

LEGAL REPORT

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Americans With Disabilities Act Sets Guidelines For Private Businesses

Imagine going to your favorite restaurant only to find that you cannot physically enter the building. Unfortunately, this is a scenario people with disabilities face if a business is not compliant with the Americans with Disabilities Act (ADA). Under Title III of the ADA, businesses cannot discriminate against anyone due to a disability. These businesses include: retail stores, restaurants and bars, gas stations, funeral parlors, shopping centers, and many other types of businesses.

The ADA provides specific guidelines for businesses, such as:

Parking Lots

- A parking lot that contains 1-25 spaces must have a van accessible parking space with a minimum of a 96-inch wide access aisle.



- A lot with 26-50 parking spaces must have 2 accessible parking spaces, one with a 60-inch wide access aisle and one with a 96 inch wide aisle.
- 2% of the first 1000 parking spaces provided must be accessible.
- A sign with the international symbol of accessibility must be mounted high enough so it can be seen while a vehicle is parked in the space.
- Signs on the pavement alone do not meet the ADA standards.

Physical barriers to people in wheelchairs

Businesses must be accessible to people in wheelchairs. Examples of inaccessibility would be having stairs block an entrance, barriers that block an entrance to a counter, or an arena that does not offer seating to individuals in wheelchairs.

Communication barriers for people who are deaf and blind

Another example of non-compliance with ADA regulations is restaurants that refuse or fail to provide large print menus for those who are visually impaired. Additional examples include the restaurant staff refusing to read the menu to a visually impaired customer, or a business failing to provide an assisted listening device for a customer with a hearing impairment.

These are just a few examples of what can be considered illegal discrimination. Businesses are required to follow the ADA laws. There are no exceptions. If you feel you have been discriminated against due to a disability, it may be advisable to contact an attorney who handles ADA cases and learn about your rights under the law.

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Ten ADA Violations That Need to End Now

The Americans with Disabilities Act (ADA) was passed twenty years ago, giving additional rights to individuals with disabilities. However, even with its passage, violations still occur everyday. Businesses that don't comply with the ADA may ultimately be shut down. The government gives businesses plenty of time to comply, but even so, some business owners continue to disregard the provisions of the ADA. For businesses that refuse to change with the times, here are the most common ADA violations that need to end now:

Not having an accessible entrance

One of the most common violations is not having a ramp or other accessible entry to a building. Every private building allowing public entrance must be accessible, regardless of its age. There is no such thing as a "grandfather clause" that exempts older business from providing an accessible entrance. There are thousands of businesses nationwide that don't provide access. Unfortunately, store entrances with a step or high lip are too common. Many individuals with disabilities justifiably sue business owners for these violations, as these individuals want to remain independent.

Bathrooms not accessible

Another common ADA violation that can hamper someone's plans is when a business doesn't have a fully accessible bathroom.

Many businesses are required to have a fully accessible bathroom and they don't. Businesses are required to have one stall that a wheelchair user can access. Although this is an expensive renovation, it is one that is necessary.

Not having a van-accessible parking spot

Businesses are required to have at least one van-accessible parking spot, yet sadly, many do not have one. A van with a ramp can be blocked by someone parking directly next to the van. Van-accessible spots need to be clearly marked with a sign. The crosshatched spot for a wheelchair lift also needs to be clearly marked, as these can quickly be covered by snow.

Stores with cluttered and narrow aisles

Stores who don't make accommodations for wheelchair users are all too common. The ADA requires that aisles in a store be no less than 36 inches wide.

Gas stations who won't help with pumping gas

In New York State, customers can pump their own gas. People with disabilities can call into the gas station and request help. Often times customers with disabilities are told that the gas station is too busy or does not have enough employees on hand to

help. Gas stations are required by the ADA to help people with disabilities pump gas.

Business owners refusing entry to service dogs

In a recent incident, a veteran was refused service in a restaurant because the owner did not like his service dog being present. This was after the veteran called police and showed the owner his service dog papers. The ADA has strict requirements regarding service dogs. Business owners must allow a service dog to enter, and the owner should never be required to show "certification paperwork."



Too steep/no curbs

A common ADA violation is businesses that do not provide a curb cut, or when they do, the cut is too steep. There are entire cities that do not have curb cuts, or cuts that are too steep and dangerous to use. Cities complain about the cost of installing curb cuts, but the modifications make it possible for all citizens to be active and productive.

Being fired/not hired due to a disability

There is an incorrect assumption that employers are forced to hire individuals with disabilities even if they aren't qualified. This simply is not true. The ADA only requires a business not to turn down an employee because of a disability. Businesses must also provide reasonable accommodations for an employee with a disability. In addition, a person cannot be fired because they have a disability. The employer must make the decision to fire someone based on job performance.

Suits may claim a host of problems

People with disabilities who become frustrated and file suit may claim a host of problems. For example, an overly steep ramp without guardrails is a problem. Other common issues are high shelves in stores and narrow pathways in stores.

Other bathroom problems

In addition to bathrooms that are not accessible, people with disabilities face other issues when trying to use public bathrooms. Business owners are required by the ADA to provide bathroom doorknobs that can be opened with a closed fist. Another common problem is exposed hot water drains under bathroom sinks. These drains can be dangerous, creating the possibility of wheelchair user sustaining burns when using the sink.

Service Animals Cannot be Banned Under ADA

The ADA prohibits businesses from banning service animals in their establishments. Under the ADA, service animals are permitted to enter any area in a business establishment where customers are generally allowed.

Most people are familiar with guide dogs for individuals who are blind. However, service animals perform a number of different tasks. The ADA defines a service animal as any guide dog, signal dog, or other animal individually trained to assist an individual with a disability. Some examples of using service animals in day-to-day activities are:

- Alerting people with hearing impairments to sounds
- Pulling wheelchairs and picking up things for people with mobility impairments
- Assisting an individual who has difficulty balancing or walking

It is important to note that service animals are not considered pets.

Rights regarding service animals under the ADA

There are certain scenarios where businesses may try and stop a service animal from entering an establishment. Some businesses may attempt to cite health codes as a reason to ban the animal, but under the ADA, no service animal may be refused entry to a business. The following are examples of the accommodations businesses must make for service animals:



- Businesses may not request certification papers or special licenses to prove that the animal is a service animal.
- The service animal must be allowed to accompany the owner in all areas where customers are allowed. The individual and their service animal cannot be segregated from other customers.
- The ADA requires a business with a "no pets" policy to allow access to service animals. Again, a service animal is not considered a pet under the ADA.
- Businesses may not impose a surcharge or deposit as a condition for

entering the business on individuals requiring a service animal.

- Taxi cabs must allow service animals to ride with their owners. A taxi cannot refuse service to an individual with a service animal.

Service animals make it possible for individuals with disabilities to perform everyday activities and maintain an independent lifestyle. The ADA protects the rights of people who require the assistance of a service animal. An individual who has been discriminated against based on using a service animal may wish to contact a skilled ADA attorney who can advise them of their legal options.



Questions?

As a client, you can be assured that your case will receive special care and consideration. That means providing you with the most up-to-date legal advice. It also means taking time to fully explain the legal procedures we recommend, including all the options available to you.

Schedule your Free Consultation today. Contact us toll-free at: 1-855-847-8969

Discrimination by State and Local Governments Illegal Under ADA

Private businesses are not the only ones who have to follow the law when it comes to the ADA. State and local governments are also prohibited from discriminating against an individual with a disability. Some examples of a state or local government discriminating against individuals with disabilities are:

- A public building that is not wheelchair accessible
- Public programs that don't provide accessible communication to those who are deaf or blind
- Government agencies that don't provide reasonable accommodations in state laws, procedures, or policies.

Title II of the ADA forbids discrimination by state and local government agencies, including city, county, and municipal governments. School districts are also required to follow the laws set forth by the ADA. These government agencies have to provide physical access as well as access to programs and services.



For example, all newly-constructed sidewalks must have cutouts for wheelchair users. This requirement also applies to private businesses that contract with the government to provide services. State and local governments including courts,

police, school districts, and motor vehicle offices are required to make reasonable modifications so people with disabilities can access their services and programs.

Additional examples of discrimination by state and local governments include:

- Providing unequal, different, or less effective services or benefits to those with disabilities
- Providing services through an agency that discriminates
- Failing to provide services in the most integrated setting possible.

"State and local governments are obligated under the law to provide access to people with disabilities," Jeffrey Freedman, Managing Attorney, stated. "We have helped our clients with disabilities fight discrimination. If you've been discriminated against, you have rights under the law."

A Brief History of the Americans With Disabilities Act



The Americans with Disabilities Act (ADA) was put into place over twenty years ago. The purpose of the ADA was to ensure that individuals with disabilities were given the opportunity to take part in everyday activities without restriction. The ADA was modeled after the Civil Rights Act of 1964, which prohibited discrimination against people based on race, color, religion, sex, or national origin.

President Bush signed the ADA on July 26, 1990, and gave the following directive: "Let the shameful walls of exclusion finally come tumbling down." The ADA and the ADA Amendments Act of 2008 (ADAA) created changes in civil rights legislation. After the signing of the ADA, individuals with disabilities were af-

forded the same civil rights protection that applied to those on the basis of race, sex, national origin, religion, and color. With the ADA in place, individuals with disabilities are also assured appropriate access to places of business, employment, transportation, government programs, and telecommunication.

"The ADA has set the guidelines so that individuals with disabilities can enjoy the same freedoms and rights as everyone else," Jeffrey Freedman, Managing Attorney, stated. "In our practice we seek to help those who have been discriminated against because of their disabilities, or who come to us because the laws set forth by the ADA have been violated."

Frequently Asked Questions About Employment and the ADA

How do I know if I'm protected by the ADA at work?

You must have a disability that is qualified by the ADA. This would include a physical or mental disability that limits a major life activity such as hearing, thinking, speaking, walking, breathing, or performing manual tasks. You must also be able to perform the job you were hired for, with or without reasonable accommodation.

What are my rights in the workplace under the ADA?

The ADA prohibits discrimination in all aspects of the job including applications, job interviews, hiring, firing, pay, promotions, and leave. You have a right to be free from harassment due to having a disability. An employer cannot fire you for



asserting your rights under the ADA. It is also your right to request a reasonable accommodation to perform job duties.

What is a reasonable accommodation?

A reasonable accommodation is any change to your work environment that will allow you to apply for a job, perform job duties, or access your workplace. Some common examples of reasonable accommodations are:

- Installing a wheelchair ramp or modifying a bathroom to accommodate wheelchairs
- Providing a quieter workspace for someone with a mental disability
- Having written materials available in Braille or on audio for someone who is visually impaired
- Making sign language interpreters available for someone who is deaf
- Providing time off for someone who needs treatment for a disability.

You may request a reasonable accommodation at any time during the application process or while on the job. There are no special forms to fill out. You just need

to notify your employer that you require a reasonable accommodation.

What can I do if my ADA rights have been violated?

Contact the nearest Equal Employment Opportunity Commission (EEOC) office and talk to a representative. They can help you determine if you need to file a complaint. Most states give 300 days from the time the discrimination took place to file a complaint. In some states it is 180 days. It is advisable to file as soon as possible.

- There is no charge to file a complaint with the EEOC.
- To contact the EEOC, look in your telephone directory under U.S. Government or call 1-800-669-4000 (voice) or 1-800-669-6820 (TTY).

Do I need a lawyer to file a complaint?

You do not need a lawyer, although some people choose to hire one. An attorney knowledgeable in ADA cases can help determine your rights under the law and assist with the process of filing a complaint.

Contact Us

Providing excellence in legal services has been a top priority at Jeffrey Freedman Attorneys, PLLC since our firm was founded in 1980. Our commitment to the highest professional and ethical standards is the foundation for the services we provide.

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