

# THE AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, AS AMENDED IN 2008

## OVERVIEW

The ADA recognizes and protects the civil rights of people with disabilities and is modeled after earlier landmark laws prohibiting discrimination on the basis of race and gender. The ADA covers a wide range of disability, from physical conditions affecting mobility, stamina, sight, hearing, and speech to conditions such as emotional illness and learning disorders. The ADA addresses access to the workplace (title I), State and local government services (title II), and places of public accommodation and commercial facilities (title III). It also requires phone companies to provide telecommunications relay services for people who have hearing or speech impairments (title IV) and miscellaneous instructions to Federal agencies that enforce the law (title V). Regulations issued under the different titles by various Federal agencies set requirements and establish enforcement procedures. To understand and comply with the ADA, it is important to follow the appropriate regulations.

Under titles II and III of the ADA, the Board develops and maintains accessibility guidelines for buildings, facilities, and transit vehicles and provides technical assistance and training on these guidelines. The ADA Accessibility Guidelines (ADAAG) serve as the basis of standards issued by the departments of Justice (DOJ) and Transportation (DOT) to enforce the law. The building guidelines cover places of public accommodation, commercial facilities, and State and local government facilities. The vehicle guidelines address buses, vans, a variety of rail vehicles, trams, and other modes of public transportation. Regulations issued by DOJ and DOT contain standards based on ADAAG and also provide important information on which buildings and facilities are subject to the standards. It is important that the regulations be used along with the design standards they contain or reference.

This information summarizes the provisions of the ADA and references the regulations issued by various agencies that are used to enforce them. Links are provided to these agencies. Regulations are referred to their location in the Code of Federal Regulations (CFR) and their publication in the Federal Register (FR).

[Title I - Employment](#)

[Title II - Public Services](#)

[Title III - Public Accommodations](#)

[Title IV - Telecommunications](#)

Title V - Miscellaneous (provides instructions to Federal agencies involved in regulating and enforcing the other titles)

### **Title I - Employment**

Accessibility Requirements:

- Employers with 15 or more employees may not discriminate against qualified individuals with disabilities. 29 CFR 1630.4.

- Employers must reasonably accommodate the disabilities of qualified applicants or employees, including modifying work stations and equipment, unless undue hardship would result. 29 CFR 1630.2 (o) and 1630.9.

Effective Dates:

- July 26, 1992 for employers with 25 or more employees.
- July 26, 1994 for employers with 15 to 24 employees.

Enforcing Agency: The Equal Employment Opportunity Commission (EEOC)

Regulations: EEOC final rules are in 29 CFR Part 1630 (56 FR 35726, July 26, 1991).

Enforcement:

Individuals may file complaints with EEOC. Individuals may also file a private lawsuit after exhausting administrative remedies. Remedies are the same as available under Title VII of the Civil Rights Act of 1964. Courts may order an employer to hire or promote qualified individuals, reasonably accommodate their disabilities, and pay back wages and attorneys' fees. (The Civil Rights Act of 1991 provides a new remedy for compensatory and punitive damages in cases of intentional discrimination in employment.)

## **Title II - Public Services**

### A. State and Local Government Services

(Note: Recipients of Federal financial assistance have similar obligations under Section 504 of the Rehabilitation Act of 1973. Most buildings constructed or altered with Federal funds are required to comply with the Architectural Barriers Act of 1968.)

Accessibility Requirements:

- State and local governments may not discriminate on the basis of disability. 28 CFR 35.130. Effective Date: January 26, 1992, unless otherwise noted below.
- Each service, program, or activity must be operated so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities, unless it would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. Structural changes to existing buildings may be required where other methods of achieving compliance are not effective. 28 CFR 35.150. Effective Dates: Structural changes to existing buildings to meet "program accessibility" requirement must be made by January 26, 1995. Public entities with 50 or more employees must develop "transition plans" for such changes by July 26, 1992. The disability community must be involved in developing the plan.
- Newly constructed State and local government buildings must be accessible. 28 CFR 35.151(a). Effective Date: Facilities must comply if bids are invited after January 26, 1992. 56 FR 35710 (July 26, 1991).

- Alterations to existing State and local government buildings must be done in an accessible manner. 28 CFR 35.151(b). Effective Dates: Alterations commenced after January 26, 1992.
- Newly constructed and altered streets and pedestrian walkways must contain curb cuts at intersections. 28 CFR 35.151(d).

Enforcing Agency: Department of Justice (DOJ)

Regulations:

DOJ final rules on State and local government services are in 28 CFR Part 35 (56 FR 35694, July 26, 1991). DOJ final rules permit State and local governments to use ADAAG or UFAS as the accessibility standard for new construction and alterations of buildings. 28 CFR 35.151(c).

Enforcement:

Individuals may file complaints with Federal agencies designated in 28 CFR 35.190. Individuals may also file a private lawsuit. Remedies are the same as available under Section 505 of the Rehabilitation Act of 1973. Courts may order public entities to make facilities accessible, provide auxiliary aids or services, modify policies, and pay attorneys' fees.

## B. Transportation

(Note: Recipients of federal financial assistance have similar obligations under Section 504 of the Rehabilitation Act of 1973. Most buildings constructed or altered with Federal funds are required to comply with the Architectural Barriers Act of 1968.)

Accessibility Requirements:

- Newly constructed transit facilities by public entities must be accessible. 49 CFR 37.41. Effective Date: Transit facilities must comply if a "notice to proceed" is issued after January 25, 1992 (October 7, 1991 for Amtrak and commuter rail stations).
- Existing "key stations" in rapid rail, commuter rail, and light rail systems must be accessible. 49 CFR 37.47 and 37.51. Effective Dates: By July 26, 1993. Extensions may be granted up to July 26, 2010 (commuter rail) and July 26, 2020 (rapid and light rail) for stations needing extraordinarily expensive structural changes.
- All existing Amtrak stations must be accessible. 49 CFR 37.55. Effective Date: By July 26, 2010
- Alterations to existing transit facilities by public entities must be done in an accessible manner. When alterations affect usability of or access to "primary function" areas of a transit facility, an accessible path of travel must be provided to the altered areas and the restrooms, drinking fountains, and telephones serving the altered areas must also be accessible, to the extent that the cost of making these features accessible does not exceed 20% of the planned alterations. 49 CFR 37.43. Effective Dates: Alterations for which "notice to proceed" or "work order" issued after January 25, 1992 (October 7, 1991 for Amtrak and commuter rail stations).

- New buses and rail vehicles acquired by public entities for fixed route systems must be accessible. 49 CFR 37.71, 37.79 and 37.85. Effective Dates: Vehicles must comply if closing date for submission of bids is after August 25, 1990. ADA Vehicle Guidelines are the applicable standard as of October 7, 1991. Interim standards apply before that date (56 FR 40762, October 4, 1990.)
- New vehicles acquired by public entities for demand responsive systems must be accessible unless the system provides individuals with disabilities a level of service equivalent to that provided to the general public. 49 CFR 37.77. Effective Dates: Vehicles must comply if the closing date for submission of bids is after August 25, 1990. The ADA Vehicle Guidelines are the applicable standard as of October 7, 1991. Interim standards apply before that date (56 FR 40762, October 4, 1990).
- Public entities have certain obligations when acquiring or remanufacturing used vehicles. 49 CFR 37.73, 37.75, 37.81, 37.83, 37.87, and 37.89. Effective Date: Acquired or remanufactured after August 25, 1990.
- One car per train must be accessible. 49 CFR 37.93. Effective Date: By July 26, 1995
- Amtrak trains must have the same number of wheelchair spaces and transfer seats for wheelchair users as would be available if every single level coach car in the train were accessible to wheelchair users. No more than two of each type of space or seat may be provided on each car. 49 CFR 37.91. Effective Dates: By July 26, 2000. Half of these spaces and seats must be available by July 26, 1995.
- Public entities operating fixed route bus, and rapid rail and light rail systems must provide comparable complementary paratransit service to individuals with disabilities who meet certain eligibility criteria to the extent that an undue financial burden is not imposed. 49 CFR 37.121 to 37.155. Effective Dates: Initial plans for providing service must be submitted to DOT by January 26, 1992 and updated annually thereafter. The disability community must be involved in developing the plans. Public entities must begin implementing plans on January 26, 1992 and achieve full compliance by January 26, 1997.

Enforcing Agency: Department of Transportation (DOT)

Regulations:

DOT final rules on transportation are in 49 CFR Parts 37 and 38 (56 FR 45584, September 6, 1991). DOT final rules require public entities to use ADAAG as the accessibility standard for new construction and alterations of transit facilities and for transit vehicles. 49 CFR 37.7 and 37.9.

Enforcement:

Individuals may file complaints with DOT concerning transportation. Individuals may also file a private lawsuit. Remedies are the same as available under Section 505 of the Rehabilitation Act of 1973. Courts may order public entities to make facilities accessible, provide auxiliary aids or services, modify policies, and pay attorneys' fees.

### **Title III - Public Accommodations**

## Accessibility Requirements:

- Restaurants, hotels, theaters, shopping centers and malls, retail stores, museums, libraries, parks, private schools, day care centers, and other similar places of public accommodation may not discriminate on the basis of disability. 28 CFR 36.201. Effective Date: January 26, 1992, unless otherwise noted below.
- Physical barriers in existing places of public accommodation must be removed if readily achievable (i.e., easily accomplishable and able to be carried out without much difficulty or expense). If not, alternative methods of providing services must be offered, if those methods are readily achievable. 28 CFR 36.304 and 36.305. Effective Dates: The obligation to engage in readily achievable barrier removal is a continuing one. 56 FR 35569 (July 26, 1991).
- New construction of places of public accommodation and commercial facilities (non-residential facilities affecting commerce) must be accessible. 28 CFR 35.401. Effective Dates: Facilities designed and constructed for first occupancy after January 26, 1993. A facility is designed and constructed for first occupancy after January 26, 1993, only if: (1) the last application for a building permit or permit extension is certified to be complete by a State, county, or local government after January 26, 1992; and (2) the first certificate of occupancy is issued after January 26, 1993.
- Alterations to existing places of public accommodation and commercial facilities must be done in an accessible manner. When alterations affect usability of or access to "primary function" areas of a facility, an accessible path of travel must be provided to the altered areas and the rest rooms, telephones, and drinking fountains serving the altered areas must also be accessible, to the extent that the cost of making these features accessible does not exceed 20% of the cost of the planned alterations. 28 CFR 36.402 and 36.403. The additional accessibility requirements for alterations to "primary function" areas do not apply to measures taken solely to comply with readily achievable barrier removal. 28 CFR 36.304(d). January 26, 1992 - unless otherwise noted below. Effective Date: Alterations commenced after January 26, 1992
- Elevators are not required in newly constructed or altered buildings under three stories or with less than 3,000 square feet per floor, unless the building is a shopping center; shopping mall; professional office of a health care provider; terminal, depot, or other station used for specific public transportation; or an airport passenger terminal. 28 CFR 36.401(d) and 36.404.
- Examinations and courses related to licensing or certification for professional and trade purposes must be held in accessible buildings or alternative accessible arrangements must be made. 28 CFR 36.309(b)(1)(iii) and (c)(4).
- New buses and other vehicles (except aircraft and automobiles) acquired by private entities to provide specified public transportation must be accessible or the system in which vehicles are used must provide individuals with disabilities a level of service equivalent to that provided to the general public depending on whether the entity is primarily engaged in the business of transporting people; whether the system is fixed route or demand responsive; and vehicle seating capacity. 49 CFR 37.101 to 37.107. Effective Dates: Vehicles must comply if the closing date for submission of bids is after August 25, 1990 (February 25, 1992 for rail passenger cars and vans with a capacity of less than 8 persons when operated by a private entity primarily engaged in

the business of transporting people). ADAAG is the applicable standard as of October 7, 1991. Interim standards apply before that date (56 FR 40762, October 4, 1990).

- New over-the-road buses (buses with an elevated passenger deck located over a baggage compartment) must be accessible. 49 CFR 37.169, and 49 CFR 38.151 to 38.157. Effective Dates: Structural changes in over-the-road buses to provide access to wheelchair users are not required until two years (three years for small companies) after DOT issues regulations.

Enforcing Agencies: Department of Justice (DOJ), Department of Transportation (DOT)

Regulations:

DOJ final rules on public accommodations and commercial facilities are in 28 CFR Part 36 (56 FR 35544, July 26, 1991). DOT final rules on transportation vehicles acquired by private entities are in 48 CFR Parts 37 and 38 (56 FR 45584, September 6, 1991). DOJ and DOT final rules require private entities covered by title III to use ADAAG as the accessibility standard for new construction and alterations of buildings and for transit vehicles. 28 CFR 36.310 and 36.406; 49 CFR 37.7.

Measures taken to comply with readily achievable barrier removal must comply with ADAAG unless it would not be readily achievable in which case other readily achievable measures that do not fully comply with ADAAG may be taken. However, no measure shall be taken that poses a significant risk to the health or safety of individuals with disabilities or others. 28 CFR 36.304 (d).

Enforcement:

On application by State or local government, the Assistant Attorney General for Civil Rights, in consultation with the Access Board, may certify that State or local building codes meet or exceed ADAAG. 28 CFR 36.601 to 36.608.

Individuals may file complaints with the Attorney General. Individuals may also file a private lawsuit. Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution is encouraged. Remedies are the same as available under Title II of the Civil Rights Act of 1964. Courts may order a private entity to make facilities accessible, provide auxiliary aids or services, modify policies, and pay attorneys' fees.

Courts may award money damages and impose civil penalties in lawsuits filed by the Attorney General but not in private lawsuit by individuals. Small businesses with 25 or fewer employees and gross receipts of \$1 million or less may not be sued for violations occurring before July 26, 1992; and small businesses with 10 or fewer employees and gross receipts of \$500,000 or less may not be sued for violations occurring before January 26, 1993. However, such small businesses may be sued for violations relating to new construction and alterations to facilities occurring after January 26, 1992.

#### **Title IV - Telecommunications**

Accessibility Requirements:

Telephone companies must provide telecommunications relay services for hearing-impaired and speech-impaired individuals 24 hours per day. 47 CFR 64.603 and 64.604.

Effective Date: By July 26, 1993.

Enforcing Agency: Federal Communications Commission (FCC)

Regulations: FCC final rules are in 47 CFR Part 64 (56 FR 36729, August 1, 1991).

Enforcement: Individuals may file complaints with the FCC.

*Credit:* <http://www.access-board.gov/about/laws/ADA-amended.htm#Text>