

## *Preface*

THERE IS A SAYING: If you are going to write a book, do it because you have to. Any other motive just won't lead to the necessary satisfaction. In other words, to write a book, you have to feel compelled to write it. I had to write this update for several reasons.

First, while there are many Americans with Disabilities Act (ADA) tomes on the market, I still have not seen any, besides the editions of this book, devoted exclusively to making the ADA understandable in an easy-to-use way.

Second, I saw a need for an ADA book that was written from the perspective of a lawyer with a disability. (I have a congenital severe to profound hearing loss but, with the use of lipreading and hearing aids, function entirely in the hearing world. For other reasons, I also use voice dictation technology.) To me, the ADA is not just a law but a way of life. For example, in this book we discuss the concept of reasonable accommodation. Two examples of reasonable accommodations I ask for every day of my life are: 1) asking people on the phone to give examples of the letters they are saying (C as in cat, P as in Patrick, etc.), because without being able to read lips—an impossibility on the phone—I am unable to understand what letter is meant; and 2) asking people not to cover their mouth with their hands. Both of these are examples of reasonable accommodations.

Third, there is a need for an ADA book that discusses preventive lawyering with regard to the ADA.

Fourth, since the last edition of the book was published, the law has evolved. Some issues have come to the fore, while others have receded. Also, the book was in need of bulking up. I took advantage of this update to go into more depth across many of the subject matters covered. Also, there are always new developments in the case law and in regulations that need to be talked about.

In prior editions, the remedies chapter was extremely short. The more I thought about that, the more misguided that approach seemed. After all, without remedies, the law doesn't mean anything. Thus, in the remedies chapter, in addition to some general thoughts, there is now a discussion about standing, when a complaint is sufficient, statute of limitations, and mixed-motive jury instructions, along with expanded discussions of disparate treatment cases, class actions (new to this edition), jury selection, and *Batson* challenges.

The ADA and Sports chapter discusses the recent Office of Civil Rights guidance on § 504 of the Rehabilitation Act and opportunities for students with disabilities to participate in athletics, as well as essential functions of jobs as they apply to athletic endeavors (a recent case involving a deaf lifeguard is discussed).

Chapter 13 has been changed from “hot areas” to “issues on the cutting edge.” Issues that are on the cutting edge of the ADA may not always be considered hot areas. However, a good preventive lawyer is always thinking about where the issues with respect to a particular law are headed. In that chapter, the reader will find many of the old standbys that appeared in prior editions along with new ones, such as: negligence and negligence per se actions as an alternative to Title III claims; how *Olmstead* is evolving into other areas (budget cuts and sheltered workshops, for example); and, in the Internet section of that chapter, a discussion of *National Association of the Deaf v. Netflix*. Developments in the area of reassignment as a reasonable accommodation are also covered, as well as a discussion of the Air Carrier Access Act and how it relates to the ADA. This list of additions to the book is not exclusive but is, I hope, indicative of how the book has been expanded from prior editions.

With these goals in mind, a couple of warnings are in order. First, the ADA remains an extremely broad and comprehensive law. This book is not a treatise and is not meant to address every contingency that can arise under the ADA. Rather, the book highlights various aspects of the ADA so that by the end, the reader has an excellent overview of the law as well as a framework for dealing with the ADA in a preventive manner. Second, the ADA is constantly changing; there are new developments every day. Thus, when an ADA issue arises, it is critical that the reader consult a lawyer knowledgeable

about the ADA. Finally, keep in mind that the cases cited in this book are for illustrative purposes only and are not meant to substitute for expert legal advice. A lawyer knowledgeable about the ADA should be consulted for the reader's specific legal needs

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