

Overview of the Americans with Disabilities Act (ADA)



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What is the ADA?



- Americans with Disabilities Act, passed in 1990
- Federal CIVIL RIGHTS legislation that says it is illegal to discriminate against people with disabilities in employment, state and local government services, private businesses, telecommunications and transportation
- **Goal:** The full inclusion of people with disabilities in all aspects of American society



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Why was the ADA needed?

Think back to before 1990...

- There were fewer curb cuts
- Many businesses were not accessible
- People with disabilities were rarely seen in advertisements and TV shows
- Interpreters were rarely used at public events
- People with disabilities were excluded from many activities due to barriers



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Legislation Relating to ADA

- Civil Rights Act 1964
- Architectural Barriers Act (ABA) 1968
- Rehabilitation Act 1973
- Fair Housing Amendments Act 1988
- **ADA 1990**
- Civil Rights Act of 1991
- Rehab Act 1998 as amended (Section 508)



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ADA = Civil Rights



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Defining Disability

- A physical or mental impairment which substantially limits one or more major life activities or
- A person with a record of such impairment or
- A person who is regarded as having such an impairment

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The ADA Amendments Act of 2008

- Signed into law by President George W. Bush on September 25, 2008
- Went into effect on January 1, 2009
- The [final regulations were published in the Federal Register](#) on March 25, 2011.
- Standards also apply under the Rehabilitation Act

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Why Did Congress Amend the ADA?

- Courts were construing definition of "disability" too narrowly and finding too many people outside the ADA's protections
- The ADA's definition of "disability" was based on Section 504 of the Rehabilitation Act of 1973, which courts pre-ADA construed broadly
- The Supreme Court's decisions construed the term "disability" too narrowly
- The EEOC's current regulation defining "substantially limits" as "significantly restricted" expresses too high a standard and is inconsistent with Congressional intent

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Major Goals of New Legislation

- To restore the ADA's broad protections as intended by Congress
- To reject the Supreme Court's view that "disability" should be determined taking into consideration the effects of mitigating measures
- To reject the Supreme Court's holding that the ADA requires a "demanding standard" for establishing coverage and requires that an impairment "severely restrict" major life activities





ADA Amendments Act

- The Amendments Act makes it *easier to meet the definition* of "disability"
- The Act states the definition of "disability" in the ADA "*shall be construed in favor of broad coverage*" and "*should not demand extensive analysis*"





Statutory Changes to Definition of "Disability"

- "**Substantially limited**" redefined
- Major life activities include "**major bodily functions**"
- Effects of mitigating measures (other than ordinary eyeglasses or contact lenses) **cannot** be considered in determining "disability"
- Impairment that is **episodic or in remission is a disability if it would be "substantially limiting"** when active



Examples of Impairments That Will “Consistently Meet the Definition of Disability”



- Due to lower substantially limits standard, new mitigating measures rule, inclusion of major bodily functions as major life activities, and new episodic/in remission rule for some types of impairments, “the individualized assessment of the limitations on a person can be conducted quickly and easily” and they will “consistently meet the definition of disability”

Examples include deafness, blindness, intellectual disability, partially or completely missing limbs, mobility impairments requiring use of a wheelchair, autism, cancer, cerebral palsy, diabetes, epilepsy, HIV/AIDS, multiple sclerosis, muscular dystrophy, major depression, bipolar disorder, post-traumatic stress disorder, obsessive-compulsive disorder, and schizophrenia



Examples of Impairments that May Be Disabling for Some Individuals But Not For Others



- Impairments such as asthma, back and leg impairments, carpal tunnel syndrome, and learning disabilities
- May require somewhat more analysis to determine whether they are substantially limiting for a particular individual
- Level of analysis still should not be extensive



Examples of Impairments that Usually Will Not Be Disabilities



Temporary, non-chronic impairments of short duration with little or no residual effects are usually not disabilities:

the common cold, seasonal or common influenza, a sprained joint, minor and non-chronic gastrointestinal disorders, or a broken bone that is expected to heal completely





The Americans with Disabilities Act

- Title I:** Employment
- Title II:** State and Local Gov't
- Title III:** Private Business
- Title IV:** Telecommunications
- Title V:** Miscellaneous





ADA Title I - Employment

- An employer may not discriminate against an employee on the basis of disability in any aspect of the employment relationship.



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Title I ensures that qualified individuals with disabilities:

- Have comparable access to the employment process
- Are afforded an interactive process to determine reasonable accommodation
- Are provided access to all benefits of employment including access to related services (e.g., gym, transportation)



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Qualified Individual with a Disability



A qualified individual with a disability means one who satisfies the requisite skill, experience, education, and other job-related requirements of the position such individual holds or desires, and who:

with or without reasonable accommodation can perform the essential functions of such position.

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Employment



- All elements covered
 - Applications
 - Interviews
 - Hiring
 - On the job
 - Benefits and privileges



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Disability Related Inquiries



Stages of Employment

- *Pre-offer*
- *Post-offer*
- *On the job*

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Pre-Offer Stage



- Before a job is offered, the employer may not ask questions about an applicant's disability and can only discuss the person's ability to perform specific tasks.
- If the applicant has a visible disability, the employer may ask the applicant to describe or demonstrate how he or she would perform a specific task that the employer has concerns about.

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Disability Related Inquiries



Interviewer May NOT Ask About:

- The nature or extent of the applicant's disability.
- If the applicant or anyone in his/her family has a disability.
- The applicant's health.
- If the applicant has a history of emotional illness.
- If the applicant has ever had an injury or disease.
- If the applicant has ever seen a psychiatrist.
- If the applicant has ever had a drug or drinking problem.

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Pre-offer Inquiries



- The ADA prohibits a prospective employer from inquiring verbally or in writing about an applicant's health or disability before offering a position to that applicant.
- Employer may not require a medical exam at this stage.
- Drug use tests are permitted if required of all applicants.

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Post-Offer

- After an individual is offered the position, it is then appropriate to discuss reasonable accommodation needs.
- This process should be interactive with the potential employee providing documentation describing specific accommodation needs and discussing options with the employer.

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Reasonable Accommodation

- *Modification to the job application process*
- *Modification to the work environment or the manner under which the position held is customarily performed*
- *Modification that enables an employee with a disability to enjoy equal benefits and privileges of employment*

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The Accommodation Process

- Employee must let the employer know that he or she needs an adjustment or change at work because of a disability
- The employer may verify the employee's disability.
- The employer identifies the essential job functions that require accommodations.

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The Accommodation Process continued

- The employer consults with the employee to identify a variety of accommodations to reduce or remove barriers and to increase productivity.
- The employer implements the most appropriate accommodations, taking into account the preferences of the individual with disabilities.



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Accommodation Brainstorm

- Employee with diabetes
- Employee with prosthetic leg must use vehicles owned by the business
- Employee with brain-injury has trouble staying organized
- Employee who is Deaf
- Employee who has low vision



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Disclosure

Under the ADA, an employer must provide reasonable accommodations to the **KNOWN** physical or mental limitations of a qualified applicant or employee with a disability.



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Title I Enforcement

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- File a complaint with the EEOC
- Other Options:
 - File a complaint with the state or local Human Relations Agency
 - Alternative Dispute Resolution




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Title II

State and Local Governments



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General Requirements

State and local government must provide full program access to people with disabilities.



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Title II: Program Access

- Programs accessible “when viewed in their entirety”
- ADA does **NOT** give special privileges or entitlements for people with disabilities – it’s about equality!
- Each state program should insure **everyone** can access **all facets** of the program
- Reasonable Modifications to insure programs accessible

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Who is Covered by Title II?



Every type of state and local government entity, including:



- all types of state agencies
- counties
- municipalities and cities
- executive, legislative, and judicial branches of state and local government

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General Requirements

A public entity must reasonably modify its policies, practices, or procedures to avoid discrimination.

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How to Achieve Program Access

- Acquire or redesign of equipment
- Relocate to alternate, accessible location
- Assign aides
- Make structural, architectural changes
- Program access evaluated when “viewed in its entirety”

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What are some ways state and local government agencies have made their services accessible?

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General Requirements

- Services and programs must be delivered in the most integrated setting appropriate to the person’s level of need even if separate programs exist.
 - Integration of persons with disabilities is one of the goals or values of the ADA.



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General Requirements continued

A public entity may not impose eligibility criteria for participation in its programs that screen out persons with disabilities unless the requirements are necessary for the provision of the service.

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Title III Public Accommodations



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Title III: Public Accommodations

Places of public accommodation may not deny people with disabilities goods or services.

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Public Accommodations



Public accommodations are private entities that own, lease, lease to, or operate a *place* of public accommodation.

A facility operated by a private entity whose operations affect commerce and that falls within at least one of the following twelve categories:

1. Inn, hotel, or other place of lodging unless five or fewer units for rent or hire and occupied by proprietor as residence



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Public Accommodations



continued

2. establishment serving food or drink
3. place of exhibition or entertainment
4. place of public gathering



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Public Accommodations



continued

5. sales or rental establishment
6. professional office of a health care provider, hospital, or other service establishment
7. station used for specified public transportation



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Public Accommodations continued



8. place of public display or collection



9. a park, zoo, amusement park, or other place of recreation



10. place of education



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Public Accommodations continued



11. social service center establishment



12. a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation



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Title III Requirements



- Reasonable modification of policies and procedures
 - "Fundamental alteration"— a change in the essential nature of the business – is not required
- Service Animals
 - Now defined as a dog that is individually trained to do work or perform tasks for an individual with a disability
- Other Power-Driven Mobility Devices
 - Non-traditional devices (for example, Segways) used as mobility aids by people with disabilities must be allowed in many circumstances



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Title III Requirements: Effective Communication



- Businesses must to take steps to provide “auxiliary aids or services” (exchange written notes, provide sign language interpreter services, Braille materials, etc.) when necessary to communicate effectively with customers with vision, hearing and speech disabilities
- If a specific communication aid or method would be an undue burden or fundamental alteration, a business must provide an effective alternative, if there is one

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What are some accommodations that restaurants could make for:



- A customer who has a visual disability?
- A customer who is Deaf?
- A customer who uses a wheelchair?



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Title III Requirements: Websites



- U.S. Department of Justice is considering revising the regulations of the ADA to establish specific requirements for state and local governments and public accommodations to make their websites accessible to individuals with disabilities

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Title III Requirements: Physical Access



- *Architectural accessibility*
 - For **new facilities** – built after March 15, 2012 must meet the 2010 standards
- *Readily achievable barrier removal*
 - In **existing facilities**

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Question:



- What are some examples of readily achievable barrier removal?

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Possible Answers



- Widening a door
- Installing grab bars
- Building a ramp
- Changing round door knobs to lever handles
- Reducing the pressure to open a door
- Rearranging furnishings / equipment

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Alternatives to Barrier Removal

- If barrier removal is not readily achievable, public accommodations must make goods and services available through readily achievable alternative methods

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Examples: Alternatives

- Service at other accessible locations
- Home delivery
- Door bell to request service
- Moveable chairs to provide access where fixed seating is not accessible
- Signage to alert patrons of alternatives

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Religious organizations are exempt from Title III

- Churches, mosques, synagogues and all of their activities, even if they are open to the public, do not have obligations under Title III.

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Available Tax Write-Offs

- **50% TAX CREDIT** for Small Business (\$1 million gross income OR less than 30 employees)
- Tax Deductions for Larger Businesses
- Capital Improvements Need Not Be Depreciated



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Practical Steps for Private Entities

1. Conduct Self Assessment/Evaluation
2. Develop Accessibility Plan. Prioritize
3. Demonstrate "Good Faith Effort"
4. Determine "Readily Achievable" Changes
5. Take Advantage of Tax Incentives
6. Advertise Positive Steps Taken



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Title II & III Enforcement



- File a complaint with the Department of Justice or Department of Transportation



- Private lawsuits
- Alternative Dispute Resolution including mediation



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Title IV: Telecommunications



- Requires that all telecommunications companies in the U.S. take steps to ensure functionally equivalent services for consumers with disabilities.



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Title IV: Telecommunications



- Federal Communications Commission is the enforcement agency for Title IV



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Title V: Miscellaneous



- Some of these items include:
- Coverage of Congress by the ADA
 - Recovery of legal fees
 - Prohibition of coercing, threatening or retaliating
 - Requirements for historic properties
 - The role of federal agencies enforcing the ADA and providing technical assistance

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