AN OVERVIEW OF
THE AMERICANS WITH DISABILITIES ACT

Materials By:

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BACKGROUND

The Americans with Disabilities Act ("ADA"), which was signed by President Bush on July 26, 1990, prohibits discrimination on the basis of disability in employment (Title I); services provided by public entities (Title II); public accommodations (Title III); and telecommunications (Title IV). Miscellaneous matters are set forth in Title V.1

Other than the Air Carrier Access Act of 1986 and the Fair Housing Amendments Act of 1988, the ADA is the only federal legislation regarding the disabled which is aimed at the private sector as well as the public sector. Members of the public sector have been the subject of a growing number of handicapper rights acts passed over the last twenty years. 2

The ADA is not intended as an exclusive remedy and will not preempt state laws which are equally or more strict. Therefore, companies in states with disability discrimination statutes must comply with both the ADA and the state law, and an individual may bring an action under both statutes.

TITLE I - EMPLOYMENT

A. Entities Covered By The Act

Title I of the ADA provides that any employer engaged in an industry affecting commerce with fifteen or more workers will ultimately be covered by the Act. For employers with 25 or more employees, the employment provisions take effect on July 26, 1992. Employers with fifteen or more employees will be covered beginning July 26, 1994. The legislative history of the ADA provides that state and other public employers which have the requisite number of employees are included in the coverage of Title I of the ADA. Employment agencies, labor organizations and joint labor-management committees are also covered.

1 Excluded from this discussion of Title II of the ADA is consideration of the public transportation services provisions, which fall within the scope of the authority of the Secretary of Transportation.

Specifically excluded from the coverage of the employment provisions are the United States, corporations owned by the United States, Indian tribes, and private membership clubs (except labor unions) which are exempt under §501(c)(3) of the Internal Revenue Code.

**Individuals Protected BY The Act**

In order to qualify for the protection offered by Title I of the ADA, an employee of a covered employer must meet three separate tests. First, the individual must be "disabled" as that term is defined under the ADA. Second, the individual must be otherwise qualified for the position. Finally, the individual must be able to perform the essential functions of the job, with or without accommodation.

1. **"Disability" As Defined By The Act**

An employee can be "disabled" such that he or she is entitled to protection in four different ways:

**Individuals Suffering From Determinable Physical Or Mental Characteristics That Limit Major Life Activities**

First, an applicant or employee is protected under the ADA if he or she has a physical or mental impairment that substantially limits his or her major life activities.

An impairment is defined as a physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of several body systems, or any mental or psychological disorder. The existence of an impairment is determined without regard to mitigating measures such as medicines or assistive devices. Physical characteristics such as height, eye color, and left-handedness which are in the "normal" range, and thus are not the result of a physiological disorder, are not impairments. The definition of "impairment" does not include predisposition to illness or disease. Pregnancy and advanced age, in and of themselves, are not impairments.

Even if an individual has an impairment, he or she is not "disabled" under the Act unless that impairment substantially affects one or more major life activities. "Major life activities" are those basic activities that the average person in the general population can perform with little or no difficulty, such as walking, seeing, hearing, or working. Temporary, nonchronic impairments of short duration, with little or no longer term or permanent impact, such as broken bones, the flu, or appendicitis, are usually not disabilities. Except in rare circumstances, obesity is not considered a disabling impairment.

This first definition of disability extends to conditions such as orthopedic, visual, speech, and hearing impairments,
epilepsy, multiple sclerosis, HIV infection, drug addiction, alcoholism, cancer, heart disease, mental retardation, emotional illness, and learning disabilities.

Alcoholism and drug addiction are "disabilities" under the ADA. However, the Act specifically excludes from coverage current users of illegal drugs. In addition, although alcoholism is considered a disability under the Act, employers are not required to accommodate attendance or performance problems caused by the use of alcohol.

b. Individuals With A Record of Disability

Second, an applicant or employee may be "disabled" within the meaning of the ADA if he or she has a record of an impairment that substantially limits a major life activity. This definition is intended to include persons who have had a disability in the past, like cancer or alcoholism, but have now recovered. The definition also includes persons who may have been misdiagnosed in the past as having a disability, such as those who were once identified as having a learning disorder. The mere fact that an individual has previously been labeled as "disabled," such as a disabled veteran or someone who has received disability income, is not sufficient to classify the person as "disabled" within this section of the Act. The record of disability must involve an impairment which substantially limits a major life activity.

c. Individuals Who Are Perceived As Being Disabled

Third, an applicant or employee may be disabled if he or she is perceived as being disabled. This part of the definition of disabled protects those who have an impairment which is not substantially limiting, but is regarded by the employer as being substantially limiting (such as high blood pressure which is not substantially limiting). The definition also protects those who have an impairment which is substantially limiting only because of the attitudes of others, such as a person with a facial disfigurement. Finally, this section protects those who have no impairment but are erroneously perceived as being disabled, such as a person who is rumored to have AIDS.

d. Individuals Related To Disabled Persons

Fourth and finally, a person may be considered disabled under Title I as a result of his or her relationship to a disabled person. This portion of the definition was included to prohibit employers from making adverse decisions about otherwise qualified employees based on assumptions about possible conflicts between job and responsibilities to a disabled person. The inclusion of this criterion in the definition of who is "disabled" for the purposes of the ADA, however, does not create an obligation for the employer to treat an employee with
responsibilities for a disabled person differently or more
leniently with regard to such things as consistently enforced attendance policies.

2. **Otherwise Qualified For The Position**

   Even if an individual is "disabled" as defined by the Act, he or she is entitled to protection under the Act only if the individual is otherwise qualified for the position. For example, the individual must have the education, experience, or expertise required for the job.

3. **Able To Perform Essential Functions With Or Without Accommodation**

   Finally the individual must be able to perform the essential functions of the job that the employee holds or is seeking, with or without accommodation. An individual will be protected if he or she is capable of performing the essential functions of the job at the time of the employment decision, even if the individual suffers from a condition that weakens, restricts, or otherwise damages his or her health such that the applicant might not be able to perform the job in the future. See, e.g., *E E Black Ltd v Marshall*, 497 F Supp 1088 (D C Hawaii 1980).

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   A function will be considered "essential" if the reason the position exists is to perform that job function. A function may also be essential because of the limited number of available employees among whom the function can be distributed. In addition, a function may be essential if it is so highly specialized that an individual would be hired for his or her ability to perform that function. In determining what functions are essential, courts will look to the employer's judgment, job descriptions, the amount of time spent performing the function, the consequences of not requiring an individual to perform the function, the terms of a collective bargaining agreement, and the work experience of those performing the job.

   C. **Prohibited Discriminator Acts**

   Title I of the ADA prohibits discrimination against a qualified individual with a disability because of the disability in regard to application procedures, hiring, promotion, termination, compensation, job training, and other "terms, conditions, and privileges of employment." The Act then lists seven specific examples of prohibited discrimination:

   (1) Limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of his or her disability;

   (2) participating in a contractual relationship that has the effect of subjecting the applicant or
employee to prohibited discrimination (e.g., contract with a labor union, referral agency, fringe benefit provider, or training organization);

(3) utilizing discriminatory standards, criteria, or methods of administration, including those that perpetuate discrimination;

(4) excluding or otherwise denying equal jobs or benefits because of an individual's relationship with an individual with a disability;

(5) failing to make reasonable accommodation or denying employment opportunities on the basis of the need to make such accommodation;

(6) using qualification standards, employment tests, or other selection criteria that screen out or tend to screen out individuals with disabilities, unless the criteria are shown to be job related and consistent with business necessity;

(7) failing to select or administer tests concerning employment in a manner which ensures that the tests accurately reflect the skills, aptitude, or other factors that the tests purport to measure, rather than merely reflecting the disability.

Medical Inquiries And Medical Examinations

Under the ADA, unlawful discrimination includes certain historically common practices regarding medical inquiries and medical examinations. Whether or not medical inquiries or examinations will be allowed depends in part upon when the inquiry or examination takes place.

a. **Pre-Offer/Pre-Employment**

An employer can never subject an applicant to a preemployment physical, ask whether the applicant has a disability, or inquire regarding the nature or severity of a disability before making an offer of employment. In addition, an employer cannot make pre-offer inquiries regarding an applicant's worker's disability compensation history.

An employer may make pre-employment inquiries regarding the ability of an applicant to perform job-related functions. If an applicant has a known disability which might interfere with job performance, an employer can ask the applicant how he or she would perform a job function, with or without accommodation, and can ask the applicant to demonstrate.
b. **Post-Offer/Pre-Employment**

After an offer of employment is made, but prior to the commencement of employment, an employer may require the prospective employee to take a physical examination, and may make the offer of employment conditional upon the results of that examination, if (1) all entering employees in the same job category are subjected to such an examination, (2) the examination is job-related and consistent with business necessity, (3) information obtained from the examination is kept in separate medical files and is treated as confidential, and (4) the results of the examination are used in accordance with the Act (i.e., only those employees who cannot perform the essential functions of the job with or without accommodation are rejected on the basis of the medical examination).

c. **Post-Employment**

An employer may conduct voluntary medical examinations which are part of an employee health program. In addition, an employer may conduct periodic physicals to determine fitness for duty or other medical monitoring as required by law, so long as the examinations are job-related and consistent with business necessity. The information obtained in these examinations is to be kept separately and treated confidentially.

d. **Drug Testing**

Tests for illegal drug use are not considered medical examinations under the Act. Therefore, an employer's ability to do drug testing is not affected by the Act. However, to the extent that a drug test reveals the use of legal drug use, such as an antihistamine which might be evidence of asthma, the drug test may be considered a medical examination. Therefore, employers should instruct the agencies performing their drug testing to only report the existence of illegal drugs.

e. **Physical Agility Tests**

Physical agility tests are not medical examinations. Therefore, they can be required at any stage of the application or employment process. However, because such tests often have an adverse impact in individuals with certain types of disabilities, the employer needs to be able to show that the test is job-related and consistent with business necessity.

2. **Reasonable Accommodation**

Under the ADA, it is unlawful discrimination to fail to provide reasonable accommodation which would enable an otherwise qualified disabled individual to perform the essential functions of the job, unless that accommodation poses an undue hardship.
Employers are required to make reasonable accommodation only for known physical or mental limitations of an otherwise qualified individual with a disability. Thus, the duty to accommodate is generally triggered by a request from an employee or applicant for accommodation. The Equal Employment Opportunity Commission has issued posters, which all employers should post, which invite employees to inform the employer of accommodation requirements. However, where an employee with a known disability is having difficulty performing the job, it is permissible for the employer to inquire into the need for an accommodation.

Title I of the ADA defines "reasonable accommodation" only by example. The ADA provides that "reasonable accommodation" may include making existing facilities used by employees readily accessible to and usable by individuals with disabilities, job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

The list is not exhaustive. This means that what constitutes reasonable accommodation will be decided case by case, depending upon the particular facts of each situation. See, e.g., Hall v United States Postal Service, 857 F2d 1073, 1080 (6th Cir 1988) (the Court held that the determination of whether a proposed accommodation is reasonable "is highly fact-specific and requires the court to engage in individualized inquiry to ensure that the employer's justifications reflect a well-informed judgment grounded in a careful and open-minded weighing of the risks and alternatives").

The following are examples of equipment or devices that may be required: electronic visual aids, braille materials, talking calculators, magnifiers, audio recordings, telephone handset amplifiers, telecommunications devices for the deaf, mechanical page turners, or raised or lowered furniture. However, personal items such as hearing aids or eyeglasses would not be included.

Reasonable accommodation under the ADA may include job restructuring, that is, modifying the job so that a person with a disability can perform the essential functions of the job. It may also include eliminating nonessential elements of the job, delegating or exchanging assignments, and redesigning procedures for task assignments. However, an employer need not eliminate essential functions of the job in question. See, e.g., Southeastern Community College v Davis, 442 US 397, 414 (1979) (the Rehabilitation Act does not require an institution to change the admission requirements of its nursing program to accommodate a deaf applicant where the ability to understand speech without reliance on lip reading was essential for patient safety during the clinical phase of the
program). Courts have also held that an employer need not create a new position for a disabled
employee. See, e.g., Davis v Meese, 692 F Supp 505 (ED Pa 1988), aff'd, 865 F2d 592 (3rd Cir 1989) (FBI had no obligation to create a permanent, limited-duty assignment for an insulin-independent agent).

1. **Undue Hardship**

The ADA provides that an employer is not required to make reasonable accommodation if doing so would cause “undue hardship.” The definition of “undue hardship” under the ADA will be determined on a case by case basis.

The ADA defines “undue hardship” as action requiring significant difficulty or expense when considered in light of the following factors:

(i) the nature and cost of the accommodation needed under the Act;

(ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the work force of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

This list of factors is not exhaustive, and the weight that will be attributed to each of these factors will vary with the facts of a particular situation. Moreover, the weight of a given factor turns on both the nature and cost of the accommodation in relation to the employer's resources and operations. The de minimis cost standard articulated by the United States Supreme Court in TWA v Hardison, 432 US 63 (1977) (which pertained to the requirement under Title VII to accommodate religious beliefs) does not apply under the ADA.

Cost is clearly a factor which courts have considered in determining undue hardship in cases brought under the Rehabilitation Act. See, e.g., Arneson v Heckler, 879 F2d 393, 397 (8th Cir 1989) (cost of part-time worker to assist plaintiff
must be evaluated to determine whether employer met reasonable accommodation obligation. If an accommodation would cause undue hardship, the employer must provide the applicant or the employee the opportunity to provide the accommodation for him or herself. Moreover, the employer must pay for that portion of the accommodation that would not cause an undue hardship if, for example, the State Vocational Rehabilitation Agency or the employee or applicant pays for the remainder of the cost of the accommodation.

Among the factors the courts have looked to in determining whether an accommodation will cause undue hardship under other federal handicapper laws is what the impact will be on the other employees in terms of workload. In Treadwell v Alexander, 707 F2d 473 (11th Cir 1983), the Court held that providing a limited duty position to a "park technician" for the Army Corps of Engineers who had a serious heart condition and was limited to walking only a mile a day would constitute an undue hardship. Park technicians were required to do extensive walking and standing since patrolling land projects was among the essential duties of the job. The Court held that the accommodation would impose an undue hardship on the employer given the inevitable "doubling up" of a small number of available workers who would have to patrol a 150,000 acre site.

2. Safety Of Self or Others

An employer is not required to hire an individual or to provide an accommodation if that individual or accommodation will pose a direct threat to the health or safety of the employee or others. See, e.g., Kimbro v Atlantic Richfield Co, 889 F2d 869, 878 fn 8 (9th Cir 1989) (safety considerations were the basis of the court's rejection of a proposed accommodation to allow a machinist who suffered from migraine headaches to compensate for absent time by working after regular hours).

The standard for "direct threat" is whether the individual poses a "significant risk," which is defined as "a high probability of substantial harm." A speculative or remote risk is insufficient. In determining whether an individual poses a direct threat, the employer should consider (1) the duration of the risk, (2) the nature and severity of the potential harm, (3) the likelihood that the potential harm will occur, and (4) the imminence of the potential harm. This determination must be made based upon objective, factual evidence about the nature or effect of a particular disability.

If a significant risk can be reduced to a remote risk through reasonable accommodation, the employer is required to provide that accommodation so long as it does not impose an undue hardship.
3. **Food Handling And Communicable Diseases**

An employer is not required to employ an individual in a food handling position if that individual has an infectious or communicable disease that is transmitted to others through the handling of food, as defined by the Secretary of Health and Human Services. Currently, this list includes diseases such as hepatitis. It does not include AIDS or HIV infection. Therefore, an employer cannot refuse to employ an individual in a food handling position simply because that individual has AIDS or has tested HIV positive. If there is an accommodation which would eliminate the threat of transmitting the disease through food handling, the employer must provide that accommodation.

4. **Religious Entities**

Nothing in the ADA prohibits a religious institution from giving preference in employment to individual of a particular religion, and a religious institution may require that all applicants and employees conform to the religious tenets of that institution.

5. **Conflict with Other Federal Laws**

___ I defense to a claim of discrimination that another federal law or regulation requires an employer to take certain action or prohibits an employer from taking certain action (such as providing a specific accommodation). Because the ADA is a federal law, and employers are required to comply with that law regardless of state law, it is not a defense that a state law may require or prohibit certain action.

E. **Enforcement And Remedies**

Title I of the ADA will be enforced by the same remedies and procedures provided for in Title VII of the Civil Rights Act of 1964. Therefore, an employee desiring to bring an action under the ADA must first file a charge with the Equal Employment Opportunity Commission.

The Civil Rights Act of 1991 has modified previous Title VII remedies. Now, a plaintiff alleging violation of the ADA's Title I may request a jury, and may receive not only back pay but compensatory and punitive damages. Punitive damages will not be allowed in a case involving an alleged failure to accommodate where the employer has acted in good faith in attempting to find a reasonable accommodation which does not pose an undue hardship.
A. **Entities Covered By The Act**

Title II of the ADA provides that any State or local government, or any department, agency, special purpose district or other instrumentality of a State or States or local government, the National Railroad Passenger Corporation and any commuter authority are covered by the provisions of Title II.

B. **Individuals Protected By The Act**

The protections provided by Title II extend to individuals with a disability who, with or without reasonable modifications to rules, policies or practices, the removal of architectural, communication or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

Like the employment title, an individual can be "disabled" for the purposes of Title II in three different ways:

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having a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; having a record of such an impairment; and being regarded as having such an impairment.

Although Title II does not specifically define as "disabled" individuals who are related to disabled persons, the Department of Justice regulations prohibit discrimination on the basis of an individual's known relationship or association with an individual with a disability. This protection is not limited to those with a familial relationship with the individual who has a disability.

C. **Prohibited Discriminatory Acts**

No public entity shall discriminate against a disabled person, or exclude a "qualified individual with a disability" from participation in, or deny him or her the benefits of, the aids, benefits, services, programs or activities it provides on the basis of the disability. Such discrimination includes affording a disabled individual an opportunity to participate in or benefit from an aid, benefit, service, program or activity in a way that is not equal to or is separate from that afforded others. These prohibitions extend to the selection of procurement contractors and the administration of licensing and certification.
programs. They also mean that the public entity shall provide its services, opportunities and benefits in the most integrated setting appropriate to the needs of the disabled individual.
These prohibitions are generally based on the prohibitions in existing regulations implementing § 504 of the Rehabilitation Act, and on the prohibitions implicit in the requirements of those regulations. There are a number of similarities in this regard between Title II and Title III of the ADA.

It is unlawful discrimination to fail to accommodate an individual who requires such accommodation to use the benefits, services, programs, or activities provided by the public entity. The following types of actions may be required to accommodate an individual:

**Reasonable modification of policies, practices and procedures**

A public entity must make reasonable modifications of its policies, practices and procedures as necessary to avoid discrimination on the basis of disability, unless it can demonstrate that the modification would **fundamentally alter** the nature of the service or activity.

**Effective Communication - Auxiliary Aids and Devices**

A public entity must take the steps necessary to ensure that communications with applicants, participants and members of the public with disabilities are as effective as communications with others. Appropriate auxiliary aids and devices must be provided as necessary to permit equal opportunity to participate in or benefit from its services, programs and activities. The public entity must give deference to the choice of the disabled individual in the selection of an auxiliary aid or device.

For example, where the telephone is the primary means of communicating with applicants or beneficiaries, the public entity will likely need to have telecommunication devices for the deaf (TDDs). Reading devices or readers may have to be supplied to enable disabled individuals to review public documents, or forms needed to receive public benefits. Another example is "911" emergency service. The final regulations of the Department of Justice mandate that disabled persons must be provided with "direct access" to such services, not merely functionally equivalent service.

3. **Existing Facilities**

A public entity does not have to make each of its existing facilities "accessible." Title II requires only that each service, program or activity conducted by a public entity, when viewed in its entirety, be **readily accessible to and usable by** persons with disabilities. A public entity must make its programs accessible in all cases, unless it would result in a **fundamental alteration** in the nature of the program, or in **undue financial and administrative burdens**. This "undue burden"
standard is intended to be much higher than the "readily achievable" standard of Title III.

A public entity may not, however, when selecting the site for construction of a new facility or selecting an existing facility to be used by the public entity, make a selection that has the effect of excluding individuals with disabilities.

4. New Construction

Buildings that are constructed or altered by, on behalf of, or for the use of a public entity shall be designed, constructed, or altered to be readily accessible to and usable by individuals with disabilities. The elevator exception discussed below in connection with Title III does not apply.

Newly constructed or altered streets, roads and highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway.

D. Enforcement

Other than the public transportation services provisions, the Department of Justice will be the primary enforcement agency for Title II. The legislative history and the Department of Justice's comments to the regulations suggest that there is no requirement that an aggrieved individual exhaust administrative remedies before pursuing a private right of action "with the full panoply of remedies to individual victims of discrimination, including specifically but, not by way of limitation, attorneys fees and costs.

TITLE III - PUBLIC ACCOMMODATIONS

A. Entities Covered By The Act

Title III of the ADA covers public accommodations, commercial facilities and private entities that offer courses or examinations relating to licensing, certification or credentialing for secondary, post-secondary education, professional or trade purposes. Public accommodations are defined in Title III primarily by reference to twelve descriptive categories. A public accommodation for the purposes of the ADA is a facility operated by a private entity that is or is like:

1. a place of lodging;
2. an establishment serving food or drink;
3. a place of exhibition or entertainment;
4. a place of public gathering;
5. a sales or rental establishment;
6. a service establishment;
7. specified public transportation;
8. a place of public display or collection;
9. a place of recreation;
10. a private school or place of education;
11. a social service establishment;
12. a place of exercise or recreation

Specifically excluded from the definition are facilities that are covered by or are expressly exempted from coverage under the Fair Housing Act of 1968, aircraft and rail cars.

**Individual Protected BY The Act**

Title III prohibits discrimination on the basis of disability by public accommodations. Like Title I and Title II, an individual may be "disabled" under Title III in three different ways:

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having a physical or mental impairment that substantially limits one or more of the major life activities of such individual; having a record of such an impairment; and being regarded as having such an impairment.

C. **Prohibited Discriminatory Acts**

A public accommodation shall not, on the basis of the disability of an individual or class, directly or through contractual or other arrangements either deny the opportunity to participate in or benefit from or afford unequal goods, services, facilities, privileges, advantages or accommodations of a place of public accommodation. Separate or different goods, services, facilities, privileges, advantages or accommodations shall not be provided to an individual or class on the basis of disability unless necessary to provide the individual or class with goods, services, facilities, privileges, advantages or accommodations that are as effective as those provided to others.

Goods, services, facilities, privileges, advantages and accommodations shall be provided individuals with disabilities in the most integrated setting appropriate to the needs of the individual.

No private or public entity shall retaliate against an individual for opposing any discriminatory act or making a charge of discrimination or participating in an investigation of discrimination, or coerce, intimidate or threaten an individual exercising or to preclude the exercise of any right conferred by the ADA.

As with Titles I and II, it is unlawful discrimination under Title III to fail to accommodate an individual with a disability. Reasonable accommodation may include:
1. Reasonable modification of policies, practices and procedures

Title III requires that a public accommodation "reasonably modify" its policies, practices or procedures where necessary to afford goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities, unless such a modification would fundamentally alter the nature of the goods, services, facilities, privileges, advantages or accommodations provided. Eligibility criteria that screen out or tend to screen out individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages or accommodations are prohibited, unless they are necessary to the provision of the goods, services, facilities, privileges, advantages or accommodations offered.

Provision of auxiliary aids and services

Title III also requires that public accommodations take affirmative steps to ensure that an individual with a disability is not excluded, denied services or treated differently by providing auxiliary aids and services unless the entity can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages or accommodations, or would be an undue burden, that is involve significant difficulty or expense.

3. Removal of barriers

Public accommodations must remove architectural barriers where removal is "readily achievable", which is defined as easily accomplishable and able to be carried out without much difficulty or expense. If removal of barriers is not readily achievable, a public accommodation must use alternate methods, such as curb service or home delivery, if the alternate method is readily achievable.

4. New construction and alterations

A public accommodation will be found to have violated Title III if it fails to design and construct facilities for first occupancy after January 26, 1992 so that it is readily accessible to and usable by individuals with disabilities, unless it can demonstrate that it is structurally impracticable to meet the requirements.

Any alteration to an existing public accommodation or commercial facility made after January 26, 1992 shall be made so that to the maximum extent feasible, the altered portions, and related paths of travel if the alteration is to an area of primary function, are readily accessible to and usable by persons with disabilities, including those who use wheelchairs.
A public accommodation is not required to install an elevator in a facility that is less than three stories tall or has less than 3000 square feet per story, unless the facility is a shopping center, a professional office of a health care provider, or a terminal, depot or other station used for specified public transportation.

D. Enforcement

The primary enforcement agency for Title III is the United States Department of Justice. An aggrieved individual may institute a civil action for injunctive relief. The Attorney General may commence a civil suit and seek injunctive relief, monetary damages for the disabled individual or group and civil penalties which may not exceed $50,000 for the first violation or $100,000 for any subsequent violation.