

Understanding the (ADA) Americans with Disabilities Act



A Publication of



***United Spinal
Association***

United Spinal Association's mission is to improve the quality of life of all people living with spinal cord injuries and disorders (SCI/D).

WHO WE ARE

United Spinal Association is the largest non-profit in the United States dedicated to helping people living with SCI/D. We are a 501(c)(3) national disability rights and veterans service organization founded in 1946. United Spinal Association provides active-lifestyle information, peer support and advocacy that empowers people with SCI/D to achieve their highest potential in all facets of life.

United Spinal played a significant role in writing the Americans with Disabilities Act, the landmark civil rights law of 1990 that protects people with disabilities from discrimination. It has also made important contributions to the Fair Housing Amendments Act and the Air Carrier Access Act, and was instrumental in getting New York City to create sidewalk curb ramps and accessible public transportation that is currently used as a model for many cities nationwide.

WHO WE SERVE

United Spinal Association's diverse membership includes wheelchair-users, veterans with disabilities and people living with multiple sclerosis, amyotrophic lateral sclerosis (ALS), post-polio, spina bifida and other spinal cord disorders. Each year, United Spinal Association helps thousands of people of all ages overcome the daily challenges of living life with a disability. And we extend our unending support to those most important in their lives – their family members and caregivers.

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FREQUENTLY ASKED QUESTIONS ABOUT THE ADA

What is the Americans with Disabilities Act?

The Americans with Disabilities Act of 1990 (ADA) is the most comprehensive law ever passed to protect the civil rights of individuals with disabilities.

The ADA enables people with disabilities to participate more fully in their communities, compete more effectively for jobs, travel more easily in their hometowns and across the nation, and gain more complete access to the goods and services that most Americans take for granted. United Spinal Association is proud to have played a role in the passage of this landmark law.

While many Americans have heard about the ADA, few know what this important law requires. The following are answers to some commonly asked questions about the ADA.

Whom does the ADA protect?

Some 54 million Americans have a disability covered by the ADA. While the ADA does not offer a list of covered disabilities, some well-established examples covered by the law include (to name only a few) spinal cord injury, blindness, hearing impairment, epilepsy, HIV infection and AIDS, diabetes, multiple sclerosis, muscular dystrophy, emphysema, cancer, dyslexia, organic brain disorder, cognitive impairment, and depression. (See page 9 for the ADA's definition of a person with a disability.)

What conditions are not protected by the ADA?

The ADA does not cover temporary, nonchronic impairments with no lasting impact, such as sprains, simple fractures, colds, and influenza; homosexuality and bisexuality, which are not impairments; or sexual and behavioral disorders, including transvestism, transsexualism, compulsive gambling, klepto-mania, and pyromania. The ADA also does not protect individuals who are currently abusing controlled substances.

Whom does the ADA affect?

The ADA affects any business or institution, public or private, that employs 15 or more people or offers goods or services to the public. That means virtually every public or private entity in the U.S. must make some accommodations for the people with disabilities whom they serve or employ.

Who is not affected by the ADA?

Executive agencies of the U.S. government are exempt from the provisions of the ADA but are covered by similar regulations promulgated by other disability nondiscrimination laws.

Also not covered are corporations fully owned by the U.S. government, Indian tribes, and bona fide private clubs that are exempt from taxation under the Internal Revenue Code. Private clubs and religious organizations are exempt from the Title III (public accommodations) provisions. (See page 19 for more information about religious organizations.)

What must employers do to comply with the ADA?

They must provide “reasonable accommodation” to their employees who live with disabilities. For example, a wheelchair user may need to have a desk raised onto blocks so that he or she can roll under it, or an individual with low vision may need a large-print computer monitor to work effectively.

Employers may not deny a job to a qualified applicant with a disability solely on the basis of the disability. They may not require an applicant to take a pre-employment medical exam, nor may they inquire about or discuss a prospective employee’s disability in any manner that has no bearing on the applicant’s ability to perform the job being offered. (See page 10 for more information on the ADA’s employment provisions.)

What must affected businesses do to comply?

Most businesses can improve access to their goods and services by building ramps, widening doorways, rearranging display racks, making shopping checkout counters wheelchair accessible, or providing alternative means of service if structural

access changes are not feasible. Providers of transportation must make their vehicles and stations accessible, and public entities that operate fixed-route service must provide complementary paratransit to passengers with disabilities. Telecommunications companies must make “relay” services available 24 hours per day at no extra charge to individuals with hearing and speech impairments. (See page 16 for more information on the ADA’s public accommodations provisions and page 21 for more information on telecommunications services.)

What are state and local governments required to do to comply with the ADA?

State and local governments must provide “program accessibility” to their services for persons with disabilities. Any department, agency, or instrumentality of a state or local government—including state legislatures, district courts, police and fire departments, school districts, motor vehicle registration offices, and polling places—is required to make reasonable modifications to its policies, practices, and procedures to ensure full access to people with disabilities. (See page 16 for more information on the responsibilities of public entities.)

When did the ADA go into effect?

For most intents and purposes, the ADA went into effect on January 26, 1992.

What are the penalties for noncompliance?

The ADA encourages alternative means of dispute resolution in cases of conflict between the rights of individuals with disabilities and the responsibilities of affected public and private entities. When conflict must be resolved in court, however, employers can be fined up to \$300,000 if found in violation of the ADA’s employment provisions, and places of public accommodation can be fined as much as \$100,000 for failing to make their buildings and services accessible. (See page 23 for more information about penalties and other remedies for noncompliance.)

Who oversees implementation of the law?

Title I of the ADA, which covers employment, is enforced by the U.S. Equal Employment Opportunity Commission. The state and local government provisions of Title II and the public accommodations provisions of Title III are enforced by the U.S. Department of Justice. The transportation provisions of Titles II and III are enforced by the U.S. Department of Transportation. Title IV, which covers telecommunications, is enforced by the Federal Communications Commission. (See page 23 for more information about enforcement of the ADA.)

How much does the ADA cost and who pays for it?

Businesses and institutions affected by the law must cover the cost of making their workplaces, state and local government buildings, transportation vehicles and facilities, and places of public accommodation accessible. However, in most cases, workplace accommodations cost less than \$500, and tax credits for small businesses of up to \$5,000 and deductions of up to \$15,000 per year are available for small businesses that comply. (See page 12 for more information on the costs of the ADA and pages 24-26 for more information about tax credits and deductions.)

A LITTLE HISTORY...

On July 26, 1990, President George Bush signed into law the Americans with Disabilities Act of 1990 (ADA). The ADA provides civil rights protection to people with disabilities and guarantees those protected by the law equal opportunity in these areas:

- ♦ Employment
- ♦ State and local government services
- ♦ Public transportation
- ♦ Privately operated transportation available to the public
- ♦ Places of public accommodation
- ♦ Telecommunications services offered to the public

INTRODUCTION

Many regard the ADA as the most sweeping piece of civil rights legislation since the Civil Rights Act of 1964. Others believe that because of the many structural and communications barriers the ADA will remove, it is the farthest-reaching civil rights law ever enacted.

The ADA is the legislative culmination of the disability rights movement that began with the independent living movement of the 1970s. The desire to become active participants in society and enjoy life, liberty, and the pursuit of happiness on a par with citizens without disabilities, has drawn together people with every kind of disability.

The goal of full participation in society led to the passage of the Rehabilitation Act of 1973 and the Education For All Handicapped Children Act of 1974 (since renamed IDEA—the Individuals with Disabilities Education Act). The Rehabilitation Act prohibited discrimination on the basis of disability in federally-funded programs and improved access to, among other services, health care, social services, recreation, housing, and transportation. Perhaps most importantly, the Rehabilitation Act gave people with disabilities educational opportunities that they had never enjoyed before. IDEA went further, requiring that schools mainstream students with disabilities into regular classrooms whenever appropriate. IDEA also established individualized educational programs for students with disabilities.

Despite these initiatives, a 1985 Louis Harris Company survey of people with disabilities found that the common thread of discontent running through the disabled community was unemployment. The Harris poll indicated that 67 percent of Americans with disabilities between the ages of 16 and 64 were unemployed; only 25 percent were reported to be employed full-time. The Harris poll results confirmed one finding of the

1980 census: While nondisabled men participated in the labor force at a rate of 88 percent and nondisabled women at a rate of 64 percent, only 42 percent of men with disabilities and 24 percent of women with disabilities were employed. Several studies conducted during the 1980s indicated a steady growth from year to year in the numbers of persons with disabilities ready to enter the labor force. A 1994 Harris poll, however, showed that unemployment among people with disabilities remained constant: While 79 percent said they wanted to work, two thirds of respondents with disabilities between 16 and 64 reported being unemployed.

The Kessler Foundation/National Organization on Disability 2010 Survey of Americans with Disabilities found that 21 percent of people with disabilities are employed full- or part-time versus 59 percent of people without disabilities—a gap of 38 percentage points. The gap was 50 points in 1998, 49 points in 2000, and 43 points in 2004. For more information, visit www.2010DisabilitySurveys.org. Unfortunately, this survey found that little progress has been made in closing the employment gap in people with and without disabilities since the passage of the ADA.

Definition of a Person With a Disability

As defined by the ADA, a disability is a physical or mental impairment that substantially limits a major life activity, such as walking, seeing, hearing, learning, breathing, caring for oneself, or working.

The ADA protects three classes of people with disabilities:

- » those who have a disability
- » those who have a record of having a disability
- » those who are regarded as having a disability, whether or not they actually have one, if their being perceived as having one results in discrimination

According to the ADA's definition, a person living with a spinal

cord injury or who is blind is protected by the law because he or she currently has a disability. A person who has recovered from cancer or who has a history of being institutionalized for mental illness, for example, is protected because he or she has a record of having a disability. The ADA also protects, for example, a person suspected of having AIDS, whether or not the suspicion is justified, because he or she is regarded as having a disability.

TITLE I: KEY EMPLOYMENT PROVISIONS

Employers with 15 or more employees are prohibited from discriminating against qualified individuals with a disability in all of the following areas:

- ◆ Job application procedures
- ◆ Job training
- ◆ Hiring, advancement, or discharge of employees
- ◆ Employee compensation
- ◆ Other terms, conditions, and privileges of employment

The ADA's requirements also cover employment agencies, labor organizations, and joint labor-management committees.

Types of prohibited discrimination in employment include:

- » segregating or classifying an applicant or employee in a way that adversely affects employment opportunities because of the individual's disability
- » participating in a contractual arrangement that has the effect of discrimination against the applicant or employee
- » using methods of administration that have the effect of discrimination or perpetuate the discrimination of others
- » discriminating based on a qualified individual's relationship or association with another individual, such as a spouse or child, with a known disability
- » using tests or other selection criteria that tend to screen

- out an individual or a class of individuals with disabilities
 - » failing to select and administer tests that accurately reflect the skills and aptitude of an applicant
 - » denying employment solely on the basis of the need to make “reasonable accommodation” (see below) for the disability of a qualified applicant
 - » not making reasonable accommodation for the disability of the qualified employee, unless such accommodation would impose an “undue hardship” (see page 12) on the employer

Reasonable Accommodation

Making reasonable accommodation for the disability of a qualified applicant or employee is key to the successful employment of people with disabilities. This practice is not new. Since the 1970s, reasonable accommodation has been required in regulations written by the Equal Employment Opportunity Commission (EEOC) and the Department of Justice to implement the Rehabilitation Act’s antidiscrimination rules.

The ADA defines “reasonable accommodation” as efforts that may include, among other adjustments:

- » making the workplace structurally accessible to people with disabilities
- » restructuring jobs to make best use of an individual’s skills
- » modifying work hours
- » reassigning an employee with a disability to an equivalent position as soon as one becomes vacant
- » acquiring or modifying equipment or devices
- » appropriately adjusting or modifying examinations, training materials, or policies
- » providing qualified readers for the blind or interpreters for the deaf

Employers are not required to supply personal items, such as eyeglasses, wheelchairs, or hearing aids, for employees with disabilities.

The EEOC recommends that employers consult applicants or employees with disabilities before making the accommodation. In many cases, the person with a disability can suggest a simple change or adjustment, based on his or her work or life experience. In cases where the adjustment is not so easy to identify, the EEOC Title I technical assistance manual offers useful guidelines for reasonable accommodation.

Undue Hardship

The ADA includes standards to determine whether an accommodation is, in fact, reasonable or constitutes an undue hardship—logistically or financially—for an employer. Criteria for making such a determination include the nature and cost of the accommodation, the financial resources of the employer, or the impact of such accommodation on the financial resources of the employer.

The Cost of Implementing the ADA

Some have argued that implementing the ADA will cost businesses a fortune. This is a misconception. Data from an EEOC study indicates that only 22 percent of employees with disabilities need accommodations at the work site.

In addition, according to the Job Accommodation Network (JAN), a service from the U.S. Department of Labor's Office of Disability Employment Policy, two-thirds of accommodations cost less than \$500, with many costing nothing at all. Tax incentives (see page 24 for more detail) are available to help employers cover the costs of accommodations, as well as the modifications required to make their businesses accessible to people with disabilities.

Pre-Employment Medical Screenings and Drug Use

The ADA prohibits pre-employment medical examinations and inquiries about the nature and severity of an applicant's disability. However, an employer may require a medical

examination after an offer of employment has been made if all entering employees are subject to such examination regardless of disability. Employers may ask applicants to explain or demonstrate how they might perform the functions of the job for which they are applying, with or without reasonable accommodation, but all such inquiries must be strictly job-related. Voluntary medical examinations that entail giving medical histories, when conducted as part of a standard employee health program, are also acceptable under the ADA.

The ADA specifically states that a qualified individual with a disability does not include any employee or applicant who is currently engaged in the illegal use of drugs (see definition of a person with a disability on page 9). Employers may utilize drug testing to ensure that individuals who have completed or are enrolled in rehabilitation programs remain drug free. The ADA gives additional authority to employers to:

- » prohibit the use of drugs and alcohol at the workplace
- » hold all employees, regardless of disability, who abuse drugs or alcohol to the same job performance criteria as other employees
- » require all employees to comply with other federal regulations for certain industries concerning drug and alcohol abuse

The ADA in the Public and Private Sectors

Title II of the ADA prohibits discrimination in public services, including those of state and local governments and their instrumentalities; Title III prohibits discrimination in public accommodations operated by private entities. Taken together, Titles II and III provide protection from discrimination to individuals with disabilities in the full range of goods and services available to the public. With few exceptions, enforcement of the ADA will make almost every community facility and service available to people with disabilities.

TITLE II: MAJOR PROVISIONS FOR PUBLIC SERVICES

Public services cannot discriminate against people with disabilities. State and local governments and any of their “departments, agencies, or instrumentalities” are required to make reasonable modifications to their policies, practices, and procedures that deny equal access to people with disabilities. State and local governments must ensure the program accessibility of their facilities.

Existing buildings need not be fully accessible, but the programs offered from them, when viewed in their entirety, must be accessible. Public entities must furnish auxiliary aids and services when necessary to ensure effective communication and may not place a special charge to cover the costs. They must eliminate unnecessary eligibility standards that deny people with disabilities an equal opportunity to enjoy their services. They may not refuse people with disabilities the right to participate in a service, program, or activity and must maintain these offerings in an integrated setting.

On July 23, 2010, Attorney General Eric Holder signed final regulations revising the U.S. Department of Justice’s Title II regulations, including its ADA Standards for Accessible Design. The official text was published in the Federal Register on September 15, 2010 (corrections to this text were published in the Federal Register on March 11, 2011). The revised regulations amend the Department’s Title II regulation, 28 CFR Part 35. Appendix A includes a section-by-section analysis of the rule and responses to public comments on the proposed rule. These final rules went into effect on March 15, 2011. Compliance with the 2010 Standards for Accessible Design is permitted as of September 15, 2010, but not required until March 15, 2012.

Public Transportation

Any public bus system that operates fixed-route service (along a prescribed route according to a schedule) must purchase or lease buses that are accessible to wheelchair users and other people with disabilities, regardless of whether the vehicles are new, used, or remanufactured. The remanufacturing of a fixed-route vehicle, if it extends the life of that vehicle for 5 or more years, must incorporate the same kinds of accessibility features that apply to new buses. Historic vehicles do not have to comply with this rule.

Public entities that operate fixed-route services must also provide complementary paratransit (comparable service for people with disabilities who cannot use the regular service) or other special transportation in their service area.

New construction and alteration of existing public transportation facilities must comply with the ADA and ABA Accessibility Guidelines for Buildings and Facilities issued by the U.S. Access Board on July 23, 2004. The Department of Transportation (DOT) adopted these Guidelines with an effective date of November 29, 2006. DOT modified the Guidelines concerning accessible routes (206.3), detectable warnings on curb ramps (406.8), bus boarding areas (810.2.2), and rail station platforms (810.5.3).

The ADA requires that most “key” stations should have been made accessible by 1993. The DOT defines key stations as ones that have above-average passenger boardings, transfer points between two or more lines, interchange with other transportation modes, or that are end stations or stations that serve major activity centers. Subway, trolley, and commuter rail systems were required to make their key stations accessible by July 26, 1993; however, if the alterations involve extraordinarily expensive structural changes, some commuter rail systems had an opportunity to apply for an extension to the year 2010, and

some subway and trolley systems to the year 2020. In any case, two thirds of the nation's key rail stations and all Amtrak stations had to be accessible by the year 2010. All rail systems must ensure that at least one car per train is accessible to wheelchair users and other people with disabilities. The "one car per train" rule and deadline apply equally to subway, trolley, and commuter systems, as well as to Amtrak. Trains of historic character may be exempted from this provision.

New, used, or remanufactured rail passenger cars purchased by Amtrak or subway, trolley, or commuter rail systems must be accessible to people with disabilities. The number of wheelchair securement locations and transfer seat/wheelchair stowage areas must equal half the number of single-level passenger coaches on any Amtrak train. The number of such areas must equal the total number of coaches on the train. Amtrak must also provide accessible public restrooms, as well as access to food service, lounge, dining, and sleeper cars.

TITLE III: MAJOR PROVISIONS CONCERNING PUBLIC ACCOMMODATIONS OPERATED BY PRIVATE ENTITIES

Private entities that own, lease, lease out, or operate a place of public accommodation cannot discriminate against people with disabilities. This generally forbids:

- » imposing eligibility criteria that tend to screen out individuals or classes of persons with disabilities from fully enjoying goods or services offered to the general public
- » failing to make reasonable modifications in the policies and practices of the place of public

TITLE III: MAJOR PROVISIONS CONCERNING PUBLIC ACCOMMODATIONS OPERATED BY PRIVATE ENTITIES

accommodation

- » failing to provide necessary auxiliary aids and services in a place of public accommodation
- » failing to remove architectural and communication barriers in a place of public accommodation if such removal is “readily achievable” or easily accomplished with little difficulty or expense
- » failing to provide the means to accommodate people with disabilities through alternative methods when the removal of architectural or communication barriers is not readily achievable

Readily achievable barrier removal should have been accomplished by January 26, 1992. This is an ongoing obligation for public accommodations. Readily achievable work yet to be accomplished should follow these priorities:

- » access to areas where goods or services are offered
- » public restroom access
- » entrance access
- » access to all other areas

New Construction and Alterations

Since January 26, 1993, construction of commercial facilities and places of public accommodation for first occupancy and alterations to existing facilities must be made accessible. The ADA Standards for Accessible Design were updated and published in the Federal Register on September 15, 2010 (corrections to this text were published in the Federal Register on March 11, 2011). The revised regulations amend Title III regulation, 28 CFR Part 36. Appendix A includes a section-by-section analysis of the rule and responses to public comments on the proposed rule. Appendix B discusses major changes in the ADA Standards for Accessible Design. These final rules went into effect on March 15, 2011. Compliance with the 2010 Standards for Accessible Design is permitted as of

September 15, 2010, but not required until March 15, 2012.

When a public accommodation's primary function area is altered, not only must it be made accessible, but the path of travel to it—including entrances, bathrooms, telephones, and drinking fountains—must also be accessible, as long as the cost of modifying these features does not exceed 20 percent of the original alteration cost. Elevators are not required in places of public accommodation and commercial facilities that have fewer than three stories or that have less than 3,000 square feet per story, unless the facility is a shopping center, a shopping mall, a health care provider's office, a transportation terminal, or an airport.

Public Accommodations

The following private entities are considered public accommodations under the ADA:

- » inns, hotels, motels, or other places of lodging, except for those with five or fewer rooms for hire in a building that the owner uses as a private residence
- » restaurants, bars, or other establishments serving food or drink
- » motion picture houses, theaters, concert halls, stadiums, or other places of exhibition or entertainment
- » auditoriums, convention centers, lecture halls, or other places of public gathering
- » bakeries, grocery stores, clothing stores, hardware stores, shopping centers, or other sales or rental establishments
- » laundromats, dry cleaners, banks, barber shops, beauty shops, travel services, shoe repair services, funeral parlors, gas stations, accounting or law offices, pharmacies, insurance offices, professional offices of healthcare providers, hospitals, or other service

TITLE III: MAJOR PROVISIONS CONCERNING PUBLIC ACCOMMODATIONS OPERATED BY PRIVATE ENTITIES

- establishments
 - » terminals, depots, or other stations used for specified public transportation
 - » museums, libraries, galleries, or other places of public display or collection
 - » parks, zoos, amusement parks, or other places of recreation
 - » nursery, elementary, secondary, undergraduate, or postgraduate private schools, or other places of education
 - » day care centers, senior citizen centers, homeless shelters
 - » food banks, adoption agencies, or other social service centers, gymnasiums, health spas, bowling alleys, golf courses, or other places of exercise or recreation

The ADA exempts private clubs and religious organizations, including places of worship, from its public accommodation requirements.

Religious Organizations

Religious institutions are not completely exempt from the employment provisions of the ADA. A religious organization may give preference to a member of its own religion in its hiring practices but cannot discriminate on the basis of disability against members of its own religion. Religious organizations, however, are fully exempt from the public accommodations provisions of Title III.

Requirements for Private Transportation Providers

The prohibition of discrimination in places of public accommodation also extends to any transportation they may provide, even when they are not primarily in the business of transporting people. Shuttle services and other transportation systems for hotels, shopping centers, amusement parks, private universities, and car rental

TITLE III: MAJOR PROVISIONS CONCERNING PUBLIC ACCOMMODATIONS OPERATED BY PRIVATE ENTITIES

agencies are all required to make their vehicles and services accessible to riders with disabilities.

Private entities whose primary business is transporting people, such as tour operators, commuter van services, taxi companies, and over-the-road bus services, must also provide accessible facilities and vehicles.

Private Entities “not primarily” in the Transportation Business

Type of System	Capacity of Vehicle	Requirement
Fixed-Route	Over 16	Acquire accessible vehicle
Fixed-Route	16 or less	Acquire accessible vehicle or provide equivalent service
Demand-Responsive	Over 16	Same as above
Demand-Responsive	16 or less	Provide equivalent service

Private Entities “primarily” in the Transportation Business

Type of System	Type of Vehicle	Requirement
Fixed-Route	All new vehicles except automobiles, vans with less than 8 passengers, or over-road buses	Acquire accessible vehicle
Demand-Responsive	Same as above	Acquire accessible vehicle or provide equivalent service
Either Fixed Route or Demand-Responsive	New vans, less than 8 passengers	Same as above

Privately-owned over-the-road bus companies (i.e., those that use Greyhound-style buses) acquiring new buses must purchase or lease only accessible vehicles. Until all of the buses are accessible, bus companies must provide boarding assistance and transport wheelchairs and

TITLE IV: TELECOMMUNICATIONS SERVICES FOR HEARING IMPAIRED & SPEECH IMPAIRED INDIVIDUALS

scooters upon 48 hours advanced notice.

Aircraft, which are covered by the federal Air Carrier Access Act of 1986, and vehicles owned or leased by private citizens are the only modes of transportation not covered by the ADA.

TITLE IV: TELECOMMUNICATIONS SERVICES FOR HEARING IMPAIRED & SPEECH IMPAIRED INDIVIDUALS

Each common carrier engaged in interstate communications by wire or radio must provide telecommunications relay services for people with hearing and/or speech impairments. Such services give a person who lives with these disabilities an opportunity to communicate with any other individual. Telecommunications relay services include those that enable two-way communication between an individual who uses a Telecommunications Device for the Deaf (TDD) or other nonvoice terminal device and one who does not use such a device.

The Federal Communications Commission, which has primary enforcement responsibility for this section of the ADA, has issued regulations to implement the law's provisions for intrastate and interstate telecommunications relay services. The regulations ensure, among other standards, that these services operate 24 hours every day and that their users not be required to pay greater rates than those for equivalent services used by people without hearing or speech impairments.

Title IV of the ADA also requires that any television public service announcement produced or funded in whole or in part by an agency or instrumentality of the federal government must include closed captioning of the verbal content.

For more information, visit the Federal Communications Commission Website at www.fcc.gov.

TITLE V: MISCELLANEOUS PROVISIONS

Insurance

Insurers, hospitals or medical service companies, and health-maintenance organizations may underwrite, classify, and administer risks as they have in the past. Nothing in the ADA impedes an entity covered by the law from administering a bona fide benefit plan, if it underwrites risks based on state insurance laws, sound underwriting principles, or if it is not subject to state laws that regulate insurance.

Congress Responsibilities

The ADA requires both the U.S. Senate and the U.S. House of Representatives abide by the rights and protections provided under the ADA. This protection covers the rights of those people with disabilities who are either employed by or seeking employment from Congress or who are seeking lawful access to U.S. Capitol buildings.

Technical Assistance Manuals and Accessibility Guidelines

The U.S. Department of Justice (DOJ) and the Equal Employment Opportunity Commission publish technical assistance manuals explaining the requirements of the ADA. You may also visit the Website www.usdoj.gov or www.ada.gov for more information.

ADA and ABA Accessibility Guidelines

On July 23, 2004 the Access Board published the revised ADA/ABA Accessibility Guidelines (Americans with Disabilities Act/Architectural Barriers Act Guidelines). Several federal agencies have adopted the revised Guidelines. The Department of Transportation adopted new ADA standards based on

the Board's updated guidelines effective November 29, 2006. The United States Postal Services adopted the new standards effective October 1, 2005. The Government Services Administration (GSA) adopted new standards based on the Board's updated ABA guidelines on November 8, 2005, which apply to construction and alterations that commence after May 8, 2006.

The Department of Justice adopted new regulations (Title II & Title III) on September 15, 2010 (See pages 14 & 17). Other federal agencies have not yet adopted them and until this happens, the 1991 Americans with Disabilities Act Accessibility Guidelines (ADAAG) remain in effect for entities governed by these departments. For more information, visit the Access Board Web site at www.access-board.gov.

Note: The International Building Code (IBC) and its accessibility standard A117.1, are already referenced by most jurisdictions in the country and have been “harmonized” with new federal accessibility guidelines.

ENFORCEMENT & DISPUTE RESOLUTION

The Equal Employment Opportunity Commission (EEOC) is charged with enforcing the ADA's employment provisions. Remedies for individuals who are discriminated against in the workplace because of a disability may include hiring, reinstatement, promotion, back pay, front pay, restored benefits, reasonable accommodation, attorneys' fees, expert witness fees, and court costs. The EEOC may also assess punitive damages against employers who intentionally discriminate, or who act with malice or reckless indifference, according to the following schedule:

Number of Employees	Maximum Damages
11 to 100	\$50,000
101 to 200	\$100,000
201 to 500	\$200,000
500 or more	\$300,000

The law also requires that federal agencies coordinate their efforts to implement the ADA's antidiscrimination in employment statutes. This provision is designed to encourage consistent standards and help agencies avoid duplicating each other's efforts.

The DOJ has the primary enforcement responsibility for Titles II and III. In enforcing Title III, the DOJ can order injunctive relief in actions against places of public accommodation that have not made a good faith effort to comply after January 26, 1992.

The DOJ may also assess civil penalties against violators of the public accommodations section of the ADA, not to exceed \$50,000 for a first violation and \$100,000 for any subsequent violation.

One of the more important miscellaneous provisions in Title V of the ADA encourages alternative means of dispute resolution, such as settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration. These methods are encouraged to resolve disputes arising under the ADA before they reach the costly stage of litigation.

Tax Credits for Compliance: Section 44 of the IRS Code

In the provisions of the Revenue Reconciliation Act of 1990, Congress adopted an important new tax credit for barrier removal in existing buildings and facilities that comply with the ADA. Effective for expenditures paid or incurred after November 5, 1990, Internal Revenue Code Section 44 allows an eligible small business to elect a nonrefundable tax credit equal to half the cost of eligible accommodations for expenditures

above \$250. The maximum credit a business can elect for any tax year is \$5,000 for eligible expenditures of \$10,250 or more.

An eligible small business is defined as any person (the term includes corporation) that had gross receipts for the preceding tax year that did not exceed \$1 million, or that had no more than 30 full-time employees. An employee is considered full-time if he or she worked at least 30 hours per week for 20 or more calendar weeks in the tax year.

Eligible access expenditures specifically include amounts paid or incurred:

- » for the purpose of removing architectural, communication, physical, or transportation barriers that prevent a business from being accessible to, or usable by, people with disabilities
- » to provide qualified interpreters or other effective methods of making aurally delivered materials available to people with hearing impairments
- » to provide qualified readers, taped texts, and other effective methods of making visually delivered materials available to people with visual impairments
- » to acquire or modify equipment or devices for people with disabilities
- » to provide other similar services, modifications, materials, or equipment

The Section 44 tax credit can be elected in more than one tax year. No other deduction or credit is allowed under any other IRS Code provision (e.g., Section 190 of the IRS Code) for the amount of the access credit. However, expenditures that exceed that amount can be deducted under another IRS Code provision for which they qualify. For an expenditure of \$10,000, for example, an eligible business could take a disabled access credit of \$4,875 (\$10,000 minus \$250, divided by two), then take the remaining \$5,125 as a section 190 deduction, assuming it otherwise qualifies.

Tax Deductions for Compliance: Section 190 of the IRS Code

Businesses, private entities, and places of public accommodation, including transportation systems, that comply with the ADA may receive an annual tax deduction of up to \$15,000. This applies only to the removal of barriers at existing places of business or trade.

Covered design areas include:

- » Gradings
- » Walks
- » Parking Lots
- » Ramps
- » Entrances
- » Doors and Doorways
- » Stairs
- » Floors
- » International Symbol of Accessibility
- » Additional Standards for Rail Facilities
- » Rest Rooms
- » Water Fountains
- » Public Telephones
- » Elevators
- » Controls
- » Identification
- » Warning Signals
- » Hazards
- » Standards for Buses
- » Standards for Rapid and Light Rail Vehicles

In general, the IRS Code Section 190 covers:

- » the removal of a substantial barrier to the access or use of a facility or public transportation vehicle
- » the removal of a barrier to one or more major classes of individuals with disabilities (such as persons who are blind or deaf or persons using wheelchairs)
- » the removal of a barrier being accomplished without creating any new barrier that significantly impairs

access to or use of the facility or vehicle

This provision of Section 190 is meant to cover barrier removals that are not detailed specifically in the ADA regulations as well. For example, if the barrier removal is covered in a local code section governing provisions for persons who are physically disabled, it would be an eligible expense under this provision of IRS Code Section 190.

For businesses that remove barriers in existing facilities, United Spinal Association recommends they follow the ADAAG or an equivalent local standard to qualify for the IRS Section 44 tax credit or the Section 190 tax deduction.

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