



May 2021 Newsletter

Renew your membership in our local chapter for only \$15 a year! Ways to renew: pay at our website on the “Donate” button in the upper right-hand corner; mail your renewal with your name, address, phone number, and e-mail to: East Bay Chapter, HLAA, P.O. Box 12484, Oakland, CA 94604-2484. See back page to sign up and support National HLAA.

May 8, 2021, Meeting by Zoom! Zoom in and see your friends from HLAA-EBC. Schedule: 9:30 a.m. Meet and Greet; 10:00 a.m. Program: "Hearing Loss & Its Effect on the Brain, Cognitive Function & Social Relationships" with Dr. Margaret Wallhagen, PhD, GNP-BC, AGSF, FGSA, FAAN, Professor, Physiological Nursing, University of California, San Francisco. Dr. Wallhagen has conducted a number of research projects in gerontology and chronic care management. Her research and publications focus especially on how older individuals and their families manage chronic illnesses, as well as changes that occur with age. She has explored issues related to informal caregiving, diabetes, and successful aging, but for the last several decades has focused specifically on hearing loss. Her most recent work included a four-year longitudinal study of the experience of hearing loss in older adults and their partners.

Register for this free event here: www.hearinglosseb.org After you register, you'll be sent the link to join the meeting. Consider staying after the meeting for AfterWords – a chance to ask more in-depth questions, as well as discuss anything you want with fellow members!

HLAA-EB will post newsletters to the California State Association webpage and a link on our website. Check out our website: <http://www.hearinglosseb.org/> Contact us: info@hearinglosseb.org

WALK4 HEARING
Hearing Loss Association of America

Bay Area Walk4Hearing
Saturday, June 12, 2021
Virtual Celebration
9 a.m. (PT) – Program starts

Platinum Sponsor
CapTel
Captioned Telephone

JOIN US!

Learn more and register at walk4hearing.org

The graphic is a promotional poster for the Walk4Hearing event. It features the HLAA logo at the top left, the event title 'Bay Area Walk4Hearing' in large orange and red text, and the date 'Saturday, June 12, 2021'. Below that, it says 'Virtual Celebration' and '9 a.m. (PT) – Program starts'. The CapTel logo is prominently displayed as a platinum sponsor. There are two photos: one of a group of people walking with a 'WALK4 HEARING' banner, and another of a man in a red shirt giving a thumbs up. A red circle with 'JOIN US!' is also present.

2021 BAY AREA WALK4HEARING IS SATURDAY, JUNE 12! JOIN US!

The Bay Area Walk4Hearing will be held Saturday, June 12, 2021, 9 a.m. Pacific time virtually online.

HLAA – East Bay Chapter has a team: East Bay Hear-Oh's. To join our team, go to walk4hearing.org. Click on “Find a Walk”. Scroll down and select “Register” under “Bay Area”. On the registration page, on the left, search for Dale Davis under Participant tab OR under Team tab search for East Bay Hear-Oh's. On our page, click on “Join Team” and if you were registered for last year's Walk4Hearing, login. If not, click on “New Walker” and register. The East Bay Hear-Oh's page can also be found by clicking on this link: EB Hear-Oh's.

Once you are registered, you will be sent a link for the virtual celebration. **JOIN US!**

MEETING NOTES: *Accessibility Rights: The COVID Factor*

At our April 10th, 2021 meeting, our guest speaker on his seventh visit with us was Attorney Steve L. Derby, Esq., from the law firm of Derby, McGuinness & Goldsmith in Oakland, Los Angeles, and now moving to San Diego. The firm exclusively represents persons with physical and/or mental disabilities, while upholding the firm's philosophy of making the world more accessible for all disabled people, including the hearing impaired. In fact, 2 of Steve's 3 children and his late mother were diagnosed with progressive sensorineural hearing loss. He has handled many disability access cases throughout California and the Western United States during his 30 years of practicing law. He has dealt with the complex legal, financial and practical issues that often arise in seeking access to reasonable and appropriate accommodations for those with communication challenges, such as hearing loss (HL).



As a disability rights attorney, Steve has focused on accessibility rights, and in particular during this last year, how the COVID factor has affected disability access. More specifically, he updated us on how businesses have used the COVID factor to try to avoid meeting their access legal obligations, and what can be done to resolve these problems.

Review of Disability Access Laws: Initially, Attorney Derby provided a brief review of the most significant disability access laws: Title 24, CA Code of Regulations (1980); the Americans with Disabilities Act (ADA) (1990); Unruh Civil Rights Act (1959); Amended ADA (2002); CA Disabled Person's Act (2009); Fair Employment & Housing Act (FEHA); Amended FHA (1988). It is all about "access," but the law is not self-executing. The overriding principle is failure, intentional or not, to comply with disability access laws is discrimination. Acknowledging that a negotiated solution is almost always better and disability access laws can be misused, Attorney Derby said that sometimes as a last resort, lawsuits are the only way.

Effective Communication: Everyone has the legal right in any public place to "effective communication," meaning all of us have the same rights as everybody else to hear and be heard. There are 2 kinds of public places: 1) Public places owned by the local, state and federal government; 2) Private places open to and serve the public, such as businesses and non-profits. Covered entities include: Public buildings, medical facilities such as hospitals & healthcare centers, schools, entertainment venues, sports arenas, ball fields, gyms, retail stores, restaurants, hotels, movie theatres, & government services such as town hall, post offices, libraries, polling places, law enforcement, as well as your work place and your home (e.g., apartments, condos & HOAs).

People with communication challenges, such as hearing, speech and visual disabilities, may need to use different ways to communicate. The ADA requires that a public accommodation provide effective communication in their chosen way of communicating, based on an interactive process involving the person with disabilities. The goal is to ensure that communication with people who have disabilities is equally effective as communication with people without disabilities. Therefore, services which may be required to provide "effective communication" include: Auxiliary aids & services (Note-taker, real-time captioning (CART), print of stock speech, etc.); Video relay service (VRS); Video remote interpreting (VRI); Telecommunications relay service (TRS); Companions (animals & people) and Interpreters.

The factors considered when determining what constitutes "effective communication" in any specific situation include: The nature, length, complexity and context of the communications, as well as the person's chosen way of communication. The equipment must be properly maintained and ready for use; policies must be established, and staff must be adequately trained to carry out the policies in providing the accommodations.

Two exceptions to these rules are allowed: 1) **Undue Burden:** When providing the aids and/or services would result in an "undue burden," defined as a significant difficulty or excessive expense, but even in those cases, the entity must provide another effective aid or service which would not result in an undue burden. Determining what constitutes undue burden may vary from entity to entity or changing circumstances year to year; **Direct Threat:** Any direct threat to people's health and safety may serve as an exception to the rules for providing equal access to accommodations.

Impact of the COVID Factor: The COVID factor has impacted the legal rights to accessibility in several ways:

COVID Factor #1 -- Economic Hardship: Undoubtedly, the pandemic and health restrictions have hurt or even devastated certain industries (e.g., restaurants, hotels & live entertainment). But some businesses have taken advantage of the situation to the detriment of those persons who still need reasonable accommodations & modifications for physical access & effective communication in public places. As the government, employers, & businesses such as restaurants begin to lift their pandemic restrictions, they must still comply with the ADA & other disability access laws & regulations, unless they can satisfy one of the exceptions described above.

COVID Factor #2 -- Health Concerns/Mask Wearing: Individuals with identified hearing loss, as well as those who don't even know they have hearing loss, often need to rely on additional sources of support beyond hearing aids or cochlear implants, such as facial visual cues and reading lips. Hence, effective communication has become especially challenging for these people during the current pandemic where wearing masks and social distancing guidelines apply. Attorney Derby offered some recent examples of covered entities failing to comply fully with the ADA or other laws, making it more difficult for people with hearing loss to deal with communication challenges during the pandemic. For example:

- Refusal to remove a mask to communicate effectively with a customer who needs to use visual facial cues & read lips.
- Refusal to allow entrance to, attend to, or communicate with a customer who can't wear a mask.
- Refusal to allow access to a companion who wants to join or needs to assist another customer.
- Failure to provide adequate auxiliary aids & services as reasonable accommodations, such as captioning.
- Employers disciplining, demoting or firing employees over masking & communication issues.

Yet, COVID is not an excuse for non-compliance with the law unless it is a direct threat to one's health & safety.

COVID Factor #3 -- Service Animals: Individuals with a disability sometimes need to rely on a service animal to assist them with access issues, including those dealing with communication challenges. After requesting that we participate in a mini-quiz on service animals, Attorney Derby provided quiz answers by reviewing the rules that apply to service animals, as follows: 1) A service animal needs to be either a dog or mini-horse; 2) A service animal does not need to wear any kind of identifying vest; 3) A service animal need not be registered, but only needs to satisfy the definition of training & ability to assist a disabled person with access they wouldn't have otherwise; 4) A disabled person does not need to have a doctor's note; in fact, it's illegal to ask any questions except: Is this a service animal? What does it do for you? 5) A service animal cannot be excluded from any place of business. Nevertheless, some persons have criticized or tried to deny access based on health concerns over service animals, although there exists little evidence that pets have contracted or spread the COVID virus.

COVID Factor #4 -- Remote Communication: Many people have fewer options for face-to-face, in-person connections during the pandemic and often must participate remotely in meetings where captioning is needed for those with HL. Attorney Derby pointed out that the availability and expense of captioning depends on the provider. For example:

- Zoom – Captioning & automatic transcripts are available, but can be expensive.
- Google -- Automatic Speech Recognition (ASR) is available, but only to G-Suite customers.
- Microsoft – Free captioning is available for meetings of less than 50 persons, but charges for over 50 people.
- TV captioning – A federal law was passed in 1996 that required all live broadcast TV be captioned, but sometimes the captioning is too small & confusing to read and follow easily. In 2010, a law was passed that required any internet transmission of a previously broadcast program be captioned. Since 2017, the Federal Communication Commission (FCC) has required that captioning on TV & the internet must be accurate, synchronous, complete & appropriately placed.

Hence, we may need to write letters to companies in order to promote their compliance with the captioning rules.

Non-Excuses for Non-Compliance: Here are some favorite non-excuses for reluctance to comply with the law:

- ✓ No hearing impaired people ever come in here. (Hearing loss is often an invisible disability.)
- ✓ It's my place – I can do whatever I want. (Everyone must still comply with the law.)
- ✓ I did not mean to discriminate. (Intent does not matter.)
- ✓ I did not know that was the law. (Ignorance of the law is never an excuse for not complying with the law.)
- ✓ That will cost me money. (The law does not require that the accommodation or solution is free.)

Solutions: Attorney Derby provided some strategies for promoting more effective communication.

- Wear a mask that leaves your lips free to communicate and be seen by those relying on lip reading.
- Wear a clear face shield to protect you while also allowing others to read your lips & use visual cues.
- For simple communication, carry a note pad and pen for writing it down.
- Consider carrying a card that announces or briefly explains your hearing loss.
- Provide reasonable advance notice when requesting aids or services as accommodations for your HL.

Practical Advice: Attorney Steve Derby concluded by offering some practical advice for avoiding confrontations:

- ❖ Remember, it is an interactive process which is partly their obligation and partly your obligation as well.
- ❖ Initially, announce yourself as a person with a hearing loss by simply stating, “I have a hearing loss.”
- ❖ Always ask immediately to speak to the manager or the person in charge who can make a decision.
- ❖ Carry a copy of the law with you, while recognizing this as an opportunity to inform and educate.
- ❖ Smile & be friendly in asking what assistance they have for effective communication for persons with HL.
- ❖ Thank them if you get a positive response. If you get a negative response, such as “I don’t really know” or “We don’t have anything,” you might then say: “I believe that you are legally required to have these accommodations available. Who do I talk to about this?” Then, you proceed to politely advise them what is legally required in a public place for effective communication, and otherwise, they are violating the law.
- ❖ You can also try to get them to acquire the accommodation or take your business (and your \$) elsewhere.
- ❖ If all else fails, consider contacting the Dept. of Justice, Civil Rights Division, or perhaps calling a lawyer.
- ❖ Finally, be firm – keep in mind that you have the right, the power and the tools to advocate for yourself!

For More Information: Visit www.dmglawfirm.com; email sderby@dmglawfirm.com; call (510) 987-8778.

~ Kathy Fairbanks

East Bay Leadership Team

The chapter is run by a Steering Committee, Leader Dale Davis, ddavis94605@gmail.com, who also oversees the Membership Database.

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Go to this URL to join today: <https://www.hearingloss.org/make-an-impact/become-a-memberrenew/>

OR, if you prefer to pay by check or card thru the mail, Nancy Asmundson has membership forms to send to you, or you can contact HLAA at 301-657-2248 or e-mail membership@hearingloss.org.

Your membership form will go along with your payment to 6116 Executive Blvd., Suite 320, Rockville, MD 20852. Call 301-657-2248 or e-mail membership@hearingloss.org.

COSTS: Regular Membership/year (will receive *Hearing Life* magazine in print and digital format):

Individual - \$45; Couple/Family - \$55; Professional - \$80; Nonprofit - \$80;

Online Membership (receives *Hearing Life* mag. in digital format only): Individual - \$35; Student - \$25

Veteran Membership: Complimentary one-year Regular Membership & Lifetime Online Membership.