



# DISABILITY LAW CENTER

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## **Access rights to places of public accommodation and commercial facilities**

Every year, the Disability Law Center (DLC) gathers input from citizens with disabilities, advocacy groups, advisory councils and our Board of Trustees. What we hear is that people with disabilities know they have rights to access places of public accommodation and commercial facilities but they do not understand those rights.

This guide is a basic overview of Title III of the Americans with Disabilities Act (ADA). Title III of the ADA was passed so that people who have disabilities can get into businesses and other places open to the general public. Under Title III, people with disabilities should be able to get the same services and programs that are offered to the general public.

### **This guide will tell you:**

- what a disability is under the ADA
- who has to comply under Title III of the ADA
- what covered places have to do in order to comply with Title III of the ADA
- what covered places do not have to do under Title III of the ADA
- what to do if you think a covered place is not in compliance with Title III of the ADA

Please keep in mind that this guide is intended to answer some basic questions so that individuals with disabilities can understand some of their rights and understand what to do if their rights have been violated. This guide is informational only and is not intended to be legal advice. Also, the law addressed in this guide may change based on different courts' interpretations of it. Whenever anyone has an actual legal problem it is best to contact a lawyer to determine which laws may apply to that specific situation at that time.

This guide was written by the Disability Law Center, a private non-profit organization designated by the governor to protect the rights of people with disabilities in Utah. The DLC envisions a society where abilities rather than disabilities are emphasized; where all people have an equal opportunity to participate in society; where all people are treated with equity, dignity and respect for their expressed choices. For more information, call the DLC at 1-800-662-9080 (voice) or 1-800-550-4182 (TTY).

## What is a disability?

The ADA says that disability means, with respect to an individual,

- 1) a physical or mental impairment that substantially limits one or more major life activities of such individual;
- 2) a record of such an impairment; or
- 3) being regarded as having such an impairment.

To understand this, we need to know what some of these different terms mean.

“Major life activities” includes things like caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

“Substantially limits” means that a person is unable to perform a major life activity that the average person in the general population can perform; or that a person is significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.

Also, the ADA says that we need to consider the nature and severity of the impairment, the expected duration of the impairment and the expected permanent or long term impact of the impairment – meaning that a person with a broken leg might be substantially limited in the major life activity of walking, but because s/he will only have the broken leg for two months until the bone heals, s/he would not be considered disabled under the ADA.

The United States Supreme Court has also said that we must take into account any mitigating measures a person may be using. This means that if a person with vision impairment wears glasses, when we are determining if they are substantially limited in the major life activity of sight, we need to analyze how they can see *with* their glasses on.

With some disabilities, it is easier to know a person’s disability substantially limits him/her in a major life activity. For example, people who cannot walk or have so much difficulty walking that they must use a wheelchair to get around are substantially limited in the major life activity of walking. Also, someone who is deaf or very hard of hearing is substantially limited in the major life activity of hearing.

With other types of disabilities though, it is not as easy to know that a person is substantially limited in a major life activity. For example, someone with a bad heart or multiple sclerosis might look just fine but still be substantially limited in one or more major life activities. While one person whose diabetes is under control may not be considered to have a disability under the ADA, another person with diabetes who can no longer care for them self because of it, might.

It is important to remember that the ADA also protects people who may not actually be substantially limited in any major life activity but might look like they could be or are regarded by other people as being disabled. For example, people with bad burns or scars may not be discriminated against just because they look different.

Also, remember the ADA says you cannot be discriminated against because you have a history of disability. For example, this protects former cancer patients from discrimination based on their prior medical history.

## **Who has to comply under Title III of the ADA?**

Title III covers places called public accommodations; commercial facilities; and private entities that offer examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes. We are going to focus this guide on places of public accommodation. Public accommodations are places where the general public can go. This includes places such as:

- hotels, motels, inns
- restaurants, bars
- movie theaters, theaters, concert halls
- stadiums, auditoriums, convention centers, lecture halls
- bakeries, grocery stores, hardware stores, shopping centers, laundromats, drycleaners,
- banks, barber shops, beauty shops, travel services, shoe repair stores, funeral parlors, gas stations, pharmacies, insurance offices, accounts' offices, lawyers' offices, doctor's offices
- terminals, depots
- museums, libraries, galleries
- zoos, parks, amusement parks, nursery, elementary, secondary, undergraduate or postgraduate private schools
- day care centers, senior citizen centers, homeless shelters, food banks, adoption agencies
- gymnasiums, health spas, bowling alleys, golf courses

Title III does NOT cover things such as:

- churches, synagogues, mosques or other religious buildings, property or programs
- private clubs
- private homes
- airplanes (See the Air Carrier Access Act)
- apartment buildings (See the Fair Housing Act)
- government buildings or programs (See Title II of the ADA, Section 504 of the Rehabilitation Act, and other federal law)

## **What do public accommodations covered by the ADA have to do to comply with the ADA?**

The ADA states that a person who has a disability cannot be treated differently because of that disability. A person with a disability must be able to shop for the same things, see the same movies and sleep in the same hotels as anyone else. But, while this looks easy on paper, it is sometimes not so easy.

One thing that places covered by ADA Title III have to do is ensure effective communication with persons with disabilities. That means that for persons with vision, hearing or speech impairments, the public accommodation will need to provide communication that is effective for that person in the given situation. That might mean the place of public accommodation needs to provide information in large print, possibly Braille, or provide a sign language interpreter. But this all depends on what is needed to effectively communicate with the person with a disability in a specific situation.

After the ADA was signed into law, a set of regulations was then written to help people know in detail how to comply with the law. Those regulations are called the Americans with Disabilities Act Accessibility Guidelines or “ADAAG.” The ADAAG is full of numbers and measurements which explain, for example, how wide an accessible toilet stall must be, how tall an accessible toilet must be, how many parking spaces in the lot must be accessible, and where Brailled signs must be.

Almost every place that is covered by Title III of the ADA that is built or remodeled after 1992 must completely comply with Title III and the ADAAG.

These new or newly-remodeled compliant places will have many things in common. The following are just some examples of the ADAAG regulations that newly-built or newly-remodeled facilities must follow.

- There will be one accessible parking space for every 25 parking spaces. If there is only one accessible parking space, it will be van-accessible. An accessible parking space is 8-feet wide with a striped 5-foot wide access aisle, and is marked as being accessible with an upright sign. A van-accessible parking space is 8-feet wide with an 8-foot wide striped access aisle and it is marked as “van-accessible” with an upright sign.
- The path from the accessible parking space to an accessible entrance to the building must be the shortest route possible and must have curb-cuts. The path must be at least 36-inches wide, continuously and cannot have objects protruding into it that are not cane-detectable.
- If there is a ramp into the entry, the rise of the ramp must not exceed 1:12, that is, the ramp must take a minimum of 12 inches in length to rise one inch in height. A ramp longer than six feet must have a railing on both sides. Also there must be a 5-foot level area at the door itself.
- The doorway at the entrance must be at least 32-inches wide and the door handle must be able to be opened with one closed fist.
- The employees must be trained to serve people who are deaf or hard of hearing or blind or visually impaired and will provide assistance to people with disabilities who cannot get products that are out of reach.

- All routes of travel within a facility will be 36-inches wide and all public areas, such as cafeteria lines, changing rooms, and restrooms must be accessible with a 36-inch wide path of travel.
- There must be a part of the ordering, service or cash counters that is no more than 36-inches high or there must be a space at the side for passing items to customers who cannot reach over a high counter.
- Waiting lines will be 36-inches wide with at least 48-inches length at the head of each turn.
- Restrooms will be accessible to someone using a standard wheelchair, including the toilet stalls, sinks and dispensers. The accessible toilet stall will have grab bars and the toilet seat will be 17-19 inches high from the floor. There are many different designs that are accessible to someone using a standard wheelchair. The rule of thumb is that a person using a standard wheelchair can get into the bathroom stall, close the stall door for privacy, transfer onto and off of the toilet and reach the toilet paper.
- Pipes under the sinks must be covered, insulated or otherwise harmless if directly touched when hot water is running.
- All door handles and faucets should be usable with one closed fist.
- All public places, such as restrooms, must be marked with signs in Braille.
- Emergency systems must have both audible alarms and flashing lights.
- Objects, such as public telephone stalls and garbage containers, must not protrude more than four inches from the wall unless the bottom of the object is also lower than 27 inches from the ground, so that they are cane-detectable.
- Interior doors in a facility may not have more than 5 pounds of opening-force.
- Service dogs must be allowed in the facility as long as they are under control and do not “change the essential nature of the business.” A service dog accompanying her/his owner into a cat show might be an example of “changing the essential nature of the business,” because, even though the dog might be under control, the cats might not behave well with a dog in the facility. Service dogs are also generally excluded from surgical suites in hospitals.

## **What is not required of public accommodations by the ADA?**

The goal of the ADA is to make sure that people with disabilities can go where everyone else goes and do what everyone else does. But there are also some rules that protect the entities. Some of those rules are:

- If a person has her/his business in a building that was built before the ADA, s/he must still do what s/he can to comply unless it would cost so much that it would place an “undue burden” on the business.
- If a person has her/his business in a building that was built before the ADA, s/he must still do what s/he can to comply. Some changes, however, may be impossible to accomplish because the building itself is structurally impossible to change. Changes that are “technically infeasible” do not have to be made.
- If a building is so old that it is considered to be a historical building, changes are not required that might destroy its historical integrity.

To better understand these exceptions, here are some examples:

- The owner of a restaurant built before the ADA put a ramp up to the door so a person using a wheelchair can get through the door into the restaurant. He moved the tables and chairs such that a person using a wheelchair could sit at any one of several tables. But the restrooms, which were originally built with only one toilet and a sink in very small rooms, were also originally built such that their walls actually help hold up the roof. Remodeling these restrooms to provide wheelchair access would probably be considered “technically infeasible” under the ADA.
- A mom and pop dry cleaning business located in an old, pre-ADA building is barely making ends meet. The owners do not have the money to ramp the twelve steps up to the door and widen the old narrow, brick-sided doorway. Doing so would probably place an “undue burden” on their business.
- A home built in 1887 is newly restored and open to the public for tours. There are steps in many places throughout the home and the doors are very narrow, all as it was originally built. This home would probably be exempt from many of the requirements of the ADA because it would be considered a historical site.

These exempted businesses and entities still need to provide their basic goods and services to people with disabilities, but in different ways. For example:

- If a ramp would be too long and too costly for the mom and pop dry cleaners, someone from the business could still arrange to meet the customer using a wheelchair at the bottom of the stairs to exchange the clothing and the money.
- A restaurant that does not have a menu in Braille must still provide the service of a menu, perhaps by having a waiter read it to the customer who is blind.
- A grocery store is not required to have all its goods within reach of a person using a wheelchair, but an employee should be available to provide assistance in obtaining the goods that are placed on higher shelves.

**Remember: Individuals with disabilities should have access to places of public accommodation that individuals without disabilities enjoy!**

## **What can you do if you think a public accommodation is not in compliance?**

It is important to understand that there are no “ADA Police.” Individuals and organizations can make a big difference in making sure public accommodations comply with the ADA. Most of the complaints about the lack of compliance with Title III of the ADA come from individuals who have disabilities and from various disability organizations. If you think a business or other public place is out of compliance with Title III of the ADA, there are several things you can do.

- Contact your regional Disability & Business Technical Assistance Center to make sure your complaint is accurate. Be prepared to explain specifically what you think might be out of compliance. The Rocky Mountain Disability & Business Technical Assistance Center can be reached at (800) 949-4232.
- Contact the owner of the business when you are sure that your complaint is accurate. Sometimes business persons simply do not know the law and will comply once they understand what they must do.
- Contact your local Independent Living Center or other disability organizations to see if they are working on Title III complaints. These agencies and organizations will often make a complaint in your behalf. Sometimes they will help you make the complaint yourself. You could find your local Independent Living Center by calling (800) 353-1592.
- File a Title III Complaint with the U. S. Department of Justice, 950 Pennsylvania Avenue, NW, Civil Rights Division, Disability Rights – NYAVE, Washington, D.C. 20530.
- Contact a private attorney who specializes in Title III ADA cases.

### ***For more information***

If you have questions about rights to access public accommodations, you may contact the Disability Law Center. The DLC is a private non-profit organization designated by the governor to protect the rights of people with disabilities in Utah.

If you are not happy with any service you received or any decision made by the DLC, you have the right to file a grievance. If you would like to file a grievance, we will send you a form for this purpose and a copy of our grievance policy.

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