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REAL SOLUTIONS

ADA in the Township Hall

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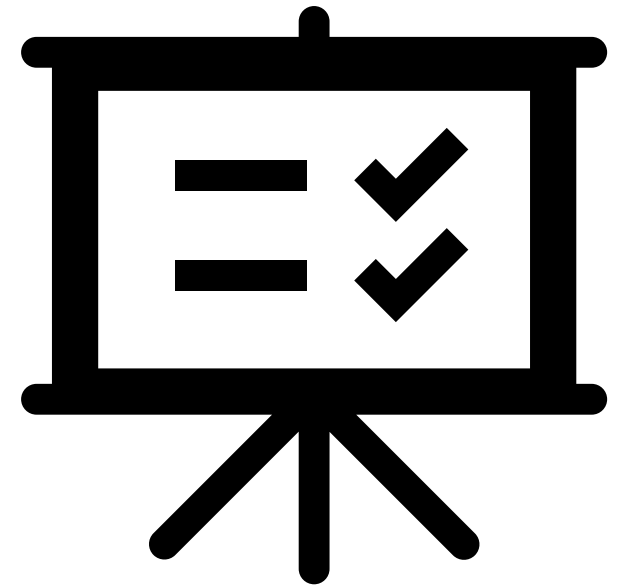
Disclaimer

- This presentation, and the materials associated with it, are comprised of general information and not intended as legal advice.
- The Americans with Disabilities Act is very fact-specific!
- Please contact an attorney if you need assistance related to a specific legal issue.



Goals

- ✓ Have a basic understanding of the American with Disabilities Act and how it affects public employment and Township services
- ✓ To ensure all Township employees and members of the public are treated with respect and dignity to create an environment free from disability – related discrimination and harassment
- ✓ Answer Questions



Overview of the ADA

- Protects individuals from discrimination on the basis of disability
- Overlaps with Michigan's Persons with Disabilities Civil Rights Act "PWDCRA"
- Title I of the ADA applies to employment
- Title II of the ADA applies to all State and local government facilities, services, and activities
- Requires reasonable accommodations to qualified individuals in employment and public services



Disability Protection in Public Employment

- The ADA states that a disability must be a “physical or mental impairment that substantially limits one or more major life activities.” 42 USC 12102(1)(A).



What is Considered a Disability?

Examples of Qualifying Physical or Mental Impairments

Deafness	Blindness	Diabetes	Cancer	Epilepsy	Intellectual disabilities
Partial or completely missing limbs	Mobility impairments requiring use of a wheelchair	Autism	Cerebral palsy	HIV infection	Multiple sclerosis
Muscular dystrophy	Major depressive disorder	Bipolar disorder	Post-traumatic stress disorder	Obsessive-compulsive disorder	Schizophrenia



Who Receives Legal Protection from Disability Discrimination?



- In order to be a “**qualified individual**” the employee *must be able* to perform the “**essential functions** of the employment position” either with or without **reasonable accommodations**.

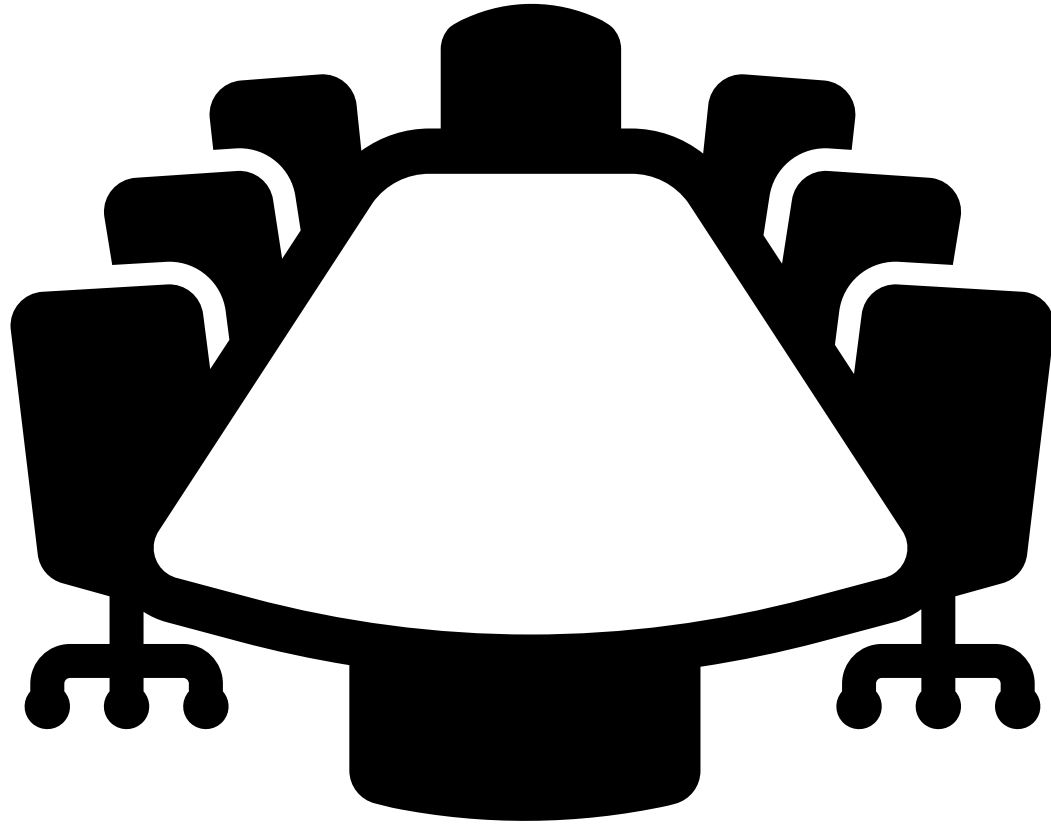




Scenario

- The Township has an open position for a firefighter
- The applicant has a disability - unable to lift objects over 30 lbs
- Part of the essential functions of the job require heavy lifting of equipment
- The Township has no obligation to hire the applicant





Reasonable Accommodations

- A reasonable accommodation = modification or adjustment made in the work environment that allows an individual with a disability to perform their job's essential functions.
- When a Township receives a request from an employee for a reasonable accommodation, this triggers an “interactive process.”

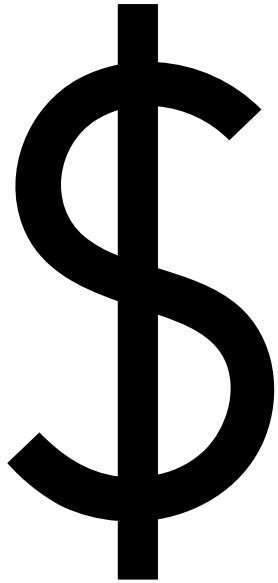


Interactive Process

- Acknowledge the request immediately.
- Discuss disability-related limitations with the employee.
- Identify what accommodations might be helpful in accommodating limitations.
- Notify employee in writing of decision to make a reasonable accommodation
 - If approved, note what reasonable accommodation will be made—and for how long
 - If denied and no alternative accommodation is offered, include reasons for denial
- Not required to grant *preferred* accommodation



Undue Hardship



- No duty to accommodate if it poses **undue hardship**.
- Standard= “Significant difficulty or expense”
- Factors
 - Nature and cost of accommodation
 - Employer’s financial resources
 - Number of employees
 - Number, type, location of facilities
 - Employer’s operation



Medical Privacy

ADA also sets the rules for the privacy of employee medical information

Townships can:

- Request medical documentation to evaluate whether an employee is disabled, ***but only where it is job-related and consistent with business necessity.***

Townships cannot:

- Receive medical information beyond what is necessary for township to evaluate ADA obligations
- Share medical information with co-workers
- Keep medical information in the employee's personnel file



COVID-19 Impact on Disability and Accommodation Law



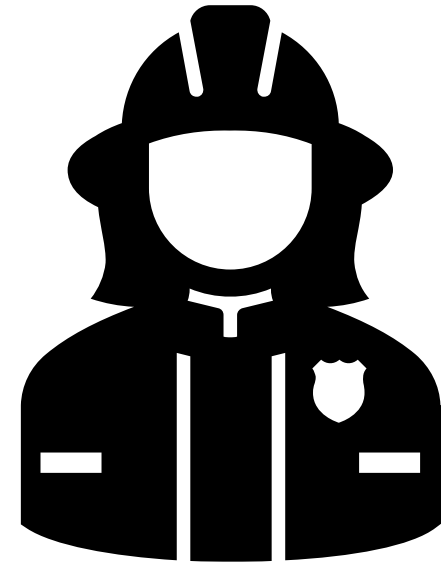
- COVID-19 is likely to cause significant shifts in how disability accommodation operates
- Focus by the EEOC to open up possibilities for remote work as a reasonable accommodation



Disability Protection in Public Services

Public Services and Facilities

- Title II of the ADA prohibits all state and local governments from discriminating against individuals with disabilities in providing public services, programs, or activities. 42 USC § 12132.
- “Public services” include:
 - ✓ Law enforcement
 - ✓ Facilities
 - ✓ Emergency services
 - ✓ Recreational programs
 - ✓ Elections
 - ✓ Parking
 - ✓ Adoption of zoning requirements



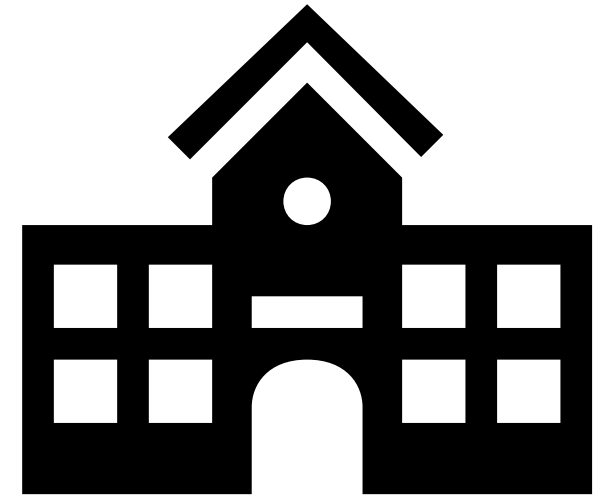
Legal Protections for Disabled Individuals Utilizing Public Services

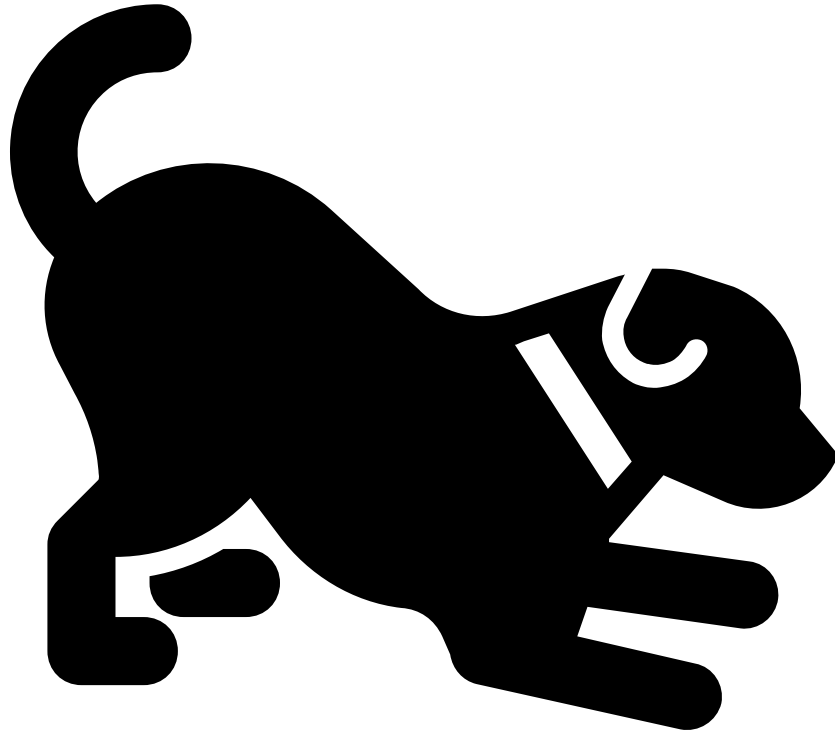
- Individuals with disabilities need “meaningful access” to township facilities and services
- Impaired individuals may request reasonable modifications to public services that would allow them to enjoy the service.
- Only applies to qualified individuals
- Townships must seek to provide accommodations unless it is determined to result in either a fundamental alteration in the program or and undue financial or administrative burden.



ADA-Compliant Facilities

- New construction or alteration
 - Strict compliance required
- Existing facilities
 - More compliance flexibility
 - Undue burden defense





Service Animals and Emotional Support Animals

- Service animal
 - Very limited definition
 - ADA protected
 - Cannot exclude (some exceptions)
- Emotional Support Animals
 - Not protected by ADA
- Permissible questions



Township Website Accessibility

- United States DOJ asserts ADA requirement for websites
- Currently, the rules are unclear for what constitutes an ADA-compliant website.
 - Conflicting court decisions
- Safe approach is to maintain an ADA-complaint website to protect against lawsuits and DOJ enforcement.
 - Web content should be accessible to blind users, deaf users and those who must navigate by voice, screen readers or other assistive technologies.



Questions



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