



# **AMERICANS WITH DISABILITIES ACT**

**Signed by President Bush, July 26, 1990**



**National Council on Disability**



The National Council on Disability is an independent federal agency with 15 members appointed by the President of the United States and confirmed by the U.S. Senate. It is the only federal agency charged by Congress with addressing, analyzing, and making recommendations on issues of public policy that affect people with disabilities.

The Americans with Disabilities Act (ADA), was first proposed in the 1986 special report of the National Council on Disability, *Toward Independence*. In 1988, the National Council outlined the blueprint for the ADA in another special report entitled *On The Threshold of Independence*.

The ADA, which was signed into law by President Bush on July 26, 1990, is a wide-ranging civil rights statute that prohibits discrimination against people with disabilities — similar to the protection given to women, minorities and others since the Civil Rights Act of 1964 was enacted.

Protected are an estimated 43 million Americans with physical or mental impairments that substantially limit activities such as working, walking, talking, seeing, hearing, or caring for oneself. People who have a record of such an impairment and those regarded as having an impairment are also protected.

People with AIDS or who are HIV-positive are protected. Individuals who are in or have successfully completed rehabilitation for alcoholism or drug abuse are protected, but not those currently engaging in the illegal use of drugs.

## Title I — Employment

Title I of ADA bars employment discrimination in the public and private sectors and in state and local governments. Prior to its passage, any discrimination — including employment — was prohibited in Federal Government operations, as well as in those of employers — including state and local government — that received federal funds. Companies doing more than \$2,500 a year of business with the Federal Government had to take “affirmative steps” in hiring and promoting people with disabilities.

ADA takes an across-the-board approach to antidiscrimination protection in employment. It bans discrimination and requires reasonable accommodation in recruiting, hiring, employing, promoting and training qualified workers with disabilities. The term “qualified” refers to an individual with a disability who — with or without reasonable accommodation — can perform the essential functions of the job held or sought. Consideration is given to the employer’s judgment as to what functions of a job are essential. If an employer develops a written job description before recruiting or interviewing applicants, this description is considered evidence of the essential functions.

Employers of 25 or more workers — the number employed each work day in each of 20 weeks in the current or preceding year — are affected starting 2 years after ADA was signed. Employers of 15 or more are covered 2 years later. Private membership clubs — except labor unions — are exempt. “Reasonable accommodation” may include making facilities used by employees accessible and usable by individuals with disabilities. It may also include restructuring jobs, setting up a part-time or modified work schedules, purchasing or modifying equipment or devices; modifying examinations, training materials, or policies; and providing qualified readers or interpreters.

Accommodation is required unless it results in “undue hardship” — significant difficulty or expense to the employer. Factors to be considered include the nature and cost of the accommodation, and the financial resources and overall size of the business in terms of the number of workers, the number of facilities, and the structure

ADA bars discrimination in employment and requires most employers to make reasonable accommodations for qualified employees with disabilities beginning in 1992. It also bars discrimination in any activity or service operated or funded by state or local government — similar to a 1973 requirement for services operated or funded by the Federal Government.

ADA prohibits discrimination in commercial facilities and public accommodations — hotels, restaurants, stores, theaters and museums, among others. New buses, trains, subway cars and rail stations will have to be made accessible in the next few years. Accessible paratransit services must be provided that are comparable to fixed-route transportation services. Phone companies must provide relay services so that people with speech or hearing impairments can converse with people or businesses that use conventional voice phones.

While many states have laws banning discrimination against people with disabilities, the National Council on Disability felt that the lack of a consistent standard across the nation left people with disabilities living as second-class citizens — unable to move about as freely as people without disabilities and viewed as dependent people unable to work. Unemployment among people with disabilities is higher than in any other group.

and functions of the workforce.

A “qualified individual with a disability” in the employment portion of ADA does not include anyone who is currently engaging in the illegal use of drugs. Protection is provided, however, to someone who is incorrectly regarded as using drugs. Also protected from discrimination are individuals who have completed or are participating in supervised drug rehabilitation programs and who are no longer using drugs.

An employer may prohibit the use of alcohol and the illegal use of drugs at the workplace and require that employees not be under the influence of either while on the job. Drug testing is permitted and is not considered to be a medical examination.

Pre-employment medical exams can be required if they apply to all entering employees, without regard to disability. Exams cannot be used to determine whether a person has a disability or to evaluate its nature or severity. The employer may, however, ask whether the applicant can perform job-related functions.

While ADA was being considered in Congress, an effort was made to amend it so that anyone who had AIDS, was HIV-positive or was regarded as having AIDS could be transferred out of a food-handling job. That requirement was dropped and a substitute inserted that required the Secretary of Health and Human Services to publish a list of infectious diseases that are transmitted through handling food. The list was issued in August 1991. If transmission cannot be eliminated through reasonable accommodations, an employer may refuse to assign an affected individual to a job involving food handling.

A year after ADA was signed, the Equal Employment Opportunity Commission (EEOC) issued regulations implementing employment provisions. Most of the enforcement aspects of Title I will be handled by the EEOC and the Attorney General and through individual lawsuits.



## Title II — Public Service and Public Transportation

Title II of ADA is devoted to prohibiting discrimination in services, programs, or activities of a "public entity" — any state or local government (any department, agency, special-purpose district, or instrumentality of state or local government, including public transportation services), the National Railroad Passenger Corporation (Amtrak), and intercity and commuter rail services generally.

No qualified individual with a disability may be excluded by reasons of such disability from participation in or be denied the benefits, services, programs, or activities of a public entity beginning January 26, 1993, 18 months after ADA was signed. Access standards must be consistent with the minimum requirements issued by the federal Architectural and Transportation Barriers Compliance Board (ATBCB). Implementing regulations for public services were issued a year after ADA's signing.

Most of the Title II focuses on public transportation — bus, rail, taxi and limousines. Air travel is not covered, since the Air Carriers Access Act already established air travel nondiscrimination and access requirements. Starting 30 days after ADA was signed, public entities purchasing or leasing new buses, rail cars, or other passenger-transporting vehicles must make certain that those vehicles are accessible and usable by people with disabilities, including those in wheelchairs. Vehicles that have been remanufactured to extend their usable life for 5 years or more must also be accessible. Historic vehicles may be exempt if accessibility modification would significantly alter their historic character.

If a public entity runs a fixed-route system other than solely commuter bus service, it must provide paratransit or other special transportation that is comparable in service level and response time to services provided to individuals who do not have disabilities using the fixed-route system, unless doing so would impose an undue financial burden. In such a case, the service must still be provided to the extent that it does not impose a burden.

New public transportation facilities must be made accessible. While existing facilities — except key stations — need not be retrofitted, portions of existing facilities being altered must be made accessible. Key stations must be made accessible in 3 years, although they have up to 30 years if expensive structural changes are needed. Two-thirds of key stations must be made accessible within 20 years.

Commuter rail services must have at least one accessible car on each train as soon as possible, but not later than 5 years after ADA's signing. Exceptions may be made for historic trains.

Commuter rail service and Amtrak share these requirements — one accessible car per train within 5 years; cars purchased or leased 30 days or more after ADA's approval must be accessible; accessible rail coaches must have an accessible restroom; remanufactured cars, to the extent feasible, must be made accessible if the rebuilding extends the life of the car for 10 years or longer; new stations must be accessible, and all stations must be made accessible within 20 years.

The Secretary of Transportation issued regulations for the implementation of these requirements.



## Title III — Public Accommodations

Title III of ADA became effective 18 months after ADA's approval, on January 26, 1992. Title III prohibits discrimination on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation and services operated by private entities. The goods, services and accommodations must be offered in the most integrated setting appropriate to the needs of the individual.

A place of public accommodation specifically identified in ADA can be a hotel, motel, or inn (except one in which the proprietor lives that has five or fewer rooms for rent); an establishment serving food or drink; a theater, concert hall, stadium or other place of exhibition or entertainment; an auditorium, convention center or lecture hall; a bakery, grocery, clothing or hardware store, shopping center, or other sales or rental establishment; a service establishment such as a laundromat, bank, barber or beauty shop, funeral parlor, gas station, accountant or lawyer, hospital or health-care provider.

Also covered are: a transportation terminal or station; a museum, library, gallery, park, zoo, or amusement park; a nursery, private school (elementary through postgraduate), or other place of education; a day-care or senior citizen center; a homeless shelter; a food bank, adoption agency, or other social service center; and a

gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

New facilities to be occupied 2 1/2 years or later after ADA's enactment have to be accessible unless it is structurally impossible to make them so. Newly altered portions of facilities must also be accessible. Elevators are not required in buildings with fewer than three stories or less than 3,000 square feet per story except for shopping malls, or offices of professional health-care providers.

Under this portion of ADA, it is discriminatory to fail to remove architectural and communication barriers in existing facilities, if removal is "readily achievable" that is, if it can be accomplished without much difficulty or expense. Factors to be considered include the nature and cost of the structural modification as well as the size, financial resources and type of business. If the barrier cannot readily be removed, the goods or services must be made available through alternative methods.

It will be considered discriminatory to fail to make reasonable modifications in policies, practices and procedures that would enable a person with a disability to have the same opportunity as a person without a disability to obtain the goods, services or privileges. Regulations to implement the public accommodations requirements come from the Attorney General.



Private entities (other than airlines) that are primarily in the business of transporting people are required to purchase or lease only accessible fixed-route vehicles if they carry more than 16 passengers, starting 30 days after ADA was signed. Demand-response systems with vehicles seating eight or more (including the driver) must be accessible, and the services must be provided at a level equivalent to those provided to people without disabilities.

Over-the-road buses (those with baggage compartments below the passenger seating areas) must be accessible in 6 or 7 years,

depending on the size of the transportation company. These deadlines may be extended a year if the President determines, following review of a study due in 1993 from the Office of Technology Assessment, that there would be a reduction in service as the result of meeting the deadlines.

The Secretary of Transportation has issued regulations to implement ADA provisions affecting private transportation companies.

## **Title IV — Telecommunications**

Under Title IV of ADA, telecommunications relay services for people with speech and hearing impairments must be in place across the country by July 26, 1993. These services link users of telecommunications devices for the deaf (TDD) or other nonvoice devices and users of voice telephones.

The mandate calls for both intrastate relay services in all states and interstate services. New York, California and Alabama already provide intrastate relay services.

Title IV requires the relay services to operate 24 hours a day, 7 days a week. Relay operators may not alter conversations, limit the length of calls, or disclose to others the contents of relayed

conversations. Rates charged to relay users may not exceed those charged for functionally equivalent voice communications as regards to the duration of the call, time of day, and distance between the caller and the place called. Regulations for implementing these services were issued by the Federal Communications Commission.

Title IV also requires that television public service announcements produced or funded in whole or in part by any federal agency be closed-captioned.

## **Title V — Miscellaneous**

Title V of ADA is a potpourri of clarifications, exclusions and add-ons, many of which were inserted to clarify questions or concerns of some Members of Congress as the measure was debated.

Among the provisions are the following:

- Nothing in ADA, except as specifically provided, shall be construed to apply a lesser standard than one already required under Title V of the Rehabilitation Act of 1973 or the regulations issued as a result of that law.
- States are subject to ADA, and ADA does not limit or invalidate state or local laws that provide protection equal to or greater than that of ADA.
- Insurers may continue to underwrite and classify risks consistent with state law and entities covered may provide benefit plans based on risk classifications.
- No person can be discriminated against because he or she has made a charge, testified, assisted, or participated in an investigation, proceeding, or hearing under ADA.
- The winning party in an ADA action — other than the U.S. Government — may be awarded a reasonable attorney's fee, including litigation expenses and costs.

— The Attorney General — in consultation with the Chairman of the Equal Employment Opportunity Commission, the Secretary of Transportation, the Chairman of the Architectural and Transportation Barriers Compliance Board and the Chairman of the Federal Communications Commission — developed a plan to assist entities covered by ADA.

— The term "disabled" or "disability" does not apply to an individual solely because the person is a transvestite.

— Homosexuality and bisexuality are not considered as impairments under ADA.

— The term "disability" does not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments or other sexual behavior; compulsive gambling, kleptomania, or pyromania; or psychoactive substance use disorders resulting from current illegal use of drugs.



ADA/	TITLE	EFFECTIVE DATES/REGULATIONS
TITLE I		Two years after the bill was signed, July 26, 1992, for employers with 25 or more employees; 4 years after it was signed for employers with 15 or more employees. Regulations were issued by the EEOC 1 year after the bill was signed. 29 C.F.R. Part 1630.
Employment		
TITLE II		Eighteen months after the bill was signed. Regulations were issued by the Attorney General 1 year after bill was signed.
Public Service		
All activities of local and state governments		After August 25, 1990, all orders for new vehicles must be for accessible vehicles; one car per train must be accessible as soon as practicable, but no later than after 5 years; paratransit services must be provided after 18 months; new stations must be retrofitted in 3 years, with some extensions allowed for up to 30 years.
(Part I), Public transportation (buses, light and rapid rail including fixed-route systems, paratransit, demand-response systems and transportation facilities).		
(Part II), Public transportation by intercity Amtrak and commuter rail (including transportation facilities).		Within 10 years after the bill was signed, Amtrak passenger coaches must have the same number of accessible seats as would have been available if every car were built accessible; half of such seats must be available within 5 years. Same one-car-per-train rule and new stations rule as above. All existing Amtrak stations must be retrofitted within 20 years; key commuter stations must be retrofitted in 3 years, with some extensions allowed for up to 20 years. Regulations were issued by the Secretary of Transportation. 49 C.F.R. Parts 37 and 38.
TITLE III		Eighteen months after the bill was signed; 24 months for businesses with 25 or fewer employees and certain level of revenues; 30 months for businesses with 10 or fewer employees and certain level of revenues. Regulations based on standards issued by the ATBCB were issued by the Attorney General 1 year after bill was signed. 28 C.F.R. Part 36.
Public Accommodations		
A. Public accommodations (all business and service providers).		Eighteen months after the bill was signed for alterations. Thirty months after the bill was signed for new construction. Same as above.
B. New construction/alterations to public accommodations and commercial facilities.		
C. Pubic transportation provided by private entities.		
		In general, after August 25, 1990, for all new purchases or leases of accessible vehicles. Calls for a 3 year study of over-the-road buses to determine access needs, with requirements effective in 6 to 7 years. Standards to be issued by the ATBCB. Regulations were issued by the Secretary of Transportation. 49 C.F.R. Parts 37 and 38.
TITLE IV		Three years after the bill was signed, by July 26, 1993, telecommunications relay services to operate 24 hours per day. Regulations were issued by the Federal Communications Commission. 47 C.F.R. Parts 0 and 64.
Telecommunications		
TITLE V		In general, this title describes the ADA's relationship to other laws, exp inclusion, sets regulations by the ATBCB, explains implementation of e provides that state and local laws that afford persons with disabilities
Miscellaneous Provisions		



## ENFORCEMENT JURISDICTION

EEOC, Attorney General. Private right of action, remedies and procedures set forth in Title VII of the Civil Rights Act of 1964, as amended.

Private right of action; remedies and procedures set forth in Section 505 of the Rehabilitation Act of 1973.

Same as above.

Same as above.

Private right of action; remedies of Title II of the Civil Rights Act of 1964; Attorney General enforcement in pattern or practice cases.

Same as above.

Same as above.

Private right of action and Federal Communications Commission.

Obtains insurance issues, prohibits state immunity, provides congressional each Title and notes amendments to the Rehabilitation Act of 1973. It also greater protection than ADA remain in effect.

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