photo by Marissa Roth

Smithsonian Institution, Washington, DC: Visitor Freddie Pecco with tactile and braille map

CHAPTER 2

Legal Overview: the ADA and the Rehabilitation Act

Introduction

This chapter provides cultural administrators with an overview of the general legal principles used to achieve accessibility for persons with disabilities. Three key federal accessibility laws require all organizations that serve the public or receive direct or indirect federal funds to enable people with disabilities to enjoy the benefits of the organization's services.

Cultural organizations must ensure that these laws are upheld both within their own organization and by any subgrantee or subcontractor receiving federal funding. For example, a state arts agency or humanities organization's enforcement responsibility would include: providing technical assistance; establishing a complaint procedure; investigating any complaints; and, in the instance of a violation, terminating funds and, if appropriate, referring the complaint for further enforcement.

"The disability rights movement, over the last couple of decades, has made the injustices faced by people with disabilities visible to the American public and to politicians. This required reversing the centuries-long history of 'out of sight, out of mind' that the segregation of disabled people served to promote.

The disability movement adopted many of the strategies of the civil rights movement before it. Like the African-Americans who sat in at segregated lunch counters and refused to move to the back of the bus, people with disabilities sat in federal buildings, obstructed the movement of inaccessible buses and marched through the streets to protest injustice. And like the civil rights movements before it, the disability rights movement sought justice in the courts and in the halls of Congress."

"The History of the ADA: A Movement Perspective," by Arlene Mayerson, 1992, legal counsel for Disability Rights Education and Defense Fund (DREDF), www.dredf.org

Three pieces of federal legislation have had a significant impact on cultural organizations: the Architectural Barriers Act of 1968, the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990.

This chapter outlines the three federal laws and their implementing standards, and discusses some of the key legal requirements and best practices that maximize inclusion and opportunities for compliance with the laws while minimizing risks.

Law and Guidelines

Architectural Barriers Act of 1968 ("ABA")
(42 U.S.C. § 4151 et seq.)

Cultural organizations that use federal funds to design, construct or alter a building must comply with a minimum level of physical accessibility.

The Architectural Barriers Act applies to buildings constructed or altered by, on behalf of, or for the use of the federal government, to federal leases and to buildings:

- to be financed in whole or in part by a grant or a loan made by the United States after August 12, 1968, if such building or facility is subject to standards for design, construction or alteration issued under authority or the law authorizing such grant or loan; or
- to be constructed under authority of the National Capital Transportation Act of 1965, or title III of the Washington Metropolitan Area Transit Regulation Compact.

Other buildings or facilities constructed by recipients of federal funds are subject to Section 504 of the Rehabilitation Act, which requires all new construction and alterations to be accessible. Regulations implementing Section 504 "deem" compliance with the Uniform Federal Accessibility Standards (UFAS) to be in compliance with Section 504. Both statutes require accessible construction, so the compliance obligation for new construction is the same.

ABA requirements do not address the activities or programs conducted in those buildings and facilities.

Rehabilitation Act of 1973, as amended ("Rehabilitation Act")

(29 U.S.C. § 794 for Section 504)

Cultural organizations, private or public, that receive direct or indirect federal funds or federal financial support must make programs, services and activities accessible, including employment opportunities.

The Rehabilitation Act prohibits discrimination on the basis of disability in programs conducted by federal agencies, in federal employment, in the employment practices of federal contractors and in programs receiving federal financial assistance, including state and local governments and private entities.

The Rehabilitation Act contains five sections that address different aspects of equal opportunity for people with disabilities. In summary, the sections and their requirements are:

Section 501. Prohibits discrimination on the basis of disability in the federal government and requires affirmative action in the hiring of people with disabilities by government agencies.

Section 502. Establishes the Architectural and Transportation Barriers Compliance Board and gives the board authority to enforce the Architectural Barriers Act of 1968.

Section 503. Prohibits employment discrimination by federal contractors and requires anyone receiving a contract or subcontract from the federal government in excess of $10,000 to have an affirmative action plan for hiring qualified people with disabilities.

Section 504. Prohibits discrimination on the basis of disability and requires federal agencies and any organization that receives federal funding to make its programs and activities accessible to people with disabilities.

Section 508. Revised in 1998, requires that any electronic or information technology developed, maintained, procured or used by federal agencies be accessible and usable by federal employees and members of the public with disabilities seeking information or services from federal agencies.

Federal agencies each have their own section 504 regulations and cultural organizations (private and public) must comply with the Section 504 regulations of all agencies providing them with federal funds, whether

directly or indirectly. For example, a museum that receives funding from the U.S. Department of Education (direct), and funding from their state humanities council, which received funding from the National Endowment for the Humanities (indirect), must comply with both federal agencies' Section 504 regulations.

Indirect federal financial support includes pass-through money and subgrants. The funds may come from the state or local government, arts or humanities council, but that organization is actually passing on federal funds. For example, when:

- a state arts agency dispenses federal funds from the National Endowment for the Arts (NEA);
- a state humanities council dispenses funds from the National Endowment for the Humanities (NEH);
- a state department of education dispenses funds from the United States Department of Education;
- a state arts council dispenses NEA funds to a local arts agency, which in turn subgrants them to a nonprofit organization; or
- local governments use federal revenue-sharing funds to support arts and humanities programs,

then, in each case, the ultimate fund recipient must comply with the dispensing agency's Section 504 regulations.

The Americans with Disabilities Act of 1990 ("ADA")
(42 U.S.C. § 12101 et seq.)

Cultural organizations, regardless of whether they receive federal financial assistance and whether they are public or private entities, must not discriminate against individuals with disabilities. Any public or private organization that meets the definition of a covered entity as contained in the ADA must comply.

In 1990, Congress enacted legislation to expand the civil rights of all individuals with disabilities. The ADA is more sweeping in its coverage than Section 504. It goes well beyond federally funded organizations to encompass private sector entities that serve the public, including cultural organizations that do not receive federal financial support. The ADA prohibits discrimination on the basis of disability in employment, state and local government services, public accommodations, commercial facilities, transportation and telecommunications.

The ADA contains five titles that extend different aspects of equal opportunity for people with disabilities. The titles and their requirements are:

Title I—Employment. Requires all employers with 15 or more employees to provide qualified individuals with disabilities an equal opportunity to benefit from the full range of employment-related opportunities available to others.

Title II—State and Local Government. Requires that all state and local governments (their departments and agencies) give people with disabilities an equal opportunity to benefit from all of their public programs, activities and services (e.g., public education, employment, transportation, recreation, health care, social services, courts, voting and town meetings).

Title III—Public Accommodations and Services Operated by Private Organizations. Requires places of public accommodation to meet architectural accessibility standards for new and altered buildings and remove barriers in existing buildings where such removal is readily achievable; make reasonable modifications to policies, practices and procedures; provide effective communication mechanisms for people with hearing, vision or speech disabilities; and other access requirements.

Title IV—Telecommunications. Amends the Communications Act of 1934 to require common carriers (telephone companies) to provide interstate and intrastate Telecommunications Relay Services (TRS) 24 hours a day, 7 days a week. This title addresses captioning of public service announcements. (Captioning and video description of television programming are addressed in later statutes and in regulations issued by the Federal Communications Commission.)

Title V—Miscellaneous Provisions. States, among other provisions, that federal laws shall not supersede state laws with more stringent accessibility provisions.

Federal Accessibility Standards

Federal law requires that organizations adhere to physical accessibility standards to comply with the three laws described above. The U.S. Architectural and Transportation Barriers Compliance Board (Access Board) is responsible for developing accessibility guidelines to assist federal standard-setting agencies to implement the Architectural Barriers Act

of 1968 (ABA) and the Americans with Disabilities Act of 1991 (ADA). The Access Board has published two sets of guidelines:

- The Minimum Guidelines and Requirements for Accessible Design were used as the basis for the Uniform Federal Accessibility Standards (UFAS) published by the General Services Administration, Department of Housing and Urban Development, U.S. Postal Service and the Department of Defense under the ABA.
- The ADA Accessibility Guidelines (ADAAG) form the basis of the accessibility standards published by the Department of Justice and the Department of Transportation to implement the ADA.

In 1999, the Access Board began updating and revising both standards in order to make them more consistent with one another. These standards will contain the minimum requirements necessary for compliance with the ABA, Section 504 and the ADA, and should be completed by 2003.

In general, private nonprofit and for profit cultural organizations (places of public accommodation) are subject to the ADA Standards including the ADAAG. Federal agencies, public cultural organizations (state or local government agencies) and private organizations receiving direct or indirect federal funds are subject to UFAS. This includes the National Endowment for the Humanities (NEH) and the National Endowment for the Arts (NEA). Under Title II of the ADA, as will be discussed, in certain circumstances public cultural agencies not receiving federal funding may have a choice between standards. Neither the ADA Standards including the ADAAG nor UFAS supersede state or local laws that provide greater or equal benefit to individuals with disabilities.

Cultural organizations that fall under more than one of these mandatory standards should follow the requirement that provides the greatest level of accessibility.

Administrative Requirements of Section 504 and Title II of the ADA

Congress passes laws and then directs various federal agencies to develop regulations that are used as the tools by which the agencies enforce the laws. For example, Congress passed the Rehabilitation Act and directed each federal agency to develop its own set of Section 504 regulations to implement agency programs. Congress passed the Americans with Disabilities Act and directed the Equal Employment Opportunity Commission (EEOC) to develop the regulations for Title I and the Department of Justice (DOJ) and Department of Transportation to develop the regulations and accessibility standards for Titles II and III.

Federal agencies each have their own Section 504 regulations. Organizations receiving federal funding should determine what the Section 504 requirements are for each agency from which it receives funding. The National Endowment for the Humanities (NEH) and the National Endowment for the Arts (NEA) amended their Section 504 regulations in 1991 to require that their grantees follow UFAS. If the grantee is also a place of public accommodation, it is also subject to Title III of the ADA, which requires compliance with the Title III regulations and ADA Standards.

There are a number of administrative requirements outlined in most Section 504 regulations and/or in Title II of the ADA. Five key requirements are highlighted below. Many state agencies and cultural organizations that receive federal funding have already met these requirements. If an organization has not taken these steps, it should do so immediately.

1. Appoint a staff member as the ADA/504 coordinator (or accessibility coordinator) to coordinate the organization's ADA/504 obligations.
2. Provide public notice of events and activities that indicate the organization will comply with the Rehabilitation Act and the ADA.
3. Establish internal grievance procedures for individuals with disabilities.
4. Conduct a self-evaluation of all policies, practices and programs to determine if they are equally available to people with and without disabilities.
5. Develop a transition plan to identify what structural or physical changes should be made to achieve program access, and a time frame for implementation.

State Law

State and local laws may affect cultural organizations and must be checked individually since they vary from state to state. There are two types of state and local laws that may have an impact on accessibility issues for cultural organizations:

- Nondiscrimination laws may cover smaller cultural organizations not covered by federal law and may impose stricter standards than federal

"I'm always surprised by discrimination in the creative community. When a director says, 'I don't know how to use you', an educator says, 'I can't see a way to let you participate with the group', or a facilities coordinator says, 'We weren't able to make this event accessible'; it still catches me off-guard. I believe that truly creative people don't discriminate because they are able to see the possibilities and potential in all people and in all situations."

Cindy Brown, ARTability: Accessing Arizona's Arts, Phoenix, AZ

law. State and local laws may also permit lawsuits providing the successful party specific relief such as accommodations (e.g., assistive listening systems for individuals with hearing-loss or more integrated seating options for people who use wheelchairs and/or other mobility aids), as well as damages and the recovery of legal fees.
- Building Codes may contain technical provisions related to construction, renovations and alterations. Cultural organizations must comply with building codes when they obtain building permits and certificates of occupancy.

Enforcement and Complaint Procedures

There are consequences for noncompliance with access laws. Honest good faith efforts to comply with access laws and the treatment of all people with equality and dignity can help avoid complaints and lawsuits.

When an organization applies to the NEA, the NEH, or to a local, state or regional arts agency or humanities council, it is required to sign an assurance or certification of compliance with federal nondiscrimination laws, including Section 504 of the Rehabilitation Act and the ADA. Various federal, state, local and regional agencies are responsible for enforcing these requirements.

If an individual believes that an organization has discriminated on the basis of disability under:
- Section 504 - they may file an administrative complaint with the federal or state agency that funded the organization;
- Title I, II, or III of the ADA - they may file a complaint with the designated federal enforcement agency such as the Equal Employment Opportunity Commission or the Department of Justice, or under Titles II and III, they may skip the administrative complaint process and file a private lawsuit.

"The major issue is accessibility with dignity. It is not enough to get into a building just any old way. I like to get into a building at the front with everybody else, where the rest of the society gets in."

Itzhak Perlman, violinist

Key Requirements and Best Practices

Frequently cultural administrators ask what their organization should do to be in compliance with disability rights laws. The three federal laws addressed in this chapter mandate:

- nondiscrimination;
- equal opportunity (and the provision of any reasonable modifications, auxiliary aids or services necessary to achieve it);
- basic standards of architectural access; and
- equal access to employment, programs, activities, goods and services.

A cultural organization's responsibilities and obligations under the Architectural Barriers Act, Section 504 of the Rehabilitation Act, and Titles I, II and III of the ADA focus on several key requirements. These laws and regulations do not tell organizations how to accomplish these goals. Instead, the laws and regulations have been written to allow as much flexibility as possible. Achieving accessibility and compliance with disability laws is an ongoing process. Good accessibility practices can maximize the opportunity for compliance while minimizing risks. These practices should complement any existing accessibility efforts and planning that cultural organizations have already undertaken.

1. Do not discriminate against individuals with disabilities.

Best Practice: Make nondiscrimination mandatory. Emphasize to employees, contractors and grantees that compliance with accessibility requirements and nondiscrimination laws is mandatory. Granting agencies commonly require grantees to obtain written assurances to this effect from subgrantees. By emphasizing and highlighting these provisions in all contracts, the institution makes all entities with which it does business aware of the importance of these provisions.

Best Practice: Make accessibility and nondiscrimination an integral and routine part of day-to-day operations. Secure leadership and institutional commitments from all employees and volunteers—from the board, executive director and management team, to every administrative, production, design and maintenance person, to volunteer docents and ushers. Make this commitment internally and externally visible.

"Nothing about us without us. We are looking for programs that are integrated, but in which we have real power. This is not art for us, this is art by us. "

Victoria Ann Lewis, founder and co-director of Other Voices, Mark Taper Forum, Los Angeles, CA

Best Practice: Apply accessibility laws to all functions. Understanding that accessibility laws apply to all functions of the organization whether on-site or off-site is essential. This includes performances, exhibits, conferences, panel meetings, grant reviews, fundraisers, special events and staff gatherings—no matter where conducted. If a cultural organization sponsors an off-site event, the alternate site must also be accessible. It is important to visit and evaluate a site before committing to it.

Best Practice: Include indemnification provisions in contracts and grants. To maximize protection, include a provision requiring all subgrantees and contractors to fully indemnify the cultural organization in the event of an administrative complaint to a federal, state or local agency or lawsuit related to discrimination or lack of accessibility. Indemnification provisions should include the actual cost of the award, court costs, legal fees and the cost of professional experts, as well as the time of the cultural organization's staff and board of directors.

2. Provide individuals with disabilities with effective communication mechanisms and an equal opportunity to benefit from programs, activities, goods and services.

Section 504 and the ADA, and their implementing regulations, are minimum legal requirements. They are intended to provide people with disabilities an equal opportunity to participate in programs, activities, goods and services in an integrated setting. Programs include activities that a cultural organization makes available to the public such as performances, tours, receptions, special events, lectures, seminars, educational programs, workshops, residencies, exhibitions and conferences.

With rare exceptions, Section 504, and Titles II and III of the ADA require that organizations also provide auxiliary aids and services to ensure effective communication with individuals with hearing or vision loss. These may include services such as qualified interpreters, readers and note takers; devices such as assistive listening systems, accessible computers, written materials for individuals with hearing loss, taped text and braille or large print materials for individuals with vision loss; and flexibility in procedures, such as work schedules.

Cultural organizations should be inclusive in all aspects of their activities. They should create new or re-introduce existing programs and activities in which people with disabilities may participate in an integrated and inclusive environment.

Best Practice: Appoint a staff member to be the accessibility coordinator for the organization's accessibility efforts. The accessibility coordinator becomes the "in-house" expert for guiding the organization, its board, staff, volunteers and grantees (if applicable) toward inclusion of people with disabilities and compliance with the ADA and Section 504 regulations. However, remember that compliance and accessibility must be everyone's responsibility.

Best Practice: Establish an access advisory committee. Seek out and include input and advice from knowledgeable individuals with disabilities representing different segments of the disability community. They can: educate the organization about legal and social issues related to accessibility; evaluate existing programs, policies and facilities; identify areas for improvement; and recommend solutions. Work in partnership with local membership organizations for people with disabilities, parents of disabled children, service agencies, independent living centers, advocacy groups, schools and local government entities, such as vocational rehabilitation and community service boards.

3. Remove barriers to existing facilities and assure that all new construction, renovations and alterations meet or exceed applicable federal accessibility standards.

- **New Construction.** The most rigorous physical accessibility requirements apply to new construction. All new construction of buildings and facilities must meet or exceed the requirements of applicable federal, state and local accessibility standards and codes. These standards and codes set forth minimum standards with which all new construction must comply. Organizations are encouraged to go beyond the minimum standards to achieve the greatest degree of accessibility. For example, an organization might elect to provide more accessible seats than the minimum standards require.

- **Renovations and Alterations.** All renovations and alterations must meet accessibility standards unless to do so is technically infeasible. In that case, they must comply to the maximum extent feasible. If an organization renovates or alters an area in such a way that it affects the

"A cultural institution and its constituents benefit when farsighted board members and administrators look beyond minimum standards to broaden the potential for usability of space and facilities for all potential staff, constituents, visitors and audiences."

Jonathan Katz, Chief Executive Officer, National Assembly of State Arts Agencies

usability of a primary function area, such as the auditorium of a lecture hall or the exhibit space of a museum, then the organization must make the path of travel to that area accessible. For example, if a concert or lecture hall is renovated, the organization must provide an accessible path of travel from the exterior to the altered area, and make the restrooms, telephones and drinking fountains serving the altered area accessible, unless the cost of these modifications are disproportionate to the overall cost of the alterations.

- **Barrier removal.** The federal standards for barrier removal in existing facilities are somewhat more flexible. Section 504 and Title II require modifications only if necessary to ensure program access. However, all organizations (public or private) must complete readily achievable barrier removal if a program cannot be made accessible by any other means. Barrier removal might include ramping to an entrance, relocating displays or exhibits to widen an aisle, installing a levered doorknob or moving a plant out of the path of travel.

Accessibility requirements provide independent, dignified access to all aspects of a facility including, but not limited to, parking, entrances, exhibits, programs, classes, performances, work areas, restrooms, elevators, shops and food services. Regardless of any law or regulation with which a cultural organization must comply, the organization facing new construction, alterations or renovations should insist upon the diligent application of accessibility concepts in design and execution. Cultural organizations are encouraged to go beyond the minimum accessibility standards to provide greater levels of accessibility.

Best Practice: Budget for accessibility. Generally, expenses fall into two categories: capital costs for new construction, alterations, renovations and removing architectural barriers, and program or operating costs for providing effective communication and auxiliary aids. Anticipate ongoing expenses for capital improvements, and for program costs to continue effective communication and to replenish auxiliary aids. The NEA and the NEH encourage applicants to include in their budget costs for access and accommodations related to the project (i.e. sign interpreters, audio descriptions and captioning).

"Accessibility does not have to be expensive. Experience has repeatedly shown that accommodations designed to serve people with disabilities generally improve the quality of programs for the broader public. In short, museums cannot afford not to make their programs accessible to all visitors."

Janice Majewski, Smithsonian Institution, Washington, DC

Best Practice: Hire qualified, knowledgeable professionals. Not all architects, designers, contractors and lawyers are familiar with accessibility requirements. Examine the work of these professionals before making commitments, and ask for references from persons in the disability rights community. Further, work with your advisory committee and/or a local independent living center to review plans and work as the project progresses.

4. Review and modify policies, procedures and practices to prevent discrimination.

Cultural organizations must make reasonable modifications to policies, procedures and practices that deny equal access to individuals with disabilities unless the changes would result in a fundamental alteration in the program or the nature of the goods and services. An overarching institutional policy that makes a commitment to universal accessibility is an excellent start.

Cultural organizations should carefully examine all policies, procedures and practices with members of the disability community along with staff and board members to determine if they provide equal access or inadvertently discriminate against people with disabilities. This is essential to making programs and facilities accessible. Policies, procedures and practices include a wide range of activities:

- Policies include eligibility criteria, employment guidelines, admission and ticketing rules, and fee structures.
- Procedures are the planned actions by which policies are implemented.
- Practices are the routine ways in which policies and procedures are carried out on a day-to-day basis.

Consider a small museum operating in a historic property. In order to make the museum accessible and preserve the historic nature of the building, the advisory committee has recommended installing a ramp to a side entrance. In the past, the policy has been to keep all doors except the front door locked.

Their new policy states, “Whenever the front door is unlocked, the side entrance must also be unlocked.” The new procedure requires maintenance staff to lock and unlock the side entrance at the same time they lock and unlock the front door. In addition, appropriate signage is placed at the inaccessible front entrance directing people to the accessible side entrance and both entrances are open to the general public. In practice, if staff members fail to unlock the side entrance, the museum is not providing equal access because everyone should be able to enter without waiting.

Organizations must not charge additional fees or require persons with disabilities to pay for costs incurred for ADA or Section 504 compliance. This does not mean that people with disabilities must be admitted free if others pay an admission charge. It does mean that if someone requires braille or other accommodations because of a disability, the organization cannot charge extra to provide it. For example, a theater may not charge for the use of assistive listening devices nor may a state arts agency charge to provide a sign language interpreter for a public meeting. These expenses should be considered as overhead and budgeted in advance.

Best Practice: Plan for accessibility. Working with your access advisory committee, identify the organization's accessibility assets by carefully evaluating four areas: nondiscrimination obligations (including policies, practices and procedures), facility and program accessibility, communications and employment. Then, develop strategies, plans and timelines for addressing strengths and weaknesses. Organizations should be prepared to respond to requests for effective communication such as captioning, sign language interpretation, braille or large print materials as well as other requests for accommodations. Implementing access does not have to be difficult or expensive. It can be a creative, engaging and instructive process in which the organization's entire staff participates.

Best Practice: Address every issue and policy with the question, "Does this provide equal access for everyone?" Equal access means making programs and services as close as possible to being the same for everyone, and that access is functional, safe, convenient and dignified. Access means entering through the primary entrance of a facility, being able to work, to use a facility and to participate fully in programs and activities.

Best Practice: Educate and train board members, staff, volunteers, panelists and grantees. Conduct regular training concerning access issues for everyone including board members, staff and constituents (including subgrantees). Your access advisory committee should be involved in planning and conducting the training. Ensure that everyone understands all accessibility accommodations and can properly apply all policies, practices and procedures. Staff should treat everyone,

"Access is what state arts agencies are all about. We work to develop new audiences, create ways to capture the attention of our young people and support programs that enhance the participation of our state's citizens in the arts. Issues surrounding Section 504, the Americans with Disabilities Act, and access should be at the top of all of our lists. It just makes sense."

Robert C. Booker, Executive Director, Minnesota State Arts Board

colleagues and visitors alike, with the same dignity and respect that they would wish to be accorded. A thoughtful, courteous attitude indicates that the organization is acting in good faith to meet the needs of people with disabilities.

Best Practice: Establish an institutional memory on disability issues and compliance efforts. By tracking what it has done (both good and bad), the organization can avoid costs by not having to "reinvent the wheel" every time a situation arises—whether it is access to a new program, construction/renovation of the facility or employment-related. The accessibility coordinator, the human resources office, the facilities office or the executive director's office might serve as the institutional policy archivist.

Best Practice: Emulate the successful practices of others. Network with other professionals and cultural administrators, find out what works and does not work, and keep abreast of access innovations and accessibility practices. It is perfectly acceptable for cultural entities to incorporate other organizations' successful practices, giving credit where credit is due.

Best Practice: Review accessibility efforts at regular intervals. Routinely review, assess and update the organization's accessibility plans, programs, policies and practices, in cooperation with the access advisory committee, at regular intervals. Frequent reviews will not only assist the organization in completing its goals, but also will provide a mechanism for revising and updating plans to incorporate fresh ideas, new technologies and other improvements as the organization evolves.

5. Provide individuals with equal employment opportunities.

The employment requirements of the Rehabilitation Act and the ADA are similar. These laws mandate that recipients of federal financial assistance, places of public accommodation, and state and local governments judge applicants solely on the basis of their qualifications.

The ADA's Title I employment provisions apply to private employers, state and local governments, employment agencies and labor unions with 15 or more employees. Title I and Section 504 require employers to provide qualified individuals with disabilities an equal opportunity to benefit from the full range of employment-related opportunities available to others. For example, the laws prohibit discrimination in recruitment, hiring, promotions, training, pay and social activities; restrict questions about an applicant's disability before a job offer is made; and require that employers make

reasonable accommodations for the known physical or mental limitations of otherwise qualified individuals with disabilities, unless doing so results in undue hardship to the employer.

Nondiscriminatory employment procedures include making recruitment and job applications accessible. For example, a person who is blind or has low vision may benefit from large print or braille applications, or accessible online applications, and applicants who are deaf or hard of hearing should be offered a sign language interpreter for interviews (if requested in advance). An organization should advertise job openings in multiple media, such as the Internet, radio and print. Employers with job hotlines for applicants must make the hotline accessible to people who are deaf or hard-of-hearing, or provide alternative methods of receiving information. Employers are also required to post notices to all employees advising them of their rights under the ADA and Section 504. Such notices must be accessible to persons with visual or other disabilities that affect reading abilities.

> **Best Practice:** Review all personnel policies for compliance with nondiscrimination laws. The organization should adopt appropriate disability-related policies and monitor their application annually as it would all other employment practices. Policies should include, but not be limited to, reviewing position descriptions to ensure they are current, accurate and do not exclude or screen out persons with disabilities; making sure application forms and interviewers do not ask, directly or indirectly, about a disability; establishing a policy on reasonable accommodation; reviewing health insurance and benefit plans to make sure they do not discriminate; keeping medical information confidential; and having physical examinations be job related, consistent with business necessities.

Definitions

Grievance procedures are internal procedures for the resolution of differences between an organization and its staff or users with disabilities.

A person with a disability is defined by the ADA and Section 504 of the Rehabilitation Act as someone who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such impairment, or a person who is regarded as having such an impairment. Neither the Rehabilitation Act nor the ADA specifically names all of the impairments that are covered.

Private entities that operate public accommodations include restaurants, hotels, theaters, convention centers, retail stores, museums, performing arts centers, libraries, parks, zoos, amusement parks and private schools. They are covered under Title III of the ADA.

Public entities include any state or local government and any of its departments, agencies or other instrumentalities. They are covered under Title II of the ADA.

Public notice is the dissemination of sufficient information to applicants, grantees, participants, beneficiaries, and other interested persons to inform them of the rights and protections afforded by Section 504 and the ADA. Methods of providing public notice include announcements in handbooks, manuals, pamphlets, newsletters, Web sites and application materials.

A qualified person with a disability is someone who meets the definition of a person with a disability and meets the legitimate skill, experience, education, or other requirements of an employment position that they hold or seek and who can perform the essential functions of the position with or without reasonable accommodation. A qualified person with a disability in a non-employment context is someone who meets the definition of a person with a disability and meets the essential eligibility requirements for a program, activity, service or benefit offered by a public entity.

Readily achievable means easily accomplishable and able to be carried out without much difficulty or expense. What is readily achievable or constitutes a difficulty or expense is determined on a case-by-case basis in light of the resources available. The case-by-case approach takes into account the diversity of enterprises covered by ADA Titles I, II and III and Section 504, as well as the wide variation in the economic health of particular entities at any given moment.

Reasonable accommodation is any modification or adjustment to the work environment that will enable a qualified person with a disability to participate in the job application process or to perform essential job functions. In the program setting, a reasonable accommodation may include a reasonable modification to a policy, practice or procedure, provision of an auxiliary aid or service to ensure effective communication, or, under Title III, readily achievable barrier removal.

Self-evaluation is the process of evaluating all policies, practices and programs of an organization to ensure equal access and availability to all persons.

Undue burden is the standard applied in non-employment situations under Titles II and III of the ADA. The definition of undue burden is the same as the definition of undue hardship, the standard applied in employment situations under Title I of the ADA and Section 504.

Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of a number of factors. These factors include the nature and cost of the accommodation in relation to the size, resources, nature and structure of the employer's operation. Undue hardship is determined on a case-by-case basis. In general, larger employers with greater resources would be expected to make accommodations requiring greater effort or expense than would be required of smaller employers with fewer resources. This is the standard under Title I of the ADA and Section 504.

Americans with Disabilities Act Questions and Answers

The following are frequently asked questions and answers about the Americans with Disabilities Act from the U.S. Equal Employment Opportunity Commission and the U.S. Department of Justice Civil Rights Division and can be found at: www.usdoj.gov/crt/ada/qandaeng.htm

Employment

Q. What employers are covered by title I of the ADA, and when is the coverage effective?
A. The title I employment provisions apply to private employers, State and local governments, employment agencies, and labor unions. Employers with 25 or more employees were covered as of July 26, 1992. Employers with 15 or more employees were covered two years later, beginning July 26, 1994.

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 protected from employment discrimination?
A. Employment discrimination is prohibited against "qualified individuals with disabilities." This includes applicants for employment and employees. An individual is considered to have a "disability" if s/he has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an

impairment. Persons discriminated against because they have a known association or relationship with an individual with a disability also are protected.

The first part of the definition makes clear that the ADA applies to persons who have impairments and that these must substantially limit major life activities such as seeing, hearing, speaking, walking, breathing, performing manual tasks, learning, caring for oneself, and working. An individual with epilepsy, paralysis, HIV infection, AIDS, a substantial hearing or visual impairment, mental retardation, or a specific learning disability is covered, but an individual with a minor, nonchronic condition of short duration, such as a sprain, broken limb, or the flu, generally would not be covered.

The second part of the definition protecting individuals with a record of a disability would cover, for example, a person who has recovered from cancer or mental illness.

The third part of the definition protects individuals who are regarded as having a substantially limiting impairment, even though they may not have such an impairment. For example, this provision would protect a qualified individual with a severe facial disfigurement from being denied employment because an employer feared the "negative reactions" of customers or co-workers.

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. Does an employer have to give preference to a qualified applicant with a disability over other applicants?
A. No. An employer is free to select the most qualified applicant available and to make decisions based on reasons unrelated to a disability. For example, suppose two persons apply for a job as a typist and an essential function of the job is to type 75 words per minute accurately. One applicant,

an individual with a disability, who is provided with a reasonable accommodation for a typing test, types 50 words per minute; the other applicant who has no disability accurately types 75 words per minute. The employer can hire the applicant with the higher typing speed, if typing speed is needed for successful performance of the job.

Q. What limitations does the ADA impose on medical examinations and inquiries about disability?
A. An employer may not ask or require a job applicant to take a medical examination before making a job offer. It cannot make any pre-employment inquiry about a disability or the nature or severity of a disability. An employer may, however, ask questions about the ability to perform specific job functions and may, with certain limitations, ask an individual with a disability to describe or demonstrate how s/he would perform these functions.

An employer may condition a job offer on the satisfactory result of a post-offer medical examination or medical inquiry if this is required of all entering employees in the same job category. A post-offer examination or inquiry does not have to be job-related and consistent with business necessity.

However, if an individual is not hired because a post-offer medical examination or inquiry reveals a disability, the reason(s) for not hiring must be job-related and consistent with business necessity. The employer also must show that no reasonable accommodation was available that would enable the individual to perform the essential job functions, or that accommodation would impose an undue hardship. A post-offer medical examination may disqualify an individual if the employer can demonstrate that the individual would pose a “direct threat” in the workplace (i.e., a significant risk of substantial harm to the health or safety of the individual or others) that cannot be eliminated or reduced below the “direct threat” level through reasonable accommodation. Such a disqualification is job-related and consistent with business necessity. A post-offer medical examination may not disqualify an individual with a disability who is currently able to perform essential job functions because of speculation that the disability may cause a risk of future injury.

After a person starts work, a medical examination or inquiry of an employee must be job-related and consistent with business necessity. Employers may conduct employee medical examinations where there is evidence of a job performance or safety problem, examinations required by other Federal laws, examinations to determine current “fitness” to perform a particular job, and voluntary examinations that are part of employee health programs.

Information from all medical examinations and inquiries must be kept apart from general personnel files as a separate, confidential medical record, available only under limited conditions.

Tests for illegal use of drugs are not medical examinations under the ADA and are not subject to the restrictions of such examinations.

Q. When can an employer ask an applicant to "self-identify" as having a disability?
A. Federal contractors and subcontractors who are covered by the affirmative action requirements of section 503 of the Rehabilitation Act of 1973 may invite individuals with disabilities to identify themselves on a job application form or by other pre-employment inquiry, to satisfy the section 503 affirmative action requirements. Employers who request such information must observe section 503 requirements regarding the manner in which such information is requested and used, and the procedures for maintaining such information as a separate, confidential record, apart from regular personnel records.

A pre-employment inquiry about a disability is allowed if required by another Federal law or regulation such as those applicable to disabled veterans and veterans of the Vietnam era. Pre-employment inquiries about disabilities may be necessary under such laws to identify applicants or clients with disabilities in order to provide them with required special services.

Q. Does the ADA require employers to develop written job descriptions?
A. No. The ADA does not require employers to develop or maintain job descriptions. However, a written job description that is prepared before advertising or interviewing applicants for a job will be considered as evidence along with other relevant factors. If an employer uses job descriptions, they should be reviewed to make sure they accurately reflect the actual functions of a job. A job description will be most helpful if it focuses on the results or outcome of a job function, not solely on the way it customarily is performed. A reasonable accommodation may enable a person with a disability to accomplish a job function in a manner that is different from the way an employee who is not disabled may accomplish the same function.

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. When is an employer required to make a reasonable accommodation?
A. An employer is only required to accommodate a “known” disability of a qualified applicant or employee. The requirement generally will be triggered by a request from an individual with a disability, who frequently will be able to suggest an appropriate accommodation. Accommodations must be made on an individual basis, because the nature and extent of a disabling condition and the requirements of a job will vary in each case. If the individual does not request an accommodation, the employer is not obligated to provide one except where an individual’s known disability impairs his/her ability to know of, or effectively communicate a need for, an accommodation that is obvious to the employer. If a person with a disability requests, but cannot suggest, an appropriate accommodation, the employer and the individual should work together to identify one. There are also many public and private resources that can provide assistance without cost.

Q. What are the limitations on the obligation to make a reasonable accommodation?
A. The individual with a disability requiring the accommodation must be otherwise qualified, and the disability must be known to the employer. In addition, an employer is not required to make an accommodation if it would impose an “undue hardship” on the operation of the employer’s business.

"Undue hardship" is defined as an "action requiring significant difficulty or expense" when considered in light of a number of factors. These factors include the nature and cost of the accommodation in relation to the size, resources, nature, and structure of the employer's operation. Undue hardship is determined on a case-by-case basis. Where the facility making the accommodation is part of a larger entity, the structure and overall resources of the larger organization would be considered, as well as the financial and administrative relationship of the facility to the larger organization. In general, a larger employer with greater resources would be expected to make accommodations requiring greater effort or expense than would be required of a smaller employer with fewer resources.

If a particular accommodation would be an undue hardship, the employer must try to identify another accommodation that will not pose such a hardship. Also, if the cost of an accommodation would impose an undue hardship on the employer, the individual with a disability should be given the option of paying that portion of the cost which would constitute an undue hardship or providing the accommodation.

Q. Must an employer modify existing facilities to make them accessible?
A. The employer's obligation under title I is to provide access for an individual applicant to participate in the job application process, and for an individual employee with a disability to perform the essential functions of his/her job, including access to a building, to the work site, to needed equipment, and to all facilities used by employees. For example, if an employee lounge is located in a place inaccessible to an employee using a wheelchair, the lounge might be modified or relocated, or comparable facilities might be provided in a location that would enable the individual to take a break with co-workers. The employer must provide such access unless it would cause an undue hardship.

Under title I, an employer is not required to make its existing facilities accessible until a particular applicant or employee with a particular disability needs an accommodation, and then the modifications should meet that individual's work needs. However, employers should consider initiating changes that will provide general accessibility, particularly for job applicants, since it is likely that people with disabilities will be applying for jobs. The employer does not have to make changes to provide access in places or facilities that will not be used by that individual for employment-related activities or benefits.

Q. Can an employer be required to reallocate an essential function of a job to another employee as a reasonable accommodation?
A. No. An employer is not required to reallocate essential functions of a job as a reasonable accommodation.

Q. Can an employer be required to modify, adjust, or make other reasonable accommodations in the way a test is given to a qualified applicant or employee with a disability?
A. Yes. Accommodations may be needed to assure that tests or examinations measure the actual ability of an individual to perform job functions rather than reflect limitations caused by the disability. Tests should be given to people who have sensory, speaking, or manual impairments in a format that does not require the use of the impaired skill, unless it is a job-related skill that the test is designed to measure.

Q. Can an employer maintain existing production/performance standards for an employee with a disability?
A. An employer can hold employees with disabilities to the same standards of production/performance as other similarly situated employees without disabilities for performing essential job functions, with or without reasonable accommodation. An employer also can hold employees with disabilities to the same standards of production/performance as other employees regarding marginal functions unless the disability affects the person's ability to perform those marginal functions. If the ability to perform marginal functions is affected by the disability, the employer must provide some type of reasonable accommodation such as job restructuring but may not exclude an individual with a disability who is satisfactorily performing a jobs essential functions.

Q. Can an employer establish specific attendance and leave policies?
A. An employer can establish attendance and leave policies that are uniformly applied to all employees, regardless of disability, but may not refuse leave needed by an employee with a disability if other employees get such leave. An employer also may be required to make adjustments in leave policy as a reasonable accommodation. The employer is not obligated to provide additional paid leave, but accommodations may include leave flexibility and unpaid leave.

A uniformly applied leave policy does not violate the ADA because it has a more severe effect on an individual because of his/her disability. However, if an individual with a disability requests a modification of such a policy as a reasonable accommodation, an employer may be required to provide it, unless it would impose an undue hardship.

Q. Can an employer consider health and safety when deciding whether to hire an applicant or retain an employee with a disability?
A. Yes. The ADA permits employers to establish qualification standards that will exclude individuals who pose a direct threat—i.e., a significant risk of substantial harm—to the health or safety of the individual or of others, if that risk cannot be eliminated or reduced below the level of a "direct threat" by

reasonable accommodation. However, an employer may not simply assume that a threat exists; the employer must establish through objective, medically supportable methods that there is significant risk that substantial harm could occur in the workplace. By requiring employers to make individualized judgments based on reliable medical or other objective evidence rather than on generalizations, ignorance, fear, patronizing attitudes, or stereotypes, the ADA recognizes the need to balance the interests of people with disabilities against the legitimate interests of employers in maintaining a safe workplace.

Q. Are applicants or employees who are currently illegally using drugs covered by the ADA?
A. No. Individuals who currently engage in the illegal use of drugs are specifically excluded from the definition of a "qualified individual with a disability" protected by the ADA when the employer takes action on the basis of their drug use.

Q. Is testing for the illegal use of drugs permissible under the ADA?
A. Yes. A test for the illegal use of drugs is not considered a medical examination under the ADA; therefore, employers may conduct such testing of applicants or employees and make employment decisions based on the results. The ADA does not encourage, prohibit, or authorize drug tests.

If the results of a drug test reveal the presence of a lawfully prescribed drug or other medical information, such information must be treated as a confidential medical record.

Q. Are alcoholics covered by the ADA?
A. Yes. While a current illegal user of drugs is not protected by the ADA if an employer acts on the basis of such use, a person who currently uses alcohol is not automatically denied protection. An alcoholic is a person with a disability and is protected by the ADA if s/he is qualified to perform the essential functions of the job. An employer may be required to provide an accommodation to an alcoholic. However, an employer can discipline, discharge or deny employment to an alcoholic whose use of alcohol adversely affects job performance or conduct. An employer also may prohibit the use of alcohol in the workplace and can require that employees not be under the influence of alcohol.

Q. Does the ADA override Federal and State health and safety laws?
A. The ADA does not override health and safety requirements established under other Federal laws even if a standard adversely affects the employment of an individual with a disability. If a standard is required by another Federal law, an employer must comply with it and does not have to show that the standard is job related and consistent with business necessity.

For example, employers must conform to health and safety requirements of the U.S. Occupational Safety and Health Administration. However, an employer still has the obligation under the ADA to consider whether there is a reasonable accommodation, consistent with the standards of other Federal laws, that will prevent exclusion of qualified individuals with disabilities who can perform jobs without violating the standards of those laws. If an employer can comply with both the ADA and another Federal law, then the employer must do so.

The ADA does not override State or local laws designed to protect public health and safety, except where such laws conflict with the ADA requirements. If there is a State or local law that would exclude an individual with a disability from a particular job or profession because of a health or safety risk, the employer still must assess whether a particular individual would pose a "direct threat" to health or safety under the ADA standard. If such a "direct threat" exists, the employer must consider whether it could be eliminated or reduced below the level of a "direct threat" by reasonable accommodation. An employer cannot rely on a State or local law that conflicts with ADA requirements as a defense to a charge of discrimination.

Q. How does the ADA affect workers' compensation programs?
A. Only injured workers who meet the ADA's definition of an "individual with a disability" will be considered disabled under the ADA, regardless of whether they satisfy criteria for receiving benefits under workers' compensation or other disability laws. A worker also must be "qualified" (with or without reasonable accommodation) to be protected by the ADA. Work-related injuries do not always cause physical or mental impairments severe enough to "substantially limit" a major life activity. Also, many on-the-job injuries cause temporary impairments which heal within a short period of time with little or no long-term or permanent impact. Therefore, many injured workers who qualify for benefits under workers' compensation or other disability benefits laws may not be protected by the ADA. An employer must consider work-related injuries on a case-by-case basis to know if a worker is protected by the ADA.

An employer may not inquire into an applicant's workers' compensation history before making a conditional offer of employment. After making a conditional job offer, an employer may inquire about a person's workers compensation history in a medical inquiry or examination that is required of all applicants in the same job category. However, even after a conditional offer has been made, an employer cannot require a potential employee to have a medical examination because a response to a medical inquiry (as opposed to results from a medical examination) shows a previous on-the-job injury unless all applicants in the same job category are required to have an

examination. Also, an employer may not base an employment decision on the speculation that an applicant may cause increased workers' compensation costs in the future. However, an employer may refuse to hire, or may discharge an individual who is not currently able to perform a job without posing a significant risk of substantial harm to the health or safety of the individual or others, if the risk cannot be eliminated or reduced by reasonable accommodation.

An employer may refuse to hire or may fire a person who knowingly provides a false answer to a lawful post-offer inquiry about his/her condition or worker's compensation history.

An employer also may submit medical information and records concerning employees and applicants (obtained after a conditional job offer) to state workers' compensation offices and "second injury" funds without violating ADA confidentiality requirements.

Q. What is discrimination based on "relationship or association" under the ADA?
A. The ADA prohibits discrimination based on relationship or association in order to protect individuals from actions based on unfounded assumptions that their relationship to a person with a disability would affect their job performance, and from actions caused by bias or misinformation concerning certain disabilities. For example, this provision would protect a person whose spouse has a disability from being denied employment because of an employer's unfounded assumption that the applicant would use excessive leave to care for the spouse. It also would protect an individual who does volunteer work for people with AIDS from a discriminatory employment action motivated by that relationship or association.

Q. How are the employment provisions enforced?
A. The employment provisions of the ADA are enforced under the same procedures now applicable to race, color, sex, national origin, and religious discrimination under title VII of the Civil Rights Act of 1964, as amended, and the Civil Rights Act of 1991. Complaints regarding actions that occurred on or after July 26, 1992, may be filed with the Equal Employment Opportunity Commission or designated State human rights agencies. Available remedies will include hiring, reinstatement, promotion, back pay, front pay, restored benefits, reasonable accommodation, attorneys' fees, expert witness fees, and court costs. Compensatory and punitive damages also may be available in cases of intentional discrimination or where an employer fails to make a good faith effort to provide a reasonable accommodation.

Q. What financial assistance is available to employers to help them make reasonable accommodations and comply with the ADA?
A. A special tax credit is available to help smaller employers make accommodations required by the ADA. An eligible small business may take a tax credit of up to $5,000 per year for accommodations made to comply with the ADA. The credit is available for one-half the cost of "eligible access expenditures" that are more than $250 but less than $10,250.

A full tax deduction, up to $15,000 per year, also is available to any business for expenses of removing qualified architectural or transportation barriers. Expenses covered include costs of removing barriers created by steps, narrow doors, inaccessible parking spaces, restroom facilities, and transportation vehicles. Additional information discussing the tax credits and deductions is contained in the Department of Justice's ADA Tax Incentive Packet for Businesses available from the ADA Information Line. Information about the tax credit and tax deduction can also be obtained from a local IRS office, or by contacting the Office of Chief Counsel, Internal Revenue Service.

Q. What are an employer's record keeping requirements under the employment provisions of the ADA?
A. An employer must maintain records such as application forms submitted by applicants and other records related to hiring, requests for reasonable accommodation, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship for one year after making the record or taking the action described (whichever occurs later). If a charge of discrimination is filed or an action is brought by EEOC, an employer must save all personnel records related to the charge until final disposition of the charge.

Q. Does the ADA require that an employer post a notice explaining its requirements?
A. The ADA requires that employers post a notice describing the provisions of the ADA. It must be made accessible, as needed, to individuals with disabilities. A poster is available from EEOC summarizing the requirements of the ADA and other Federal legal requirements for nondiscrimination for which EEOC has enforcement responsibility. EEOC also provides guidance on making this information available in accessible formats for people with disabilities.

Q. What resources does the Equal Employment Opportunity Commission have available to help employers and people with disabilities understand and comply with the employment requirements of the ADA?
A. The Equal Employment Opportunity Commission has developed several resources to help employers and people with disabilities understand and comply with the employment provisions of the ADA. Resources include: a technical assistance manual that provides "how-to" guidance on the employment provisions of the ADA as well as a resource directory to help individuals find specific information, and a variety of brochures, booklets, and fact sheets.

State and Local Governments

Q. Does the ADA apply to State and local governments?
A. Title II of the ADA prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities. It applies to all State and local governments, their departments and agencies, and any other instrumentalities or special purpose districts of State or local governments. It clarifies the requirements of section 504 of the Rehabilitation Act of 1973 for public transportation systems that receive Federal financial assistance, and extends coverage to all public entities that provide public transportation, whether or not they receive Federal financial assistance. It establishes detailed standards for the operation of public transit systems, including commuter and intercity rail (AMTRAK).

Q. When do the requirements for State and local governments become effective?
A. In general, they became effective on January 26, 1992.

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. Does title II cover a public entity's employment policies and practices?
A. Yes. Title II prohibits all public entities, regardless of the size of their work force, from discriminating in employment against qualified individuals with disabilities. In addition to title II's employment coverage, title I of the ADA and section 504 of the Rehabilitation Act of 1973 prohibit employment discrimination against qualified individuals with disabilities by certain public entities.

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. When must structural changes be made to attain program accessibility?
A. Structural changes needed for program accessibility must be made as expeditiously as possible, and should have been made by January 26, 1995. This three-year time period is not a grace period; all alterations must be accomplished as expeditiously as possible. A public entity that employs 50 or more persons must have developed a transition plan by July 26, 1992, setting forth the steps necessary to complete such changes.

Q. What is a self-evaluation?
A. A self-evaluation is a public entity's assessment of its current policies and practices. The self-evaluation identifies and corrects those policies and practices that are inconsistent with title II's requirements. All public entities should have completed a self-evaluation by January 26, 1993. A public entity that employs 50 or more employees must retain its self-evaluation for three years. Other public entities are not required to retain their self-evaluations, but are encouraged to do so because these documents evidence a public entity's good faith efforts to comply with title II's requirements.

Q. What does title II require for new construction and alterations?
A. The ADA requires that all new buildings constructed by a State or local government be accessible. In addition, when a State or local government undertakes alterations to a building, it must make the altered portions accessible.

Q. How will a State or local government know that a new building is accessible?
A. A State or local government will be in compliance with the ADA for new construction and alterations if it follows either of two accessibility standards. It can choose either the Uniform Federal Accessibility Standards or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities, which is the standard that must be used for public accommodations and commercial facilities under title III of the ADA. If the State or local government chooses the ADA Accessibility Guidelines, it is not entitled to the elevator exemption (which permits certain private buildings under three stories or under 3,000 square feet per floor to be constructed without an elevator).

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.

Q. Does title II require that telephone emergency service systems be compatible with all formats used for nonvoice communications?
A. No. At present, telephone emergency services must only be compatible with the Baudot format. Until it can be technically proven that communications in another format can operate in a reliable and compatible manner in a given telephone emergency environment, a public entity would not be required to provide direct access to computer modems using formats other than Baudot.

Q. How will the ADA's requirements for State and local governments be enforced?
A. Private individuals may bring lawsuits to enforce their rights under title II and may receive the same remedies as those provided under section 504 of the Rehabilitation Act of 1973, including reasonable attorney's fees. Individuals may also file complaints with eight designated Federal agencies, including the Department of Justice and the Department of Transportation.

Public Accommodations

Q. What are public accommodations?
A. A public accommodation is a private entity that owns, operates, leases, or leases to, a place of public accommodation. Places of public accommodation include a wide range of entities, such as restaurants, hotels, theaters, doctors' offices, pharmacies, retail stores, museums, libraries, parks, private schools, and day care centers. Private clubs and religious organizations are exempt from the ADA's title III requirements for public accommodations.

Q. Will the ADA have any effect on the eligibility criteria used by public accommodations to determine who may receive services?
A. Yes. If a criterion screens out or tends to screen out individuals with disabilities, it may only be used if necessary for the provision of the services. For instance, it would be a violation for a retail store to have a rule excluding all deaf persons from entering the premises, or for a movie theater to exclude all individuals with cerebral palsy. More subtle forms of discrimination are also prohibited. For example, requiring presentation of a driver's license as the sole acceptable means of identification for purposes of paying by check could constitute discrimination against individuals with vision impairments. This would be true if such individuals are ineligible to receive licenses and the use of an alternative means of identification is feasible.

Q. Does the ADA allow public accommodations to take safety factors into consideration in providing services to individuals with disabilities?
A. The ADA expressly provides that a public accommodation may exclude an individual, if that individual poses a direct threat to the health or safety of others that cannot be mitigated by appropriate modifications in the public accommodation's policies or procedures, or by the provision of auxiliary aids. A public accommodation will be permitted to establish objective safety criteria for the operation of its business; however, any safety standard must be based on objective requirements rather than stereotypes or generalizations about the ability of persons with disabilities to participate in an activity.

Q. Are there any limits on the kinds of modifications in policies, practices, and procedures required by the ADA?
A. Yes. The ADA does not require modifications that would fundamentally alter the nature of the services provided by the public accommodation. For example, it would not be discriminatory for a physician specialist who treats only burn patients to refer a deaf individual to another physician for treatment of a broken limb or respiratory ailment. To require a physician to accept patients outside of his or her specialty would fundamentally alter the nature of the medical practice.

Q. What kinds of auxiliary aids and services are required by the ADA to ensure effective communication with individuals with hearing or vision impairments?
A. Appropriate auxiliary aids and services may include services and devices such as qualified interpreters, assistive listening devices, notetakers, and written materials for individuals with hearing impairments; and qualified readers, taped texts, and Brailled or large print materials for individuals with vision impairments.

Q. Are there any limitations on the ADA's auxiliary aids requirements?
A. Yes. The ADA does not require the provision of any auxiliary aid that would result in an undue burden or in a fundamental alteration in the nature of the goods or services provided by a public accommodation. However, the public accommodation is not relieved from the duty to furnish an alternative auxiliary aid, if available, that would not result in a fundamental alteration or undue burden. Both of these limitations are derived from existing regulations and case law under section 504 of the Rehabilitation Act and are to be determined on a case-by-case basis.

Q. Will restaurants be required to have brailled menus?
A. No, not if waiters or other employees are made available to read the menu to a blind customer.

Q. Will a clothing store be required to have brailled price tags?
A. No, not if sales personnel could provide price information orally upon request.

Q. Will a bookstore be required to maintain a sign language interpreter on its staff in order to communicate with deaf customers?
A. No, not if employees communicate by pen and notepad when necessary.

Q. Are there any limitations on the ADA's barrier removal requirements for existing facilities?
A. Yes. Barrier removal need be accomplished only when it is "readily achievable" to do so.

Q. What does the term "readily achievable" mean?
A. It means "easily accomplishable and able to be carried out without much difficulty or expense."

Q. What are examples of the types of modifications that would be readily achievable in most cases?
A. Examples include the simple ramping of a few steps, the installation of grab bars where only routine reinforcement of the wall is required, the lowering of telephones, and similar modest adjustments.

Q. Will businesses need to rearrange furniture and display racks?
A. Possibly. For example, restaurants may need to rearrange tables and department stores may need to adjust their layout of racks and shelves in order to permit access to wheelchair users.

Q. Will businesses need to install elevators?
A. Businesses are not required to retrofit their facilities to install elevators unless such installation is readily achievable, which is unlikely in most cases.

Q. When barrier removal is not readily achievable, what kinds of alternative steps are required by the ADA?
A. Alternatives may include such measures as in-store assistance for removing articles from inaccessible shelves, home delivery of groceries, or coming to the door to receive or return dry cleaning.

Q. Must alternative steps be taken without regard to cost?
A. No, only readily achievable alternative steps must be undertaken.

Q. How is "readily achievable" determined in a multisite business?
A. In determining whether an action to make a public accommodation accessible would be "readily achievable," the overall size of the parent corporation or entity is only one factor to be considered. The ADA also permits consideration of the financial resources of the particular facility or facilities involved and the administrative or fiscal relationship of the facility or facilities to the parent entity.

Q. Who has responsibility for ADA compliance in leased places of public accommodation, the landlord or the tenant?
A. The ADA places the legal obligation to remove barriers or provide auxiliary aids and services on both the landlord and the tenant. The landlord and the tenant may decide by lease who will actually make the changes and provide the aids and services, but both remain legally responsible.

Q. What does the ADA require in new construction?
A. The ADA requires that all new construction of places of public accommodation, as well as of "commercial facilities" such as office buildings, be accessible. Elevators are generally not required in facilities under three stories or with fewer than 3,000 square feet per floor, unless the building is a shopping center or mall; the professional office of a health care provider; a terminal, depot, or other public transit station; or an airport passenger terminal.

Q. Is it expensive to make all newly constructed places of public accommodation and commercial facilities accessible?
A. The cost of incorporating accessibility features in new construction is less than one percent of construction costs. This is a small price in relation to the economic benefits to be derived from full accessibility in the future, such as increased employment and consumer spending and decreased welfare dependency.

Q. Must every feature of a new facility be accessible?
A. No, only a specified number of elements such as parking spaces and drinking fountains must be made accessible in order for a facility to be "readily accessible." Certain nonoccupiable spaces such as elevator pits, elevator penthouses, and piping or equipment catwalks need not be accessible.

Q. What are the ADA requirements for altering facilities?
A. All alterations that could affect the usability of a facility must be made in an accessible manner to the maximum extent feasible. For example, if during renovations a doorway is being relocated, the new doorway must be wide enough to meet the new construction standard for accessibility. When alterations are made to a primary function area, such as the lobby of a bank or the dining area of a cafeteria, an accessible path of travel to the altered area must also be provided. The bathrooms, telephones, and drinking fountains serving that area must also be made accessible. These additional accessibility alterations are only required to the extent that the added accessibility costs do not exceed 20% of the cost of the original alteration. Elevators are generally not required in facilities under three stories or with fewer than 3,000 square feet per floor, unless the building is a shopping center or mall; the professional office of a health care provider; a terminal, depot, or other public transit station; or an airport passenger terminal.

Q. Does the ADA permit an individual with a disability to sue a business when that individual believes that discrimination is about to occur, or must the individual wait for the discrimination to occur?
A. The ADA public accommodations provisions permit an individual to allege discrimination based on a reasonable belief that discrimination is about to occur. This provision, for example, allows a person who uses a wheelchair to challenge the planned construction of a new place of public accommodation, such as a shopping mall, that would not be accessible to individuals who use wheelchairs. The resolution of such challenges prior to the construction of an inaccessible facility would enable any necessary remedial measures to be incorporated in the building at the planning stage, when such changes would be relatively inexpensive.

Q. How does the ADA affect existing State and local building codes?
A. Existing codes remain in effect. The ADA allows the Attorney General to certify that a State law, local building code, or similar ordinance that establishes accessibility requirements meets or exceeds the minimum accessibility requirements for public accommodations and commercial facilities. Any State or local government may apply for certification of its code or ordinance. The Attorney General can certify a code or ordinance only after prior notice and a public hearing at which interested people, including individuals with disabilities, are provided an opportunity to testify against the certification.

Q. What is the effect of certification of a State or local code or ordinance?
A. Certification can be advantageous if an entity has constructed or altered a facility according to a certified code or ordinance. If someone later brings an enforcement proceeding against the entity, the certification is considered "rebuttable evidence" that the State law or local ordinance meets or exceeds the minimum requirements of the ADA. In other words, the entity can argue that the construction or alteration met the requirements of the ADA because it was done in compliance with the State or local code that had been certified.

Q. When are the public accommodations provisions effective?
A. In general, they became effective on January 26, 1992.

Q. How will the public accommodations provisions be enforced?
A. Private individuals may bring lawsuits in which they can obtain court orders to stop discrimination. Individuals may also file complaints with the Attorney General, who is authorized to bring lawsuits in cases of general public importance or where a "pattern of practice" of discrimination is alleged. In these cases, the Attorney General may seek monetary damages and civil penalties. Civil penalties may not exceed $55,000 for a first violation or $110,000 for any subsequent violation.

Miscellaneous

Q. Is the Federal government covered by the ADA?
A. The ADA does not cover the executive branch of the Federal government. The executive branch continues to be covered by title V of the Rehabilitation Act of 1973, which prohibits discrimination in services and employment on the basis of handicap and which is a model for the requirements of the ADA. The ADA, however, does cover Congress and other entities in the legislative branch of the Federal government.

Q. Does the ADA cover private apartments and private homes?
A. The ADA does not cover strictly residential private apartments and homes. If, however, a place of public accommodation, such as a doctor's office or day care center, is located in a private residence, those portions of the residence used for that purpose are subject to the ADA's requirements.

Q. Does the ADA cover air transportation?
A. Discrimination by air carriers in areas other than employment is not covered by the ADA but rather by the Air Carrier Access Act (49 U.S.C. 1374 (c)).

Q. What are the ADA's requirements for public transit buses?
A. The Department of Transportation has issued regulations mandating accessible public transit vehicles and facilities. The regulations include requirements that all new fixed-route, public transit buses be accessible and that supplementary paratransit services be provided for those individuals with disabilities who cannot use fixed-route bus service.

Q. How will the ADA make telecommunications accessible?
A. The ADA requires the establishment of telephone relay services for individuals who use telecommunications devices for deaf persons (TDD's) or similar devices. The Federal Communications Commission has issued regulations specifying standards for the operation of these services.

Q. Are businesses entitled to any tax benefit to help pay for the cost of compliance?
A. As amended in 1990, the Internal Revenue Code allows a deduction of up to $15,000 per year for expenses associated with the removal of qualified architectural and transportation barriers. The 1990 amendment also permits eligible small businesses to receive a tax credit for certain costs of compliance with the ADA. An eligible small business is one whose gross receipts do not exceed $1,000,000 or whose workforce does not consist of more than 30 full-time workers. Qualifying businesses may claim a credit of up to 50 percent of eligible access expenditures that exceed $250 but do not exceed $10,250. Examples of eligible access expenditures include the necessary and reasonable costs of removing architectural, physical, communications, and transportation barriers; providing readers, interpreters, and other auxiliary aids; and acquiring or modifying equipment or devices.

RESOURCES

Access as a Civil Right

Approaching disability rights as civil rights moved the fight for equality and access into the awareness of mainstream America, and led to several notable legislative actions by the U.S. Congress.

"A Chronology of the Disability Rights Movement"
Office of Human Relations' Disability Programs Unit
San Francisco State University
www.sfsu.edu/~hrdpu/chron.htm

"The Disability Rights Movement: A Brief History"
Access and Opportunities: A Guide to Disability Awareness
U.S. Society & Values-USIA Electronic Journal, Vol. 4, No. 1, January 1999
www.usinfo.state.gov/journals/itsv/0199/ijse/history.htm

ADA Regulations, Accessibility Standards, Requirements and Technical Assistance Publications

Disability Rights Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 66738
Washington, DC 20035-6738
(800) 514-0301 voice
(800) 514-0383 TTY
www.usdoj.gov/crt/ada

The U.S. Architectural and Transportation
Barriers Compliance Board (Access Board)
1331 F Street, NW, Suite 1000
Washington, DC 20004-1111
(202) 272-5434 voice
(202) 272-5449 TTY
(202) 272-5447 fax
(800) 872-2253 voice
(800) 993-2822 TTY
info@access-board.gov
www.access-board.gov/index.htm

Employment and Accessibility for Employees with Disabilities

U.S. Equal Employment Opportunity Commission (EEOC)

1801 L Street, N.W.
Washington, DC 20507
(800) 663-4000 voice
(800) 663-4494 TTY
www.eeoc.gov

The Job Accommodation Network (JAN)

An international toll-free consulting service, JAN provides information about job accommodations and the employability of people with disabilities.
Job Accommodation Network (JAN)
West Virginia University
PO Box 6080
Morgantown, WV 26506-6080
(800) 526-7234 voice/TTY
www.janweb.icdi.wvu.edu/

Disability and Business Technical Assistance Centers (DBTACs)

The National Institute on Disability and Rehabilitation Research (NIDRR) has ten regional centers to provide checklists, information and technical assistance to employers, persons with disabilities, and others with rights or responsibilities under the ADA. The centers act as a "one-stop" central, comprehensive resource on ADA issues in employment, public services, public accommodations and communications.
DBTAC
(800) 949-4232 voice/TTY
www.adata.org/text-dbtac.html