

How to Comply with the Americans with Disabilities Act

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Introduction

The legal and political roots of the Americans with Disabilities Act (ADA) owe themselves to the civil rights era of the 1960s, which passed the Civil Rights Act in 1964, the Voting Rights Act in 1965 and the Architectural Barriers Act of 1968, and to the Rehabilitation Act of 1973. From the 1970s to the 1990s, activism among the disabled became increasingly visible. In 1986, congress passed the Air Carriers Act, which addressed the rights of the disabled when using air transportation. Later in 1988, the Civil Rights Restoration Act was passed along with the Fair Housing Amendments Act (Historical, 2003).

On the morning of July 26, 1990, President George Bush signed the ADA into law making it the largest signing ceremony in history. President Bush described the ADA as:

“the world’s first comprehensive declaration of the equality of people with disabilities, and evidence of America’s leadership internationally in the cause of human rights. With today’s signing of the landmark Americans with Disabilities Act, every man, woman and child with a disability can now pass through once closed doors into a bright new era of equality, independence and freedom” (Historical, 2003)

The passage of the ADA is parallel to those that have been passed by the US government in the past for women, racial, ethnic, and religious minorities. To ensure the disabled were given equal access everywhere, the ADA is comprised of five titles; these titles ensure equal opportunity in employment, state and local government services, business that are accessible to the public, and TTY services. The ADA opened the doors and now gives equal access to those with disabilities to all services previously enjoyed by the non-disabled (Historical, 2003).

The protection of the ADA applies primarily to those individuals who are disabled or impaired. Under the ADA, a disability or impairment can be either physical or mental. The ADA defines a physical impairment as:

“Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine” (What, 2003).

The ADA defines a mental impairment as:

“any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities” (What, 2003).

These impairments, whether they are physical or mental, must substantially limit one or more of the individual's life activities and the person must have a record of such disability. Other persons that are protected by the ADA are those who have an association with the disabled person.

Title I: Employment

Title I of the ADA was written so that employers, those with 15 or more employees (the 15 employee rule does not apply to state or local governments), could not discriminate against qualified individuals with disabilities. It covers such things as the working environment that includes proper placement of desks, any special needs items to facilitate work, and sensitivity training for the other employees. Job applications, employee related services and hire and firing practices are also covered under Title I.

The ADA does not force businesses to hire disabled individuals but only states that they hire qualified (someone who has the education and or experience) individuals. If the disabled individual is qualified for the position, the employer must provide reasonable accommodations presuming the accommodation does not result in an undue hardship to the employer. Reasonable accommodations may include rearranging the person's work schedule, modifying the building or work environment and providing additional on-the-job training, an assistive device or extra personal assistance (Zimbrich, 1998). However, if these accommodations are deemed too costly or disruptive to the company such that the company is adversely affected, the accommodations may not be required.

To ensure that employers comply with Title I and to give individuals an outlet to settle grievances, the Equal Employment Opportunity Commission (EEOC) is charged with enforcement. When the ADA was passed, there was a fear that ADA employment lawsuits would flood the courts; however, within the first seven years there were approximately 1,200 lawsuits. The EEOC has ruled on thousands of cases (employers winning about 90% of them) but this is small when compared to the roughly six million businesses and the many state and local government offices that must comply (Dispel-ling, 2002).

Title II: State and Local Government Services and Public Transportation

Under Title II of the ADA, all state and local government programmes, services and activities must be made available to those with disabilities. This title also applies to public transportation.

State and Local Government Services

Programmes or services under Title II would include public education and social programmes, state legislatures and courts, town meetings, police and fire departments, motor vehicle licensing, employment services etc. In order to comply with Title II, older government buildings must undertake reasonable modifications to allow access to the disabled. If a modification is deemed not reasonable, then alternate assistance should be provided. To illustrate, a two storey library that does not have an elevator and it is deemed unreasonable to install an elevator, should provide employee assistance for the disabled who cannot access the information on the second floor.

When new facilities are designed for the state or government, the buildings must be designed in accordance with the ADA Standards for Accessible Design. Such standards specify requirements for headroom, ground and floor surfaces, maneuvering clearance at doors, doorway thresholds, and door hardware. Most of these specifications allow for easy maneuverability for those in wheelchairs. Other modifications that facilitate wheelchairs are allowing enough turning space and adjusting counter height (ADA, 2002). The US Department of Justice (DOJ) enforces Title II of the ADA (Introduction, 2003).

Public Transportation

Just as the state and local governments are required, public transportation must also make their vehicles and services available to those with disabilities. The Department of Transportation enforces this provision of Title II and ensures that all new transit buses and rail cars are wheelchair accessible. They also require that transit authorities provide comparable transportation services to individuals who cannot use fixed route bus services (Zimbrich, 1998). To accommodate wheelchairs and others with limited mobility, all buses have low curb step-in and lifts for loading wheelchairs and all train cars are level with the platform allowing wheelchairs to simply roll in. Both buses and train cars have special seats that can be folded up in order to accommodate wheelchairs. For those who cannot use fixed route bus services, the transit authorities provide smaller buses that are able to pick up individuals from their residences by appointment.

Title III: Public Accommodation

Title III of the ADA prohibits discrimination against disabled individuals in public places and commercial facilities. These public places include over six million businesses such as restaurants, hotels, theatres, convention centres, doctors offices, retail stores, museums, libraries, private schools, etc., and is enforced by the US Department of Justice (ADA, 2002). Although Title I of the ADA only applies to employers with 15 or more employees, Title III applies to all sizes of business not considering the number of employees or whether the building is an existing building or new building.

Many buildings existed that did not accommodate disabled people before the passing of the ADA. To improve access to the older buildings, the ADA established requirements for the removal of barriers. Some common barrier removal could include the re-stripping of parking lots to accommodate handicap parking. The addition of wheelchair ramps and the removal of large thresholds that can impede wheelchairs would also constitute barriers for removal. The requirement to provide access for existing buildings is less stringent than in new construction mainly due to the high cost of retrofitting. All businesses open to the public must remove physical barriers that can be removed without much difficulty or expense; the expense is based on the size and resources of the business. This means that larger businesses or those with more resources would be expected to remove more barriers than smaller businesses. The ADA also allows businesses to delay barrier removal when resources are low, but the barriers must be removed as soon as there are resources. In order to determine which barriers should be removed, businesses should consult the ADA Standards for Accessible Design.

Newly constructed buildings must also follow strict compliance with the ADA standards as dictated by the ADA Standards for Accessible Design. This guide provides very detailed standards as to how a building should be constructed from items such as thresholds and drinking fountains to hallway size and parking lot arrangement. Adherence to the ADA for new construction is more comprehensive than for existing buildings since the standard can be easily incorporated into the designing and building phases of the facility. The ADA standards for new buildings require accessibility to most areas but requirements for work areas are more limited than those for public and common areas.

Not only do businesses have to ensure that their buildings comply with the ADA but they must also have policies and procedures that do not limit or exclude disabled individuals. An example would be for a store that excludes animals to change that policy so those who require the use of service animals can bring them into the store. Due to the varying nature of businesses, these policies can vary from business to business. For those who operate in areas that receive snow it is important that they maintain a policy of removing snow and ice from the handicap parking spaces (Jackson, 2002). Business owners who do not attend to these hazardous conditions are leaving themselves open to lawsuits. On the island of Kauai in Hawaii, a woman with muscular dystrophy sued more than 100 businesses over a two-year span for alleged violation of the ADA. She had moved to the island and became frustrated that businesses were not taking the ADA seriously. Her lawsuits demonstrated the failure of the Kauai businesses to comply with the ADA (More, 2003). Compliance with the ADA is crucial.

ADA compliance is an ongoing event. Businesses and other entities that must comply with the ADA standards are also required to conduct self-evaluation to validate their compliance. These self-evaluations are meant to ensure that the businesses evaluate their current services, policies,

and practices and consider whether they are in compliance. If they have fallen out of compliance, modification would be necessary. During these self-evaluation periods, the business should also invite individuals with disabilities to participate in the evaluation processes validating their concerns and needs (Kozlowski, 1995).

Title IV: Telecommunications

Under Title IV of the ADA, telephone companies that provide services to the general public must provide relay services to people with hearing and/or speech impairments (Zimbrich, 1998). Currently, there are three popular modes of communication for the deaf, TTY, Internet Relay, and Video Relay. TTY allows the users to communicate over the telephone lines via a keyboard. The receiver can read the sent message by means of a print out and responds by typing their response.

With the popularity of the Internet, Internet Relay and Video Relay are becoming more widespread. Internet Relay is similar to instant messaging in which the individuals type messages back and forth. With Video Relay, the individuals can use American Sign Language (ASL) by signing into a camera while the other views them on their monitor. The telephone companies also provide a service where the hearing impaired can use any three of the mentioned relay services and communicate with others who do not have this equipment. In these instances, a relay operator receives and translates the sent message and dictates it to the intended sender via a standard telephone. The operator then translates and/or sends the recipient's message back to the hearing impaired sender via the relay.

Title V: Miscellaneous

Title V of the ADA provides for the use of alternate means to resolve disputes, including mediation and arbitration. In addition, Title V prohibits retaliation and coercion against any individual who has filed a complaint under the ADA, or who has acted on behalf of a person filing a complaint. The title also addresses issues such as smoking, insurance, design guidelines, technical assistance, wilderness areas and other miscellaneous items (Introduction, 2003). One of these miscellaneous issues concerns the controlled burning of wheat stubble. In Washington State, two children, one asthmatic, the other suffers from cystic fibrosis, sued the state claiming the smoke from the fires caused them to lose their rights to use public facilities (Suber, 2000). When burning wheat, the farmers must abide by EPA regulations but now there is concern that they will also be bound by the ADA.

Conclusion

During the 30 years preceding the 1990 signing of the ADA, the United States had experienced much positive change regarding discrimination of all types. When then President Bush signed the ADA into law, it opened the door for large groups of disabled individuals to experience the world in a new way. In the past, communities were built around non-disabled individu-

als. The ADA changed this thinking, as it required planners to incorporate designs that facilitate the interaction of the disabled. The disabled now have access to better employment, services that were once denied them, transportation, and better communication.

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