

Vermont Human Rights Commission Newsletter

May 2016

In this month's newsletter I am excited to bring you some highlights from the all-day ADA training, with presenter Kathy Gips, on May 11, 2016.

- Karen Richards



"It [the ADA] was a formal acknowledgment that Americans with disabilities are Americans first, and they are entitled to the same rights and freedoms as everyone else; a right to belong and participate fully in the American experience; a right to dignity and respect in the workplace and beyond; the freedom to make of our lives what we will." -

President Obama

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Did you know?

The definition of Disability is:

An individual who has a physical or mental impairment that substantially limits a major life activity.

An individual who has a record or history of a physical or mental impairment that substantially limits a major life activity.

An individual who is regarded as having a physical or mental impairment that substantially limits a major life activity.

Reasonable Modifications:

*Must be made to policies, practices and procedures when necessary to ensure equal opportunity for a person with a disability. *Unless the modification would 'fundamentally alter' the nature of the service, program or activity.*

Service Animals:

Any dog and in some cases, miniature horse individually trained to do work or provide tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.

Only two questions can be asked:

1. *Is this a service animal required because of a disability?*
2. *What work or task has the animal been trained to provide?*

***These laws apply to places of Public Accommodation. Fair Housing laws differ.*



From Left: Karen Richards with Kathy Gips

On May 11, 2016 the Human Rights Commission sponsored a training on Titles I, II and III of the Americans with Disabilities Act Amendment Act (ADAAA) with Kathy Gips, Director of Training for the New England ADA Center presenting.

Ms. Gips presented information to over 70 attendees, including Commissioners Marzec-Gerrior, Besio and Vickers as well as all HRC staff. Topics covered included the obligations of State and local governments, private entities and employers around policies, practices and procedures when working with or interacting with persons with disabilities.

Ms. Gips provided a number of scenarios and offered ample time for audience questions and interaction on subject matter including reasonable modifications, service animals, assistance animals (fair housing), effective communication, readily achievable barrier removal, permissible interviewing inquiries, pre-offer ability testing, post-offer (pre-employment) questions, rescinding a job offer, exclusions to the ADAAA definition of disability and reasonable accommodations.

Those attending gave high praise to Ms. Gips, her presentation and the topics covered, the general consensus being that all left with new knowledge and understanding of the laws covered.

The HRC extends a huge thank you to Ms. Gips!

If you would like to be on our email list for future trainings like this, please contact Jocelyn Bolduc by email at Jocelyn.bolduc@vermont.gov or by telephone (802) 828-1625.



For years Deaf and Hard of Hearing individuals were completely dependent on hearing family members, friends, and neighbors to make telephone calls on their behalf. In the 1960's, Robert Weitbrecht, a Deaf scientist, developed the teletypewriter (TTY). While calls between TTY's were a step forward, most people did not have a TTY so in order to provide greater access, TTY relay services began. TTY relay service works with a communication assistant (CA) connecting TTY relay calls with people who communicate by telephone. The CA converts voice to text and text to voice communication. In 1987 California became the first state to mandate a state Telecommunications Relay Program with other states establishing their own state relay services across the country. Then in 1990, Title IV of the Americans with Disabilities Act (ADA) mandated that relay services be made available in every state and territory twenty-four hours a day, seven days a week—this was more than 100 years after the invention of the telephone! While at the time of its invention, the TTY revolutionized communication for Deaf and Hard of Hearing individuals, its use has largely been replaced by new technologies.

Today there are a number of ways to communicate with individuals who have hearing disabilities including: "traditional" TTY relay services, email, texting, sign language video relay service, written notes, typing at a computer, assistive listening devices, closed captioning, computer aided real-time transcription (CART), in person sign language interpreters, and video remote interpreting.

When working with a Sign Language Interpreter you must ensure the interpreter is qualified. The definition of a qualified Sign Language Interpreter is someone who is "able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary." A child or non-qualified adult should never be relied on to provide interpretation unless it is an emergency involving "imminent threat to the safety or welfare of an individual or the public." Additionally, when communicating with someone who is Deaf it is important to face the person who is Deaf and speak directly to them not to the interpreter. When working with a Sign Language Interpreter within a group, the Interpreter should be standing and clearly visible to the Deaf individual. If a session will be for an extended period of time, multiple interpreters will be necessary to prevent interpreter fatigue and ensure accurate communication.

When communicating with individuals who have visual disabilities always identify yourself, describe who and what is in the space, describe what you're going to do, let the person know when you are leaving, and, never pet or distract a guide dog.

When acting as a 'human guide' to a person with a visual disability, allow the visually impaired person to take your arm or hand as a guide. You should not grab onto his or her arm or hand. The person should walk slightly behind you not next to you to avoid running into any obstructions or obstacles.

If providing written materials to an individual with a visual disability you can provide material in large print—(generally accepted font 18 point. However, if an individual makes a specific request, provide whatever size the person needs). Material can also be provided in braille, on a thumb drive or email by email - many blind individuals use screen reading technology with audio input or refreshable braille. Materials can also be provided using audio.

When communicating with people having speech disabilities you should repeat back what you think the person is saying and ask them to confirm, ask yes and no questions, and be honest if you don't understand. An individual with a speech disability may request a speech synthesizer (text to speech) or a communication board to effectively communicate.

If requested to provide an auxiliary aid or service, an entity is required to provide what is requested unless it would be an undue financial and administrative burden. Note that undue burden means "significant difficulty or expense." Any decision to deny a request for an auxiliary aid or service based on an undue burden must be made by the head of the public entity or their designee. The head of the public entity or their designee must provide a written statement of the reasons for reaching that conclusion.

To learn more about **State and Local Government's Title II obligations** go [here](#) to visit the United States Department of Justice—Civil Rights Division.

To learn more about **Public Accommodations and Commercial Facilities' Title III obligations** go [here](#) to visit the United States Department of Justice—Civil Rights Division.



People with physical or mental disabilities face particular challenges in the workplace that require not only equal treatment but also reasonable accommodation for qualified persons with a disability. The ADAAA covers employers who have 15 or more employees however, Vermont's equivalent law, the Fair Employment Practices Act (FEPA) covers ALL Vermont employees. Private employment discrimination matters are enforced by the [Vermont Attorney General's Office—Civil Rights Division](#). State employment discrimination matters are enforced by the [Vermont Human Rights Commission](#).

A qualified person with a disability is a person with a disability who is capable of performing the essential (vs. marginal) functions of the job with or without a reasonable accommodation. The definition of a person with a disability under the ADAAA is very broad and covers nearly any medical condition that substantially limits a major life function, a history of such a condition and includes someone who is regarded as having a disability. The ADAAA also prohibits discrimination against someone based on association with a person with a disability (such a family member who would be eligible for employer-sponsored insurance).

Ms. Gips provided a number of tips for employers to avoid running afoul of responsibilities under the ADAAA: be clear about job duties and qualitative and quantitative standards; make sure all supervisors and HR personnel recognize requests for accommodation (there is no requirement that a request be in writing or that an employee use those magic words); employer can ask for a request in writing but must still honor oral requests; purpose of a reasonable accommodation is to support the person in doing the job; employer can require documentation only if the disability or the need for accommodation is not obvious; employer must engage in an informal, interactive process to discuss any alternate offers of accommodation; the accommodation must be effective but not necessarily what the person requested; in order to deny an accommodation an employer must be able to show that granting it would be an undue hardship or would not be an effective accommodation.

Reasonable accommodations can include: modification of equipment/devices/software; job restructuring (i.e. reassigning marginal responsibilities); part-time or modified work schedules; reassignment to a vacant position; adjustment or modification of examinations, training materials, or policies/procedures; provision of readers/interpreters; or provisions of readily accessible and usable workplaces for persons with disabilities.

NEWS

On April 29, 2016 the U.S. Department of Justice, Civil Rights Division released a statement regarding rulemaking on accessibility of web information and services of state and local government entities. Read the full statement [here](#)

Homefront lawsuits have workplace lawsuits soaring. Read the full story [here](#)

House Passes Bill That Lets Government Contractors Fire People for Being LGBT. Read the full story [here](#)

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The HRC can provide training on Titles II and III of the ADAAA upon request for a nominal fee.