



ADA Live! Episode 125: Applying the ADA's Integration Mandate and Olmstead v. L.C. to Sheltered Employment and Day Services for People with Disabilities

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Julie Kegley: Hi, I'm Julie Kegley, and you're listening to ADA Live!

Pamela Williamson:

Hello, everyone. On behalf of the Southeast ADA Center, the Burton Blatt Institute at Syracuse University and the ADA National Network Welcome to ADA live. I am Pam Williamson, assistant project director of the Southeast ADA Center. Listening audience, If you have questions about the Americans with Disabilities Act, also known as the ADA, you can use the online form anytime at adalive.org, or call the Southeast ADA Center at at 404-541-9001. All calls are free and confidential. According to the Department of Justice, a significant number of individuals with disabilities spend their day receiving public services and sheltered workshops and facility based day programs. In a report titled Beyond Segregated and Exploited the National Disability Rights Network, also known as NDRN, estimates that over 400,000 people are sent to sheltered workshops where they earn less than the federal minimum wage. This environment results in stigmatization and a lack of economic independence. These settings segregate individuals from the community and provide little to no opportunity

to interact with people without disabilities other than paid staff based on an incorrect belief that people with disabilities need to get ready to go to work. Putting individuals with disabilities in segregated work settings is often highly regimented, and typically offers no opportunity for advancement. Most segregated programs like sheltered workshops or day activity centers are publicly funded. The segregated programs may include services that are available through multiple state agencies and funding streams including vocational rehabilitation, Medicaid and education agencies. A study by the Collaboration to promote self determination and the Ruderman Family Foundation illustrated that sheltered workshop programs cost taxpayers on average of \$45,684 versus \$19,101 for supported employment services. The Department of Justice implements the integration mandate of the Americans with Disabilities Act, which requires public entities to administer services, programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities. The ADA's integration mandate makes clear that public entities must provide reasonable modifications to policies, practices and procedures to avoid discrimination. On October 31, 2023, the Department of Justice issued guidance that the integration mandate applies to sheltered workshops and day centers, putting them in violation of the ADA and the Olmstead decision. In this episode, we will discuss the most recent guidance on the ADA's integration mandate and the Olmstead decision and its application to employment and day services for people with disabilities. I'm happy to welcome our guest today, Julie Kegley, who is the staff attorney and program director of the Georgia Advocacy Office. Julie, welcome to the show. And we're going to start out with a question about the how does the ADA's Title II integration mandate apply to sheltered employment and day services?

Pamela Williamson:

So when the ADA regulations and the Olmstead decision from the Supreme Court use the word most integrated setting, what does this really mean?

Julie Kegley:

Thank you Pam. Thank you for having me. I'm excited to be here in 1990, the ADA was passed to provide a mandate by the Elimination of Discrimination against people with disability. And Congress recognized that historically, society has tended to isolate and segregate people with disabilities. The ADA the Americans with Disabilities Act passed five Titles and Title II covers both state and local government and it prohibits them from discriminating against people with disabilities. By that means that public entity, state and local government have to administer sheltered employment and day services in the most integrated setting. And that means people with disabilities interacting with people without disabilities.

Julie Kegley:

The ADA was passed in 1990, we had the United States Supreme Court decision Olmstead that came down in 1999, and Olmstead is a case that said people with disability have the right to live the most integrated setting. Well, another case the Lane/Oregon case expanded Olmstead. And it's that that people with disability have the right to work in the most integrating setting, by that phrase the most integrated studying has been appropriated by the Department of Justice to mean, that is the setting or environment that enables people with disability to interact with non disabled people to the fullest extent possible, whether it be living, and or working in the community.

Pamela Williamson:

Well, research on supported employment services has yielded best practices for ensuring that individuals with disabilities are able to engage in employment in the most integrated setting appropriate. Can you tell us more about what best practices state and local government employment service system should adopt to ensure that people with disabilities have access to competitive integrated employment?

Julie Kegley:

We have talked about integrated employment. This means that people with disabilities who are working around people without disabilities, taking it one step further, and

competitive integrated employment, which means that the person with a disability is working alongside persons without a disability making minimum wage or greater. And the goal is for people with disability to have the same opportunity like everybody else. That can be promotion, [inaudible], or flexibility in scheduling. And the success of approaching with a disability in competitive integrated employment often depend on identifying new job that that align with the person's strong interest and ability. And another best practice would be supported employment services, and supported employment allow people with disability to work in typical employment settings where they can interact with non disabled co-workers, customers, and peers. Supported employment services include things like job coaching, job training, vocational assessments, benefit counseling, an other things, services that people with disability have real jobs, making real money, in the community.

Pamela Williamson:

So the bottom line here is that people with disabilities should have the same opportunity to work and earn money and be able to live in the community like anyone else. So if that is our goal, why are so many people with disabilities being placed in segregated employment services

Julie Kegley:

It can be for several reasons. One reason can be that the family wants to make sure that the family member with a disability can be safe. Another reason can be that family may be dependent upon the person with a disability's social security benefit and they don't want to lose those benefits. In Georgia we currently have six sheltered workshops, which are places of segregated employment. and these six workshops are paying 226 People subminimum wage. And the way that they were able to do that is because these six employers have a [inaduble] certificate. Back in 1938, Congress passed the full neighbor's standard act [inaduible] thirteen states. It allowed employers to pay people with disabilities sub minimum wage, and this standard has continued to this day. And I have been to ending all the sheltered workshops in Georgia. That will be most mostly in industrial buildings, the only people working are people with

disability and the staff are the people that don't have a disability. At the type of work that they were doing is very piecemeal work. For example, one place that I went to, they were all lined up at a table and they have stacks of textbooks in front of them. And they were tearing the pages out of the textbook to be [inaudible] And they were just doing this repetitively all day, every day, every day. Another place that I went to they had been [inaudible] Inside all of the boxes were coat hangers. And they were suppose to be cleaning the coat hangers for a local dry cleaning business, who wanted the coat hangers to be cleaned in between every use. That's the type of work that goes on in these places. And fortunately, I have seen in Georgia the number of employers who have who have a [inaudible] certificate decrease. So that's a good thing that in Georgia the number is decreasing. And I know that the federal government is working on ways to support these sheltered workshops to transform those services delivery model to support people with disabilities to work in the community instead of in the workshop and to make at least minimum wage.

Pamela Williamson:

So what we're seeing, if I understand correctly is that people with disabilities are still working in the in the segregated settings making less than minimum wage at very boring or mundane jobs and for a variety of reasons. So, we want to be able to look at how can we ensure that people in are at risk of being placed in the sheltered work or day services programs have the opportunity to make an informed decisions on whether or not to work in the integrated employment settings

Julie Kegley:

People in congregated and segregating settings, like sheltered workshops, have often been told that they cannot work and there are [inaudible] sheltered workshops [inaudible] and they may not have been given information about the possibility of working in the community. So they may be hesistant to exploring working in the community. And they may also not be aware of the supported employment services that are available to them. In my office, we talk a lot about the viable image, the viable image of congregated segregated work is competitive, integrated work. Real jobs

making real money. State public services should be exposing people to the viable image of segregated work by providing information about the benefits of working in integrated employment setting. The benefit of providing vocational assessments, career planning, job discovery, peer mentoring, facilitating the [inaudible] job site and providing benefit counseling. And after a person has been given all of the options they should be able to make an informed decision about where they want to work.

Pamela Williamson:

So we really need to make sure that folks have all of the information available to them in order to make that informed decision about where they want to work and how they want to work.

Julie Kegley:

Yep.

Pamela Williamson:

So we've talked about people being at risk and being in sheltered workshops and day services programs. But we also understand there may be a wide range of remedies that are appropriate to address these violations to the ADA's integration mandate. So what remedies address these violations of the ADA's integration mandate in the context of publicly funded employment and day services?

Julie Kegley:

The Department of Justice have entered into settlement agreements with different states on this issue. and the kinds of remedies that they have included are remedies that expand the variety, intensity and duration of supported employment services. They include remedies that are to be done to ensure that people with disabilities who who are in segregated settings or who are at risk of segregating settings and who are interested in integrated employment can be served individuals services like job discovery, and career planning, supported employment, all the things that we talked about. And also for students starting at age thirteen while they are still in school.

Some remedies that can be good, that include transition planning and pre employment transition services for students with disabilities who are planning to work after school.

Pamela Williamson:

Well, Julie, thank you for this great information so far. We appreciate it so much. Now ADAlive listening audience. If you have questions about this topic or any other ADA live topics, you may submit your questions online at www.adalive.org or call the Southeast ADA Center at 404-541-9001. And now a word from our episode sponsor, the Georgia Advocacy Office.

Voice-Over:

The Georgia Advocacy Office, GAO, is the federally funded private nonprofit organization designated by the governor of Georgia to protect and advocate on behalf of Georgians with disabilities. GAO's mission is to organize our resources and follow our values and legal mandates and ways which substantially increase the number of people who are voluntarily standing beside and for people in Georgia who have significant disabilities and mental illness. GAO envisions a Georgia where all people have value, visibility and voice, where even the most difficult in long standing challenges are addressed by ordinary citizens acting voluntarily on behalf of each other, and where the perception of disability is replaced by the recognition of ability. To learn more about the Georgia advocacy office, visit their website at thegao.org.

Pamela Williamson:

Welcome back, everyone. I am Pam Williamson, assistant project director of the South East ADA Center. Our guest today is Julie Kegley, Georgia Advocacy Office staff attorney and program director. Now Julie, many people with disabilities think that ADA requires an individual with a disability to work in an integrated employment setting or participate in integrated day services. Is this true?

Julie Kegley:

No Pam, people with disabilities may decline accept a service in the most integrated setting. State and local governments are not required to provide community based services to people who don't want them. On the other hand, state and local government have no obligation under the ADA to provide services in integrated settings.

Pamela Williamson:

So this really does come back down to understanding what the options are so a person can make a choice. Is that correct?

Julie Kegley:

Yes.

Pamela Williamson:

A public entities obligation under the ADA's integration mandate and the Olmstead decision to provide services in the most integrated setting is not unlimited. For example, in instances where a public entity can prove that the requested modification to its programs or services would fundamentally alter the nature of the public entity services system. What is the fundamental alteration defense? What does this mean?

Julie Kegley:

Not a defense, but state and local government choose if they don't want to do something, but state and local government do not have to provide services in the most integrated setting, if they can prove that doing so will require a fundamental alteration of a service system. So if they can somehow prove that it will cost too many are cost to much and based on that the court may consider that to be a fundamental alteration.

Pamela Williamson:

Well, Julie, we thank you for the great information you've shared with our listeners on applying the ADA's integration mandate and the Olmstead decision to shelter

employment and day services for people with disabilities. Do you have any final thoughts to share with our listening audience?

Julie Kegley:

Yes, if you or someone that you are supporting, wants more information about competitive integrated employment, I encourage you to contact the protection and advocacy system in your state. Because we help people in removing barriers to employment so that they can engage in competitive, integrated employment. We believe that people with disabilities should have real jobs, making real money and we want to help them do that.

Pamela Williamson:

Well Julie, we thank you again for joining us today and providing this excellent information. Now, listeners We also thank you for joining us with this conversation with Julie Kegley, the Georgia Advocacy Office staff attorney and program director. You can find the recording of this podcast on our website at Adalive.org along with useful resources. To learn more about the disability rights in the Americans with Disabilities Act. You can access more ADA Live episodes with archived audio accessible transcript and resources on our website at Adalive.org you may also listen to SoundCloud ADA live channel at soundcloud.com/adalive. You may also download ADA live to your mobile device in your podcast app by searching for ADA live. If you have questions about the Americans with Disabilities Act, please use the online form anytime at adalive.org or contact your Regional ADA Center at 800-949-4232. All calls are free and confidential. Adalive is a program of the Southeast ADA center, the Burton Blatt Institute at Syracuse University, and a collaboration with the Disability Inclusive Employment Policy, Rehabilitation Research and Training center. Our producer is Celestia Ohrazda, with Cheri Hofmann, Mary Morder, Marsha Schwanke, Chase Coleman and Barry Whaley. Our music is from four wheel city the movement for improvement. We also invite you to tune in to our companion podcast Disability Rights today for an in depth discussions on important court cases that shaped

disability rights and the Americans with Disabilities Act. Learn more and listen at the website DisabilityRightsToday.org. We look forward to having you on our next episode.

4 Wheel City

They watching. They don't want us be part of the city, man. They put all these steps, man. All these curbs we can't get over. All these inaccessible stores. 4 Wheel City. They don't want us here. We'll survive and we're going to make our own place. Our own world. The 4 Wheel City-

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