The 2010 ADA Standards Take Effect: What Hospitality, Retail Businesses and Health Care Providers Need to Know

February 22, 2012

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ADA Focus Points

- Customer Service: Lack of Sensitivity
- Accessibility Elements: Lack of Knowledge
- Renovations: Lack of Access
UNDERSTANDING TITLE III OF THE ADA

• Coverage
  o Places of public accommodation -- Hotels, restaurants, bars, spas, fitness centers, hospitals, doctors offices, stores, recreation centers.
  o Prohibits public accommodations from denying services to individuals with disabilities.
  o Protects individuals with disabilities and individuals associated with disabled individuals.
OBLIGATIONS OF PLACES OF PUBLIC ACCOMMODATION

- Must make goods and services *available* to individuals with disabilities on an equal basis with general public
- Must make goods and services *usable* by people with disabilities
- Requires the removal of architectural and structural barriers in existing facilities where *readily achievable*

- Familiarity with ADA regulations and standards is necessary to ensure compliance with the law and avoid discrimination lawsuits.
Purpose
- Governs the construction and alteration of places of public accommodation

ADA Standards
- Maintained by Department of Justice
- Have been in place since 1991
- Referred to as “1991 Standards”
- 2010 Standards created “Safe Harbor”
Promulgation of “2010 Standards”

- Have been in process of being revised for 10 years
- Effective date is March 15, 2012
- Delay in implementation was provided to allow businesses sufficient time to plan for implementing the new requirements
- Set minimum requirements for newly designed and constructed places of public accommodations
- Designed to limit architectural barriers and ensure public accommodations are readily accessible to and usable by individuals with disabilities
Examples of architectural barriers include:

- Parking spaces with no access aisle to allow deployment of a van’s wheelchair lift;
- Steps at a facility’s entrance or within its serving or selling space
- Aisles too narrow to accommodate mobility devices
- Counters that are too high
- Restrooms that are too small to use with a mobility device
2010 Standards includes new requirements not previously addressed in 1991 Standards including:

- amusement parks
- playgrounds
- golf facilities
- miniature golf courses
- recreational boating facilities
- exercise machines and equipment
- fishing piers
- swimming pools, wading pools
- spas, saunas, and steam rooms
Full compliance is required to the extent that it is *not structurally impracticable*. Alterations to buildings or facilities that are designated as historic under State or local law, must comply to the *maximum extent feasible*. Must remove barriers to the extent *readily achievable*. Readily achievable means “easily accomplishable without much difficulty or expense.”

- Relative to the size and financial resources of a business.
SAFE HARBOR PROVISION

- No obligation to change any element that is presently compliant with the 1991 Standards until renovations or alterations occur
- Existing facilities in compliance with the 1991 Standards stand to benefit from the safe harbor provision
- All future renovations and alterations must be done with the 2010 Standards as a guide
- Safe Harbor does not apply to facilities not previously addressed in ADA (e.g., swimming pools and exercise equipment)
  - These alterations are mandatory by March 15, 2012
OBLIGATIONS UNDER THE ADA

Accessible Entrances

- 60% of all public entrances must be accessible
- Alternate accessible entrance should be used if main entrance cannot be made accessible
  - Signs should be posted at inaccessible entrances directing individuals to accessible entrance
  - Accessible entrance must be open whenever other public entrances are open
OBLIGATIONS UNDER THE ADA

Parking

• You must provide accessible parking spaces for vans if readily achievable to do so

• 1 of every 6 accessible spaces must be van accessible

• Small businesses with very limited parking (4 or fewer spaces) must have one accessible parking space

• An accessible parking space must have access aisle allowing a wheelchair to get in and out of the vehicle
### Obligations under the ADA

<table>
<thead>
<tr>
<th>Total Number of Parking Spaces Provided in Parking Facility</th>
<th>Minimum Number of Required Accessible Parking Spaces</th>
</tr>
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<tbody>
<tr>
<td>1 to 25</td>
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<tr>
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<tr>
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<td>2 percent of total</td>
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<tr>
<td>1001 and over</td>
<td>20, plus 1 for each 100, or fraction thereof, over 1000</td>
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Shelves, Counters & Check-Out Aisles

• Located on accessible route with space to allow customers using mobility devices to access merchandise
  o Not required to take steps resulting in significant loss of selling space

• Counters – Max Height is 36”
  • Shelves may be any height
  • Clerks expected to assist customers and retrieve merchandise from high shelves

• At least one check-out aisle must be usable by people with disabilities

• When not readily achievable to make sales or service counter accessible, folding shelf or nearby accessible counter should be provided – clip board or lap board should be last resort
OBLIGATIONS UNDER THE ADA

Accessible Route to Goods & Services

- Businesses must maintain accessible route at least 3 ft. wide
  - Cannot be blocked by display racks, plants, furniture, filing cabinets, newspaper dispensers, vending or ice machines

- Temporary interruptions for maintenance or repairs are permissible
  - Staff must be available to assist
  - Must be remedied as soon as possible

- Accessible toilet stalls, dressing rooms or counters at cash register must not be cluttered with merchandise
OBLIGATIONS UNDER THE ADA

Medical Care for Individuals with Disabilities

- Commonly asked questions:
  - Can health care provider refuse treatment due to lack of accessible medical equipment?
  - Should accessible exam table should be reserved for patient with a disability?
  - Must every exam room have accessible exam tables?
  - What if medical staff is unfamiliar with equipment or transfers?
  - If my medical office space is leased, am I responsible for ensuring examination room, waiting room and toilet rooms are accessible?
Accessible Exam Rooms

- Accessible route to and through exam room
- Entry door with adequate width, maneuvering clearance and accessible hardware
- Appropriate models and placement of accessible equipment (e.g., adjustable height table or chairs, accessible scales, portable lifts)
- Clear floor and turning space inside examination rooms
Swimming Pools:

- Accessible means of entry/exit are required
  
  * 2 means of entry/exit for larger pools (300 or more linear feet)

- One entry must be a sloped entry or pool lift at a fixed location

- Other entry could be transfer wall or transfer system

- Wading pool must provide sloped entry into deepest part of pool

Obligations under the ADA
OBLIGATIONS UNDER THE ADA

Spas and Saunas:
- If more than 1 spa, 5% of total must be accessible
  • If clusters of whirlpools, 5% of each must be accessible
- Spa treatment rooms – 5% of rooms must be accessible
- Saunas & Steam Rooms
  • Contain appropriate turning space
  • Doors cannot swing into clear floor space
  • Accessible bench, where provided
    o May provide a readily removable accessible bench
Exercise Rooms:

- At least one of each type of sitting exercise equipment must be on accessible route and have clear floor space to enable an individual with a disability to use the equipment:
  - 30 x 48 inches of clear floor space; and
  - Be on a 36-inch wide accessible route.
- For standing machines, clear floor space can be in accessible path route
- Ensure staff and trainers do not move equipment to impede accessible elements
ATM’s:

- Structural Elements (height, reach, accessible floor space) are entitled to safe harbor protection.
- Safe Harbor does NOT apply to communication-related elements (auxiliary aids and services).
  - This includes requirements regarding voice guidance, speech output and Braille instructions.
- Communication-related elements must be modified unless you can show that compliance imposes undue burden.
KEY POLICY & PROCEDURE REVISIONS

- Service Animals
- Mobility Devices
- Effective Communication
SERVICE ANIMALS (DOGS)

- Definition -- Dogs trained to perform work for the benefit of a person with disability

- Must permit use of service animals when task performed is related to disability – e.g., seeing eye dog

- Cannot impose surcharge or cleaning fee for use of service animals

- Only two permissible inquiries can be made:
  - Is the animal required because of a disability?
  - What work or task has the animal been trained to perform?
  * No other inquiries about an individual’s disability or the dog are permitted
SERVICE ANIMALS (DOGS)

- Cannot require proof of certification or medical documentation as condition of entry
- May require the dog to be harnessed, leashed or tethered
- May only exclude service animals if:
  - The dog is out of control and the owner cannot gain control
  - The dog is not housebroken

* If dog is excluded, the individual must be allowed to enter the business without the service animal

- “Comfort,” “therapy,” or “emotional support” animals do not meet the ADA’s definition of service animal
MOBILITY DEVICES

- Must permit manually powered devices (wheelchairs) intended for use by individuals with disabilities

- Must also allow use of “other power driven mobility devices” (e.g., golf carts or Segways), unless such devices cannot be operated in accordance with legitimate safety requirements (including time restrictions)

- Permissible to request a credible assurance that the device is required because of a disability

- Verbal assurance is okay

- Legitimate safety requirements based on actual risks may be imposed

- As with Service Animals, it is not permissible to ask about a person’s disability
Effective Communication

- Required to take steps necessary to communicate effectively with customers with vision, hearing, and speech disabilities
- May offer video remote interpreting (“VRI”) services as an auxiliary aid to provide effective communication
- Must comply with certain performance standards to ensure its effectiveness
**Effective Communication**

- Auxiliary aids must be provided in accessible formats, in timely manner, and privately.
- Business is financially responsible for cost of auxiliary aid unless it can demonstrate it would result in undue burden (significant difficulty or expense).
- Cannot impose surcharge to cover cost of auxiliary aid provided.
- If one method would impose undue burden, business must provide effective alternative if one exists.
- Examples of common auxiliary aids and services include text telephones; Braille menus; large-print menus; interpreters; phone amplifiers; assistive listening devices; note takers; computer aided transcription services.
RESERVATIONS FOR ACCESSIBLE ROOMS AT HOTELS

As of March 15, 2012, Hotel reservation systems must:

- Ensure that disabled individuals can make reservations for accessible guest rooms during the same hours and in the same manner as non-disabled individuals;

- Hold back the accessible guest rooms for individuals with disabilities until all other guest rooms of that type have been reserved;

- Remove reserved accessible rooms from all reservation systems; and

- Guarantee that the specific accessible guest room reserved through its reservation system is held for the reserving guest.
RESERVATIONS FOR ACCESSIBLE ROOMS

- Staff must be able to identify and describe accessible features of the facility offered through its reservation system:
  - the accessible room type (e.g., deluxe executive suite, deluxe king, etc.);
  - the number and size of beds (e.g., two queen beds);
  - available communications features (e.g., visual alarms and notification devices); and
  - the type of accessible bathing facility (e.g., bathtub with grab bars, transfer shower, or roll-in shower).
For older facilities not fully compliant with 1991 or 2010 Standards, the Hotel must disclose information about:

- The facility’s accessible entrances;

- Accessible paths of travel to guest check-in and other essential services (e.g., restaurants)

- Information about important features of the hotel that are not in compliance (e.g., doorway width or non-accessible check-in counters)
ADA ACTION ITEMS

- Modify policies and procedures to allow disabled guests an equal opportunity to enjoy your businesses services and amenities
- Implement policies to serve and communicate effectively with customers with disabilities
- Train Staff Members
- Remove structural and architectural barriers that limit a disabled individual’s access
- Design, alter or construct facilities in accordance with ADA Accessibility Guidelines
Recent Wave of Private and DOJ Lawsuits

- Large influx of Title III litigation
  - Due in part to promulgation of these new regulations
  - Due in part to HUGE incentive of attorneys’ fees
- Suits brought by relatively few “drive by” plaintiffs suing multiple properties
- Plaintiff often is not even guest or patron of facility
- Plaintiffs aim to settle early
- Failure to comply with applicable regulations may have effect of causing DOJ to join the lawsuit
- DOJ may require one property, or all affiliated properties, to conduct a survey of its facilities and certify that the hotel complies with the ADA
FENDING OFF “DRIVE BY” PLAINTIFFS

– Training is Essential
  • Good business practice
– Never have a second chance to make a first impression
  • Develop guidelines and procedures
  • Conduct regular training sessions
  • Managers set the tone
– Certain key points
  • Handle reservations with respect
  • Effective communication with vision/hearing impaired customers
  • Assist customers with mobility impairments
  • Ensure proper opening of doors; operation of lifts, etc.
Remove all structural or architectural barriers that limit a disabled individual’s access if readily achievable

- Examples:
  - Install ramps
  - Widen doors
  - Change door handles
Pay special care to areas easily seen by and utilized by the public

- Entrance
- Parking
- Lobby
- Service Counters
- Bar/Restaurants
- Public Bathrooms

Most important takeaway:

- Train employees regularly to ensure staff is adequately aware of and comfortable with ADA issues
QUESTIONS?

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