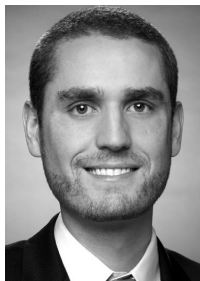


Let Them In

Rights of the deaf and hearing impaired



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Attorneys should be aware of special considerations that must be taken into account when working with deaf and hearing impaired clients. This includes compliance with the laws that extend certain protections to the deaf and hearing impaired, as well as an awareness of the steps that an attorney must take to ensure effective communication with the client. The legal issues faced by deaf and hearing impaired individuals may be the same as non-disabled clients or the issues may relate to the legal protections for the disabled.

Key laws

There are a number of civil rights laws that extend protection to deaf and hearing impaired individuals. The most significant of these laws is the Americans with Disabilities Act (ADA), 42 U.S.C.

§ 12111 *et seq.* The ADA is a wide-ranging law that prohibits discrimination against individuals with disabilities — including individuals with hearing impairments — in a number of scenarios.

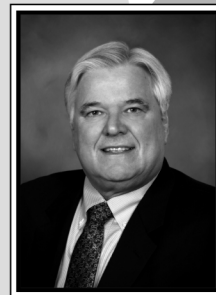
Title I of the ADA, 42 U.S.C. §§ 12111-12117, prohibits discrimination in employment. This provision makes it unlawful for an employer to fire or refuse to hire an individual because of his or her disability, if that individual is otherwise qualified to perform the essential functions of the position. It also requires an employer to provide reasonable accommodations to employees and prospective employees. There are some limitations on this requirement and an employer is not required to provide an accommodation that would impose an undue hardship on the employer. For example, while an employer would likely not be required to hire a sign language interpreter to accompany a deaf employee at all times, an employer would likely provide an interpreter for required meetings, closed captioning for video training, informa-

tion in written form that may otherwise have been provided orally or necessary equipment to allow the deaf employee to communicate over the phone.

Title II of the ADA, 42 U.S.C. §§ 12131-12165, prohibits discrimination by all public entities at the local and state level. This provision makes it unlawful for local or state government to exclude any individual from participating in its services, programs, or activities because the individual has a disability. A public

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entity has an affirmative duty to take steps to ensure that deaf and hearing impaired individuals have the same access to government services as individuals without hearing impairments. This provision applies to services ranging from the city bus to the courtroom to prisons. For example, the court would be required to provide an interpreter for a deaf juror.

Title III of the ADA, 42 U.S.C. §§ 12181-12189, prohibits discrimination in places of public accommodation. This provision makes it unlawful for any person or entity that offers its services to the public to make any distinction or discriminate against a customer because that individual has a disability. As it pertains to the deaf and hearing impaired, the obligations of the place of public accommodation depend of the circumstances. For example, a grocery store is not required to provide an interpreter for simple interactions that it has with a deaf

customer. However, when the services offered by a place of public accommodation involve the exchange of complex information, or if information is exchanged for a lengthy period of time, the place of public accommodation is required to provide an interpreter or some other type of auxiliary aid to ensure effective communication. Examples of this situation include doctor's appointments and, as discussed in further detail below, meetings with attorneys. Movie theaters are now required to provide closed captioning for all movies.

Another important federal statute is Section 504 of the Rehabilitation Act, 29 U.S.C. § 701 *et seq.* Like the ADA, Section 504 prohibits discrimination against disabled individuals. However, while the ADA applies to the actions of employers, local and state government, and private businesses, Section 504 applies to the federal government and any program that receives federal financial assistance. Examples of programs that receive federal

financial assistance include universities (through federal grants and student loan assistance), hospitals (through Medicare payments) and certain public housing (through HUD grants). Further, all individuals who receive federal financial assistance are subject to Section 504, such as doctors (Medicare) and farmers (agricultural subsidies).

Finally, the Fair Housing Act (FHA), 42 U.S.C. § 3601 *et seq.* prohibits discrimination against disabled individuals in housing and requires housing providers to reasonably accommodate disabled tenants. Examples of reasonable accommodations would be waiving a "no-pet" rule to allow a deaf tenant to live with a hearing ear dog or allowing a deaf tenant to install a specialized fire alarm.

In addition to these federal laws, Oregon law also protects the rights of deaf and hearing impaired individuals. A number of provisions of ORS 659A mirror the aforementioned federal laws, including ORS 659A.112 (Title I of the ADA), ORS 659A.142 (Titles II-III of the ADA) and ORS 659A.145 (the FHA). The remedies available under state law may be broader than some of the federal laws.

Special considerations

Attorneys must understand that, because they offer their services to the public, they are also subject to the ADA and ORS 659A.142. This means that attorneys may not refuse to represent somebody because they are deaf or otherwise disabled. It also means that attorneys must provide auxiliary aids to ensure effective communication with deaf and hearing impaired clients. While such an accommodation is not required for every interaction, it is required whenever the information being communicated is complex or is exchanged for a lengthy period of time. The appropriate auxiliary aid will vary based on each particular client's preferred method of communication.

The most common auxiliary aid is the

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use of an American Sign Language (ASL) interpreter. However, not every deaf person knows ASL. An individual who became deaf later in life is less likely to understand ASL and may require an alternative aid, such as real-time captioning. Additionally, some deaf individuals communicate with a form of sign language that is different than ASL. Because of this, it is possible that two interpreters will be needed: one to translate from the deaf individual's form of sign language to ASL and one to translate from ASL to English.

If an ASL interpreter is an appropriate accommodation, an attorney should retain an interpreter who is qualified in legal interpreting. Such interpreters have knowledge of specialized legal vocabulary and are competent to effectively communicate complex legal concepts.

Keep in mind that ASL interpreters are not communicating word-for-word translations between English and ASL. Rather, ASL is a unique language with a grammar

and sentence structure that is entirely different from English. For deaf and hearing impaired individuals who grew up communicating via ASL, English is a second language. Even if they are able to read and write English on some level, it is not their native language. As a result, you will need to determine your client's ability to understand written communications. Don't assume that, because it is written, it will be understood. Contracts and affidavits may need to be interpreted by a qualified interpreter.

A final important consideration related to interpreters is the question of who pays. This is determined by who is providing the service and where the primary service is being provided. For example, when a deaf client has an office meeting with his or her attorney, the attorney pays for the interpreter. When a deaf client is being deposed by the opposing party, opposing counsel pays for the interpreter. For all court proceedings, the court furnishes and pays for the interpreter.

Because of these civil rights laws, deaf and hearing impaired clients must be provided with equivalent access to all services provided by attorneys and all attorneys should be familiar with the legal and practical implications of this obligation.

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