



# 5<sup>th</sup> Annual Disability Law Conference



Presented by:

*NJ Division on Civil Rights*

[www.NJCivilRights.org](http://www.NJCivilRights.org)

*February 29, 2008, New Brunswick, NJ*

Topic:

**Protecting People with Hearing Loss:  
How the N.J. Law Against Discrimination  
Protects Your Civil Rights**



## Presenters:

Director **J. Frank Vespa-Papaleo, Esq.**

NJ Division on Civil Rights

Office of the Attorney General

Email: [director@NJCivilRights.org](mailto:director@NJCivilRights.org)

Deputy Attorney General **Anne Marie Kelly**

NJ Division of Law, Civil Rights Section

Office of the Attorney General

Email: [AnneMaire.Kelly@dol.lps.state.nj.us](mailto:AnneMaire.Kelly@dol.lps.state.nj.us)



# The ABC's of the LAD

- The New Jersey Law Against Discrimination (LAD) prohibits discrimination in the areas of:
  - Employment
  - Housing
  - Credit and Contracting
  - Places of Public Accommodation





# Most Common Protected Categories under LAD

- Race/ancestry/national origin
- Sex/Gender identity or expression
- Age
- Creed (religion)
- Color
- Sexual orientation
- Marital, Domestic or Civil Union Status
- “Retaliation”
- **Disability**



# NJ LAD

The statute: N.J.S.A. 10:5-12, et. seq.

The regulations: N.J.A.C. 13:13-1.1, et. seq.



# What is a “Public Accommodation”?

According to the LAD, in NJ a “Public Accommodation” is:

A place which invites the public to join, attend or participate.





## Examples of Places of Public Accommodation

Hospitals & funeral homes	Summer or day camps/local or Little League baseball
Schools and universities	Swimming pools
Hotels & restaurants	Motion picture theaters
Government offices & services	Polling Places



## Hearing Loss is a “Disability” under NJ LAD

The LAD recognizes that persons who are deaf or hard of hearing (nearly 720,000 people in NJ) have a “**disability**” under the New Jersey LAD and therefore *could be* protected under the LAD.







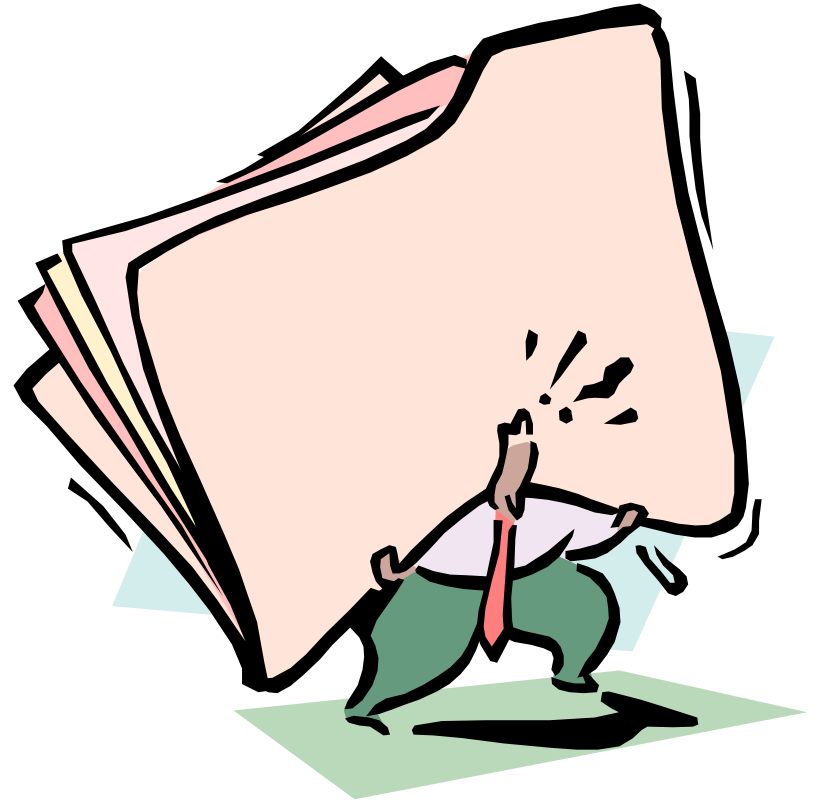
# “Reasonable Accommodation” under the LAD

- The LAD requires those who operate places of public accommodation to “**reasonably**” accommodate persons with disabilities.
- Reasonable accommodations under the LAD involve taking “**reasonable**” steps to make sure that a person with a hearing loss can enjoy the goods, services and facilities available to everyone else. If the accommodation causes “**undue hardship**” on the operator of the public accommodation, it is not reasonable under the LAD.



# What is an “Undue Hardship”?

- One that imposes undue financial and administrative burdens on the entity





## Factors to Be Considered in Determining “Undue Hardship”

- Size of business or entity
- Type of operations of the business/entity
- Nature and cost of accommodation



# Types of Reasonable Accommodations in Places of Public Accommodation under the NJ LAD

(See: N.J.A.C. 13:13-4.12 for *some* examples)



# Academic Institutions

- Schools must provide a student's deaf parents with sign language interpreter or a hard of hearing parent with hearing assisted devices to enable them to participate fully at school-initiated conferences incident to the academic and/or disciplinary aspects of their child's education.
- School **may** be required to provide CART to hard of hearing students for lectures





# Health Care Providers

- Interpreter or ALD's **may** be required during instances when there is communication concerning a patient's non-routine medical care and treatment.
- Specialized equipment **may** be required to assist patients with mobility issues.
- Hospitals in NJ **are** required to follow procedures for patients with hearing loss or their medical decision-makers to provide multiple options for communications access

(See fact sheet on: ***“Ensuring Open & Effective Communication in Hospitals”*** available in your packets and at our website at [www.NJCivilRights.org](http://www.NJCivilRights.org))





# “Ensuring Open & Effective Communication in Hospitals”

## Fact Sheet

### Ensuring Open and Effective Communication In Hospitals

### FACT SHEET

#### For Persons Who are Deaf or Hard of Hearing

The New Jersey Hospital Association, a representative organization comprised of over one hundred member hospitals, is working with the New Jersey Attorney General, including the New Jersey Division on Civil Rights, to ensure that hospitals as places of public accommodation are fully accessible to everyone, including people who are deaf or hard of hearing. This fact sheet is intended to assist hospitals and patients in understanding the New Jersey Law Against Discrimination (LAD) as it applies to accommodating the needs of individuals who are deaf or hard of hearing.



#### 1. What will hospitals do to facilitate open and effective communication with persons who are deaf or hard of hearing?

Hospitals will provide persons who are deaf or hard of hearing reasonable accommodations to assist them in communicating with hospital staff. While the law does not require all accommodations that a patient might request, hospitals must provide accommodations that are *reasonable* under the individual circumstances of the communication. For instance, brief and relatively simple communications, such as inquiring about meal times or purchasing an item in the gift shop, may generally be accomplished through written notes or pointing to items. For more complicated, interactive communications, such as discussing symptoms, diagnosis and treatment options, other forms of communication, such as interpreters, may be required.

#### 2. What are examples of some reasonable accommodations that might be provided?

When appropriate for effective communication, reasonable accommodations may include auxiliary aids and services such as qualified sign language interpreters, remote video interpreting services, assistive listening devices, amplified phones, TTY's/TDD's or other devices and services, such as computer assisted real-time transcription (CART) for large group community meetings. Because there is a shortage of qualified sign language interpreters in the State of New Jersey, such services may not always be available. It is important to keep in mind that reasonable accommodations for persons who are deaf may be different than those for persons who are hard of hearing.

*more...*



State of New Jersey • Office of the Attorney General • Division on Civil Rights



# Entertainment Venues

- Theaters, sports venues, gyms, etc. must be made available to all persons with hearing loss, however, persons with disabilities are not required to be given discounts on tickets, admission fees or memberships fees.
- The facilities must reasonably accommodate deaf and hard of hearing patrons.







# Movie Theaters

- Large multiplex theaters must provide either open-captioning or closed-captioning for some movies, as well as ALD's that work correctly.





# Stores & Retail Establishments

- Store owners cannot refuse to do business with persons who use assistive technology or call them with telephone relay service.





# Hotels

- Hotels must have available rooms (or kits) which include flashing emergency lights & hotels cannot refuse service to deaf and hard or hearing patrons who utilize a service or guide animal.





# Government Services

- NJ Courts and government hearing officers are required to provide certified sign language interpreters, CART or ALD's to participants in judicial proceedings who are deaf or hard of hearing.





# Other Government Services

- Courts and towns must provide interpreters or hearing assisted devices to a couple who are being married or civil unioned in court or by Mayor





# Examples of what is NOT covered under NJ LAD

- Movie captioning on airlines
  - Discounts for admission tickets
  - Requests for reasonable accommodations at federal parks, museums and buildings
  - Accommodations at US veterans hospitals
  - Complaints against any federal agency
- However, some of these might be covered under federal law.



# Deputy Attorney General Anne Marie Kelly

## Employment & Housing Discrimination



# Employment Discrimination under the NJ LAD

- It is unlawful under NJ law to discriminate against deaf or hard of hearing employees or job applicants in hiring, promotions, or terms and conditions of employment





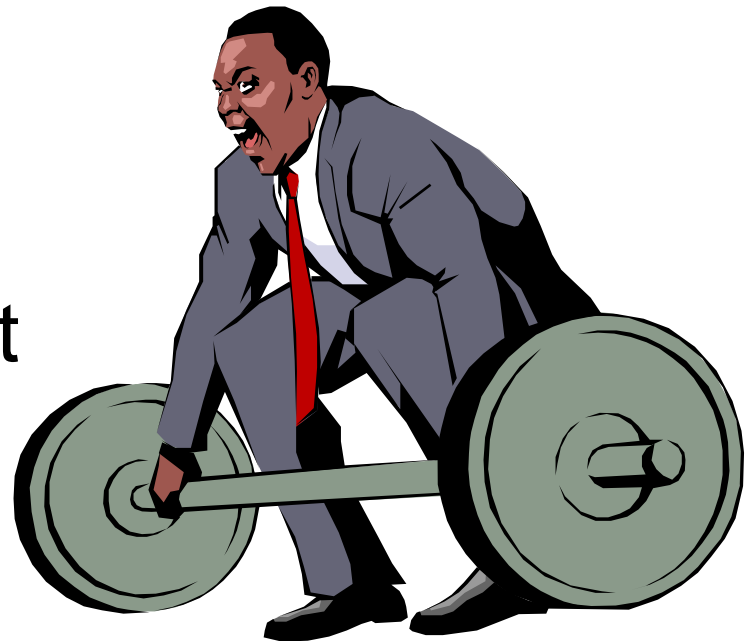
## “Reasonable Accommodations” for Employees with Hearing Loss

- Employers must make “reasonable accommodations” to allow employees with hearing loss to perform the essential functions of his or her job



# However...

As with places of public accommodations, the accommodation being sought must be “reasonable” and cannot pose an **undue burden** on the employer.





# Making a Request for a Reasonable Accommodation

- It is not necessary that such requests be in writing or use the phrase “reasonable accommodation” but employer must be put on notice that you need an accommodation.



# Employer's Responsibility

- An employer must engage (with the employee) in an interactive process involving an **interactive dialogue**.





# What To Discuss in Interactive Process

This process must identify potential reasonable accommodations such as:

## TTY Equipment



## CapTel



## Wireless Pagers





## Fire Alarms

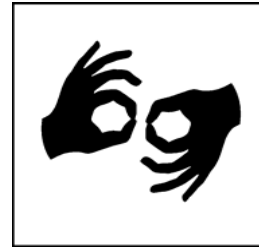


## Assistive Listening Devices





## Interpreters



## Video Remote Interpreting





## CART – Open Captioning







# Housing Discrimination under NJ LAD

- Landlords cannot discriminate against persons with hearing loss who need to make reasonable modifications to their apartments (such as visible alarms, etc.) to accommodate their disability, but any modifications are done **at tenant's expense**.
- However, landlords must reasonably accommodate common areas of housing complex.



# *Remedies under LAD*

- Out of pocket losses (therapists, doctors, etc)
- Compensatory damages (incl. *pain and humiliation* damages)
- Punitive damages (Superior Court only)
- Penalties (at DCR)
- Attorney fees
- “Injunctive” relief (policies, directives, training, etc.)



# What To Do If You are a Victim of Discrimination

- **Keep notes** about the discrimination details (names, dates, witnesses, examples of discrimination, etc.)
- **Communicate** with advocacy organizations such as:
  - NJ Division of Deaf and Hard of Hearing: 800-792-8339 V/TTY
  - NJ Association for the Deaf: [President@NJADeaf.org](mailto:President@NJADeaf.org)
  - Hearing Loss Association of NJ: [info@hearingloss-nj.org](mailto:info@hearingloss-nj.org)
- You are legally protected from **retaliation** if you participate in reporting or testifying in harassment investigation
- **Hang up** Public Accommodation Discrimination posters in your workplace, apartment building, etc.



# NJ Anti-Discrimination Posters:

- *Employment*
- *Housing*
- *Public Accommodations*

# New Jersey Law Prohibits Discrimination

## in places of Public Accommodation

**ON THE BASIS OF:** Race, Creed, Color, National Origin, Ancestry, Nationality, Marital or Domestic Partnership or Civil Union Status, Sex, Gender Identity or Expression, Affectional or Sexual Orientation, or Disability

**BY:** A Proprietor, Manager, Owner, Superintendent, Lessee, Agent or Employee

**WITH RESPECT TO:** The Services, Facilities, Privileges, or Accommodations Provided by Public Accommodations (whether or not it has a building, headquarters, office or other place). Public Accommodations include, but are not limited to, schools, government buildings, courts, restaurants, taverns, libraries, hotels, gymnasiums, theaters and hospitals.

**REMEDY MAY INCLUDE:** An Order Restraining Unlawful Discrimination, Reimbursement for Financial Loss, Damages for Pain and Humiliation Experienced as a Result of Unlawful Discrimination, Punitive Damages, and Attorney's Fees

**Violations Should Be Reported To the Nearest Office of the NJ Division on Civil Rights or Call Toll Free at 866-405-3050**

**Atlantic City**  
26 S. Pennsylvania Avenue, 3<sup>rd</sup> Floor  
Atlantic City, NJ 08401  
(609) 441-3100 (Phone)  
(609) 441-7648 (TTY)

**Camden**  
One Port Center  
2 Riverside Drive, 4<sup>th</sup> Floor  
Camden, NJ 08108  
(856) 614-2590 (Phone)  
(856) 614-2574 (TTY)

**Jersey City**  
574 Newark Avenue, 3<sup>rd</sup> Floor  
Jersey City, NJ 07306  
(201) 798-5168 (Phone)

**Newark**  
31 Clinton Street, 3<sup>rd</sup> Floor  
Newark, NJ 07102  
(973) 648-2700 (Phone)  
(973) 648-4678 (TTY)

**Paterson**  
100 Hamilton Plaza, 8<sup>th</sup> Floor  
Paterson, NJ 07601  
(973) 977-4500 (Phone)  
(973) 977-1955 (TTY)

**Trenton**  
140 East Front Street, 6<sup>th</sup> Floor  
Trenton, NJ 08625  
(609) 292-4605 (Phone)  
(609) 292-1785 (TTY)

[www.NJCivilRights.org](http://www.NJCivilRights.org)

The regulations of the New Jersey Division on Civil Rights require that all places of public accommodation who are covered by the New Jersey Law Against Discrimination shall display this official poster in places easily visible to all persons seeking or using the accommodations. N.J.A.C. 17:28-1.4.



Anne Milgram  
Attorney General



Jon S. Corzine  
Governor

**CIVIL RIGHTS**

J. Frank Veppo-Papalio  
Director



# What To Do If You are a Victim of Discrimination

## Also....

- **Within 180 days of the discrimination contact** NJ Division on Civil Rights by visiting our offices in Paterson, Newark, Trenton, Camden and Atlantic City – contact us if you need us to hire an interpreter or CART, etc. (see [www.njcivilrights.org](http://www.njcivilrights.org)).
- Within 300 days contact EEOC if employment discrimination.
- Within 2 years of the discrimination you can go to a lawyer as well.



# Thanks to Our Conference Co-Sponsors

- NJ State Bar Foundation
- NJ Division on Civil Rights
- NJ Commission on Civil Rights
- NJ Division of the Deaf and Hard of Hearing
- NJ Department of the Public Advocate
- U.S. Equal Employment Opportunity Commission
- U.S. Dept. of Housing & Urban Development
- NJ Division of Disability Services
- NJ Affirmative Action Officers' Council



