

Your Rights Under the ADA

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Prevalence & Economics of Disability

- **13% (30 million) aged 12 years or older has hearing loss in both ears**
- **25% (1/4) of the population 15 years of age and older has a disability**
- **52% of the population 65 years of age and older has a disability**
- **\$490 billion of disposable income (US)**
- **Globally the disability community has exceeded the size of China at 1.3 billion people and control \$8 trillion dollars in annual disposable income**

Americans with Disabilities Act

- **Title I – Employment**
- **Title II – Public Services: State and Local Government**
- **Title III – Public Accommodations and Services Operated by Private Entities**
- **Title IV – Telecommunications – Every state must have a message relay service**
- **Title V – Miscellaneous Provisions**

An individual with a “disability” is someone who:

- Has a physical or mental impairment that substantially limits one or more major life activities**
- Has a record of such an impairment**
- Is regarded as having such an impairment**

Title I - Employment

No employer shall discriminate against any qualified individual with a disability in regard to any aspect of employment.

Aspects of employment include:

- **Recruitment, Application process, Hiring**
- **Leaves, Layoffs**
- **Training, Job Assignments, Promotions**
- **Benefits, Employer-sponsored events**
- **Discharges**

Qualified Individual with a Disability

An individual with a disability is “qualified” if he or she:

- **Satisfies the skill, education and training for a position and**
- **Can perform the essential functions of the position with or without a reasonable accommodation**
- **Qualifications for a position are determined by the employer**
 - **Job Descriptions/Advertisements are a piece of evidence of what these are. A job description is not required under the ADA**

These are fundamental job duties. A function may be “essential” for several reasons:

- The job exists to perform the function**
- There are a limited number of people to perform the function**
- The job is highly specialized**

Reasonable Accommodation

A reasonable accommodation is:

- **Any change in the workplace or in the way things are usually done that provides equal opportunities for those with disabilities**
- **General Rule: An employer provides reasonable accommodation to a qualified individual with a disability if requested and it is not an undue hardship**

Reasonable Accommodations

- **Physical modifications to the workplace**
- **Job restructuring, part-time work, or modified work schedules**
- **Leave – must be related to employee's disability**
- **Reassignment to a vacant position**

Hearing Loss Accommodations

- **Noise abatement products**
- **Captioning services**
- **Assistive listening devices**
- **Mirrors**
- **Strobe lights**
- **Sound amplification devices**
- **Sound absorption devices**

Programs, services and activities of State and local government must be accessible to and useable by people with disabilities.

- **May not refuse to allow a person with a disability to participate in a service, program, or activity simply because the person has a disability.**

- **Must make reasonable modifications in policies, practices, and procedures that deny equal access to individuals with disabilities, unless a fundamental alteration in the program would result.**
- **Must furnish auxiliary aids and services when necessary to ensure effective communication, unless an undue burden or fundamental alteration would result.**

- **May not place special charges on individuals with disabilities to cover the costs of measures necessary to ensure nondiscriminatory treatment, such as making modifications required to provide program accessibility or providing qualified interpreters or CART.**
- **SHALL OPERATE THEIR PROGRAMS SO THAT, WHEN VIEWED IN THEIR ENTIRETY, THEY ARE READILY ACCESSIBLE TO AND USABLE BY INDIVIDUALS WITH DISABILITIES.**

Effective Communication

- **Auxiliary aids**
 - **Interpreters**
 - **TTY**
 - **Braille materials**
 - **Audio recordings**
 - **Telephone amplifiers**
 - **Assistive listening systems**
- **No surcharge**
- **Primary consideration given to the individual's choice of auxiliary aids or service.**

Title III: What is a Public Accommodation?

Under title III of the ADA a place of public accommodation is a facility whose operations affect commerce and fall within a least one of the following 12 categories with some examples:

- 1. Places of lodging (inns, hotels, motels)**
- 2. Establishments serving food or drink (restaurants and bars)**
- 3. Places of exhibition or entertainment (movie theaters, concert halls, stadiums)**
- 4. Places of public gathering (auditoriums, convention centers, lecture halls)**

What is a Public Accommodation? (2)

- 5. Sales or rental establishments (grocery stores, hardware stores, shopping centers)**
- 6. Service establishments (dry cleaners, banks, travel services, funeral parlors, gas stations)**
- 7. Public Transportation terminals, depots or stations**
- 8. Places of public display or collection (museums, libraries, galleries)**

What is a Public Accommodation? (3)

- 9. Places of recreation (parks, zoos, amusement parks)**
- 10. Places of education (nursery schools, elementary, secondary and higher education private schools)**
- 11. Social service center establishments (day care centers, homeless shelters, food banks)**
- 12. Places of exercise or recreation (gyms, spas, bowling alleys, golf courses)**

Overview of Requirements

- **Must provide goods and services in an integrated setting.**
- **Must eliminate unnecessary eligibility standards or rules that deny individuals with disabilities an equal opportunity to enjoy goods and services.**
- **Must make reasonable modifications in policies, practices and procedures that deny equal access to individuals with disabilities.**

Overview of Requirements

- **Must furnish auxiliary aids when necessary to ensure effective communication, unless an undue burden or fundamental alterations would result.**
- **Must remove architectural and structural communication barriers in existing facilities where readily achievable.**
- **Must provide readily achievable alternative measures when removal of barriers is not readily achievable.**

Overview of Requirements

- **Must provide equivalent transportation services and purchase accessible vehicles in certain circumstances.**
- **Must maintain accessible features of facilities and equipment.**
- **Must design and construct buildings and facilities so that they are accessible.**

Title IV - Telecommunications

- **Every state must have telecommunications relay services (TRS) 24/7**
- **Internet Protocol Captioned Telephone Service (IP CTS) allows access to text version of phone calls**
- **Requires closed captioning of federally funded public service announcements**

What is Readily Achievable?

- **Title III of the ADA requires that businesses remove barriers in existing facilities when it is “readily achievable” to do so**
- **Readily achievable means “easily accomplishable and able to be carried out without much difficulty or expense”**

What is Readily Achievable (2)

- **This does not necessarily mean full compliance with the guidelines**
- **Determine what can be done to make the space more accessible to people with disabilities based on the resources of the business**

ADA – Hearing Loss Rights

- **Captioning and CART are covered in the ADA**
- **Captioning can be provided via closed captioning, so that it is only viewable by patrons who have receivers; or via open captioning that is viewable on the screen for the entire audience**
- **CART can be provided for the individual who requests that accommodation via a laptop or tablet, or via a screen at the meeting, theater or other public event.**
- **Hearing Loop not required ☹️**

- **No grandfather provision**
 - But there is a Safe Harbor provision (next slide)
- **ADA is different from the state building code**
- **Use the state building code as access standard**
- **Use the ADA to determine when to make changes**
- **Use WCAG 2.0 AA as digital access standard**
 - Standards are not in the ADA

- **Websites and documents should be designed in a way that people with disabilities can access them**
 - Captioning
 - Transcripts
 - Volume control
- **Lawsuits have been increasing around the country with majority of rulings favoring the plaintiffs**
- **Majority of judges say digital accessibility is in the “spirit of the law (ADA)”**
- <https://www.disability.state.mn.us/information-and-assistance/digital-accessibility/>

- **Fair Housing Act (FHA)**
- **Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA)**
- **Air Carriers Access Act (ACAA)**
- **Rehab Act**
- **Telecommunications Act**
- **MN State Accessibility Standard - MN Statute 16E.03, Subd. 9**

Accommodation Topics – Service Dogs

- **The Service Dog (or miniature horse) must be “individually trained to do work or perform tasks for the benefit of an individual with a disability.”**
- **The work or tasks performed by a service animal must be directly related to the handler's disability.**
 - **Balance**
 - **Detect and alert to seizures, breathing issues, drops in blood sugar**
 - **Deep pressure therapy for calm**
 - **Alert/interrupt/alleviate a panic attack(licking/pawing at handler)**

Accommodation Topics – Service Dogs

What can you ask?

- **DO NOT ask about the *nature or extent* of a person's disabilities.**
- **You CAN ask two questions, but only if the need for the service dog is not clear:**
 - 1. Is the animal required because of a disability?**
 - 2. What work or task has the animal been trained to perform?**

Accommodation Topics – Service Dogs

Documentation

- **You CANNOT require documentation of certification, training, or licensure as a service animal.**
- **The federal government does not monitor or regulate this.**

Accommodation Topic – Service Dogs

- **The dog must be under the handler's control:**
 - **Housebroken**
 - **Leash, tether, vocal control**
- **Cannot charge surcharge or fees, but can charge for damages**

Minnesota State Statutes

- Minnesota statute 609.833 - It is against the law to misrepresent an animal as a service animal. An emotional support animal is not a service animal and their owners may be liable under this law.
- Minnesota [statute 609.226](#) – It is a misdemeanor for a dog owner who fails to control their dog that results in a service animal being hurt. Any cost associated with the incident may be placed on the dog owner.
- Minnesota [statute 343.21](#) – It is a gross misdemeanor for a person to harm a service animal. Penalty may be imprisonment for not more than two years or to payment of a fine of not more than \$5,000, or both.

- Minnesota Council on Disability (MCD) 651-361-7800
www.disability.state.mn.us
- ADA Minnesota 651-603-2015 www.adaminnesota.org
- Great Lakes ADA Center 800-949-4232 www.adagreatlakes.org
- ADA Checklist for Existing Facilities <http://www.ada.gov/racheck.pdf>
- MN Commission of the Deaf DeafBlind & Hard of Hearing 651-431-5961
<https://mn.gov/deaf-commission/>

Thank You!

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