State ADA Coordinator’s Office: 2023 Virtual ADA Conference for State & Local Governments Session 2B

Georgia Finance and Investment Commission

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JOHAN: Good afternoon everyone and those on the West Coast good morning. This is Johan Rempel from CIDI Georgia Tech. I will be covering some housekeeping items. We try to practice what we preach and make this as accessible an experience as possible through C.A.R.T. and captioning as well as ASL. To begin, there are 2 ways to access the captioning.

The first is to access the Streamtext link. If it is not in the chat it will be dropped in there momentarily. That opens a third-party application with additional options for individuals that benefit from captions. Second way is to Access the Closed Captions control on the Zoom toolbar with a bright red arrow pointing to it. It is accessible by pressing tab, if you are screen reader user or use a keyboard or peripheral device.

Today what we are doing is spotlighting the ASL interpreters. We do have 2 ASL interpreters with us today. We will be spotlighting them so they should be visually appearing on your screen. The host or cohost can spotlight someone. Whomever is spotlighted will appear in the Speaker View. Pinning is more specific to meetings versus webinars. Also depending upon the version of Zoom you are using.

Any participant can pin another participant's video at any time. It only impacts the participants’ display. In this case because we spotlighted the number two ASL interpreters, you will see one of them on screen at all times. How to spotlight and pin, hover over the participant you want to spotlight or pan then select the ellipsis (…). If that option is available, you can spotlight for everyone or pin for everyone.

This is an exciting feature that Zoom just introduced a few months ago. Today because we have 2 ASL interpreters we choose to spotlight them. This works really well with 1 ASL interpreter in a meeting. In the meeting advanced settings, the host must select sign language interpreter view toggle and then in the zoom desktop version must be used by the host to manage and initiate interpretation.

For participants, sign language interpreters are shown in the dedicated video channels. Participants can resize or really relocate the video window as needed. Interpretation option is on the Zoom toolbar shown with the bright red arrow. Again this works very well for one ASL interpreter at a given time.

Some additional housekeeping items to cover. The Zoom chat is disabled for participants. We ask that you submit questions using the Q&A feature found on the Zoom toolbar. There will be a brief Q&A session following the presentation.

All questions submitted by registrants during the registration process have been provided to their prospective centers ahead of time and virtual ADA Conference team will also monitor the Q&A throughout the presentation. As time allows, the team will address as many questions as possible. If the team is unable to get to your questions during the session, the team will make every effort to follow up after the conference.

As a reminder, please do not place private or confidential information in the Q&A. All presentations are being recorded and will be housed on the State ADA Coordinator office website in the weeks following the conference.

For any technical issues experienced related to Zoom you will have access to the Zoom support link which will be in the chat. We invite the presenters to turn your cameras on temporarily while being introduced and during the Q&A session at the end.

I will now pass it to Barbara Tucker, our ADA Administrative Services Coordinator. She will serve as moderator and be introducing the next presenter. Barbara, if you can give me a moment to press record, then we will be good to go.

MODERATOR: Thank you Johan. Good afternoon. Welcome to session 2 B entitled ADA Legal Updates 2022 Year in Review. The presenters for today are Barry C Taylor and Rachel Weisberg.

Mr. Taylor is the vice president of the Civil Rights and Systematic Litigation and Equip for Equality. He has worked since 1996. He has worked at Equip for Equality and overseen many individuals and systematic disability discrimination cases and is currently co-counsel for 6 class action cases.

Rachel Weisberg serves as managing attorney at Equip for Equality and is an experienced Disability Rights attorney. She has represented hundreds of clients and individual in systematic disability and discrimination cases.

Rachel also developed and now manages Equip for Equality employment rights helpline. It aims to expand employment opportunities by providing legal and practical advice to applicants and individuals with disabilities. You can find their complete bios in the registration email. Welcome to Rachel and Barry.

RACHEL: Thank you so much to Barbara and everyone for having us here. We are pleased to be celebrating the ADA and spending time with you all sharing some legal court case updates and settlements from the last year. Our plan for today is I am going to get started by talking about the recent court cases about the definition of disability.

I will talk about cases and settlements under title one of the ADA. Folks know the employment aspects of the law. At that point I will turn it over to Barry who will lead us to the discussion of a number of interesting updates under Title II of the ADA focused on state or local government and public entities. Then as mentioned, we will have a bit of time hopefully at the end for questions.

Let us dive in. Definition of disability. The first case asked the question about whether gender dysphoria is a disability under the ADA. People who have been keeping up-to-date, there have been a number of court cases analyzing this question. The case we are going to tell you about today is the very first appellate court case. A case decided by the US Court of Appeals.

What happened here is a transgender woman with gender dysphoria was placed in a prison and she sued under ADA Section 504. For people not familiar with gender dysphoria, it is defined as an impairment caused by the discrepancy between a person's gender identity and a person's sex assigned at birth.

Moving forward in the ADA case, the District Court said there is no disability at issue here. Why? While the District Court looked at the text of the ADA, the text says there is an exemption under the definition of disability for quote gender identity to that are not resulting from physical impairment.

The plaintiff disagreed and filed an appeal and made 2 different arguments. The first argument was gender dysphoria categorically is absolutely not a gender identity too. Then the plaintiff argued that even if it is, gender dysphoria results from the physical basis so it comes in the nuance of the exception.

The first appellate court to decide the question agreed with the plaintiff and said we agree that gender dysphoria could be disability under the ADA. They agreed with the first argument that the plaintiff made. They said let us do historical review of what gender dysphoria is.

They said gender identity -- the specific phrase that is mentioned in the ADA -- is actually an obsolete diagnosis that was removed years ago from the DSM. That was up a time where the DSM category rose being transgender as a mental illness. The court said we agree that gender dysphoria is a different sort of diagnosis.

The court said alternatively even if that was not the case, the plaintiff here showed there was a physical basis for gender dysphoria. As a result, the case is allowed to move forward. Gender dysphoria can be disability under the ADA. There is a petition pending with the US Supreme Court. It is not necessarily the end of the story on this but the Supreme Court takes very few cases. We shall see how it plays out.

We want to turn to a couple of cases about COVID as a disability. I know this is a topic we have all been waiting for the court to give us meaningful guidance on. We have a few court cases for you but still we are waiting to see. The Brown case was brought under actual disability. Somebody shows they have a substantial limitation in a major life activity.

The Brown case was brought by a certified nursing assistant who in the summer of 2020, was fired during a 14-day isolation period that was required both by her employer policy and that the CDC due to COVID symptoms.

She alleged in her complaint a number of specific symptoms and things we all have now come to equate to COVID like severe weakness, fatigue, brain fog, high blood pressure, cough, difficulty breathing, fever and swollen eyes. The employer argued this is not enough to argue the requirement that she showed she is a person with a disability.

The court disagreed and said no. She’d given enough specific symptoms that it could substantially limit things like breathing, concentrating, thinking, communicating, performing manual tasks, and working. As a result, that was enough to establish for the purposes of a motion to dismiss that she could be a person with a disability.

The other interesting part of the case is the court cited folks that have probably seen the guidance document out there about COVID both from the Department of Justice and HHS and the EEOC. The court referenced both documents calling them helpful and explaining that when you are looking at COVID, we need to apply the same principles of looking at this from a broad perspective. We want to broadly interpret the definition of disability. That case is still pending.

But of course this is a discussion of court cases and the ADA, so I will always have some information going a different way, right? The McKnight case is interesting and the court cites the very federal agency guidance from HHS and DOJ and EEOC.

But there is this the guidance reach an opposite conclusion in this case the plaintiff tried to move forward and the record of disability showing that they had a record of disability. The individual had been hospitalized in the ICU for five days due to severe lung problems and pneumonia. But they decided it was not substantially limiting to major life activity and therefore could not move forward, saying COVID itself had been a record of disability.

Another place where we are seeing discussion about COVID as a disability is under the regarded as. As people know employees can bring claims based on regarded as by showing the employer perceived a regarded them to have an impairment. But there is an exception to this regarded as protections. That is for impairments that are more transitory and minor.

So most court cases that are looked at regarded as really focus on the transitory and minor exception. True to form, cases are going both ways on this as well. In the Alvarado case, which is a situation where an employee had work-related exposure and went home on doctor's orders and was therefore fired, brought a regarded as claim.

The court said COVID is really this thing that is very specific. We are not able to tell now that COVID was transitory or minor because it impacts people through so many different ways. Let that case move forward.

In the Freeman case, we have a situation where the individual felt unwell only for a few days and did not really plead or allegedly had any really serious symptoms. They just said they took Mucinex to take care of their condition. In that case, the court said no regarded as definition of disability. The case was dismissed.

What do we expect in the future? I think we are going to start to see many more cases about long COVID . My prediction is that because the nature of long COVID is the situation or people have more ongoing symptoms and they last for longer period of time, my prediction is we will find many more cases where courts more easily conclude long COVID is a disability under the ADA.

Let us turn to some cases under Title I, the employment aspects of the ADA. We will begin with an extremely important topic one I know that we drill in on and that is the interactive process. We will begin with a few cases about what courts determine triggers that interactive process.

The King case is a place where there was a nurse that worked for hospital for quite a long time. She had asthma. During a shift, she had an asthma attack and had to go home early. She continued to then call into subsequent shift . Notably she did a few things after that.

She contacted her employer's third-party lead administrator and asked for leave for her disability. Then when she had some difficulty communicating with the third party, she then called her supervisor and reiterated the request and after supervisor for help.

At first the case went to the District Court and it was dismissed for many reasons. But the one I want to focus on is the employee did not make a reasonable accommodation request. That decision did not hold up on appeal.

It went to the Sixth Circuit and they said no, come on, we have said this time and time again. We give the plaintiff some flexibility in how they request accommodation. It does not have to be for specific channels or using any sort of magic words. A plaintiff's own request whether in writing or stated verbally can satisfy the requirement.

Again there are no magic words. After training after training after training it is helpful to see an appellate court case reiterating that important concept. They said here, there is certainly enough to say the employee triggered the process. They made the request to the third party and to a supervisor.

A few teachable moments from this case are one, it is so important that we as employers are training supervisors about understanding and recognizing inappropriately responding to accommodation request. Two, a lot of larger employers are using these third-party administrators. It is really important to make sure there is an open line of communication. If a request gets triggered back to the employer.

The Owens case at the bottom of the slide provides similar guidance but that is to the employee. In this case, the court found the employee had failed to initiate the interactive process. What this employee said when asking to work remotely is, they had complications during the labor giving birth to her child.

While the court found that statement in and of itself was not enough to identify disability, so clarify that an employee needs to identify both the disability and explain how the proposed accommodation would address the disability. Obligation is definitely on both sides but we want to broadly interpret employee's request.

What about engaging in the interactive process? This is a vitally important part of the ADA of course. Courts really do look at what party caused the breakdown when determining who is going to be successful in a case.

The Maguire case is one in which an employee has low vision . They were unable to independently clock in. They asked for some related accommodation and as reported in the case, the supervisor tried to help. They scheduled a walk-through of the restaurant to identify the tasks the employee could perform and figure out what accommodations.

But unfortunately, the employee refused to participate in the walk-through. Instead they filed a lawsuit under the ADA stating they were not given the opportunity to show their abilities. Probably unsurprisingly, the court dismissed the ADA case granting summary judgment to the employer. Why? They said the interactive process is a numb two-way street and hear the employee failed to engage in the interactive process.

Compare that result to the Cooke case reference on the bottom of the slide. In this case the employee tried to return with the mental health leave and the doctor cleared the return to the employee would benefit from some consistent scheduling. The employee said for 30 days only but no after that and no further discussion.

There the employer said, actually it was the company that refused to engage in the interactive process. They kind of said, no without any further discussion. Really good reminders of the importance of the interactive process and engaging in good faith.

The DiFranco case gives us guidance about important interactive process issue about delayed. Let us say an employer goes to the interactive process but does not add delayed basis is that alone a violation of the ADA? Courts pretty much said yes but of course it is very fact dependent. The DiFranco case is a sad case about what can happen .

This case was a situation that took place during COVID. The Chicago Police Department told employees if they had a medical condition that places them at greater risk, if they acquire COVID to let them know this happened right at the beginning of the onset of the pandemic. Mr. DiFranco right away contacted the police department.

His doctor actually sent a letter saying he has cystic fibrosis and it’s related to diabetes and asked to work remotely or social distance. The city did not respond and really according to the complaint the only contact was to berate him for asking for these things and to say they would be in touch.

For the police department policy, while he is recovering, he continued to work and shortly thereafter he developed COVID and shortly after that died from COVID related complications. What happens next? His estate brought an ADA lawsuit on his behalf.

Defending itself, the city argued they cannot be liable for failing to accommodate him because of the very short timeframe. It was only 10 days between his request and the hospitalization. But the court said that was not necessarily a basis.

We need to look at the facts. There was very fact specific information. The court said determining whether a delay is reasonable depends upon the totality of the circumstances, including the employer's good faith, the length, and reasons for the delay in the complexity of the requested accommodation.

An important reminder of the importance of acting promptly when accommodation requests come through. Let us look at the question of when accommodations are required. This is another question that has been percolating a bit through the courts.

What happened in the Edwards case is there was an office manager who had depression and she asked her employers for 18 different accommodations. She did not say I need these accommodations. She did not say I cannot do my job without getting accommodations. What she said is I need these accommodations to maximize my productivity.

In the Eleventh Circuit the court held that accommodation is reasonable if it enables an employer employee to perform the essential functions on their dog. Hear the employee did not need the accommodation. As evidence of that they said the employee worked for 2 years after her diagnosis and had done a fine job at her job therefore she did not need reasonable accommodation.

I have mixed feelings about highlighting this case because I feel like it is an important case to highlight as we talk about the 11th circuit which is Georgia. But as you might guess, I think the court got it wrong here. I would caution employers on relying too heavily on it for a few different reasons.

One, it is Eleventh Circuit case. The Eleventh Circuit covers Georgia Florida and Alabama but there are appellate courts across the country that have reached opposite conclusions. I have citations on the bill case in the First Circuit that was one of the other courts that said you don't necessarily -- as long or even if you can do your job with some difficulty you are still entitled to accommodations.

The other reason I would caution people from relying too heavily on this in the court did not address this but courts make people may remember that under the ADA employers must provide reasonable accommodation for the application process. To help somebody do the essential functions of her job and the third category is to be able to access the benefits of privileges of employment.

There have been a lot of pieces saying even if somebody can do their job maybe they cannot do it with additional pain or stress. These kinds of cases often analyzed the benefits and privileges of employment model. I do not believe that was referenced in this case. I wanted to share the case but again with some caution not to be too heavily reliant.

Let us talk about specific accommodation starting with job restructuring. Job restructuring is when an employer removes a specific task from the employee's job responsibilities. The rule in this is an employee or employer may need to remove a marginal task but does not need to remove an essential task.

The question in all of these cases is whether the specific task the employee cannot do because of their disability was essential or marginal. Here we have a customer service rep that had pregnancy related complications such as nausea and vomiting and changes in saliva. You can use to use a spit cup while her job was about 20% working in the production area and 80% in a clerical area.

The employer said no problem. No problem having the spit cup in the clerical area but you cannot use it in the production area. Therefore you cannot do your job. No discussion at all about job restructuring. Ms. Brown brought a lawsuit under the Florida state law that has similar provisions to the ADA.

The case went to a jury and the jury found the employee. That decision was affirmed on appeal meaning the Eleventh Circuit agreed with the employee. But the Eleventh Circuit said we need to look at whether working in that production area was an essential part of the job. There was enough evidence to show that there was not.

What was the evidence? The employees’ own job description did not say anything about working in this production area. Testimony from the employee and other similar people said she was only working in the production area about 20% of the time. The team even had a buddy system where they could trade off.

I think a really important takeaway from this case is the importance of doing regular reviews of job descriptions and making sure they are actually consistent with job experience. You do want to next necessarily say that everything a person does is essential because it certainly is not.

Let us look at a few cases about remote work. How the COVID experience may impact those cases. The right case from Florida is a situation where an employee worked as an evidence technician. During the pandemic she had a process where she and other evidence technicians divided up their job duties. Where a lot of this they can do at home and there were a few things he needed to do such as logging of the evidence and they did that in person.

She was diagnosed with colon cancer and wanted to work from home. Can I do my job the same way I did it during the pandemic? The court ended up saying her case could move forward. It denied the employer's motion for summary judgment. As evidence to the fact that this remote work might be reasonable, it actually cited what happened during the pandemic. It said there was a proven record that this is how it worked during the pandemic. A reasonable jury could find this would be possible moving forward as well.

The Coleman case is also another case where the court referenced how successful remote work was during the pandemic; to ultimately allow a case to move forward about remote work. Then there is a link at the bottom of the slide to the EEOC settlement with ISS facility. This was the very first case filed by the EEOC about COVID. The employee had a pulmonary condition animal asked to work remotely and this case settled ultimately for about $50,000.

Of course like all accommodations, reasonableness is very specific in the Turner case is one where we have a finding for the employer. The Turner case we have a professor who had irritable bowel syndrome and asked to teach remotely. This request was pretty COVID. She asked in March 2019. However it turned out to enable her to do this it would require swapping three of her in person sections with three online sections that had already been assigned.

The court ultimately concluded this was not reasonable. Interestingly, even though the employee's request was pretty COVID, the decision was post COVID. So the court had the ability to look at the world through this post COVID or during COVID lands. They said we recognize remote work as a regular part of many different fields. A reality grown more prevalent during the COVID-19 pandemic.

Just because some employers allow remote work does not mean all fields are workplaces are equally suited to this type of arrangement. This case is currently on appeal. My interpretation of a lot of these cases is COVID and the fact that people pivoted to remote work made it more possible and likely in many situations but not all. Right? There will still be situations where in person is going to be required by employers and the courts.

As more and more people with intellectual and developmental disabilities come into the workplace, we see more cases about job coaches as a reasonable accommodation. People who have heard my presentations before you may have remember the case I think we have talked about each year because almost every year a new and exciting decision happens in this case.

We have another one for you. This is EEOC v Wal-Mart stores. This case was brought by the EEOC on behalf of an employee with several different types of disabilities who had worked for 16 years as a cart attendant at Walmart. This employee had worked with a full-time permanent job coach that was provided and paid for by his Medicaid waiver services.

What you need to know is there was a dispute about the job coach and he was ultimately removed from the schedule. He lost his job after 16 years. There were many court decisions throughout the years and a jury verdict in this case before $5.2 billion that ultimately was reduced to $300,000 given the ADA statutory cap.

The reason we are talking about this case today is because it was appeal to the Seventh Circuit. Walmart argued that having a full-time job as a coach is never categorically as a matter of law ever a reasonable accommodation. The Seventh Circuit refused to adopt the rule which I think is really good for employees who benefit from job coaches. Whether full-time permanent job coaches reasonable is a case-by-case question.

The fact that the person is permanent or full-time is not enough to say it is not reasonable. One of the main important questions is who is the one performing the essential task? Is the job coach doing the job orders the job coach giving direction and helping steer the person click giving verbal cues? Helping the person stay on task. These are the important questions to be asked.

The court skipped out on the question of who has to pay for the job coach because here the employees job coach was paid for by Medicaid. They will punt on the question of whether a employer would have to pay for somebody.

Let us turn to a few other non-accommodation ADA issues starting with direct threat. This is an employer defense. In the Zimmerman case, out of North Dakota, the case was brought by a deaf employee hired as a ramp agent and disclosed he was deaf during his job interview. He ended up needing to go through orientation training and he asked for closed caption .

He passed the training and ended up working for a few months. But at some point that accommodation request made its way up to the higher ups and they panicked . How is he going to do this job? They placed him on administrative leave to talk about accommodation. They started to ask questions to his audiologist.

Ultimately, they terminated his employment. In defense of the employees ADA case, the employer said he would pose a direct threat. Because of his disability, he posed a substantial risk of serious harm that cannot be reduced or eliminated with reasonable accommodation.

The court said, we do not agree at least not at this stage. They are letting the case move forward and said part of the evidence for that was he disclosed his disability during his interview as he was hired and he worked in the role for 2 months without any incident. This case is also ongoing. I know for one, I will be following it.

The ADA protects employees from retaliation. The Laguna case is retaliation example where we have an employee with mental health complications from a seven-month experience with COVID. The employee was out on leave and asked for an additional week to attend his mental health treatment. Instead of engaging in the act or process he was just fired the same day. The court said this was enough to establish a retaliation claim.

In addition to that termination and failure to accommodate. He engaged in a protected activity which was his request for accommodation. He was fired the same day. That was enough to give some sort of inference that the adverse action or bad act was caused by his desire to engage in protected activity.

In the EEOC settlement, there is another situation where an employee complained of discrimination and was fired. Of course, we want to protect people who choose to ask for accommodation and complain about discrimination or otherwise act in the furtherance of their own rights under ADA.

Our final court case about employment is one about constructive discharge. Here we have a legal claim. Constructive discharge is a legal claim that an employee was not actually fired but they were working in an environment that was so intolerable they really had no choice but to resign or quit. In the Benson case, you will see it has some pretty compelling fact that the court filed.

It was enough to possibly establish a constructive discharge. In this case there was both a husband and wife that worked for the employer. The wife had multiple sclerosis and significant costs for her benefits paid for by her health insurance. The employer first fired the wife and then at issue here is reduced her husband's hours which as a result caused him to lose his health insurance also her health insurance.

The husband, among other claims brought a claim for constructive discharge in the courts again said yes that is enough to go. He can move forward due to the reduced hours and salary. The employer essentially placed the employee in a position where they knew he would have to quit given the importance of the insurance. A high bar in this case.

Before I give it to Barry let me give a quick rundown of some federal agency great work that has been done by federal agencies. First EEOC and then the DOJ. We have 4 links on the first slide. We have a settlement where a preschool settled the case after not hiring a candidate with cerebral palsy.

In addition to policies and training, they have to pay the employee $100,000. The Red Roof Inn is an interesting one. In this situation, the hotel told a blind employee that would be a waste of time for him to apply for promotion. Then refused to even allow him to learn about promotional opportunities.

That case was also settled. There is also a staffing company that settled the case for rescinding a job offer because the applicant was missing a left-hand. Then there is a healthcare settlement that I wanted to really highlight because there was a situation where they failed to hire a deaf applicant is a greeter and refused accommodations.

One of the settlement requirement is now in contract with staffing firms, it is agreed to engage in the ADA interactive process and provide accommodations. I know personally I have seen many situations where there is a breakdown between an employee and a staffing agency so I thought this was a great part of or a great concept to put in a settlement agreement.

Finally, we have 3 different settlements from the Department of Justice. We have a town in Indiana that settled the case after revoking a job offer to a police officer with HIV. They had to revise their policies for medical exams and inquiries as well as pay this police officer. People know there has been a lot out there about accommodating individuals with opioid use disorder.

We have a reference to a Tennessee county settlement with the DOJ. This was the first OUD employment settlement. There was a settlement in Ohio agency as well denying a correctional officer's request to work the day shift to accommodate his diabetes.

I encourage you to check out all of these especially with the DOJ. If you go to the link there are also links to the underlying consent decree. I think there is great lessons learned from looking at how the DOJ write things up in these types of settlement agreements. With that, I will pass the mic over to Barry Taylor.

BARRY: Thank you Rachel. Hello everybody, glad to be with you. We are shifting to Title II which is State and Local Government and transportation. I know a lot of you work on ADA unemployment as well as being sure State and Local Government are providing program access. We will go through different categories of entities covered by Title II.

First is court access. The Luke case out of Texas. This is a case involving an individual who is deaf and needed a sign language interpreter. He got no sign language interpreter throughout the process. His arrest. He was arrested for marijuana possession. Meetings with probation officers as well as court. He filed litigation under Title II of the ADA.

One thing he was concerned about was he was not given the interpreter . Instead his mother who had limited American Sign Language skills was forced to service his interpreter in these interactions. With the court in the parole officer the trial court said there is no real ADA claim here because you successfully completed your probation. No harm no foul.

He appealed to the Fifth Circuit Court of Appeals and the reversed and said wait a minute, this guy has a viable ADA claim. The no harm no foul theory is not consistent with the ADA. They said the lack of meaningful access in and of itself is a harm under Title II regardless of whether any additional injury occurs.

The level of injury goes to the number of damages you get. But not whether you violated the ADA. Here they did not provide an interpreter or effective communication, which is a requirement under the ADA. So he won the case on appeal.

We have a similar case out of Illinois the Mendoza case. This time it was somebody who could not have physical access to the courts and they said that failure to provide physical access was a violation of Title II as well. Let us move on to the next case. Rachel talked about situations involving remote access for employment.

Remote access has come up also entitled to context. The Cushing case is an example. Here you have 6 different state legislators out of New Hampshire who all had disabilities and said they would have enhanced vulnerability to COVID if they had to participate in person so they look for accommodation. So they could do their legislative work remotely.

There was concerns because the New Hampshire Constitution talked about quorums and in person . But the New Hampshire Supreme Court issued an opinion and said, we think it is okay to hold these meetings remotely.

There is no violation of the quorum rules under the New Hampshire Constitution. They had the green light to do it but for whatever reason, the speaker of the house was not a fan of people participating remotely and said you must be here in person.

That is required. They filed suit under the ADA and the initial court said, before we get to whether this is reasonable accommodation request or not, we will find that the speaker of the house has legislative immunity meaning he is not bound for suit under the ADA.

Basically what they are saying is, we need to have a separation of the legislative branch and the judicial branch and we will not hold our legislatures liable under the ADA. We say they are immune from lawsuits under the ADA so it did not get to whether it was a reasonable request but they looked at it more as a technical legal question about whether you could sue a legislator under the ADA.

The legislators who brought the case appealed it in the First Circuit reversed and said wait Congress said there is no legislative immunity when it passed the ADA. The speaker of the house said I want another bite of the apple. He asked for what is called a rehearing on bond. This means you ask all the judges for the First Circuit to hear the case instead of a three-person panel.

They agreed with the trial court and said because he was in his professional capacity and they were suing him individually as opposed to the state itself, he did have immunity and the suit could proceed with him under the ADA or Rehabilitation Act.

Let us move on to the next case which is a accommodation that comes up regarding sidewalk accessibility. Often time and involves curb cuts that are nonexistent or not in good repair. A group of people in Philadelphia including an organization filed a class action to address the inaccessibility sidewalk in Philadelphia. This is a case that was settled. You have a link to the consent decree which is like a settlement agreement the court hangs on to.

Basically what has happened is they set out a whole plan to address these issues. What the city agreed to under the consent decree was to install or remediate at least 10,000 curb ramps or curb cuts over the next 15 years. They actually set up interim benchmarks where you have to do 2000 at least curb ramps every 3 years.

By the time you get to the 15th year you will have 10,000. Additionally they agree to maintain existing programs if it gets in disrepair and also issue annual progress reports to be sure they keep up with the requirements and also provide training to ensure curb cuts are done in a proper way.

As I said because it is a consent decree the federal court will maintain jurisdiction to be sure the city complies. Just last week the agreement was approved by the court because you have to go through a fairness hearing when you have class actions . There was some people who objected, saying it would take too long and said the court founded over 15 years was reasonable.

Before we move on, I want to mention there is a recent case that came out after our materials were presented or submitted. It involved audible pedestrian signals which is akin to the sidewalk issue but it is for blind people trying to navigate crossing intersections.

That is the case out of Chicago. We are happy to provide more information about that. It was decided after we submitted our material. Another thing to keep in mind and think about is not only sidewalks but also the accessibility of intersections for blind people. You will see we have a lot of cases involving transportation which is kind of unusual.

We do not have a lot of court cases and settlement on that but we did this year. These next slides involve transportation. The first 2 cases on the slide show how these cases can go different ways as Rachel reference. I think the facts are very different here, which contributes to the different result maybe. What is it talking about is when somebody is not given proper service by a transit authority do they have a claim under the ADA? Can they show they were denied meaningful access?

The Siegel case you had a bus rider who was deaf and blind and documented over 150 incidents where bus drivers failed to either pick him up appropriately. It was failure to pick him up in the right place as well as to announce the stop so he knew when to get off or get on or which must get on. Over 61 different drivers had been involved in these over 150 incidents so he filed suit under the ADA as well as the rehab act and local laws.

He claimed he did not get meaningful access. The court agreed that all these different things that happened to him documented so completely were enough to add up to failure to provide meaningful access so his case was able to proceed.

The graphs just in this case, at the bottom this time you had a blind bus rider who documented three times when the bus failed to pick him up over an eight-month period. The court said that is a frustrating situation but it is isolated and does not really rise to the level of meaningful access so now ADA violation in that case according to the court.

Another transportation case out of Louisiana was really interesting. Just because of the arguments made by the defendant here. Different writers with disabilities challenge the fact that the bus stops were inaccessible. The defendant said, if you cannot if the mainline is not working you can always take paratransit. They also said we've got a 30-year plan to increase access citywide.

So your case is moot. We will get to those bus stops eventually. The court actually granted summary judgment meaning they filed in favor of the plaintiff a valid trial which is unusual. They said this is still not access this is violation of the ADA .

Be sure the bus stops are addressed contemporaneously, not over a 30-year period. In fact, the new construction requirements that are part of the ADA were not complied with so they put in bus stop there were inaccessible and even those that were newer ones. Then they were failing to modify existing bus stops that were inaccessible as well.

So they said the 30-year plan is insufficient and also we are not happy with your claim that if main line is inaccessible, you can ride paratransit. That is not the reason paratransit should be used. You should make mainline accessible because that provides more independence to people so they rejected that argument as well.

Speaking of paratransit, the Department of Justice actually investigated paratransit system of New York City and found it was violating Title II of the ADA. There were 2 main issues they focused on. There were significant untimely drop-offs as well as excessive travel times when people were in their different paratransit rights.

This case did not result in actual litigation after the findings came out. They negotiated with New York paratransit and the DOJ was able to get New York City to agree to establish performance standards for on-time drop-offs and trip length, collect and maintain data as well as conduct analysis about the issue and reporting and training goes along with that.

Another Paratransit Agreement that DOJ reached in Hawaii involved the fact they were having difficulty scheduling the rides themselves. So an agreement was reached on that issue as well and there is a link to that.

Speaking of New York City in transit, there was a major settlement this year on that front as well. There were two different lawsuits that were filed to address the inaccessible New York subway stations. If you have ever been to New York you know the subways are big part of transit. Unfortunately only 25% of stations were accessible when they filed the suits a few years ago.

Finally after a lot of negotiation, there was a settlement that made significant change in New York City. By 2055, 95% of the subway stations in New York over 350 stations will be accessible.

As laid out here, there is a progressive requirement. 81 stations by 2024, 85 more stations on them two years later, 90 more by 2045 and the final 90 stations accessible by 2055. Going from 25% to 95% is a major development . Obviously it will take a while but these are pretty extensive rehabilitations.

They also did something very important to get New York City Transit Authority to agree to dedicate a certain percentage of the capital plan budget to station accessibility. So there are no claims we do not have enough money to do it. That is really great.

We have a link at the bottom of the slide of another DOJ settlement agreement of the city in Michigan about making its rail station accessible. The city operated and owned the station to address a lot of physical access issues including signage and parking and accessible paths and entrances and restrooms.

Let us shift to the issue of voting. You know there have been a lot of legislations passed. They are ostensibly saying they are trying to detect and punish voter fraud. But what raise concerns is sometimes these new laws have the effect of disenfranchising and putting more barriers for people with disabilities.

There was a major law in Texas that I am sure you heard about election protection and integrity act that put a lot of restrictions on voting. Again for the up sensible purpose of addressing voter fraud. A group of people challenge this on a variety of theories but for our purposes, one theory raised with disability discrimination under the ADA and Rehabilitation Act, the court agreed that the claims under the ADA and rehab could proceed because of the new provisions of the law that were disproportionately impacting people with disabilities who wanted to vote.

Some specific concerns was the signature matching the voter ID requirements because that adversely impacted people with disabilities and there were limits on in person voting assistance which obviously what impact people with disabilities as well as limits providing people participating in voting by mail. This is not the end of the story because the defendants have appealed the case up to the Fifth Circuit Court of Appeals.

As of yet, the case has not been decided. That is something to be watching for as this might inform other voting laws that have been passed across the country. I mentioned before the importance of effective communication and that requirement under the ADA. The bone case is helpful on this. This is a Title II case because it involves the University of North Carolina healthcare system. A lot of titled two cases would apply to Title III for private businesses like private healthcare as well.

This was under title to. The problem was the University of North Carolina healthcare system was not providing accessibility for people who are blind in ultimate alternate formats as well is a variety of other accommodations requested. There was one plaintiff that talked about repeatedly asking for materials in large print. They never got it but kept getting a standard print.

What was interesting is the defendant’s argument was this is just a bureaucratic snafu. It is not a civil rights violation. There is no animus here. The court said this is problematic. It was before a magistrate judge that recommended that there was a violation of the law.

Then a settlement was reached last summer with North Carolina where they admitted to liability and agreed to pay $125,000 in damages. The case is not over yet because in addition to addressing the damages of the particular individuals, the case is seeking to get some kind of court order to require them to do this better in the future and make them change their policies and implement them. That is continuing. It has not been decided yet that the motion for the injunction or the court order has not been decided by the court yet. Stay tuned.

Let us now focus on education. That is obviously a big area of Title II. There was a major case decided in New York involving providing care for students with diabetes. This is an interesting case in that it has many different issues. Most of the issues were about providing accommodation and assistance of students with liabilities were resolved but there were 2 issues the party could not resolve. They ended up going before a judge.

The 2 issues were 1, the lack of nurses available on field trips to provide insulin. Also the issue of lack of support to assist students with disabilities on buses to and from school. They could not resolve that. As a result, the parents had to go on these field trips to provide the insulin because of the lack of nurses and also there was insufficient support on the buses. So students could not ride the buses and parents had to drive the children to school. Those were real barriers for those families.

The court said, the district was violating the ADA by failing to provide these accommodations. Then a settlement was reached that covered everything. You have a link there where this city agree to modify the policies and practices and procedures for children with diabetes. One of the things they had to do is make sure they are meeting their needs and setting up proper Section 504 plans. Also providing care so students were not excluded from field trips were segregated from the buses from their classmates as well as other activities.

Significant training for staff and any contractors that they hired major changes there. Before going to the next slide since we’re talking about kids, I want to acknowledge the fact that the US attorney for the Northern District of Georgia seems to be doing proactive things. One announced recently is he sent a flyer to all camps in northern Georgia about accommodating kids going to camp. Children with disabilities.

Hopefully that will make the summer a better process for kids going to camp. Also within the last year, there was a settlement with the YMCA that the Attorney General or the US attorney excuse me in Atlanta was able to get for a child with diabetes. I wanted to reference those as that is the state you all are in. The next slide is tricky so I will do my best but this is about mask requirements in schools.

It is a little tricky because after we submitted our materials, what has happen. I will tell you what is on the slide and then what has happened. The first cases of interest to all of you since it involves Georgia and you might know the case better than I. This is a case where there was initially mask mandates in the Cobb County school district then they decided to hold them back.

Students with disabilities were very concerned because of their added vulnerability if they caught COVID how it would impact them because of underlying disabilities. They wanted to force Cobb County to keep that masked requirement . Initially, the court said they were not required to do it but it was appealed up to the 11th circuit that covers Georgia and other southern states. They reverted back order and said, they could require mandatory masking in the Cobb County schools.

What was interesting about that case is it was reasonable accommodation analysis making sure you are modifying your policies for the students who needed that accommodation. But also they said it was unjustified isolation because the students were choosing not to go to school in person because of the danger they were alleging they would have due to the underlying disabilities.

The Olmsted theory. The Supreme Court said unjustified interests’ institutionalization or segregation is discrimination. That theory was applied to the context of COVID which was a very interesting analysis. As I said that case was not over because a lot has happened since we submitted this.

The thing that happened was it was sent back to the trial court and the trial court said, even though the court above said there was a problem here, we no longer think it is a problem because Georgia the Cobb County school district is providing accommodation but does not providing the accommodation the student wanted. They provided other accommodations not requiring masks and that is enough to meet the obligation under the ADA.

They also said there is no Olmsted violation here either because a lot of students were staying home not just children with disabilities. So it was not a policy that was only adversely affecting children with disabilities. This is not over yet of course because now the students after they lost at the trial court are appealing back up to the Eleventh Circuit. Stay tuned for that.

This continues to be a very tricky and challenging issue for folks. Really quickly, the Iowa case is similar in that the court allowed or said masking should have been a reasonable accommodation. Requiring masking for students with disabilities who they are around. But the school district has appealed to the Eighth Circuit so that is still pending as well. But there was a good decision for people with disabilities at the lower court.

Cases that have gone the other way. One in Texas and one in Tennessee. Both said it would be speculative as to whether or not the students were actually in danger if there was not mandatory masking. Because it was so speculative, the students really did not have a legal right to bring a case under the ADA both lost their cases.

Another education case involves digital accessibility. People may know there have been a lot of cases over the years about accessibility of the Internet and the website, etc. A number of cases involve higher education and accessibility of materials they make available both for students as well as the public.

The DOJ filed a complaint saying that University of California-Berkeley free online content was inaccessible to people with hearing vision and manual disabilities. A complaint was filed and you have a link there. A consent decree was entered on the same day. There was a lot of negotiation and the DOJ filed the complaint but also filed a consent decree at the same time which was approved by the court.

Basically over a 3.5-year period Berkeley has agreed to make all future in the vast majority of their existing online content accessible to people with disabilities. They have agreed to do the Web Content Accessibility Guidelines 2.0 to meet the standard. They have also agreed to revise the policies and procedures related to online content.

Train relevant personnel. Also have agreed to designate a web accessibility coordinator. They also agreed to conduct accessibility checking of the online content and finally have agreed to hire an independent auditor to evaluate accessibility of content. Those of you who work for universities might want to take a look at this consent decree because it is very comprehensive and gives insight as to how the DOJ regards the obligations of higher education entities.

One more education case involves testing accommodations. This is technically a Title III case because it is a private entity. However there are a lot of public based entities that also provide testing and oversee testing like the bar exam for lawyers usually do the government. These are technically Title III but this is a applicable to Title II as well.

There were multiple complaints raised by people with disabilities against the testing service that did testing for different examinations including the GRE. Basically they were saying they were not providing the accommodations that had been requested and they had unreasonably designed it. A settlement was reached in this case.

The entity has agreed to be more reasonable and limited as far as the request of documentation when evaluating accommodation request. There are a lot of concerns about how extensive documentation has been required. They also agreed to be more timely responding to request. There were complaints also about how slow they were.

They also said you have to give more weight to the recommendations of qualified professionals that observe the applicants. They have experience with the person so they deserve difference. I think someone's microphone is on. Can you mu please? They also said you need to give deference to testing accommodations that have been approved previously when in school under their IEP or 504 plan.

We are now going to shift to another issue. I referenced before the Olmsted case and that is a reminder that that is the case by the Supreme Court that said unjustified into civilization and segregation is discrimination of the ADA. We wanted to let you know that there have been a number of cases that have come recently applying these to kids who have been institutionalized. Most of these cases in the past have been for adults. The same analysis applies to children.

The big case on this slide is from the state of Maine. The DOJ did investigation and found the state of Maine was unnecessarily segregating children with behavioral health needs in a variety of settings including psychiatric hospitals, residential treatment facilities and a juvenile detention center.

The DOJ found they could be served in the community. Community services had long wait lists and there was insufficient investment in the community and lack of crisis services. Really poor support for the treatment of foster care parents.

That case is settled in the state of Maine has agreed to modify their Medicaid waiver plan as far as community services that they provide. As far as how many service hours are available as well as to ensure there is better capacity in crisis services available. A very similar case was decided in Rhode Island as well and you have links to both of these cases.

Another Olmsted case on the next slide this case is a bit different. It is not about people and institutions but those in the community. That the community settings were too large. So they behaved like many institutions.

Minnesota is further along the road than a lot of us other states. They rely upon 4-person group homes but a lot of people in the small group homes wanted to live in their own apartments or homes alone or with a roommate. Minnesota was not meeting those requests. So litigation was filed and the first link is the court link from 2019.

It said that Olmsted is not limited to people who are in institutions. It also covers those who are in facilities that still segregate people and do not provide integration to the fullest extent possible. You might remember there was a provision in Olmsted that said you need to be in the most integrated setting possible but

that is not happening in the 4 person homes. A settlement has been reached and you have a link to that where the state is agreeing to provide access to be able to live in your own home or apartment. There is a fairness before that is finalized this Friday. Hopefully it will go through and people with disabilities can live in their own home in Minnesota.

A related housing case is right here the Valencia case a city ordinance that was owned and had limits on people with disabilities living in the community. Basically they said you cannot have a group home with people with disabilities near another group home. There were limits on how many people with disabilities could live in a particular area.

They brought a lawsuit under the ADA as well as under the Fair Housing Act and we have act. That went to the Seventh Circuit initially and the court found for the plaintiffs that there was intentional discrimination and failure to accommodate. Such short supply for people with disabilities to live in the community so provide reasonable accommodations and waivers to be sure they have that opportunity.

After that rule, the case went to trial and last year, the jury found in favor of the plaintiffs here and found the city violated federal law and issued a verdict. That was a case brought by private plaintiffs and the residents in the provider as well as the United States Department of Justice. A combined effort on that case.

We cannot have training without talking about service animals because it comes up all the time. This is an interesting case be leave a case. Service animals a private business or government entity not allowing access. Here you had a blind man who was shopping in the mall and the store he was and did not want him in there with his guide dog. They ended up calling the police.

The police came and threatened him and said you will be arrested if you do not leave the store. This is private property and they have the right to exclude you. Interestingly the case was not against the store but the city of Winston-Salem and the police department.

After they filed the suit, the city agreed to settle the case and adopt a policy about how Winston-Salem police officers will address these issues and ensure specific training on the laws that protect the people with disabilities who use service animals. You can click on the policy and see it but I thought that was an innovative way to address the service animal issue with where the police are involved.

We will now shift to law enforcement. Obviously interacting with the police can be tricky for people with disabilities. I have a few cases that highlight the issue. The first case is the Sandoval case out of California. You have a man with a history of mental illness. He had a hard time and he was pacing in the street barefoot at 4 AM and somebody called the police. He was on empty street and nobody else was around but he was very upset and he was walking around with a knife.

The police arrived and unfortunately instead of de-escalating the situation in trying to talk to him, he was having some kind of mental health issue they instead six their police dogs on him and when the man tried to defend himself against the dog who was going for his throat, the police shot and killed him. It was a tragic situation.

The state sued under a variety of theories including the claim this is a violation of the ADA. The city moved to dismiss and said you know police had to do what they had to do and this was a dangerous situation. They were not 100% sure he even had a disability but the court said we will let the case go forward because we think they made a proper ADA claim.

The officers failed to make reasonable accommodation by not taking his apparent mental illness into account. The employee may employ tactics that end up with the tragic circumstance but they could have done something else to resolve the situation especially since nobody else was around. They went to the extreme approach as opposed to trying to do other things. This is an example of when utilizing mental health professionals instead of only relying on the police can really make a difference.

MODERATOR: Excuse me Barry, this is your 15-minute time check.

BARRY: Thank you we have a few more cases than we have time for questions. Thank you for the reminder. Another case involving law enforcement went the other way. Here you had a woman with mental illness who had attempted suicide so people call because they were concerned that she went into the woods and they were afraid she would die out there.

They called the police and the police came and tried to calm her down. She broke free and she was bleeding she was definitely in a bad state. They released a dog in this time she was not killed but the dog bit her several times. She ended up suing under the ADA saying they should have accommodated her and should have done something besides the dog. Here the court went the other way. And said it is not reasonable to require officers to figure out how to do this. To calm down somebody and just de-escalate situations when it would pose a risk to themselves or to others .

That is really not necessary in the heat of the moment and what they did was reasonable. Maybe because the person did not die they were bitten and that certainly a concern maybe that was the difference . I am not really sure or maybe it was a different perspective by a different judge. I think it is a good reminder these are tricky cases.

Trying to de-escalate situations is the best way to do when people with mental illness have a hard time and interact with the police. The final related area to talk about on the ADA and corrections context is these are people who are already incarcerated.

The Tellis case is involving a class action brought in Louisiana on behalf of a variety of prisoners but there was a subclass involving prisoners with serious mental illness. There were serious allegations including lack of mental health treatment, overly using solitary confinement which exacerbates mental illness and abuse and neglect.

The court initially there was a question of whether these were viable claims. The court allowed the ADA claim to proceed to trial and at trial the court ruled in favor of the subclass of people with mental illness . They found that Louisiana had failed to accommodate the needs of inmates with mental illness.

As well as their methods of administration are discriminatory and they fail to identify inmates with mental illness and had an adequate system for processing requests for accommodations and failed to track the requests. The remedy part of the trial is still proceeding in Louisiana what they have to do is currently pending before the court.

The last case to mention is the Mackes v Colorado Department of Corrections. Again we are talking about the Department of Corrections but this time it is blind inmates. The fact that Colorado Department of Corrections is failing to accommodate blind inmates and compromise their safety and privacy.

So they did a variety of things like all the materials were in paper format and that did not work for blind people who did not understand the grievance process or how to make a medical appointment or have access to computers or educational programs or vocational programs. They actually required blind inmates to pay for auxiliary aids that would help them understand what's going on.

That case was settled and there is a link to it which will include enhancing identification of blind inmates in their need for accommodation as well as hiring an expert consultant to hire them to evaluate the prisoners. Also provide auxiliary aids and services and giving prime consideration for the preferences of the blind inmates and not charging them for it.

Also making sure all written materials were provided in an accessible format for communication. Also making sure they had equal access to vocational and work assignments they had been denied before. With that we have gone through all the cases and we will now start addressing questions. There may have been some questions in the Q&A Rachel? Have you read those? I will start looking as well.

RACHEL: We have been told to put on our cameras for this part so we will do that.

MODERATOR: I have questions for you all if you are ready. The first question is from Charles. Is employment network only for Illinois residents?

RACHEL: Charles I am not sure if you are referring to the employment rights helpline reference in my bio . If so, yes that particular program is only for folks who live or work in Illinois. But if you want to reach out to them to me I can give you some referrals for them. Equip for Equality is a part of a network of other protection advocacy agencies but not a not all agencies do employment work but many do. That might be a good starting point. You can find your local protection advocacy agency.

MODERATOR: Thank you. The next question is from Heidi it is a two-part question. Specific to protection based on disability discrimination by State and Local Government, not only ADA Title II but other Civil Rights Act, customers, not employees, can you talk about what it means to think about methods of administration, criteria, etc.? To me, methods and criteria are not necessarily about program access. But how an entity makes decisions, what decisions are based upon and how decisions for benefits and resources could be a bias or stereotype.

BARRY: I am happy to answer that. In the Tellis case I mentioned before, involving prisoners of mental illness that is a good example. The failure to accommodate was one violation of the ADA but they also said the methods of administration in and of themselves were discriminatory. You might remember that is a case where they fail to identify inmates with mental illness.

By failing to identify them, they were then not providing the accommodation so that was the method of administration. The other method of administration was the inadequate system for processing request accommodations. Then failing to track the request. I am very glad you asked that question because it is not just about what you do but it is also about how you do it. These are both important. Failure to do either of those can be violation of the ADA.

MODERATOR: Thank you very the next question is from Alisha. And my understanding in the remote work is not reasonable example, that this case means if a facility member requests 100% telework, it is not considered a reasonable accommodation to reassign online courses that have already been assigned to other faculty members?

RACHEL: I would say maybe. I am sorry to give you a lawyer answer there. I think the case you are referring to is the Turner case. A lot of times we do not get all of the facts. What the court ended up staying in that case is there were 3 people already assigned to teach online and therefore it was not reasonable to take those classes away from them and reassign those particular classes.

That is what the court decided in that particular case. What I do not know is if another case would be more successful if in the typical course of college distribution of courses, there is regularly a way to reassign people or if it happens all the time or are people swapped or maybe there is a seniority order.

In which case, people get remote versus in person courses. I think a lot of it depends upon the fact. You are correct that that was the basis in that Turner case. The other thing I will note is that case is on appeal. I cannot remember if I said that during the conversation but it is kind of a stay tuned to see if that changes once it has been appealed at the Circuit Court.

MODERATOR: Thank you Rachel next question is George. Under ADA Title II has any court order of government agencies to provide a certified death interpreter as a reasonable accommodation for effective community communication with a deaf citizen?

RACHEL: I have not seen a court case where it has been ordered. I can tell you I have been in court where courts have provided both a CDI and an ASL interpreter to ensure effective communication for individuals who require a CDI for active communication. But I have not seen a court decision ordering it. I am not sure if Barry has.

BARRY: I have not either but I would think that the person get effective communication through a traditional American Sign Language interpreter. As we know, the standard is the accommodation has to be effective but not necessarily preferred under Title II there are some more reliance on the preference of the person with the disability.

That makes the analysis a bit different I think that maybe Title I thank you for employment. But I have seen this specific case to talk about that but I do not see a reason why that cannot be ordered if that is really what is necessary for that person to have effective communication because people need Certified Deaf Interpreters, when American Sign Language may not be strong.

So Certified Deaf Interpreters may be able to use symbols that are different for that person that does not have as much fluency in ASL. Barbara would you mind going to Jill's question? I think it is an important question that would be helpful to talk about

MODERATOR: Not a problem. Jill's question is, I have had a high-level person in our local government ADA coordination leadership state that because a court case was not in our region circuit, it was not applicable to us. For example, the three circuits that favorably settled court cases surrounding temporary impairment such as broken limbs like arms or wrists etc., being a consideration as an ADA disability. I was told that because these court cases are not in our circuit, it does not apply to us and therefore, we do not have to adhere to it.

BARRY: Yes the reason I want to talk about this is because I always caution people about seeing one case in saying it does not cover our area so we do not have to follow it. You never know how it is going to play out. There may be decision that goes one way in your circuit and then that could be something considered president. It has something to rely upon. But sometimes there is not one in your circuit that there are in other circuits.

If there is one other circuits and not yours, often times your circuit will look at other decisions they do not have a president on file already. Not to contradict the person you spoke to, but I think it is a little bit risky to say that does not cover our geographic area so we will follow it. Especially if there is any contrary precedent in your geographical area.

I would be really careful about that. For us, there is sort of what the court say and then there is also good public policy toward people with disabilities. Even though technically, it may not be a violation if there is a way to accommodate people with disabilities and provide accommodations that are not unreasonable, or some sort of undue hardship or burden, I think that is always the best thing to do and not necessarily hang your hat on various decisions that might come down.

MODERATOR: Thank you for that answer. The next question is from Sarah Perry for effective communication, is there a recommended percentage of large print documents we should make for large events? For example, graduation programs. 2000 programs. How many should be large print? Any good resources that you would recommend for looking up best practices on these in the future?

BARRY: I am not aware of any court cases are regulations that talk about percentage of documents that must be in an accessible format. I think sometimes you can look at your population and do an estimate and percentage. How many people would low vision are there might be one way to do it. Another way to do that may be to have something ahead of time that says if you need something in large print to request it.

Obviously, we do not just want to say people have to request it and having the ability to have alternatives is a good idea. Being proactive is a good strategy but maybe having that announcement may give you a sense of the volume you need to have available. Again, large print is not too difficult to do versus braille or something like that which is a bit trickier I think from the expense standpoint. Rachel do you have additional thoughts?

RACHEL: I agree with both points. The only thing I will add in terms of resources is I am sure people are familiar with the ADA National network. I believe they have put out a number of different publications about accessible temporary events. I would check that out. I think there is always a great place to bounce ideas off of firm resources for resources and best practices so I would steer you there if you want to learn further.

MODERATOR: Thank you both. The final question for this afternoon's from Amanda. Have the courts held how to handle employees taking leave for training with service animals? For example sick time versus vacation or unpaid leave?

RACHEL: Amanda that is a great question. I have not seen a court that gives that level of detail. There has been a number of service animal cases under Title I lately. I was excited to see that because for a while we had not had any. Court cases have made clear that employers do need to do more than just let the service animal in if it would be reasonable, they have to do other sorts of adjacent type accommodations.

I think there is a good argument that the employee would be able to take some leave. Exactly how the leave is categorized I think would depend. As folks probably know, under the ADA is considered unpaid leave so if an employee is asking for leave as an accommodation under the ADA, the default is probably unpaid.

The question is there. The opportunity under the employer's own employment policies to take it instead as PTO or sick time or vacation time or other paid leave. I would want to know a bit more about what other employers are entitled to or what the particular employee is entitled to as well.

MODERATOR: Thank you so much Rachel. We would like to thank both you and Barry for being here this afternoon and providing us with an excellent session. Providing us with the wealth of knowledge and experience that you all bring to the table. The next session is ADA Accessibility Rules for Alterations to Existing Buildings. It will begin at 3 PM Eastern standard time. Thank you all for joining us and we will see you later this afternoon.

Session Ended.

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