



# Enforcing the ADA

## *A Status Report from the Department of Justice*

*(January-March 1999)*

*This Status Report covers the ADA activities of the Department of Justice during the first quarter (January - March) of 1999. This report, previous status reports, and a wide range of other ADA information are available through the Department's ADA Home Page on the World Wide Web (see page 15). The symbol (\*\*) indicates that the document is available on the ADA Home Page.*

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The Americans with Disabilities Act (ADA) is a comprehensive civil rights law for people with disabilities. The Department of Justice enforces the ADA's requirements in three areas -

Title I: Employment practices by units of State and local government

Title II: Programs, services, and activities of State and local government

Title III: Public accommodations and commercial facilities

## I. Enforcement

*Through lawsuits and both formal and informal settlement agreements, the Department has achieved greater access for individuals with disabilities in hundreds of cases. Under general rules governing lawsuits brought by the Federal Government, the Department of Justice may not file a lawsuit unless it has first unsuccessfully attempted to settle the dispute through negotiations.*

### A. Litigation

*The Department may file lawsuits in Federal court to enforce the ADA and may obtain court orders including compensatory damages and back pay to remedy discrimination. Under title III the Department may also obtain civil penalties of up to \$50,000 for the first violation and \$100,000 for any subsequent violation.*

#### 1. Decisions

***Title II's Ban on Surcharges Ruled Unconstitutional by Fourth Circuit*** -- In Brown v. North Carolina Division of Motor Vehicles, the U.S. Court of Appeals for the Fourth Circuit ruled that the title II regulation's "surcharge" provision, which prohibits public entities from making people with disabilities pay for actions mandated by the ADA to accommodate them, is beyond the power of

Congress under the Fourteenth Amendment. The lawsuit challenged North Carolina's practice of charging five dollars for the issuance of a placard that enables persons with disabilities to park in designated accessible parking spaces for a period of five years. The Department of Justice filed an amicus brief arguing that title II is constitutionally appropriate legislation to remedy the history of pervasive discrimination against people with disabilities. The Fourth Circuit, however, focused specifically on the surcharge ban and ruled it unconstitutional, because the court could find nothing in the legislative record to show that surcharges in programs that benefit people with disabilities are motivated by an intent to discriminate against people with disabilities. The Department's brief did not address whether the placard fee violates title II.

***Blind Voters Do Not Have ADA Right to Secret Voting Procedure*** -- The U.S. Court of Appeals for the Sixth Circuit decided in Nelson v. Miller that the ADA does not require Michigan to make reasonable modifications in its voting procedures to provide technology that would allow blind individuals to vote without assistance from other people. The court reasoned that blind voters were not excluded from the State's "secret voting program" because under Michigan law the secret ballot guarantee of the State constitution has not been interpreted to prohibit personal voter assistance for blind persons in the voting booth.

The court disagreed with the Department's amicus brief which argued that the plaintiffs were entitled to prove that there are reasonable modifications that would give them equal access to the ballot secrecy enjoyed by others.

***Ninth Circuit Rejects Title II Employment Coverage*** -- The U.S. Court of Appeals ruled in Zimmerman v. Oregon Department of Justice that title I provides the only remedy for employment discrimination under the ADA. The court disagreed with the Department's amicus brief which argued that the broad language of title II and its legislative history made clear that Congress intended to have employment coverage under title II, as well as title I. The court's ruling would eliminate ADA coverage of employment practices of public entities who are not covered by title I -- those with fewer than 15 employees. The Zimmerman ruling is in conflict with the earlier decision by the U.S. Court of Appeals for the Eleventh Circuit in Bledsoe v. Palm Beach County Soil and Water Conservation District that upheld title II coverage of employment.

***Federal Judge Issues Mixed Ruling on Stadium-style Movie Theaters*** -- The U.S. District Court for the Western District of Texas ruled in Lara v. Cinemark, USA, Inc., that all 18 theaters at a newly constructed stadium-style theater complex in El Paso, Texas, that were found by the court to be in violation of the ADA's new construction standards must be made accessible. It rejected defendant's argument that, because Cinemark acted "in good faith" in the construction of the theaters, a sufficient remedy would be to renovate only five of the 18 auditoriums. The court ruled that there is no "good faith" exception to the ADA's requirements. It also decided, however, that Cinemark could place all of the accessible seats in the first row of the stadium-style seating instead of one or two rows higher as desired by plaintiffs. The Department did not file a brief on remedies, but it did file an amicus brief at an earlier stage in the case in which it successfully

argued that the El Paso theaters did not provide lines of sight for wheelchair users that were comparable to those provided for others.

## 2. New lawsuits

*The Department initiated or intervened in the following lawsuits.*

### Title I

*United States v. City of Chicago, Office of the City Clerk* -- The Department filed suit in the U.S. District Court for the Northern District of Illinois alleging that the City of Chicago, Office of the City Clerk, violated title I of the ADA when it withdrew a previously provided accommodation -- transfer to another division offering a more moderate work schedule -- for an employee diagnosed with major depression. Her doctor described the employee's major depression as causing her difficulty in performing at home and at work, including impaired sleep, crying spells, decreased concentration, and impaired memory, and recommended that she work in a different department with a moderate work schedule of no more than eight hours per day. Because the city determined that she was not an individual with a disability, it returned her to her original job in the Council Division of the Clerk's Office, where overtime was required as needed by the City Council members, sometimes up to 16 hours a day. She subsequently experienced another depressive episode and missed several days of work without calling in. As a result, the city fired her. After negotiations with the Department of Justice, the city rehired the employee into a position of comparable salary and with no required overtime. The Department filed a lawsuit, however, because the parties could not reach agreement on specifics relating to back pay, remedial seniority, and compensatory damages.

***New Title III Lawsuits Challenge Stadium-style Theater Design --***

*United States v. AMC Entertainment, Inc.* -- The Department filed suit against AMC Entertainment, Inc., and American Multi-Cinema, Inc., in the U.S. District Court for the Central District of California for violating the ADA in the design, construction, and operation of stadium-style movie theaters in the AMC chain. The two theaters named in the complaint are the Norwalk Theater in Norwalk, California, and the Promenade 16 Theater in Woodland Hills, California. The newly constructed AMC theaters have two types of seats -- stadium-style seats, which provide comfortable, unobstructed lines of sight to the screen, and traditional seating, which is located on the sloped floor at the front of the theater immediately in front of the screen. Although AMC marketed the theaters as providing stadium-style seating, it placed the wheelchair seating only in the less desirable traditional seating on sloped floors. Wheelchair users are therefore denied a movie viewing experience that is comparable to that afforded to other members of the general public. The complaint also alleges other access violations including the failure to provide companion seating next to wheelchair seats; failure to provide handrails; inadequate space at wheelchair seating locations; and inaccessible concession counters, bathrooms, and telephones.

*United States v. Cinemark USA, Inc.* -- The Department filed suit against Cinemark USA, Inc., in the U.S. District Court for the Northern District of Ohio alleging that three of Cinemark's Ohio theaters, as well as its stadium-style seating theaters across the country, violated the ADA by failing both to provide comparable lines of sight to wheelchair users and to make wheelchair seating locations an integral part of the stadium-style seating. Prior to this lawsuit, Cinemark filed suit against the Department of Justice in the U.S. District Court for the Eastern District of Texas asserting that the Department's actions regarding stadium-style theaters violate the Administrative Procedure Act. The Department believes that suit is without merit and has asked the court to dismiss it.

*Lonberg v. Sanborn Theaters, Inc.* -- The Department intervened in an ongoing lawsuit in the U.S. District Court for the Central District of California brought by two wheelchair users against the Market Place Cinema in Riverside California, a facility that offers stadium-style seating. The suit alleges that Sanborn violated title III because it does not provide adequate numbers of wheelchair seating locations, fixed companion seats next to wheelchair seating locations, aisle seats with removable armrests, and wheelchair seating locations with lines of sight comparable to those for other members of the general public.

**Title III**

*Pasciuti v. City of New York; U.S. v. New York City Department of Parks and Recreation* -- The U.S. Attorney for the Southern District of New York intervened in an ongoing private lawsuit against the New York Yankees regarding ADA violations at Yankee Stadium. The U.S. Attorney simultaneously filed suit against the City of New York, the stadium's owner. The complaint alleges a wide range of barriers to access throughout the stadium, including an insufficient number of wheelchair seating locations, companion seats, and seats with removable armrests; the failure of current wheelchair seats to provide a line of sight over standing spectators; inaccessible routes throughout the stadium; and improper ticketing policies and procedures.

*United States v. Vasquez Funeral Home* -- The Department filed suit against the Vasquez Funeral Home in Chicago, Illinois, alleging that Vasquez violated title III when it discriminated against a person with AIDS and his family by charging an additional fee of \$100 to provide funeral services because the deceased person had AIDS. Because funeral homes are required to assume that all human remains harbor infectious diseases and to take the same required precautions in every case, it is unjustified to only charge extra for handling the body of an individual who was HIV-positive. The Department entered into a formal settlement agreement with the Vasquez Home in May 1998 in which Vasquez agreed to change its policy, to designate an employee to be in charge of compliance, to train its staff in the use of universal precautions, and pay damages of \$3,000 to the family. Vasquez, however, has refused to carry out any part of the agreement, making a lawsuit necessary.

*Cunningham v. The Public Eye* -- The U.S. Attorney for the Western District of Tennessee intervened in this lawsuit brought by a woman who uses a wheelchair against The Public Eye, a prominent restaurant in Memphis, Tennessee. The

complaint alleges that The Public Eye failed to remove barriers to access that would be readily achievable to remove, such as modifying the restaurant's main entrance to be accessible. Currently, restaurant employees direct wheelchair users to a secondary entrance that has a small step and that leads to a private dining room rather than to the general restaurant area.

**3. Consent Decrees**

*Some litigation is resolved at the time the suit is filed or afterwards by means of a negotiated consent decree. Consent decrees are monitored and enforced by the Federal court in which they entered.*

**Title III**

*\*\* United States v. RCPI Trust and Radio City Productions LLC* -- The U.S. Attorney for the Southern District of New York filed, and resolved by consent decree, a lawsuit against the owners and operators of Radio City Music Hall, a historic theater dating from the 1930's. The theater has nearly 6,000 seats, with over 3,400 on the orchestra level, and the remainder on three mezzanine levels. Radio City agreed to install 59 wheelchair and companion seating locations and 60 aisle seats with removable armrests. It will also modify its ticketing policies to reserve accessible seats for persons with disabilities until all other seats are sold. To compensate for the lack of wheelchair seating on upper levels, Radio City will discount a portion of the orchestra wheelchair seating so that persons with disabilities will be able to purchase tickets at a range of prices comparable to the general public. Radio City also agreed to remove barriers affecting exterior and interior routes, doors, and elevators; service areas such as restrooms, telephones, drinking fountains, concession areas, and a ticket window; dressing rooms and adjacent shower/toilet rooms; and tour routes. Radio City will make available 240 assistive listening devices and install visual alarms that comply with the ADA.

It will also provide signage throughout the public areas directing patrons with disabilities to accessible routes and service areas.

#### 4. Amicus Briefs

*The Department files briefs in selected ADA cases in which it is not a party in order to guide courts in interpreting the ADA.*

##### Title I

*Albertsons v. Kirkingburg* -- The Department filed an amicus brief in the Supreme Court arguing that monocular vision is frequently a disability under the ADA, because it substantially limits both the depth perception and peripheral vision involved in the major life activity of seeing. The Court is reviewing a decision by the U.S. Court

of Appeals for the Ninth Circuit, which concluded that an employer violated the ADA by firing a commercial truck driver in Portland, Oregon, because of his impaired vision even though he met the monocular vision waiver standards for the issuance of interstate truckers licenses issued by the U.S. Department of Transportation. The brief also argues that the employer's statement that plaintiff was "legally blind" was enough evidence for a court to conclude that the employer regarded the plaintiff as an individual with a disability who is substantially limited in the major life activities of seeing and working. In addition, the brief asserts that the employer has the burden of justifying its more demanding qualification standard by showing it is necessary to avoid a direct threat to the health or safety of the driver or others.

***Department Advises Supreme Court not to Consider Mitigating Measures in Determining Disability*** -- The Department filed amicus briefs in the Supreme Court in both *Murphy v. United Parcel Service* and *Sutton v. United Air Lines, Inc.* arguing that mitigating measures, such as medicines, eyeglasses, or prosthetic devices, should not be taken into account in determining whether an individual is substantially limited in a major life activity under the ADA. In *Murphy* a truck driver was terminated because of elevated blood pressure. Without medication, the driver's blood pressure was a dangerously high 250/160. The U.S. Court of Appeals for the Tenth Circuit held that, when treated with medication, the driver only had moderate hypertension (160/102) and was therefore not an individual with a disability. In *Sutton*, twin sister pilots who have uncorrected vision of 20/200 and 20/400 in their right and left eyes respectively, but which is correctable to 20/20, were rejected by United because they did not meet the airline's uncorrected vision standard of 20/100. Because their vision is correctable with lenses to 20/20, the Tenth Circuit ruled that they were not individuals with disabilities, because they were not substantially limited in the major life activity of seeing. In both of its briefs in the Supreme Court, the Department argued that, as intended by Congress, the mitigating measures should not be taken into account. The Department's brief in *Sutton*, however, argues that moderate myopia, such as 20/30 vision, would not be a disability because it is so common in the general population. Both briefs also assert that, even if mitigating measures are taken into account, the individuals are still protected by the statute because they were "regarded as" being substantially limited in the ability to perform a class of jobs and, therefore, in the major life activity of working.

## Title II

*Deck v. City of Toledo* -- The Department filed an amicus brief in the U.S. District Court for the Northern District of Ohio in support of a lawsuit challenging Toledo's failure to install accessible curb cuts when streets are resurfaced. The city argues that resurfacing projects that occurred before May 5, 1996, are beyond the statute of limitations and cannot be reviewed by the court. The amicus brief argues that these earlier failures may be reached by the court because they are part of a pattern of violations that has continued after that date.

*James v. Peter Pan Transit Management Services, Inc.* -- The Department filed an amicus brief in the U.S. District Court for the Eastern District of North Carolina arguing that public transit authorities are responsible for discrimination in services provided by their private contractors and should be required to pay compensatory damages when they know discrimination is

occurring but fail to take adequate corrective measures. The plaintiff alleged that the public transit system in Raleigh, North Carolina, failed to provide wheelchair users with equal access to the benefits and services afforded other riders. Specifically, the plaintiff alleged that she was denied equal access to the CAT Connector service, a supplemental van service that connects bus routes and other points of interest through fixed-route service and that also serves areas not fully serviced by regular transit buses on a demand-responsive basis. Peter Pan Transit Management, a private company, operates the CAT Connector buses, providing drivers, dispatchers, and maintenance personnel under a contract with the City of Raleigh. The City of Raleigh provides all of the buses and equipment for a minimal leasing fee. The plaintiff alleged that Peter Pan drivers refuse to pick her up; that lift and securement equipment is often missing or inoperable, and that drivers are not adequately trained to use the lift and securement equipment.

### ***Supreme Court Urged to Rule that Unjustified Segregation Violates the ADA*** --

The Department has asked the Supreme Court to rule under the ADA's "most integrated setting appropriate" requirement that States must provide services to people with disabilities in a community setting, rather than in an institution, when a State's treatment professionals have determined in the exercise of reasoned professional judgment, that community placement of the individual is appropriate. The amicus brief asserts, however, that the integration obligation would not require unreasonable changes in State policy or a fundamental alteration in the nature of the State's treatment program. In *L.C. v. Olmstead*, the U.S. Court of Appeals for the Eleventh Circuit ruled that Georgia might have violated the ADA by confining two individuals with mental disabilities in an institution rather than providing services through a community-based program as recommended by the State's treating professionals. The Eleventh Circuit sent the case back to the district court for a determination as to whether community placements in this particular case would have caused a fundamental alteration in the nature of the program. The district court ruled that they would not. The district court's decision on the application of the fundamental alteration in this particular case is not under Supreme Court review, only the decision of the Court of Appeals that unjustified segregation can be a form of illegal discrimination under the ADA.

*Project Life Inc. v. Glendening* -- The U.S. Attorney for the District of Maryland filed an amicus brief in support of a lawsuit charging that the Maryland Port Administration and several other State agencies violated the Fair Housing Act and title II of the ADA by refusing to grant a long-term berth to Project Life, which plans to operate a 30-day residential and education program aboard the U.S.S. Sanctuary in Baltimore Harbor for women recovering from substance abuse. The complaint alleges that the Maryland Port Authority required Project Life to adhere to special conditions only because of the history of disability of the program participants, including requiring Project Life to obtain “community support” for its project; to obtain approvals from a State alcohol and drug commission and a not yet established port advisory committee; and to have its clients use a separate entrance to the port. The court had earlier refused to dismiss the case, holding that the actions of the Maryland Port Authority are covered by the ADA and the Fair Housing Act. Defendants are now arguing that the case is not “ripe” for court review because they have not yet formally refused the berth and the two additional commissions have not yet approved or denied the berth. The U.S. Attorney’s brief argued that, because defendants have already imposed additional eligibility requirements on Project Life, the discrimination has already occurred, and the case is “ripe” for court action.

*Badillo v. Garcia* -- The U.S. Attorney for the District of Puerto Rico filed an amicus brief in support of a lawsuit brought by an individual who is hard of hearing, who alleges he was denied appropriate auxiliary aids when he was a defendant in a civil action in Puerto Rico Superior Court. The plaintiff claims that the judge refused his request for an assistive listening device and provided him instead with a wheeled secretary’s chair, so that he could move around the proceedings closer to whomever was speaking.

The lawsuit seeks damages against several commonwealth officials involved in court administration and the judge who refused his auxiliary aid request. The U.S. Attorney’s brief argues that the commonwealth’s claim that the administrators are immune from a suit for damages in their official capacities is incorrect given that the ADA specifically provides that States may be sued like other parties. The brief also argues that the judge does not enjoy the traditional judicial immunity from damages suits because in this case the decision denying the auxiliary aid was administrative rather than judicial in nature.

### Title III

## Amicus Briefs

*Doe v. Mutual of Omaha* -- The Department filed an amicus brief in the U.S. Court of Appeals for the Seventh Circuit in support of two HIV-positive individuals who are challenging special lifetime caps that Mutual of Omaha’s

health insurance policies impose on treatment of HIV and other AIDS-related conditions. The lifetime AIDS cap is \$100,000 in one of the policies and \$25,000 in the other, while the lifetime cap for medical conditions unrelated to AIDS is one million dollars. Even if an insured reaches that one million dollar cap, Mutual will reinstate benefits for non-AIDS-related conditions (and provide a new one million dollar lifetime limit) if the insured does not incur any medical expenses for two consecutive years. Mutual, however, will not reinstate benefits for AIDS-related conditions once the insured reaches the lifetime AIDS cap. The district court agreed with the Department’s earlier amicus brief in this case and concluded that the AIDS caps violated title III. The Department’s brief on appeal argues that title III covers disability-based discrimination in the terms and conditions of insurance policies and that Mutual of Omaha’s imposition of a special lifetime cap for AIDS, but not for other illnesses, and its refusal to restore benefits for AIDS-related treatment violate title III.



*Chabner v. United of Omaha Life Insurance Company* -- The Department filed an amicus brief in support of a lawsuit brought by an individual with fascioscapulohumeral muscular dystrophy who alleged that United of Omaha violated title III of the ADA by charging him a premium that was about twice as much as the standard premium it charges non-disabled policyholders. The district court ruled in favor of the plaintiff, concluding that United of Omaha engaged in disability-based discrimination covered by title III, that the company failed to produce evidence that the challenged insurance practice complied with California law, and that, because the company violated state law, it was not exempt from liability under the ADA's special provisions on insurance. The Department's amicus brief in the court of appeals argues that title III guarantees more than mere physical access to public accommodations, that the statute reaches disability-based discrimination in the terms and conditions of insurance coverage, that United of Omaha engaged in disability-based discrimination by charging the plaintiff a higher premium than it charged non-disabled persons, and that an insurance company cannot qualify for the ADA's limited insurance exemption unless it produces evidence that its insurance practices comply with relevant State law.

*Stevens v. Premier Cruise Lines* -- The Department filed an amicus brief in the U.S. Court of Appeals for the Eleventh Circuit in support of the right of an individual to challenge disability discrimination by a cruise line. The complaint alleges that Premier Cruise Lines located in Miami, Florida, violated the ADA by charging her an increased fare for an accessible cabin and by failing to remove architectural and communication barriers on the ship to make it accessible to persons with disabilities. The amicus brief argues that the plaintiff has the right to ask the court to consider ordering changes in its ships and policies because she has alleged that she would take another cruise with defendants if their ADA violations were corrected. The brief also

asserts that the ADA covers cruise vessels when they are in the ports or other internal waters of the United States, even if they are registered in a foreign country.

*Colorado Cross-Disability Coalition v. Taco Bell Corp.* -- The Department filed an amicus brief in the U.S. District Court for the District of Colorado in support of a challenge to inaccessible customer service queues at one "existing" and two newly constructed Taco Bell restaurants. The brief argues that people wishing to sue under title III do not have to provide any prior notice to State agencies, that the customer service queues in the two newly constructed restaurants are too narrow to comply with the ADA Standards for Accessible Design, that allowing wheelchair users to bypass the queue does not provide equivalent facilitation because the alternative route is frequently blocked by a chain and does not provide independent access, and that it may be readily achievable for the existing restaurant to reconfigure the queue to make it accessible.

## **B. Formal Settlement Agreements**

*The Department sometimes resolves cases without filing a lawsuit by means of formal written settlement agreements.*

## **Title II**

*New Oxford Borough, Pennsylvania* -- The Department reached an agreement with the Council for New Oxford Borough, Pennsylvania, resolving a complaint that the second floor meeting room where the Council's public meetings are held is inaccessible to individuals with disabilities who are unable to climb stairs. In addition, the complaint alleged that the Borough's library, located in the basement, is also inaccessible to individuals who use wheelchairs because of stairs and broken sidewalks leading to the building entrance. The Council agreed to adopt and publish a procedure for relocating all public meetings to an accessible location with

reasonable notification and to set aside a room on the accessible first floor for the use of the library so that individuals with disabilities can access library services. It will also repair or replace the sidewalk as part of an accessible route from the parking lot to the building entrance and adopt and post a written policy statement indicating procedures to be used to obtain reasonable modifications of policies, practices, and procedures.

*Pearl River County, Mississippi* -- The U.S. Attorney's Office for the Southern District of Mississippi entered into a settlement agreement with the Pearl River County 9-1-1 Commission, which oversees the administration of 9-1-1 services for the entire county. The Commission has agreed to install additional equipment so that each answering position has TDD response capability; establish procedures for effective processing of TDD calls, including training for emergency dispatchers; develop and implement a public education program to promote the use of 9-1-1 by individuals who use TDD's; and conduct semiannual audits of the quality of service provided to TDD users.

*Evangeline Parish, Louisiana* -- The Evangeline Parish Police Jury agreed to complete a self-evaluation of its compliance with title II and a transition plan identifying structural changes needed to make its programs accessible.

### Title III

*\*\*Wold Driving School, Wausau, Wisconsin* -- The Department entered into an agreement with the Wold Driving School to resolve a complaint alleging that the school had refused to provide a sign language interpreter during a driver's training course for a student who is deaf. The school agreed to provide auxiliary aids and services, including sign language interpreters, when necessary to ensure effective communication with

student drivers who are deaf and to pay the complainant \$750 in compensatory damages.

*Wendy's Restaurants, Maine* -- The owners of all nine franchised Wendy's restaurants in Maine will remove architectural barriers under an agreement with the U.S. Attorney's Office for the District of Maine. Wendy's franchisees, Transco Distributors of Augusta and Robco, Inc., of Sanford, will accommodate customers who use wheelchairs by either widening the queues that customers must pass through to place their orders or by removing the queues altogether. The restaurants also agreed to install door handles and grab bars in their public restrooms and pay civil penalties totaling \$4,500. These franchised facilities were not covered by an earlier agreement between Wendy's International, Inc., and the Department of Justice that addressed inaccessible queues at over 1600 company-owned locations.

## Formal Settlement Agreements

*Dairy Point Restaurant, Greensburg, Indiana* -- The U.S. Attorney's Office for the Southern District of Indiana reached an agreement requiring the Dairy Point Restaurant to make its bathroom accessible and to provide accessible parking. The restaurant also paid a \$500 civil penalty under the agreement.

*\*\*Crown Cine Theaters, Danbury, Connecticut* -- The Department entered an agreement with Crown Cine Theaters resolving a complaint alleging that it failed to provide an adequate number of assistive listening devices and to maintain these devices in proper working order. The theater had a permanently installed assistive listening system for its three screens totaling 1,074 seats but provided only 15 receivers. Crown agreed to make available an additional 12 receivers and three neck loop devices. It also agreed to establish a maintenance procedure to ensure that all devices are maintained in proper working order and to provide appropriate training

for employees. In addition to its current practice of providing notice about assistive listening devices in its printed advertisements, Crown Theaters agreed to include information in its prerecorded telephone messages and to provide appropriate signage. Crown Theaters also agreed to issue free movie passes to a future showing of any film along with a full refund of money paid and an apology to any person who is hard of hearing, and any companions, who cannot attend a particular showing of a film because an assistive listening device is not in proper working order.

*Well's Realty, Greensburg, Indiana* -- The U.S. Attorney's Office for the Southern District of Indiana entered into a settlement agreement with Well's Realty concerning a complaint that the facility's front entrance ramp was too steep and therefore not accessible. Well's Realty agreed to install an accessible ramp.

### **C. Other Settlements**

*The Department resolves numerous cases without litigation or a formal settlement agreement. In some instances, the public accommodation, commercial facility, or State or local government promptly agrees to take the necessary actions to achieve compliance. In others, extensive negotiations are required. Following are some examples of what has been accomplished through informal settlements.*

A small Pennsylvania city installed a van accessible parking space in the municipal building parking lot.

The Salt Lake City, Utah, office of a nationally recognized insurance company installed an entrance ramp and a door buzzer to provide accessibility to its facility.

A nationwide retailer and sponsor of a modeling contest and fashion show established a policy and procedure for providing effective communication and auxiliary aids and services, including sign language interpreters for deaf contestants; added this information to the contest application for 1999; designated responsible employees to ensure nondiscrimination and provision of auxiliary aids and services upon request; and disseminated the policy to all employees involved in the modeling contest.

A large hotel and resort complex in Honolulu, Hawaii, removed architectural barriers in the lobby, lobby restroom, restaurant, and pool area, developed a written policy that prohibits discrimination on the basis of disability, and paid the complainant \$500 in damages. It will create 12 accessible guests rooms, seven with roll-in showers, and 12 additional rooms that are accessible to individuals with visual and hearing impairments.

*U.S. Attorneys obtained informal settlements in the following cases --*

Middle District of Florida -- Organizers of a 5K-run agreed to drop their policy of excluding wheelchair-user participants for safety reasons and to allow them to start the race before the other racers.

Southern District of Mississippi -- An ice cream restaurant made modifications to its restrooms, seating area, and parking to provide accessibility.

## II. Mediation

*Through a technical assistance grant from the Department, The Key Bridge Foundation is accepting referrals of complaints under titles II and III for mediation by professional mediators who have been trained in the legal requirements of the ADA. More than 350 professional mediators are available to mediate ADA cases in \*\*45 States. Over 80 percent of the cases in which mediation has been completed have been successfully resolved. Following are recent examples of results reached through mediation.*

- In Texas, a wheelchair user complained that a restaurant had no accessible entrance and that it and another restaurant owned by the respondent did not have accessible restrooms. The owner of the restaurants agreed to install a ramp at the entrance to one of the restaurants and to remove barriers to access in the restrooms in both restaurants.
- In New York, two people who are blind complained that a limousine service charged them extra because they were accompanied by their service animals. The owner stated that this was a violation of existing company policy. The owner agreed to distribute the Department's policy on service animals to company staff and to provide the complainants with one free trip.
- A wheelchair user complained that a Georgia bank did not have an accessible entrance and that there was no accessible parking close to the entrance. The bank manager agreed to install ramps at the entrance and to create three accessible parking spaces.
- In Utah, a person who is deaf complained that a doctor's office refused to provide an interpreter for effective communication during an office visit. The doctor acknowledged his responsibilities and agreed to comply with the effective communication requirements under the ADA. He also apologized for the manner in which his staff handled communications with the complainant.
- A person with a mobility impairment complained that a tour of a Nebraska State building was not accessible to her because of the rapid pace of the tour guide. The building management agreed to modify the pace of the tour as needed and to provide a staff person to assist if requested for all future tours. Management also apologized for the way the complainant was treated during the tour.
- In Texas, a wheelchair user complained that a government agency was not accessible and had no accessible parking. The agency agreed to provide accessible parking and to modify a building entrance and a men's room to make them accessible. The agency also agreed to move public services to a first floor location when necessary to provide access to people with disabilities and to provide a phone number for people with disabilities to use to request accommodations or auxiliary aids and services.
- A person with a mobility impairment complained that a Texas golf course did not have accessible parking. The manager agreed to restripe the parking lot and create five accessible spaces and one van accessible parking space with appropriate signage.

- In Florida, a wheelchair user complained that a restaurant had no accessible parking, entrance, or restroom. Restaurant management agreed to create five accessible parking spaces, to build a ramp to the entrance, and to lessen the force required to open both the front door and restroom door. Management agreed to make the restrooms accessible and pay the complainant approximately \$1,500.
- A wheelchair user complained that a Pennsylvania professional building did not have an accessible restroom. The building manager agreed to renovate the restroom to make it accessible.
- In Louisiana, a person whose wife is a wheelchair user complained that a restaurant did not have adequate accessible parking and also that the only wheelchair accessible seating was located in the smoking section of the restaurant. The restaurant determined that it was not possible to put in a permanent ramp to the non-smoking section given the configuration of the existing room. The restaurant agreed to construct a removable wooden ramp and create two accessible parking spaces in their lot of 40 spaces.
- In Vermont, a person complained that a dance hall did not have accessible restrooms. The owner agreed to make the restrooms accessible.
- An individual complained that a New Mexico office supply store did not have accessible parking. The store responded by making accessible parking available.
- In Texas, a wheelchair user complained that a hotel was not accessible because it had a short steep ramp at the entrance. The respondent agreed to install an accessible ramp, pay the complainant \$300, and write a personal letter of apology to the complainant.
- A person with a mobility impairment complained that a Florida golf club's policies discriminated against people with disabilities who use motorized carts for mobility by unnecessarily restricting access to certain parts of the course. The respondent agreed to modify the existing policy to allow the complainant and others who use carts within the previously restricted areas.
- A person complained that a Texas fast food restaurant's accessible parking was located in the rear of the facility, requiring people with disabilities to walk through an alley to get to the entrance. The respondent agreed to paint a pedestrian walkway from the accessible space to the entrance, limit the flow of traffic to one direction, and install appropriate directional signage. The respondent also agreed to add a second accessible space and to send a memo to all managers reminding them of their ADA responsibilities.
- A wheelchair user complained that a New York car towing service had its office on the fourth floor and could not be accessed by people unable to climb stairs. The respondent agreed to post a sign and install a telephone so that people unable to climb stairs could contact the office to have an appropriate accommodation made to allow them to transact business. In this case, the respondent would bring the necessary paperwork downstairs to the complainant. The respondent also agreed to pay the complainant \$500.
- In California, a mother complained that her son, who is a wheelchair user, was denied access to the bumper cars at an amusement park. The respondent apologized for the incident, eliminated the unnecessary eligibility criteria which barred the complainant from that ride, and agreed to conduct an employee

*Mediation*

training program that would emphasize compliance with the ADA. The respondent also gave complimentary passes to an amusement park of the complainant's choice.

- In North Carolina, a wheelchair user complained because a grocery store placed a large refrigerator outside its doors that blocked the only ramp available for wheelchair users. The store agreed to move the refrigerator.
- A wheelchair user who is assisted by a service animal complained that he was denied access to a California restaurant. The owners of the restaurant apologized for their employee's conduct and agreed to comply with the ADA. The respondent also agreed to provide training to be conducted by a trade association to educate its employees about the ADA and service animals.
- In Texas, a person complained that the witness and jury boxes in a courthouse were

inaccessible to him. The court system agreed to develop a policy to inquire, prior to the start of all proceedings, whether any accommodations or auxiliary aids and services were required by any prospective witnesses or jurors.

- In Michigan, a person complained that a property management company located its accessible parking on a very steep incline that made the parking inaccessible to him. The management company agreed to repave the parking lot to eliminate the steep slope.
- A deaf consumer complained that the owner of a Virginia deli hung up on her when she tried to place an order using the Virginia Relay Service. The owner apologized for hanging up on the customer, explaining that he had not been educated about relay service telephone calls, and agreed to accept relay calls in the future. The complainant was also delivered a free dinner.

### III. Certification of State and Local Building Codes

*The ADA requires that newly constructed or altered facilities comply with the ADA Standards for Accessible Design (Standards). The Justice Department is authorized to certify building codes that meet or exceed the ADA Standards. In litigation, an entity that complies with a certified code can offer that compliance as rebuttable evidence of compliance with the ADA.*

*In implementing its authority to certify codes, the Department works closely with State and local officials, providing extensive technical assistance to enable them to make their codes equivalent to the ADA. In addition, the Department responds to requests for review of model codes and provides*

*informal guidance to assist private entities that develop model accessibility standards to make those standards equivalent to the ADA.*

The Department has certified the accessibility codes of the States of Washington, Texas, Maine, and Florida, and has pending requests for certification from New Mexico, Minnesota, New Jersey, Maryland, California, Indiana, the Village of Oak Park, Illinois, and the County of Hawaii. The Department has received a supplemental request for certification of accessibility code amendments from the State of Washington, and it is also reviewing model codes submitted by the Building Officials and Code Administrators, International; and the Southern Building Code Congress, International. Recent certification activity includes --

**North Carolina** -- The Department received a request from the State of North Carolina that the Department certify that the State's accessibility code meets or exceeds the new construction and alterations requirements of title III of the ADA. This is the 16th request for certification received by the Department.

**Maryland** -- The Department received a response to technical assistance that it provided on the Maryland Accessibility Code. The Department will review the response and continue to work with the Maryland officials to resolve any remaining obstacles to certification.

## IV. Technical Assistance

*The ADA requires the Department of Justice to provide technical assistance to entities and individuals with rights and responsibilities under the law. The Department encourages voluntary compliance by providing education and technical assistance to businesses, governments, and members of the general public through a variety of means. Our activities include providing direct technical assistance and guidance to the public through our ADA Information Line, ADA Homepage and Fax on Demand, developing and disseminating technical assistance materials to the public, undertaking outreach initiatives, operating an ADA technical assistance grant program, and coordinating ADA technical assistance government-wide.*

**\*\*Self-Serve Gas Fact Sheet Now Available** -- A new technical assistance fact sheet on ADA requirements for providing assistance at self-serve gas stations is available through the ADA Home Page, the ADA Information Line, and ADA Fax on Demand (document #3210).

### ADA Home Page

An ADA home page is operated by the Department on the Internet's World Wide Web (<http://www.usdoj.gov/crt/ada/adahom1.htm>). The home page provides information about:

- the toll-free ADA Information Line,
- the Department's ADA enforcement activities,
- the ADA technical assistance program,
- certification of State and local building codes,
- proposed changes in ADA regulations and requirements, and
- the ADA mediation program.

The home page also provides direct access to:

- ADA regulations and technical assistance materials (which may be viewed online or downloaded for later use),
- Freedom of Information Act (FOIA) materials, and
- links to the Department's press releases, ADA Bulletin Board, and Internet home pages of other Federal agencies that contain ADA information.

## ADA Information Line

The Department of Justice operates a toll-free ADA Information Line to provide information and publications to the public about the requirements of the ADA. Automated service, which allows callers to listen to recorded information and to order publications, is available 24 hours a day, seven days a week. ADA specialists are available on Monday, Tuesday, Wednesday and Friday from 10:00 a.m. until 6:00 p.m. and on Thursday from 1:00 p.m. until 6:00 p.m. (Eastern Time). Spanish language service is also available.

To obtain general ADA information, get answers to technical questions, order free ADA materials, or ask about filing a complaint, call:

800-514-0301 (voice)  
800-514-0383 (TDD)

## ADA Fax On Demand

The ADA Information Line Fax Delivery Service allows the public to obtain free ADA information by fax 24 hours a day, seven days a week. By calling the number above and following the directions, callers can select from among 32 different ADA technical assistance publications and receive the information, usually within minutes, directly on their fax machines or computer fax/modems. A list of available documents and their code numbers may also be ordered through the ADA Information Line.

## Publications and Documents

Copies of the Department's ADA regulations and publications, including the Technical Assistance Manuals for titles II and III, and information about the Department's technical assistance grant program, can be obtained by calling the ADA

Information Line, visiting the ADA Home Page on the World Wide Web, or writing to the address listed below. All materials are available in standard print as well as large print, Braille, audiotape, or computer disk for persons with disabilities.

Disability Rights Section  
Civil Rights Division  
U.S. Department of Justice  
P. O. Box 66738  
Washington, D.C. 20035-6738

Copies of the legal documents and settlement agreements mentioned in this publication can be obtained by writing to:

Freedom of Information/Privacy Act Branch  
Administrative Management Section  
Civil Rights Division  
U.S. Department of Justice  
P.O. Box 65310  
Washington, D.C. 20035-5310  
Fax: 202-514-6195

*Technical  
Assistance*

Currently, the FOI/PA Branch maintains approximately 10,000 pages of ADA material. The records are available at a cost of \$0.10 per page (first 100 pages free). Please make your requests as specific as possible in order to minimize your costs.

The FOI/PA Branch also provides access to ADA materials on the World Wide Web at <http://www.usdoj.gov/crt/foia/records.htm>. A link to search or visit this website is provided from the ADA Home Page.



## V. Other Sources of ADA Information

The *Equal Employment Opportunity Commission* offers technical assistance to the public concerning the employment provisions of title I of the ADA.

ADA documents  
800-669-3362 (voice)  
800-800-3302 (TDD)

ADA questions  
800-669-4000 (voice)  
800-669-6820 (TDD)

<http://www.eeoc.gov>

The *Federal Communications Commission* offers technical assistance to the public concerning the communication provisions of title IV of the ADA.

ADA documents  
202-857-3800 (voice)  
202-293-8810 (TDD)

ADA questions  
202-418-0976 (voice)  
202-418-0484 (TDD)

<http://www.fcc.gov/dtf/welcome.html>

The *U.S. Department of Transportation* through the *Federal Transit Administration* offers technical assistance concerning the transportation provisions of title II and title III of the ADA.

ADA Assistance Line for information, questions, or complaints  
888-446-4511 (voice/relay)  
202-366-2285 (voice)  
202-366-0153 (TDD)

ADA documents and general questions  
202-366-1656 (voice/relay)

ADA legal questions  
202-366-4011 (voice/relay)

<http://www.fta.dot.gov>

The *U.S. Architectural and Transportation Barriers Compliance Board*, or *Access Board*, offers technical assistance to the public on the ADA Accessibility Guidelines.

ADA documents and questions  
800-872-2253 (voice)  
800-993-2822 (TDD)

<http://www.access-board.gov>

The *Disability Rights Education and Defense Fund ADA Hotline* is funded by the Department of Justice to provide technical assistance to the public on all titles of the ADA.

ADA technical assistance  
800-466-4232 (voice & TDD)

The *Disability and Business Technical Assistance Centers* are funded by the U.S. Department of Education through the National Institute on Disability and Rehabilitation Research (NIDRR) in ten regions of the country to provide resources and technical assistance on the ADA.

ADA technical assistance  
800-949-4232 (voice & TDD)

<http://www.adata.org>

*Project ACTION* is funded by the U.S. Department of Transportation to provide ADA information and publications on making transportation accessible.

Information on accessible transportation  
800-659-6428 (voice/relay)  
202-347-3066 (voice)  
202-347-7385 (TDD)

The *Job Accommodation Network (JAN)* is a free telephone consulting service funded by the President's Committee on Employment of People with Disabilities. It provides information and advice to employers and people with disabilities on reasonable accommodation in the workplace.

Information on workplace  
accommodation  
800-526-7234 (voice & TDD)

<http://janweb.icdi.wvu.edu/english>

## VI. How to File Complaints

### Title I

Complaints about violations of title I (employment) by units of State and local government or by private employers should be filed with the Equal Employment Opportunity Commission. Call 800-669-4000 (voice) or 800-669-6820 (TDD) to reach the field office in your area.

### Titles II and III

Complaints about violations of title II by units of State and local government or violations of title III by public accommodations and commercial facilities should be filed with --

Disability Rights Section  
Civil Rights Division  
U.S. Department of Justice  
Post Office Box 66738  
Washington, D.C. 20035-6738