

# Welcome!

## New Regulations: Intersection of Territorial Disability Law and the ADA in Puerto Rico and the Virgin Islands

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# Disclaimer



Information, materials, and/or technical assistance are intended solely as informal guidance, and are neither a determination of your legal rights or responsibilities under the ADA, nor binding on any agency with enforcement responsibility under the ADA.

The Northeast ADA Center is authorized by the National Institute on Disability and Rehabilitation Research (NIDRR) to provide information, materials, and technical assistance to individuals and entities that are covered by the ADA. The contents of this document were developed under a grant from the Department of Education, NIDRR grant number H133 A110020. However, those contents do not necessarily represent the policy of the Department of Education, and you should not assume endorsement by the Federal Government.

# Plan for session...



- Quick overview: The ADA
- Does ADA apply to US territories?
- Quick overview: Disability and charge statistics
- Territorial disability law and case law in Virgin Islands
- Challenges in the Virgin Islands
- Territorial disability law and case law in Puerto Rico
- Challenges in Puerto Rico
- Emerging trends & challenges for territorial disability law



# Who has rights under the ADA?



## Applies to people who:

- Have a disability
- Have a record of a disability
- Are regarded as having a disability



## What is a “disability?”

*...A physical or mental impairment that substantially limits one or more major life activities\**

\* [http://www.eeoc.gov/laws/regulations/ada\\_qa\\_final\\_rule.cfm](http://www.eeoc.gov/laws/regulations/ada_qa_final_rule.cfm)

# Five Titles of the ADA



## **Title 1. Employment**

Prohibits disability discrimination in all employment processes



## **Title 2. Accessibility in public entities**

Physical and program accessibility in state/local govt. entities

## **Title 3. Accessibility in businesses**

Physical and program accessibility in restaurants, hotels, stores, places of business

## **Title 4. Telecommunications**

Telephone and communications systems for the public

## **Title 5. Miscellaneous**

Protection from retaliation

# Who must comply with the ADA



Entities with 15 or more employees

Public (government) agencies regardless of whether they receive federal assistance

Privately operated commercial entities (for example, private schools and colleges, banks, restaurants, theaters, hotels, private transportation, supermarkets, shopping malls, museums, recreational facilities, sports arenas, medical, legal and insurance offices)

Some exemptions



# Does the ADA apply to US territories?



**Short answer: Absolutely!**

**Long answer:** Yes, but there are additional problems in implementation and enforcement



# Does the ADA apply to US territories?



When two laws could apply (both federal and territorial), generally the most restrictive law should apply



To bring a lawsuit, a charge must be registered with the EEOC or DOJ offices within 180 days of the alleged discrimination event



# Poverty Rates (%) US & Puerto Rico 2008/2011: With vs. Without Disability



	2008		2011	
	US	PR	US	PR
Poverty W/O Disability	<b>9.6%</b>	<b>37.2%</b>	<b>12.4%</b>	<b>39.2%</b>
Poverty With Disability	<b>25.3%</b>	<b>51.3%</b>	<b>27.8%</b>	<b>52.2%</b>
Gap	<b>15.7</b>	<b>14.1</b>	<b>15.4</b>	<b>13</b>

\*Adapted from: Erickson, W., Lee, C., & von Schrader, S. (2012). Disability Status Reports: United States and Puerto Rico. Ithaca, NY: Cornell University Employment and Disability Institute(EDI). Accessed at <http://www.disabilitystatistics.org>

# Poverty Rates (%) Virgin Islands\* With vs. Without Disability



**% of VI population living in poverty  
(income <\$15,000/year)**

- 22.3% of people with disabilities
- 10.9% of people without disabilities

\*Please note: These statistics are taken from the BRFSS 2010. Hence they are not comparable to the numbers given for PR in the last slide. See <http://dhds.cdc.gov/dataviews/tabular?viewId=808&geoid=1&subsetId=&z=1>

# EEOC Disability Employment Discrimination Charges



## Puerto Rico



	2009	2010	2011	2012
Number	<b>124</b>	<b>111</b>	<b>146</b>	<b>180</b>
Percent of all types of employment discrimination charges in PR	<b>35.6%</b>	<b>31.3%</b>	<b>44.0%</b>	<b>44.2%</b>

- Puerto Rico represents about 1.2% of total US population (3.6 million people)
- Puerto Rico represents about 0.7% of total US EEOC disability discrimination charges

# EEOC Disability Employment Discrimination Charges



## US Virgin Islands



	2009	2010	2011	2012
Number	3	11	5	8
Percent of all types of employment discrimination charges in VI	14.3%	33.3%	26.3%	40.0%

- Virgin Islands represents about 0.04% of total US population (about 107,000 people)
- Virgin Islands accounts for 0.00% of total US EEOC disability discrimination charges (number too small to calculate)

# Virgin Islands Disability Law



## **Civil Rights of Blind Persons – VI Code Title 10, Chapter 9**

Prohibits discrimination against blind people in public services, including transportation, public accommodations, employment, housing, having a service dog, Right-of-way over vehicles while crossing the highway or intersections thereof with a service dog or a can.

## **Access to Public Buildings by Physically Disabled – VI Code Title 29, Chapter 5A**

Established that any public building and parking shall be so designed and constructed as to provide reasonable means of ingress and egress by persons with physical disabilities, and accessible toilets in accessible public buildings' floors. One of the exceptions are jails or other places of detention.



# Virgin Islands Disability Law



## Visitability Initiative



An addition to the VI's Territorial building code, the Visitability Certification Program sets specific requirements for a home to be considered visitable for people with mobility disabilities. The program is administered by the **V.I. Department of Planning and Natural Resources**. A homeowner whose construction meets those requirements can obtain a certificate of visitability and then is eligible for a real property tax credit of 20 percent for 10 years.

<http://virginislandsdailynews.com/news/governor-signs-bill-that-creates-program-to-reward-disabled-friendly-construction-1.1231150>



# Virgin Islands Disability Law

## **Vocational Rehabilitation – VI Code Title 34, Chapter 9**

According to Federal Vocational Rehabilitation Act, establish, operate, and maintain rehabilitation facilities in VI

## **Care of Mentally Ill People –**

### **VI Code Title 19, Chapter 45. Sub Chapter IV**

Established the requirements for care, hospitalization, recording of information, evaluation, maintenance and Transportation, of people with mental disabilities



# Recent Case Law Virgin Islands



## Title II – Informal Settlement District of VI

A local government department agreed to provide access to its programs by making the parking, the routes from the parking lots to the entrance, the waiting areas and other public areas, the employee work areas, and the restrooms accessible

<http://www.ada.gov/aprjun10.htm>

Title III --DOJ vs. World Fresh Market, LLC (DBA) Pueblo

<http://www.ada.gov/worldmarket.htm>





# Law and Policy challenges unique to VI



Need for more awareness of ADA rights both within and outside disability community

2 different enforcing bodies—Confusion about how to bring a charge?

- EEOC (ADA Title I--Employment)
- DOJ (ADA Titles II & III—Accessibility)

Length of time to process an ADA charge

Small population— “Everyone will know” effect?

Need for increased communications from federal agencies?

The “digital divide” might impact the VI

# How to bring a charge in VI...



**To bring an employment-related charge in either PR or VI**

## *EEOC Office*

525 F.D. Roosevelt Ave.  
Plaza Las Americas, Suite 1202  
San Juan, Puerto Rico 00918-8001  
Call: 1-800-669-4000

**To bring a charge about physical or program accessibility in VI:**

*Virgin Islands Department of Justice*  
Office of the Attorney General  
34-38 Kronprindsens Gade  
G.E.R.S. Complex, 2nd Floor  
St. Thomas, VI 00802  
340-774-5666 ext. 170, telephone

*Department of Justice*  
Office of the Attorney General  
Design Centre Building  
6040 Castle Coakley  
Christiansted  
St. Croix, Virgin Islands 00820  
(340) 773-0295 ext. 203, telephone

# About territorial disability law in Puerto Rico



## Here are some key PR laws:



Bill of Rights of People with Disabilities – Law #238 of 2004

[www.lexjuris.com/lexlex/leyes2004/lexl2004238.htm](http://www.lexjuris.com/lexlex/leyes2004/lexl2004238.htm)

Established the PR Government public policy regarding people with disabilities and a list of civil rights of this population in PR

Non-Discrimination Against People with Disabilities Act – Law #44 of 1985

<http://www.lexjuris.com/LEXMATE/Impedidos/lex1985044%20Ley%20para%20Impedidos.htm>

Established the prohibition of disability-related discrimination in employment and, public and private services in PR

# About territorial disability law in Puerto Rico



Integral Educational Services for People with Disabilities (Special Education Act) – Law #51 of 1996

<http://www.lexjuris.com/LEXLEX/lexcodigoc/lexedimpedimentos.htm>

Established the special education policy in PR

Mental Health Act – Law #408 of 2000

<http://www.lexjuris.com/LEXLEX/Leyes2000/lex2000408.htm>

Established the public policy and procedures regarding mental health in PR

# About territorial disability law in Puerto Rico



Assistive Technology Equipment Warranty Act – Law #402 of 2000

<http://www.lexjuris.com/LEXLEX/Leyes2000/lex2000402.htm>

Established the rights and responsibilities of consumers and assistive technology suppliers, regarding this kind of equipment

There is additional legislation regarding people with disabilities in PR. For more information contact our PR Affiliate at (787) 758-7901 ext. 1021 or [lcdaguardiola@gmail.com](mailto:lcdaguardiola@gmail.com)

# Puerto Rico Disability Case law



## Title I



Public Employer: DOJ vs. PR DOJ -

[http://www.ada.gov/puerto\\_rico\\_doj.htm](http://www.ada.gov/puerto_rico_doj.htm)

Private Employer: EEOC vs. AT&T -

<http://www.eeoc.gov/eeoc/litigation/selected/adaaa.cfm>

AT&T/Centennial De PR: (D. P.R.) filed 9/30/11 by Miami District Office - The Commission alleges that Defendant failed to provide a reasonable accommodation to the Charging Party, who is blind as a result of diabetic retinopathy

# Puerto Rico Disability Case law



## Title II

DOJ / Municipality of Fajardo:

<http://www.ada.gov/fajardo.htm>



DOJ / Municipality of Guanica:

<http://www.ada.gov/guanica.htm>

## Title III

DOJ vs. Modern Hair Stylist Institute:

[http://www.ada.gov/modern\\_hairstyling.htm](http://www.ada.gov/modern_hairstyling.htm)

# Law and Policy challenges unique to PR



Need for more awareness of disability and sensitivity.

Need for more awareness of ADA rights both within and outside disability community

4 different enforcing bodies—Confusion about how to bring a charge?

- EEOC (ADA Title I--Employment)
- PR DTRH (Federal & Territorial Disability Employment Discrimination Laws)
- DOJ (ADA Titles II & III—Accessibility)
- OPPI – (Territorial Agencies and Private Services)

Length of time to process an ADA charge

Need for increased communications from federal agencies?

The “digital divide” might impact some people in PR.





# How to bring a charge in PR...



## To bring an employment-related charge in PR



EEOC Office  
F.D. Roosevelt Ave.  
Plaza Las Americas, Suite 1202  
San Juan, Puerto Rico 00918-8001  
Call: 1-800-669-4000

PR Department of Labor and Human 525  
Resources (DTRH) Anti-Discrimination Unit  
Unidad Anti-Discrimen  
Metro Center Building, Mayaguez Street  
San Juan / Call: (787) 754-5806

## To bring a charge about physical or program accessibility in PR:

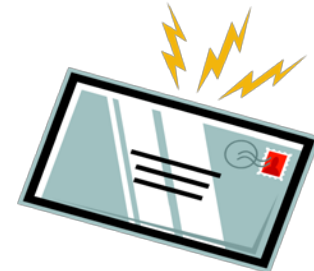
Ombudsman for People  
with Disabilities Office (OPPI)  
670 Ponce De Leon Ave.  
Caribbean Office Plaza  
San Juan, Puerto Rico 00907  
Telephones: (787) 725-2333  
1-800-981-4125

Department of Justice  
Office of the Attorney General  
350 Chardon Ave.  
Chardon Towel Bldg. Suite 1201  
San Juan, Puerto Rico 00918  
Telephone: (787) 766-5656  
ADA TA Line: 1-800-514-0301

# How to bring a charge in PR with the DOJ



- **By US Mail:**  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Civil Rights Division  
Disability Rights - NYAVE  
Washington, D.C. 20530



- **By email:** [ada.complaint@usdoj.gov](mailto:ada.complaint@usdoj.gov)



- **By Fax:** (202) 307-1197



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# Emerging trends and issues in both VI and PR...



- Veterans with disabilities
- Tourism/hospitality is a major economic sector in both territories
- Higher levels of poverty generally in VI and PR
- More historic properties make accessibility a challenge
- Digital divide—More difficult to build awareness and knowledge of people’s rights when information is online

# Emerging trends and issues in both VI and PR...



BEAT member Peter Tan demonstrating how impossible it is to board a bus.

- Transportation is a big challenge for PWD in both territories.
- Health Care Reform applies different to this territories. Access to high quality health care may be a challenge.
- Need to Improve Emergency Preparedness & Management for People with Disabilities
- Lack of knowledge about the law and how to file a complaint still there.



Any thoughts/  
questions...

# NEADA Upcoming Webinars



***October 9, 2013: ADA Basics: What DSP's Need to Know about the Employment Provisions of the ADA***

2pm-3pm EST

<http://www.ilr.cornell.edu/edi/register/index.cfm?event=4479>

***October 30, 2013: Interacting with Individuals with Disabilities in Law Enforcement***

1pm-2pm EST

<http://www.ilr.cornell.edu/edi/register/index.cfm?event=4417>



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