

# **The ADA** ***REVISITED***

## **Facilitation Guide**



**Includes Program Handouts**

© **Quality Media Resources, Inc.**  
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## Important Legal Notice

Employment laws like The Americans with Disabilities Act address complex legal issues. “The ADA Revisited” is intended as a resource to help organizations communicate their policies and expectations to employees and managers and to help clarify some of the legal issues involved. It is NOT intended to provide legal advice or to answer specific legal questions.

Please refer all legal questions to your organization’s legal counsel.

## Foreword

In 1992, the Americans with Disabilities Act (or ADA) took effect. This sweeping legislation has since become a worldwide model for those seeking to remove barriers to employment for people with disabilities.

In the years since the ADA was enacted, courts have interpreted the law in an effort to clarify its intent and to help organizations implement its provisions. For example, in *Sutton vs. United Airlines* and *Murphy vs. United Parcel Service*, the US Supreme Court ruled that impairments should be evaluated in their corrected or "mitigated" state. Other rulings have addressed whether the ADA covers State government employees, if a person with a disability can be excluded from employment if the employer feels that the person could be harmed by the work, whether seniority trumps the ADA in hiring decisions, and much more.

While some of these court decisions have been seen as narrowing the scope of the ADA, the key societal values underlying the law remain. A person with a disability should have the same rights as any other person to apply for a job; and a person's abilities, not their disabilities, should be the main factor in making a decision to hire or promote.

Fairness is difficult to legislate. There can be a tension between protecting employers' rights to manage their organizations and ensuring fair treatment of employees. What the ADA has done is to try to find a balance between the right of an individual with a disability to be treated fairly in the workplace and the right of an employer to hire the best person for any given position. By focusing on 2 key principles – that disability should not be considered as a barrier to employment and that employees with disabilities are entitled to "reasonable accommodations" to ensure they are able to do the work for which they have been hired, the ADA has opened the workplace to millions of qualified men and women who want to work.

QMR created a 2-video series called "The ADA on Video" in 1992. It was our first training series and launched our company. Those programs have been revised and updated to create "The ADA Revisited". Like the original law, much in this video has remained unchanged. Where new information was available, it has been incorporated. We hope you find this program helpful in your efforts to comply with the law as you welcome and integrate employees with disabilities into your workplace.



Robert Rosell  
Writer/Producer

## Copyrights

Handout pages to be used as part of the training are located at the end of this Facilitator's Guide. When you license training rights for **The ADA Revisited**, Quality Media Resources, Inc. (QMR) grants you a license to make as many copies of this manual, including the handout pages, as needed for the internal training needs of your organization.

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Thank you.



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## How to Use This Manual

### **Include Your Organization's Policy**

When you present these programs, we recommend that you also distribute and review copies of your organization's policies and values statements on legal compliance and diversity issues.

### **A Word about Timing Presentations and Activities...**

Based on time availability and classroom dynamics, you may choose to add or delete activities or materials from your presentation of the *The ADA Revisited*. Some of the activities included in this manual suggest a time allotment. Be aware that timing suggested for each activity is an estimate. Some individuals and groups may need or want more time than others depending on the number of participants, room arrangements, current situations in the work environment, the facilitator's style preferences, and other factors.

### **PowerPoint Slides**

Many of the handouts for this series are also available as PowerPoint slides on the Support Materials CD (supplied with your training kit). See the Sample Agendas for details.

### **Sample Outline and Agenda**

Sample outlines are provided for 1-hour and 2-hour versions of the training. These can be adapted to meet the needs of your organization. Follow these outlines for guidance on a suggested approach to presenting training using this program.

You also will find sample agendas for the 1-hour and 2-hour versions to help you monitor your time flow during training.

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# Preparation

## Room Configuration

If space and tables are available, seating participants at tables “clustered” throughout the room helps the facilitator lead the program and makes conversation easier for those who feel uncomfortable speaking in larger groups. More than eight participants per table may hamper open discussion.

Arrange the room so that participants have an unobstructed view of the video, of one another, of the facilitator, of images displayed on easel charts, as well as materials shown by electronic equipment.

## Facilitator’s Role

Regardless of the length of your session, the facilitator...

- Checks all materials and equipment prior to participants’ arrival
- Selects and presents handouts and materials to generate discussion and reinforce learning
- Distributes pens, pencils, writing paper, name tents (or name tags), and other materials at each table
- Circulates a “Sign-in Sheet” for participants to sign and return
  
- Introduces the program
- Leads one or more pre-viewing exercises
- Shows the video program
- Leads group discussion regarding issues presented in the video
- Distributes an “Acknowledgement of ADA Training” form to each participant at the end of the session.

## Handouts - Activities - Resources

Facilitators may select from a range of handouts and activities in planning their sessions. Handouts are designed to assist the facilitator in generating discussion about the ADA and disability issues and in leading exercises with participants. Many of these handouts are also available as PowerPoint slides (provided in your kit).

Take time before each training session to select the handouts and activities you would like to use during the session. Prepare an agenda as either a handout or an easel chart to review. Activities can be added or omitted based on the time available for training. Sample agendas are provided.

# The ADA Revisited

## Facilitator's Outline for 1 Hour Session

### I. Introduction. (5 minutes)

#### A. Facilitator Introduces Herself/Himself.

*Welcome participants to the program and explain who you are and your role in facilitating the program. If the participants don't know each other, you might take a couple of minutes for group members to introduce themselves.*

#### B. Review the Program Objectives.

*Use the Handout "Program Objectives - The ADA Revisited" to introduce the training. Take a few minutes to quickly review the agenda. It is not necessary to explain each component of the program.*

Explain to participants that your organization takes legal compliance very seriously and believes that all employees have the right to work in an environment that values them and their contributions to the organization and where they feel fairly treated. Distribute copies of any internal policy or values statements supporting your organization's perspective on the topic.

The ADA and other laws aimed at ending employment discrimination against people with disabilities are complex and have evolved over time. The goal of this training is not to turn participants into legal experts on this topic, but to familiarize them with the fundamental reasons for the law and their rights and responsibilities under its provisions.

Explain that participants will watch a video program that uses interviews with lawyers and Human Resources professionals as well as with persons with disabilities to explain the ADA.

### II. Video Pre-View Questions (10 minutes)

Ask participants to answer questions contained in the Handout "Video Pre-View Questions."

This process is most effective in smaller groups. If you are facilitating with a larger group, consider sub-dividing participants (perhaps into table groups). One option for facilitating this discussion is to print copies of each question on both sides of a card folded into a tent - so that the same question is visible by participants seated on either side of the card. Place one question on each table, so that each table group is responding to one of the questions in the handout.

Ask each table group to assign a “scribe” to record responses to their question. *Coach scribes to record comments using the speaker’s words, rather than their interpretation of the speaker’s words.* Allow 2 minutes for the groups to respond to their question.

Ask each scribe (or another group member) to report the responses to the larger group. Each report should last no more than 1 minute.

These questions are addressed in the video and in the materials included in this manual. Unless you recognize a disturbing trend in the responses, or inappropriate responses, it is not necessary to debrief the comments. You may, however, want to return to these same questions at the close of the training. If so, assign each table group a different question than the one they answered prior to the video.

### III. Show the Videotape... The ADA Revisited (24 minutes)

The video can be shown uninterrupted for the 1 hour session.

#### Additional Activities:

**Select 1 or 2 of the following handouts that you feel will be most beneficial. Distribute the handout to participants or show it on an overhead projector or using the PowerPoint slide version.** Feel free to allow participants to answer and discuss questions rather than feeling obligated to answer each question yourself. Facilitate the discussion to ensure information is correct and opinions are presented in a respectful and appropriate way.

IV. Handout & Discussion: **Who is a “Person with a Disability”?**  
**Handout C** (10 minutes)

V. Handout & Discussion: **Essential Job Functions**  
**Handout D** (10 minutes)

VI. Handout & Discussion: **Reasonable Accommodations**  
**Handout E** (10 minutes)

VII. Handout & Discussion: **Appropriate & Inappropriate Interview Questions -**  
**Handout F** (10 minutes)

### VIII. Conclude the Program (1 minute)

Have participants complete an “Acknowledgement of ADA Training” Form (See Handout G). Thank the class for their participation and inform them of who the appropriate person would be to approach with any questions or concerns they might have.

## Sample Agenda 1 Hour Session

- [2 Minutes]            Introductions
- [3 Minutes]            Program Objectives (Handout/PowerPoint)
- [10 Minutes]           Video Pre-View Questions (Handout/PowerPoint)
- [24 Minutes]           View video... **The ADA Revisited**

### **Select 1 or 2 of the following activities...**

- [10 Minutes]           **Who is a “Person with a Disability”?** (Handout C)
- [10 Minutes]           **Essential Job Functions** (Handout D)
- [10 Minutes]           **Reasonable Accommodations** (Handout E)
- [10 Minutes]           **Appropriate & Inappropriate Interview Questions**  
(Handout F)
  
- [1 Minute]            Close – distribute **“Acknowledgement of ADA Training”**  
(Handout G)

# The ADA Revisited

## Facilitator's Outline for 2 Hour Session

### I. Introduction. (10 minutes)

#### A. Facilitator Introduces Herself/Himself.

*Welcome participants to the program and explain who you are and your role in facilitating the program. If the participants don't know each other, you might take a couple of minutes for group members to introduce themselves.*

#### B. Review the Program Objectives.

*Use the Handout "Program Objectives - The ADA Revisited" to introduce the training. Take a few minutes to quickly review the agenda. It is not necessary to explain each component of the program.*

Explain to participants that your organization takes legal compliance very seriously and believes that all employees have the right to work in an environment that values them and their contributions to the organization and where they feel fairly treated. Distribute copies of any internal policy or values statements supporting your organization's perspective on the topic.

The ADA and other laws aimed at ending employment discrimination against people with disabilities are complex and have evolved over time. The goal of this training is not to turn participants into legal experts on this topic, but to familiarize them with the fundamental reasons for the law and their rights and responsibilities under its provisions.

Explain that participants will watch a video program that uses interviews with lawyers and Human Resources professionals as well as with persons with disabilities to explain the ADA.

### II. Video Pre-View Questions (20 minutes)

Ask participants to answer questions contained in the Handout "Video Pre-View Questions."

This process is most effective in smaller groups. If you are facilitating with a larger group, consider sub-dividing participants (perhaps into table groups). One option for facilitating this discussion is to print copies of each question on both sides of a card folded into a tent - so that the same question is visible by participants seated on either side of the card. Place one question on each table, so that each table group is responding to one of the questions in the handout.

Ask each table group to assign a “scribe” to record responses to their question. *Coach scribes to record comments using the speaker’s words, rather than their interpretation of the speaker’s words.* Allow 2 minutes for the groups to respond to their question.

Ask each scribe (or another group member) to report the responses to the larger group. Each report should last no more than 1 minute.

These questions are addressed in the video and in the materials included in this manual. Unless you recognize a disturbing trend in the responses, or inappropriate responses, it is not necessary to debrief the comments. You may, however, want to return to these same questions at the close of the training. If so, assign each table group a different question than the one they answered prior to the video.

### III. Show the Videotape... The ADA Revisited (24 minutes)

The video can be shown either uninterrupted (as with the 1 hour session) or by stopping and starting at the various section titles (or Chapter Points) to allow for discussion and questions about the previous segment.

#### Additional Activities:

**Distribute each of the following handouts to participants or show it on an overhead projector or using the PowerPoint slide version.** Feel free to allow participants to answer and discuss questions rather than feeling obligated to answer each question yourself. Facilitate the discussion to ensure information is correct and opinions are presented in a respectful and appropriate way.

IV. Handout & Discussion: **Who is a “Person with a Disability”?**  
**Handout C** (15 minutes)

V. Handout & Discussion: **Essential Job Functions**  
**Handout D** (15 minutes)

VI. Handout & Discussion: **Reasonable Accommodations**  
**Handout E** (15 minutes)

VII. Handout & Discussion: **Appropriate & Inappropriate Interview Questions -**  
**Handout F** (15 minutes)

VIII. **Conclude the Program (6 minute)**  
Have participants complete an “Acknowledgement of ADA Training” Form (See Handout G). Thank the class for their participation and inform them of who the appropriate person would be to approach with any questions or concerns they might have.

## Sample Agenda for 2 Hour Session

- [5 Minutes]            Introductions
- [5 Minutes]            Program Objectives (Handout/PowerPoint)
- [20 Minutes]          Video Pre-View Questions (Handout/PowerPoint)
- [24 Minutes]          View video... **The ADA Revisited**

### **Do all of the following activities...**

- [15 Minutes]          **Who is a “Person with a Disability”?** (Handout C)
- [15 Minutes]          **Essential Job Functions** (Handout D)
- [15 Minutes]          **Reasonable Accommodations** (Handout E)
- [15 Minutes]          **Appropriate & Inappropriate Interview Questions**  
(Handout F)
  
- [6 Minutes]            Close – distribute **“Acknowledgement of ADA Training”**  
(Handout G)

# Who's Who in "The ADA Revisited"

## On-Screen Experts

**Lonnie Davis**  
**Attorney**  
**Disabilities Law Project**

4649 Sunnyside Avenue North, Suite 100  
Seattle, Washington 98103-6900  
TEL: 206-633-6637;  
TTY: 206-633-6636  
FAX: 206-545-7059

Lonnie Davis and the Disabilities Law Project offer legal representation for people with disabilities needing help with issues including: accessibility of public facilities and programs; discrimination in employment, housing and public accommodation, and other areas.

**Candy Marshall**  
**Chief Human Resources Officer**  
**Bill & Melinda Gates Foundation**

Candy Marshall is the Chief Human Resource Officer for the Bill and Melinda Gates Foundation. Before joining the Gates Foundation, Candy worked at software firm WRQ as Executive Vice President, Corporate Development and General Counsel. Previously, Candy was a partner at Sebris Busto and Marshall, a management employment law firm and worked as an attorney in the Seattle law firm Davis Wright Tremaine. Candy has consulted with Northwest employers for over 23 years, helping companies develop and implement innovative human resources programs.

**Michael Reiss**  
**Attorney**  
**Partner, Davis Wright Tremaine**

Mike Reiss has litigated jury and non-jury cases on behalf of large and small employers in Washington, Oregon, California and elsewhere throughout the United States. He has served as lead counsel in state-wide and nationwide race discrimination, sex discrimination and wage-and-hour class actions.

Mr. Reiss has also been a law professor at the University of Southern California and was Regional Attorney for the US Equal Employment Opportunity Commission. He is a graduate of Yale Law School and Harvard College. In addition to his legal practice, Mr. Reiss currently teaches trial advocacy for the University of Washington School of Law and serves as Program Director, Team Leader and Faculty for the National Institute for Trial Advocacy (NITA).

**Writer-Director**

**Robert Rosell**  
**President**  
**Quality Media Resources, Inc.**  
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Robert Rosell has worked as a high school teacher, a theater and video director, a university professor, a writer, and has served as president of 3 media production companies. Since Robert and his wife Patricia founded QMR in 1992, the company has produced over 40 workplace-related training programs. These have won numerous national and international awards and have been used by over 15,000 major public and private sector organizations in 15 countries. Robert has served as president of the Training Media Association (TMA), the Digital Learning Organization (DLO), the International Youth Hall of Fame, and sits on the Board of the Instructional Systems Association (ISA). Robert also appears as a speaker on issues related to developing respectful workplace relationships in today's organizations.

# **The ADA** ***Revisited***

**Handouts - Activities - Resources**

## **The ADA Revisited**

### **Program Objectives**

Upon completion of this program, employees will...

- **understand the origins of the Americans with Disabilities Act and why it was enacted**
- **be familiar with the definition of a “person with a disability” under the ADA**
- **know what the “essential functions” of a job are as defined by the ADA**
- **understand the difference between appropriate and inappropriate interviewing questions under the ADA**
- **be prepared to determine appropriate “reasonable accommodations” for employees or job applicants with disabilities**

# The ADA Revisited

## Video Pre-View Questions

**Why do you think of the over 50 million Americans with disabilities, 70% are unemployed?**

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**What responsibilities do we have to an existing employee who becomes disabled?**

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**Do you think the ADA was necessary? Why or why not?**

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**Describe an experience you have had with "accommodations" - either for yourself or for someone you work with or know?**

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**Has the ADA changed the way we run our organization? If so, how?**

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## Who is a “Person with a Disability”?

Under the ADA, employment discrimination is prohibited against "qualified individuals with disabilities." This includes applicants for employment and current employees. Individuals are considered to have a disability if ...

- **they have a physical or mental impairment that substantially limits one or more major life activities**
- **they have a record of such an impairment, or**
- **they are regarded as having such an impairment**

The first part of the definition makes clear that the ADA applies to persons who have impairments and that these must substantially limit major life activities such as seeing, hearing, speaking, walking, breathing, performing manual tasks, learning, caring for oneself, and working. An individual with epilepsy, paralysis, HIV infection, AIDS, a substantial hearing or visual impairment, mental retardation, or a specific learning disability is covered, but an individual with a minor, non-chronic condition of short duration, such as a sprain, broken limb, or the flu, generally would not be covered.

The second part of the definition protecting individuals with a record of a disability would cover, for example, a person who has recovered from cancer or mental illness.

The third part of the definition protects individuals who are regarded as having a substantially limiting impairment, even though they may not have such an impairment. For example, this provision would protect a qualified individual with a severe facial disfigurement from being denied employment because an employer feared the "negative reactions" of customers or co-workers. Someone who is rumored to have AIDS (for example) but doesn't would also be covered under this provision.

### Questions for discussion:

1. What are examples of physical or mental impairments that would “substantially limit” a major life activity?
2. What are examples of a person with a “record” of having an impairment and why do you think such people are protected under the law?
3. Why do you think the law provides protection for people who don't have a disability but are “regarded” as having one?

## Essential Job Functions

Title I of the ADA protects individuals with disabilities from discrimination during the hiring process. To qualify, a candidate must:

- Satisfy the required skill, experience, and education levels required for the position.
- Be able to perform the "essential job functions" with or without "reasonable accommodations".

Let's look at how you determine what constitutes an "essential job function" using a secretarial position to illustrate each point.

- **Tasks that are fundamental and necessary for the position** (typing proficiency, telephone skills, etc.)
- **Does not include incidental duties** (making coffee)
- **Amount of time spent on or speed they use to perform a specific task or duty** (typing at least 50 words per minute) *Note: An employer is not required to hire an individual who performs an essential task at a significantly slower rate than other applicants, even if the slower speed at which they perform the task is a direct result of their disability as long as applicants without disabilities are held to the same time standard.*
- **What the employer believes to be an essential job function** (operating the copy machine) *Note: The employer can set his/her own job standards as long as these can be verified (e.g., the secretary must be able to operate the copy machine because s/he frequently is alone in the office, the office uses a high volume of photocopies, etc.).*
- **Duties described as "essential" in the job description or requisition** (using specific computer software, speaking a particular language, etc.)

### Questions for discussion:

1. What is the difference between tasks or duties that are "fundamental" to a position and those that are "incidental" or "peripheral"?
2. Considering the ADA, why would it be a good idea to have clear and complete job descriptions when hiring or promoting employees?
3. Does the ADA require that you hire a person with a disability over an equally qualified candidate without a disability? If not, what does the ADA require?

## Reasonable Accommodations

A “Reasonable Accommodation” is any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to participate in the application process or to perform essential job functions. Reasonable accommodation also includes adjustments to assure that a qualified individual with a disability has rights and privileges in employment equal to those of employees without disabilities.

### Examples:

- **making existing facilities used by employees readily accessible to and usable by an individual with a disability;**
- **restructuring a job;**
- **modifying work schedules;**
- **acquiring or modifying equipment;**
- **providing qualified readers or interpreters;**
- **appropriately modifying examinations, training, or other programs**
- **reassigning a current employee to a vacant position for which the individual is qualified, if the person is unable to do the original job because of a disability even with an accommodation.** *Note: there is no obligation to find a position for an applicant who is not qualified for the position sought. Employers are not required to lower quality or quantity standards as an accommodation; nor are they obligated to provide personal use items such as glasses or hearing aids.*

The decision as to the appropriate accommodation must be based on the particular facts of each case. In selecting the particular type of reasonable accommodation to provide, the principal test is that of effectiveness, i.e., whether the accommodation will provide an opportunity for a person with a disability to achieve the same level of performance and to enjoy benefits equal to those of an average, similarly situated person without a disability. However, the accommodation does not have to ensure equal results or provide exactly the same benefits.

### Questions for discussion:

1. How can you best determine what reasonable accommodation to offer an employee with a disability who needs one?
2. What if the accommodation an employee requests is prohibitively expensive?
3. Can an employer be required to reallocate an essential function of a job to another employee as a reasonable accommodation?
4. Some disabilities are largely invisible (depression, sleep apnea, etc.). What should you do if an employee requests an accommodation for a condition you don't understand or have difficulty seeing? How do you determine such a request is legitimate and valid?

## Appropriate & Inappropriate Interview Questions

Questions an employer CANNOT ask an applicant before making a job offer:

- Do you have a heart condition? Do you have asthma or any other difficulties breathing?
- Do you have a disability which would interfere with your ability to perform the job?
- How many days were you sick last year?
- Have you ever filed for workers' compensation? Have you ever been injured on the job?
- Have you ever been treated for mental health problems?
- What prescription drugs are you currently taking?
- What is your HIV status?
- Any question designed to reveal if the applicant has a disability.

Employers CAN ask these and other questions related to a person's disability once a job offer has been made as long as they ask these questions of all applicants and the question is reasonably related to determining the candidate's ability to do the job. They cannot, however, withdraw the job offer simply because the applicant has a disability. An employer can withdraw a job offer only if it can show that the candidate is unable to perform the essential functions of the job (with or without reasonable accommodation), or that the applicant with a disability poses a significant risk of causing substantial harm to him/herself or others.

Questions an employer CAN ask an applicant before making a job offer:

Any question designed to determine the candidate's ability to do the essential functions of the job such as...

- Can you perform the essential duties of the job, with or without reasonable accommodations?
- Can you tell me (or demonstrate) how you will perform these duties?
- Can you meet the attendance requirements of the job?

If an applicant has an obvious disability or voluntarily discloses a hidden disability to the employer, the employer may ask the applicant whether he/she needs reasonable accommodations and what types of reasonable accommodations she/he will need.

**Activity Idea:** Try role-playing a group interview with a candidate who has a disability. Determine in advance if you are aware of this disability and practice the interview. Have one member of your group act as the candidate while the rest of the group asks the interview questions. Afterward, debrief the interview.

## Acknowledgement of ADA Training

I acknowledge that on \_\_\_\_\_ (date) I attended a training program on the Americans with Disabilities Act titled **The ADA Revisited**. I understand that; (1) employees with disabilities have the right to be treated with respect and to receive reasonable accommodations to assist them in performing the essential functions of their job; (2) I have a responsibility not to engage in behaviors that constitute discrimination against employees with disabilities and (3) if I feel my rights as a person with a disability under the ADA are not being respected, I have the right and the responsibility to communicate this directly to the Human Resources Department or another representative of management.

---

(Name)

---

(Signature)

# Information Resources

## Online Resources

US Government, EEOC: <http://www.eeoc.gov/ada/adahandbook.html>

US Government, Department of Justice: <http://www.usdoj.gov/crt/ada/adahom1.htm>

ADA Job Accommodation Network: <http://www.jan.wvu.edu/links/adalinks.htm>

National Organization on Disability: <http://www.nod.org/>

## Support Organizations

National Organization on Disability  
910 16th Street NW  
Suite 600  
Washington, D.C. 20006  
(202) 293-5960 (voice)  
(202) 293-5968 (TDD)

Issued fact sheet on the ADA to its 3,000 Communities in Action, consisting primarily of mayors' offices on disability policy, who are pledged to bring about changes promoting the full integration of people with disabilities into their communities; offers a 10 minute video narrated by Charles Kuralt, "Community Partners at Work," available only to its affiliated Communities in Action for community showings; offers to any local organization camera-ready copies of public service announcements promoting changes consistent with the goals of the ADA.

President's Committee on Employment of People with Disabilities  
1331 F Street NW  
Third Floor  
Washington, D.C. 20004  
(202) 376-6200 (voice)  
(202) 376-6205 (TDD)

Provides technical assistance on employment provisions of ADA directly and through its Governors' Committees on Employment of People with Disabilities.