
Americans with Disabilities Act (ADA) - *Overview*

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The information contained in this course document are excerpts from the original document titled: "Americans with Disabilities Act – Questions and Answers" published by the U.S. Equal Employment Opportunity Commission of the Civil Rights Division of the U.S. Department of Justice, last updated on November 14, 2008. The original document may be viewed or downloaded by clicking on: <http://www.ada.gov/gandaeng.htm>. For more information or additional resources, call the ADA Information Line at 800-514-0301 (voice) or 800-514-0383 (TTY).

Americans with Disabilities Act (ADA) Overview

(Questions and Answers)

Barriers to employment, transportation, public accommodations, public services, and telecommunications have imposed staggering economic and social costs on American society and have undermined our well-intentioned efforts to educate, rehabilitate, and employ individuals with disabilities. By breaking down these barriers, the Americans with Disabilities Act (ADA) will enable society to benefit from the skills and talents of individuals with disabilities, will allow us all to gain from their increased purchasing power and ability to use it, and will lead to fuller, more productive lives for all Americans.

The Americans with Disabilities Act gives civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, State and local government services, and telecommunications.

Fair, swift, and effective enforcement of this landmark civil rights legislation is a high priority of the Federal Government. This booklet is designed to provide answers to some of the most often asked questions about the ADA.

STATE AND LOCAL GOVERNMENTS

Q. *Does the ADA apply to State and local governments?*

A. Title II of the ADA prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities. It applies to all State and local governments, their departments and agencies, and any other instrumentalities or special purpose districts of State or local governments. It clarifies the requirements of section 504 of the Rehabilitation Act of 1973 for public transportation systems that receive Federal financial assistance, and extends coverage to all public entities that provide public transportation, whether or not they receive Federal financial assistance. It establishes detailed standards for the operation of public transit systems, including commuter and intercity rail (AMTRAK).

Q. *When do the requirements for State and local governments become effective?*

A. In general, they became effective on January 26, 1992.

Q. *How does title II affect participation in a State or local government's programs, activities, and services?*

A. A state or local government must eliminate any eligibility criteria for participation in programs, activities, and services that screen out or tend to screen out persons with disabilities, unless it can establish that the requirements are necessary for the provision of the service, program, or activity. The State or local government may, however, adopt legitimate safety requirements necessary for safe operation if they are based on real risks, not on stereotypes or generalizations about individuals with disabilities. Finally, a public entity must reasonably modify its policies, practices, or procedures to avoid discrimination. If the public entity can demonstrate that a particular modification would fundamentally alter the nature of its service, program, or activity, it is not required to make that modification.

Q. *Does title II cover a public entity's employment policies and practices?*

A. Yes. Title II prohibits all public entities, regardless of the size of their work force, from discriminating in employment against qualified individuals with disabilities. In addition to title II's employment coverage, title I of the ADA and section 504 of the Rehabilitation Act

of 1973 prohibit employment discrimination against qualified individuals with disabilities by certain public entities

Q. *What changes must a public entity make to its existing facilities to make them accessible?*

A. A public entity must ensure that individuals with disabilities are not excluded from services, programs, and activities because existing buildings are inaccessible. A State or local government's programs, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. This standard, known as "program accessibility," applies to facilities of a public entity that existed on January 26, 1992. Public entities do not necessarily have to make each of their existing facilities accessible. They may provide program accessibility by a number of methods including alteration of existing facilities, acquisition or construction of additional facilities, relocation of a service or program to an accessible facility, or provision of services at alternate accessible sites.

Q. *When must structural changes be made to attain program accessibility?*

A. Structural changes needed for program accessibility must be made as expeditiously as possible, but no later than January 26, 1995. This three-year time period is not a grace period; all alterations must be accomplished as expeditiously as possible. A public entity that employs 50 or more persons must have developed a transition plan by July 26, 1992, setting forth the steps necessary to complete such changes.

Q. *What is a self-evaluation?*

A. A self-evaluation is a public entity's assessment of its current policies and practices. The self-evaluation identifies and corrects those policies and practices that are inconsistent with title II's requirements. All public entities must complete a self-evaluation by January 26, 1993. A public entity that employs 50 or more employees must retain its self-evaluation for three years. Other public entities are not required to retain their self-evaluations, but are encouraged to do so because these documents evidence a public entity's good faith efforts to comply with title II's requirements.

Q. What does title II require for new construction and alterations?

- A.** The ADA requires that all new buildings constructed by a State or local government be accessible. In addition, when a State or local government undertakes alterations to a building, it must make the altered portions accessible.

Q. How will a State or local government know that a new building is accessible?

- A.** A State or local government will be in compliance with the ADA for new construction and alterations if it follows either of two accessibility standards. It can choose either the Uniform Federal Accessibility Standards or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities, which is the standard that must be used for public accommodations and commercial facilities under title III of the ADA. If the State or local government chooses the ADA Accessibility Guidelines, it is not entitled to the elevator exemption (which permits certain private buildings under three stories or under 3,000 square feet per floor to be constructed without an elevator).

Q. What requirements apply to a public entity's emergency telephone services, such as 911?

- A.** State and local agencies that provide emergency telephone services must provide "direct access" to individuals who rely on a TDD or computer modem for telephone communication. Telephone access through a third party or through a relay service does not satisfy the requirement for direct access. Where a public entity provides 911 telephone service, it may not substitute a separate seven-digit telephone line as the sole means for access to 911 services by non-voice users. A public entity may, however, provide a separate seven-digit line for the exclusive use of non-voice callers in addition to providing direct access for such calls to its 911 line.

Q. Does title II require that telephone emergency service systems be compatible with all formats used for non-voice communications?

- A.** No. At present, telephone emergency services must only be compatible with the Baudot format. Until it can be technically proven that communications in another format can operate in a reliable and compatible manner in a given telephone emergency environment, a public entity would not be required to provide direct access to computer modems using formats other than Baudot.

Q. *How will the ADA's requirements for State and local governments be enforced?*

A. Private individuals may bring lawsuits to enforce their rights under title II and may receive the same remedies as those provided under section 504 of the Rehabilitation Act of 1973, including reasonable attorney's fees. Individuals may also file complaints with eight designated Federal agencies, including the Department of Justice and the Department of Transportation.

PUBLIC ACCOMMODATIONS

Q. *What are public accommodations?*

A. A public accommodation is a private entity that owns, operates, leases, or leases to, a place of public accommodation. Places of public accommodation include a wide range of entities, such as restaurants, hotels, theaters, doctors' offices, pharmacies, retail stores, museums, libraries, parks, private schools, and day care centers. Private clubs and religious organizations are exempt from the ADA's title III requirements for public accommodations.

Q. *Will the ADA have any effect on the eligibility criteria used by public accommodations to determine who may receive services?*

A. Yes. If a criterion screens out or tends to screen out individuals with disabilities, it may only be used if necessary for the provision of the services. For instance, it would be a violation for a retail store to have a rule excluding all deaf persons from entering the premises, or for a movie theater to exclude all individuals with cerebral palsy. More subtle forms of discrimination are also prohibited. For example, requiring presentation of a driver's license as the sole acceptable means of identification for purposes of paying by check, could constitute discrimination against individuals with vision impairments. This would be true if such individuals are ineligible to receive licenses and the use of an alternative means of identification is feasible.

Q. *Does the ADA allow public accommodations to take safety factors into consideration in providing services to individuals with disabilities?*

A. The ADA expressly provides that a public accommodation may exclude an individual, if that individual poses a direct threat to the health or safety of others that cannot be mitigated by appropriate modifications in the public accommodation's policies or procedures, or by the provision of auxiliary aids. A public accommodation will be permitted to establish objective safety criteria for the operation of its business; however, any safety standard must be based on objective requirements rather than stereotypes or generalizations about the ability of persons with disabilities to participate in an activity.

Q. *Are there any limits on the kinds of modifications in policies, practices, and procedures required by the ADA?*

A. Yes. The ADA does not require modifications that would fundamentally alter the nature of the services provided by the public accommodation. For example, it would not be discriminatory for a physician specialist who treats only burn patients to refer a deaf individual to another physician for treatment of a broken limb or respiratory ailment. To require a physician to accept patients outside of his or her specialty would fundamentally alter the nature of the medical practice.

Q. *What kinds of auxiliary aids and services are required by the ADA to ensure effective communication with individuals with hearing or vision impairments?*

A. Appropriate auxiliary aids and services may include services and devices such as qualified interpreters, assistive listening devices, notetakers, and written materials for individuals with hearing impairments; and qualified readers, taped texts, and Brailled or large print materials for individuals with vision impairments.

Q. *Are there any limitations on the ADA's auxiliary aids requirements?*

A. Yes. The ADA does not require the provision of any auxiliary aid that would result in an undue burden or in a fundamental alteration in the nature of the goods or services provided by a public accommodation. However, the public accommodation is not relieved from the duty to furnish an alternative auxiliary aid, if available, that would not result in a fundamental alteration or undue burden. Both of these limitations are derived from existing regulations and case-law under section 504 of the Rehabilitation Act and are to be determined on a case-by-case basis.

Q. *Will restaurants be required to have brailled menus?*

A. No, not if waiters or other employees are made available to read the menu to a blind customer.

Q. *Will a clothing store be required to have brailled price tags?*

A. No, not if sales personnel could provide price information orally upon request.

Q. *Will a bookstore be required to maintain a sign language interpreter on its staff in order to communicate with deaf customers?*

A. No, not if employees communicate by pen and notepad when necessary.

Q. *Are there any limitations on the ADA's barrier removal requirements for existing facilities?*

A. Yes. Barrier removal need be accomplished only when it is "readily achievable" to do so.

Q. *What does the term "readily achievable" mean?*

A. It means "easily accomplishable and able to be carried out without much difficulty or expense."

Q. *What are examples of the types of modifications that would be readily achievable in most cases?*

A. Examples include the simple ramping of a few steps, the installation of grab bars where only routine reinforcement of the wall is required, the lowering of telephones, and similar modest adjustments.

Q. *Will businesses need to rearrange furniture and display racks?*

A. Possibly. For example, restaurants may need to rearrange tables and department stores may need to adjust their layout of racks and shelves in order to permit access to wheelchair users.

Q. *Will businesses need to install elevators?*

A. Businesses are not required to retrofit their facilities to install elevators unless such installation is readily achievable, which is unlikely in most cases.

Q. *When barrier removal is not readily achievable, what kinds of alternative steps are required by the ADA?*

A. Alternatives may include such measures as in-store assistance for removing articles from inaccessible shelves, home delivery of groceries, or coming to the door to receive or return dry cleaning.

Q. *Must alternative steps be taken without regard to cost?*

A. No, only readily achievable alternative steps must be undertaken.

Q. *How is "readily achievable" determined in a multi-site business?*

A. In determining whether an action to make a public accommodation accessible would be "readily achievable," the overall size of the parent corporation or entity is only one factor to be considered. The ADA also permits consideration of the financial resources of the particular facility or facilities involved and the administrative or fiscal relationship of the facility or facilities to the parent entity.

Q. *Who has responsibility for ADA compliance in leased places of public accommodation, the landlord or the tenant?*

A. The ADA places the legal obligation to remove barriers or provide auxiliary aids and services on both the landlord and the tenant. The landlord and the tenant may decide by lease who will actually make the changes and provide the aids and services, but both remain legally responsible.

Q. *What does the ADA require in new construction?*

A. The ADA requires that all new construction of places of public accommodation, as well as of "commercial facilities" such as office buildings, be accessible. Elevators are generally not required in facilities under three stories or with fewer than 3,000 square feet per floor, unless the building is a shopping center or mall; the professional office of a health care provider; a terminal, depot, or other public transit station; or an airport passenger terminal.

Q. *Is it expensive to make all newly constructed places of public accommodation and commercial facilities accessible?*

A. The cost of incorporating accessibility features in new construction is less than one percent of construction costs. This is a small price in relation to the economic benefits to be derived from full accessibility in the future, such as increased employment and consumer spending and decreased welfare dependency.

Q. *Must every feature of a new facility be accessible?*

A. No, only a specified number of elements such as parking spaces and drinking fountains must be made accessible in order for a facility to be "readily accessible." Certain non-occupiable spaces such as elevator pits, elevator penthouses, and piping or equipment catwalks need not be accessible.

Q. *What are the ADA requirements for altering facilities?*

A. All alterations that could affect the usability of a facility must be made in an accessible manner to the maximum extent feasible. For example, if during renovations a doorway is being relocated, the new doorway must be wide enough to meet the new construction standard for accessibility. When alterations are made to a primary function area, such as the lobby of a bank or the dining area of a cafeteria, an accessible path of travel to the altered area must also be provided. The bathrooms, telephones, and drinking fountains serving that area must also be made accessible. These additional accessibility alterations are only required to the extent that the added accessibility costs do not exceed 20% of the cost of the original alteration. Elevators are generally not required in facilities under three stories or with fewer than 3,000 square feet per floor, unless the building is a shopping center or mall; the professional office of a health care provider; a terminal, depot, or other public transit station; or an airport passenger terminal.

Q. *Does the ADA permit an individual with a disability to sue a business when that individual believes that discrimination is about to occur, or must the individual wait for the discrimination to occur?*

A. The ADA public accommodations provisions permit an individual to allege discrimination based on a reasonable belief that discrimination is about to occur. This provision, for example, allows a person who uses a wheelchair to challenge the planned construction of a

new place of public accommodation, such as a shopping mall, that would not be accessible to individuals who use wheelchairs. The resolution of such challenges prior to the construction of an inaccessible facility would enable any necessary remedial measures to be incorporated in the building at the planning stage, when such changes would be relatively inexpensive.

Q. *How does the ADA affect existing State and local building codes?*

A. Existing codes remain in effect. The ADA allows the Attorney General to certify that a State law, local building code, or similar ordinance that establishes accessibility requirements meets or exceeds the minimum accessibility requirements for public accommodations and commercial facilities. Any State or local government may apply for certification of its code or ordinance. The Attorney General can certify a code or ordinance only after prior notice and a public hearing at which interested people, including individuals with disabilities, are provided an opportunity to testify against the certification.

Q. *What is the effect of certification of a State or local code or ordinance?*

A. Certification can be advantageous if an entity has constructed or altered a facility according to a certified code or ordinance. If someone later brings an enforcement proceeding against the entity, the certification is considered "rebuttable evidence" that the State law or local ordinance meets or exceeds the minimum requirements of the ADA. In other words, the entity can argue that the construction or alteration met the requirements of the ADA because it was done in compliance with the State or local code that had been certified.

Q. *When are the public accommodations provisions effective?*

A. In general, they became effective on January 26, 1992.

Q. *How will the public accommodations provisions be enforced?*

A. Private individuals may bring lawsuits in which they can obtain court orders to stop discrimination. Individuals may also file complaints with the Attorney General, who is authorized to bring lawsuits in cases of general public importance or where a "pattern of practice" of discrimination is alleged. In these cases, the Attorney General may seek monetary damages and civil penalties. Civil penalties may not exceed \$55,000 for a first violation or \$110,000 for any subsequent violation.

MISCELLANEOUS

Q. *Is the Federal government covered by the ADA?*

A. The ADA does not cover the executive branch of the Federal government. The executive branch continues to be covered by title V of the Rehabilitation Act of 1973, which prohibits discrimination in services and employment on the basis of handicap and which is a model for the requirements of the ADA. The ADA, however, does cover Congress and other entities in the legislative branch of the Federal government.

Q. *Does the ADA cover private apartments and private homes?*

A. The ADA does not cover strictly residential private apartments and homes. If, however, a place of public accommodation, such as a doctor's office or day care center, is located in a private residence, those portions of the residence used for that purpose are subject to the ADA's requirements.

Q. *Does the ADA cover air transportation?*

A. Discrimination by air carriers in areas other than employment is not covered by the ADA but rather by the Air Carrier Access Act (49 U.S.C. 1374 (c)).

Q. *What are the ADA's requirements for public transit buses?*

A. The Department of Transportation has issued regulations mandating accessible public transit vehicles and facilities. The regulations include requirements that all new fixed-route, public transit buses be accessible and that supplementary paratransit services be provided for those individuals with disabilities who cannot use fixed-route bus service. For information on how to contact the Department of Transportation, see below.

Q. *How will the ADA make telecommunications accessible?*

A. The ADA requires the establishment of telephone relay services for individuals who use telecommunications devices for deaf persons (TDD's) or similar devices. The Federal

Communications Commission has issued regulations specifying standards for the operation of these services.

Q. *Are businesses entitled to any tax benefit to help pay for the cost of compliance?*

- A.** As amended in 1990, the Internal Revenue Code allows a deduction of up to \$15,000 per year for expenses associated with the removal of qualified architectural and transportation barriers. The 1990 amendment also permits eligible small businesses to receive a tax credit for certain costs of compliance with the ADA. An eligible small business is one whose gross receipts do not exceed \$1,000,000 or whose workforce does not consist of more than 30 full-time workers. Qualifying businesses may claim a credit of up to 50 percent of eligible access expenditures that exceed \$250 but do not exceed \$10,250. Examples of eligible access expenditures include the necessary and reasonable costs of removing architectural, physical, communications, and transportation barriers; providing readers, interpreters, and other auxiliary aids; and acquiring or modifying equipment or devices.