

Public Law Update – Attorney General Opines that ADA-Disabled Members of Legislative Bodies May Attend Meetings Remotely

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The Attorney General issued a formal opinion on July 24, 2024 that the Americans with Disabilities Act requires public agencies to permit disabled members of a legislative body to remotely participate in Ralph M. Brown Act meetings if the member's disability precludes them from attending the meeting in-person. To comply with the Brown Act, the members remotely participating in meetings must (1) use real time two-way video and audio streaming; and (2) disclose the identity of any adults who are present with the member at the remote location. While this formal opinion is not binding law on public agencies, it gives important guidance to public agencies on how the Brown Act would likely be interpreted by the courts.

Background on the Brown Act and the Americans with Disabilities Act

The Brown Act is California's open meeting law and requires local agencies to permit members of the public to attend public meetings and comment on the public's business. The Brown Act requires the legislative bodies of local agencies—such as city councils—to hold their meetings in person unless there is an emergency or public health crisis.

The Americans with Disabilities Act ("ADA") is a federal law that was enacted in 1990 and is intended to combat discrimination against people with disabilities. The ADA requires employers and government agencies to make "reasonable accommodation[s]" for individuals with disabilities. Under the ADA, a disabled individual is defined as a person who has "a physical or mental impairment that substantially limits one or more" of the person's "major life activities."

Entities subject to the ADA only have to honor a person's "reasonable accommodation" request when the disabled requestor is still able to perform a job's "essential function['s]." Determining what constitutes a reasonable accommodation is a fact-intensive, individualized inquiry that each public agency must complete, but may include changes to a person's work schedule for instance.

At the request of Lieutenant Governor Eleni Kounalakis, the Attorney General analyzed how the ADA's reasonable accommodation analysis

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impacts the Brown Act's requirement that legislative bodies meet in person.

The Attorney General Opinion Found that Public Agencies Must Grant Disabled Individuals Request for Reasonable Accommodation to Remotely Participate in Brown Act Meetings

The Attorney General opined that disabled individuals are entitled to a reasonable accommodation from a public agency under the ADA to remotely participate in Brown Act meetings. The Attorney General Opinion noted members of legislative bodies—such as city councilmembers and planning commissioners—were subject to the ADA but did not conclude whether that was because their service to the public agency is considered employment or whether that was because they were participating in a government service or activity, which are treated differently under the ADA.

The Attorney General opined that in-person attendance of a Brown Act meeting is not an "essential job function" because the Legislature has amended the Brown Act to allow for remote participation in certain circumstances.

In 2001 the Attorney General issued an opinion on the same issue and concluded that remote participation could not be considered a reasonable accommodation under the ADA. The Attorney General's analysis has changed because in the intervening years (1) the Legislature has modified the Brown Act to allow remote participation by members of public agencies in the wake of the Covid-19 pandemic if there is a new state of emergency; and (2) teleconferencing technology has also improved to allow two-way real time video and audio streaming in a way that was not as prevalent in 2001.

Currently, the Brown Act permits individual members of public agencies to participate in Brown Act meetings remotely if they have "just cause" or if there is an "emergency" circumstance, as those terms are defined in Government Code Section 54953.[1] A member can only use the "just cause" exception to remotely participate in a Brown Act meeting twice in a calendar year. The Attorney General notes that the "just cause" exception to the in-person meeting requirement can be based on a disability that has not been accommodated under the ADA. The Opinion, therefore, interprets the Brown Act to permit members to remotely participate in Brown Act meetings (1) for disabilities not accommodated under the ADA per Government Code Section 54953's "just cause" for two meetings a calendar year; and (2) for an unlimited number of sessions as an ADA accommodation.

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Conditions on Remote Participation

The Attorney General Opinion notes that the Brown Act places at least two restrictions on remote participation by disabled members in Brown Act meetings. First, the member must use real time two-way video and audio streaming. Second, the member participating remotely must disclose the identity of any adults who are present with the member at the remote location. These conditions are intended to fulfill the Brown Act's preference for in-person meetings.

Conclusion

Although the Attorney General's opinion is non-binding, it is persuasive in how courts interpret the intersection of the ADA and the Brown Act as the Attorney General is the chief law enforcement officer in California. Local public agencies should, therefore, consider whether they are complying with this opinion and the Attorney General's interpretation of the exceptions to the Brown Act meeting requirements when considering a member's request to remotely participate in a Brown Act meeting due to a disability.

Attorneys at Burke regularly advise clients on legal matters related to the Brown Act.

[1] Legislative bodies may still meet via teleconference by following the traditional Brown Act rules of identifying the teleconference site on the agency's agenda and ensuring it is accessible for the public to attend.

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