

LAW IN BRIEF

WHAT ARE MY RIGHTS TO PARTICIPATE IN STATE AND LOCAL GOVERNMENT PROGRAMS 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.¹ 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.²

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 or record of such impairment, or (3) who is regarded by others as having such impairment.

Major life activities are defined broadly. They include, but are not limited to, caring for oneself, seeing, hearing, reading, communicating, learning, lifting, or standing. It also includes limitations of major bodily functions, such as neurological and reproductive functions.

TITLE II OF THE ADA: PROTECTION FROM DISCRIMINATION BY PUBLIC ENTITIES

Title II of the ADA was created to expand protections for persons with disabilities under Section 504 of the Rehabilitation Act of 1973. Section 504

¹ <https://www.ada.gov>

² Id.

prevented any program or service that received federal funding from discriminating against persons with disabilities because of their disability. Title II of the ADA expanded that protection from only federally funded programs and services to ones provided by state and local governments and/or agencies, defined as “public entities,” as well. Thus, combined, the laws require that federal, state, and local governmental programs and services must provide people with disabilities an equal opportunity to benefit from them. Title II of the ADA requires that persons with disabilities have an equal opportunity to participate in:³

- activities of state legislatures
- state, county, and municipal courts
- town meetings
- police and fire departments
- motor vehicle licensing
- public education
- transportation
- recreation
- public health care services
- social services
- voting
- employment

OVERVIEW OF ADA TITLE II REQUIREMENTS

A state or local government or agency⁴:

- May not refuse a person with a disability to participate in a service, program, or activity, simply because he/she has a disability.
- Must provide programming in the most integrated setting, unless segregation is necessary to ensure equal opportunity.
- Must eliminate any standards that “screen out” individuals with disabilities from the equal opportunity to enjoy benefits from services, programs, or activities.
- Must make reasonable accommodations to policies, practices, and procedures that prevent equal opportunity for people with disabilities.
- Must make communication effective by furnishing auxiliary aids, such as qualified interpreters, assistive listening devices, television captioning and decoders,

³ <https://www.ada.gov>

⁴ <https://www.ada.gov>

telecommunications devices for deaf persons (TDD's), videotext display readers, taped text, or large print materials.

- May not charge individuals with disabilities to cover the costs needed to ensure nondiscriminatory treatment.
- Shall operate their programs so that, when viewed in their entirety, they are readily accessible to and usable by individuals with disabilities.
- Must ensure buildings or public meeting space is accessible so that individuals are not excluded from services.
- Must not require separate programs for persons with disabilities. But when a public entity offers a special program as an alternative, individuals with disabilities have the right to choose whether to participate in the special program available or in the regular program.

ACCESSIBLE PUBLIC SPACES RULES

Title II of the ADA requires that federal, state, and local government programs and services are readily accessible to and usable by people with disabilities.

However, this does not require that each and every building where a public program or service is held must be accessible. Instead, the program or service must be conscious about putting the program or service in an accessible room or building.

The ADA breaks down building requirements according to when the building was built or repaired or whether it would be an undue burden to make the building accessible. For example, a historical building where widening the doors would destroy its historic features, would likely be exempt from ADA modifications.

Public programs should choose the method of providing its service that provides the most integrated setting appropriate. This encourages interactions between people with 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 hearings to accessible areas.
- Changing existing buildings by installing accessibility aids, such as,

ramps, handrails, signs, Braille pads, etc.

- 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).

A public program is 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.

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

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 II. The public program must provide the name, office, and telephone number of that employee.⁵

WHAT YOU CAN DO IF YOU FEEL YOU HAVE BEEN DISCRIMINATED AGAINST BY A STATE OR LOCAL GOVERNMENT PROGRAM OR SERVICE BECAUSE OF YOUR DISABILITY

If you feel you have been discriminated against based on your disability by an employer, **Do Not Wait!** Complaints must be made within 180 days of the alleged discrimination.⁶

⁵ 28 C.F.R. 35.107.

⁶ 28 C.F.R. 35.170-35.190.

What You Can Do:

1. Public Programs Grievance Process: A public program must have a grievance process in place to address individual complaints within the public program. This step is not required to file a grievance with a federal agency or in a court.

2. Administrative Complaint with the Department of Justice: You can file an Americans with Disabilities Act complaint alleging disability discrimination against a state or local government. A complaint can be filed:

- **Online:** <https://www.ada.gov/complaint/>
- **By Mail:**
US Department of Justice
950 Pennsylvania Avenue, NW
Civil Rights Division
Disability Rights Section – 1425 NYAV
Washington, D.C. 20530
- **By Fax:** (202) 307-1197

3. File a Private Lawsuit

RETALIATION

Can a state or local government program or service 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.