

## Overview of the Americans with Disabilities Act of 1990 and the ADA Amendments Act of 2008

Over 54 million Americans with physical or mental impairments that substantially limit daily activities are protected under the ADA. These activities include working, walking, talking, seeing, hearing, or caring for oneself. People who have a record of such an impairment and those regarded as having an impairment are also protected.

### The Americans with Disabilities Act (ADA) has five titles:

[Title I](#) - Employment—private employers with 15 or more employees and all state and local government entities

[Title II](#) - Public Services—state and local governments including public school districts and public transportation

[Title III](#) - Public Accommodations and Services Operated by Private Entities

[Title IV](#) - Telecommunications

[Title V](#) - Miscellaneous Provisions

The following is a brief summary of some of the major requirements contained in the ADA statute.

To determine all of the requirements that a covered entity must satisfy, it is necessary to refer to the regulations, guidelines, and/or technical assistance materials that have been developed by the Department of Justice (DOJ), the Equal Employment Opportunity Commission (EEOC), the Department of Transportation

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***Your One-Stop Resource for Information about the  
Americans with Disabilities Act***

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(DOT), the Federal Communications Commission (FCC), and the Architectural and Transportation Barriers Compliance Board (the Access Board). In addition, the Internal Revenue Service (IRS) has developed regulations on the tax relief available for certain costs of complying with the ADA, such as small business tax credits.

## **Title I -Employment**

Title I of the ADA prohibits discrimination in employment against people with disabilities. It requires employers to make reasonable accommodations to the known physical or mental limitations of a qualified applicant or employee, unless such accommodation would impose an undue hardship on the employer. Reasonable accommodations include such actions as making worksites accessible, modifying existing equipment, providing new devices, modifying work schedules, restructuring jobs, and providing readers or interpreters.

Title I also prohibits the use of employment tests and other selection criteria that screen out, or tend to screen out, individuals with disabilities, unless such tests or criteria are shown to be job-related and consistent with business necessity. It also bans the use of pre-employment medical examinations or inquiries to determine if an applicant has a disability. It does, however, permit the use of a medical examination after a job offer has been made if the results are kept confidential; all persons offered employment in the same job category are required to take them; and the results are not used to discriminate.

Employers are permitted, at any time, to inquire about the ability of a job applicant or employee to perform job-related functions. The EEOC is the enforcement agency for Title I.

[Return To ADA Titles](#)

## **Title II -State and Local Governments**

Title II of the ADA requires that the services and programs of local and State governments, as well as other non-Federal government agencies, shall operate their programs so that when viewed in their entirety they are readily accessible to and usable by individuals with disabilities.

Title II entities:

- do not need to remove physical barriers, such as stairs, in all existing buildings, as long as they make their programs accessible to individuals who are unable to use an inaccessible existing facility.
- must provide appropriate auxiliary aids to ensure that communications with individuals with hearing, vision, or speech impairments are as effective as communications with others, unless an undue burden or fundamental alteration would result.

- may impose safety requirements that are necessary for the safe operation of a Title II program if they are based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

In addition, Title II seeks to ensure that people with disabilities have access to existing public transportation services. All new buses must be accessible. Transit authorities must provide supplementary paratransit services or other special transportation services for individuals with disabilities who cannot use fixed-route bus services, unless this would present an undue burden.

[Return To ADA Titles](#)

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

Public accommodations include the broad range of privately owned entities that affect commerce, including sales, rental, and service establishments; private educational institutions; recreational facilities; and social service centers. In providing goods and services, a public accommodation may not use eligibility requirements that exclude or segregate individuals with disabilities, unless the requirements are "necessary" for the operation of the public accommodation. As an example, restricting people with Down Syndrome to a certain area of a restaurant would violate Title III. It also requires public accommodations to make reasonable modifications to policies, practices, and procedures, unless those modifications would fundamentally alter the nature of the services provided by the public accommodation.

Title III also requires that public accommodations provide auxiliary aids necessary to enable persons who have visual, hearing, or sensory impairments to participate in the program, but only if their provision will not result in an undue burden on the business. Thus, for example, a restaurant would not be required to also provide menus in Braille for blind patrons if it requires its wait persons to read the menu. The auxiliary aid requirement is flexible. A public accommodation may choose among various alternatives as long as the result is effective communication.

With respect to existing facilities of public accommodations, physical barriers must be removed when it is "readily achievable" to do so (i.e., when it can be accomplished easily and without much expense). Tax write-offs are available to minimize the costs associated with the removal of barriers in existing buildings or in providing auxiliary aids, including interpreters for the deaf. Modifications that would be readily achievable in most cases include the ramping of a few steps or changing hardware on doors. However, all construction of new building facilities and alterations of existing facilities in public accommodations, as well as in commercial facilities such as office buildings, must comply with the ADA Accessibility Guidelines (ADAAG) so they are accessible to people with disabilities. New privately owned buildings are not required to install elevators if they are less than three stories high or have less than 3,000 square feet per story, unless the building is a shopping center, mall, or a professional office of a health care provider.

Title III also addresses transportation provided by private entities.

[Return To ADA Titles](#)

## **Title IV - Telecommunications**

Title IV requires that telephone companies provide telecommunications relay services that allow individuals with hearing impairments to communicate using a TTY or other non-voice device. Relay services may be accessed by dialing 7-1-1.

Title IV also requires that all television public service announcements produced by or funded in whole or in part by the federal government include closed captioning.

[Return To ADA Titles](#)

## **Title V - Miscellaneous Provisions**

Title V includes information regarding the ADA's relationship with other federal and state laws, including the Rehabilitation Act of 1973, requirements relating to the provision of insurance, construction and design regulations by the U.S. Access Board, prohibition of state immunity, inclusion of Congress as a covered entity under the law, promotion of alternative means of dispute resolution, and establishment of technical assistance resources.

Source: ADA Document Portal

<http://www.adaportal.org/adadoc-General/ADAOverview.aspx#title5>

## **The Americans with Disabilities Act (ADA) Amendments Act of 2008**

On September 25, 2008, the ADA Amendments Act (ADAAA) was signed into law. It became effective on January 1, 2009. The U.S. Senate and the U.S. House of Representatives both unanimously passed the ADAAA.

The ADAAA focuses on the discrimination at issue instead of on the individual's disability. It makes important changes to the definition of the term "disability" by rejecting the holdings in several Supreme Court decisions and portions of Equal Employment Opportunity Commission's (EEOC) ADA regulations. The Act retains the ADA's basic definition of "disability" as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. However, it changes the way that the statutory terms should be interpreted. Most significantly, the ADAAA:

- Directs EEOC to revise the portion of its regulations that defines the term "substantially limits";

- Expands the definition of "major life activities" by including two non-exhaustive lists:
  1. The first list includes many activities that the EEOC has recognized (e.g., walking) as well as activities that EEOC has not specifically recognized (e.g., reading, bending, and communicating);
  2. The second list includes major bodily functions (e.g., "functions of the immune system, normal cell growth, digestive, bowel, bladder, respiratory, neurological, brain, circulatory, endocrine, and reproductive functions");
- States that mitigating measures other than "ordinary eyeglasses or contact lenses" shall not be considered in assessing whether an individual has a disability;
- Clarifies that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active;
- Provides that an individual subjected to an action prohibited by the ADA (e.g., failure to hire) because of an actual or perceived impairment will meet the "regarded as" definition of disability, unless the impairment is transitory and minor;
- Provides that individuals covered only under the "regarded as" prong are not entitled to reasonable accommodation; and
- Emphasizes that the definition of "disability" should be interpreted broadly.

Source: EEOC Notice Concerning Americans with Disabilities Act Amendments Act of 2008

[http://www.eeoc.gov/ada/amendments\\_notice.html](http://www.eeoc.gov/ada/amendments_notice.html)

ADA Amendments Act (ADAAA) of 2008 - Summary and Resources

[www.sedbtac.org/ada/publications/adaaa\\_resources.doc](http://www.sedbtac.org/ada/publications/adaaa_resources.doc) (Word)

[www.sedbtac.org/ada/publications/adaaa\\_resources.txt](http://www.sedbtac.org/ada/publications/adaaa_resources.txt) (Text)

## New and Proposed Regulations

U.S. Department of Justice

2010 ADA STANDARDS FOR ACCESSIBLE DESIGN

[http://www.ada.gov/2010ADASTandards\\_index.htm](http://www.ada.gov/2010ADASTandards_index.htm)

EEOC Regulations

<http://www.eeoc.gov/laws/regulations/index.cfm>