

Michigan AG: Public Bodies Must Offer Reasonable Accommodations Under the ADA Which Could Include a Remote Participation Option for Meetings Held Pursuant to the Open Meetings Act

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On February 4, 2022, Michigan Attorney General Dana Nessel opined that the Americans with Disabilities Act (the "ADA") requires public bodies to afford an individual with a disability a reasonable accommodation to participate in meetings subject to the Michigan Open Meetings Act (the "OMA"), which could include the option to participate virtually. Any individual with a disability, whether a member of the public or a member of the public body, may be entitled to an accommodation.

The OMA requires that "[a]ll meetings of a public body must be open to the public and must be held in a place available to the general public." MCL 15.263(1) (emphasis added). Traditionally, the OMA has been interpreted to mean that meetings must be held within a physical space, not a virtual one. However, in light of the COVID-19 pandemic, the OMA was amended in recent years to allow public meetings to be held electronically, which authorization expired as of January 1, 2022. Consequently, all public meetings now must be held in person, subject to limited exceptions for members of the public body serving in the military.

As the Attorney General noted, the OMA does not generally provide any accommodations for disabled individuals' access to public bodies as members of the public body or the general public. In her opinion, though, she stated:

"[T]he [ADA] and Rehabilitation Act require state and local boards and commissions to provide reasonable accommodations, which could include an option to participate virtually, to qualified individuals with a disability who request an accommodation in order to fully participate as a board or commission member or as a member of the general public in meetings that are required by the [OMA] to be held in a place available to the general public."

In discussing whether an individual qualifies for an accommodation, the Attorney General recognized that the analysis is "heavily fact-dependent and resolved on a case-by-case basis," and therefore, "it cannot be stated that, in all situations, an immune-compromised individual is a 'qualified individual with a disability'" under the ADA. However, "the existence of such a condition, or any other underlying condition, that makes an individual particularly susceptible to contracting an illness or disease such as COVID-19 if they were to attend a meeting in a public, physical space, could very well form the basis for a sufficient showing."

As a result, the Attorney General opined, when a public body receives an accommodation request from an individual with a disability, that public body "must consider whether it can modify its meetings without incurring an undue burden or fundamentally altering the nature of the meetings." In addition, the Attorney General argued that because Michigan's public bodies must already provide remote access and allow full participation for a member of the military, and many have already gone virtual during the COVID-19 pandemic, "it seems unlikely that a request for a hybrid approach of an in-person meeting and telephone access or a virtual platform would result in an undue administration or financial burden or constitute a fundamental alteration of a [public body's] meetings."

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It is important to note that attorney general opinions are not binding on local units of government, but are binding on state public bodies. Nonetheless, due to the burden of fact-intensive inquiries which could result from requests for reasonable accommodations at public meetings, whether from members of the public or members of the public body, public bodies should be prepared to consult with legal counsel about such requests and appropriate policy considerations.

If you have further questions or require advice on this issue, please contact your Miller Canfield attorney or any of the authors listed on this alert.