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## **Older Americans and the Americans with Disabilities Act of 1990: Title I**

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### **I. Introduction**

Although the aging process itself does not cause disabilities, it has long been recognized that the frequency of disabilities <sup>/1/</sup> increases with age. While only 5.2 percent of the population has a physical disability, this figure increases to 45.4 percent for those 65 -- 69 years old and 55.3 percent for those 70 -- 74 years old. <sup>/2/</sup> As of 1991, 60 percent of persons with disabilities in the United States were 45 years of age or older. <sup>/3/</sup> SSA reported in 1985 that 68 percent of the 2.7 million persons receiving disability insurance were over 50 years old. <sup>/4/</sup>

Many lawyers, advocates, and service providers are aware of problems older Americans face with age discrimination, and the rights and remedies available through the Age Discrimination in Employment Act (ADEA). <sup>/5/</sup> However, professionals representing and serving older persons need to be aware that this population may face discrimination based on disability, alone or in combination with age discrimination. Since many impairments develop as persons get older, age and disability are often related. In fact certain disabilities -- such as lung disease, heart impairments, and stroke -- are more prevalent among older individuals. <sup>/6/</sup> Yet many older individuals with disabilities may not consider themselves as having a disability. They also may not recognize that they have been subjected to discrimination based on disability or that such discrimination is illegal under federal law.

A major new study of 13,000 individuals aged 51 -- 61 noted the link between disability and aging, and its impact on continued employment. <sup>/7/</sup> This study reported that approximately 10 percent of workers have a health condition that limits work, while 40 percent of nonworkers reported having a health condition that limits work. Poor health was the single most important reason why nonworking individuals left their last job. Interestingly, the types of health conditions cited by survey participants show some correlation with the types of disabilities most frequently claimed by individuals filing Americans with Disabilities Act (ADA) charges with EEOC, the federal agency

that enforces the ADA's employment provisions. For example, EEOC reports that back impairments constitute the single largest category of impairments cited in ADA charges; heart impairments and diabetes come in fifth and seventh. /8/ The Health and Retirement Study (HRS) reports that back problems, heart conditions, diabetes, and chronic lung disease were the four most common conditions given as reasons nonworking survey participants left their last jobs. /9/

The significance of these numbers increases when one learns that almost half of the HRS working participants believe there is some likelihood they could lose their job during the next year, and almost 25 percent believe their chances of being laid off are 50-50 or worse. /10/ Employers seeking to save money may target for layoff older workers, particularly those with disabilities. Thus, it is imperative that older workers and their advocates understand the implications of the ADA in protecting employment rights of older Americans with disabilities.

## **II. Major Provisions of Title I of the ADA**

The ADA was patterned after section 504 of the Rehabilitation Act of 1973, /11/ which prohibits discrimination against persons with disabilities in a broad range of areas, including employment, social services, and education. Congress modeled many of the Title I provisions of the ADA on regulations implementing section 504 of the Rehabilitation Act. /12/

### **A. Entities That Must Comply with Title I?**

Private employers, employment agencies, labor organizations, joint labor-management committees, and state and local governments must comply with the ADA's employment provisions. /13/ Compliance by these "covered entities" mirrors the reach of Title VII of the Civil Rights Act of 1964. /14/ The Civil Rights Act of 1991 expanded the ADA's coverage to the executive branch of the federal government, /15/ as well as to personnel actions affecting persons chosen or appointed by elected public officials in any state or political subdivision of a state. /16/

Title I currently applies to employers who have 15 or more employees. /17/

### **B. Types of Employment Practices Regulated by Title I**

Title I prohibits discrimination in the following areas:

- Application
- Promotion
- Training
- Testing

- Medical exams
- Compensation
- Hiring
- Layoff/recall
- Leave
- Assignments
- Termination
- Evaluation
- Discipline
- Benefits /18/

Title I also prohibits employers from limiting, segregating, or classifying an individual in a way that limits or denies job opportunities because of disability. /19/ In addition, an employer may not enter into a contract that has the effect of discriminating on the basis of disability against an applicant or employee. /20/

### **C. *Definition of "Persons with Disabilities"***

The ADA has its own definition of "disability" that an individual must meet in order to be covered. The mere presence of a health condition or disease is insufficient. Similarly, the fact that an individual receives disability benefits as a veteran, or receives workers' compensation for a workplace accident, does not automatically grant coverage under the ADA. /21/

The ADA defines a disability in three ways:

- (1) a physical or mental impairment that substantially limits one or more major life activities,
- (2) a record of such an impairment, or
- (3) being regarded as having such an impairment. /22/

Under the first prong of this definition, a person must have a physical or mental impairment. Neither the statute nor the EEOC's implementing regulations attempt to provide a definitive list of impairments. The regulations define physical impairments as "[a]ny physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs),

cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine." /23/ The definition of a mental impairment is similarly broad: "[a]ny mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities." /24/

Physical or emotional characteristics, or personality traits, are not impairments. Thus, being left-handed, overweight, or having brown hair are not impairments. /25/ Similarly, having poor judgment, a quick temper, or a low threshold for stress are not impairments. /26/ Advanced age by itself is not an impairment, although impairments associated with old age could be disabilities protected by the ADA. /27/ Impairments can include heart disease, lung disease, stroke, Alzheimer's disease, arthritis, alcoholism, /28/ cancer, diabetes, vision and hearing impairments, osteoporosis, and paralysis.

Having an impairment is insufficient, however, to meet the ADA's definition of disability. Congress drew a distinction between impairments, which may create minor difficulties for short periods of time, and disabilities, which entail substantial limitations in daily activities. Thus, an individual's impairment must be serious enough to limit one or more major life activities in order to be covered by the ADA. Major life activities are those activities that an average person can perform with little or no difficulties, including:

- Walking
- Seeing
- Speaking
- Hearing
- Breathing
- Learning
- Performing manual tasks
- Caring for oneself
- Working /29/

Other possible major life activities could be having a reasonable attention span, interacting with other people, being able to concentrate, sitting, standing, and lifting. /30/

The key criterion to meeting the definition is that an individual experience a "substantial limitation" in one or more major life activities. Three factors determine whether an impairment's effects are substantial enough to trigger ADA coverage: (1) the nature and severity of the impairment, (2) its duration or expected duration, and (3) its permanent or long-term impact, or expected impact. /31/ Generally, an individual must be unable to perform, or be significantly limited in performing, a

major life activity to meet the severity test. Certain mental conditions, such as personality disorders, may affect an individual's activities, but not to the point of substantially limiting them. Similarly, a minor case of arthritis may cause some pain and necessitate taking an occasional painkiller, but not be severe enough to limit substantially such activities as walking, lifting, or reaching. By contrast, a severe case of arthritis, necessitating prescription medication and causing excruciating pain if the arm is raised above shoulder-level could cause substantial limitation in lifting and reaching.

Evaluating the duration of an impairment also is critical. Broken limbs, sprains, influenza, the common cold, headaches, or concussions are all impairments that may affect a major life activity. However, their duration usually is minimal -- a few hours, days, weeks, or months. Thus, these "temporary" impairments would not meet the ADA's definition of a "substantial limitation." /32/

Determining whether an impairment substantially limits a major life activity is done without regard to any medications or assistive devices that mitigate the effects of an impairment. /33/ For example, whether a hearing impairment is substantially limiting must be determined without regard to whether the individual wears a hearing aid. The critical question is how well the individual could hear if he or she did not wear a hearing aid. Similarly, a person who must constantly take prescription painkillers for arthritis should be evaluated as to the impact on performing major life activities if the person did not take medication.

A determination of a substantial limitation in a major life activity should focus on all activities other than the major life activity of working. If a person is substantially limited in walking, seeing, lifting, and so on, then there is no need to consider working. However, if a person is not substantially limited in any other major life activity, then restrictions in working should be considered. /34/

The second prong of the definition of disability covers anyone with a "record" of a physical or mental impairment that substantially limits one or more major life activities. /35/ For example, an individual with a history of bone cancer, but whose cancer is in remission, is protected by the ADA if at one time the cancer substantially limited a major life activity. /36/

The third prong of the definition covers anyone "regarded" as having a physical or mental impairment that substantially limits one or more major life activities. /37/ Included within this definition are individuals who may not have a disability as defined by the ADA but nevertheless are denied an employment opportunity because of the perception that their life activities are limited. For example, an individual with high blood pressure could be covered by the third prong of the definition if an employer refuses to promote the individual to a high-stress job because of unsubstantiated fears that the person's high blood pressure and the job stress will result in a heart attack. /38/

There is one other significant category of individuals protected by the ADA: nondisabled people who suffer discrimination because of their relationship or association with a person with a disability. /39/ Relationship or association refers to family relationships and any other social or business relationship or association. For example, a nondisabled woman applies for a job and discloses that her husband has Alzheimer's disease. If the employer refuses to hire the woman

because of fears that she would miss work a lot to care for her husband, the woman's relationship with her husband (who has a disability under the ADA) would be protected.

#### ***D. Qualified Individuals with a Disability***

The ADA prohibits employment discrimination against a "qualified individual with a disability." /40/ To be "qualified" one must be "an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position." /41/

Thus, determination of whether a person with a disability is qualified involves two steps. First, one must determine if the person meets the prerequisites for a specific position. These are the neutral job requirements that any individual must meet in order to be considered qualified for a job. If the person meets such prerequisites, then the second inquiry is whether the person can perform the essential functions of the job.

##### **1. The Essential Functions of the Job**

Most jobs involve performance of essential and marginal functions. Essential functions are the primary job tasks, the critical tasks that enable successful performance of a specific job. /42/ Marginal functions are the secondary, less important, tasks. /43/ Marginal functions may be important for someone in the organization to perform, but not necessarily a person holding a specific position.

Why is the distinction between essential and marginal functions critical? Under the ADA, an employer can refuse to hire, or fire, an individual with a disability if, due to disability, the individual cannot perform the essential functions of the position because he or she would not be "qualified." /44/ But, if the same individual's disability merely prevents the individual from performing a marginal function, then the individual would still be considered qualified for the job under the ADA. /45/ For example, if filing was a marginal function of an accountant's position, and due to arthritis an individual could not lift and bend to do the filing, but still could perform all the essential functions of the position, then the individual would be considered qualified for the job. However, if filing was an essential function of a secretarial position, then the individual with severe arthritis might not be qualified. /46/

A determination of whether a function is essential or marginal should focus on the purpose served by a function, its objective or outcome. /47/ This determination should not focus on the customary manner in which the function is performed. For example, employees customarily type information onto a computer keyboard in order to store, write, edit, and retrieve it. Storing, writing, editing, and retrieving information are job functions (essential or marginal), but manually typing on a keyboard is the means by which the functions are performed. This distinction is critical. Employers are entitled to require that essential functions be performed (e.g., storing, writing, editing, and retrieving information). However, the way in which such functions are performed can be altered

with reasonable accommodations. For example, a voice-activated computer would allow a person with carpal tunnel syndrome to perform all of the functions listed above.

## 2. Reasonable Accommodations

Perhaps the single most important provision in all of Title I of the ADA is the requirement that employers provide individuals with disabilities with "reasonable accommodations" that enable them to perform the essential functions of the job. This requirement responds to one of the fundamental myths underpinning disability discrimination -- the notion that disability prevents individuals from working successfully. The ADA's reasonable accommodation requirement acknowledges that disabilities may pose limitations but recognizes that such limitations generally can be remedied by changes in the job, the tools and the equipment used to perform the job, or the work environment and that the need to make such changes is not a basis for considering an individual unqualified.

Reasonable accommodations are modifications or adjustments that enable individuals with disabilities to enjoy equal employment opportunities. Toward this end, the EEOC regulations define three circumstances in which reasonable accommodations may be required:

- (1) to ensure equal opportunity in the application process;
  - (2) to enable a qualified individual to perform the essential functions of the job; and
  - (3) to enable an employee with a disability to enjoy equal benefits and privileges of employment.
- /48/

Failure to provide a reasonable accommodation is a form of discrimination prohibited by the ADA. /49/ Similarly, failure to hire a person with a disability because of fears or knowledge that the individual will require a reasonable accommodation also is prohibited. /50/ Only individuals with disabilities are entitled to a reasonable accommodation, not individuals who have a relationship or association with a person with a disability. Thus, the ADA does not require an employer to provide a modified work schedule for an employee who needs to care for an elderly parent with Alzheimer's disease. /51/

Individuals with disabilities are responsible for informing their employers when they need reasonable accommodations. /52/ Many disabilities, such as heart disease, cancer, or diabetes are hidden. An employer might not know that an individual has one of these disabilities unless the individual informs the employer. However, even if a disability is obvious, such as paralysis necessitating use of a wheelchair, the individual still must notify the employer of the need for a reasonable accommodation. The ADA does not require employers to be mind readers, nor does it wish to encourage employers to assume that all individuals with disabilities need accommodations.

Once an individual informs an employer of the need for an accommodation, the employer should seek guidance from the individual. /53/ Many people know exactly what types of accommodations they need. However, many individuals may not know what types of accommodations are available,

especially if the accommodation involves modification or purchase of equipment or devices. This may be especially true of individuals who develop a disability when they are older. Unlike individuals who have had disabilities since birth or childhood, older individuals may be less aware of available accommodations. If this is the case, the employer has an obligation to determine if reasonable accommodations are available. If two or more accommodations are available, the EEOC regulations encourage employers to choose the accommodation preferred by the individual with the disability. However, as long as the accommodations are equally effective, the employer may make the final choice. /54/

### 3. Undue Hardship

Employers are not obligated to provide accommodations that cause them "undue hardship." /55/ The EEOC regulations define undue hardship as "significant difficulty or expense." /56/ The mere fact that an accommodation costs money, or entails some action by the employer, does not make it an undue hardship. /57/ In addition, the prejudice or discriminatory attitudes of employees, customers, or clients do not constitute undue hardship. /58/

Instead, the EEOC regulations suggest several factors that an employer should consider in determining whether a specific accommodation constitutes an undue hardship:

- (1) the nature and net cost of the accommodation, taking into consideration available tax credits and deductions /59/ and/or outside funding to cover the cost (or partial cost);
- (2) overall financial resources of the facility, the number of persons employed at such facility, and the effect on expenses and resources; /60/
- (3) overall financial resources of the employer (e.g., if the accommodation is needed in a branch office of a multibranch employer);
- (4) type of operation of the employer; and,
- (5) impact of the accommodation upon the operation of the facility. /61/

### ***E. Discrimination in the Provision of Benefits***

Title I prohibits discrimination on the basis of disability in fringe benefits. /62/ Employers must provide individuals with disabilities "equal access" to such benefits as insurance (health, life, disability), leave, and pension plans. /63/ Thus, it would violate the ADA to exclude an employee with heart disease from access to the employer's health insurance plan.

Suppose an employee with heart disease is admitted to the health insurance plan, but the plan does not cover any treatments for heart disease. Is this permissible under the ADA? The EEOC's Interim Enforcement Guidance, issued in June 1993, addresses the use of such "disability-based distinctions" in health insurance plans. /64/ The Interim Guidance established a three-step analysis

to determine if a health insurance plan violates the ADA by singling out certain disabilities for different treatment.

The first step is to determine if the health insurance plan contains any "disability-based distinctions." These distinctions occur when a health plan singles out a specific disability (e.g., deafness, Alzheimer's disease, arthritis), a discrete group of disabilities (e.g., cancers, kidney diseases), or disability in general (i.e., a physical or mental impairment that substantially limits one or more major life activities). /65/ If a health plan contains a disability-based distinction, then an employer has the burden of justifying the distinction by showing that it is not in violation of the ADA. Thus, the second step requires the employer to prove that it has a "bona fide" health plan. /66/ If the employer passes this hurdle, then the third step requires the employer to prove that its plan is not a "subterfuge" to evade the ADA. /67/ This step basically requires an employer to show that its disability-based distinction is justified by the risks or costs associated with the disability. /68/

### **III. Remedies and Enforcement Mechanisms**

#### **A. Remedies**

Title I of the ADA incorporates the full range of "make whole" remedies traditionally available to victims of discrimination under Title VII of the Civil Rights Act of 1964. /69/ These remedies include injunctive relief, hiring, promotion, reinstatement, back pay, front pay, restored benefits, and training. Additional remedies are uniquely available under the ADA. An employer can be ordered to provide an individual with an accommodation. The appropriate accommodation must be determined on a case-by-case basis. An employer that has entered into a contract with a discriminatory effect could be enjoined to terminate such a contract and to refrain from entering into such a contract in the future. /70/

Additional remedies are available under the Civil Rights Act of 1991 /71/ to individuals with disabilities who are subjected to discrimination in employment. This Act provides for an award of compensatory and punitive damages when intentional discrimination is found or when an employer has not made a "good faith" effort to provide a reasonable accommodation. /72/ The Act sets limits on the amount of future pecuniary compensatory, nonpecuniary compensatory, or punitive damages that can be awarded against a defendant in an ADA suit based on the employer's number of employees. /73/ The Act also provides for jury trials in ADA lawsuits. /74/

#### **B. Enforcement**

##### **1. Charge Filing**

Congress, in enacting the ADA, provided that EEOC would enforce Title I under the same procedures used to enforce Title VII. /75/ Under these procedures, job applicants or employees who believe they have been subjected to discrimination in employment because of disability must file a charge with EEOC. /76/ While it is possible to call an EEOC office to file a charge of

discrimination, /77/ it is strongly recommended that a written charge be filed, in person or by mail. A charge of discrimination may be filed under more than one basis. For example, a 60-year-old woman who believes she has been terminated because of her age and because she has severe arthritis that substantially impairs her ability to use her hands could base her charge on the Age Discrimination in Employment Act as well as the ADA.

Charges of discrimination can be filed by individuals who believe they are victims of discrimination and also by organizations or groups which file a third-party charge on behalf of an individual. /78/ For example, an advocacy group that acts as an employment referral agency for individuals aged 55 and older notes that every individual with a back impairment who is referred to Company X is rejected for employment. It also appears that Company X, which has been doing massive hiring because of a dramatic expansion of its business, is hiring a disproportionately large number of young people. All those referred to Company X say that the application forms asked about their age and health status. Several individuals who identified their back problems on Company X's application form say they were told by the company's receptionist that Company X needs young, healthy workers who can be at work every day. While these individuals feel they have not been treated fairly, they are hesitant to challenge Company X on their own. In these circumstances, the individuals who believe they are victims of discrimination can ask the advocacy group to file a third-party charge on their behalf.

The charge or third-party complaint must be filed within 180 days of the discriminatory act, unless the discriminatory act took place in a state that has a statute comparable to the ADA and an agency approved by EEOC, /79/ and the individual has already filed a complaint under state law. In that case, the charging party would have up to 300 days within which to file a charge with EEOC. /80/

The charge of discrimination should include: the charging party's name, address, and telephone number; the name, address, and telephone number of the alleged discriminating party (e.g., private employer, state or local government, employment agency, labor organization, joint labor management committee); the basis or bases of the claim (e.g., disability, disability and age); the individuals involved in the alleged discrimination; the date of the discriminatory act or acts; a description of what occurred; and the identity of any witnesses to the act(s).

## 2. EEOC Investigations, Conciliation Efforts, and Litigation

Once a charge is filed, EEOC sends written notice of the receipt of the charge to the respondent. /81/ EEOC reviews the information submitted by the charging party and requests from the charging party and the respondent information that will help it determine whether the respondent did discriminate against the charging party. EEOC's investigation usually includes interviews of witnesses to the alleged discriminatory act. EEOC may also request additional documents from the charging party as well as the respondent.

Advocates for individuals with disabilities can play an important role in the charge process. Not only can they help the individual prepare the charge but also they can help identify, for EEOC, key witnesses and documents that would help establish the claim of discrimination. Where a charging party is not aware of possible accommodations that might allow the party to return to work, an

advocate may help the charging party identify those organizations or groups that could assist in this process. /82/

Once EEOC completes its investigation, it sends an official "Letter of Determination" to the charging party and respondent, stating whether it has "reasonable cause" to believe the ADA has been violated. /83/ If EEOC issues a "no cause" determination, it will issue to the charging party a "right to sue" letter. The charging party then has 90 days from receipt of this notification within which to file suit. /84/

If EEOC issues a "reasonable cause" determination, it will attempt to resolve the matter through conciliation. Here again, advocates for individuals with disabilities can assist in attempting to resolve the case. For example, in cases involving issues of reasonable accommodation, the advocate may be able to help the charging party and employer explore what accommodations may enable the individual to perform the essential functions of the job.

If, however, conciliation efforts are unsuccessful, EEOC may file suit on behalf of the charging party or issue a "right to sue" letter to the charging party. /85/ Where a state or local government is a respondent, EEOC refers the case to the Department of Justice for it to determine whether to file a lawsuit or to issue a "right to sue" letter. /86/ The charging party has 90 days from receipt of a "right to sue" letter issued by EEOC or the Department of Justice within which to file suit. /87/

### 3. Private Litigation to Enforce the ADA

While a charging party is required to file a charge of discrimination with EEOC before filing suit, the charging party does not need to wait for EEOC to complete its investigation before filing suit. The charging party may, anytime after 180 days will have passed since the filing of the charge, request that EEOC issue a "right to sue" letter. Once this letter is issued, the charging party has 90 days within which to file suit. /88/

## IV. Case Studies

John Smith, a delivery truck driver for a hardware store wholesaler, severely injures his back after falling from his truck. He has corrective back surgery which his doctor indicates was a complete success. After being on disability leave for 15 weeks, Mr. Smith returns to work with a note from his doctor stating that Mr. Smith cannot lift more than 15 pounds. Mr. Smith's employer states that Mr. Smith's job requires that he lift more than 15 pounds at least 20 times a day, when he loads his truck at the beginning of the day before going out on delivery. The employer states that this lifting is an essential function of Mr. Smith's job and that he cannot return to work until he presents a release from his doctor indicating that he can load his truck without any strain to his back. Mr. Smith tells his employer that there is a simple, inexpensive hoist that he could use to load his truck without any back strain.

The employer tells Mr. Smith that it is concerned about Mr. Smith reinjuring himself and is unwilling to discuss any job modifications. When Mr. Smith applies for unemployment

compensation, his employer successfully opposes payment on the grounds that Mr. Smith's fall was the result of his negligence. Mr. Smith asks you to help him obtain the unemployment compensation benefits to which he believes he is entitled. What advice would you give him regarding his rights?

Legal services attorneys often have such heavy workloads that there is a tendency to focus on the immediate problem the client presents. In this case, Mr. Smith's immediate concern is his unemployment compensation benefits. However, the evidence suggests that he might have a strong claim under the ADA. That Mr. Smith has a back ailment that prevents him from lifting more than 15 pounds probably means that he is substantially limited in lifting, a major life activity, and that he therefore has a "disability" within the meaning of the ADA. Assuming that moving materials onto the truck is an essential function of Mr. Smith's job, it is the movement of the goods, not Mr. Smith's lifting the goods, that is the essential function. /89/ Mr. Smith proposed a reasonable accommodation -- modifying the lifting function by using a simple, inexpensive hoist. Since the employer has refused to consider Mr. Smith's request for a reasonable accommodation, it faces potential liability not only for back wages but also for compensatory and punitive damages under the Civil Rights Act of 1991. These ADA remedies not only would provide Mr. Smith more money than he would get in unemployment compensation benefits but also reinstatement to his job.

You could assist Mr. Smith not only in his unemployment compensation claim but also in pursuing his disability discrimination claim under the ADA. /90/ Even if your program's priorities do not include representing disability claimants in litigation, you could help him pursue his administrative remedies and develop the supporting evidence. /91/

Jean Jones, aged 56, has experienced periodic bouts of depression for the past three years, especially during the winter months. She works a day shift in an automobile assembly plant. She is being treated for her depression. Her therapist has advised her to not work the evening shift and to avoid working overtime because he believes these working conditions could severely aggravate her condition. Her supervisor wants to hire his cousin for Ms. Jones's day-shift position and reassigns her to an evening shift. Ms. Jones's request to stay on the day shift is denied by her supervisor. Ms. Jones comes to your office seeking your advice. She wants to know whether she should disclose her disability and whether she has a right to stay on the day shift.

Under the ADA, it is unlawful for an employer to refuse to make "reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee." /92/ Therefore, the employer would not violate the ADA by refusing Ms. Jones's request if she failed to tell her supervisor about her disability and the resulting need to remain on the day shift. In general, it is the responsibility of an individual with a disability to inform the employer that an accommodation is needed.

However, many individuals with psychiatric and other hidden disabilities are hesitant to disclose them for fear that they will be subjected to discriminatory treatment by their employers and harassment by their employers and coworkers. /93/ Decisions about whether and when to disclose, to whom to disclose, and how much to say, has been described as what "may be the most delicate and complex area of ADA implementation for workers with psychiatric disabilities." /94/ However, Ms. Jones should be advised that her employer is under no obligation to consider her request to

continue in her day shift position unless she discloses her psychiatric disability and asks to be allowed to stay on the day shift as an accommodation.

## V. Conclusion

Title I of the ADA provides a statutory foundation for creating an environment in which people are considered for employment based on their abilities, not any disabilities they might have. For this goal to be achieved, it is essential that individuals with disabilities, and their advocates, understand Title I of the ADA and its prohibitions against employment discrimination. Since a significant number of older individuals with disabilities may be subject to discrimination because of their age and their disability, it is particularly important for older individuals to be aware of their employment rights and how to protect them.

### Footnotes

/1/ The use of the term "disability" in many of the sources cited in this article may differ from the definition of "disability" in the Americans with Disabilities Act (ADA). See discussion at section I.C.

/2/ Susan Harrington, *Welcome Back to Work*, N.Y. News Day, July 26, 1992, at 53 (quoting the New York State Office of Vocational and Educational Services for Individuals with Disabilities).

/3/ Kathy Sisco, *Unemployment of the Older Worker with a Disability: An Overview*, *Aging, Disability and the Nation's Productivity: A Report on the Fifteenth Mary E. Switzer Memorial Seminar 11* (Leonard G. Perlman & Carl E. Hansen eds., 1991).

/4/ *Id.*

/5/ *Age Discrimination in Employment Act*, 29 U.S.C.A. Secs. 621-634 (West Supp. 1993).

/6/ *Survey Sketches New Portrait of Aging America*, Health and Retirement Study (press release, June 17, 1993). The Health and Retirement Study (HRS), directed by F. Thomas Juster, Ph.D., is a cooperative agreement between the Institute for Social Research at the University of Michigan and the National Institute on Aging. Papers concerning the results of this study are available from the University of Michigan, Health and Retirement Study, (800) 272-2815. This longitudinal study seeks to understand two critical social phenomena -- the retirement of the "baby boom" generation and the aging of society generally. Specifically, the study is examining work and retirement, health care, financial issues, and family responsibilities.

/7/ *Id.*

/8/ EEOC CDS National Database (Feb. 1994).

/9/ See HRS, *supra* note 6.

/10/ Id.

/11/ Rehabilitation Act of 1973, 29 U.S.C.A. Sec. 791 (West Supp. 1993). Title V of the Rehabilitation Act contains the nondiscrimination provisions. The scope of coverage of these provisions is as follows: (1) section 791 applies to all federal departments and agencies and the U.S. Senate; (2) section 793 applies to federal contractors; and (3) section 794 applies to programs and activities conducted by recipients of federal financial assistance and to programs conducted by executive agencies. Thus, the Rehabilitation Act covers only federal agencies, federal contractors, and programs and activities that receive federal funding. One reason for enacting the ADA was to extend the reach of federal antidiscrimination protection to private sector employers that neither have federal contracts nor receive federal financial assistance.

/12/ The section 504 regulations were issued pursuant to HHS at 45 C.F.R. Secs. 85.1 -- 85.58 (1980) (current version at 28 C.F.R. Secs. 41.1 -- 41.58 (1993)).

/13/ 42 U.S.C.A. Secs. 12111(2), 12112 (West 1993). The ADA actually refers to these entities as "covered entities." For the sake of clarity this article refers to "employers," but readers should remember that the obligations discussed extend to all of these "covered entities."

/14/ 42 U.S.C.A. Sec. 2000e(b) (West 1981 & Supp. 1993). Title I of the ADA uses the same definitions of these covered entities as those used in Title VII. See 42 U.S.C.A. Sec. 12111(7) (West 1993).

/15/ Civil Rights Act of 1991, Pub. L. No. 102-66, Sec. 320, 105 Stat. 1096 (1991) (codified at 2 U.S.C. Sec. 1219 (1988 & Supp. III 1991)). However, employees of federal agencies who have disabilities are not covered by the ADA. Rather, their employment rights are protected by the Rehabilitation Act. 29 U.S.C.A. Secs. 791, 794 (West Supp. 1993).

/16/ Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1097 (codified at 2 U.S.C.A. Sec. 1220 (West Supp. 1994)).

/17/ An employer is defined under the ADA as "a person engaged in an industry affecting commerce. . . ." 42 U.S.C.A. Sec. 12111(5)(A) (West 1993). It also includes an "agent" of such person. Id.

/18/ 42 U.S.C.A. Sec. 12112(a) (West 1993); 29 C.F.R. Sec. 1630.4 (1993).

/19/ 42 U.S.C.A. Sec. 12112(b)(1) (West 1993); 29 C.F.R. Sec. 1630.5 (1993).

/20/ 42 U.S.C.A. Sec. 12112(b)(2) (West 1993); 29 C.F.R. Sec. 1630.6 (1993).

/21/ EEOC, A Technical Assistance Manual on the Employment Provisions (Title I) of The Americans with Disabilities Act at II-1 (Jan. 26, 1992) (hereinafter Technical Assistance Manual); Bureau of National Affairs, Americans with Disabilities Act Manual at 90:0515 (1993) (hereinafter

BNA ADA Manual). The BNA manual is published verbatim from the EEOC Technical Assistance Manual.

/22/ 42 U.S.C.A. Sec. 12102(2) (West 1993); 29 C.F.R. Sec. 1630.2(g) (1993).

/23/ 29 C.F.R. Sec. 1630.2(h)(1) (1993).

/24/ 29 C.F.R. Sec. 1630.2(h)(2) (1993).

/25/ See Appendix to 29 C.F.R. Sec. 1630, Interpretive Guidance on Title I of the Americans with Disabilities Act (hereinafter Interpretive Guidance), 29 C.F.R. Sec. 1630.2(h) (1993). But see *Cook v. Rhode Island Dep't of Mental Health, Retardation & Hosps.*, 783 F. Supp. 1569 (D. R. I. 1992), *aff'd*, 10 F. 3d 17 (1st Cir. 1993), in which the First Circuit upheld a jury's decision that the defendant violated the Rehabilitation Act by discriminating against Bonnie Cook on the basis of her morbid obesity. The court of appeals' decision focuses on the "regarded as" prong of the definition of disability (the court refers to it as "perceived disability"). The First Circuit held that morbid obesity (a condition in which a person's weight is twice the appropriate weight for a specific height) is an impairment and upheld the jury's finding that the defendant regarded Cook's impairment as substantially limiting her ability to walk, lift, bend, and work. Also, the Michigan Elliot-Larsen Civil Rights Act, Mich. Comp. Laws Sec. 1501.28(a)(2), explicitly protects overweight people from discrimination, and other state or local laws may also offer such protection.

/26/ See Interpretive Guidance, *supra* note 25. Although feeling stress, by itself, is not an impairment, certain mental illnesses or conditions may cause an individual to have significant difficulty dealing with stress beyond the stress levels experienced by an average person. Such an impairment, if it causes a substantial limitation in a major life activity, could be a disability. See Technical Assistance Manual, *supra* note 21, at II-3; BNA ADA Manual, *supra* note 21, at 90:0509.

/27/ See Interpretive Guidance, *supra* note 25, on 29 C.F.R. Sec. 1630.2(h) (1993).

/28/ Current and recovering alcoholics may be disabled within the meaning of the ADA. The EEOC's Interpretive Guidance, *supra* note 25, on 29 CFR Sec. 1630, app., Sec.1630.16(b) (1992), and Technical Assistance Manual, *supra* note 21, at VIII-1, and BNA ADA Manual, *supra* note 21, at 90:0568, make it clear that an alcoholic is an individual with a disability.

/29/ 29 C.F.R. Sec. 1630.2(i) (1993).

/30/ See Interpretive Guidance, *supra* note 25, on 29 C.F.R. Sec. 1630.2(i) (1993).

/31/ 29 C.F.R. Sec. 1630.2(j)(2) (1993).

/32/ See Interpretive Guidance, *supra* note 25, on 29 C.F.R. Sec. 1630.2(j) (1993).

/33/ *Id.*

/34/ *Id.* on 29 C.F.R. Sec. 1630.2(j) (1993). A substantial limitation in working involves more than the inability to perform one specific job in one specific location. The EEOC regulations state that the following factors should be considered: (1) the geographical area to which the individual has access; (2) the job from which the individual's impairment has resulted in disqualification; (3) the approximate number and types of jobs utilizing similar knowledge, skills, abilities, and training in the geographical area ("class of jobs"); and (4) the approximate number and types of jobs not utilizing similar knowledge, skills, abilities, and training in the geographical area ("broad range of jobs in various classes"). 29 C.F.R. Sec. 1630.2(j) (1993). See also Technical Assistance Manual, *supra* note 21, at II-6-7; BNA ADA Manual, *supra* note 21, at 90:0509.

/35/ 29 C.F.R. Sec. 1630.2(k) (1993).

/36/ See Interpretive Guidance, *supra* note 25, on 29 C.F.R. Sec. 1630.2(k) (1993).

/37/ 29 C.F.R. Sec. 1630.2(l) (1993).

/38/ See Interpretive Guidance, *supra* note 25, on 29 C.F.R. Sec. 1630.2(l) (1993).

/39/ 29 C.F.R. Sec. 1630.8 (1993); see Interpretive Guidance, *supra* note 25, on 29 C.F.R. Sec. 1630.8 (1993).

/40/ 42 U.S.C.A. Sec. 12112(a) (West 1993).

/41/ 29 C.F.R. Sec. 1630.2(m) (1993) (emphasis added).

/42/ 29 C.F.R. Sec. 1630.2(n) (1993); see Interpretive Guidance, *supra* note 25, on 29 C.F.R. Sec. 1630.2(n) (1993).

/43/ *Id.*

/44/ See 29 C.F.R. Sec. 1630.2(m) (1993). As noted above, a person with a disability is qualified if the person can perform the essential functions of the position, with or without reasonable accommodation. In order to simplify discussion, this section focuses only on the ability to perform essential functions; the next section examines reasonable accommodation requirements. Readers should bear in mind, however, that an individual with a disability is considered qualified for a job if the individual can perform the job's essential functions with or without reasonable accommodation.

/45/ See 29 C.F.R. Secs. 1630.2(m) -- (n) (1993).

/46/ The EEOC regulations state that a job function will be considered essential if (1) the position exists to perform the function; (2) there are a limited number of employees available among whom the performance of that function can be distributed; or (3) the function is so highly specialized that the incumbent was hired for his or her expertise. 29 C.F.R. Sec. 1630.2(n)(2) (1993). The regulations also note that the following types of evidence (not exhaustive) will be considered in determining whether a particular function is essential: (1) the employer's judgment as to which functions are essential; (2) written job descriptions if prepared before advertising a position; (3)

amount of time actually spent performing the function; (4) consequences of not performing the function; (5) terms of a collective bargaining agreement; and (6) work experience of past and present incumbents in the job. 29 C.F.R. Sec. 1630.2(n)(3) (1993).

/47/ See Technical Assistance Manual, *supra* note 21, at II-13 - II-18; BNA ADA Manual, *supra* note 21, at 90:0514 -- 16.

/48/ 29 C.F.R. Sec. 1630.2(o)(1) (1993). The statute and the EEOC regulations do not attempt a definitive list of reasonable accommodations. However, the regulations provide examples of types of reasonable accommodations, such as (1) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; (2) job restructuring (i.e., switching marginal job functions); (3) part-time or modified work schedules; (4) acquisition or modification of equipment or devices; (5) appropriate adjustment or modification of examinations, training materials, or policies; (6) the provision of qualified readers or interpreters; and (7) reassignment to an existing, vacant position for which the individual is qualified. 29 C.F.R. Sec. 1630.2(o)(2) (1993). Reassignment is available only to current employees and only if there are no reasonable accommodations that will enable an employee to remain in his or her current position. See Interpretive Guidance, *supra* note 25, on 29 C.F.R. Sec. 1630.2(o)(2) (1993).

/49/ 29 C.F.R. Sec. 1630.9(a) (1993).

/50/ 29 C.F.R. Sec. 1630.9(b) (1993).

/51/ See Interpretive Guidance, *supra* note 25, on 29 C.F.R. Sec. 1630.8 (1993). An employer's failure to promote this employee because of fears that the employee will need time off to care for her parent would constitute discrimination under the ADA.

/52/ See Interpretive Guidance, *supra* note 25, on 29 C.F.R. Sec. 1630.9 (1993).

/53/ *Id.*

/54/ *Id.*

/55/ 29 C.F.R. Sec. 1630.15(d) (1993).

/56/ 29 C.F.R. Sec. 1630.2(p)(1) (1993).

/57/ See Interpretive Guidance, *supra* note 25, on 29 C.F.R. Secs. 1630.2(p), 1630.15(d) (1993).

/58/ See Interpretive Guidance, *supra* note 25, on 29 C.F.R. Sec. 1630.15(d) (1993).

/59/ The Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, 104 Stat 1388 (1990), provides a tax credit for "eligible small businesses" that incur expenses associated with complying with the ADA. 26 U.S.C. Sec. 44 (1988 & Supp. III 1991).

/60/ Undue hardship is not determined on the basis of the costs of an accommodation as compared to the individual's salary. See Interpretive Guidance, *supra* note 25, on 29 C.F.R. Sec. 1630.15(d) (1993).

/61/ 29 C.F.R. Sec. 1630.2(p)(2) (1993).

/62/ 29 C.F.R. Sec. 1630.4(f) (1993).

/63/ See Interpretive Guidance, *supra* note 25, on 29 C.F.R. Secs. 1630.5, 1630.16(f) (1993).

/64/ EEOC, Interim Enforcement Guidance (June 8, 1993); BNA ADA Manual, *supra* note 21, at 70:1051.

/65/ EEOC, Interim Enforcement Guidance (June 8, 1993); BNA ADA Manual, *supra* note 21, at 70:1052 -- 53. EEOC stated that broad distinctions that (1) apply to the treatment of a multitude of dissimilar conditions and (2) affect individuals who have and do not have disabilities are not disability-based distinctions. The Guidance distinguishes between "physical" conditions and "mental/nervous" conditions as an example. Also permissible under the ADA are blanket preexisting condition clauses that deny coverage for all such conditions for a specified period. Finally, EEOC notes that limits on medical procedures or treatments that are used for different conditions, such as annual limits on the number of X-rays or blood transfusions, do not violate the ADA.

/66/ 42 U.S.C.A. Sec. 12201(c) (West 1993); 29 C.F.R. Sec. 1630.16(f) (1993). This step requires an employer to show that (1) the plan exists and pays benefits and (2) the plan's terms have been accurately communicated to eligible employees. If the employer has an insured plan (as opposed to a self-insured plan), then the employer also must show that its plan is consistent with state law.

/67/ 42 U.S.C.A. Sec. 12201(c) (West 1993); 29 C.F.R. Sec. 1630.16(f) (1993).

/68/ EEOC, Interim Enforcement Guidance (June 8, 1993); BNA ADA Manual, *supra* note 21, at 70:1054 -- 55. EEOC indicates that a determination of subterfuge is made on a case-by-case basis, considering the totality of the circumstances. EEOC provides several nonexhaustive examples of how an employer might justify the use of disability-based distinctions. A discussion of each of these examples is beyond the scope of this article. However, the examples focus on (1) providing legitimate actuarial data showing comparable treatment of comparable conditions, (2) maintenance of commonly accepted or legally required standards of fiscal soundness, (3) prevention of unacceptable changes in plan coverage or premiums, and (4) evidence that the disputed treatment provides no medical benefits.

/69/ Advocates should also become familiar with any state or city civil rights and disability discrimination laws that may provide protections or remedies in addition to those available under the ADA.

/70/ E.g., if an employer had a contract with an employment agency that refused to place individuals with mental disabilities, the employer could be ordered to terminate this contract and to refrain from entering into such contracts in the future.

/71/ Civil Rights Act of 1991, 42 U.S.C. Sec. 1981a (1988 & Supp. IV 1992).

/72/ 42 U.S.C. Sec. 1981a (a) (3) (1988 & Supp. IV 1992).

/73/ 42 U.S.C. Sec. 1981a (b) (1988 & Supp. IV 1992).

/74/ 42 U.S.C. Sec. 1981a (c) (1988 & Supp. IV 1992).

/75/ See 42 U.S.C. Secs.2000e-4, 2000e-5, 2000e-6, 2000e-8, 2000e-9 (1988 & Supp. IV 1992).

/76/ 42 U.S.C. Sec. 12117 (1988 & Supp. III 1991). If there is no EEOC office nearby, individuals should call, toll free, (800) 669-4000 (voice) or (800) 800-3302 (TDD), to find the nearest EEOC office.

/77/ 29 C.F.R. Sec. 1626.5 (1993).

/78/ See EEOC Compliance Manual, Sec. 2.1, Bureau of National Affairs EEOC Compliance Manual (hereinafter, BNA EEOC Compliance Manual) at 2:0001.

/79/ 42 U.S.C. Sec. 2000e-5(e) (1988 & Supp. IV 1992); see also EEOC Compliance Manual, Sec.2.4(d); BNA EEOC Compliance Manual, supra note 78, at 2:0004.

/80/ 42 U.S.C. Sec. 2000e-5(e).

/81/ 42 U.S.C. Sec. 2000e-5(b) (1988).

/82/ Some of the governmental and private sector organizations that might be of help are listed in an accompanying sidebar.

/83/ 42 U.S.C. Sec. 2000e-5(b) (1988).

/84/ 42 U.S.C. Sec. 2000e-5(f)(1) (1988).

/85/ 42 U.S.C. 2000e-5(f) (1988).

/86/ Id.

/87/ Id.

/88/ 29 C.F.R. Sec. 1601.28(a)(2).

/89/ See supra note 42 and accompanying text. Manually lifting the goods is only one way of performing this function. Another possible way of moving the goods could be with a hoist.

/90/ There may be other state laws or city ordinances available to address Mr. Smith's disability discrimination claims. An attorney could help Mr. Smith explore the best forum for addressing his particular claims.

/91/ See section III, supra, for a discussion of charge-filing procedures under the ADA.

/92/ 42 U.S.C. Sec. 12112(b)(5)(A) (1988 & Supp. III 1991). (emphasis added).

/93/ For an excellent discussion of issues related to reasonable accommodation and psychiatric disabilities, see Laura Mancuso, *Case Studies on Reasonable Accommodations for Workers with Psychiatric Disabilities*, California Department of Mental Health (1993). Other helpful resources on the ADA and the rights of individuals with psychiatric disabilities are: Mental Health Law Project, *Mental Health Consumers in the Workplace: How the Americans with Disabilities Act Protects You Against Employment Discrimination* (1993), and American Bar Association and National Mental Health Association, *The ADA and People with Mental Illness: A Resource Manual for Employers* (1993).

/94/ See Mancuso, supra note 93, at 27.

### ***Resources on the ADA, Reasonable Accommodations, and Disability Rights Organizations***

EEOC

Headquarters, Washington, D.C.

For technical assistance and filing a charge, call (800) 669-4000 (voice). For various ADA publications, including the ADA Technical Assistance Manual and Resource Directory, call (800) 669-3362 (voice) or (800) 800-3302 (TDD). The Technical Assistance Manual offers a practical explanation of ADA employment provisions and is available free of charge. The comprehensive Resource Directory lists disability organizations (including those concerned with psychiatric disabilities), federal and state agencies (including protection and advocacy agencies for mentally ill individuals), and federally funded ADA projects.

### ***Disability and Business Technical Assistance Centers***

Ten regional ADA centers are funded by a federal contract. They provide free or low-cost publications, training, individualized technical assistance, and referral to other agencies and organizations. The national, toll-free number, (800) 949-4232 (voice/TDD), connects you directly with an ADA center in your region.

Judge David L. Bazelon Center for Mental Health Law  
1101 Fifteenth Street N.W., Suite 1212

Washington, D.C. 20005-5002  
(202) 467-5730 (voice)  
(202) 467-4232 (TDD)

Bazelon Center has several publications, including *Mental Health Consumers in the Workplace: How the Americans with Disabilities Act Protects You Against Employment Discrimination*. It also identifies job and work-site accommodations and provides technical assistance.

Disability Rights Education and Defense Fund  
Berkeley, California  
(510) 644-2555 (voice)  
(510) 644-2625 (TDD)  
(800) 466-4232 (voice/TDD)

The Disability Rights Education and Defense Fund provides technical assistance through its toll-free ADA hotline. It also publishes ADA materials, provides training, and conducts litigation.  
National Association of Protection and Advocacy Systems (NAPAS)  
900 Second Street, N.E., Suite 211  
Washington, DC 20002  
(202) 408-9514 (voice)  
(202) 408-9521 (TDD)

NAPAS is a national voluntary membership organization of the federally mandated Protection and Advocacy (P&A) Systems and Client Assistance Programs (CAP) in each state. P&A Systems and CAPs were established by Congress to provide legal assistance and advocacy services to people with disabilities. NAPAS facilitates coordination among its member programs and provides technical assistance and training to member agencies.

National Mental Health Association  
Alexandria, Virginia  
(703) 684-7722 (voice)

The Association is a coauthor of *The ADA and Mental Illness: A Resource Manual for Employers*. It provides other ADA and related materials on job restructuring, flextime, quiet work spaces and other accommodations. It also provides consultation and technical assistance. The Association has local affiliates.

American Bar Association Commission on Mental and Physical Disability Law  
Washington, D.C.  
(202) 331-2240 (voice)

The ABA Commission is a coauthor of *The ADA and Mental Illness: A Resource Manual for Employers*. The ABA commission provides information and technical assistance.

Job Accommodation Network  
(800) 526-7234 (voice/TDD)  
(800) 526-4698 (voice/TDD -- West Virginia only)

The Network provides a free help line with counselors offering suggestions on possible accommodations tailored to limitations resulting from a disability.

### Upcoming Trainings on the ADA and Older Americans

The Americans with Disabilities Act (ADA) provides benefits for millions of older Americans who have physical or mental disabilities. Yet a Harris Poll conducted in 1993 indicated that most older persons were unfamiliar with the Act. Experience tells us that older persons typically do not identify themselves as being "disabled" even though they may have one or more disabilities. And they usually are not linked to the disability community.

Accommodations for older persons may differ from those for younger persons with disabilities. For example, persons who develop vision impairments late in life will most likely not read Braille. And many accommodations for older persons may require some creativity beyond the Americans with Disabilities Act Accessibility Guidelines (ADAAG) requirements. For example, while the ADAAG does not mention the installation of benches in waiting areas, adequate seating is a crucial component of accessibility for older persons with limited endurance.

The American Association of Retired Persons (AARP) has a grant from the Department of Justice to provide information to older consumers and those who serve them with information on titles II (state and local government services) and III (public accommodations) of the ADA. The project will include:

- six regional trainings for aging and legal service providers;
- publication of an accessibility checklist for entities serving older persons, both public and private;
- publication of a brochure on the ADA for older persons; and
- technical assistance to the aging network on the Act.

The grant is being administered by AARP's Consumer Affairs and Legal Counsel for the Elderly, with assistance from the National Senior Citizens Law Center and Adaptive Environments. An advisory council of aging, minority, and disability groups plays an ongoing role to facilitate outreach to a broad and diverse audience. Trainings for aging and legal services providers will be held in the following locations:

Denver, Colorado  
Contact: Janet Meyers

The Legal Center  
(303) 722-0300 (voice)  
(800) 288-1376 (TTY)[0]  
Bloomington, Indiana  
Contact: Barbara S. Fox

Institute for the Study of Developmental Disabilities  
(812) 855-9396 (TTY)  
Jackson, Mississippi  
Contact: Donna Ross

Mississippi Legal Services Coalition  
(601) 944-0765  
Washington, D.C.  
Contact: Debra Busacco

Gallaudet University  
(202) 651-5096 (voice)  
(202) 651-5096 (TTY)  
Boston, Massachusetts  
Contact: Ellen Hemley/Debbie Thomson

Massachusetts Law Reform Institute  
(617) 742-9250  
Portland, Oregon  
Contact: David Thornburgh

Oregon Legal Services  
(503) 234-1534 (voice)  
(503) 243-2081 (TTY)

For questions on the trainings, contact Ada Albright, training coordinator, (202) 434-2197 (voice), (202) 434-6562 (TTY). For technical assistance on ADA issues affecting older persons, contact Robin Talbert, (202) 434-6057.

#### ADA Work Groups

Advocates for older people and people with disabilities have established two work groups to address issues under the Americans with Disabilities Act (ADA).

The Americans with Disabilities Act Advocacy Group focuses on how the ADA can be used as another legal theory to enhance traditional legal services representation of low-income and older clients. The group considers (1) particular problems experienced by clients to determine whether the ADA provides a remedy, (2) the development of litigation theories and strategies, (3) the use of dispute resolution methods other than litigation, and (4) educational efforts to increase both client and advocate awareness about the ADA. For more information, contact Vicki Gottlich, National Senior Citizens Law Center, (202) 887-5280, or Patricia DeMichele, Legal Counsel for the Elderly, (202) 434-2120.

The ADA-ADR Group looks specifically at the implementation of provisions of the ADA that encourage the use of alternative dispute resolution methods. For more information, contact Robin Talbert, American Association of Retired Persons, (202) 434-6057.