

Department of Justice Considers New ADA Rules—Affecting Millions of Businesses

The U.S. Department of Justice is considering changes to the rules on what businesses must do to comply with the Americans with Disabilities Act (ADA). Currently, the agency is revising its existing rule in response to new architectural standards set this past summer by the Architectural and Transportation Barriers Compliance Board. It is also considering the extent to which businesses will be required to renovate or remodel their buildings to meet these new standards. The Department of Justice has provided small businesses with an excellent opportunity to participate in the process, giving until May 31 for the submission of written comments on the potential costs of the new requirements and recommendations to reduce burdens.

The Office of Advocacy has heard comments on the proposal from diverse establishments including manufacturers, retailers, restaurants, hotels, and office-based businesses. Advocacy needs your help in making sure that the Department of Justice understands how these new requirements will affect your business or your members' businesses. Advocacy is also seeking suggestions on how to reduce or eliminate those effects, in order to propose alternatives to the rule.

Please copy Advocacy on any comments that include projected cost impacts on small businesses. For more information or for responses to Advocacy's request for information, please contact Assistant Chief Counsel Michael See at (202) 619-0312, or by email at michael.see@sba.gov.

The New Architectural Standards. In general, the ADA forbids businesses open to the public from discriminating against people with disabilities, and the Department of Justice sets the rules on what a business must do to make sure it doesn't have barriers to equal enjoyment by the disabled. The new architectural standards the agency is currently considering span 300 pages and cover everything from the width of paths in restaurant kitchens to the number of wheelchair-accessible bathroom stalls in an office building. The rules may impose duties on owners of buildings, as well as both landlords and tenants of leased properties, to remove architectural and other features that could hinder the full enjoyment of the premises by the disabled. These duties may apply to every facility.

Examples of Proposed Changes. The new rule that the Department of Justice is considering will apply to a wide range of small businesses, including one major provision which would apply to almost every business that has employees. For example, the new rule may require businesses to make employee-only areas wheelchair accessible. This provision may apply regardless of whether the public ever entered these areas or the firm had an employee with a disability. Small manufacturers may have to meet a wide range of criteria, including ensuring that shop and office floors not exceed a certain slope, that there are no steps or changes in level, that doors are wide enough for wheelchairs, that

curbs have ramps, and that sufficient wheelchair turning radius exist in halls and on the shop floor. This isn't an exhaustive list, and this wheelchair-access provision is only one of three new requirements the Department of Justice is considering for employee work areas. Since businesses are currently only required to provide access up to the employee work area (not within it), this change represents a major shift in the applicability of the ADA.

The table on the next page lists a few of the generally applicable changes that small businesses have commented on. Given that the standards themselves fill approximately 300 pages, you should understand that these are but a small portion of the rule's many industry-specific changes and generally applicable changes. They are simply illustrative of the types of proposed requirements contained in the revisions under consideration.

Study It, Tell Other Businesses About It, And Tell Advocacy.

Advocacy is seeking to inform small businesses of the rule's existence and requests information on actual small business impacts to be incorporated into Advocacy's discussions with and written comments to the Department of Justice and others. Advocacy has been informed by various industry representatives that the new ADA rules could impose billions of dollars of costs on small businesses across the country, and Advocacy is asking for individual comments from small business owners outlining the exact nature and extent of any potential changes to their business.

The Department of Justice is seeking input on its proposals to reduce the economic impact of the ADA revisions. Advocacy strongly encourages business owners to comment on these. The agency is seeking comments on any combination of: (1) providing a safe harbor from any new standards to buildings that comply with the currently existing standards, (2) providing exemptions to existing buildings from certain provisions of the new standards, and (3) lowering the scoping requirements of some standards (e.g., instead of requiring two grocery checkout stands out of five to be wheelchair accessible, lowering the requirement to one out of five).

Advocacy will be submitting detailed, written comments to the Department of Justice prior to the comment deadline of May 31 outlining the economic burdens on small businesses that the ADA standards would impose. Advocacy will be incorporating the information it receives from small businesses in these comments.

The Department of Justice’s advance notice of proposed rule-making and the written comments submitted thus far can be found at www.adaanprm.org. The new standards can be found at www.access-board.gov/ada-aba.htm. Comments may be submitted electronically to the Department of Justice at the www.adaanprm.org website.

Copy Advocacy on Comments

Please copy the Office of Advocacy on any comments that include projected cost impacts on small businesses. For more information or for responses to the Office of Advocacy’s request for information, please contact Assistant Chief Counsel Michael See at (202) 619-0312, or by email at michael.see@sba.gov.

Some Examples of Proposed Changes to Architectural Requirements

	Current Standard for Existing Buildings	Proposed Standard for New or Altered Buildings
<i>Section 203.9</i> Employee Work Areas	4.1.1(3) Must provide wheelchair access up to the employee work area, but access through area not required.	Paths of access through employee work area must be wheelchair accessible.
<i>Section 206.4.1</i> Entrances—Public Entrances	4.1.3(8)(a)(i) 50 percent of entrances to building must be accessible (if two entrances from same thoroughfare, usually only one must be accessible).	60 percent of public entrances must be wheelchair accessible (if there are two public entrances to a facility, both must now be accessible).
<i>Section 904.4.2</i> Sales and Service Counters—Forward Approach	7.2(1) Must provide a 30 inch by 48 inch space for wheelchair approach in front of sales counters, either through a forward or parallel approach.	Floor space requirements are the same, but if a forward approach is provided, the counter must include toe space that would likely eliminate bottom shelves.
<i>Section 308.3</i> Side Reach	4.2.6, <i>Fig. 6(b)</i> Where business provides element with a side reach for wheelchairs, the element must be between 9 and 54 inches from the floor.	The side reach range is changed to require elements to be within a smaller range of distance from the floor, to between 15 and 48 inches.
<i>Section 229.1</i> Windows	4.12 No current requirements.	One window in each room with windows must be accessible to a person with a disability, including a wheelchair accessible path of access to the window and clear floor space in front, placement within a reach range, and the ability to operate the window with less than 5 lbs. of pressure.

Source: U.S. Small Business Administration, Office of Advocacy. For the current standards, see www.usdoj.gov/crt/ada; for the proposed standards, www.access-board.gov/ada-aba.htm.