>> Matan Koch: Hello, and welcome to "How to Ensure Legal Rights and Compliance Obligations," the seventh in our series on inclusion for Jewish organizations. I'm Matan Koch, I am the Director of Jewish Programming here at RespectAbility and I'll be your moderator today.

I am joined by our panelists: Bobby Silverstein, the principal of Powers Pyles Sutter and Verville PC, who is a principal draft person of the ADA, will give us some history; followed by Ariella Barker, attorney and former RespectAbility Fellow, will tell us a little bit about ADA obligations and players; and Matthew Dietz, attorney, who will tell us a little bit about ADA accommodations as a place of public accommodation, we'll give you more about them before they speak, but first a few minutes of housekeeping.

This is a fully accessible webinar, so you will note that the highlighted speaker on the Facebook presentation is our sign language interpreter, but if you would like to arrange so that you see more speakers, you can click "Gallery View" at the top of your corner if you're logged into Zoom. There are closed captions available, which you will see in the "Closed Caption" box at the bottom of your screen - click that and they will pop up.

Additionally there is a running transcript available, at a link that is now available in the chat from my colleague Eric Ascher. You'll notice at the bottom of the screen there's also a box that says "Q&A" - please don't hesitate to put your questions in that box - we want to see you, we want to answer you and we'll have a Q&A period at the end, but we want to accumulate them throughout that time. For those that have been with us for all seven webinars, thank you for sticking with us; for those that are joining us for the first time, the other six webinars in this series are all available online at respectability.org, and we encourage you to go to our website, take a look at them and learn really everything that you might ever want to know to make your organization more inclusive.

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I want to thank, especially this time because we're at the end of our series, our amazing partners and co-promoters, really just a wonderful who's who of the Jewish world that came together so that we could offer this series that is now reaching people all over the world.

 And I really do want to thank our funders who made this possible: the Jewish Community Foundation of Los Angeles through a Cutting Edge Grant, The Diane and Guilford Glazer Philanthropies, The Charles and Lynn Schusterman Family Foundation, The David Berg Foundation, the Stanford and Joan Alexander Foundation, Stanley and Joyce Black Family Foundation and The Beverly Foundation.

Now, a few words of introduction and about our topic today: we're talking about legal rights and compliance and the two things that I'd like everyone to keep in mind; number one is that Bobby is going to frame for us why our discussion around inclusion is values-based on how the ADA reflects that, but I want to remind everyone that the reason that this is the seventh webinar is that we've spent six webinars talking about all of the affirmative and positive things that you want to do to be more inclusive, this is the webinar to help you understand the legal framework in which you do it, not to establish uh the bare minimum of what you want to do; the other is that, though all of our panelists are in fact attorneys, nothing in this presentation should be construed as legal advice or to create a lawyer-client relationship - please, for any individual legal questions, retain or consult your own counsel. Thank you.

 Next slide, please.

So why are we doing this series? We're doing it because according to the U.S. Census, one-in-five people in America has a physical, sensory, cognitive, mental health or other disability and yet we have found that while ninety percent of Jewish respondents feel that disability inclusion is a priority, less than one-third of respondents really feel like they know how to do it and are doing all the things that need to be done. Our goal in this series is to help to close that gap so that all of that good will, all of that desire within the Jewish world and beyond to do the right thing, will be equipped with the ability to do that.

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And so I've already spoken to who our panelists are so we'll skip right past that - next slide - and now it's my privilege to introduce in a little more detail Robert "Bobby" Silverstein, who is a nationally-recognized attorney with over 45 years of public policy and advocacy experience. For more than a decade he served as the staff director and chief counsel for the Senate Subcommittee on Disability Policy chaired by Senator Tom Harkin. Bobby was the behind-the-scenes architect of more than 20 disability-related bills enacted into law including the landmark Americans with Disabilities Act, the Rehabilitation Act of 1973 and the Individuals with Disabilities in Education Act. Currently, Bobby is a principal in the law firm of Powers Pyles Sutter and Verville, PC. I will leave Bobby to tell you anything else about himself that he would like.

Bobby, take it away.

>> Robert Silverstein: Thank you so much, Matan. You know, July 26, 2020 - just a few weeks ago - was a very, very special day - the 30th anniversary of the enactment of the Americans with Disabilities Act - the ADA. A lot of folks in the disability community refer to the ADA as the 20th century Emancipation Proclamation for people with disabilities. Now anniversaries - next slide, please - anniversaries -

next slide - anniversaries are a time to celebrate, but they're also a time to reflect. Now, Matan, when he contacted me, asked me to take a few minutes to provide an introduction, and he wanted me to do it from the perspective of a Jew. So, I'm going to reflect on the ADA from the perspective of a Jew, as Matan asked me, and to me, the ADA is a codification of the commandment to do justice and pursue acts of loving kindness.

Next slide.

So to do justice, one must understand history and the nature of injustice experienced by people with disabilities. Now I'm going to start by going back to the philosophers who we, in Western civilization, often make reference to: Hippocrates asked the question, "which children should be raised?" Aristotle made it clear that people with disabilities were not among those slated to live. Plato stated society will provide treatment for those of our citizens whose physical and psychological constitution are good and for others, society will leave the unhealthy to die - and those whose psychological constitution are incurably corrupt, society will put to death: that seems to be the best thing for both the individual sufferer and society. Aristotle was in full agreement. Quote: "with regard to the choice between abandoning an infant or rearing it, let there be a law that no crippled child be reared." Fast-forward to many cities in this country that had ugly laws - one of them was Chicago, that had this law on the books until the 1970s: "no person who is disease, maimed or in any way deformed so as to be an unsightly or disgusting object shall be allowed in or on the public ways." There were Supreme Court cases in states about exclusion from public education; one case in Wisconsin said that Merritt, a child with cerebral palsy, should be excluded because of his disability. Merritt was just described as crippled and defective, described further as producing a depressing and nauseating effect on others. The Wisconsin Supreme Court concluded that he should be excluded because his presence is quote "harmful to the best interest of the school." We had a U.S. Supreme Court case where Justice Oliver Wendell Holmes concluded that a woman who had a developmental disability should be sterilized against her will. He said, in part, "we need, in order to prevent our being swamped with incompetence, it is better for all the world if instead of waiting to execute degenerate offspring for crimes or let them starve for their imbecility, society can and must prevent those who are manifestly unfit from continuing their kind." We had forced institutionalization in this country, in order to prevent quote "a menace to society and civilization." Justice Thurgood Marshall described our treatment of people with disabilities in another Supreme Court case as grotesque and worse than the worst excesses of Jim Crow laws.

So what we have here, in summary, is what we call 'the old paradigm of disability,' where people with disabilities were treated as defective, dependent, pitied, in need of fixing, and the public policy result was exclusion, segregation and denial of opportunity. Fast forward to the 1980s, when we had hearings on the ADA and some of them summarized the result of what was included in, would call 'discrimination diaries' - Justin Dart, a colleague in the disability community, went to all 50 states to collect them. We found that Judy Heumann, who had polio, was denied the opportunity to teach in New York City. We heard from parents whose kids were kicked out of the zoo in New Jersey because the zookeeper was afraid that they would upset the chimpanzees. We heard from a Harvard Law grad who couldn't get a interview for a job. Etcetera, etcetera.

Next slide.

 So from the old paradigm, with the passage of the ADA, we now have a new paradigm - a new set of values and principles. The first precept is very simple but very profound: that disability is a natural and normal part of the human experience that in no way can diminish a person's right to fully participate in all aspects of society; and what we must do is focus on fixing the environment: programs, buildings, transportation, communication, by recognizing the principle of universal design - that when we design something from the word 'go,' it should reflect the needs of the greatest number of persons.

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To do justice, we also need to recognize the four goals of disability policy: equality of opportunity is the first, which means treat people as individuals, based on facts, objective evidence science, high expectations, focus on people's strengths, do not focus on fear, ignorance, prejudice, mythologies and labels; second, provide effective and meaningful opportunity - you'll hear phrases like reasonable accommodation, provision of auxiliary aids and services, reasonable modifications of policies practices and procedures when we talk about Title I and Title III - but as policy makers, as folks implementing programs, don't focus so much on this legal mumbo-jumbo or disability jargon, focus on what are the underlying policies behind that - effective and meaningful opportunity. Many of you, when you're in the workplace, you have a desk, you have a chair, you have a telephone, you have a computer - we don't call these reasonable accommodations, these are tools to allow you to effectively and meaningfully do your job: that's what people with disabilities want to and they want it in the most integrated setting appropriate. Full participation is the second goal; nothing about us without us. Self-determination, empowerment, informed choice - and then the goals of our policy should be to foster, facilitate independent living and economic self-sufficiency.

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 Now, the second part of the commandment is to pursue acts of loving kindness. Now when it comes to people with disabilities, this phrase, unfortunately, is often misconstrued: pursuing acts of loving kindness does not entail pity or charity, it does not helping without asking if help is needed, it does not entail helping with a sense of superiority; pursuing acts of loving kindness does entail treating people with dignity and respect, focusing on strengths and capabilities, embracing and celebrating differences and fostering empowerment and self-determination. Next slide. I want to leave my portion of this webinar by reading from a dedication from my boss, Senator Tom Harkin, who is the chief sponsor of the ADA, and to me, I hope this is what all of you who are listening will dedicate yourself to as well. He said, "I want to make a dedication. Across our Nation, mothers are giving birth to infants with disabilities. So, I want to dedicate the ADA to these, the next generation of children and their parents, the ADA generation. With the passage of the ADA, we as a society make a pledge that every child with a disability will have the opportunity to maximize his or her potential to live proud, productive and prosperous lives in the mainstream of our society." We love you all and welcome you into the world, we look forward to becoming your friends, your neighbors and your co-workers, we say whatever you decide as your goal, go for it - the doors are open and the barriers are coming down.

Thank you.

>> Matan Koch: Thank you, Bobby, and it's such a powerful sentiment and I know at least some of us here on this call owe our very mission of what we do to that and so I want to encourage everyone as we're listening to Ariella and Matthew take us through the specifics of what the law requires, let's keep the framework that Bobby created for us in mind - this is how we consider and think about our legal compliance obligations.

Joshua, next slide, please.

 So I now want to take the opportunity to introduce our next panelist: Ariella Barker is a dual American-Israeli citizen and an attorney, policy advisor and communications specialist. She has a BBA and a JD from Emory University and an MPA from the Harvard Kennedy School where she was a John F. Kennedy Fellow on a full merit scholarship. She has worked internationally across the public, social and private sectors, fiercely advocating for her clients and communities in areas of employment discrimination issues, antisemitism and disability rights. She's going to speak to us today on Title I of the ADA regarding employment. Without further ado, I turn it over to my friend and colleague, Ariella Barker.

Josh, next slide.

 Ariella, your turn.

>> Ariella Barker: Thank you so much, Matan. It's great being here. We heard from Bobby what the intentions were of the ADA, but once it was passed, many of you might be wondering, "okay, now what are my responsibilities under the ADA for being an employer?"

So next slide.

We know that still, even though the ADA was passed 30 years ago, upwards of 80 percent of Americans with disabilities are still unemployed, so Title I of the Americans with Disabilities Act is possibly one of the most important sections of this law, and it basically provides that employers are required to remove barriers for qualified applicants or employees with disabilities. So this applies both to applicants, if an applicant comes and applies for a job and they have a disability, you must give them a reasonable accommodation; it also applies to existing employees, so that relationship between employer and employee has to exist in some way.

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 So who must comply with Title I of the ADA? I know that many of you are Jewish organizations or lead Jewish organizations and many believe that because there is a clause that exempts religious institutions from the ADA, that religious institutions are also exempt from Title I, but in fact that is not the case: they are required to meet the obligations under Title I. Title I applies to private sector employers with 15 or more employees, state and local government - so I actually represent the City of New York and we therefore have to comply under Title I of the ADA - as well as employment agencies, unions and other joint labor management committees.

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 So who is protected? What does it mean to be a qualified individual with a disability? Those who are covered by Title I of the ADA are qualified individuals with disabilities, which means that either they're an employee or an applicant who is qualified for the position that they're either applying to or currently have and they also have a disability which meets the guidelines of the ADA. You can go to the next slide, please. So how disability is defined under the ADA has been litigated so much over the last 30 years since the ADA was passed that in fact in 2008, the ADA Amendments Act was passed because courts were constricting the meaning of disability so much that it was almost impossible to prove that you had a disability under the definition of the ADA: so they amended the act to make it less difficult to prove that you have a disability. So the requirements are either that the person has an actual disability, has a record of a disability or is regarded as having a disability. So, having an actual disability is straightforward; a record of is, you might have had a disability in the past that now the employee or applicant has recovered from, and as a result of having this record or this history of a disability, they may be discriminated against based on that; and regarded as might be, the employer might think that this person has a disability when in fact they don't, even in that case, those people are protected.

Next slide.

 What is not a disability under the ADA are transitory and minor general ailments, like the common cold or a flu or maybe a broken bone, and things that are just insufficiently severe that don't affect a major life activity. But as I said, the ADA Amendments Act made it more possible to prove that you have a disability when you have something such as diabetes, HIV, epilepsy.

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So you've probably heard the term 'reasonable accommodation' many times in the context of ADA, and a lot of people don't understand what that means: and basically all that a reasonable accommodation is, is a change or adjustment to a job or work environment that permits that qualified individual with a disability to perform the essential functions of the job. Reasonable means that it's reasonable - it's possible, it's not going to cause the employer undue financial burdens or - they won't have to, for example, change the essential functions of the job such that the individual with the disability can have the position while not performing what the position requires it to do. And the reasonable accommodation simply must be effective in order for it to be reasonable.

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So part of the really important part about granting a reasonable accommodation to an applicant or an employee is that you have an interactive process between the employer and the employee, where they can discuss and come up with the best possible reasonable accommodation. So that process is right here: it looks like from step one, recognizing an accommodation request, which can be sometimes difficult, to gathering information, exploring accommodation options, to then choosing an accommodation, implementing it and then monitoring it.

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 So recognizing an accommodation request can be difficult particularly because employees or applicants are not technically required to fill out an accommodation request or do some sort of formal writing: it can be as simple as making a statement in which the employer is required to recognize that it's a request for a reasonable accommodation. So examples of this can be - this is actually something that's going on with me right now - I am working so many hours typing, so much writing, so many briefs, that my hands bother me, and a lot of employees, particularly those that are on assembly lines, they work with their hands so much that they develop carpal tunnel; and the courts have found the carpal tunnel is a disability within the ADA, so an employee saying, "I'm getting carpal tunnel on my hands from typing so much," that could be a request to say, "I need an accommodation to change my keyboard or my mouse" to allow them to better be able to work, without being impacted. Another one might say, they return to work, they're using a wheelchair, they can't fit under their desk; or they might say, "I need to work from home for the entire duration of the pandemic because my disability puts me at a high risk" - that also is a request for a reasonable accommodation, even though they are not saying "can I please..." or filling out an accommodation request. Next slide. So, determining whether the individual is qualified is a little bit more tricky, and has a lot more rules but in general, I would just like to say, if an employee comes to you and they request an accommodation, the general rule should be granted, so long as it's reasonable and it's not going to put your organization out of business or completely - you have to hire someone else - you should grant it, but what you are permitted to do is ask, determine what the disability is, what their needs are in that accommodation and how best to accommodate it. Next slide. There are three types of reasonable accommodations, which are: modifications or adjustments needed during the application process, modifications or adjustments to the workplace and then modifications or adjustments for enjoyment of equal benefits or privileges of employment. So the first two are pretty self-explanatory but the last one might be, for example, your office is having an office party that is in a restaurant that is inaccessible, and the employee says, "I would like to go to this party, but it's inaccessible," changing the party to an accessible location would be a reasonable accommodation.

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And these are some examples of reasonable accommodations, so, making facilities accessible, modifying policies in your workplace, acquiring or modifying equipment, granting intermittent or concurrent leave, allowing you to work from home, allowing them to bring a service or an emotional support animal. Next slide. Unreasonable accommodations might be something like "I need you to pay for my hearing aid," something that the person needs not just in the workplace but also for home, or asking them to completely change the essential job functions of the position.

Next slide.

So, in terms of providing an accommodation, basically the main thing is don't delay, make sure that you provide it within a timely manner, communicate effectively and ensure that the accommodation is effective.

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And monitor the accommodation: this is not to make sure that they need it or to constantly surveil them but to make sure that it is appropriate, that it's working for them and that you're doing everything possible to ensure that that person can perform the essential functions of the job with the accommodations that you provided.

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And that's it. Sorry that I ran through everything, I just wanted to make sure I got it in within time and it's a really complicated process, so I apologize.

>> Matan Koch: No apologies necessary and thank you, Ariella, and of course, you'll be able to elaborate on anything you ran through during the Q&A period when we address people's questions.

 I thank you that people are putting questions in the question box and we will now, without further ado, next slide,

 I want to introduce our next panelist, Matthew Dietz. Matthew W. Dietz is a founding member and the current Litigation Director of the Disability Independence Group. He has been practicing in the arena of civil rights litigation since 1996 and he's handled hundreds of matters involving the Americans with Disabilities Act, Fair Housing Act and other civil rights laws regarding the rights of persons with disabilities. I'm sort of summarizing, he will give you all of his background that he sees fit if he's stuck, but I will now jump to the bottom paragraph and say Mr. Dietz represents victims of discrimination in administrative, trial and appellate proceedings and has over 300 reported decisions in the past 20 years. He's worked to redefine effective communication, reasonable accommodation and expand the rights and opportunities of people with disabilities. In 2019, he was awarded the American Bar Association's Paul G. Hearne award for performing exemplary service in furthering the right, dignity and access to justice of people with disabilities, and he's going to explain to you your obligation as an organization that serves the public under Title III of the ADA. Matthew, thank you for being with us today and take it away.

>> Matthew Dietz: Great. Thank you so much, Matan and thank you so much for having me here today.

Can we go to the next slide?

Today I'm going to briefly discuss the five requirements under Title III of the ADA. What Title III applies to, it applies to public accommodations: this is any type of a business or service provider that provides products or programs or services or benefits of a place of public accommodations. For Jewish organizations, there is a religious exception as well, and that applies to facilities that are religious in -- that teach religion, so for example, if you have a school that is non-denominational that does not teach religion, that would be covered, on the other hand if you have a school that teaches religion as part of its program, so that the teachers are considered to be religious teachers, then it would not. So, there's many issues that are covered such as JCC activities that are open to everybody or daycare centers that are open to everybody.

Let's go to the next slide.

The first thing that people always think of when they see the ADA and when they say, "oh, that was another ADA case that was filed," they think of barrier removal, and for many years there were many many many cases filed about barrier removal and that really is the obligation of the ADA to remove architectural, communication and transportation barriers. For barriers that were existing prior to 1990, an entity has an obligation to do what is readily achievable, which is easily to do without undue expense: for those barriers that were built after the effective date, actually it's a little bit further than the effective date, an entity would have to construct those facilities as being accessible, and this includes any type of barriers, for example, there's certain standards for accessible vehicles, and accessible vehicles and transportation is a very important factor in the ADA. And that's the first picture. The second picture is this ramp that goes down about 40 feet on top of a staircase where somebody put pieces of wood on there - that is not barrier removal, because in order to have barrier removal, it has to have a certain slope. The problem is when a lot of people do barrier removal, they sort of jerry rig it in a way that they feel is accessible, and when the Department of Justice made regulations by 1994, it contained certain standards, almost like a building code, that ensured that the barriers would be removed in a way that would increase accessibility. A barrier like the one in the middle would be a certain failure for those in most wheelchairs, almost like a skateboard ramp. The automatic doors, for certain doors that are too heavy; on the bottom right are detectable warnings for curb cuts, and curb cuts were one of the most important factors when the ADA was enacted because that gave folks the opportunities to get out in the neighborhood. When I was growing up in the in the 70s and 80s, to think about that there were no curb cuts, and that folks could not even get off their sidewalk, is a huge advance that is very important to the ADA and very important to get folks from one place to another. And the other area that we see a lot is accessible bathrooms: the picture you see here is not an accessible bathroom, but it has grab bars. So there are many ways to do it but only a few ways that are part of the ADA guidelines. Now, as we've reached the 30th anniversary of the ADA, many local building codes have incorporated the ADA architectural standards in those codes, so if you violate local architectural standards, you would also violate the ADA in many cases.

Let's go to the next slide.

The next slide is one of the essential parts of the ADA is to ensure inclusion, not to have segregated programs or services. So you don't want to segregate an individual - if they're excluded, denied services, segregated or otherwise treated differently. Examples of this is when you have a restaurant that has multiple levels and you only have one level that is accessible for a person with a mobility impairment. Another one, let's say you have a after-school program, and you have this program for children with autism and you don't incorporate them into the regular program, and if you don't incorporate them into the regular program - and I've actually seen this and and sometimes they name programs like Tikvah, it's a very wonderful, inclusive type thing, but it's still segregation, and you could only have segregated programs when that, number one, the person chooses it, or number two, when a reasonable accommodation cannot be made: when you have an after-school program, for example, if you look to see what schools do for that same program, for example, having a one-on-one aid, and having a one-on-one aid for a child with autism would be an appropriate accommodation for that child, and that child then would be integrated into the program like everybody else. There's other things that would deny inclusion as well: for example, if you have a field trip and you decide not to get an accessible transportation to that field trip. So there's - just like with any other discrimination, integration is incredibly important.

Let's go to the next one.

 Eligibility criteria: imposing or applying eligibility criteria that screen or tend to screen individuals with disabilities from full and equal enjoyment of the goods and services. Where I see this, often, is amusement parks: you can't do this if you don't have two arms, you can't ride this ride, you can't enter this program unless you are at least 60 inches tall and what happens if a little person wants to go in that - there has to be standards, it has to be reasonable, it has to be based not upon stereotypes. Where this happened a lot was back in the beginning of the ADA when you had people with HIV and AIDS: you can't be a member of this because of the fact that you have AIDS, you have HIV. If a child has type 1 diabetes, you can't be a member of this program, you can't participate in the sports program, because of the fact that you have diabetes, and it's too dangerous for you, even though the doctor has a letter that says it's going to be fine for you. So these are all things that you need to think about when you talk about eligibility criteria and these things happen every day.

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Reasonable modifications: just like Ariella was saying, reasonable accommodations are an essential factor when it comes to public accommodations under Title III. Public accommodations have, we have a responsibility to make reasonable accommodations and policies, practices and procedures to allow people with disabilities full and equal enjoyment of goods and services. Let me give you some examples: having a guide dog - having a service animal, and in a place of public accommodation when you have no dogs allowed - under the ADA, service animals are allowed but emotional support animals aren't - that's because it says so in the regulations. Having straws - most municipalities, well not most in Florida where I'm from, most municipalities, save the turtles, don't provide straws; however straws are essential for many folks that are paraplegics, have dexterity issues - need straws in order to use drinks. Being allowed to have a straw is a reasonable modification. For a person with a learning disability, to have additional time on a test is a reasonable accommodation. All of these things in which folks do now and is normal and common and what we do on an everyday basis, is a reasonable accommodation. For example, bringing something out to a person in a car who can't get out of their car or place is inaccessible - that would be a reasonable accommodation. The defense to reasonable accommodation, as Ariella was saying before, is if it's a fundamental alteration or an undue financial or administrative burden. My favorite case was one I just got - it was a fair housing case, which is similar, and the judge talked about the difference between a reasonable accommodation and a fundamental alteration, and what the judge says is "a reasonable accommodation is like putting a saddle on a camel, a fundamental alteration is like cutting the hump off." So it is a huge burden to say it's a fundamental alteration - it's not "I think something is reasonable, I think something isn't" - no, it's a burden where you have to look at all your entire programs and services and income and say what change is this going to make in what we're doing. That's what the ADA means to inclusion.

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 I feel like I'm going so fast, it's because I'm from New York originally. Effective communication is one of my favorite issues that I deal with: failing to provide effective communication detailing how to ensure a full and equal enjoyment of goods and services. This is basically for folks that are deaf, have visual impairments, have other communication impairments - also folks that have developmental or intellectual disability for plain language. Where I see this most often - providing interpreters for folks that are deaf. You wouldn't believe how many hospitals don't provide interpreters for people that are deaf - and we're talking about 30 years after the ADA. Providing items in different formats - effective communication can be providing captions, we have captions here - captions are relatively easy to do. Going back to reasonable, and sometimes there is a a flow from reasonable accommodations and modifications and effective communication: ensuring that your website is accessible to people that are blind and ensuring website accessibility is a huge factor now and something that is so important now in the digital age, because electronic access provides a level of freedom for folks that has never been available before, whether it's somebody who is blind, whether it's somebody who is deaf, whether it's somebody who needs clearer language if they have a disability, and I always try to make certain that plain language is important for those that have developmental disabilities and thinking about things like effective communication - I just settled the case last week involving people who are blind are entitled to having accessible vote by mail so they could vote by filling out their ballots using a computer because if they get a ballot that is on paper, they can't see it - if they don't have access to the computer, they can't fill it out, and when you're talking about accessibility and going back to what Bobby was saying in the beginning of this, voting was one of the essential essential parts of being a citizen in this country, to have the ability to to file independently of vote, and it gives me chills; when I got that settlement, and we settled it actually on July 26, which gave me major chills thinking, this is why we have the ADA, so folks can have independence in society. And I've been speaking really fast and the reason why is I wanted to leave time for questions, and do I have another slide here or did I go through all five things? Ahh.

>> Matan Koch: Perfect timing and that'll bring us to our questions section. Thank you, Matthew. Thank you also to our panelists who've been answering questions textually as they've come up in the Q&A box. Joshua, can we temporarily drop the presentation so people can see our faces as we're going through the Q&A? Thank you so much.

So I want to take some questions - I want to sort of divide up those the questions into two different categories - there's a lot of questions coming in that are people's individual sort of legal questions and we'll be happy to address this if we have time, to the extent that we can and that we have something meaningful to say, but I want to start with some of those questions that are sort of geared towards the obligations of Jewish organizations, since that's sort of what we aimed to each with this. I also want to let people know that the panelists have agreed that we can go a few minutes over our allotted, planned hour if the questions are coming, I also want to remind people that nothing in this Q&A section should be considered to create a lawyer-client relationship and that you should seek counsel for your individual legal questions.

 So one of the first questions that was posed and, Matthew, I know you answered it in print, but I want to use it as a bit of a basis to ask a question with the panelists, is whether lawyers should be involved in the good faith negotiation between employer and employee, and I want to offer a thought as an attorney myself but then ask the panelists to respond to that thought. My general thought is that with all of these, by the time a lawyer's gotten involved, it means that you're not where you want to be as an organization, that where you want to be as an organization, and whether it's the good faith negotiation between employers and employees where you're actually trying to figure out how you can access the talents of an individual that you've chosen to bring into your organization or whether it's the public accommodation in discussion where you're trying to allow for another person to participate, to give of and be a part of your programming, that by the time the lawyers get involved, it means you've already lost sight of your initial goal, which was that everyone get to a place of inclusion in a place of shared strength, but I wonder if any of the panelists want to speak a little more to this.

>> Ariella Barker: I would probably add to that. I would say it's perfectly fine and even potentially preferable if you're very confused about how best to accommodate to speak to an attorney, but I would not recommend having an attorney be a part of the process because it incredibly intimidates an employee or an applicant from going through the process and it gives a bad signal. So if you are feeling very confused, you're not sure whether you're doing something properly or - if you just need some legal assistance in providing that accommodation to the applicant or employee, then it's definitely advisable to speak to an attorney, but don't involve the attorney in that interactive process.

>> Matthew Dietz: And to add on to that - this is Matthew - I frequently get calls from employees, and the process and what I do is I give them the resources on what to do, I tell them the process in which to follow, because usually it's a very confusing time because for all employers, especially larger employers, there's a process to follow and there's a lot of resources on the internet such as Jobs Accommodation Network, which is the best resource for many disabilities out there, and I walk them through it and then I say, "if anything happens, if they don't do it, then come back to me and ask me more questions." But yeah, I would be very scary.

>> Matan Koch: And I would say that, by the way, that's www.askjan.org - Eric, if you can put that in the chat box so that people can see that link, that would be -

>> Ariella Barker: Can I also - I'm sorry. I'd also like to add that, and I wasn't able to put it in my slides because I knew I had a time limit. But I think that it's highly advisable for any employer to have a policy and procedure in place for how an employee or an applicant would go about requesting a reasonable accommodation, and how the employer, whether it be their supervisor or HR, grants that accommodation, and having that will better prepare both sides to go through the process with a lot less confusion.

>> Matan Koch: And so - thank you, everyone. There is a question in the chat box that is really about what makes something an essential function - there's an example used, the specific question is about a job that has communication as an essential function and whether a person that does not have those communication skills could therefore be denied the essential function - can you guys read the specific question, but so the question that I would pose is "how do we think about whether an aspect of a job is essential?" I know we got the great example that Matthew used in the public accommodation context of the saddle versus cutting off the hump of the camel, but perhaps we can give a more detailed statement. I'll start with Ariella because Title I was your part of this, this that we're doing, so, Ariella.

>> Ariella Barker: Yeah, let me just read the question one more time. Which one is it? The -

>> Matan Koch: It is the one that came in at 11:18 am, navigating reasonable accommodations for individuals who live with individual disabilities, is the lead-in.

>> Ariella Barker: Ah, the communications question.

>> Matan Koch: Yeah, but I broadened it so you can speak to essential functions.

>> Ariella Barker: Yes, I'm trying to think of an example of when someone asks for something that would - well, first, I would like to say that, just because you may think that someone can't communicate, for example - I know, personally, Senator Amy Klobuchar's Director of Communications is deaf, so you may think that someone may not be able to perform the essential functions but in fact they can - but an example of not being able to perform the essential functions of the job and would be, trying to think of the many cases that I've had, I guess - okay, well one of them, it's quite outlandish but the NYPD, who's one of my clients, has a requirement that police officers don't take illegal drugs, and an employee that we terminated for, we caught buying illegal drugs on the black market and testing positive for them in a drug test, he believed that he should have the accommodation of being permitted to take illegal drugs for a disability of something that wasn't actually a disability, so something that would like change - and it you know completely - if you were allowing NYPD officers to take illegal drugs, that would completely interfere with their ability to perform that job to the best of their ability. So for a communications position, it would have to be something where that person would need to change the position so much to the point that you're not actually getting the job functions of that position performed by hiring or by filling that position with the person. So, I'm not sure.

>> Matan Koch: And then if I can jump in and add, one of the ways that I often encourage people to think about this is, one often says, "ooh, being a great communicator is an essential function, but that's nebulous - the essential function may be regularly putting out good communications through your email channels for instance, right? In which case the question you ask yourself is "what is the accommodation that allows someone to put out good communication into your email channels?" That's the actual function that you're trying to mention, we don't usually talk about essential functions in terms of a skill like communicating - we look at what the job actually requires. So a great example that I like to think about, just if you don't mind my offering, is, so we wouldn't hire someone to be a sweeper and make the accommodation that they didn't have to sweep, right? But on the other hand, we might make the accommodation that they don't have to sweep with a broom, but they can instead sweep with a different machine that they have that allows them to sweep because our goal is a swept floor. As long as we end up with a swept floor, then the essential function of the job is being met, regardless of how they sweep the floor. On the other hand, if they can't sweep the floor, then the floor is not swept, the essential function of the job is not being met, in this hypothetical, sweeping the floor is what the job actually entails, and so that's often a way that I think about it. I don't know if any of the other panelists have thoughts to offer or we can move on. There's a question that was just posed, "what if you hire someone who - and it doesn't even matter whether the disabilities frankly are invisible or visible, and they end up incapable of doing the job?" Well, I think an important part of Title I at any point is that they have to be capable of doing the job with or without a reasonable accommodation, which means, if you actually have determined while doing good effort and all the negotiating processes that we talked about, that they just can't do it, then of course, sadly, you have to separate - you can't keep someone on that can't do a job: the warning, the thought is, ask yourself have you really gone through all of the negotiation and creativity to determine whether they can do the job. I don't know if any of the other panelists would like to add to that idea.

>> Ariella Barker: Quite a bit. Because I think that that's the most common way in which Title I cases come up, where an employer hires someone, whether they are not disabled at the time or they have an invisible disability that the employer doesn't know about, and then they either acquire a disability or whatever and can't perform the essential functions of the job: I think one really important point is that, even if they can't perform the essential functions of that job, if you have another job that they can perform the essential functions of, you have a requirement to transfer them to the other job or accommodate - you don't have to create a job for them, but you do have to, in some way, accommodate to allow them to continue within your employment, and that requirement even includes so much as, if there's a law in place where under civil service law, you have to take an exam, you have to do this and that to get the position, you still are permitted to transfer them and not make them go through all those processes to get that position.

>> Matan Koch: Thank you. Well, guys, I think we're going to begin to bring it to a close - there are a few other questions in the question box that are really -- I encourage, you may want - if any of the panelists are willing to be reached out to by email, there might be the opportunity to discuss some of these, but I think we've sort of reached the end of the ones that speak to our topic and our broad audience, so now Joshua, if you can bring the presentation back up - I want to thank our panelists, I want to thank them for doing this, I want to thank everyone who's attended this or any of our other webinars. As my colleague Eric Ascher mentioned in the chat box, this presentation is already available on our website and will soon be available along with a video transcript and captions. I also wanted to do a quick teaser that we just released today a guide to help organizations running high holiday services to make those celebrations accessible to all - its RespectAbility in conjunction with over 20 other Jewish organizations, all of whom are also co-sponsors of this webinar series; you can find that guide at the link that is showing up on screen. Again, you will have access to this presentation right after. Thank you for those who stuck with us and please feel free, and we encourage you to fill out the post-webinar survey, but with which you will be receiving an email in the next hour or so. Thank you. Have a wonderful day.