

The Americans with Disabilities Act (ADA)

(nichcy.org October 2010)

The Americans with Disabilities Act makes it possible for everyone with a disability to live a life of freedom and equality. Passed by the Congress and signed into law by the President on July 26, 1990, the ADA is the first comprehensive declaration of equality for people with disabilities. The ADA protects the civil rights of people with disabilities in all aspects of employment, in accessing public services such as transportation, and guaranteeing access to public accommodations such as restaurants, stores, hotels and other types of buildings to which the public has access.

The website of the ADA National Network, <http://www.adata.org>

So you'd like to know more about the Americans with Disabilities Act—commonly referred to as the ADA. This webpage will connect you with volumes of information on the ADA from the most authoritative sources. Rather than repeat what others have masterfully explained, we hope that the links and resources listed below quickly bring you to the information on the ADA you seek.

- ADA Reauthorized
- Best place to begin your ADA info search
- Treasure trove at Dept. of Justice
- ADA and public schools
- ADA and child care centers

ADA—Reauthorized!

On Friday, July 23, 2010, Attorney General Eric Holder signed final regulations revising the Department of Justice's ADA regulations, including its ADA Standards for Accessible Design. The official text was published in the Federal Register on September 15, 2010. These final rules will take effect March 15, 2011. Compliance with the 2010 Standards for Accessible Design is permitted as of September 15, 2010, but not required until March 15, 2012. The Department has prepared fact sheets identifying the major changes in the rules. Read all about this reauthorized ADA at:

<http://www.ada.gov/regs2010/ADAregs2010.htm>

2010 ADA Standards for Accessible Design:

The 2010 Standards set minimum requirements -- both scoping and technical -- for newly designed and constructed or altered State or local government facilities, public accommodations, and commercial facilities to be readily accessible to and usable by individuals with disabilities.

Q. What practices and activities are covered by the employment nondiscrimination requirements?

A. The ADA prohibits discrimination in all employment practices, including job application procedures, hiring, firing, advancement, compensation, training, and other terms, conditions, and privileges of employment. It applies to recruitment, advertising, tenure, layoff, leave, fringe benefits, and all other employment-related activities.

A Treasure Trove of ADA Info at the U.S. Department of Justice

The U.S. Department of Justice provides information about the ADA through an information-rich ADA website and a toll-free ADA Information Line. The information service permits businesses, state and local governments, or others to call and ask questions about general or specific ADA requirements including questions about the ADA Standards for Accessible Design. Spanish language service is also available.

For general ADA information, answers to specific technical questions, free ADA materials, or information about filing a complaint:

ADA Information Line: 1.800.514.0301 (Voice) | 1.800.514.0383 (TTY)

The following are some questions and answers taken from the ADA.gov website:

Q. What practices and activities are covered by the employment nondiscrimination requirements?

A. The ADA prohibits discrimination in all employment practices, including job application procedures, hiring, firing, advancement, compensation, training, and other terms, conditions, and privileges of employment. It applies to recruitment, advertising, tenure, layoff, leave, fringe benefits, and all other employment-related activities.

Q. Who is a "qualified individual with a disability?"

A. A qualified individual with a disability is a person who meets legitimate skill, experience, education, or other requirements of an employment position that s/he holds or seeks, and who can perform the essential functions of the position with or without reasonable accommodation. Requiring the ability to perform "essential" functions assures that an individual with a disability will not be considered unqualified simply because of inability to perform marginal or incidental job functions. If the individual is qualified to perform essential job functions except for limitations caused by a disability, the employer must consider whether the individual could

perform these functions with a reasonable accommodation. If a written job description has been prepared in advance of advertising or interviewing applicants for a job, this will be considered as evidence, although not conclusive evidence, of the essential functions of the job.

Q. What is "reasonable accommodation?"

A. Reasonable accommodation is any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to participate in the application process or to perform essential job functions. Reasonable accommodation also includes adjustments to assure that a qualified individual with a disability has rights and privileges in employment equal to those of employees without disabilities.

Q. What are some of the accommodations applicants and employees may need?

A. Examples of reasonable accommodation include making existing facilities used by employees readily accessible to and usable by an individual with a disability; restructuring a job; modifying work schedules; acquiring or modifying equipment; providing qualified readers or interpreters; or appropriately modifying examinations, training, or other programs. Reasonable accommodation also may include reassigning a current employee to a vacant position for which the individual is qualified, if the person is unable to do the original job because of a disability even with an accommodation. However, there is no obligation to find a position for an applicant who is not qualified for the position sought. Employers are not required to lower quality or quantity standards as an accommodation; nor are they obligated to provide personal use items such as glasses or hearing aids.

The decision as to the appropriate accommodation must be based on the particular facts of each case. In selecting the particular type of reasonable accommodation to provide, the principal test is that of effectiveness, i.e., whether the accommodation will provide an opportunity for a person with a disability to achieve the same level of performance and to enjoy benefits equal to those of an average, similarly situated person without a disability. However, the accommodation does not have to ensure equal results or provide exactly the same benefits.

Q. How does title II affect participation in a State or local government's programs, activities, and services?

A. A state or local government must eliminate any eligibility criteria for participation in programs, activities, and services that screen out or tend to screen out persons with disabilities, unless it can establish that the requirements are necessary for the provision of the service, program, or activity. The State or local government may, however, adopt legitimate safety requirements necessary for safe operation if they are based on real risks, not on stereotypes or generalizations about individuals with disabilities. Finally, a public entity must reasonably modify its policies, practices, or procedures to avoid discrimination. If the public entity can demonstrate that a

particular modification would fundamentally alter the nature of its service, program, or activity, it is not required to make that modification.

Q. What changes must a public entity make to its existing facilities to make them accessible?

A. A public entity must ensure that individuals with disabilities are not excluded from services, programs, and activities because existing buildings are inaccessible. A State or local government's programs, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. This standard, known as "program accessibility," applies to facilities of a public entity that existed on January 26, 1992. Public entities do not necessarily have to make each of their existing facilities accessible. They may provide program accessibility by a number of methods including alteration of existing facilities, acquisition or construction of additional facilities, relocation of a service or program to an accessible facility, or provision of services at alternate accessible sites.

Q. What requirements apply to a public entity's emergency telephone services, such as 911?

A. State and local agencies that provide emergency telephone services must provide "direct access" to individuals who rely on a TDD or computer modem for telephone communication. Telephone access through a third party or through a relay service does not satisfy the requirement for direct access. Where a public entity provides 911 telephone service, it may not substitute a separate seven-digit telephone line as the sole means for access to 911 services by nonvoice users. A public entity may, however, provide a separate seven-digit line for the exclusive use of nonvoice callers in addition to providing direct access for such calls to its 911 line.

ACCESS CODE for test: Path2020

ADA Homepage: <http://www.ada.gov/>

The ADA and Public Schools

What obligations do public schools have with respect to complying with the ADA? Here are several resources that can answer that question.

Compliance with the Americans with Disabilities Act: A Self-Evaluation Guide for Public Elementary and Secondary Schools.

From the Office for Civil Rights, U.S. Department of Education

<http://www2.ed.gov/about/offices/list/ocr/docs/hq9805.html>

Section 504 and ADA Obligations of Public Schools.

From the National Association of the Deaf.

<http://www.nad.org/issues/education/k-12/section-504-and-ada-obligations>

ADA Q & A: Back to School. From the PACER Center.

<http://www.pacer.org/publications/adaqa/school.asp>

Section 504, the ADA, and Public Schools.

From LDonline.

<http://www.ldonline.org/article/6108>

The ADA and Child Care Centers

What obligations do child care centers have with respect to complying with the ADA? The resources below all address this question.

Commonly Asked Questions about Child Care Centers and the ADA.

From the U.S. Department of Justice.

<http://www.ada.gov/childqanda.htm>

The Child Care Law Center.

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

ADA Q&A: Child Care Providers From the PACER Center.

<http://www.pacer.org/publications/adaqa/childcare.asp>