

Americans with Disabilities Act (ADA)

The ADA prohibits discrimination on the basis of disability in employment, State and local government, public accommodations, commercial facilities, transportation, and telecommunications. It also applies to the United States Congress.

To be protected by the ADA, one must have a disability or have a relationship or association with an individual with a disability. An individual with a disability is defined by the ADA as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment. The ADA does not specifically name all of the impairments that are covered.

While the definition of disability has not changed, recent court cases have modified the interpretation. For specific questions related to the ADA please refer to the ADA resources listed at the end of this document.

ADA Title I: Employment

Title I requires employers with 15 or more employees to provide qualified individuals with disabilities an equal opportunity to benefit from the full range of employment-related opportunities available to others. For example, it prohibits discrimination in recruitment, hiring, promotions, training, pay, social activities, and other privileges of employment. It restricts questions that can be asked about an applicant's disability before a job offer is made, and it requires that employers make reasonable accommodation to the known physical or mental limitations of otherwise qualified individuals with disabilities, unless it results in undue hardship. Religious entities with 15 or more employees are covered under title I.

Title I complaints must be filed with the U. S. Equal Employment Opportunity Commission (EEOC) within 180 days of the date of discrimination, or 300 days if the charge is filed with a designated State or local fair employment practice agency. Individuals may file a lawsuit in Federal court only after they receive a "right-to-sue" letter from the EEOC.

Charges of employment discrimination on the basis of disability may be filed at any U.S. Equal Employment Opportunity Commission field office. Field offices are located in 50 cities throughout the U.S. and are listed in most telephone directories under "U.S. Government."

For the appropriate EEOC field office in your geographic area, call:

(800) 669-4000 (voice)

(800) 669-6820 (TDD)

www.eeoc.gov

US Equal Employment Opportunity Commission (EEOC)'s mission is to eradicate employment discrimination and to increase knowledge about individual rights under the anti-discrimination laws among the public and employee groups. EEOC provides valuable information for employers

including information on the employment of individuals with disabilities with small businesses, and the ways in which employer can comply with the ADA.

For information on how to accommodate a specific individual with a disability, call the Job Accommodation Network at:

(800) 526-7234 (voice/TDD) Fax: (304) 293-5407

1-800-ADA-WORK (800) 232-9675 ADA information

E-mail: jan@jan.icdi.wvu.edu Web: www.jan.wvu.edu

Job Accommodation Network (JAN) assists in the hiring, retraining, retention or advancement of persons with disabilities by providing accommodation information. JAN also has a résumé database of qualified job candidates with disabilities.

ADA Title II: State and Local Government Activities

Title II covers all activities of State and local governments regardless of the government entity's size or receipt of Federal funding. Title II requires that State and local governments give people with disabilities an equal opportunity to benefit from all of their programs, services, and activities (e.g. public education, employment, transportation, recreation, health care, social services, courts, voting, and town meetings).

State and local governments are required to follow specific architectural standards in the new construction and alteration of their buildings. They also must relocate programs or otherwise provide access in inaccessible older buildings, and communicate effectively with people who have hearing, vision, or speech disabilities. Public entities are not required to take actions that would result in undue financial and administrative burdens. They are required to make reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination, unless they can demonstrate that doing so would fundamentally alter the nature of the service, program, or activity being provided.

Complaints of title II violations may be filed with the Department of Justice within 180 days of the date of discrimination. In certain situations, cases may be referred to a mediation program sponsored by the Department. The Department may bring a lawsuit where it has investigated a matter and has been unable to resolve violations.

For more information or to file a complaint, contact:

ADA Information Line – Department of Justice

U.S. Department of Justice
950 Pennsylvania Avenue, NW
Civil Rights Division
Disability Rights Section - NYAVE
Washington, D.C. 20035-6738

(800) 514-0301 (voice) (800) 514-0383 (TDD) (202) 307-1198 (Fax)

Web: www.usdoj.gov/crt/ada/adahom1.htm

The US Department of Justice provides information on general and technical assistance regarding the ADA. A toll-free ADA Information Line allows organizations to ask about ADA requirement, order free ADA materials, and obtain information about filing a complaint.

Title II may also be enforced through private lawsuits in Federal court. It is not necessary to file a complaint with the Department of Justice (DOJ) or any other Federal agency, or to receive a "right-to-sue" letter, before going to court.

ADA Title II: Public Transportation

The transportation provisions of title II cover public transportation services, such as city buses and public rail transit (e.g. subways, commuter rails, Amtrak). Public transportation authorities may not discriminate against people with disabilities in the provision of their services. They must comply with requirements for accessibility in newly purchased vehicles, make good faith efforts to purchase or lease accessible used buses, remanufacture buses in an accessible manner, and, unless it would result in an undue burden, provide paratransit where they operate fixed-route bus or rail systems. Paratransit is a service where individuals who are unable to use the regular transit system independently (because of a physical or mental impairment) are picked up and dropped off at their destinations.

Questions and complaints about public transportation should be directed to:

Federal Transit Administration

U.S. Department of Transportation

400 Seventh Street, S.W.

Washington, D.C. 20590

Information, questions and complaints:

(888) 446-4511 (voice/relay) (202) 366-2285 (voice) (202) 366-0153 (TDD)

Documents and Questions:

(202) 366-1656 (voice/relay)

Legal Questions:

(202) 366-4011 (voice/relay)

ADA Title III: Public Accommodations

Title III covers businesses and nonprofit service providers that are public accommodations, privately operated entities offering certain types of courses and examinations, privately operated transportation, and commercial facilities. Public accommodations are private entities who own, lease, lease to, or operate facilities such as restaurants, retail stores, hotels, movie theaters, private schools, convention centers, doctors' offices, homeless shelters, transportation depots, zoos, funeral homes, day care centers, and recreation facilities including sports stadiums and fitness clubs. Transportation services provided by private entities are also covered by title III.

Public accommodations must comply with basic nondiscrimination requirements that prohibit exclusion, segregation, and unequal treatment. They also must comply with specific requirements related to architectural standards for new and altered buildings; reasonable modifications to policies, practices, and procedures; effective communication with people with hearing, vision, or speech

disabilities; and other access requirements. Additionally, public accommodations must remove barriers in existing buildings where it is easy to do so without much difficulty or expense, given the public accommodation's resources.

Courses and examinations related to professional, educational, or trade-related applications, licensing, certifications, or credentialing must be provided in a place and manner accessible to people with disabilities, or alternative accessible arrangements must be offered.

Commercial facilities, such as factories and warehouses, must comply with the ADA's architectural standards for new construction and alterations.

A public accommodation that provides transportation services, but that is not primarily engaged in the business of transporting people, is subject to the general and specific provisions in Title III. Examples of transportation services subject to this section include, but are not limited to, shuttle services operated between transportation terminals and places of public accommodation, customer shuttle bus services operated by private companies and shopping centers, student transportation systems, and transportation provided within recreational facilities such as stadiums, zoos, amusement parks, and ski resorts.

Complaints of title III violations may be filed with the Department of Justice. In certain situations, cases may be referred to a mediation program sponsored by the Department. The Department is authorized to bring a lawsuit where there is a pattern or practice of discrimination in violation of title III, or where an act of discrimination raises an issue of general public importance. Title III may also be enforced through private lawsuits. It is not necessary to file a complaint with the Department of Justice (or any Federal agency), or to receive a "right-to-sue" letter, before going to court.

For more information or to file a complaint, contact:

U.S. Department of Justice
950 Pennsylvania Avenue, NW
Civil Rights Division
Disability Rights Section - NYAVE
Washington, D.C. 20035-6738

(800) 514-0301 (voice) (800) 514-0383 (TDD) (202) 307-1198 (Fax)
Web: www.usdoj.gov/crt/ada/adahom1.htm

ADA Title IV: Telecommunications

Title IV addresses telephone and television access for people with hearing and speech disabilities. It requires common carriers (telephone companies) to establish interstate and intrastate telecommunications relay services (TRS) 24 hours a day, 7 days a week. TRS enables callers with hearing and speech disabilities who use text telephones (TTY's or TDD's), and callers who use voice telephones, to communicate with each other through a third party communications assistant. The Federal Communications Commission (FCC) has set minimum standards for TRS services. Title IV also requires closed captioning of Federally funded public service announcements.

For more information about TRS, contact the FCC at:

Federal Communications Commission
445 12th Street, SW
7th Floor
Washington, D.C. 20554

Documents: (202) 857-3800 (voice) (202) 293-8810 (TDD)
Questions: (202) 418-0976 (voice) (202) 418-0484 (TDD)

MYTHS AND FACTS ABOUT THE AMERICANS WITH DISABILITIES ACT

MYTH: ADA suits are flooding the courts.

FACT: The ADA has resulted in a surprisingly small number of lawsuits -- only about 650 nationwide in five years. That's tiny compared to the 6 million businesses; 666,000 public and private employers; and 80,000 units of state and local government that must comply.

MYTH: The ADA is rigid and requires businesses to spend lots of money to make their existing facilities accessible.

FACT: The ADA is based on common sense. It recognizes that altering existing structures is more costly than making new construction accessible. The law only requires that public accommodations (e.g. stores, banks, hotels, and restaurants) remove architectural barriers in existing facilities when it is "readily achievable", i.e., it can be done "without much difficulty or expense." Inexpensive, easy steps to take include ramping one step; installing a bathroom grab bar; lowering a paper towel dispenser; rearranging furniture; installing offset hinges to widen a doorway; or painting new lines to create an accessible parking space.

MYTH: The government thinks everything is readily achievable.

FACT: Not true. Often it may not be readily achievable to remove a barrier -- especially in older structures. Let's say a small business is located above ground. Installing an elevator would not, most likely, be readily achievable -- and there may not be enough room to build a ramp -- or the business may not be profitable enough to build a ramp. In these circumstances, the ADA would allow a business to simply provide curbside service to persons with disabilities.

MYTH: The ADA requires businesses to remove barriers overnight.

FACT: Businesses are only required to do what is readily achievable at that time. A small business may find that installing a ramp is not readily achievable this year, but if profits improve it will be readily achievable next year. Businesses are encouraged to evaluate their facilities and develop a long-term plan for barrier removal that is commensurate with their resources.

MYTH: Restaurants must provide menus in braille.

FACT: Not true. Waiters can read the menu to blind customers.

MYTH: The ADA requires extensive renovation of all state and local government buildings to make them accessible.

FACT: The ADA requires all government programs, not all government buildings, to be accessible. "Program accessibility" is a very flexible requirement and does not require a local government to do anything that would result in an undue financial or administrative burden. Local governments have been subject to this requirement for many years under the Rehabilitation Act of 1973. Not every building, nor each part of every building needs to be accessible. Structural modifications are required only when there is no alternative available for providing program access. Let's say a town library has an inaccessible second floor. No elevator is needed if it provides "program accessibility" for persons using wheelchairs by having staff retrieve books.

MYTH: Sign language interpreters are required everywhere.

FACT: The ADA only requires that effective communication not exclude people with disabilities which in many situations means providing written materials or exchanging notes. The law does not require any measure that would cause an undue financial or administrative burden.

MYTH: The ADA forces business and government to spend lots of money hiring unqualified people.

FACT: No unqualified job applicant or employee with a disability can claim employment discrimination under the ADA. Employees must meet all the requirements of the job and perform the essential functions of the job with or without reasonable accommodation. No accommodation must be provided if it would result in an undue hardship on the employer.

MYTH: Accommodating workers with disabilities costs too much.

FACT: Reasonable accommodation is usually far less expensive than many people think. In most cases, an appropriate reasonable accommodation can be made without difficulty and at little or no cost. A recent study commissioned by Sears indicates that of the 436 reasonable accommodations provided by the company between 1978 and 1992, 69% cost nothing, 28% cost less than \$1,000, and only 3% cost more than \$1,000.

MYTH: The government is no help when it comes to paying for accessibility.

FACT: Not so. Federal tax incentives are available to help meet the cost of ADA compliance.

MYTH: Businesses must pay large fines when they violate the ADA.

FACT: Courts may levy civil penalties only in cases brought by the Justice Department, not private litigants. The Department only seeks such penalties when the violation is substantial and the business has shown bad faith in failing to comply. Bad faith can take many forms, including hostile acts against people with disabilities, a long-term failure even to inquire into what the ADA requires, or sustained resistance to voluntary compliance. The Department also considers a business' size and resources in determining whether civil penalties are appropriate. Civil penalties may not be assessed in cases against state or local governments or employers.

MYTH: The Justice Department sues first and asks questions later.

FACT: The primary goal of the Department's enforcement program is to increase voluntary compliance through technical assistance and negotiation. Under existing rules, the Department may not file a lawsuit unless it has first tried to settle the dispute through negotiations -- which is why most every complaint settles.

MYTH: The Justice Department never files suits.

FACT: The Department has been party to 20 suits under the ADA. Although it tries extensively to promote voluntary compliance, the Department will take legal action when entities continue to resist complying with the law.

MYTH: Many ADA cases involve frivolous issues.

FACT: The Justice Department's enforcement of the ADA has been fair and rooted in common sense. The overwhelming majority of the complaints received by the Justice Department have merit. Our focus is on fundamental issues related to access to goods and services that are basic to people's lives. We have avoided pursuing fringe and frivolous issues and will continue to do so.

MYTH: Everyone claims to be covered under the ADA.

FACT: The definition of "individual with a disability" is fraught with conditions and must be applied on a case-by-case basis.

MYTH: The ADA protects people who are overweight.

FACT: Just being overweight is not enough. Modifications in policies only must be made if they are reasonable and do not fundamentally alter the nature of the program or service provided. The Department has received only a handful of complaints about obesity.

MYTH: The ADA is being misused by people with "bad backs" and "emotional problems."

FACT: Trivial complaints do not make it through the system. And many claims filed by individuals with such conditions are not trivial. There are people with severe depression or people with a history of alcoholism who are judged by their employers, not on the basis of their abilities, but rather upon stereotypes and fears that employers associate with their conditions.

For an analysis of the ADA and its application to US organizations operating outside of the United States please read: Kanter, Arlene S., "Taking it on the Road – The Presumption against Extraterritoriality as applied to Study Abroad Programs," Stanford Journal of Legislation and Policy (2003).

ADA RESOURCES:

ADA Regulations and Technical Assistance Materials:

<http://www.usdoj.gov/crt/ada/publicat.htm#Anchor-14210>

ADA Technical Assistance Program:

<http://www.adata.org/>

Information for Individuals and Communities:

<http://www.usdoj.gov/disabilities.htm>

U.S. Department of Justice ADA:

<http://www.usdoj.gov/crt/ada/adahom1.htm>

Disability Rights Education and Defense Fund (DREDF)

www.dredf.org