



ADA Live! Episode 102b: Is it ADA? It Depends

Broadcast Date: February 16, 2022

Presenters: Rebecca Williams - Lead Information Specialist / Technical Assistance & Cheri Hofmann - ADA Distance Learning and Training Director Southeast ADA Center

Recording: adalive.org/episodes/episode-102b/

Cheri Hofmann: Hi, I'm Cheri Hoffman and you're listening to ADA Live.

Intro: Yo. Hi, let's roll (singing)

Barry Whaley:

Hi everybody. On behalf of the Southeast ADA Center, the Burton Blatt Institute at Syracuse University and the ADA National Network, welcome to this episode of ADA Live. I'm Barry Whaley, I'm the project director of the Southeast ADA Center. Listening audience, if you have questions about the Americans with Disabilities Act, you can use our online form anytime at adalive.org.

Barry Whaley:

The Southeast ADA Center provides information, training and guidance on the Americans with Disabilities Act and disability access tailored to the needs of business, government, individuals at the local state and regional level. Southeast ADA Center is not an enforcement agency and all the calls we receive are confidential. On average Southeast ADA Center responds to 2500 calls for technical assistance each year. These calls may

come from many people. People with disabilities, business owners, state and local government employees, employers, and other entities. The Southeast ADA Center is a trusted source for accurate, technical guidance on the law for each of their situations. We're pleased to have as our guest today for this episode, Rebecca Williams, our lead technical assistant specialist and Cheri Hofmann, our ADA distance learning and training director here at Southeast ADA Center. And today we're going to be talking shop about technical assistance calls they receive, and whether the ADA applies in a given situation, as well as how they advise our callers. So Rebecca and Cheri, welcome, and I'll turn it over to you.

Rebecca Williams:

Thanks, Barry. Cheri, I'm really looking forward to our coffee table chat today. You and I have been providing responses to our callers at the Southeast ADA Center for many years and we both know that just because a caller may have a disability, the ADA does not always apply in a particular situation. So let's just throw out a few situations to each other, and we can talk through how we determine whether the ADA applies. So Cheri, here's the first tricky call for you.

Rebecca Williams:

We received a call from an individual that she believed was an ADA Title I employment question. She said her work required the COVID-19 vaccine. The caller said that she got the first shot and she had a very strong adverse reaction to it so her doctor wrote a letter stating that she cannot by any means get the second COVID shot. Her work did not want to accept that doctor's letter and she called us wanting to know her rights.

Cheri Hofmann:

Well, Rebecca, so my response is going to be, [inaudible 00:03:17] it depends. Just having an adverse reaction to a shot doesn't mean she necessarily has a disability and in addition to that, a physician doesn't determine accommodations. When an employee requests an accommodation, a physician's rule is to determine if the impairment substantially limits a major life activity and how the impairment may prevent the employee

from employment. We need to guide this caller into deciding first, whether she is a person with a disability as defined by the ADA and if not, there are no protections.

Cheri Hofmann:

So that was a great question, Rebecca. And here's one for you. We had an interesting Title II question. Title II is State and Local Government for our listeners. A city entity was renting a space to a religious entity for a play. The church had a person who requested an interpreter for the play. When the church said we are unable to do this, the individual called the city to complain and called us for guidance.

Rebecca Williams:

Cheri, I find these are always interesting because what might be concerted right and the right thing to do is not always how it is viewed by the law. In this case, if the city is merely the quote "landlord" in this situation, the play is not a program of the city and the city would not be responsible for providing effective communication or the ASL interpreter. Now, a city can certainly add language in its contract for situations where it might require outside organizations to provide ADA accommodations. However, let's say they are a small church and the reason they're having to play in the city facility is because there is staging, lighting, sounding equipment that the church itself would not be able to afford because of its budget and the only people attending are church members and the church is not charging for the performance.

Rebecca Williams:

So in this case, to me, it seems that there isn't an ADA case. It wasn't the city's responsibility to pay for an interpreter and the church was exempt from hiring an interpreter under the ADA. This is great example of how we often have to ask our callers questions to fully understand the situation before we can provide an accurate response. And generally religious entities are exempt from ADA requirements, as you said earlier and the fact that the church was using a city facility did not negate the church's exemption.

Rebecca Williams:

So here's another one for you to ponder Cheri. I took a call from the owner of a restaurant. A customer came in with a cat wearing a vest that stated it was a service animal. The cat sat on the customer's shoulder the entire time the customer was there eating. Several other customers were upset that an animal was allowed in there. The restaurant owner, who it was the caller, said to me, she thinks she has to allow service animals and so she wanted to know, was she correct in permitting the cat inside her restaurant?

Cheri Hofmann:

Well, Rebecca, like you said, we get a lot of service animal questions and this is a great example of confusion about service animals under the ADA. So under the ADA, a service animal is defined as a dog that has been individually trained to do work or perform tasks for an individual with a disability. The task performed by the dog must be directly related to the person's disability so to answer that question to you, the ADA does not apply because a cat is not a service animal regardless of the fact that it was wearing a service animal vest.

Barry Whaley:

Thank you for clearing that up Cheri. It is a very complex topic when we're talking about service animals. So thank you, Rebecca and Cheri. ADA Live listening audience, if you have questions about this topic or any other ADA Live topic, you can submit your questions online at adalive.org, or you can call the Southeast ADA Center at 1-404-541-9001 and now a word from this episode sponsor.

Advert sponsor:

[inaudible 00:08:13] ADA Center is your leader in providing information, training and guidance on the Americans with Disabilities Act and disability access tailored to the needs of business, government and individuals at local, state and regional levels. The Southeast ADA Center located in Atlanta, Georgia is a member of the ADA national network and

serves eight states in the Southeast region. For answers to your ADA questions, contact the ADA national network at 1-800-949-4232.

Barry Whaley:

Hi folks. And welcome back we're with Rebecca Williams and Cheri Hofmann and we'll continue our conversation about is it the ADA? It depends.

Cheri Hofmann:

Well, Rebecca I'm going to start this discussion with a call I received where a bank customer who was blind, was very upset. He said he gets trapped in his bank's phone push button phone tree and because of his vision loss, he can't push the buttons fast enough. He said he gets hung up on constantly, or he gets please try again. What can the bank do to prevent this from happening? What is the bank's ADA obligations?

Rebecca Williams:

Cheri, I'm sure this is very frustrating for the caller. However, I think this is one of those calls that we need to break down and look at the situation and what actually occurred to decide does the ADA apply. My first thought is can't everyone get caught in the phone tree for one reason or another, and if this is the case, then it's not discriminatory, it is happening to everybody so, again, my thought is, it doesn't seem like the ADA applies here.

Rebecca Williams:

Now. He might need to try to find if he can get assistance another way and ask his bank is there another way he can access his banking? Maybe there's an online way he can access it. Maybe he can get assistance from a friend which isn't completely independent, but the bigger issue is, are there more ways for people to access the bank, but if everybody's getting caught in the same push button, wait here, push this button, the ADA doesn't seem to apply to me in that particular situation.

Rebecca Williams:

So, Cheri, here's the next one for you to determine if the situation is ADA or if it is in it depends situation. Can an insurance company refuse to provide insurance to someone with a dog because the dog is determined to be a vicious breed? I had a call from somebody that was trying to obtain homeowners insurance. They were buying a home and you have to have homeowners insurance in order to get a mortgage and the first company they called said you have a vicious breed, we're not going to insure you, and then they said but it's a service animal. And the insurance company said, but it's a vicious breed. That was the question the caller posed to me.

Cheri Hofmann:

Well, you know, Rebecca, sometimes these things are really a sticky wicket and we have to do a little legwork before providing the response. Keep in mind, this is a transaction a business is making with an individual. So in researching this, we found that the insurance companies have specific regulations which they must follow and the insurance company is a Title III entity under the ADA, which is a business. So it may be a fundamental alteration to change a regulation that prohibits ensuring dogs on a vicious breeds list. And that's regardless if they are service animals. It has become difficult for individuals who have trained service animals that are on these lists. I know because I own Huskies and I found that in my state I live in, they have been put on the top 10 list of vicious breeds. For this call, we determined that denial of the insurance was not an ADA violation.

Cheri Hofmann:

So Rebecca, I had another one that was interesting because this caller was certain her issue dealt with the Air Carriers Access Act. She travels somewhat frequently and had in the past, been picked up in front of the airport with a wheelchair for assistance to get in the airport, through TSA and ultimately to her gate. Her companion traveler also uses a wheelchair. The airlines she flew said that they can't send anyone to assist her. The airport doesn't allow them to do this anymore. However, when she arrived, she noticed that other airlines were providing wheelchair assistance at the curb. She could not find who to make a complaint to. She asked, would it be TSA? Would it be the airline? Would it be the airport authority? She said the airline actually told her to have the taxi cab driver

come in, get the wheelchair, but the taxi driver last time she flew said his service ended at the curb.

Cheri Hofmann:

So let me skip to the end of this, because it was interesting about this case as it was actually a private contractor who picks up people at their cars or at taxis and wheels them through the airport from the check-in to the gate. She was dealing directly with the air carrier and they said, we don't do that. The fact is they don't, but she was able to finally get someone in an ADA coordinator position with the city to help her through the tangled web of whose responsibility is this. And as it turns out, it was an ADA Title III issue because it was a private business that was providing this service at this particular airport. She was able to resolve all her issues, get curbside pickup and the ADA coordinator was able to work with the airline to encourage greater communication with their staff to understand that even though it wasn't their responsibility, it would've been beneficial knowing how to serve people with disabilities who are flying through their airline.

Rebecca Williams:

That call, Cheri is a great example of how there's often the rest of the story and how we need to dig deeper into a situation before we can provide an accurate response. And as you said, this woman initially thought the Air Carrier Access Act applied and then when we dug deeper, we found it was an ADA Title III so yeah, that situation, the ADA did apply. So, you know Cheri, were kind of coming close to finishing our time together and I just wanted to throw out one more call that I thought was interesting. And actually this came through via email to us, and this is just kind of the way it came.

Rebecca Williams:

Are there any ADA requirements that will relate to access to a standup style tanning booth? The email further stated that many tanning booth facilities were no longer able to provide lay down tanning booths for hygienic purposes and it said you have to be able to stand up to go to the tanning booth.

Cheri Hofmann:

Well, Rebecca, initially someone may think the ADA does apply because a tanning salon is a business and falls under Title III of the ADA. A lot of times, Rebecca, we have to step back and look at the question from all sides. The ADA 2010 Standards for Accessible Design apply to the built, fixed environment and tanning beds, whether they used to be laying down or now they're standing, are not part of the fixed environment. So there are no requirements to how stand up tanning booths need to be built. However, the salon is a business under the ADA. It does offer goods and services so they must be made accessible to people with disabilities. So it would be up to the business owner to determine if there would be a way to accommodate a customer with a mobility impairment. So in this situation, it is ADA.

Rebecca Williams:

I got to tell you Cheri, I've had some calls like that too and I think we're lucky that we don't have to solve those sort of access issues for people. All we have to do is walk callers through their situation to help them determine whether the ADA applies or not. So I want to try to get one more quick one in there for you Cheri, for your thoughts and what you would think.

Rebecca Williams:

I've received a call from municipal ADA coordinator, which again is Title II, for our listeners. The city owns beachfront property that individuals can reserve for private events. Now folks are required to obtain a permit to hold a private event but there's no money that's exchanged, they just have to make sure they have a permit so it can be reserved. And this ADA coordinator who is new to her position just wanted to make sure she was doing the right thing and she wanted to know if the city would be responsible for somehow providing access down to that wedding on the beach.

Cheri Hofmann:

Well, that is a good one, Rebecca. That really isn't ADA and that's because it's a private event and there were no fees paid. Now let's look at it, if the beachfront hotel rented this portion of the beach for events that would trigger Title III and the hotel would have access requirements.

Cheri Hofmann:

So let me go with one last tricky TA for you, Rebecca. The caller was a man who had a reading level of eighth grade because he never finished school. He wanted the courthouse to hire a reader for him per the ADA he said, because he couldn't read all the documents that they were giving him and he needed to be able to read them to do his discovery.

Rebecca Williams:

Cheri, I really like this call because it demonstrates that we almost always need to start by going back to the beginning and seeing who is protected under the ADA. Is there a person with a disability involved? And whether the entity that's going on here so there has to be a physical or mental impairment that substantially limits one or more major life activities to trigger ADA responsibilities. Limited reading ability only because one did not finish school is not a disability so in this situation, it is not ADA.

Barry Whaley:

Well Rebecca, and Cheri, thank you for sharing your time. What a great conversation and some very valuable information about the technical assistance calls we receive and the examples of when the ADA applies and when it may not apply. The resources that you share will also be posted with this episode on our ADA Live website. So again, thank you for both joining us today and I want to thank you, our ADA Live listeners. Remember you can access all ADA Live episodes with archived audio, accessible transcripts and resources on our website at adalive.org.

Barry Whaley:

You can listen to ADA Live on SoundCloud. Just search our SoundCloud channel at soundcloud.com/adalive. You can download ADA Live on your mobile device in your podcast app by searching for ADA Live. If you have questions about the ADA, you can use our online form anytime at adalive.org, or you can contact your regional ADA Center at 1-800-949-4232 and as always, those calls are free and they're confidential. ADA Live is a program in the Southeast ADA Center and a collaboration with the disability inclusive employment practices, RRTC. Our producer is Celestia Ohrazda with Beth Miller Harrison, Mary [Mordor 00:00:32], Emily [Ruber 00:00:32], Marsha Schwanke and me, I'm Barry Whaley. Our music is from 4 Wheel City. The Movement 4 Improvement. We'll see you next episode.

Barry Whaley:

Thank you, Peter. Christine, thank you. What a wonderful interview today. Thanks for sharing your time and your interests and your passion with us. Listeners, you can access all ADA Live! episodes with archived audio, accessible transcripts and resources at our website, adalive.org. You can listen to the SoundCloud, ADA Live! channel at soundcloud.com/adalive. You can download ADA Live! to your mobile device and your podcast app by searching for ADA Live!.

Barry Whaley:

If you have questions about the ADA, you can use our online form anytime at adalive.org, or contact your regional ADA center at 1-800-949-4232. Remember, those calls are always free, and they're confidential. ADA Live! is a program of the Southeast ADA Center and the Burton Blatt Institute at Syracuse University in collaboration with the Disability Inclusive Employment Policy Rehabilitation Research and Training Center. Our producer is Celestia Ohrazda, with Beth Miller Harrison, Mary Morder, Emily Ruber, Marsha Schwanke and me, I'm Barry Whaley.

Barry Whaley:

Our music is from 4 Wheel City: The Movement 4 Improvement. As a reminder, you can also listen to our companion podcast, Disability Rights Today. Your source for in-depth discussion on important court cases that shape the Americans with Disabilities Act. You can learn more at disabilityrightstoday.org. See you next episode.

4 Wheel City: (rapping)

[End of Transcript]

Disclaimer: The contents of this publication are developed under a grant from the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR grant #90DP0090-01-00). NIDILRR is a Center within the Administration for Community Living (ACL), Department of Health and Human Services (HHS). The contents of this publication do not necessarily represent the policy of NIDILRR, ACL, HHS, and you should not assume endorsement by the Federal Government.

The information, materials, and/or technical assistance provided by the Southeast ADA Center are intended solely as informal guidance and are neither a determination of your legal rights or responsibilities under the Act, nor binding on any agency with enforcement responsibility under the ADA. The Southeast ADA Center does not warrant the accuracy of any information contained herein.

Any links to non-Southeast ADA Center information are provided as a courtesy, and are neither intended to, nor do they constitute, an endorsement of the linked materials. The Southeast ADA Center provides these links as a courtesy and does not endorse, take responsibility, or exercise control of the organization nor vouch for the accuracy or accessibility of the contents of the link destination. The information is intended solely as informal guidance and is neither a determination of legal rights or responsibilities under the ADA, nor binding on any agency with enforcement responsibility under the ADA.

Contact for More Information or Assistance:

Southeast ADA Center

Email: ADAsoutheast@law.syr.edu

Phone: 404-541-9001