



Title III of the ADA: Common Myths and Mix-Ups

Will begin at 2:00 PM Eastern Time

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- This session will be open-captioned



Technical Assistance

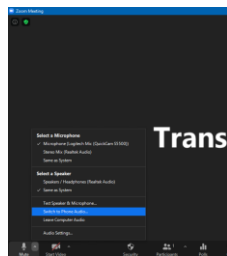
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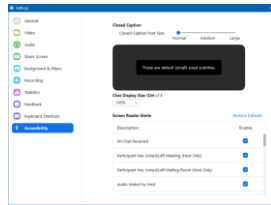


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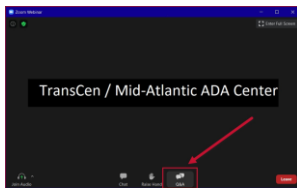
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Archive

- This webinar is being recorded
 - You will receive an email with information on how to access the archive



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Certificates of Attendance

- Only those who purchased certificates when registering for the session are eligible to receive one
- Certificates are available only for attending the live session; attendance will be verified
- The code to submit for a certificate will be announced later in the session

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Presentation Accessibility

- For the benefit of participants who are not able to see the presentation slides on the webinar platform, speakers will
 - Announce slide numbers
 - Describe images that are meaningful to the content of the session

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About Your Hosts...

TransCen, Inc.

- Improving the lives of people with disabilities through meaningful work and community inclusion

Mid-Atlantic ADA Center, a project of TransCen, Inc.

- Funded by National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR), Administration for Community Living, U.S. Department of Health and Human Services

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ADA National Network

- Ten regional centers provide guidance, training, and materials on the ADA

• 1-800-949-4232

• ADAata.org



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Title III of the ADA:

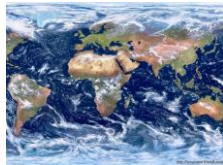
Common Myths and Mix-Ups



Myth: The ADA Covers the World

- The ADA covers *everything*, including, for example ...

- Private housing, airlines, telephone companies, the federal government, foreign countries ...



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Fact: ADA Covers ...

- Title I: Employers
 - State and local government agencies and private companies with at least 15 employees
- Title II: State and local governments
 - Programs, services, activities made available to the public
- **Title III: Private entities** (28 CFR Part 36)
 - Public accommodations
 - Commercial facilities
 - Courses and exams
- Title IV: Telecommunications
- Title V: Miscellaneous

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Title III: Coverage and Exemptions 1

Myth

- Title III governs employment-related issues if you work for a public accommodation (e.g., service animals, accessible parking)

Fact

- Title III regulates the relationship between a public accommodation and the public, not its employees; likewise, ADA Standards for facilities that apply under Title III do not apply under Title I (§ 36.102)

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Title III: Coverage and Exemptions 2

Myth

- A business is exempt if it is operated out of a private home

Fact

- Title III covers home-based businesses (§ 36.207)



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Title III: Coverage and Exemptions 3

Myth

- Mobile facilities are exempt

Fact

- Mobile facilities are covered!



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Title III: Coverage and Exemptions 4

Myth

- Religious entities are exempt from Title III *unless* their programs or activities are open to the general public

Fact

- Religious entities are broadly exempt from Title III (§ 36.102(e))



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Title III: Coverage and Exemptions 5

Myth

- "I'm just the landlord."
- "It's not our building; we just rent."

Fact

- Public accommodations include any private business that **owns, operates, leases, or leases to** a place of public accommodation (§ 36.104)
 - **Landlords and tenants are both covered by Title III** (§ 36.201(b))

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Title III: Coverage and Exemptions 6

Myth

- The ADA always overrides state or local law

Fact

- State or local laws that provide better protection or greater remedies will override the ADA (§ 36.103(c))



Facility Design 1

Myth

- If there are no standards specific to a particular type of facility, there is no requirement to make it accessible

Fact

- Standards should be applied "to the extent possible"

Related issue: equipment, furnishings, or technologies

- Follow standards for similar elements and consult reliable guidance (e.g., standards under other laws, voluntary guidance such as Web Content Accessibility Guidelines)



Facility Design 2

Myth

- Temporary facilities are exempt

Fact

- Temporary facilities are covered! (ADA Standards for Accessible Design, 201.3)



Existing Facilities 1

Myth

- Historic facilities are exempt

Fact

- Historic facilities are covered
 - However, historically significant features should never be threatened or destroyed
 - Creative designs can enhance access while preserving historic significance and character



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Historic Library



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Creative Solution: New Ramp, New Door



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Existing Facilities 2

Myths

- The "grandfather clause" and its opposite
 - Facilities built before the ADA (1990) are exempt from requirements related to structural access
 - Every existing structure must be made fully accessible

Fact

- Readily achievable barrier removal
 - **Places of public accommodation only; does not apply to commercial facilities**

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Title III: Readily Achievable Barrier Removal

- "Easily accomplishable and able to be carried out **without much difficulty or expense**"

- Consider
 - **Nature and cost** of action needed
 - **Overall financial resources** of site or sites involved
 - **Impact** on resources and operations
 - **Safety**

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Suggested Barrier Removal Priorities

1. Getting in (parking, exterior routes, entrance, etc.)
2. Accessing goods and services (sales/service areas)
3. Restrooms (if there are any)
4. Other

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Alternatives to Barrier Removal

- When it is not readily achievable to remove barriers, consider readily achievable alternatives, for example ...
 - Delivering goods or services at alternate locations, including home delivery or curb service; relocating activities (e.g., classes, meetings) to accessible locations
 - Retrieving merchandise from inaccessible shelves or racks

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Continuing Obligation

- Obligation to remove barriers is on-going
 - Factors affecting what is readily achievable may change over time
 - Projects may be completed in stages
 - Minimize disruption
 - Maximize tax incentives

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Existing Facilities 3

Myth

- Alterations or barrier removal: If you touch *anything*, you have to fix *everything*

Fact

- Alterations must meet accessibility standards to the greatest extent *technically feasible*
- Only alterations affecting "primary function areas" trigger an expanded scope of work, and then only to improve accessibility of the "path of travel" from site arrival points (public sidewalks, transit stops, parking facilities, passenger loading zones, etc.) to the altered primary function area
 - Alterations to windows, hardware, controls, electrical outlets, and signage are not considered to affect usability of primary function area (§ 36.403)

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What Are Primary Function Areas?

- Spaces where main activities take place
 - Includes public areas and/or employee work areas (e.g. both the dining room and the kitchen of a restaurant would be considered primary function areas)
- Spaces generally not considered primary function areas: entrances, corridors, restrooms (except in a facility such as a highway rest stop), employee common areas (e.g. employee break rooms or locker rooms)

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Disproportionality

- Cost of making path of travel accessible does not have to exceed 20% of the overall cost of the alteration to the primary function area
- Priorities should be:
 - Entrance
 - Route to primary function area
 - Elements that serve the primary function area
 - Restrooms
 - Telephones
 - Drinking fountains
 - Other elements (e.g. parking, alarms, storage)

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Barrier Removal

- Structural modifications made for the sole purpose of removing barriers in existing facilities do not trigger the "path of travel" obligation, even if such modifications affect primary function areas (§ 36.304)

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Tax Incentives: Not a Myth!

- Tax **credit** for small businesses (gross receipts of \$1 million or less in previous tax year **OR** 30 or fewer full-time employees)
 - Credit for 50% of eligible access expenditures; maximum credit of \$5,000
 - Examples of eligible expenses: barrier removal, hiring qualified interpreters or readers, producing accessible materials (e.g. large print)
- Tax **deduction** for businesses of any size
 - \$15,000 for costs of removing architectural or transportation barriers in existing facilities or vehicles



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- Please email the code above to ADAtraining@transcen.org by 5 p.m. Eastern Time on November 18, 2022
- Certificates are emailed 1 – 2 weeks after the session

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Mid-Atlantic ADA Center

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Local: **301-217-0124**

ADAinfo@transcen.org

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