

Employment Discrimination

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Presenters: Mark Sorokin, Sarah Weiber

Mark Sorokin: My name is Mark. I'm the trial attorney with the Federal Governments Equal Employment Opportunity Commission. I've been with them for about five years and do both trial attorney work and federal sector work. So I can speak to the experience of people who actually work for the federal government and have had employment discrimination in that area.

Sarah Weimer: I'm a trial attorney for the Arizona Center for Disability Center for Disability Law, ACDL. I have also worked for the federal government in the past. I also help people with employment discrimination complaints. The ACDL helps people who have disabilities regarding employment matters. If you have a problem with employment discrimination, you can call us. Maybe you'll go to a place for public accommodation. And they have problems there. Then you can call us. We can help you.

Mark Sorokin: The Federal Equal Employment Opportunity Commission deals with employment discrimination matters both in the federal sector and in the private sector. So we enforce Title VII, which deals with race, color, natural origin, sex, and sexual orientation. And we also deal with age discrimination. So if you're over 40 years old and you feel like you've been discriminated against then we deal with that. We also deal with The Americans with Disabilities Act: the ADA, and that covers employment discrimination for a number of disabilities. Sometimes we take cases to court and we litigate those cases.

We can't have an office in every state because the republicans keep taking away our money. So we work with employment practice agencies in every state to help us collect those employment discrimination complaints. We investigate them and sometimes we take them up. So we have contact with various employment practice agencies in state. In Arizona it's with the Arizona Center, Arizona Civil Rights Division.

Sarah Weimer: What is employment discrimination? It's when an employer takes an adverse action against you because of your disability, such as when you apply for a job. They don't hire you because of the disability or an adverse accountable. If they fire you or discipline you without providing reasonable accommodations, those are those are adverse actions if they are based on your disability.

Mark Sorokin: Now “adverse action” is a legal term. Denying you communication aids are considered adverse actions. You could have captioned telephone. You could have CART. You could have a service animal. E-mail. Instant messaging. You can have accommodations and changes made to your actual work plan. In some situations depending on your disability, your job may need to be restructured. But, it's important to make a distinction between essential job function and ancillary, non-essential job functions. Non-essential job functions can be useful, but if you can't do the essential functions of the job, that is where some issues could occur.

Sarah Weimer: I want to talk about e-mail. It's hard for me to get verbal instructions. So I ask people to give me e-mails. I rely on emails both as a primary communication tactic and for follow-up, as well.

Reasonable accommodations: You may need part-time or modified work schedules. The job can acquire or modify equipment or devices such as a captioned telephone. You can ask your employer to modify training materials, policies, or examinations. For example, if your employer has a training video, you can ask for a CART transcript of that video, and then afterward you can listen to the video without captions. That would be a modification of training materials.

Mark Sorokin: Another interesting example of modifications: the Commission is litigating a case against FedEx. The problem in this case is with the scanner, a device that FedEx drivers use. They scan the box and it makes an audible beep to let the drivers know what they're supposed to do with that box. Does it go left or right? Up or down? Obviously if you can't hear the beep, you need an accommodation. The modification would be to have a device that vibrates instead of beeps. With just a little bit of a modification, the vibration allows the driver to do the same job.

Sarah Weimer: Another example of reasonable accommodations includes reassigning a person to a vacant position. Maybe you have a job that requires you to do something that is impossible. You can ask for a reassignment to another position. You can also share duties between coworkers. If you have to make a telephone call, you can use a captioned telephone or ask someone to make the call for you.

Mark Sorokin: Another example would be if you had a very physically demanding position. If you were a truck driver that required a commercial truck driver license, you could ask the company to reassign you to a desk job where you don't actually have to drive a truck because you can't physically qualify for the license. Or you could drive a truck that does not require a special license.

Sarah Weimer: I did work on this issue recently with a deaf person. He wanted to get a CDL (commercial driver's license). He had to apply for an exception to the hearing standards from the Department of Transportation. That constituted an accommodation.

Other kinds of accommodations include changing how a job is performed, getting emails instead of phone calls, flexible leave policies, paid or unpaid leave, going to a doctor's appointment, all depending on your disability.

Mark Sorokin: How you ask for reasonable accommodation really depends on the type of accommodation you're looking for and on your company's policy for how to request the accommodation. For example, if you're only looking for a couple of hours to go to an audiologist appointment, you could work that out with your supervisor. But if you need something of a more permanent change in your work schedule or a permanent change in how meetings are conducted, that's something where you'll have to make a more formal accommodation request. There is no magic language. You don't have to say "I have a disability and because of the ADA you're required to give me a reasonable accommodation.." You don't have to do that. Rather, you confide in your boss with something like, "Look I'm having a problem. My hearing is affected." Or, "I'm having a hard time hearing you and understanding what's happening in the meetings. So can we do something about that?" That would be good enough. However, you still have to look at the company's policy to see if legal assistance is possible.

Audience Member: Do you recommend that we notify the employer after we get the job that we have a hearing loss so it's on record and if something happens later, we can justify it? Or do we wait until something arises and then let them know we have a hearing loss?

Mark Sorokin: I think it's better that you let the employer know that you have a hearing loss because then it removes an ambiguity. But at the same time, I recognize that every situation is different. Every working relationship is different.

Audience Member: What I did at my work was a lot like coming out of the closet. After I was hired, I just dropped it into the conversation about my hearing loss and hearing aids. Someone said, "Oh, I didn't notice those! I've used them for years." So the information exists without it being a major announcement.

Audience Member: Obviously, you don't mention your hearing loss before you get hired. But legally are you in trouble if on that application it asks whether you have anything that prevents you from doing so and so and you answer, "No."?

Mark Sorokin: I think you're raising a couple of different issues. Every situation is different. Every situation is fact specific. In one case we may be able to find discrimination; in another case it may not work because of the specific facts in that case. In one situation, it will work and allow for a positive working

relationship. Sometimes that can't happen. If, for example, you have a hostile employer. Then it is very important you have your hearing loss on record and they know about your hearing loss. Then you're in a better position if you're ever denied an accommodation.

Audience Member: Okay, I was just asking about on the job application?

Mark Sorokin: On the job application, it's a very different story.

Audience Member: How can they even ask that? Isn't that discriminatory?

Mark Sorokin: No, they can't ask. But it comes up, for example, if you have a resume. You submit your resume and demonstrate that you went to Gallaudet. Or you went to NTID for your bachelor's. They're going to put two and two together and figure out you're deaf.

Audience Member: I was just thinking on the application I saw somewhere it said do you have any limitations that would prevent you from

Mark Sorokin: There are two ways to finish that question. The first way is, can you do this job with a reasonable accommodation? That's okay. That's fine because it's that action that determines whether you can do the job.

Audience Member: Okay, so you would answer yes, you can do the job.

Mark Sorokin: You say, yes. The other way of asking is, Do you need a reasonable accommodation to do this job? That would be bad because that would be asking you if you have a disability that needs to be accommodated.

Sarah Weimer: What if I have been offered a job and then say that I need a captioned telephone. Who do I contact to talk to about getting a captioned telephone? I mean there's no perfect time to ask that. Any time after you get the job, say what you need. I recommend just asking them for what you need. I know some job applications ask if you have a disability. For example, USA Jobs ask but answering is voluntary, right?

Mark Sorokin: I would have to look at the question, but definitely they're not allowed to ask if you have a disability.

Audience Member: Can I help you answer that as a federal employee? If anyone is ever interested in a federal government job there is a specific section, Schedule A, of USA Jobs' website. Go to USA Jobs and click on Schedule A. That allows you to apply for a federal job anywhere in the country or anywhere in the world. You file your application under Schedule A if you have a disability. All the information about what kinds of disabilities are covered is there on the website but it's very broad. It's very broad. All you have to do is get a letter from a

physician or a company medical professional or your audiologist that says you have a Schedule A qualifying disability and that's it. You disclose nothing more in that application's process. I know people who have been hired under that process and it does give people with disabilities preferential treatment.

Mark Sorokin: I was hired that way by the federal government. I didn't have to go through the competitive process because of USA Jobs Schedule A section. This is not discriminatory, it just you a chance to bypass the regular competitive process, which can be very competitive.

Audience Member: I know the federal government rules differ from state to county. I'm a county government employee and I know there are various differences. But overall, doesn't employment opportunity apply to all levels of government?

Mark Sorokin: Yes. But county employees are covered by the private sector process. We're definitely going to cover the private sector process. The EEOC covers it.

Sarah Weimer: I would recommend that you submit a request for reasonable accommodation in an email. I recommend that because I have seen cases where someone said that she I asked for accommodation on this day and time. But she had no proof. It really helps if you ever have to file a discrimination complaint to have your request in writing. You have an e-mail. It says you asked for this on a specific date and time. Here is the e-mail response.

Once you ask for a reasonable accommodation, the employer should respond promptly to your request. Under the ADA, employers must work with employees and ask what they need. You need to make sure you have what you need to be able to do your job. The employer can provide other accommodations, for example, CART or if you prefer, an ASL interpreter. They don't necessarily have to give you exactly what you want. It depends on the situation.

Audience Member: My question is about my job, one that I got hired for that was wonderful for a long time. Then it got worse and I ended up leaving. My employer asked me what I needed. Since I was newly late deafened, I said I was not sure. I said, "I'm not sure, either an interpreter because I sign, or CART. Right now I think either one, doesn't matter to me. Whichever is cheaper for you would be fine." My employer considered it my job to say exactly what I needed and I didn't know. I didn't grow up deaf.

Mark Sorokin: I can't say right now whether that was wrong or not.

Audience Member: I'm just saying that it is a challenge. You don't have to tell them it must be exactly this. They have to have flexibility. The problem was I didn't know what I needed.

Mark Sorokin: Right.

Audience Member: What are my rights?

Mark Sorokin: You can rightfully ask them to research the issue for you. I can't say what they did was absolutely wrong. The reason I say that is it seems like they were willing to provide you with whatever you needed.

Audience Member: But my skills weren't up to the task!

Sarah Weimer: The Job Accommodation Network, JAN, can help here. I'm not sure if private employers can contact JAN to figure out what accommodations they can provide. You can certainly contact JAN to figure out what you need.

Audience Member: I can speak to that. The Job Accommodation Network, www.askJAN.org, has a website that you can go to with a realtime, live chat feature so you can chat with an accommodation specialist. They have two people at JAN who specialize in sensory disabilities. You can also e-mail JAN at the same e-mail address, askJAN.org. The website also has a searchable database for hearing loss with all kinds of publications and all kinds of accommodations and effective communications strategies for the workplace. JAN is funded by the United States Department of Labor. It is completely free. They can help any employee with a hearing loss understand their hearing loss, its effect on their functional capacities, what types of accommodations will most likely be effective, how to get a hold of those accommodations, and who makes them.

Audience Member: You can also contact your state's Vocational Rehabilitation since a lot of times, the employer doesn't know who you should contact. It's important for you to ask questions; have you contacted Human Resources? Human resources might know who to contact.

Mark Sorokin: Of course, you can Google the question. You can get on the Internet; something will come up.

Audience Member: I guess it depends on how big the organization is or what type of agency but most jobs have a web services (WS) unit where somebody knows about technology. You have to have the system you use compatible with the system that your company or agency operates under. So if you need a CapTel then your WS or your information system or your technical people should be able to help you with that. You don't have to figure that out. That's their job.

Mark Sorokin: The employer has to engage you in an interactive process once they realize that you have made a request for a reasonable accommodation. The law requires direct communication between the employer and the employee. The employer has to consider the request and they have to offer an accommodation that is reasonable and effective. It's an interactive process. But the important part

is that the employer has to take steps to help you and try to work with you. If they don't work with you, then that could be a violation.

Recently there was a case in Colorado where an assisted living facility received a request from an employee with physical and mental disabilities. She requested to work a half schedule for a week. Just a week. She requested to have the lights adjusted in her office and she requested an ergonomic chair. Three requests. Sounds really easy. The employer's answer was, "Oh, you can't do your job unless we have to provide that. So go home." They didn't even talk to her. They didn't even try to clarify her request. They didn't even try to provide an ergonomic chair. Nothing. So because of that, the assisted living facility paid her over \$100,000. But I do have to mention that the employer has discretion of what kind of accommodations to provide. You may be asking for interpreting, but they may think that CART is more effective given the situation. You may have asked for an interpreter for a conference, but since there may be some other deaf people in the conference, the employer provides CART just to cover its bases. That's fine. They just need to offer some kind of accommodation.

Sarah Weimer: Some examples of employment discrimination are first of all, not providing reasonable accommodations. Not hiring because of your disability, not promoting you because of your disability, disciplining you because of your disability and terminating you because of your disability is a short list. There are other examples.

Mark Sorokin: One I call the Bermuda Triangle is particularly important. EEOC covers this under the ADA. Taking medical leave is covered under FMLA (family medical leave act). Most people have heard of FMLA under which you get to take 12 weeks of leave for any kind of medical problem. But what happens if you're not covered by FMLA because you've not worked for the employer long enough or if you've already taken twelve weeks? Leave is a reasonable accommodation. Thus you have to consider the request for leave under both the ADA and FMLA. Even if FMLA does not cover you, the ADA may cover. It may give you another couple of days or weeks. Or it may give you a few weeks where you couldn't even get 12 weeks to begin with.

Also they cannot ask you questions about the disability on the job application. No. And they cannot make fun of somebody's speech or something like that. Can't do it.

Sarah Weimer: There is a limited way an employer may ask you questions about your disability. During the job interview, the employer may ask you about your ability to do some job functions and they ask you to describe how you would do the job. For example, if you apply for a secretary or receptionist job, the employee may ask how you handle phone calls. And you can tell them you use a captioned telephone.

Mark Sorokin: I actually had this happen to me. I was interviewing with a big law firm. I had gone through three rounds of interviews between me and one other person. When I went in for the final interview, she asked me how I would use the phone. I demonstrated how my VPS works. Virtual private servers were very new at that time. I went into another office and told her to phone call me. That showed her how the VPS works and I got the job. So I demonstrated how I can use the phone and could talk with others.

Sarah Weimer: I had to do the same, as well. I ask for CART. The court has provided CART for trials. If they ask me about my disability, such as how deaf I am or how much I can hear, that's not okay. They can only ask you a question about your disability if it's related to the job and it's necessary for business. For me that would be a question about how I do trials, that is, job related.

Audience Member: What happens when they do ask again and again? "Are you really that deaf? I see you listening to things! I see you respond! You say they can't do this, but what do you do when they do? So many of my friends have their bosses saying, "But you're not really deaf."

Mark Sorokin: You can tell them right off the bat that that is an inappropriate question. And you can certainly e-mail them right after the interview and they'll know that they asked you that question. That will force them to respond to you. Will they admit to it? Probably not. But at least it's something. You can try to do something. You never know, they may be caught by surprise. But they may make an admission. Then you can take that e-mail to the EEOC and tell the Commission that your boss asked me about my deafness. That is the very least you can do, I think.

Sarah Weimer: What to do if an employer discriminates against you: it depends on who the employer is. Is it the federal government or is it a private employer? Is it a temp agency or a labor union. We will start with the private sector process first.

Mark Sorokin: Title I of the ADA says employers may not discriminate against employees who have a disability. But what's important to keep in mind is you have to work in a company that has 15 or more employees. That number can be fuzzy. Two companies working together and they collectively have more than 15 people. You can have one company that owns ten companies. Each of them has a single employee. You never know. So the bottom line is an employer has to have 15 employees for ADA to apply.

Audience Member: Does that mean that the employee has no protections if the employer employs fewer than 15 employees?

Mark Sorokin: Yes and no. It depends on what the state law is. It means the federal government can't go after that employer. But sometimes a state law may cover instances where there are fewer than 15 employees.

If you've been discriminated against, or you believe you've been discriminated against in Arizona, you can file a complaint with the Commission. Since we don't have EEOC offices everywhere, so you can also file with your state's Fair Employment Practices Agency, (FEPA). The Arizona Civil Rights Division is the FEPA for Arizona.

You have 180 days to file from when discrimination happens. Think about timing. If there's FEPA, then you get 300 days to file with the Commission, about 10 months. If you miss that time requirement, you can't file a charge anymore. It's a little bit different from most civil actions, in which you have about a year or two years or five years. You have a lot of time. With employment discrimination, you don't have that much time. You have six months, eight or ten months, and then after that the employer is free and clear. You have to be very careful about how much time you take to think about filing.

Sarah Weimer: The EEOC and FEPA have a shared agreement. If your state has one, they will process and investigate your charge of discrimination. You only have to file with one agency and tell them you want to file with the other agency. For example, at the EEOC they have to file for the charge of discrimination.

Mark Sorokin: There are two small boxes at the top of the form in Arizona, a box for ACRD and EEOC. You can check both of them.

Sarah Weimer: In other states do they have a line for the name of the state?

Mark Sorokin: Yeah. They have a line for the state FEPA.

Sarah Weimer: When you file with one agency, it automatically files with the other agency. But only if your state has a FEPA. If your state does not have a FEPA, you need to file with the EEOC.

Mark Sorokin: I think it's self explanatory. Go to the Commission's website or go to ACRD's website about how to file.

After filing, then what happens? Their investigator will review your charge. We may ask the employer to provide a statement. If we think what has been submitted states a valid claim, and if there no timing issues, then we will go ahead and ask the employer to give us their side of the story. But if there's a problem with the claim, if it doesn't pass muster, then we'll let you go ahead and send it back to us again. We may ask for a position statement and once we get the position statement, we'll give you some information about what the employer

told us. And we'll ask you to explain any problems you have with that statement. For example, the employer may say, "Oh, he's a bad employee. He doesn't do his work. He bothers other employees. We had to let him go because he's a terrible performer." And you say "no, no, no. That never happened. I was a good employee. I can tell you because I have this stack of e-mails right here saying great job." ACDL can help you write a rebuttal response.

Sarah Weimer: I help people write their responses to their employer's position statements.

Mark Sorokin: Actually, getting Sarah's help is a good idea. You don't want to put something in writing that could hurt you down the road.

Sarah Weimer: Right. Some people who write an e-mail saying, "No, they're a liar. They're a liar," I will sometimes e-mail the EEOC investigator if I think the case is a good case. I will e-mail the investigator that I need time to file a response on behalf of this person. From my experience, the EEOC investigators have been fine with that. They want a more formal response and I send it to the EEOC for them. Then what?

Mark Sorokin: That's my area, the investigative area. We investigate, which means a whole bunch of different activities. We'll ask the employee a question. We'll ask them for documents. We'll interview the supervisors. We'll review a whole bunch of facts. If we find that there's case for discrimination, then we are required to conciliate the claim. Conciliation is a legal word that appears in the statute. We have to conciliate and try and make everybody happy. If we fail conciliation, for example if the employer gets that paper saying that we think they discriminated against the employee and they say, "Oh, the hell with that," we then make a decision whether to litigate the case. That's when it comes to my desk and I have to think about whether this is worth the limited resources that we have. What kind of case do we have? What kind of message are we sending when we litigate this case?

If we decide to litigate, you find an attorney to represent your interest. There are a lot of reasons why you may or may not want to do that. You may want to do it because you have other claims. You may have a breach of contract claim. Maybe your supervisor actually hits you over the head with a baseball bat and that made you deaf. We can't cover that. But you can go get the attorney and cover that.

There may be other reasons why you may not want to intervene. For example, if you sign the agreement with the company agreeing to arbitrate your claims, which means you go to a private person, or if you submit your claims to the arbitrator, and the arbitrator decides whether you get any money. If you decide on that kind of agreement, it overrides the other agreement. You could lose your

chance to get satisfaction. You want to be careful and make sure it's okay to intervene.

Sarah Weimer: We file lawsuits on behalf of people, not just for one person. The EEOC advocates for as many people with disabilities as possible, not to give just one person a pile of money. We can file a motion to intervene. We represent the client.

Audience Member: I had a situation about five or seven years ago when I went to mitigation with the EEOC with my employer. At the time the investigator did a few things, I found out subsequently, that were wrong. One, she kept urging me to mediate, and after about six hours of going back and forth with mediation, she said that it was all about forgiveness. She was almost pushing me to include this. I also requested an interpreter several weeks beforehand. She did not push the EEOC office to not provide an interpreter because she said it's not in the budget. By the way, this was only five or six years ago. The whole thing actually just collapsed because I really didn't have anyone behind me supporting my efforts. I guess my question would be, if you were to file a complaint against the EEOC, what's the time limit?

Mark Sorokin: I don't know the answer to that because I don't think there is a time limit. You're talking about a case well passed in time. I think it's more like a personal complaint rather than a complaint about employment discrimination. What I'm thinking is that you would probably file a complaint with the director of that office. Explain what happened to you. You're talking about mediation. Mediation happens before we investigate anything.

The investigator who you were talking with was a mediator. That's separate from investigating. The mediator's job is to try to resolve the case before it goes any further. So it's her job to address that first. Of course, you should stand up and say I can't go through this if I can't understand anybody here. And say you won't go forward with mediation until you get the interpreter. That's completely within your right. Since I don't know the facts of the case, what she said about forgiveness... Maybe, maybe not. But you should have had the interpreter. EEOC has a budget for that.

Sarah Weimer: If EEOC or ACRD decides to file a lawsuit on your case, you will get a letter of a Notice of the Right to Sue. And they tell you that you have 90 days to file a lawsuit in federal court or you lose the right to do it for that employment discrimination case. The employer is free and clear if you take no action within 90 days. If you don't understand the letter, you need to call the investigator and ask them to explain it to you. You may want to talk to attorneys. I recommend that you talk to a private attorney. They have to have time to prepare a lawsuit. It takes a lot of time to get a lawsuit ready. You have to file a complaint. You have to investigate the case. You have to develop an argument.

Audience Member: If you see that the EEOC or a state civil rights division doesn't find discrimination, is it really worth it to file a private lawsuit? If EEOC doesn't find problems, will the judge?

Mark Sorokin: I can't answer that question because it really depends on a lot of factors. We may not be able to get information from the employee that would show discrimination. But it's entirely possible that you could find an attorney who's willing to take your case on a contingency fee. The attorney may be willing to do a lot more investigation. It really depends on the facts of the case. If we don't find discrimination, you have to understand that we go by a 51% standard. That means that the case may have been very, very borderline. Could it have been discrimination? Could it not have been? We don't know. Maybe you can take it on your own. You may be able to persuade a jury of 12 people that it was discrimination. So it depends.

Audience Member: As a private attorney who has done some of these in the state of Washington where we have an excellent state law, the drill is you file with the EEOC first. They investigate and it turns out to be kind of a no lose deal. If they find discrimination and decide not to sue for whatever reason, that can be introduced into court as partial proof of evidence that leads to discrimination. The cool thing is if they don't find discrimination, the employer can't write that (no discrimination) that in. We let these EEOC guys do discovery and then get the Notice of the Right to Sue letter and investigate the case. Don't give up. Just take the packet that they managed to put together. Take it to your private attorney and see what they say.

Audience Member: Can you just touch on briefly what appears to be the catchall of the ADA, the undue hardship thing? If an employer has fewer than 15 employees, the employer can always claim undue hardship. But how far can they claim an undue hardship? We can't let you work part time because of limited resources because it costs too much. How far can they go?

Sarah Weimer: We have the federal sector process. Basically, if you file for a federal job and you feel like there was discrimination, you can contact the EEO's office and tell them you want to file a discrimination complaint and go from there. You have 45 days to contact the office. It's different from the private sector process.

Mark Sorokin: We have a whole bunch of remedies available. They can be required to give you your job back. They can be required to reinstate you to where you would have been if you hadn't been discriminated against/. That includes back pay and benefits. You may be able to get front pay. You may be able to get a whole bunch of things. Attorney fees, expert witness fees, all the costs of litigation. The company that discriminated can be required to train the employees and the supervisors.

Sarah Weimer: There are basically two reasons that an employer can argue against your employment discrimination claim. A reason for not providing reasonable accommodation, the employer can say we can't provide CART because it causes undue hardship on our business. They're too expensive or too complicated, whatever. Or two, there are no reasonable accommodations available that would allow you to do your job.

Mark Sorokin: First of all, what's an undue hardship? Who knows really? It depends on the size of the business. It could be very difficult for WalMart to ever say that providing interpreters is an undue hardship. But if you work for a law firm that has 16 employees, that's a little bit closer. You have to bring in a lot of financial figures and think about whether the law firm actually can afford to pay for this. Is it an undue hardship for a company to make every single aspect of their entire building across the country wheelchair accessible because one guy in Tennessee asked for a wheelchair ramp. That really wouldn't work. It would not be unreasonable for them to put in a wheelchair ramp where he was in Tennessee. An employer can also say that there are no reasonable accommodations available.

But of course make sure that you stand up for your rights. Make sure you have an interpreter or some other accommodation if you need it.

Sarah Weimer: Your state FEPA can represent you. Just contact them and ask can you, FEPA represent me? We may or may not be able to. It depends on how busy we are. But I have represented people before.

Mark Sorokin: Now about retaliation. If you file a complaint or request an accommodation with the ADA then you are protected. If the employer takes the adverse action against you because you engaged in that protected activity that would be retaliation. You can file a new charge based on that.

Sarah Weimer: Sometimes if you go through that process, it makes your case stronger. If the employer retaliates against the employer, that's stronger than the first charge.

Mark Sorokin: You need to keep records along with the time line of events so you have evidence. Because if you have proof of excellent performance, and then file claiming that you didn't get any accommodations, and then your employer provides accommodation the next day, your records and time line of events are very strong evidence.

Sarah Weimer: We talked about how P&A, protection and advocacy system, can help you. We can help you file a charge. We can help you write a response. We can represent you at mediation or hearings in a lawsuit.

Audience Member: I just have a question about a planned company event being job related. An example is where federal government is offering something for all its employees. It may be on a personal development for me specifically but for everyone, like CPR certification. It doesn't have anything directly to do with you doing your job. But it's being offered to everybody. And you're a deaf or hard of hearing person and you want to take it also. Do they have to provide a reasonable accommodation?

Mark Sorokin: So you are talking about something that's being offered to all employees in your industry.

Audience Member: Everybody in the agency but it's not related to the job. It's a personal development offering that can help anybody. If you become certified, you may save a life.

Mark Sorokin: I got it. You're talking about a situation where if you did not get the accommodation, then the employer would be treating you differently based on your disability. They have to provide you an accommodation. In this case you're still talking about the conditions of your employment. You're still talking about something where they're giving it to other employees, but they're not giving it to you.

Audience Member: I'm dealing with something right now because I just lost my hearing. I work as a substitute in a school district and all our jobs come through by the telephone. Since I can't hear on the telephone now, I'm asking people to be able to contact me in a different way. They ask me for suggestions.

Sarah Weimer: Have you asked them to email you or text you?

Mark Sorokin: They can text you. I have seen systems that will send out notifications by email or text. The school district probably doesn't want to take the time to figure it out. So make a request. What state?

Audience Member: Nevada.

Mark Sorokin: You can contact the Los Vegas office at the Commission and talk with them about it. They will ask you if you're willing to file a charge. They'll give you more information. And then they'll investigate.

Audience Member: I just wanted to suggest that you might want to think about a visual voice mail transcription service. What I'm talking about is something different. It's a voice mail transcription service. The people at Job Accommodation Network can help you locate visual voice mail transcription service and that can make a huge difference.

Mark Sorokin: Thank you for mentioning that because I've actually used that in the past. You get a phone call. You let them leave a voice mail as they would leave a voice mail on any phone. You authorize this service to pull the voice mail, transcribe it, and send you an email. Your email has all the details, what time they called, what phone number called you and the message.

Audience Member: That doesn't work with that because you have to punch in a code. You have to give your password before they will give you that information.

Sarah Weimer: Google Voice. I have used Google Voice in the past.

Mark Sorokin: You can certainly make a request for a reasonable accommodation. You can also refer them to JAN which can help you find a good solution as the Job Accommodation Network may be able to talk with you and help you figure out a way to do it if it has to be done.

Audience Member: The proprietary service that we use is called Grasshopper and it's a part of the Citrux voice mail system. When someone leaves a voice mail for me, I get an email that tells me I have a voice mail and there's a speech-to-text transcription of that voice mail that appears in my email message box. If I want to still try to listen to the voice mail, I can. But the important thing is I have the speech-to-text translation appearing in that email.

Mark Sorokin: At any rate, go to the Job Accommodation Network. That should be a good start. Thank you very much.

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Glossary

ACDL	Arizona Center for Disability Law
ACRD	Arizona Civil Rights Division
ADA	Americans with Disabilities Act
ALDA	Association of Late Deafened Adults
ASL	American Sign Language
CART	Communication Access Realtime Translation
CPR	Cardiopulmonary Resuscitation
EEOC	Equal Employment Opportunity Commission
FEPA	Fair Employment Practices Agency
FMLA	Family Medical Leave Act
JAN	Job Accommodation Network
NTID	National Technical Institute for the Deaf
P&A	production and advocacy system
VPS	virtual private server
WS	web services

Mark Sorokin is a trial attorney with the Equal Employment Opportunity Commission. He also has trial attorney work and federal sector work in employment discrimination.

Sarah Weimer is a staff attorney at Arizona Center for Disability Law, ACDL, where she practices in the areas of civil and disability rights, and employment discrimination among others.