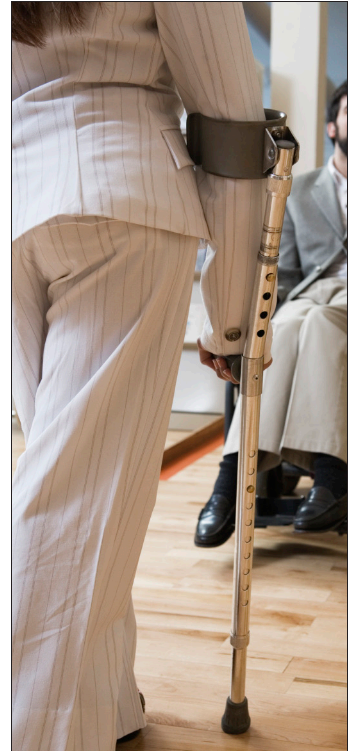
- To facilitate communication, try to place yourself at the eye level of the person with a mobility impairment.

Example: Sit facing the individual who uses a wheelchair or stand slightly away rather than stand in front of the person to facilitate eye contact.

- Make sure all ramps and wheelchair-accessible doorways remain unlocked and clear of obstacles.
- Make sure all parking areas, restrooms, hallways, and aisles are clear of obstacles.

THINGS TO REMEMBER

- Not all people who use wheelchairs are paralyzed or unable to walk. Some people can stand or walk short distances. Wheelchairs may enable some people to move more easily and save energy.
- Not all people with mobility impairments use assistive devices.
- Because discrimination can be both subtle and insidious, individuals with disabilities may vary greatly in their desire to share information they deem private.
- There is no single "correct" way to use any assistive device, so refrain from criticizing or giving opinions on usage.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CONTROVERSIAL TOPICS

- Making jokes or comments about a person's assistive device (such as "that scooter's got a lot of zip!") as a way of broaching the topic of disability generally is considered insulting or demeaning.
- It is generally inappropriate to ask personal questions that you would not pose to people without disabilities, including questions of sexuality and sexual abilities.

THE AMERICANS WITH DISABILITIES ACT

AMERICANS WITH DISABILITIES ACT—TITLE I EMPLOYMENT

The Americans with Disabilities Act (ADA) covers persons with disabilities in virtually all aspects of public life: employment, public services and accommodations, communications, and transportation. The ADA consists of four parts, each covering a specific area:

- Title I: Employment
- Title II: State and Local Government Services
- Title III: Public Accommodations and Commercial Facilities
- Title IV: Telecommunication

Here we will concern ourselves with the employment provisions, as contained in Title I.

DEFINITION OF TERMS

In 2008, the original Americans with Disabilities Act of 1990 (ADA) was updated and amended by the ADA Amendments Act of 2008. The primary focus of attention in pre-2008 ADA cases was supposed to be whether covered entities complied with their obligation not to engage in discrimination on the basis of disability.

Through this broad mandate, the ADA was intended to protect anyone who was discriminated against on the basis of disability, including an individual who:

- actually had a current impairment;
- did not have a current impairment but who had a record or history of having such an impairment; or
- did not have a current impairment but who was regarded, i.e., adversely treated as having such an impairment (actual or perceived).

The question of whether an individual's impairment constitutes a disability under the ADA was not supposed to have demanded extensive analysis, i.e., not unduly focus on the threshold question of whether a particular person is a "person with a disability." Congress did not intend for the threshold question of disability to be used as a means of excluding individuals from coverage.

Examples of persons intended by Congress to be protected under the ADA or allowed to prove discriminatory treatment are described below:

- A 29-year-old man claimed employment discrimination (refusal to hire) on the basis of intellectual disability (mental retardation). In this case, the individual's cognitive ability was comparable to that of an eight year old. The individual graduated with a certificate in special education (not a regular diploma) and he was receiving Social Security disability benefits (as the Social Security Administration had concluded that he was unable to engage in substantial gainful activity).
- A woman was a registered nurse, and, after working for a hospital for five years, she was diagnosed with stage III breast cancer. After her cancer was in remission, she applied for reinstatement to a comparable position, but the hospital refused her application.
- A pharmacist had insulin-dependent diabetes. He needed to take regular, interrupted breaks to inject insulin, which enabled him to function successfully on the job. His request for a reasonable accommodation (breaks to take his insulin) was denied.
- Additional examples of conditions previously protected under section 504 of the Rehabilitation Act are identified in the legislative history, and include epilepsy, multiple sclerosis, hearing impairment, heart disease, cerebral palsy, and clinical depression.

The ADA Amendments Act of 2008 (ADAAA) restored the original intent of the ADA by:

- Reinstating the broad scope of protection;
- Moving the focus from the threshold issue of disability to the primary issue of discrimination; and
- Affirming that although the definition of disability is intended to be broad, only those individuals who are qualified and can prove discrimination are entitled to relief.

The ADAAA:

- Rejects interpretations by the U.S. Supreme Court, lower courts, and the Equal Employment Opportunity Commission (EEOC) restricting/narrowing the scope of protection against discrimination under the ADA.
- Retains (without amendment) the existing definition of the term "disability."
- Clarifies the key words and phrases in the definition of disability to make it easier for an individual to be protected by the law.
- Focuses attention on whether discrimination on the basis of disability occurred rather than whether or not the individual met the definition of disability.
- Limits the circumstances under which employers and public accommodations are required to provide reasonable accommodations and make modifications to policies and practices (only when a functional test of disability is met and not when one is regarded as having a disability).
- Includes construction clauses clarifying that the changes to the definition and to the structure of the law should not be construed to have any impact on other disability-related benefits laws (e.g., workers' compensation) nor on the applicability of current defenses against allegations of discrimination included in the ADA (e.g., fundamental alteration).
- Specifies the authority of EEOC, the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT) to issue regulations implementing the definition of the term "disability."

- Includes a conforming amendment specifying that the definition of "disability" used under the ADA shall be used for purposes of Title V of the Rehabilitation Act of 1973, as amended.

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THE ADAAA DEFINITION OF DISABILITY

The term "disability" means, with respect to an individual:

- A physical or mental impairment that substantially limits one or more major life activities of such individual (Prong 1).
    - Key Components:
        - Physical or mental impairment
            - Currently, no definition of the phrase "physical or mental impairment" exists in the statute but within current EEOC regulations:
                - The phrase *physical or mental impairment* means –
                    (i) any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine;
                    (ii) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities;
                    (iii) The phrase *physical or mental impairment* includes but is not limited to: contagious and non-contagious diseases and conditions such as orthopedic; visual; speech and hearing impairments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; mental retardation; emotional illness; specific learning disabilities; human immunodeficiency (HIV) disease (whether symptomatic or asymptomatic); tuberculosis; drug addiction; and alcoholism;
                    (iv) The phrase *physical or mental impairment* does not include homosexuality or bisexuality.
            - ADAAA does not add definition of the phrase *physical or mental impairment* to the statute.
            - Federal legislative history explains that the definition included in current regulations is appropriate.

- The ADAAA also contains substantial limits, as it:
  - Rejects standards adopted by courts and EEOC ("prevent or severely restrict") as "too demanding."
  - Directs courts and agencies to construe the term "broadly" and "without regard to the ameliorative effects of mitigating measures."
  - Directs the courts and EEOC to view impairments that are "episodic" or "in remission" in their "active" state.
  - Modifies ADA as follows:
  - Commentary:
    - Rejects standards adopted by the courts as too demanding, i.e., it rejects the notion that an impairment must "prevent or severely restrict" an individual from doing major life activities.
    - Rejects the standard adopted by the EEOC as too demanding, or rejects "significantly restricted."
    - Rejects the requirement that whether an impairment substantially limits a major life activity is to be determined with reference to the ameliorative effects of mitigating measures.
    - Directs the courts and agencies to interpret the term, consistent with the following guidance:
      - (i) Construe the term in favor of broad coverage;
      - (ii) Determine whether an impairment substantially limits a major life activity without regard to the ameliorative effects of mitigating measures (an illustrative list includes medication, medical supplies, equipment, or appliances, low-vision devices {which do not include ordinary eyeglasses or contact lenses}, prosthetics including limbs and devices, hearing aids, cochlear implants or other implantable hearing devices, mobility devices, oxygen therapy equipment and supplies, uses of assistive technology, reasonable accommodations, or auxiliary aids and services, or learned behavioral or adaptive neurological modifications.
      - (iii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.
      - (iv) Recognize that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
      - (v) Consider whether a person's activities are restricted as to the conditions, manner or duration under which they can be performed in comparison to most people.
      - (vi) Includes illustrative list of major life activities.
      - (vii) Specifies that major life activities include major bodily functions.
      - (viii) Clarifies that an individual may be limited in only one major life activity.

- Additional Commentary:
  - The ADAAA modifies the ADA as follows with regard to the term *major life activity*:
    - (i) Includes an illustrative list of *major life activities*—caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.
    - (ii) Specifies that the term *major life activity* includes major bodily functions, including, but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. An impairment can substantially restrict the operation of a bodily function if it causes the operation to over-produce or under-produce in some harmful fashion. The inclusion of major bodily functions under the term *major life activities* is important for persons with immune disorders, cancer, kidney disease, or liver disease because they no longer need to show what specific activity they are limited in to meet the statutory definition of disability.
    - (iii) Rejects the interpretation by the courts that an individual must have an impairment that prevents or severely restricts the individual from doing multiple activities.
    - (iv) Specifies that an impairment that substantially limits one major life activity need <u>not</u> limit other major life activities in order to be considered a disability.

- A <u>record</u> of such an impairment (Prong 2): No change to current law or regulatory interpretation; or
- Being <u>regarded</u> as having such an impairment (Prong 3).
  - Individuals are not subject to functional tests.
  - Individual must prove adverse action was taken because of an actual or perceived impairment.
  - Does not include transitory and minor impairments.
  - Covered entities not required to make reasonable accommodations or modifications.
- Commentary:
  - The ADAAA specifies that courts and agencies must adopt a broad view of Prong 3 consistent with the U.S. Supreme Court decision in *Arline*, which found that unfounded concerns, mistaken beliefs, fears, myths, or prejudice about disabilities are often just as disabling as an actual impairment.
  - Individuals included under Prong 3 are <u>not</u> subject to a functional test (i.e., a determination of whether the person actually has the impairment or whether the impairment constitutes a disability under Prong 1 or Prong 2)—an individual need only establish that he or she was treated adversely, in other words, subjected to an adverse action (for example, they were disqualified from a job) prohibited by the ADA because of an actual <u>or</u> perceived impairment. This is a significant step because individuals will no longer have to prove that they have a

disability or that their impairments limit them in any way.

- The ADAAA specifies that impairments that are transitory and minor are excluded from eligibility under Prong 3. The federal legislative history explains that a transitory and minor impairment includes, for example, common ailments like the cold or flu.
- The ADAAA specifies that covered entities need not provide a reasonable accommodation or a reasonable modification to an individual who meets the definition of disability under Prong 3.

- Construction Clauses
    - Workers' compensation and other disability benefit programs not affected.
    - Fundamental alteration defense not affected.
    - Reverse discrimination claims not authorized. Regulatory Authority: ADAAA makes it clear that the EEOC, DOJ, and DOT are authorized to issue regulations implementing the definition of disability.
    - Conforming Amendments: ADAAA specifies that the meaning given to the term "disability" under the ADA shall be used for the purposes of defining the term "disability" under Title V of the Rehabilitation Act of 1973, as amended.
    - ADAAA Changes the Structure of the ADA: The focus is on the merits of the case such as whether a covered entity was engaged in discrimination against a qualified individual on the basis of disability rather than the threshold question as to whether the individual was disabled.
- Commentary:
    - The ADAAA amends the structure of Title I of the ADA to mirror the structure of non-discrimination protection under other civil rights statutes such as Title VII of the Civil Rights Act of 1964.
        - The ADAAA changes the language of Title I of the ADA from prohibiting discrimination against a "qualified individual with a disability because of the disability of such individual" to prohibiting discrimination against a "qualified individual on the basis of disability."
- This ensures that the emphasis is on the critical inquiry of whether discrimination on the basis of disability has occurred and is not unduly focused on the threshold question of whether a particular person is a "person with a disability."
- Covered entity may not use qualifications standards or other selection criteria based on an individual's uncorrected vision unless it is shown to be job-related for the position in question and consistent with business necessity.
- Critical Considerations:
    - Identify the essential functions of the job and that they are current.
    - If written job descriptions are used, they will be considered evidence of the essential functions of the job.
    - Examples of ADAAA Disability Discrimination:

        - Utilization of qualification standards, employment tests, criteria, or methods of administration that have a discriminatory effect
        - Not making reasonable accommodations
        - Use of unlawful pre-employment inquiries
        - Failure to maintain medical records on separate forms and treat them as confidential
    - Examples of Defenses:
        - Demonstration that an accommodation would impose an undue hardship
        - Qualification standards, tests, or selection criteria are shown to be job-related and consistent with business necessity
        - Individual may pose a direct threat to the health or safety of others in the workplace

REASONABLE ACCOMMODATION

Reasonable accommodation is simply defined as an accommodation to an individual's disability that does not cause undue hardship for the employer.

The ADA makes the applicant or employee responsible for notifying the employer of any needed accommodations—that is, the employer is not required to make accommodations for conditions of which it is unaware.

What's Reasonable, What's Not. What constitutes a "reasonable accommodation" will vary according to a number of factors—the size and financial condition of the business, the severity of the individual's disability, the cost and/or extent of the accommodation, and so on. Recognizing this, the accommodation provisions of the ADA, and of the EEOC regulations, have been written to encourage decision-making on a case-by-case basis.

Typical Workplace Accommodations. It would be impossible to make a list of accommodations covering every situation that may arise. Below is a summary of the categories in which most accommodations fall, along with a few examples for guidance. These examples are illustrative only as each reasonable accommodation determination needs to be evaluated on a case-by-case basis. That is, a reasonable accommodation in certain situations and for some employers may not be "reasonable" in other contexts.

1. **Adaptive Equipment/Devices:** The number and variety of devices and equipment designed for use by persons with disabilities grows larger each year. Items range from low tech to high tech—from simple grips that enable a person with weak hands to hold a pen, to Telecommunications Devices for the Deaf (TDDs), to computers that can be operated by voice commands or movements of the head, eyes, and facial muscles. Some items serve as modifications of existing equipment, while other devices have been designed virtually from scratch. Here especially, the first step is to consult the applicant or employee for suggestions. This person most likely has had long experience in making adaptations at a minimum cost

for maximum effectiveness.

2. **Job Restructuring:** In job restructuring, a manager would redistribute the marginal functions of a job to other employees so an employee with a disability can perform the essential functions effectively. The ADA does not require any restructuring that affects essential job functions, such as those a qualified employee must perform with or without an accommodation. However, it may be considered a reasonable accommodation to redistribute marginal, non-essential duties among other employees, to exchange duties for those the employee with a disability can perform, or even to change the time or manner in which essential job functions are performed.

Example #1

A person is hired for one of two clerical positions, a marginal duty of which is to make copies. It is discovered that the person, a wheelchair user, cannot use the copier. The employer decides to redistribute the duties of the job, making the other clerical employee wholly responsible for copying and the person with the disability responsible for all filing.

Reasonable accommodation is simply defined as an accommodation to an individual's disability that does not cause undue hardship for the employer.

Example #2

A person is hired for a position, an essential function of which is to attend a weekly staff meeting every Wednesday afternoon. However, the person has a standing medical appointment every week at that time. The problem is solved by rescheduling the meeting for Wednesday morning, or for a different day of the week.

Example #3

A person with a developmental disability can perform all the essential duties of a job, but has difficulty remembering the order in which they must be done. The employee is provided with a checklist that is reviewed by a supervisor at the end of the day.

3. **Modifying Work Schedules:** Many disabilities require frequent doctor's visits or regular medical treatments that may be available only at certain times. For a person with such a condition, a manager might find it reasonable to modify the normal work schedule by permitting the employee to work late, work on off days, or work on a part-time basis.

Example #1

An employee with a mental illness meets with a psychiatrist for two hours on Tuesday. To accommodate his condition, the employer allows him to take an extended lunch and to make up the

time by working an hour later on Tuesday and Wednesday.

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Example #2

A person with kidney disease goes in for dialysis treatment twice a week. In her case, the treatment is available only on weekdays. Her employer agrees to let her perform work assignments at home or on weekends.

Example #3

An employee at a telemarketing firm works rotating shifts depending on the workload and the part of the country being called in a given week. However, the employee is a person with diabetes and must adhere to a strict eating schedule, and take insulin at the same times each day. To accommodate this condition, the employer assigns the employee to a single shift on a permanent basis.

Other cases, which might call for a modified work schedule, involve persons who are easily fatigued and therefore need a rest period to perform effectively, or persons with mobility impairments who cannot use public transportation and depend on the irregular schedules of paratransit, or "dial a ride" services.

4. **Flexible Leave Policies:** Certain persons with disabilities require additional time off for reasons related to their condition, including:
   - Medical treatment
   - Repair of equipment (wheelchairs, prostheses, etc.)
   - Temporary changes in the working environment that are adverse to the person's condition (e.g., a failure of climate control where an employee cannot function under temperature extremes, a remodeling project using materials to which an employee is allergic or otherwise sensitive)
   - Training in the use of service dogs or specially designed equipment

   Under the ADA, an employer does not have to provide additional paid leave because of a disability, but in many cases it would be considered a reasonable accommodation to let the employee use vacation hours, advanced leave, or paid/unpaid leaves of absence in situations pertaining to his or her condition.

   If special equipment is used on the job and is provided as part of an accommodation, the employee should be permitted to train on the equipment during work hours without having to take leave, if other employees receive equipment or systems training as part of their jobs.

5. **Re-assignment to a Vacant Position:** If an employee becomes disabled after hiring, if the severity of an existing disability increases beyond a firm ability to accommodate it reasonably, or if changes in equipment or procedures adversely affect job performance because of a disability, the employer should consider re-assigning the employee to an available vacant position for which the employee is qualified. In general, such a measure should be taken only if:

- The employee can no longer perform essential job duties because of the disability; and,
- The employer cannot accommodate the disability in the current job without undue hardship.

This type of accommodation applies only to current employees. The employer is not required by the ADA to assign an applicant to a position other than the one for which that person was hired. However, re-assignment may not be used to segregate employees with disabilities, or to discriminate against them in promotion, business reorganization, salary increases, or career tracking.

If possible, re-assignment should be to a position that is equivalent in pay and job status, for which the employee is qualified, and which either is currently vacant or expected to be vacant within a reasonable amount of time. A lower-level job should be considered only if an equivalent job is unavailable. The ADA does not require the employer to promote an individual as a means of re-assignment, to create a new job, or to transfer their non-disabled employee from an existing job to create vacancy for an employee with a disability.

6. **Hiring Readers or Interpreters or Purchasing Assistive Technology and/or Software to Accomplish Same:** It may be considered a reasonable accommodation for an employer to pay for the services of a reader for employees with visual impairments or a sign language interpreter for those with hearing impairments. Readers or interpreters may not need to be hired for full-time positions. For example, a reader may only be required to help an employee with job-related correspondence, while the services of an interpreter may only be required to allow an employee to communicate at staff meetings or similar functions.

   In consulting with the applicant or employee, the employer might find there are other ways of making the same accommodation. An employee with a visual impairment, for instance, may be able to perform his job effectively through use of magnifiers, talking computers, or job-related materials (manuals, reference books, etc.) on tape or in Braille. These, in turn, may cost the employer less than paying for a reader.

   To accommodate persons with hearing impairments, it is important that the employer first determine how the individual prefers to communicate—through lip reading, American Sign Language, finger spelling, video relay interpreting, or a combination of all these methods—in order to be certain of the inclusion and consideration of all communication options. A new employee who lip reads may only need an interpreter during the first few days on the job, while becoming accustomed to the speech patterns of co-workers. Or, an interpreter may be needed only during interviews, meetings, presentations, and other situations where precise communication is essential. A manager may find it useful to provide basic sign language training to supervisors and fellow employees or use VRSIK video relay services/interpreting. As with all accommodations, managers are advised to discuss all alternatives with the applicant or employee in question. It is important to remember that accommodations are not required to cater to personal preferences. Accommodations directly affect individual rights and the ability to perform a job and be “reasonably accommodated” under the law.

Professional interpreters generally must receive intense training and be certified by a public or private agency serving persons with hearing impairments. See the "Resources" section of this document for organizations providing interpreting services or referrals.

THE AMERICANS WITH DISABILITIES ACT (ADA)—SEPTEMBER 1993

EMPLOYMENT AND THE ADA: A WALK-THROUGH

Ultimately, the individual with the disability (or his/her health care provider) is the best "expert" on the condition, and the person to whom your concerns should be directed. The following suggestions, beginning with the interview, and proceeding through every step of the hiring process, should prove helpful in this respect. The suggestions should be applied regardless of whether an applicant has an apparent disability or not.

INTERVIEWING

The ADA prohibits direct pre-employment inquiries about a person's disabilities either on applications or during interviews. This is designed to prevent an applicant with a disability from being screened out because of misinformation or stereotypes surrounding the applicant's condition.

However, the ADA does permit questions relating to an applicant's abilities to perform specific job-related tasks.

It is important that the same questions be asked of all candidates as to the ability to perform job-related tasks. The questions should not be phrased in terms of a disability.

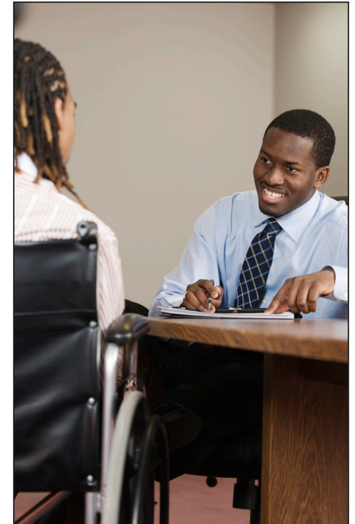
- **Make accommodations for a person's disability in the application process:** For example, if applicants are required to take a written test, that test should be offered orally to an applicant who is visually impaired.

Accommodations also should be offered during the interview itself. If an applicant uses a wheelchair, the interview should be held at an accessible location. A hearing-impaired applicant should be permitted to bring an independent sign language interpreter, or another assistive device or service consistent with his or her preferred mode of communication, at the employer's expense.

- **When an applicant voluntarily discloses the existence of a disability, ask him or her about any accommodations that may assist him or her in participating fully in the application and employment process:** If an applicant has an apparent disability or has disclosed the existence of a hidden one, you may ask whether the person is able to perform the essential functions of the job with or without a reasonable accommodation.

At this point, communication becomes especially vital. In evaluating an applicant with a disability, it is important to not ignore the disability, but rather to view it in terms of the individual's ability to perform the essential duties of the job with reasonable accommodations.

- **Examples of disability related questions PROHIBITED by the ADA include:**
  1. "Please list any conditions or diseases for which you have been treated within the last five years."
  2. "Do you have any physical impairments that prevent you from performing certain kinds of work?"
  3. "Are you currently taking any prescription drugs?"
  4. "Have you ever filed for worker's compensation insurance?"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POST-OFFER

Although the employer may not ask disability-related questions prior to making a job offer, certain questions pertaining to an applicant's medical history and his or her ability to meet health and safety standards may be asked once a conditional job offer has been made and before the employee starts work. This is usually facilitated by an outside agency.

An employer should use the initial application stage (the pre-offer stage) to determine whether an applicant has the basic job qualifications sought by the employer for a particular job. The post-offer stage could be used to explore forms of reasonable accommodation.

- Examples of disability accommodation-related questions an employer may ask during the post-offer stage include:
  1. "What accommodations do you think will be necessary?"
  2. "What accommodations did your last employer make?"
  3. "What sort of equipment is available that may help us accommodate your condition?"

Again, questions must not center around the disability itself, but around the duties of the job and the applicant's ability to perform them after reasonable accommodation, if any, has been made. An interviewer should not ask an applicant who uses a wheelchair, "Can you use this workstation?" but should phrase the question, "Do any adaptations need to be made to a workstation before you would be able to use it?" (This assumes that the applicant has visited a workstation or is otherwise familiar with the layout of the workstation that he or she should be using.)

- Examples of other permissible questions to an applicant with a "known disability" include:
  1. (To a visually impaired applicant) "What sort of modifications can we make for you to use our file room?"

OUTSIDE RESOURCES

You can contact a knowledgeable disability organization and/or rehabilitation agency for information on accommodation options the applicant may not know about during the interview process.

Organizations that provide support services to people with specific conditions, and rehabilitation

agencies concerned with a broader range of disabilities (e.g., mobility impairments, visual impairments, developmental disabilities), can provide current information on special equipment as well as suggestions as to how a disability may be accommodated in other ways. Such groups may be able to answer any remaining questions about the applicant's condition. Disability advocacy organizations are useful in assisting you in locating a qualified sign language interpreter or other devices or services necessary to accommodate your employees.

HIRING

In evaluating applicants who have an apparent disability or who voluntarily disclose the existence of a hidden one, the following pointers should be considered:

- Before approaching the question of accommodations, determine if the applicant is otherwise qualified: The ADA regulations drawn up by the EEOC state that an employer is not required to make accommodations for applicants who are not "otherwise qualified" or who do not meet job-related selection criteria relating to skills, experience, education, etc.
- The manager should make the hiring -decision before discussing potential accommodations so that the need to accommodate a disability does not have a negative impact on the hiring manager's judgment of the applicant: Once the applicant has been judged to have the necessary qualifications, then the questions turn to what sort of adaptations would be needed to allow the employee to perform the specific duties of the job.
- List and evaluate potential accommodations: Consider all alternatives relevant to the situation. The focus here should be on the whole range of measures that can be taken to enable an applicant to perform job duties, on the effectiveness of each alternative, and on its acceptability to the applicant.
- Determine whether the necessary accommodation is reasonable: Although the term "reasonable accommodation" is a vague one, there are a number of factors you can consider in making decisions about accommodations. These factors include:
  1. How much the accommodation will cost.
  2. How extensive of an accommodation will be required.
  3. To what degree normal business operations will be disrupted.
  4. What the fundamental impact will be on the nature or operation of the business or on other employees.

  As stated earlier, a reasonable accommodation is one that does not impose an "undue hardship." Determining that such a hardship would exist for one particular accommodation does not relieve the employer of the responsibility of considering alternatives.
- Select the best-qualified applicant, regardless of disability: The ADA is not an affirmative action measure. It does not require the employer to hire an applicant simply because the applicant has a disability. However, when selecting the best person for a job the employer must make sure an applicant's disability does not taint those subjective or intangible factors that go into a final hiring decision.

DISCRIMINATION

Job applications should be non-discriminatory and should not contain questions about the applicant's race, sex, age, religion or national origin, marital status, number or ages of children or other dependents, or the existence, nature, or severity of a disability. The ADA identifies the following types of conduct as discriminatory under its provisions, though it does not limit the definition of discrimination to these examples:

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- The use of qualification standards, employment tests, or other selection criteria intended to screen out applicants with disabilities.
- Using the reasonable access requirement as a basis for an adverse decision regarding an applicant or employee with a disability.
- Discriminating against an individual because that individual is related to a person with a disability (for example, refusing to hire a person whose son has cystic fibrosis because of possible increases in health insurance premiums).
- Failing to make reasonable accommodations to the known limitations of an applicant or employee, unless the employer can prove such an accommodation would cause undue hardship.
- Working with an outside entity (such as a temporary agency, consultant, or contractor) to discriminate against the employer's own applicants or employees. Employers cannot contract away their non-discrimination requirements. They must require non-discriminatory practices in their sub-contracts.
- Inquiries into an applicant's medical history and/or diagnosis/prognosis are strictly prohibited during the interview process. After the offer, the hiring manager may ask questions that pertain to the employee's need for reasonable accommodation to perform the essential duties of the job for which he or she has been hired.

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PRAISE FOR THE DISABILITY ETIQUETTE GUIDE

"Columbia Lighthouse for the Blind is pleased to endorse this publication as it will dismantle many myths about people with disabilities. It is very important that people are educated as to how to communicate effectively with all people, and this guide helps with that effort. As an employer at Columbia Lighthouse for the Blind, where more than 70 percent of our personnel is blind or visually impaired, I can attest to the great work and value that these employees provide."

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WORDS ARE POWERFUL.
THEY HAVE THE ABILITY TO INSPIRE AND ALSO HURT.

These guidelines describe preferred terminology, but they are not a substitute for one-on-one conversations with individuals to inquire about language they deem most appropriate to their life experiences.

Although opinions may differ on some terms, these guidelines reflect input from numerous national disability organizations, and have been reviewed and endorsed by media and disability experts throughout the country.

Don't Say	Do Say
Differently abled, challenged	Disability
The disabled	People with disabilities
Slow learner	Person with a learning disability
Quad	Person with quadriplegia
Autistic	Person with autism
Mongoloid	Person with Down syndrome
Midget	Person of short stature
Burn victim	Burn survivor
Handicapped parking	Accessible parking
Blind	Visually impaired
Alcoholic	Alcohol dependent
Brain damaged	Brain injury
Polio	Post-polio syndrome
Confined to a wheelchair	Uses a wheelchair, or wheelchair user
Hare lip	Cleft lip
Fit, attack	Seizure
Mute, dumb	Speech disorder
Birth defect	Congenital disability
Mental retardation	Intellectual or cognitive disability
Normal, able-bodied	Nondisabled
Deaf-mute, the hearing impaired	Deaf, hard-of-hearing

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