

Disability Rights Nebraska

Protection and Advocacy for People with Disabilities

This is basic information and does not constitute legal advice.

A Guide to Title III of the Americans with Disabilities Act

What is the Americans with Disabilities Act (ADA)?

The ADA is a law that makes it illegal to discriminate against people because of their disabilities. The ADA applies to employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services.

What is Title III of the ADA?

Title III of the ADA protects people with disabilities from discrimination on the basis of disability in the enjoyment of goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation provided by a *private entity* who owns, leases, or operates a place of public accommodation.¹ This means that a public accommodation cannot deny you full and equal enjoyment of goods or services that a place of public accommodation provides to customers or clients.² Thus, businesses must give people with disabilities an equal opportunity to benefit from programs, services, and activities that are open to the general public.

Who must comply with Title III of the ADA?

Title III applies to any private entity that sells goods or services to the general public, commercial facilities, or any private entity that offers examinations or courses relating to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes.³ This includes but is not limited to:

- inns, motels, and hotels (containing at least 6 rooms for rent);⁴

¹ 28 C.F.R. § 36.201 (2010).

² Department of Justice Americans with Disabilities Act Title III Assistance Manual (hereinafter "Assistance Manual"), III-3.1000 (1993).

³ 28 C.F.R. § 36.102(a) (2010).

⁴ Assistance Manual III-1.2000 (1993).

- restaurants, bars, and other businesses selling food or drinks;
- movie theaters, concert halls, stadiums, and other entertainment venues;
- auditoriums, convention centers, lecture halls, and other places of public gathering;
- bakeries, grocery stores, clothing stores, hardware stores, shopping centers, or other sales or rental businesses;
- a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other business providing a service;
- terminals, depots, or other stations used for public transportation;
- museums, libraries, galleries, or other places of public displays;
- parks, zoos, amusement parks, or other places of recreation;
- nursery, elementary, secondary, undergraduate, or postgraduate private school, or other places of education;
- day care centers, senior citizen centers, homeless shelters, food banks, adoption agencies, or other social service center establishments;
- health and recreation centers, gymnasiums, health spas, bowling alleys, golf courses, or other places of exercise or recreation;

Title III does not apply to:

- private residences;
- aircrafts and trains, including passenger trains;
- private club activities;
- religious groups and organizations;
- churches or other places of worship;
- public entities (these are covered by Title II of the ADA).⁵

Does Title III apply to businesses that are located in homes?

Although Title III does not apply to residential units, like homes and apartment complexes, it covers public areas within the residential complex used exclusively in the operation of the place of public accommodation.⁶

For example, if an apartment complex includes a swimming pool that sells summer memberships to the general public, the pool is an area used for public activity and must comply with Title III. The rental office for residential units is also considered to be a public area.⁷

⁵ 28 C.F.R. §§ 36.102, 36.104 (2010).

⁶ 28 C.F.R. § 36.207 (2010).

⁷ Assistance Manual III-1.2000 (1993).

When a place of business is located in a private residence, the section of the residence that is used for business must comply with Title III. This includes the homeowner's sidewalk, the door or entryway, hallways, and any area available to or used by customers, including restrooms.⁸

For example, if a daycare center is being run out of a person's home, the restroom and any rooms used for the daycare must have an accessible route that can be used by the children and their parents.⁹

How does Title III affect my participation or benefit from a business's goods, programs, facilities, activities, and services?

A business providing goods, services, or activities for the general public must:

- provide to people with disabilities an equal opportunity to participate and benefit from their services.¹⁰ It cannot treat people with disabilities separately or differently than people without disabilities, unless it is needed to give people with disabilities a service that is as effective as that provided to others.¹¹
- provide goods, services, benefits, and accommodations in the most integrated setting appropriate to the needs of the person with a disability.¹² This may include providing auxiliary aids to individuals with disabilities. However, no one is forced to accept an accommodation, aid, or service just because they have a disability.¹³
 - For example, a theater that offers reduced rate tickets for individuals with disabilities and requires appropriate documentation for eligibility for the reduced rates cannot require an individual who qualifies for the reduced rate to present documentation or accept the reduced rate, if he or she chooses to pay the full price.¹⁴
- have policies and procedures in place that prevent discrimination.¹⁵ This is so people with disabilities are given an equal opportunity to participate in a public program.

A business cannot:

- refuse to admit a person merely because he or she has a disability;¹⁶
- ask about the existence of a disability if it is not necessary or relevant to the activity's purpose;¹⁷

⁸ 28 C.F.R. § 36.207 (2010).

⁹ Assistance Manual III-3.12000 (1993).

¹⁰ 28 C.F.R. § 36.203(b) (2010).

¹¹ 28 C.F.R. § 36.202(c) (2010).

¹² 28 C.F.R. § 36.203(a) (2010).

¹³ 28 C.F.R. § 36.203(c) (2010).

¹⁴ Assistance Manual III-3.4200 (1993).

¹⁵ 28 C.F.R. § 36.204 (2010).

¹⁶ 28 C.F.R. § 36.202(a) (2010).

¹⁷ 28 C.F.R. §§ 36-302(c), 36-311 (2010); Assistance Manual III-4.1300 (1993).

- require certain eligibility criteria that tend to screen out people with disabilities, unless it can show that the criteria are necessary to provide the good, services, facilities, privileges, advantages, or accommodations offered.¹⁸
 - For example, certain safety rules may be enforced for the safe operation of the service, as long as those safety rules are based on actual risks of danger and not generalizations or stereotypes about people with disabilities.¹⁹

A business may exclude a person with a disability from participating in an activity if that person's participation would result in a *direct threat* to the health or safety of others.²⁰ The business must determine whether anything can be done to accommodate the person and make the activity safer for everyone.²¹ The decision that the person poses a direct threat to the health or safety of others cannot be based on generalizations or stereotypes about the particular disability. Instead, it must be based on the reasonable judgment that relies on current medical knowledge or the best available objective criteria, to determine: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will reduce the risk.²²

For example, a restaurant cannot refuse to serve a person with HIV, because the HIV virus cannot be transmitted through casual contact.²³

It is not considered discriminatory for a business with a specialty in a particular area to refer a person with a disability to a different business if the person is seeking a service or treatment outside the referring business's area of expertise and the business would normally make a similar referral for a person who does not have a disability.²⁴

What if I cannot physically access the business's services because of my disability?

The ADA says that businesses must remove architectural barriers in existing facilities where removal is able to be carried out without much difficulty or expense.²⁵ This may include, but is not limited to, the following:

- installing ramps;
- making curb cuts in sidewalks and entrances;
- repositioning shelves;
- rearranging tables, chairs, vending machines, display racks, and other furniture;

¹⁸ 28 C.F.R. § 36-301 (2010).

¹⁹ 28 C.F.R. § 301(b) (2010).

²⁰ 28 C.F.R. §36-208 (2010).

²¹ Assistance Manual III-3.8000 (1993).

²² 28 C.F.R. § 32.208(b) (2010).

²³ Assistance Manual III-3.8000 (1993).

²⁴ 28 C.F.R. § 36.302(b) (2010).

²⁵ 28 C.F.R. § 36.304(a) (2010).

- repositioning telephones;
- adding raised markings on elevator control buttons;
- installing flashing alarm lights;
- widening doors;
- installing accessible door hardware;
- installing grab bars and raised toilet stalls;
- installing a full-length bathroom mirror;
- creating designated accessible parking spaces.²⁶

The ADA says that businesses should address these concerns in the following order of priorities:

- access from public sidewalks, parking, and public transportation;
- access to goods and services made available to the public;
- access to restroom facilities; and
- any other measures necessary to provide access to the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation.²⁷

No changes should be made if it will pose a significant risk to the health or safety of people with or without disabilities.²⁸

Public accommodations must make reasonable changes to their policies, practices, or procedures, unless the changes will fundamentally alter the nature of the goods or services they provide.²⁹

There are other steps a business can take if it can show that barrier removal is not readily achievable,³⁰ such as:

- providing curb service or home delivery;
- retrieving merchandise from inaccessible shelves or racks;
- relocating activities to accessible locations.³¹

Businesses do not have to provide personal devices, such as wheelchairs, eyeglasses, hearing aids, or services of a personal nature, including assistance in eating, toileting, or dressing.³²

What should businesses do about service animals?

²⁶ 28 C.F.R. § 36.304(b) (2010).

²⁷ 28 C.F.R. 36.304(c) (2010).

²⁸ 28 C.F.R. § 36.304(d)(3) (2010).

²⁹ 28 C.F.R. § 36.302(a) (2010).

³⁰ 28 C.F.R. § 36.305(a) (2010).

³¹ 28 C.F.R. § 36.305(b) (2010).

³² 28 C.F.R. § 36.306 (2010).

Service animals must be allowed in public accommodations, but the care or supervision of a service animal is the responsibility of its owner, not the public accommodation.³³ A public accommodation cannot require the owner to pay a deposit, even if such a deposit is required for pets.³⁴ Many states have programs to certify service animals. However, public accommodations may not insist on proof of State certification before permitting the entry of a service animal into their establishment.³⁵

Nebraska does not have an official State certification system for service animals. Nebraska law recognizes service dogs that are specifically trained for the purpose of assisting their owner who has a disability. Owners are allowed to be accompanied in public accommodations by their service animals without having to pay an extra charge for the service animal. However, the owner will be liable for any damage done to the facilities or to any person by their service animal.³⁶

What kinds of auxiliary aids and services are required by the ADA to ensure effective communication with people with hearing or visual impairments?

Public accommodations must have auxiliary aids available upon request,³⁷ such as:

- Qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;³⁸
- Qualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision.³⁹

Public accommodations may also be required to obtain or modify equipment or devices to ensure effective communication.⁴⁰

³³ 28 C.F.R. § 36-302(c)(1), (5) (2010).

³⁴ 28 C.F.R. § 36-302(c)(8) (2010).

³⁵ 28 C.F.R. § 36-302(c)(6) (2010).

³⁶ Neb. Rev. Stat. § 20-127 (2008).

³⁷ 28 C.F.R. § 36.303(a) (2010); Assistance Manual III-4.3100 (1993).

³⁸ 28 C.F.R. § 36.303(b)(1) (2010).

³⁹ 28 C.F.R. § 36.303(b)(2) (2010).

⁴⁰ 28 C.F.R. § 36.303(b)(3) (2010).

If providing one of these auxiliary aids would result in a fundamental change in the nature of the goods, services, facilities, privileges, advantages, or accommodations provided or cause a significant difficulty or expense, the public accommodation must provide some alternative that would, to the maximum extent possible, still allow people with disabilities to receive the goods, services, facilities, privileges, advantages, or accommodations offered by the public accommodation.⁴¹

Public accommodations that provide telephone services to customers, patients, clients, or participants must make telecommunication auxiliary aids and services available for deaf persons (TTYs) or similar services available upon request.⁴² However, businesses are NOT required to use a TTY for receiving or making phone calls as part of their operations.⁴³

Hotels and inns that provide televisions in five or more guest rooms and hospitals that provide televisions for patient use must make closed-captioned televisions available upon request for use by a person with impaired hearing.⁴⁴

Can I be charged a fee if I need accommodations?

Although providing accommodations may result in some additional cost, a business may not place a surcharge only on particular people with disabilities or groups of people with disabilities to cover these expenses.⁴⁵

What can I do if I think that I have been discriminated against because of my disability?

If you think you have been discriminated against and you wish to report a complaint against a public program, you can:

- file a private lawsuit if you believe you are being subjected to discrimination or have reasonable grounds to believe that you are about to be subjected to discrimination;⁴⁶
- file an administrative complaint with the Department of Justice.⁴⁷
 - To file a complaint with the Department of Justice, you may download a copy of the complaint form at <http://www.ada.gov/t2cmpfrm.htm>. Once you have completed the form, you may e-mail it to: ada.complaint@usdoj.gov, or you can mail any complaint to:

⁴¹ 28 C.F.R. 36.303(g) (2010).

⁴² 28 C.F.R. § 36.303(d) (2010).

⁴³ 28 C.F.R. § 36.303(d)(5) (2010).

⁴⁴ 28 C.F.R. § 36.303(e) (2010).

⁴⁵ 28 C.F.R. § 36.301(c) (2010).

⁴⁶ 28 C.F.R. § 36.501 (2010).

⁴⁷ 28 C.F.R. § 36.502 (2010).

U.S. Department of Justice
Civil Rights Division
Disability Rights Section - NYAV
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

If you have questions about how to complete the form, you may call the ADA information line at: 1-800-514-0301 (voice) or 1-800-514-0383 (TTY).

After you have filed a complaint with the Department of Justice, they will investigate the alleged Title III violation and determine whether to conduct a compliance review.⁴⁸ Following the compliance review, or at any point in the Attorney General's discretion, the Department of Justice may file a civil lawsuit against the person or group of persons that engaged in the practice of discrimination.⁴⁹

Can the public accommodation retaliate against me if I file a complaint?

No. People who exercise their rights under the ADA, or assist others in exercising their rights, are protected from retaliation. Retaliation includes threats, intimidation, harassment, or interference. In other words, if you are being discriminated against and you file a complaint, or if you know of someone who is being discriminated against and you help them during their grievance process, you are protected.⁵⁰

⁴⁸ 28 C.F.R. § 36.502(c) (2010).

⁴⁹ 28 C.F.R. § 36.503 (2010).

⁵⁰ 28 C.F.R. 36.206 (2010); Assistance Manual III-3.6000 (1993).