



RECREATION  
LAW GROUP

# The Americans with Disabilities Act (ADA) and Essential Eligibility Criteria

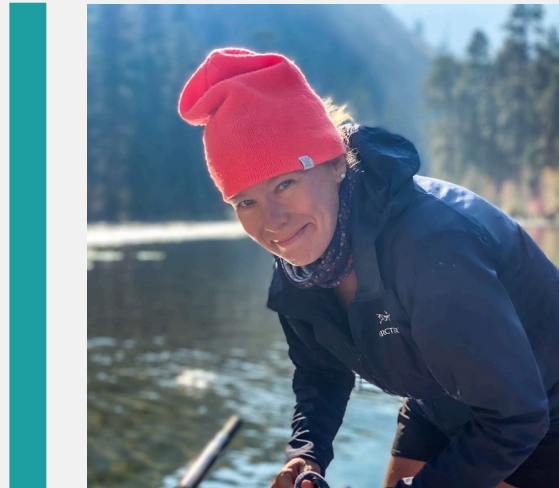
*A Legal and Risk Management Perspective*

America Outdoors - 2023

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# About

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# Disclaimer

This presentation is for educational purposes only. I am providing legal information, not legal advice.

If you need legal advice, please reach out.

# Outline

- **ADA Overview: The Law and Basic Application of the Law**
- **Assessing Ability using EEC**
- **Accommodations and Inclusivity**
- **Accommodation Analysis Factors**

# About the ADA

*What to know  
about the  
Americans  
with  
Disabilities Act*



# The Law



Your outdoor recreation business or organization is likely bound by the following federal laws which address disability discrimination:

- Americans with Disabilities Act of 1990 (“ADA”)
  - Applies to all businesses offering a “public accommodation” (includes places of recreation, exercise, or entertainment)
- Section 504 of the Rehabilitation Act of 1973 (“Section 504”)
  - Applies to federal permittees offering a public service

# The Basics



- The ADA *“prohibits discrimination against people with disabilities in everyday activities.”*
- A disability is defined as an *“impairment that substantially limits one or more major life activities.”*

# The Law



## Title III of the ADA provides:

*"[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation."*



# The Basics



## **What does this mean?**

Not discriminating means to provide equal access to participation in an activity or program that you offer.

## **How do I do that?**

Provide reasonable accommodations for people with qualifying disabilities.

# The Law



But first, a person with a disability is one who:

- has a **physical or mental impairment that substantially limits** one or more major life activities, OR
- has a **history or record** of such an impairment (such as cancer that is in remission), OR
- **is perceived by others** as having such an impairment (such as a person who has scars from a severe burn).

# The Law



“Major life activities” include such activities as:

- caring for one’s self,
- performing manual tasks,
- walking, seeing, hearing, speaking, breathing,
- learning, and working.

# The Law



- “Substantially limits” a major life activity (or have a record of such limitation) is measured *as compared to most people in the general population*.
- “Substantially” is *less than* preventing a major life activity or severely or significantly limiting a major life activity.

# Examples



## Examples of conditions that may be a disability under the ADA:

- Orthopedic injury
  - Heart condition
  - Seizure disorder
  - Asthma
  - Allergies
- 
- Note: Several federal courts have ruled that obesity is not a disability under the ADA
    - *Unless* it is related to an underlying physiologic or psychological condition.

# The Law



**The definition of a disability is extremely broad.**

It is good practice to assume that most physical or mental conditions or deficits described by a potential participant is a disability.



# Assessing Ability to Participate

*Using Essential Eligibility Criteria in Outdoor Recreation*

# Using EEC

The ADA authorizes the use of **Essential Eligibility Criteria** or EEC to help gauge whether one possesses the necessary abilities to participate in a specific activity.

EEC are identified *abilities* that *every* participant must possess, *with or without* the aid of an accommodation, in order to participate on a trip.

**EEC apply to *everyone*, not just those who may have a disability.** Do not make assumptions about ability – that is the whole point of EEC.





Essential Eligibility Criteria  
are *essential* abilities  
not *desired* abilities.



Example:

A potential participant is booking a wilderness whitewater rafting and fishing trip...



# EEC & Your Business

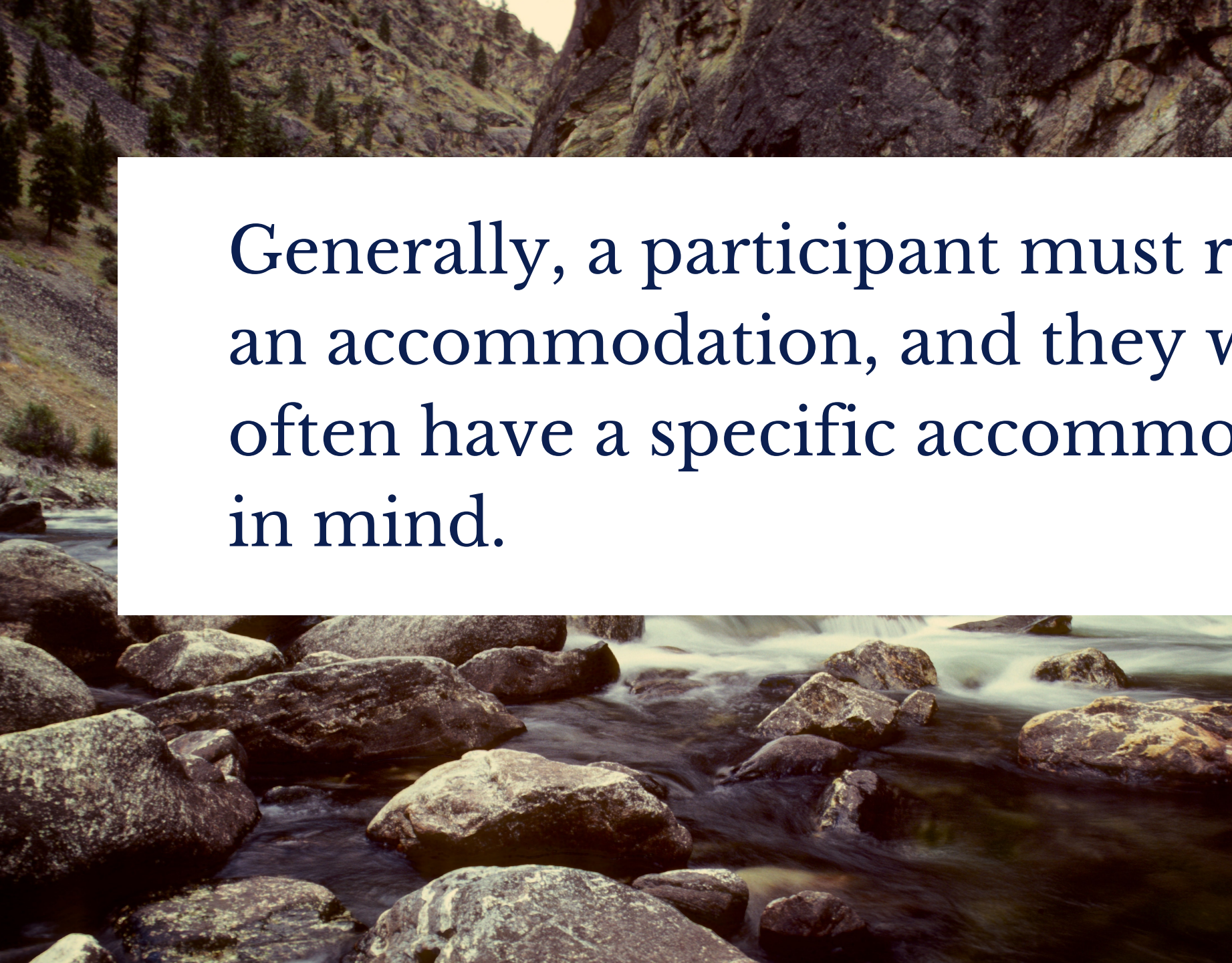
- The EEC should be posted on your company website in a conspicuous location, preferably linked to in each trip description.
- The EEC should be made known to potential participants during the reservation process.

# Accommodations



What are your obligations regarding accommodation of individuals with disabilities?

How do you balance inclusivity with safety?



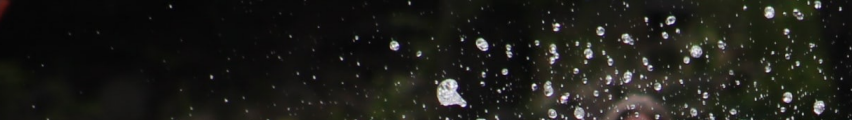
Generally, a participant must request an accommodation, and they will often have a specific accommodation in mind.

# Accommodations



Your business or organization must, by law, provide a requested or identified accommodation if it is *reasonable*.

The law provides factors to assist *you* in determining whether a requested accommodation is reasonable.



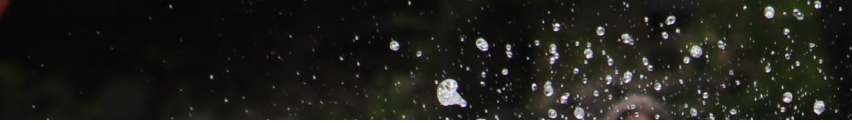
# Accommodations



**A proposed accommodation is *unreasonable* if providing it would:**

- (1) create an undue financial, personnel, or other undue burden for your company;
- (2) alter the essential nature of the activity; or
- (3) compromise the safety of participants or staff.

In other words, your business or organization is not required to accommodate an individual with a disability if, by objective assessment, it is likely that any of these outcomes would result.



# Accommodations



- This is an *objective* decision-making process.
- Your staff must be mindful of stereotypes when engaging this process and avoid making assumptions regarding the participant's abilities.
- An accommodation may be to provide an extra staff person to accompany the individual; this may mean a sign language interpreter or someone to carry the person's pack.





## Practice:

Brainstorm potential accommodations for the disability and activities below:

- Wheelchair bound – tent camping
- Back injury - backpacking
- Blind - cycling
- Prosthetic leg – horseback riding
- Oxygen tank dependent - rafting

# Analysis

*Using the ADA  
Factors to Assess  
Accommodation*



# Undue Burden



## Factors to Consider:

- overall financial resources of your business,
- the number of employees at your site,
- whether your site is geographically isolated, and
- the existence, financial resources and size of any parent corporation or related entity.

# Fundamental Alteration



## Factors To Consider:

If allowing access, including any proposed modification, would alter the **essential nature or character** of the activity, denial may be justified.

# Compromise Safety



## Factors to Consider:

- If the required accommodation would be a “direct threat to safety” of the individual or others.
- You must make an *individual assessment* grounded in current medical knowledge
- Taking into consideration the severity of the risk and the likelihood of harm.

# Summary: ADA Decision Process



1. Does this person have a disability?
2. Does this person have the abilities enumerated in our EEC?
3. What modifications can we make or accommodations can we provide?
4. Are those modifications reasonable?
  - Undue burden?
  - Alter the nature of the activity?
  - Compromise safety of participant or others?
5. How do we communicate and document our decision-making process?

# Recommended Next Steps

1

Familiarize yourself with the basics of the ADA.

2

Review your Essential Eligibility Criteria with legal counsel.

3

Train all booking staff on how to assess potential participants' abilities (a decision flow chart is helpful).

4

Consider how you can help create more inclusive outdoor recreation opportunities.

# Thank You!

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management self-assessment*





# Using EEC

- Essential Eligibility Criteria are not meant to be exclusive, but instead, are meant to help set up a participant to participate in outdoor recreation activities where they are able.
- **The use of EEC is not to be confused with or used as a tool for “screening out.”**

# EEC & Your Business

*Using Essential  
Eligibility  
Criteria in Your  
Business or  
Organization*

# EEC & Your Business

Universal EEC

+

Activity Specific EEC

(Note – this can be combined into one EEC)

## Practice:

You operate a trail riding business that does day rides and overnight trips...

Universal EEC

v.

Activity Specific EEC





## Practice:


Brainstorm five universal EEC for your business/organization.

Brainstorm five activity specific EEC for your business/organization.

# EEC & Your Business

When a potential participant signs up for a trip, they will be requested to:

1. Review the EEC, and (if necessary)
2. Communicate with your company that they don't think they can meet one or more EEC and request an accommodation.



The requirement for participants is that they determine that they can meet the EEC for the trip *with or without an accommodation.*

# EEC & Your Business

When a potential participant signs up for a trip, they will be requested to:

1. Review the EEC, and (if necessary)
2. Communicate with your company that they don't think they can meet one or more EEC and request an accommodation.



# Decision Flowchart

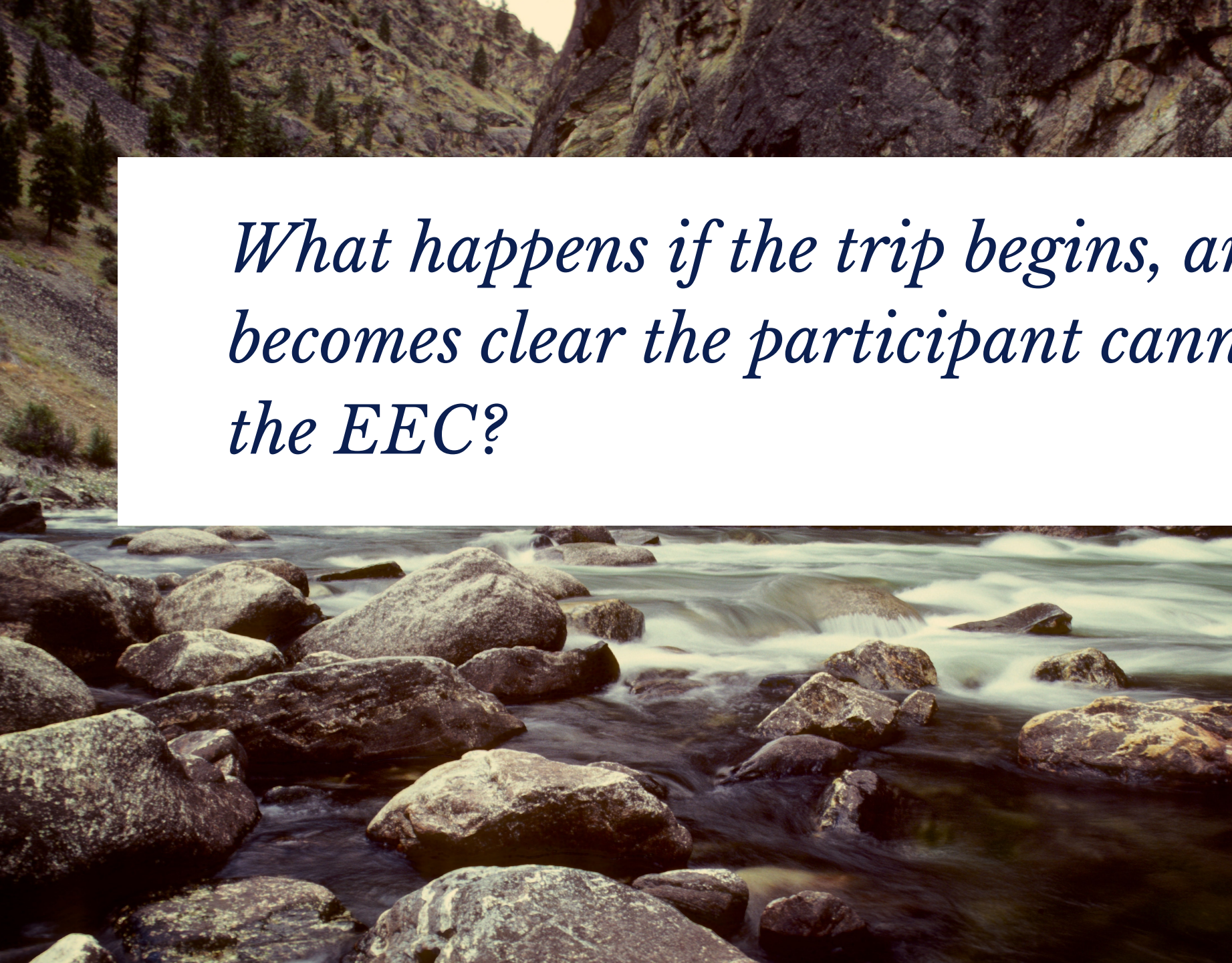
**Step 1:** Potential participant reviews EEC for trip of interest

**Step 2:** Determination of disability

**Step 3:** Identify accommodation options

**Step 4:** Is accommodation reasonable?

**Step 5:** If yes . . . /If no . . .

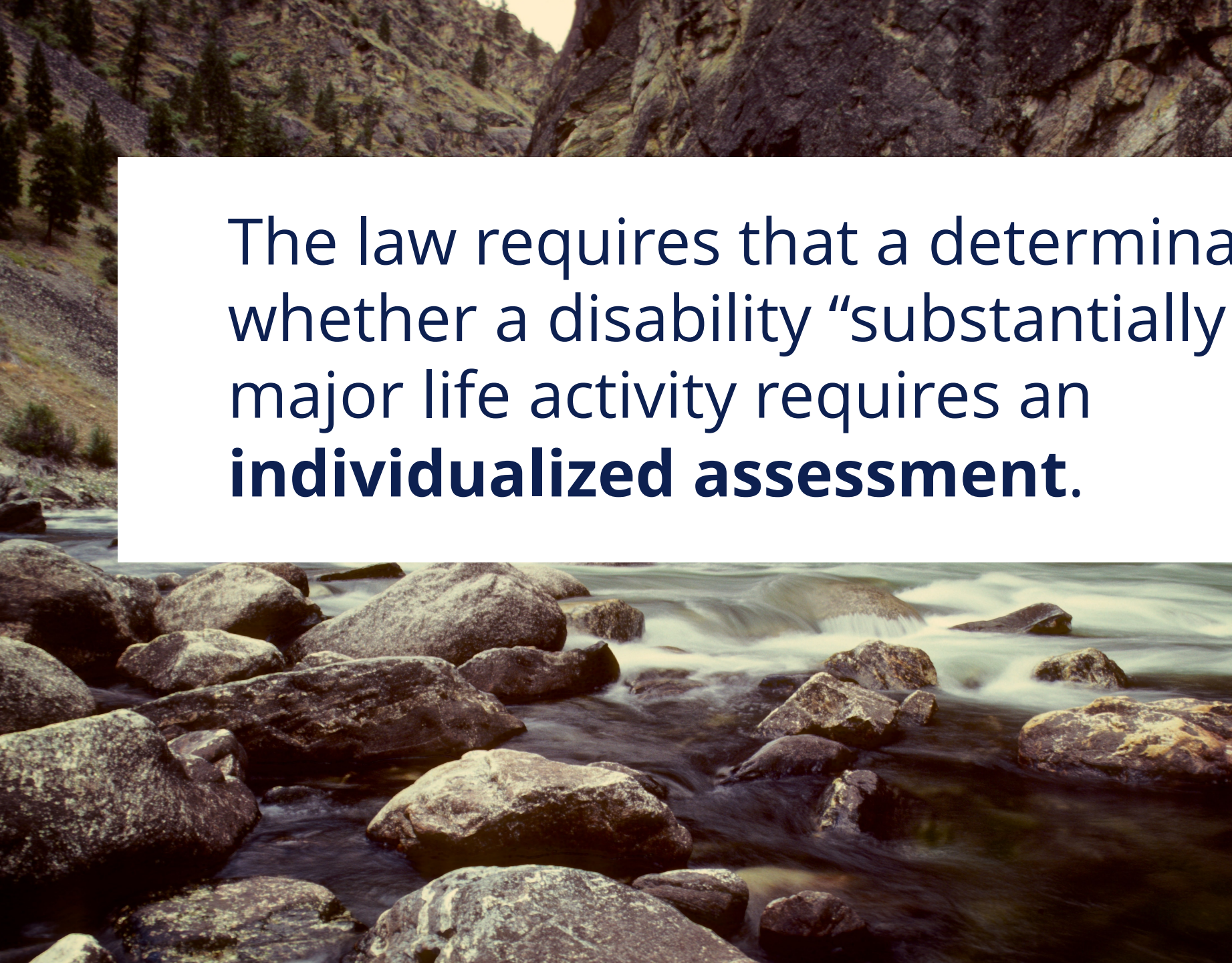


*What happens if the trip begins, and it becomes clear the participant cannot meet the EEC?*

# Example:

You own a flatwater SUP  
boarding company...





The law requires that a determination of whether a disability “substantially limits” a major life activity requires an **individualized assessment.**