

Title III Highlights

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I. Who is Covered by Title III of the ADA

The title III regulation covers --

Public accommodations (i.e., private entities that own, operate, lease, or lease to places of public accommodation),

Commercial facilities, and

Private entities that offer certain examinations and courses related to educational and occupational certification.

Places of public accommodation include over five million private establishments, such as restaurants, hotels, theaters, convention centers, retail stores, shopping centers, dry cleaners, laundromats, pharmacies, doctors' offices, hospitals, museums, libraries, parks, zoos, amusement parks, private schools, day care centers, health spas, and bowling alleys.

Commercial facilities are nonresidential facilities, including office buildings, factories, and warehouses, whose operations affect commerce.

Entities controlled by religious organizations, including places of worship, are not covered.

Private clubs are not covered, except to the extent that the facilities of the private club are made available to customers or patrons of a place of public accommodation.

State and local governments are not covered by the title III regulation, but rather by the Department of Justice's title II regulation.

II. Overview of Requirements

Public accommodations must --

Provide goods and services in an integrated setting, unless separate or different measures are necessary to ensure equal opportunity.

Eliminate unnecessary eligibility standards or rules that deny individuals with disabilities an equal opportunity to enjoy the goods and services of a place of public accommodation.

Make reasonable modifications in policies, practices, and procedures that deny equal access to individuals with disabilities, unless a fundamental alteration would result in the nature of the goods and services provided.

Furnish auxiliary aids when necessary to ensure effective communication, unless an undue burden or fundamental alteration would result.

Remove architectural and structural communication barriers in existing facilities where readily achievable.

Provide readily achievable alternative measures when removal of barriers is not readily achievable.

Provide equivalent transportation services and purchase accessible vehicles in certain circumstances.

Maintain accessible features of facilities and equipment.

Design and construct new facilities and, when undertaking alterations, alter existing facilities in accordance with the Americans with Disabilities Act Accessibility Guidelines issued by the Architectural and Transportation Barriers Compliance Board and incorporated in the final Department of Justice title III regulation.

A public accommodation is not required to provide personal devices such as wheelchairs; individually prescribed devices (e.g., prescription eyeglasses or hearing aids); or services of a personal nature including assistance in eating, toileting, or dressing.

A public accommodation may not discriminate against an individual or entity because of the known disability of a person with whom the individual or entity is known to associate.

Commercial facilities are only subject to the requirement that new construction and alterations conform to the ADA Accessibility Guidelines. The other requirements applicable to public accommodations listed above do not apply to commercial facilities.

Private entities offering certain examinations or courses (i.e., those related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes) must offer them in an accessible place and manner or offer alternative accessible arrangements.

III. "Individuals with Disabilities"

The Americans with Disabilities Act provides comprehensive civil rights protections for "individuals with disabilities".

An individual with a disability is a person who --

Has a physical or mental impairment that substantially limits one or more *major life activities*, or

Has a record of such an impairment, or

Is regarded as having such an impairment.

Examples of physical or mental impairments include, but are not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism. Homosexuality and bisexuality are not physical or mental impairments under the ADA.

"Major life activities" include functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Individuals who currently engage in the illegal use of drugs are not protected by the ADA when an action is taken on the basis of their current illegal use of drugs.

IV. Eligibility for Goods and Services

In providing goods and services, a public accommodation may not use eligibility requirements that exclude or segregate individuals with disabilities, unless the requirements are *necessary* for the operation of the public accommodation.

For example, excluding individuals with cerebral palsy from a movie theater or restricting individuals with Down's Syndrome to only certain areas of a restaurant would violate the regulation.

Requirements that tend to screen out individuals with disabilities, such as requiring a blind person to produce a driver's license as the sole means of identification for cashing a check, are also prohibited.

Safety requirements may be imposed only if they are necessary for the safe operation of a place of public accommodation. They must be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

For example, an amusement park may impose height requirements for certain rides when required for safety.

Extra charges may not be imposed on individuals with disabilities to cover the costs of measures necessary to ensure nondiscriminatory treatment, such as removing barriers or providing qualified interpreters.

V. Modifications in Policies, Practices, and Procedures

A public accommodation must make reasonable modifications in its policies, practices, and procedures in order to accommodate individuals with disabilities.

A modification is not required if it would "fundamentally alter" the goods, services, or operations of the public accommodation.

For example, a department store may need to modify a policy of only permitting one person at a time in a dressing room if an individual with mental retardation needs the assistance of a companion in dressing.

Modifications in existing practices generally must be made to permit the use of guide dogs and other service animals.

Specialists are not required to provide services outside of their legitimate areas of specialization.

For example, a doctor who specializes exclusively in burn treatment may refer an individual with a disability, who is not seeking burn treatment, to another provider. A burn

specialist, however, could not refuse to provide burn treatment to, for example, an individual with HIV disease.

VI. Auxiliary Aids

A public accommodation must provide auxiliary aids and services when they are necessary to ensure effective communication with individuals with hearing, vision, or speech impairments.

"Auxiliary aids" include such services or devices as qualified interpreters, assistive listening headsets, television captioning and decoders, telecommunications devices for deaf persons (TDD's), videotext displays, readers, taped texts, brailled materials, and large print materials.

The auxiliary aid requirement is flexible. For example, a brailled menu is not required, if waiters are instructed to read the menu to blind customers.

Auxiliary aids that would result in an undue burden, (i.e., "significant difficulty or expense") or in a fundamental alteration in the nature of the goods or services are not required by the regulation. However, a public accommodation must still furnish another auxiliary aid, if available, that does not result in a fundamental alteration or an undue burden.

VII. Existing Facilities: Removal of Barriers

Physical barriers to entering and using existing facilities must be removed when "readily achievable."

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

What is readily achievable will be determined on a case-by-case basis in light of the resources available.

The regulation does not require the rearrangement of temporary or movable structures, such as furniture, equipment, and display racks to the extent that it would result in a significant loss of selling or serving space.

Legitimate safety requirements may be considered in determining what is readily achievable so long as they are based on actual risks and are necessary for safe operation.

Examples of barrier removal measures include --

Installing ramps,
Making curb cuts at sidewalks and entrances,
Rearranging tables, chairs, vending machines, display racks, and other furniture,
Widening doorways,
Installing grab bars in toilet stalls, and
Adding raised letters or braille to elevator control buttons.

First priority should be given to measures that will enable individuals with disabilities to "get in the front door," followed by measures to provide access to areas providing goods and services.

Barrier removal measures must comply, when readily achievable, with the alterations requirements of the ADA Accessibility Guidelines. If compliance with the Guidelines is not readily achievable, other safe, readily achievable measures must be taken, such as installation of a slightly narrower door than would be required by the Guidelines.

VIII. Existing Facilities: Alternatives to Barrier Removal

The ADA requires the removal of physical barriers, such as stairs, if it is "readily achievable." However, if removal is not readily achievable, alternative steps must be taken to make goods and services accessible.

Examples of alternative measures include --

Providing goods and services at the door, sidewalk, or curb,
Providing home delivery,
Retrieving merchandise from inaccessible shelves or racks,
Relocating activities to accessible locations.

Extra charges may not be imposed on individuals with disabilities to cover the costs of measures used as alternatives to barrier removal. For example, a restaurant may not charge a wheelchair user extra for home delivery when it is provided as the alternative to barrier removal.

IX. New Construction

All newly constructed places of public accommodation and commercial facilities must be accessible to individuals with disabilities to the extent that it is not structurally impracticable.

The new construction requirements apply to any facility occupied after January 26, 1993, for which the last application for a building permit or permit extension is certified as complete after January 26, 1992.

Full compliance will be considered "structurally impracticable" only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features (e.g., marshland that requires construction on stilts).

The architectural standards for accessibility in new construction are contained in the ADA Accessibility Guidelines issued by the Architectural and Transportation Barriers Compliance Board, an independent Federal agency. These standards are incorporated in the final Department of Justice title III regulation.

Elevators are not required in facilities under three stories or with fewer than 3,000 square feet per floor, unless the building is a shopping center, shopping mall, professional office of a health care provider, or station used for public transportation.

X. Alterations

Alterations after January 26, 1992, to existing places of public accommodation and commercial facilities must be accessible to the maximum extent feasible.

The architectural standards for accessibility in alterations are contained in the ADA Accessibility Guidelines issued by the Architectural and Transportation Barriers Compliance Board. These standards are incorporated in the final Department of Justice title III regulation.

An alteration is a change that affects usability of a facility. For example, if during remodeling, renovation, or restoration, a doorway is being relocated, the new doorway must be wide enough to meet the requirements of the ADA Accessibility Guidelines.

When alterations are made to a "primary function area", such as the lobby or work areas of a bank, an accessible path of travel to the altered area,

and the bathrooms, telephones, and drinking fountains serving that area, must be made accessible to the extent that the added accessibility costs are not disproportionate to the overall cost of the original alteration.

Alterations to windows, hardware, controls, electrical outlets, and signage in primary function areas do not trigger the path of travel requirement.

The added accessibility costs are disproportionate if they exceed 20 percent of the original alteration.

Elevators are not required in facilities under three stories or with fewer than 3,000 square feet per floor, unless the building is a shopping center, shopping mall, professional office of a health care provider, or station used for public transportation.

XI. Overview of Americans with Disabilities Act Accessibility Guidelines for New Construction and Alterations

New construction and alterations must be accessible in compliance with the ADA Accessibility Guidelines.

The Guidelines contain general design ("technical") standards for building and site elements, such as parking, accessible routes, ramps, stairs, elevators, doors, entrances, drinking fountains, bathrooms, controls and operating mechanisms, storage areas, alarms, signage, telephones, fixed seating and tables, assembly areas, automated teller machines, and dressing rooms. They also have specific technical standards for restaurants, medical care facilities, mercantile facilities, libraries, and transient lodging (such as hotels and shelters).

The Guidelines also contain "scoping" requirements for various elements (i.e., it specifies how many, and under what circumstances, accessibility features must be incorporated).

Following are examples of scoping requirements in new construction --

At least 50 percent of all public entrances must be accessible. In addition, there must be accessible entrances to enclosed parking, pedestrian tunnels, and elevated walkways.

An accessible route must connect accessible public transportation stops, parking spaces, passenger loading zones, and public streets or sidewalks to all accessible

features and spaces within a building.

Every public and common use bathroom must be accessible. Only one stall must be accessible, unless there are six or more stalls, in which case two stalls must be accessible (one of which must be of an alternate, narrow-style design).

Each floor in a building without a supervised sprinkler system must contain an "area of rescue assistance" (i.e., an area with direct access to an exit stairway where people unable to use stairs may await assistance during an emergency evacuation).

One TDD must be provided inside any building that has four or more public pay telephones, counting both interior and exterior phones. In addition, one TDD must be provided whenever there is an interior public pay phone in a stadium or arena; convention center; hotel with a convention center; covered shopping mall; or hospital emergency, recovery, or waiting room.

One accessible public phone must be provided for each floor, unless the floor has two or more banks of phones, in which case there must be one accessible phone for each bank.

Fixed seating assembly areas that accommodate 50 or more people or have audio-amplification systems must have a permanently installed assistive listening system.

Dispersal of wheelchair seating in theaters is required where there are more than 300 seats. In addition, at least one percent of all fixed seats must be aisle seats without armrests (or with movable armrests). Fixed seating for companions must be located adjacent to each wheelchair location.

Where automated teller machines are provided, at least one must be accessible.

Five percent of fitting and dressing rooms (but never less than one) must be accessible.

Following are examples of specific scoping requirements for new construction of special types of facilities, such as restaurants, medical care facilities, mercantile establishments, libraries, and hotels --

In restaurants, generally all dining areas and five percent of fixed tables (but not less than one) must be accessible.

In medical care facilities, all public and common use areas must be accessible. In general purpose hospitals and in psychiatric and detoxification facilities, ten percent of patient bedrooms and toilets must be accessible. The required percentage is 100 percent for special facilities treating conditions that affect mobility, and 50 percent for long-term care facilities and nursing homes.

In mercantile establishments, at least one of each type of counter containing a cash register and at least one of each design of check-out aisle must be accessible. In some cases, additional check-out aisles are required to be accessible (i.e., from 20 to 40 percent) depending on the number of check-out aisles and the size of the facility.

In libraries, all public areas must be accessible. In addition, five percent of fixed tables or study carrels (or at least one) must be accessible. At least one lane at the check-out area and aisles between card catalogs, magazine displays, and stacks must be accessible.

In hotels, four percent of the first 100 rooms and approximately two percent of rooms in excess of 100 must be accessible to persons with hearing impairments (i.e., contain visual alarms, visual notification devices, volume-control telephones, and an accessible electrical outlet for a TDD) and to persons with mobility impairments. Moreover, an identical percentage of additional rooms must be accessible to persons with hearing impairments.

Technical and scoping requirements for alterations are sometimes less stringent than those for new construction. For example, when compliance with the new construction requirements would be technically infeasible, one accessible unisex bathroom per floor is acceptable.

XII. Examinations and Courses

Certain examinations or courses offered by a private entity (i.e., those that are related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes) must either be given in a place and manner accessible to persons with disabilities, or be made accessible through alternative means.

In order to provide an examination in an accessible place and manner, a private entity must --

Assure that the examination measures what it is intended to measure, rather than reflecting the individual's impaired sensory, manual, or speaking skills.

Modify the examination format when necessary (e.g., permit additional time).

Provide auxiliary aids (e.g., taped exams, interpreters, large print answer sheets, or qualified readers), unless they would fundamentally alter the measurement of the skills or knowledge that the examination is intended to test or would result in an undue burden.

Offer any modified examination at an equally convenient location, as often, and in as timely a manner as are other examinations.

Administer examinations in a facility that is accessible or provide alternative comparable arrangements, such as providing the examination at an individual's home with a proctor.

In order to provide a course in an accessible place and manner, a private entity may need to --

Modify the course format or requirements (e.g., permit additional time for completion of the course).

Provide auxiliary aids, unless a fundamental alteration or undue burden would result.

Administer the course in a facility that is accessible or provide alternative comparable arrangements, such as provision of the course through video tape, audio cassettes, or prepared notes.

XIII. Enforcement of the ADA and its Regulations

Private parties may bring lawsuits to obtain court orders to stop discrimination. No monetary damages will be available in such suits. A reasonable attorney's fee, however, may be awarded.

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 or practice" of discrimination is alleged.

In suits brought by the Attorney General, monetary damages (not including punitive damages) and civil penalties may be awarded. Civil penalties may not exceed \$50,000 for a first violation or \$100,000 for any subsequent violation.

XIV. Technical Assistance

The ADA requires that the Federal agencies responsible for issuing ADA regulations provide "technical assistance".

Technical assistance is the dissemination of information (either directly by the Department or through grants and contracts) to assist the public, including individuals protected by the ADA and entities covered by the ADA, in understanding the new law.

Methods of providing information include, for example, audio-visual materials, pamphlets, manuals, electronic bulletin boards, checklists, and training.

The Department issued for public comment on December 5, 1990, a government-wide plan for the provision of technical assistance.

The Department's efforts focus on raising public awareness of the ADA by providing--

- Fact sheets and pamphlets in accessible formats,

- Speakers for workshops, seminars, classes, and conferences,

- An ADA telephone information line, and

- Access to ADA documents through an electronic bulletin board for users of personal computers.

The Department has established a comprehensive program of technical assistance relating to public accommodations and State and local governments.

Grants will be awarded for projects to inform individuals with disabilities and covered entities about their rights and responsibilities under the ADA and to facilitate voluntary compliance.

The Department will issue a technical assistance manual by January 26, 1992, for individuals or entities with rights or duties under the ADA.

For additional information, contact:

Disability Rights Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 66738
Washington, D.C 20035-6738

(800) 514-0301 (Voice)

(800) 514-0383 (TDD)

(202) 514-6193 (Electronic Bulletin Board)