



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 act that provides protections to individuals with disabilities similar to the rights protected based on 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.

Title III of the ADA specifically addresses discrimination against individuals with disabilities by private entities that provide goods, services, facilities, privileges, advantages, or accommodations to the public. This publication is intended to provide a general overview of your rights to equal access under Title III of the ADA.

What Is Accessibility?

Accessibility means individuals with disabilities have the same or substantially similar use and enjoyment of goods and services that are enjoyed by people without disabilities. Accessibility is not limited to physical access; it also includes access to effective communication.

What Is a Place of Public Accommodation?

Places of public accommodation are private businesses or organizations that provide goods and services to the public. Title III applies to all public accommodations, regardless of size.

A wide variety of places are considered public accommodations. This includes but is not limited to hotels, restaurants, bars, movie theaters, stadiums, shopping centers, grocery stores, banks, hospitals, doctor's offices, lawyer's offices, bus stations, museums, zoos, private schools, homeless shelters, and golf courses. (42 U.S.C. § 12101.) Religious organizations and private clubs are not considered public accommodations.

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For example: Clubs that are not open to the public, seminaries, and churches are not considered public accommodations.

Aircraft and railroads are not considered public accommodations under Title III, but discrimination in these areas of transportation may be covered under separate federal laws, such as the Air Carrier Access Act (49 U.S.C. § 1374(c).)

What Is a Reasonable Accommodation?

Discrimination may take many forms. One example is when a public accommodation does not change its practices and policies to make sure it provides a similar level of service to people with disabilities as it does for others. The change or modification of practices and policies are called reasonable accommodations.

For example: If 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 may have.

Another example: A restaurant with a no-pets policy must make an exception for service dogs. Public accommodations cannot require that a service animal be licensed, nor can they 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 any animals in restaurants, without an exception for service animals, the local health law is in violation of the ADA. (<http://www.ada.gov/qasrvc.htm>)

Public accommodations are required to make reasonable accommodations unless they would fundamentally alter the nature of the goods, services, or operations. For example: It would not be discriminatory for a doctor who treats only burn patients to refer an individual with a hearing impairment to another doctor for treatment of a broken leg. To require a doctor to accept patients outside of his or her specialty would fundamentally alter the nature of the medical practice. (<http://www.ada.gov/q&aeng02.htm>)

More subtle forms of discrimination are also illegal. For example: A clothing store's policy of requiring a driver's license as the only acceptable means of identification when paying by check or credit card would be discrimination if an individual with a vision impairment cannot get a driver's license and the use of other types of identification is possible. (<http://www.ada.gov/qandaeng.htm>)

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: Any service dog that is vicious towards 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. (<http://www.ada.gov/qasrv.htm>)

Another example: It is legal for an amusement park to set height limits for certain rides when required for safety.

Auxiliary Aids and Services - Interpreters

Auxiliary aids and services are considered reasonable modifications under Title III. 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. As a result, 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. (<http://www.ada.gov/smbusgd.pdf>)

In professional settings, effective communication is important in preventing 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 not considered an acceptable means of communication with a doctor, lawyer, or other professional. If you have a hearing impairment 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 to both the professional and to the individual with a hearing impairment. 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 certain technical terms or may 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 an individual with a disability, 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 providing 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.

(<http://www.ada.gov/qasrvc.htm>)

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 III requires the removal of barriers in existing buildings if removal is not too expensive or difficult. Title III requires 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: installing 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: If it is far too expensive for a small restaurant to install an elevator, they may provide home delivery instead. They cannot charge a fee for this service. Other examples: providing curb service or home delivery, retrieving merchandise from inaccessible shelves or racks, or relocating activities to accessible locations.

Alterations to Existing Facilities and New Construction

Title III requires places of public accommodation to be designed, constructed, and altered in compliance with certain accessibility standards.

Newly constructed buildings first occupied on or after January 26, 1993 must meet or exceed ADA standards. The standards also apply to altered portions of existing buildings made on or after January 26, 1992. Many state and local standards are stricter than ADA requirements.

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

An alteration is a change that affects usability of a facility. For example, if during remodeling, 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 so long as the costs are not greater than 20 percent of the original alteration.

Elevators. Buildings with fewer than 3 stories or less than 3000 square feet per floor are not required to install an elevator. Exceptions: Shopping centers, shopping malls, offices of health care providers, and stations used for public transportation.

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

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 does not hurt 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.

Finally, 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 III Complaint

If you believe you have been discriminated against on the basis of a disability by a place of public accommodation, you have two options:

(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 monetary damages and civil penalties. *See 'Sample Complaint Letter' for more information on filing a complaint.*

(2) File your own case in U.S. District 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 III of the ADA. A reasonable attorney's fee may be awarded at the judge's discretion.

IMPORTANT – Deadline to File Case

If you are in North Carolina, an ADA complaint against a business must be filed with a state or federal court within **two (2) years** of the date on which you were discriminated against for all claims other than employment discrimination. For claims of employment discrimination under Title I of the ADA, you must file a charge of discrimination with the U.S. Equal Employment Opportunity Commission within 180 days to preserve your claim. Please refer to ADA Title I/Employment materials for more information.

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.

Disability Rights North Carolina

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