

# The ADA turns 34: The intersection of technology, AI, and individuals with disabilities

By Bradford J. Kelley, Esq., and Sean O'Brien, Esq., Littler Mendelson PC\*

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On July 26, 1990, the Americans with Disabilities Act (ADA) was signed into law. On the recent 34th anniversary of the ADA, U.S. Equal Employment Opportunity Commission (EEOC) General Counsel Karla Gilbride and U.S. Department of Justice (DOJ) Deputy Assistant Attorney General Jennifer Mathis issued an announcement affirming the agencies' "Commitment to Technological Equity for People with Disabilities."

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The agencies' joint announcement explained: "As the ADA reaches its 34th anniversary this month, the Justice Department's Civil Rights Division and the [EEOC] are working closely with one another to prioritize issues of technological equity, inclusion and accessibility through a multi-pronged approach."

Thirty-four years after the ADA was signed, emerging technologies, including artificial intelligence (AI) tools, present new considerations for employers to ensure they comply with the ADA. New technologies, including AI-powered tools, can significantly aid disabled employees, and their employers, by enhancing accessibility and productivity.

For instance, AI-powered speech recognition software can assist those with mobility impairments by enabling hands-free operation of computers, while text-to-speech and screen readers can help visually impaired employees access digital content.

Additionally, AI can customize work environments by adapting to individual needs, such as adjusting screen brightness for those with light sensitivity or providing real-time transcription of a meeting. These technologies help create inclusive workplaces where all employees can thrive.

During the COVID-19 pandemic, the EEOC launched its AI Initiative (<https://bit.ly/4dlqqQm>) out of concern that AI tools may put certain employees at a disadvantage, including disabled employees. Indeed, the EEOC's first AI guidance document focused on disability discrimination.

However, it is particularly noteworthy that the EEOC has not issued any guidance concerning AI since May 2023. The Office of Federal Contract Compliance Programs (OFCCP) has issued related AI guidance (<https://bit.ly/3Qlnee4>). Since then, the federal government has taken a "whole of government" approach to new technology, AI, and employment laws and regulations (<https://bit.ly/4cKA18g>).

With respect to the ADA, the EEOC and DOJ announcement (<https://bit.ly/4gjKV83>) underscores that federal agencies will continue to work "closely with one another to prioritize issues of technological equity, inclusion and accessibility through a multi-pronged approach."

DOJ has finalized its regulations (<https://bit.ly/4dV5iXa>) that establish standards for entities' web and application content under Title II of the ADA. Importantly, employers, subject to Title I of the ADA, and places of public accommodation, subject to Title III of the ADA, must make their online information accessible to individuals with disabilities. That includes individuals who use assistive technology.

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However, employers not only need to ensure their web-based content is accessible, but also consider whether information technology and software used in hiring, performance monitoring, and other aspects of employment do not unlawfully screen out individuals with disabilities, disproportionately impact those with disabilities, or otherwise discriminate on the basis of an individual's disabilities.

While technology and AI can certainly increase efficiency and help foster diversity by removing the human element and implicit biases

in certain processes, their use it not without risk. Notably, the EEOC has indicated that the scope of information technology systems and other software is broad, including commonly thought of items such as algorithms and AI-based software.

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But the EEOC has additionally referenced lesser thought-of items, such as chatbots, monitoring software such as a keystroke tracker, and programs analyzing an individual's voice, personality, and work history, or even video software registering candidates' facial expressions.

Employers using these or similar programs should take steps to closely scrutinize them for any potential impact they may have on individuals with disabilities. In fact, the EEOC has published Tips for Workers (<https://bit.ly/3zaCpXX>) regarding the use of technology and AI in employment.

As examples, the EEOC advises that employers may need to accommodate applicants who are required to complete a computer-based pre-hire examination if such individuals have a disability impacting their ability to type quickly; or, employers may need to

consider algorithms that assist chatbots fielding applicant inquiries about job postings if that chatbot does not consider whether an applicant in a wheelchair could perform the requisite job duties with a simple accommodation such as sitting in a chair.

Although this new technology and AI may not have existed when the ADA became law, Congress and the EEOC do not appear to believe any change to the ADA is necessary to regulate such new technology. In fact, a group of U.S. Senators released a plan called "Driving U.S. Innovation in Artificial Intelligence."

The plan does not suggest any change to the ADA, but rather focuses on annual spending of \$32 billion by 2026 for research and development of AI, creation of a federal data privacy law, and efforts to prevent deepfakes in elections. Accordingly, emerging technologies, including AI, will be analyzed under current ADA standards.

At the end of the day, the EEOC and DOJ ADA announcement emphasizes that the agencies will be more focused on disability discrimination in the age of AI moving forward. And while the DOJ-EEOC joint announcement does not specifically mention AI, it merely scratches the surface because both agencies have a significant number of wide-ranging inter-agency agreements to help ensure coordinated and shared enforcement.

Regardless, employers need to keep a close eye on their technology and software deployed in the employment context and should consult with counsel before launching new technologies and AI for applicants and employees. Employers should also consider including language offering reasonable accommodations when these tools are used in the workplace.

### About the authors



**Bradford J. Kelley (L)** is a shareholder in **Littler Mendelson PC's** Washington, D.C., office who advises clients on employment anti-discrimination matters and emerging technologies, including AI, and their impact in the workplace. Previously, he was a senior official at the Equal Employment Opportunity Commission and the Labor Department's wage and hour division. Before becoming an attorney, he served as a U.S. Army infantry and intelligence officer. He can be reached at [bkelly@littler.com](mailto:bkelly@littler.com). **Sean O'Brien (R)** is an associate in the firm's Memphis office, focusing on employment discrimination, harassment, leave and accommodation matters, and wage and hour disputes. He can be reached at [sobrien@littler.com](mailto:sobrien@littler.com). This article was originally published Aug. 21, 2024, on the firm's website. Republished with permission.

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