

Introduction to the Fifth Edition

The timing of the Fifth Edition recognizes some significant milestones – 50 years of federal special education statutory policy (1975 enactment of the Individuals with Disabilities Education Act) and 35 years of the most comprehensive disability discrimination law (Americans with Disabilities Act of 1990).

While there have been few statutory changes since 2009 (Patient Protection and Affordable Care Act of 2010 and Every Student Succeeds Act amending No Child Left Behind in 2015), there has been much regulatory activity and hundreds of reported judicial decisions. In addition, emerging issues such as the impact of technology (web developments), COVID, and neurodiversity issues were also factors in the decision to prepare a new edition.

As with the previous edition, not all decisions on every issue are included. Those selected for inclusion are generally all cases from a federal circuit court of appeals and cases that are of particular interest for a range of reasons. Even preliminary rulings are noted in many cases with sufficient description of the issues being addressed to allow the treatise user to know if more research on that case might be helpful in the issue they are addressing. There have been approximately 15 Supreme Court decisions since 2009, all of which are reflected in the supplements, but the new edition provides an opportunity to reflect on the topics of those decisions. Four of the decisions involve education contexts, four involve employment settings, and the others run the gamut from issues in the criminal justice system to hotel websites, and other issues that may indirectly impact disability discrimination law.

The definition of disability has received attention primarily in the context of employment cases. Conditions such as obesity, diabetes, pregnancy related impairments, depression and stress related mental health impairments have been addressed. Due to the COVID pandemic, new issues of whether Long COVID is a disability or being immunocompromised is a basis for protection have arisen in a range of contexts. Although the COVID crisis is not currently a challenge, concerns about other infectious and contagious conditions (such as measles and others) make this an issue important for ongoing attention. Other definitional issues receiving increasing attention are gender dysphoria and neurodiverse conditions. Most recent decisions, however, instead of ad-

addressing whether a condition is covered, tend to focus more on the issue of reasonable accommodations and whether the individual is otherwise qualified. Many stress the importance of an interactive process in addressing accommodation decisions. That is the case in employment and other contexts. The COVID experience of remote work raises a number of legal accommodation issues in the context of disability law. These include whether attendance is an essential function in an array of settings and mandates regarding masking and vaccinations. The increasing awareness of the range of neurodiversity conditions has given rise to judicial attention to when and what conditions are disabilities, whether individuals are otherwise qualified, and the challenge of accommodations in a range of settings. So much litigation has occurred related to COVID that the judicial decisions on education and employment that were originally in Chapter 1, have been moved to Chapters 2 and 4.

Lack of clarity about what is required for website accessibility continues. Title II website regulations have been issued, but current federal administrative treatment of those regulations and judicial attention makes this an ongoing area of flux. What entities in the “web universe” are to be treated as Title III public accommodations and what that means substantively, procedurally, and for remedies remains in a state of flux. These are referenced in Chapter 9 and are discussed in more detail in the Fifth Edition of the treatise.

While there continue to be judicial decisions about treatment of individuals with mental disabilities in the criminal justice system, and while judges often recognize the value of better training, it is rare that a state or local governmental agency is found to have violated the ADA in the treatment of individuals with disabilities. This includes during arrest stages as well as when an individual is incarcerated. Disputes in this area continue.

As noted above, the issue of COVID and its intersection with disability rights issues has received much recent attention by the media and policymakers. Because of the impact of COVID, a new section was added to Chapter 1 in 2022 that incorporates a broad range of issues. The Fifth Edition includes some of the judicial decisions relating to post-COVID disability issues. In addition, some developments are included as appropriate in other chapters (primarily Chapters 2 and 4).

The greatest challenge for us in preparing the Fifth Edition was the floodgate of federal presidential administrative action beginning in January 2025. Before the change in administration,

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some regulations had been issued by several agencies. The Trump administration, however, by Executive Order and agency funding has created questions about what is currently required. Judicial deference to agency regulations and guidance has been revisited, and that adds an additional challenge of uncertainty. For that reason, users of this treatise are cautioned when relying on a citation to a federal regulation or other administrative guidance to check for the most current version of what is required from the Executive Branch. Much is still in flux as this treatise goes to print. The scheduled twice yearly supplements, beginning in 2026, will attempt to reflect how the agency guidance is being applied and interpreted.

Noteworthy is the fact that it seems quite unlikely that any of the major statutes are likely to be changed.

Thank you for subscribing to *Disabilities and the Law*. We value the opportunity to update you on this continuously evolving and complex area of law.

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