



## **The ADA and Public Places: Access, Accessibility, and Advocacy**

### **What Is the Americans with Disabilities Act (ADA)?**

The Americans with Disabilities Act (ADA) is a federal civil rights law protecting people from discrimination based on disability. It requires public accommodations, employers, transportation providers, state and local governments, and telecommunications to be accessible to people with disabilities. Title Three of the ADA applies specifically to places of public accommodation. This publication provides a general overview of your rights under Title Three of the ADA.

Note: The ADA uses Roman numerals to identify its different titles—e.g., Title III. We are spelling out the numbers to improve accessibility of this document.

### **What Is Accessibility?**

Accessibility means that people with disabilities are able to access the same buildings, programs, goods, and services as people without disabilities. Accessibility is not limited to physical access; it also includes communication access.

### **What Is a Place of Public Accommodation?**

Places of public accommodation are private businesses or organizations that provide goods, services, facilities, privileges, advantages, or accommodations to the public. Examples include hotels, restaurants, movie theaters, stadiums, shopping centers, grocery stores, banks, hospitals, lawyers' offices, museums, zoos, private schools, homeless shelters, and golf courses. Title Three applies to all public accommodations, regardless of how many employees they have.

Religious organizations and private clubs are not considered public accommodations. That includes seminaries, churches, mosques, synagogues, and clubs that are not open to the public.

Aircraft and railroads are not considered public accommodations under Title Three, but discrimination in these areas of transportation may be covered under separate federal

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laws, such as the Air Carrier Access Act.

### **What Is a Reasonable Accommodation?**

Sometimes, a public accommodation needs to change how it does business to provide a similar level of service to people with disabilities as it does to others. The change is called a reasonable accommodation or reasonable modification.

For example, a grocery store has only one accessible checkout aisle, but it happens to be the "10 items or less" aisle. The store should allow customers using wheelchairs or other mobility devices to use the aisle regardless of the number of items they have.

Another example involves service dogs in restaurants. A restaurant with a "no pets" policy must make an exception for service dogs. Public accommodations cannot require that a service animal be licensed, and they cannot ask about an individual's disability. The ADA takes priority over local or state laws or regulations. If a local health law does not allow animals in restaurants without an exception for service animals, the local health law is in violation of the ADA and the business owner should not follow it.

Public accommodations are required to make reasonable accommodations unless doing so would fundamentally alter the nature of their goods, services, or operations. For example, it would not be discriminatory for a cardiologist to refer an individual with hearing loss who has a broken bone to an orthopedist. To require a doctor to accept patients outside of his or her specialty would fundamentally alter the nature of the medical practice.

More subtle forms of discrimination also are illegal. For example, a store requires a driver license as proof of identity when paying by check or credit card. The policy may discriminate against an individual with a vision impairment who cannot get a driver license if other types of identification are not accepted.

Health and Safety Exception. A public accommodation may set safety requirements that are necessary for safe operation when an individual poses a direct threat to the health or safety of others. Safety requirements must be based on actual risks and not on stereotypes or generalizations about the ability of persons with disabilities to participate in an activity.

For example, a service dog that is vicious toward other guests may be excluded. However, a public accommodation may not make assumptions about how an animal is likely to behave based on past experience with other animals. Each situation must be considered individually. Although a public accommodation may exclude any service animal that is vicious, it should give the individual with a disability who uses the service animal the option of continuing to enjoy its goods and services without having the service animal on the premises.

In contrast, it is legal for an amusement park to set height limits for riders when such limits are necessary to safely enjoy the ride.

### **Auxiliary Aids and Services - Interpreters**

Public accommodations must provide auxiliary aids and services when necessary for communication with individuals with disabilities. Some examples of auxiliary aids and services are qualified interpreters, assistive listening devices, note takers, written materials, qualified readers, taped texts, and Brailled or large-print materials.

Most business communications, such as ordering food at a restaurant, are relatively straightforward and can be done using pen and paper. Retail stores are not required to have Brailled merchandise tags as long as a salesperson is available to assist an individual with a visual impairment. However, certain services require a higher level of communication.

In professional settings, effective communication is important to prevent the wrong diagnosis, the loss of wages, or other negative consequences that might come from a lack of clear understanding. Professionals are required to provide, at their own expense, auxiliary devices and services unless the services are far too expensive or difficult, which is rare.

Communication through note writing is generally not considered an acceptable means of communication with a doctor, lawyer, or other professional. If you have hearing loss and sign language is your primary means of communication, a lawyer, a doctor, or other professional must pay for and provide a sign language interpreter. A qualified interpreter must be able to listen, understand, and explain what has been said both to the professional and to the individual with hearing loss. An interpreter cannot be overly emotional or one-sided.

Family Members as Interpreters. A family member is not usually considered a qualified interpreter and should be used only in emergency situations. A family member may not know how to interpret technical terms or may not be able to remain unemotional. A doctor or lawyer may not ask that you bring a family member along to interpret; they must provide a qualified interpreter for you.

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. However, when a service requires a person to undress in order to receive care, as is the case with many medical exams, staff must provide assistance.

### **Screening**

A public accommodation cannot set eligibility criteria that screen out or tend to screen

out individuals with disabilities, unless the criteria can be shown to be necessary. For example, a gym cannot say that all members must be able to run a mile in order to join. This requirement would have the effect of screening out people who use wheelchairs or people who have trouble running due to a disability.

### **Charges or Fees**

A public accommodation cannot make an individual with a disability pay to cover the costs of measures, such as auxiliary aids or barrier removal, that are required to provide that individual with nondiscriminatory treatment.

For example, a hotel may not charge a fee or a deposit as a condition to allowing a service animal to come with an individual with a disability, even if deposits are usually required for pets. However, the hotel may charge for damage caused by the service animal if the same policy is used for the pets of guests who do not have disabilities.

### **New Construction and Alterations to Existing Facilities**

Places of public accommodation constructed and open to the public on or after January 26, 1993 must be accessible to people with disabilities. The ADA Accessibility Guidelines contain general design or technical standards for building and site elements, such as parking, doors, entrances, drinking fountains, bathrooms, signs, telephones, fixed seating and tables, and dressing rooms. State or local standards that are stricter than the ADA requirements must be followed.

The standards also apply to portions of buildings that were altered on or after January 26, 1992. An alteration is a change that affects the usability of the building. For example, the width of a doorway may affect the usability of a building. If a door is relocated during remodeling, the new doorway must be wide enough to meet the requirements of the ADA Accessibility Guidelines. In contrast, reroofing is not an alteration because it does not change the usability of the building.

When alterations are made to a "primary function area," such as the lobby or work areas of a bank, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving that area, must be made accessible so long as these costs are not more than 20 percent of the cost of altering only the primary function area.

Elevators. Generally, buildings with fewer than three stories or less than 3000 square feet per floor are not required to install an elevator. Exceptions to this rule are shopping centers, shopping malls, buildings that include the professional offices of a health care provider, and stations used for public transportation.

Maintenance. Public accommodations are required to maintain all accessible areas and services in operable working condition.

## **Removal of Barriers**

To provide individuals with disabilities the same or substantially similar use and enjoyment of goods and services that are enjoyed by individuals without disabilities, Title Three requires the removal of barriers in all buildings, regardless of when constructed, if removal is not too expensive or difficult. This includes the removal of architectural barriers, such as narrow walkways, round doorknobs, and steps, as well as the removal of communication barriers that are structural in nature.

Examples of barrier removal include the installation of ramps, Brailled signs, flashing alarm lights, and grab bars in toilet stalls, as well as widening doors or creating accessible parking spaces.

Various factors are considered when determining whether an accommodation will be too difficult or expensive. This includes, but is not limited to, the nature and cost of the action needed, the overall financial resources of the business, the number of persons employed, and safety requirements that are necessary for safe operation. Determinations are made on a case-by-case basis.

Alternatives to Barrier Removal. If the removal of a barrier is far too expensive or difficult, the goods or services should be made available through alternative, well-publicized methods at no extra charge. For example, it is too expensive and difficult for a small restaurant in an old building to install an elevator. Instead, it offers home delivery at no extra cost. Other examples include providing curb service, retrieving merchandise from inaccessible shelves or racks, or relocating activities to accessible locations.

## **Guidance and Practical Tips on Requesting Accommodations**

You do not have to make your request for a reasonable accommodation in any particular way.

Remember, you are not asking for a favor. You are entitled to a reasonable accommodation under the law. As always, it is best to ask politely, but do not be afraid to assert your rights if your request is denied or the public accommodation is unclear about the scope of their legal responsibilities.

A place of public accommodation may not retaliate against you for requesting a reasonable accommodation or participating in any investigation or action to enforce the ADA. Retaliation includes, but is not limited to, the denial of services, intimidation, or threats. Retaliation is a violation of the ADA.

## **How to File a Title Three Complaint**

If you believe you have been discriminated against on the basis of a disability by a place

of public accommodation, you may:

1. File a complaint with the U.S. Department of Justice: The U.S. Attorney General (AG) is authorized to bring lawsuits in cases of general public importance or where a pattern or practice of discrimination is alleged. The AG may seek equitable relief, which requires the place of public accommodation to stop or fix the discriminatory practice(s). The AG also may seek financial remedies.
2. File your own case in court: You also have the option of filing your own case in U.S. District Court, where you may obtain a court order to stop discrimination. Monetary damages are not provided in private lawsuits under Title Three of the ADA. A reasonable attorney's fee may be awarded at the judge's discretion.

### **Resources on ADA.gov**

The U.S. Department of Justice maintains the website [www.ada.gov](http://www.ada.gov). This site has information on the rights of individuals with disabilities under the ADA and the responsibilities of places of public accommodation.

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Disability Rights North Carolina is a 501(c)(3) nonprofit organization headquartered in Raleigh. It is a federally mandated protection and advocacy system with funding from the U.S. Department of Health and Human Services, the U.S. Department of Education, and the Social Security Administration.

Its team of attorneys, advocates, paralegals and support staff provide advocacy and legal services at no charge for people with disabilities across North Carolina to protect them from discrimination on the basis of their disability. All people with disabilities living in North Carolina are eligible to receive assistance from Disability Rights NC.

Contact us for assistance or to request this information in an alternate format.

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