

# LAW IN BRIEF

## WHAT ARE MY RIGHTS IN PUBLIC PLACES UNDER THE AMERICANS WITH DISABILITIES ACT?

The Americans with Disabilities Act (“ADA”) was signed into law on July 26, 1990. It is the United States’ most comprehensive pieces of civil rights legislation.<sup>1</sup> The ADA prohibits discrimination against people with disabilities and ensures that they are given the same opportunities as a person without disabilities to live, work, and participate in the community.<sup>2</sup>

### WHO IS PROTECTED UNDER THE ADA?

The ADA protects persons with disabilities. Under the ADA, the term disability is defined as a person (1) with a physical or mental impairment that substantially limits one or more major life activities, (2) with a history of such impairment, or (3) who is regarded by others as having such impairment.<sup>3</sup>

Major life activities are defined broadly under the ADA. They include, but are not limited to, caring for oneself, seeing, hearing, reading, communicating, learning, lifting, or standing.<sup>4</sup> It also includes limitations of major bodily functions, such as, neurological

<sup>1</sup> [https://www.ada.gov/ada\\_intro.htm](https://www.ada.gov/ada_intro.htm)

<sup>2</sup> *Id.*

<sup>3</sup> 28 C.F.R. § 36.105(a)(1) (2010).

<sup>4</sup> 28 C.F.R. § 36.105(c)(1)(i) (2010).

and reproductive functions.<sup>5</sup>

## TITLE III OF THE ADA: PROTECTION FROM DISCRIMINATION OF PUBLIC ACCOMMODATIONS

Title III of the ADA protects people with disabilities from being discriminated against in the enjoyment of goods, services, facilities, privileges, advantages or accommodations of public accommodations, which are provided by a private entity that owns, leases, or operates a place of public accommodation.<sup>6</sup> An entity is considered a public accommodation when they provide goods, services, or space to the general public.<sup>7</sup> Therefore, a private business that allows the public to come and go within its owned space is a public accommodation and is bound by Title III of the ADA. They must provide individuals with disabilities full and equal enjoyment of goods and services.

### Examples of Public Accommodations

#### **Title III applies to:**

- inns, motels, and hotels (containing at least 6 rooms for rent);<sup>8</sup>
- restaurants, bars, and other businesses selling food or drinks;
- movie theaters, concert halls, and other entertainment venues;
- auditoriums, convention centers, lecture halls, and other places of public gathering;
- bakeries, grocery stores, clothing stores, or other sales or rental businesses;
- laundromats, banks, barber shops, gas stations, 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;
- places of education;

<sup>5</sup> 28 C.F.R. § 36.105(a)(1)(ii) (2010).

<sup>6</sup> 28 C.F.R. § 36.202 (2010).

<sup>7</sup> Department of Justice Americans with Disabilities Act Title III Assistance Manual (hereinafter "Assistance Manual"), III-3.1000 (1993).

<sup>8</sup> Assistance Manual III-1.2000 (1993).

- day care centers, senior citizen centers, homeless shelters, or other social service centers;
- places of exercise or recreation.

### **Title III does not apply to:**

- private residences;
- aircrafts and 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).<sup>9</sup>

### Public Accommodations in Private Residences

Title III does not typically apply to residential units like houses or apartments. It does apply to places within a house or apartment that is exclusively for use as a public accommodation.<sup>10</sup> An example would be a daycare that is run out of someone's home. The space in the home that is used for the daycare must be accessible to parents and children, unless it would place an undue burden on the owner.<sup>11</sup>

### **OBLIGATIONS OF A PUBLIC ACCOMODATION UNDER THE ADA**

A private business that provides public accommodations cannot deny a person with a disability the right to participate in the goods, services, or activities it provides to the general public.<sup>12</sup> The entity cannot treat individuals with disabilities differently, or separately, than those without disabilities, unless doing so is a reasonable accommodation that allows them to benefit from the goods, services, or activities.<sup>13</sup> In

<sup>9</sup> 28 C.F.R. §§ 36.102, 36.104 (2010).

<sup>10</sup> 28 C.F.R. § 36.207 (2010).

<sup>11</sup> Assistance Manual III-3.12000 (1993).

<sup>12</sup> 28 C.F.R. § 36.203(b) (2010).

<sup>13</sup> 28 C.F.R. § 36.202(c) (2010).

addition, places of public accommodation must make reasonable changes to their policies, practices, or procedures.<sup>14</sup>

A business cannot refuse to admit a person merely because they have a disability,<sup>15</sup> ask about the existence of a disability if it is not necessary or relevant,<sup>16</sup> or require certain eligibility criteria that tend to screen out people with disabilities unless it can show the criteria are necessary to provide the goods, service, or accommodations offered.<sup>17</sup>

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.<sup>18</sup> The reason for exclusion must be based on reasonable judgment that relies on current medical knowledge or the best available objective reasoning.

### Accessible Public Spaces Rule

The ADA requires businesses to remove architectural barriers in existing facilities where the removal is possible without excessive difficulty or expense.<sup>19</sup> This may include installing ramps, widening sidewalks and entrances, and creating designated accessible parking spaces.<sup>20</sup>

The ADA's building requirements are determined by what year the building was constructed or renovated, and whether it would be an undue burden to make the building accessible. A historical site, where altering the building would destroy its historic features, would likely be exempt from ADA regulations.<sup>21</sup>

Public programs should choose the method of providing its service that provides the most integrated setting possible. This encourages interactions between people with

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<sup>14</sup> 28 C.F.R. § 36.302(a) (2010).

<sup>15</sup> 28 C.F.R. § 36.202(a) (2010).

<sup>16</sup> 28 C.F.R. §§ 36.302(c), 36.311(c) (2010); Assistance Manual III-4.1300 (1993).

<sup>17</sup> 28 C.F.R. § 36.301 (2010).

<sup>18</sup> 28 C.F.R. § 36.208 (2010).

<sup>19</sup> 28 C.F.R. § 36.304(a) (2010).

<sup>20</sup> 28 C.F.R. § 36.394(b) (2010).

<sup>21</sup> 28 C.F.R. § 36.405 (2010).

and without disabilities and achieves the ADA's goal in fostering a community where people with disabilities have the opportunity to equally participate. Options to integrate public services include:

- Moving programs, meetings, or hearing to accessible area.
- Offering personal aides to assist persons with disabilities (for example, providing a librarian to retrieve books off a high shelf for a person who uses a wheelchair).
- Changing existing buildings by installing accessibility aids, such as handrails, sign, Braille pads, etc.

Businesses are not required to provide assistance items such as wheelchairs, prescription eyeglasses, hearing aids, or provide assistance with "personal" tasks such as eating, toileting, or dressing.<sup>22</sup>

Carrying a person with a mobile disability is not an appropriate accommodation. It is only allowed in the event of an emergency, such as evacuating during a fire. In such a case, carriers should carry the person in the least humiliating way.

### Effective Communication

Public accommodations must have auxiliary aid available upon request,<sup>23</sup> such as:

- Qualified interpreters on-site or through video remote interpreting services, assistive listening devices, open and closed captioning, and other methods of make aurally delivered information available to individuals who are deaf or hard of hearing;
- Qualified readers, taped texts, Braille materials, screen reader software, and other methods of making visually delivered materials available to individuals who are blind or have low vision.<sup>24</sup>

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<sup>22</sup> 28 C.F.R. § 36.306 (2010)

<sup>23</sup> 28 C.F.R. § 36.303(a) (2010); Assistance Manual III-4.3100 (1993).

<sup>24</sup> 28 C.F.R. § 36.303(b) (2010).

If providing one of these auxiliary aids would result in a fundamental change in the nature of the goods, service, or accommodations provided, or would cause significant difficulty or expense, the public accommodation must provide an alternative that would allow an individual with a disability to participate to the maximum extent possible.<sup>25</sup>

## REQUESTING ACCOMMODATIONS

Public programs must have a process in place that allows for persons with disabilities to request accommodations. Public programs with 50 or more employees are required to have a designated employee who handles requests under Title III.<sup>26</sup> The public program must provide the name, office, and telephone number of that employee.<sup>27</sup> 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.<sup>28</sup>

## REPORTING DISCRIMINATION

If you think you have been discriminated against and you wish to report a complaint against a public accommodation, 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.<sup>29</sup>
- File an administrative complaint with the Department of Justice by visiting [https://www.ada.gov/filing\\_complaint.htm](https://www.ada.gov/filing_complaint.htm). The Department of Justice will investigate the alleged Title III violation and determine further action.

Individuals who exercise their rights under the ADA are protected from retaliation. Retaliation includes threats, intimidation, harassment, or interference. The public accommodation you filed a lawsuit or complaint against cannot retaliate in return.<sup>30</sup>

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<sup>25</sup> 28 C.F.R. § 36.303(h) (2010).

<sup>26</sup> 28 C.F.R. § 35.107 (2010).

<sup>27</sup> *Id.*

<sup>28</sup> 28 C.F.R. § 36.301(c) (2010).

<sup>29</sup> 28 C.F.R. § 36.501 (2010).

<sup>30</sup> 28 C.F.R. § 36.206 (2010).