

# ADA Myth-conceptions



**Presenter:**  
Conrad Reynoldson, JD

# Washington Civil & Disability Advocate

## Washington Civil & Disability Advocate

**Conrad Reynoldson**

Attorney at Law

3513 NE 45th St. Suite G  
Seattle, WA 98105

(206) 855-3134

Conrad@wacda.com

www.wacda.com



A few “interesting” examples of “access”...

1



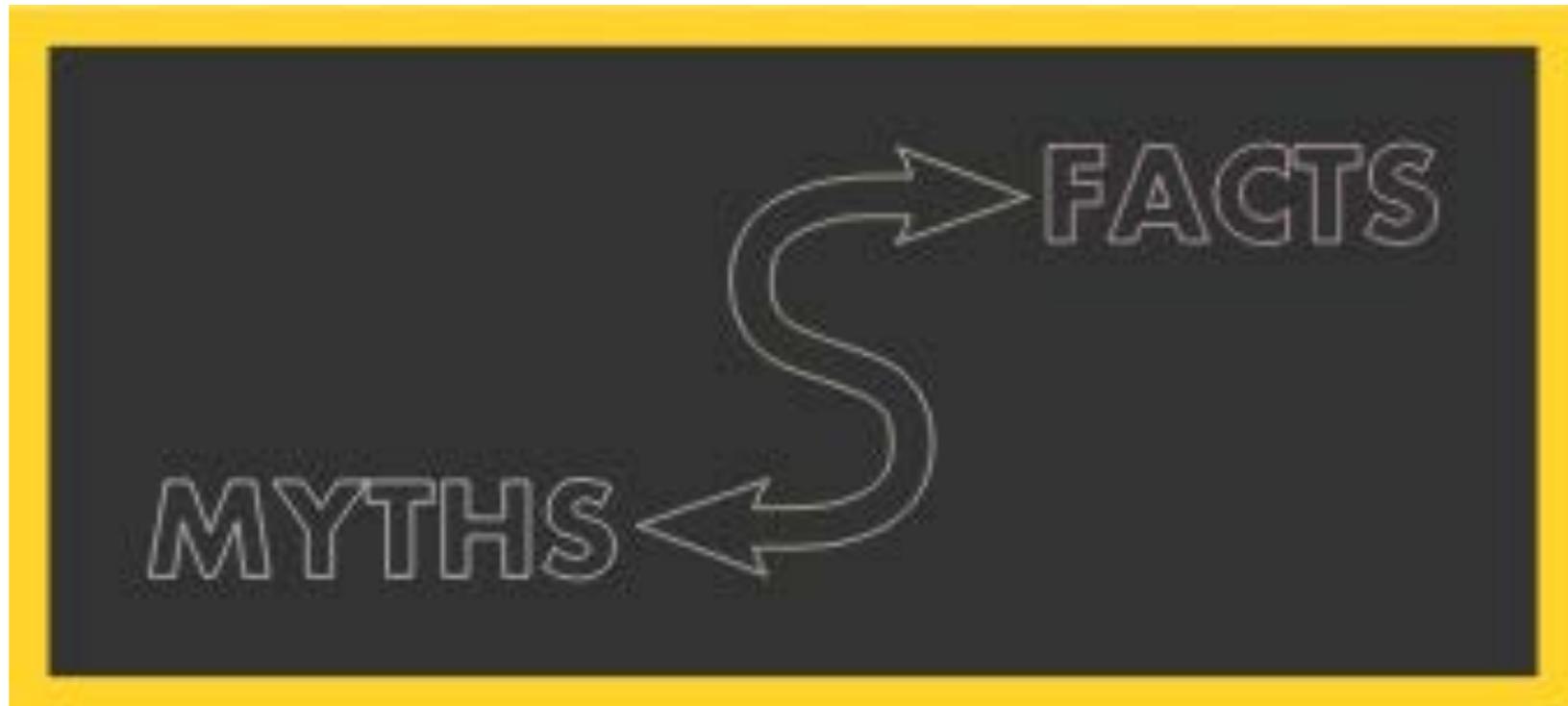
2



**3**



## 6 common ADA “myths”



# 1. MYTH: ADA employment suits are overwhelming the courts.



**2. MYTH: People with disabilities win most of their cases against employers under the ADA, which results in employers paying out massive awards.**



### 3. MYTH: The ADA is rigid and has excessive requirements for making existing facilities accessible.



Do not overlap this box with text. Video of presenter will display in this area for picture in picture. Please delete before presenting.

### 3. MYTH: The ADA is rigid and has excessive requirements for making existing facilities accessible.



**4. MYTH: ADA requires that sign language interpreters for all situations that involve persons who are deaf and is inflexible.**



**5. MYTH: The ADA requires extensive renovations of all state and local government buildings to make them accessible and this is a heavy toll on budgets.**



# Why “myths” matter



Simone Becchetti via Getty Images

# Spirit of the ADA

“Most importantly, ADA is a landmark commandment of fundamental human morality. It is the world’s first declaration of equality for people with disabilities by any nation. It will proclaim to America and to the world that people with disabilities are fully human; that paternalistic, discriminatory, segregationist attitudes are no longer acceptable; and that henceforth people with disabilities must be accorded the same personal respect and the same social and economic opportunities as other people.”

– Justin Dart, Jr.

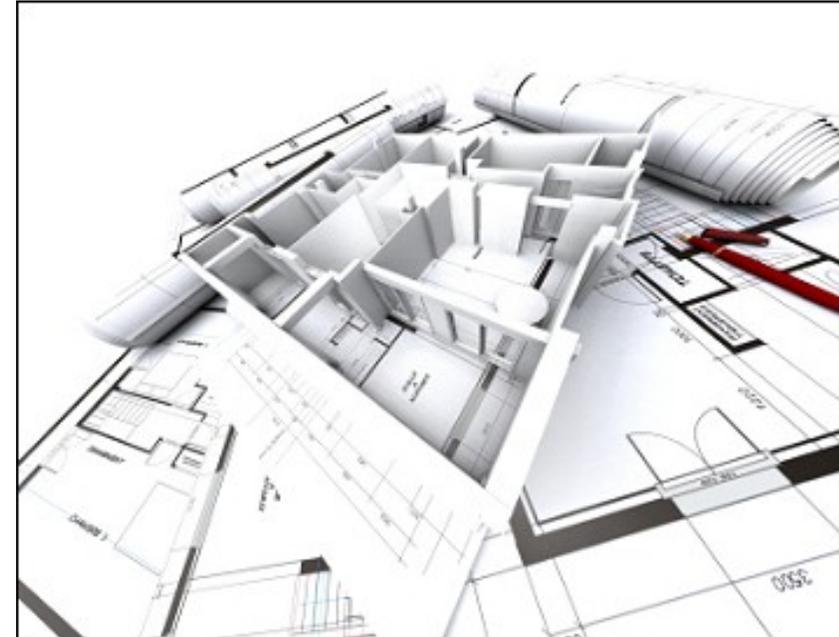
# Who and what does the ADA cover?

- Title I - Employment
- Title II - State and Local Governments and Transportation
- Title III - Public Accommodations (“Businesses”)
- Title IV - Telecommunications
- Title V - Miscellaneous



# ADA and accessibility

- What about ADA requirements for existing facilities?
- Title II – State and Local Governments
  - must achieve program accessibility.
- Title III – Public Accommodations
  - must pursue barrier removal - or alternatives - in existing places of public accommodation.
- New Construction – must meet accessibility standards!



# ADA Title I: Employment

Who is covered?

What is discrimination?



# ADA Title II: Gov't Buildings/Services

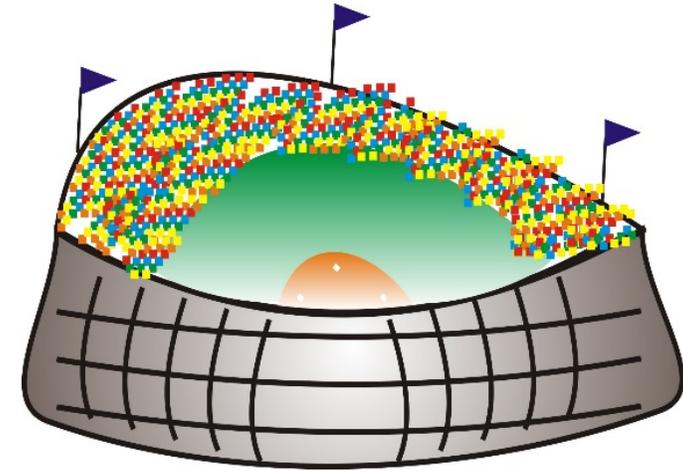
Who is covered?

What is discrimination?



# ADA Title III: Public Accommodations

- Places of public accommodation
- Commercial facilities
- Private entities that offer certain educational and occupational certification exams and classes
- Title III does not cover:
  - Religious organizations
  - Private clubs



# Title III: Public Accommodations cont.

Three areas of “obligation”

1. Same opportunity to participate.
2. Effective communication.
3. Provide accessibility

Removing barriers

Providing alternatives

New construction and alterations



# Limitations on Title III obligations

- Title III entities are not required to change their policies and/or procedures in any way that would “fundamentally alter” the nature of goods or services offered, would undermine safe operation, or would pose a “direct threat” to health/safety.
- Considerations:
  - What is a “fundamental alteration”?
  - What would undermine the “safe operation”?
  - What would qualify as a “direct threat”?
  - What would constitute an “undue burden”?



# What is a “fundamental alteration”?

A "fundamental alteration" is a change that that alters the essential nature of the goods, services, facilities, privileges, advantages, or accommodations offered.



# What would undermine the “safe operation”?



People with disabilities cannot be excluded UNLESS:  
Necessary for legitimate safety reasons  
That are based on actual risks  
NOT stereotypes or generalizations

# What would qualify as a “direct threat”?

A "direct threat" is a significant risk to the health or safety of others that cannot be eliminated.



# What would constitute an “undue burden”?

- Defined as "significant difficulty or expense."
- Sometimes a challenging determination
- Depends on a variety of factors
- This standard is intended to be applied on a case-by-case basis.
- Not measured by the amount of income the business is receiving from the individual. Instead, undue burden is measured by the overall financial impact on the whole entity.



# Section 504/ADA in college

- How does the ADA affect postsecondary schools?
- What are the differences between the ADA and Section 504?
- What do postsecondary programs generally have to do for students with disabilities?
- What are the architectural accessibility requirements that affect postsecondary educational programs?
- Can a school charge me for the cost of providing an accommodation?
- Does the college that accepted me into its program have to provide me with an accessible dorm room?
- Do I have to provide documentation of my disability to request accommodations?
- Are schools required to make testing accommodations for students with disabilities?
- What should I do if my instructor refuses or neglects to make the accommodations I requested?
- What if informal attempts to resolve the problem are unsuccessful?



# What is ABLE?

The Stephen Beck, Jr. **Achieving a Better Life Experience (ABLE) Act** (PL 113-295) amends the federal tax code to add Section 529A in order to:

*create a new option for eligible people with disabilities to save money in a tax-exempt account that may be used for qualified disability expenses while still keeping their eligibility for federal public benefits.*

Challenges in US System	Opportunities for PWD	Intent of ABLE
<p>People with disabilities can only have \$2,000 in assets at any given time to remain eligible for Medicaid (our national healthcare system for people with disabilities) and Social Security Insurance (SSI)</p> <p>Medicaid &amp; SSI do not provide all the necessary supports and services</p> <p>We disincentivize employment in the US</p> <p>Sheltered Workshops and sub-minimum wage is legal, unemployment rates are very high in the US</p>	<p>People with disabilities are going to college – we have 250 postsecondary programs in the US now</p> <p>People with disabilities are pursuing employment opportunities, especially in competitive and integrated settings, like no other time</p> <p>People with disabilities want to work and can work</p> <p>People with disabilities are living longer and have so much to contribute to society</p>	<p>To encourage and assist individuals and families in saving private funds for the purpose of supporting individuals with disabilities to maintain health, independence, and quality of life</p> <p>The legislative intent of ABLE Accounts is to provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities</p> <p>To supplement, but not supplant, benefits provided through private insurances, the Medicaid program, the Supplemental Security Income program, the beneficiary’s employment, and other sources</p>

# Basic Mechanics of ABLE

- Only **one** account per **eligible individual**
- Can open an account in **ANY STATE ABLE PROGRAM**
- Only owner (or legal guardian) can open the account; “**Designated Beneficiary**” is the **account owner**
- Can transfer account to immediate family member who is also an eligible individual
- Funds can only be spent on “**qualified disability expenses**”

## Account Caps

Total annual contributions = **\$14,000** (federal gift tax limit)

Maximum account balance = state 529 account limit

**\$100,000** = amount at which Supplemental Security Income (SSI) is *suspended* but not terminated (Medicaid not affected)

# Eligibility for an ABLE Account

**1. Age requirement: onset of disability before age 26; AND**

**2. Severity of disability:**

Have been determined to meet the disability requirements for Supplemental Security Income (SSI) or Social Security Disability Income (SSDI),

**OR**

OBTAIN a “disability certification”, including a physician’s diagnosis, that the individual meets criteria to be further established

in regulations (essentially equal to Social Security level

of disability – disability poses “marked and severe

functional limitations”).

# What is a “Disability Certification”?

- A doctor’s note (or form) stating that your disability creates “marked and severe functional limitations” or blindness, and is likely to last for more than a year and/or result in death
- You obtain the note from your doctor and then you KEEP THE NOTE IN YOUR OWN FILES
- You DO need to certify under penalty of perjury that you have obtained this certification prior to opening the account; may need to recertify at some point
- If you are already eligible for SSI or SSDI, then you do NOT need a separate disability certification

# Qualified Disability Expenses

KEEP YOUR OWN  
RECEIPTS AND  
RECORDS!

Widely interpreted by US Treasury as virtually anything relating to the individual's disability or blindness to enhance quality of life, health or independence, including:

Education, Housing, Transportation, Employment training and support, Assistive technology and personal support services, Health, prevention, and wellness, Financial management and administrative services, Legal fees, Funeral and burial expenses, Basic living expenses (very widely interpreted!)

# Impact on Federal Benefits: SSI

Can accumulate more than \$2,000 in assets without losing SSI or Medicaid benefits

Supplemental Security Income (SSI)

Assets up to \$100,000 not counted “against” beneficiary for SSI eligibility or payments

After \$100,000, SSI checks stop and eligibility is suspended (but not terminated)

Specific rules regarding use for housing expenses (rent) and deposit of earned income into ABLE account apply – see SSA’s [Program Operations Manual \(POMS\)](#) on ABLE

# Impact on Federal Benefits: Medicaid

- ABLE assets are disregarded in determining Medicaid eligibility
- Medicaid benefits are NOT suspended if the ABLE account balance exceeds \$100,000
- Medicaid Payback: Any assets remaining in the ABLE account when a beneficiary dies *may* be used to reimburse a state for Medicaid payments made on behalf of the beneficiary after the creation of the ABLE account

**ALL OUTSTANDING QUALIFIED DISABILITY EXPENSES WILL BE PAID OUT OF THE ABLE ACCOUNT FIRST**

States may or may not exercise this right to reimbursement

# State ABLE Legislation

47 states + DC have enacted their own versions of the ABLE Act.  
Not all states will create ABLE programs

**YOU DO NOT HAVE TO WAIT FOR YOUR HOME STATE TO ESTABLISH  
AN ABLE PROGRAM –  
YOU ARE FREE TO SHOP AROUND AND  
OPEN AN ACCOUNT NOW!**



Credit: Steve-Lovelace.com

*Remember:  
only ONE account per eligible individual*



## Q & A