

# 140

**American Hotel & Lodging Association**

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**American Hotel & Lodging Association**  
**GOVERNMENTAL AFFAIRS**



**Washington Lodging Association**  
**October 2011**





# ADA Regulations

## Americans with Disabilities Act





## ADA – Outline

# Americans with Disabilities Act Outline

- History of ADA
- Compliance Dates
- Key Changes
  - Reservations Rules
  - Service Animals
  - Effective Communication Rules
  - Mobility Devices
- What's Next?
- Legislation
- Guidance
- ADA Amendments Act





## ADA History

# Americans with Disabilities Act

- Signed by President George Bush July 1990;
- Extends civil rights protections to disabled;
- Expands upon Civil Rights Act of 1964, Architectural Barriers Act of 1968, Rehabilitation Act of 1973, and other laws;
- Attempts to “harmonize” with various regional codes.





## ADA History

### ADA Timeline

- 1990: Becomes Law;
- 1991: Original Accessibility Guidelines (“1991 Standards”);
- 1992: Effective Date;
- 2004: AH&LA hires ADA Counsel
- 2008: Department of Justice Proposed Changes (AH&LA hires economist, Submits comments, and Testifies at public hearings);
- 2010: 20<sup>th</sup> Anniversary of ADA;
- 2010: DOJ Issues Final Changes to Guidelines (“2010 Standards”);
- 2011: Effective Date;
- March 15, 2012: Compliance Date.



# ADA Regulations

- **AH&LA Activity:**

- Hired Legal Counsel
- Hired Economist
- Filed Comments
- Testified at Public Hearings
- Met with DOJ, White House, OMB, DOL, SBA, Congress
- Formed Multiple Committees to Review
- Held Numerous Meetings & Conference Calls
- Assisted Other Organizations Efforts
- AH&LA Communication Efforts
- AH&LA Webinars
- AH&LA Website
- Accessibility Guide (to be updated 2011)
- Presentations and Educational Sessions at various meetings



## ADA Market

### Market Segment of Disabled Travelers

*According to Open Doors Organization study:*

- *54 million* Americans with disabilities (1 of 6 Americans);
- *39 million* actual or potential travelers (those with financial and physical capability to travel);
- *38 million* companion travelers with disabled (family members, friends and assistants);
- In 2002 American travelers with disabilities spent *\$13.6 billion* on travel (*\$4.2 billion on lodging*);
- In 2002 American travelers with disabilities took *31.7 million* trips;
- Disabled travelers & employees are loyal.



## ADA Market

# Market Segment of Disabled Travelers

- Three out of five hotel users report that they encounter obstacles when staying at hotels (Open Doors Organization study), top concerns:
  - Doors that are too heavy or hard to open;
  - Not enough room to maneuver in hotel rooms and/or bathrooms;
  - Inaccessible shower or bath facilities;
  - Service/personnel obstacles;
  - Lack of availability of convenient rooms (i.e., first floor, near elevators);
  - Hotel personnel not aware of services provided for people with disabilities;
  - Communication-related obstacles;
  - Difficulty communicating with hotel personnel;
  - Reservation communicated to hotel;
  - Accessible rooms only offering single bed.





# ADA Regulations

- **ADA has five parts, or “Titles”:**
  - Title I – Employment
  - Title II – Public Services
  - Title III – Public Accommodations & Commercial Facilities
  - Title IV – Telecommunications
  - Title V – Miscellaneous Provisions





# ADA Regulations

**ADA Title III prohibits discrimination, or disparate treatment, by public accommodations against individuals with disabilities. Title III requires:**

- Lodging properties be made accessible;
- Reasonable modifications to policies, practices and procedures;
- Provision of certain auxiliary aides and services at no additional charge.



# ADA Regulations

## What Has Changed?

***The obligation to provide accessible facilities has not changed – only the technical standards to be applied (1991 Standards vs. 2010 Standards)***



# ADA Regulations

## 2010 ADA Title III Regulations

- Revises regulations issued in 1991;
- Sets new standards for what is an accessible facility;
- Clarifies or expands key operational accessibility requirements (e.g., reservations, ticketing, service animals, effective communication);
- Addresses new accessibility issues (e.g., power driven devices);
- Addresses Title III coverage of timeshare and condo-hotels.



# ADA Compliance Deadlines

<b>September 15, 2010</b>	2010 Regulations Published
<b>March 15, 2011</b>	2010 Regulations General Effective Date <ul style="list-style-type: none"><li>• Effective Communications;</li><li>• Service Animals;</li><li>• Power Mobility Devices;</li><li>• Ticketing.</li></ul>
<b>March 15, 2012</b>	<ul style="list-style-type: none"><li>• 2010 Standards become mandatory for alterations, new construction and barrier removal;</li><li>• Reservations requirements must be implemented;</li><li>• Newly covered existing recreation elements must comply with 2010 Standards unless compliance is not readily achievable.</li></ul>



# ADA Compliance Deadlines

## What Happens on March 15, 2012?

<p>Elements that comply with the 1991 Standards.</p>	<p>In <b>Safe Harbor</b>, no need to comply.</p>
<p>Elements that do not comply with the 1991 Standards.</p>	<p>Elements must comply with the 2010 Standards as follows:</p> <ul style="list-style-type: none"> <li>• If element was constructed prior to January 26, 1993 and not altered since then, hotel must remove barriers to the extent readily achievable. The 2010 Standards will be used to determine what is a barrier.</li> <li>• If the element was altered after January 26, 1992, it must comply with the 2010 Standards to the maximum extent feasible.</li> <li>• If the element was constructed after January 26, 1993, it must comply with the 2010 Standards unless structurally impracticable.</li> </ul>
<p>Elements covered for the first time by the 2010 Standards.</p>	<p>Must comply with the 2010 Standards by March 15, 2010 to the extent “readily achievable” (i.e., easily accomplished and able to be carried out without much difficulty or expense). <b>No Safe Harbor.</b></p>



# ADA Newly Covered Elements

## Existing Elements that must comply with the 2010 Standards by March 15, 2012

- Swimming pools, wading pools, and spas
- Saunas and steam rooms
- Exercise equipment
- Play areas
- Residential facilities and dwelling units
- Amusement rides
- Fishing piers and platforms
- Recreational boating facilities
- Golf and mini-golf facilities
- Shooting facilities
- Accessible route to bowling lanes
- Accessible route to court sports facilities
- ATM communications-related elements





# ADA Compliance Deadlines

## What standards apply for barrier removal, alterations and new construction between September 15, 2010 and March 15, 2012?

- Choose between 1991 Standards or 2010 Standards;
- Must pick one Standard; not both;
- Speed up current projects?





# ADA Transition Rules

- The compliance date for the 2010 Standards for new construction and alterations is determined by:
  - the date the last application for a building permit or permit extension is certified to be complete by a state, county, or local government
  - the date the last application for a building permit or permit extension is received by a state, county, or local government, where the government does not certify the completion applications, or
  - the start of physical construction or alteration, if no permit is required
- If that date is on or after March 15, 2012, then new construction and alterations must comply with the 2010 Standards. If that date is on or after September 15, 2010, and before March 15, 2012, then new construction and alterations must comply with either the 1991 or the 2010 Standards.

**Each lodging facility must choose either the 1991 Standards or the 2010 Standards (i.e., no mixing and matching of standards)**



# ADA – Existing Facilities

Types of Element/Space	Current Obligations
Elements/Spaces that were constructed prior to January 26, 1993 and have not been altered	Remove architectural barriers to access to the extent removal is “readily achievable” (defined as easily accomplished without much difficulty or expense)
Elements/Spaces altered after January 26, 1992	Must comply with the 1991 Standard to the <b>maximum extent feasible</b> (Financial resources not taken into account). In addition, if a “primary function area” is altered, the path of travel to the function area, and the restrooms, telephones, and water fountains serving the area must be made accessible up to an additional 20% of the cost of the alteration project.
Facilities constructed after January 26, 1993	Must comply with the 1991 Standards unless structurally impracticable.



# ADA – Pools and Spas





# ADA – Pools and Spas

## Swimming pools with less than 300 lf of wall

- Pool lift or sloped entry required.

## Swimming pools with 300 lf or more of wall

- Two accessible means of entry required;
- One of the means shall be a pool lift or sloped entry.

## Spas

- One of the following accessible means of entry:
  1. Lift;
  2. Transfer wall; or
  3. Transfer system.

## Wading Pools

- One sloped entry is required. This may or may not be readily achievable or technically feasible in many existing wading pools.



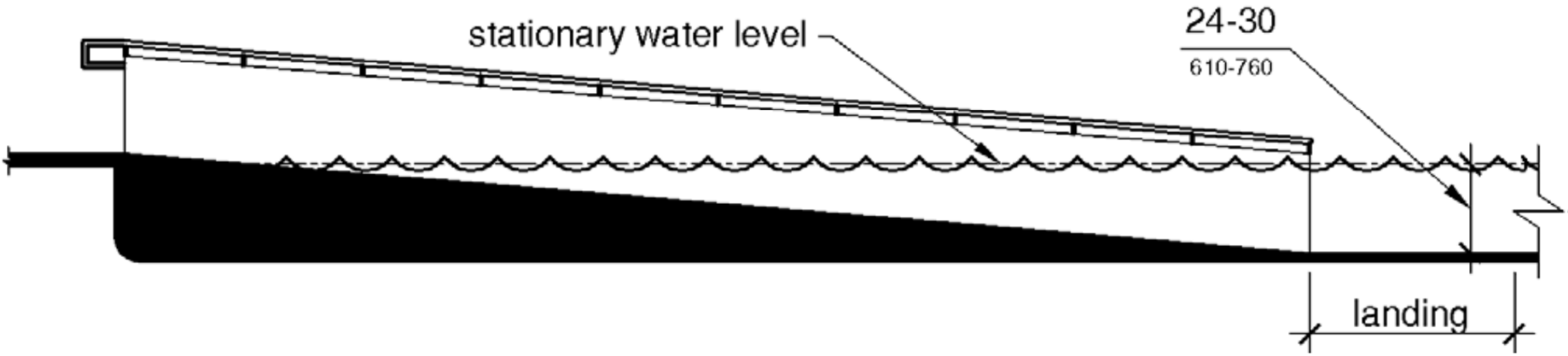
# ADA – Pools and Spas

## Factors affecting pool lifts according to DOJ:

1. Seat height and width
2. Footrest
3. Armrest
4. Independently operable by user
5. Controls and operating mechanisms
6. Submerged depth
7. Lifting capacity
8. Various other space requirements relating to location of installation

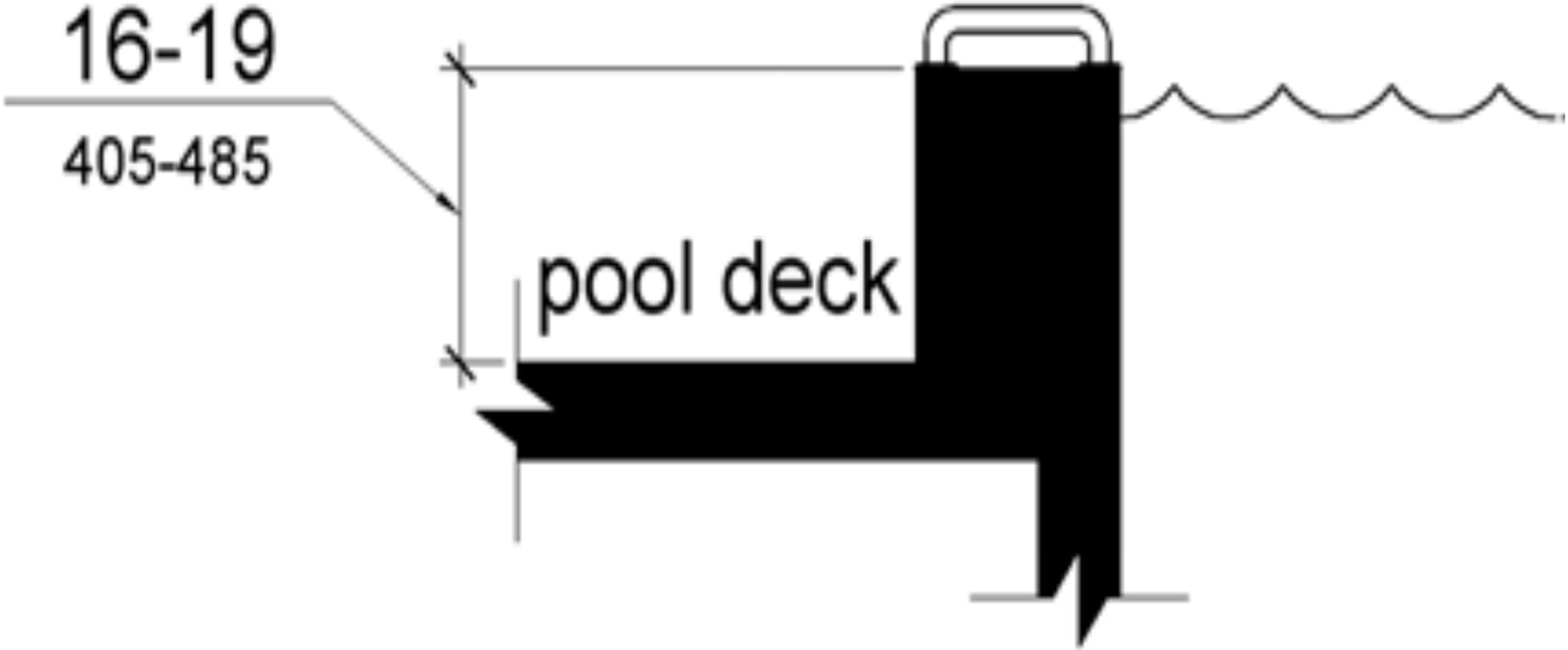


# ADA – Sloped Entry



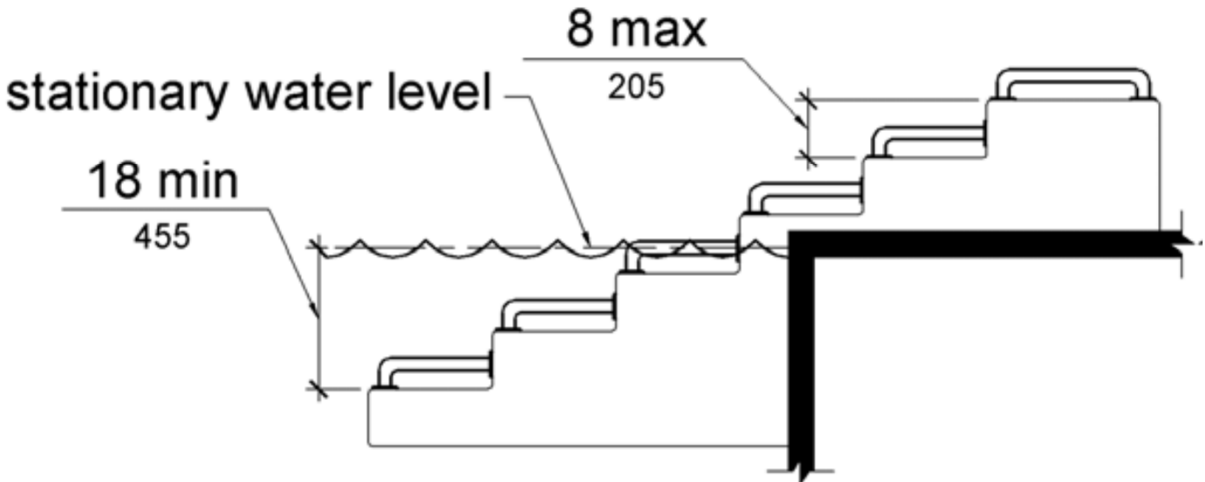


# ADA – Transfer Wall





# ADA – Transfer System







## ADA – Exercise Equipment

### At least one of each type of exercise equipment must:

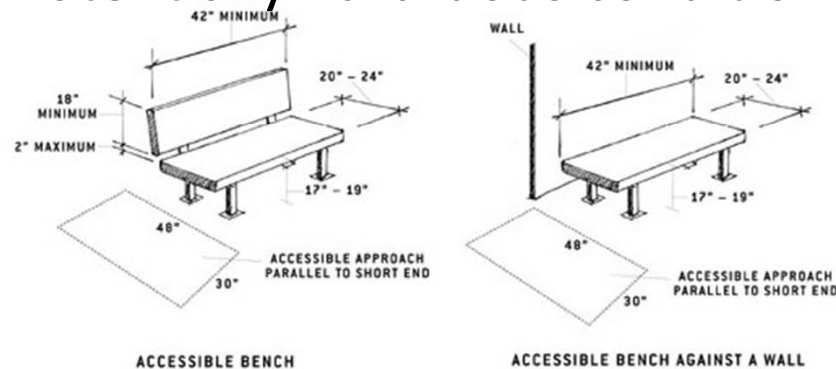
- Provide 30” x 48” clear floor space positioned for transfer by someone using a wheelchair. Commentary to 2010 Regulation states that the transfer space can be at the end of the equipment (i.e., overlap the accessible route), as opposed to side space, if a person would have to stand to use the equipment;
- Be on a 36” wide accessible route.



# ADA – Saunas and Steam Rooms

Five percent of saunas and steam rooms (*but no fewer than one*) must have the following features:

- Turning space for a wheelchair;
- Accessible bench;
- Existing accessible route requirements such as door width and threshold requirements would also likely apply.
- **Warning:** Potentially hazardous conditions created?





## ADA – ATMs

### ATM Communication Features

- **1991 Standards**: contains only general requirement that instructions and information for use be accessible to and independently usable by persons with vision impairments;
- **2010 Standards**: Contains specific technical requirements for speech output, privacy, tactilely discernable input controls, display screens, and Braille instructions (likely compliance date: March 15, 2012);
- DOJ considers ATM Communication features to be “auxiliary aids and services.”



# ADA – Key Changes

## Alterations:

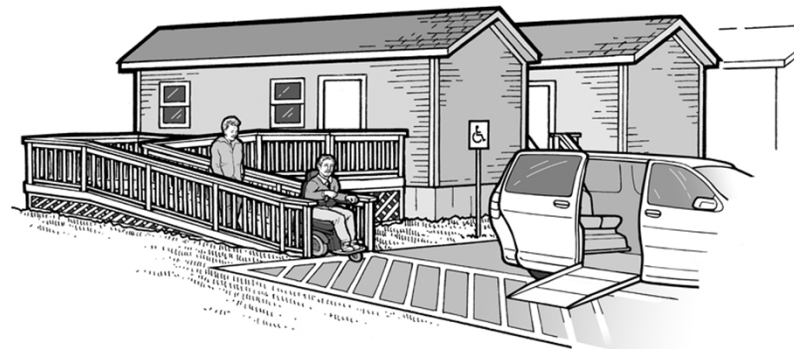
- **1991 Standards**: Contains a rule that if enough elements in a single space are altered, the entire space must be made accessible.
- **2010 Standards**: Rule is eliminated. DOJ commentary stated: “Under Section 202.3 of the 2010 Standards, entities can alter as many elements within a room or space as they like without triggering a requirement to make the entire room or space accessible based on the alteration of individual elements. This does not, however, change the requirement that if the intent was to alter the entire room or space, the entire room or space must be made accessible...”



# ADA – Key Changes

## Public Entrances:

- **1991 Standards**: 50 percent of public entrances must be accessible, or a number equal to the number of exits required by local codes (typically two);
- **2010 Standards**: 60 percent of public entrances must be accessible.





# ADA – Key Changes

## Toilet Rooms:

- **1991 Standards**: Accessible sink can be placed within the required clear space around a toilet;
- **2010 Standards**: Accessible sink may not be placed in toilet clear floor space.

## Mitigating Measures under 2010 Standards:

- Shorter 20” (L) rear toilet grab bar can be used to allow the sink to be recessed in the rear wall;
- Door can swing into the fixture clearances provided that there is 30” x 48” clear space outside of door swing.



## ADA – Key Changes

### Single use toilet rooms & accessible guest room bathrooms

- 1991 Standards: Accessible sink can be placed within the required toilet clear floor space.
- 2010 Standards: Accessible sink may not be placed in toilet clear floor space.

### Mitigating measures under the 2010 Standards

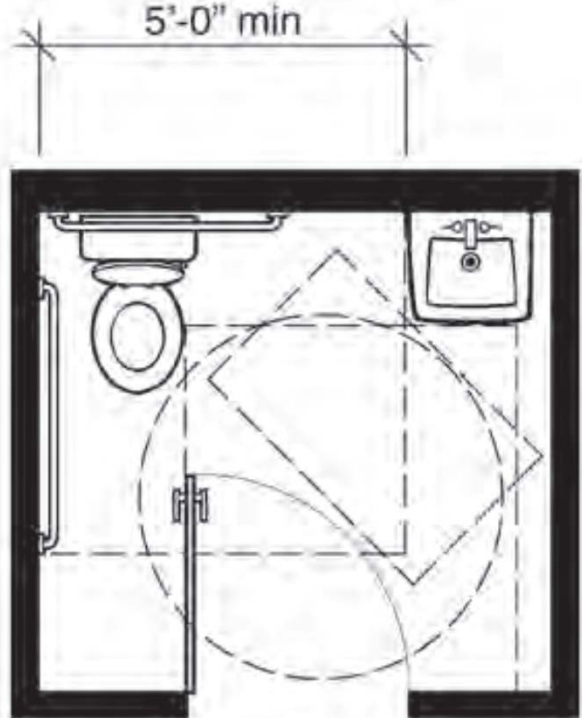
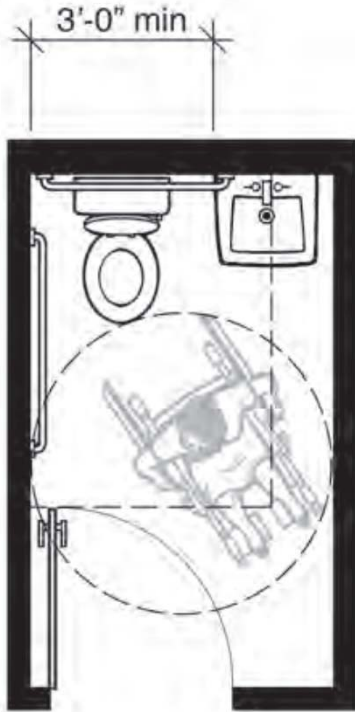
- Shorter 24” (L) rear toilet grab bar can be used to allow the sink to be recessed into the rear wall; and
- Door can swing into the fixture clearances provided that there is 30”x48” clear space outside of the door swing.



# ADA – Key Changes

## 1991 Compliant Bathroom (left) vs. 2010 Compliant Bathroom (right)

**Examples:**







## ADA – Key Changes

- **2010 Standards**: Shower and sauna doors in non-accessible guest rooms can provide less than 32” clear width when open.
- **2010 Standards**: When determining how many accessible guest rooms are required, facilities subject to the same permit application on a common site that each have 50 or fewer guest rooms may be combined. Facilities with more than 50 guest rooms will be treated separately for this analysis.



# ADA – Key Changes

- **Vanity space in accessible guest rooms**
  - 1991 Standards: No requirement for vanity space.
  - 2010 Standards: Vanity counter space must be “comparable” to the space provided in non-accessible guest rooms.
- **Accessible guest rooms with communication features**
  - 1991 Standards: Visual fire alarms and visual notification devices for incoming telephone calls and a door knock or door bell can be portable.
  - 2010 Standards: Visual fire alarms must be permanently installed and tied to the main alarm system. Visual notification devices for incoming telephone calls and a door knock or door bell can still be portable.



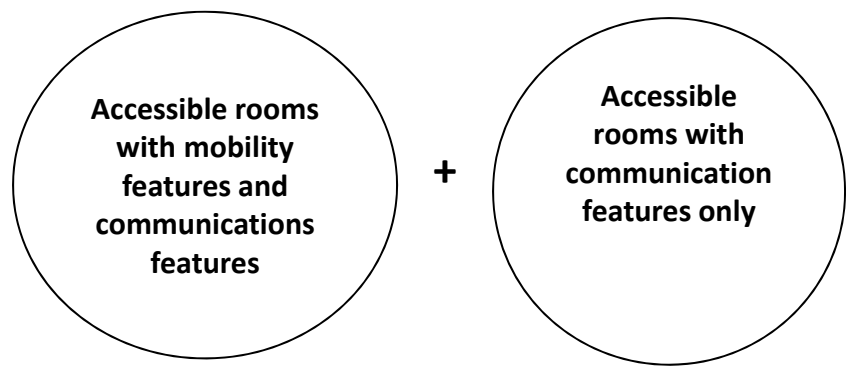
# ADA – Key Changes

## 1991 Standards

Total Accessible Room Inventory =

Room type

Room type

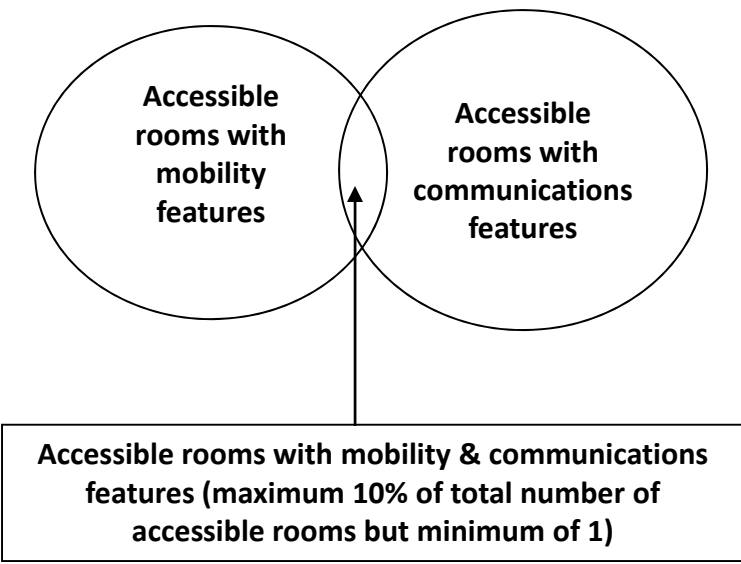


## 2010 Standards

Total Accessible Room Inventory =

Room type

Room type



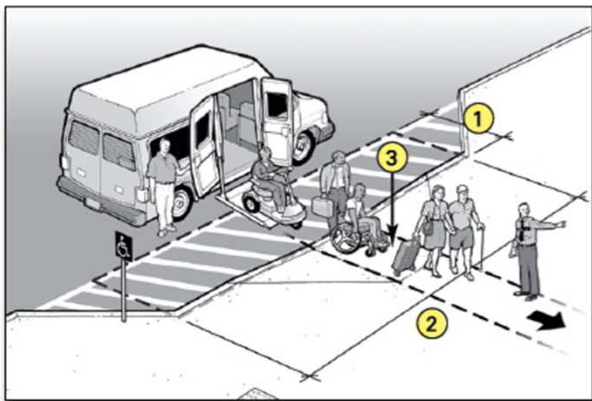


## ADA – Key Changes

### Sales and Service Counters:

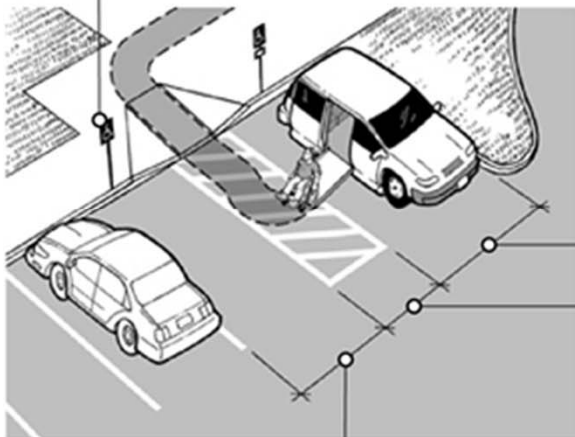
- **1991 Standards**: 36” (w) counter that is no higher than 36” AFF required at counters with cash registers. No depth requirement. Various alternatives also acceptable at service counters with no registers as flip-up and auxiliary counters;
- **2010 Standards**: Accessible counter has to be the same depth as the non-accessible counter used by customers. No alternative options (e.g., flip-up counters) for service counters with no registers.

# ADA – Parking

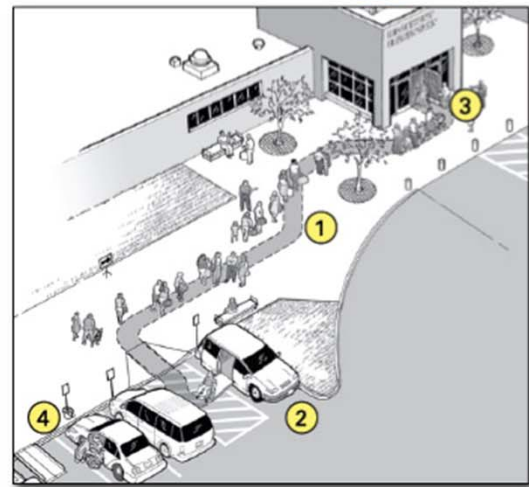


Signage: international symbol of accessibility placed in front of the parking space mounted at least five feet above the ground, measured to the bottom of the sign. Van accessible spaces include the designation "van accessible".

Van Accessible Spaces: 2010 Standards—one for every six accessible spaces (1991 Standards required one for every eight)



Space width for car: eight feet



Space width for van: 11 feet (although it may be eight feet wide if its access aisle is eight feet wide)

Access aisle:  
Width: five feet (if aisle serves car and van spaces)  
Length: full length of parking space





## ADA – Key Changes

### Van Accessible Parking Spaces:

- **1991 Standards**: 1 out of 8 accessible spaces must be van accessible;
- **2010 Standards**: 1 in 6 accessible spaces must be van accessible.





## ADA – Key Changes

### Direct access entrances from parking structures:

- **1991 Standards**: If there is a direct pedestrian connection from a parking structure to a facility, at least one connection has to be accessible.
- **2010 Standards**: All direct pedestrian connections must be accessible.

### Valet Parking

- **2010 Standards**: Valet Parking areas will no longer be exempt from accessible parking requirements. Must have at least one spot available for disabled driven self-parking.



## ADA – Key Changes

### Urinals:

- **1991 Standards**: Accessible urinal required in all restrooms;
- **2010 Standards**: Restrooms with only one urinal do not need an accessible urinal as long as there is a wheelchair accessible toilet stall.

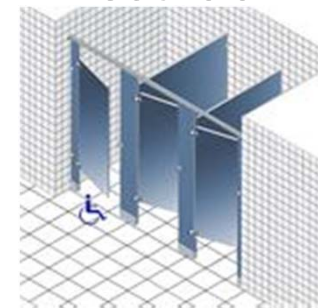
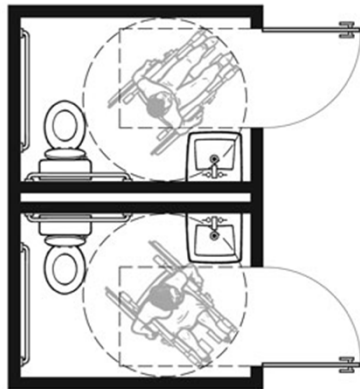




# ADA – Key Changes

## Ambulatory Toilet Stalls:

- **1991 Standards**: 1 ambulatory stall required in restrooms with 6 or more stalls;
- **2010 Standards**: 1 ambulatory stall required in restrooms with 6 or more stalls or urinals.





## ADA – Key Changes

### Detectable Warnings (Truncated Domes):

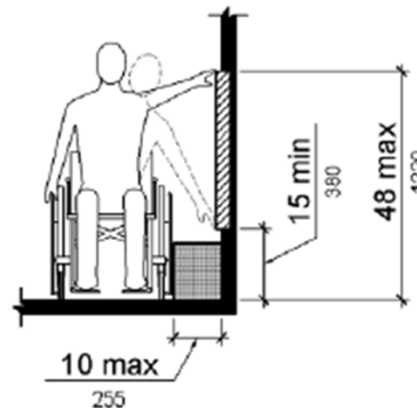
- **1991 Standards**: Detectable warnings requires at hazardous vehicular areas and curb ramps;
- **2010 Standards**: Required eliminated but may be revisited in a later rulemaking.



# ADA – Key Changes

## Reach Ranges:

- **1991 Standards**: Accessible side reach (not over obstruction) is 9" – 54" AFF;
- **2010 Standards**: Accessible side reach (not over obstruction) is 15" – 48" AFF.





## ADA – Key Changes

### Accessible Seating in Food and Beverage Areas:

- **1991 Standards:**
  - Accessible table(s) can be provided in lieu of a lowered bar counter
  - 5% of tables must be accessible
- **2010 Standards:**
  - 5% of seating and standing spaces (i.e., bars) must be accessible
  - Eliminated the option of providing accessible table instead of an accessible counter at the bar.



# ADA – Key Changes

## Vending machines

- **1991 Standards:**
  - On accessible route; and
  - 30”x48” clear floor space next to machine.
- **2010 Standards:**
  - Both of the above, plus
  - Operational parts must be within reach range and not require tight grasping, pinching or twisting of the wrist.



# ADA – Key Changes

## Signage Mounting Location

<u>1991 Standards</u>	<u>2010 Standards</u>
60" to the center of the sign	48" AFF minimum (measured to the baseline of the lowest tactile character) and 60" max. AFF (measured from the baseline of the highest tactile character).
Person should be able to be within 3" of the sign without encountering a protruding object or standing within door swing.	18" x 18" clear floor space outside of door swing, centered on tactile letters.
For single doors, latch side of door.	Same.
If insufficient space latch side, sign should be on the nearest adjacent wall.	Same.
For double doors, sign should be on the nearest adjacent wall.	For double doors, with one active leaf, sign should be on inactive leaf. For double doors with two active leaves, sign should be to the right of the right hand door.
Sign not allowed on door.	Sign can be mounted on the door on push side if there is a closer and no hold open device.



## ADA – Key Changes

### Employee Work Areas:

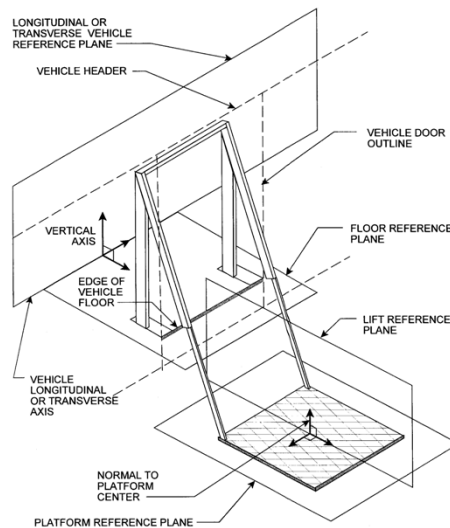
- **1991 Standards**: Employee work areas must be designed so that a person using a wheelchair can enter, exit, and approach the area;
- **2010 Standards**: Additional requirement that common use circulation paths within work areas greater than 1,000 s.f. be accessible, subject to certain limited exceptions. In addition, wiring for visual alarms is required in work areas.



# ADA – Key Changes

## Platform lifts that are part of an accessible egress route:

- **1991 Standards**: No standby power required;
- **2010 Standards**: Standby power required.



PLANES OF REFERENCE

FIGURE 1







# ADA – Key Changes

## Drinking Fountains:

- **1991 Standards**: Freestanding or built-in (but not wall-mounted) water fountains do not need knee/toe clearance space underneath;
- **2010 Standards**: Freestanding or built-in (but not wall-mounted) water fountains must have knee/toe clearance underneath. 2010 Standards also contain technical requirements for fountains for standing persons.





## ADA – Key Changes

### Miscellaneous Provisions:

- **2010 Standards**: Assembly areas without fixed seating will be required to have an assistive listening system if audio amplification is provided;
- **2010 Standards**: Additional Requirements for washers and dryers;
- **2010 Standards**: Operable windows in rooms or spaces for operation by occupants are covered for first time.



# ADA – Key Changes

## Miscellaneous Provisions:

- **2010 Standards**: New narrow exception to requirement for an accessible route between a site arrival point and accessible facilities. If the only means of access between the two is a vehicular way that does not provide pedestrian access, an accessible pedestrian route is not required (e.g., route between public road and hotel complex on a very large isolated site served by a private road);
- **2010 Standards**: Construction and manufacturing tolerances will apply only to dimensions in the 2010 Standards that are stated in absolute terms. If the standards specify a range, the construction and manufacturing tolerances are considered to be reflected in the range.



## ADA – Key Changes

### Miscellaneous Provisions:

- **2010 Standards**: Accessible guest rooms with communication features must have permanently installed audible and visible fire alarms and must provide visible notification devices for incoming telephone calls and a door knock or door bell;
- **2010 Standards**: At least one, but not more than 10% of accessible guest rooms with mobility features can have communications features for guests with hearing disabilities.



# ADA Condo-Hotels and Timeshares

- General Rule: Condo-hotels and timeshares that meet the definition of “place of lodging” (slide 48) are covered under ADA Title III like traditional hotels.
- Parties involved in the design and construction of condo-hotels must ensure that the common areas of the facility comply with ADA Title III requirements, and that the facility has the required number of accessible units based on the number of units that will be sold with the possibility of being used as a place of lodging (i.e., placement in a rental program), as opposed to constructed for purely residential use.
- Exception: Units in existing facilities that are not owned or substantially controlled by the entity that owns, leases, or operates the overall facility and whose physical interior features are controlled by their individual owners are not subject to the barrier removal or alterations requirements of ADA Title III.



# ADA – Reservations



**Effective Date: March 15, 2012**



# ADA – Reservations

## Who is affected?

- A “**place of lodging**” is now specifically defined to include:
  - Inn, Hotel, Motel;
  - A facility that provides guest rooms for short-term (30 days or less) stays with no right to return to a specific room.
- A facility that provides guest rooms under conditions with amenities similar to a hotel, motel, or inn, including:
  - On or off-site management or reservation service;
  - Walk-up or call-in rooms;
  - Housekeeping or linen service;
  - Acceptance for reservation without guarantee of a specific room until check-in; and
  - No prior lease or security deposit required.
- **Facilities with five rooms or less for rent that are the residence of the proprietor are not places of lodging.**



# ADA – Reservations

## The 2010 Standards requires:

- Lodging operators ensure guests with disabilities can reserve accessible guest rooms during the same hours and in the same manner as other guests;
- Lodging operators identify and describe accessible features of the hotel and guest rooms offered to allow independent assessment by the disabled individual of whether the hotel or room meets accessibility needs.





## ADA – Reservations

### Identification of accessible features will vary by hotel, but should include at a minimum:

- Accessible bathing fixture (roll-in shower, transfer shower, accessible tub);
- Number and size of beds;
- Communications features in the room;
- Accessible entrances, routes, and paths of travel to essential services and rooms;
- Information about features that *do not* comply with the 1991 standards.



# ADA – Reservations

## Holding Rooms:

- Ensure accessible guest rooms are held until all other guest rooms of the same type have been rented;
- Ensure the accessible guest rooms reserved is blocked and removed from all reservations systems;
- Guarantee the specific accessible room is held for the reserving customer;
- These requirements do not apply to reservations for individual guest rooms or units not owned or substantially controlled by the entity owning, leasing, or operating the overall facility.



# ADA – Service Animals





## ADA – Service Animals

**Under the ADA, a “Service Animal” is now limited to any dog or miniature horse that is individually trained to work or perform tasks for individuals with physical, sensory, psychiatric, intellectual, or other mental disabilities. (1991 Standards did not limit the definition to dogs.)**

- Other species of animals, whether trained or untrained, are not “service animals” (with exception of miniature horses);
- Pets are not “Service Animals”;
- Animals whose sole function is to provide emotional support, comfort, therapy, companionship, or crime deterrence are not “service animals.”



## ADA – Service Animals

### **The ADA requires that public accommodations:**

- Allow individuals with disabilities to bring their service animals into all areas of the facility where customers are normally allowed to go; and
- Make reasonable modifications in policies, practices, or procedures to permit an individual with a disability to be accompanied by a miniature horse if it has been individually trained to do work or perform tasks for the benefit of the individual with a disability.



## ADA – Service Animal FAQs

### **If an individual enters a facility with an animal, may I request special ID for the animal?**

- No, the ADA prohibits asking for proof that the animal has been certified, trained, or licensed as a service animal.

### **What questions *can* I ask?**

- The ADA now allows the following questions to be asked:
- Do you need the animal because of a disability?
- What work or tasks has the animal been trained to perform?



## ADA – Service Animal FAQs

**May a public accommodation ask an individual to explain or verify what kind of disability he/she has?**

- No.

**May a public accommodation charge a special entrance or usage fee to a patron with a service animal?**

- No. However, if a public accommodation normally charges patrons for damage they cause to the facility, it can similarly charge a patron with a service animal for any damage caused by the service animal.



## ADA – Service Animal FAQs

### **May a public accommodation have a service animal removed from a facility?**

- Yes, if the animal is out of control and the patron is not taking corrective action, or the animal is not housebroken.
- In that case, the public accommodation should give the patron the option of remaining in the facility to enjoy the goods/services without the service animal.
- Allergies and general fear of animals generally are not valid reasons for denying access or refusing service to individuals with service animals.





## ADA – Service Animal FAQs

### **May a public accommodation exclude a service animal from a facility if state or local health codes prohibit animals on the premises?**

- No. The ADA is a Federal law that trumps state or local laws and regulations that are less protective of the rights of individuals with disabilities.

### **Is a public accommodation required to provide food or special care for the service animal?**

- No.



# ADA – Service Animal State Laws

- **Some state laws/regulations define “service animal” more broadly than the ADA. For example:**
  - Illinois: a “service animal” means **any animal** “trained in obedience and task skills to meet the needs of a disabled person” (510 ILCS 70/2.01c).
  - Iowa: a “service animal” means **any animal** “professionally trained and certified by a recognized certification entity to assist a person with a disability in meeting specific personal care needs or engaging in daily activities” (IA ST 216C.11(2)).
  - Montana: a “service animal” includes “a dog **or other animal** individually trained to provide assistance to an individual with a disability” (MT ST 49-4203(2) (emphasis added)).
  - North Dakota: a “service animal” includes “any guide dog, signal dog, **or other animal** trained to do work, perform tasks, or provide assistance for the benefit of an individual with a disability” (ND ST 25-13-01.1) (emphasis added)).
- **The ADA does not disturb any state or local law/regulation that provides protection for individuals with disabilities at a level greater or equal to that provided by the ADA.**



# ADA – Effective Communication Rules





# ADA – Communications Rules

**Public Accommodations have an obligation to provide auxiliary aids and services to the extent necessary to facilitate effective communication with individuals with disabilities.**



## ADA – Communication Rules

### The 2010 Regulations make the following clarifications:

- Public Accommodations must consult with individuals with disabilities about how he or she wants to communicate, but the decision on the auxiliary aid or service to be provided rests with the public accommodation as long as the communication is effective;
- Effective communication for people who are companions of patron individuals with disabilities is required;
- Additional options for effective communication such as real time captioning, videophones, video remote interpreting services, and exchange of written notes have been added;
- If the situation calls for an interpreter, a public accommodation may not rely on friends or family members to interpret, unless the customer wants those people to interpret;
- Calls made via relay service must be accepted and handled in the same manner as other telephone calls.



# ADA – Effective Communication Rules

## **The 2010 Regulations make the following clarifications:**

1. Lodging facilities must consult with an individual with a disability about how he/she wants to communicate, but the decision on the auxiliary aid or service to be provided rests with the lodging facility as long as the communication is effective.
2. Effective communication for companions of individuals with disabilities (if those companions have disabilities) is required.
3. Additional options for effective communication such as real time captioning, videophones, video remote interpreting services, and exchange of written notes have been added.
4. If the situation calls for an interpreter, a lodging facility may not rely on friends or family members to interpret, unless the guest wants those persons to interpret.
5. Calls made via relay service must be accepted and handled in the same manner as other telephone calls.



# ADA – Mobility Devices





## ADA – Mobility Devices

### **A Public Accommodation must:**

- Permit individuals with mobility disabilities to use wheelchairs (defined as a manually-operated or power-driven device designed primarily for use by an individual with a mobility for locomotion) and manually-powered mobility aides (walkers, crutches, canes, braces, etc.) in any areas open to pedestrian use; and
- Make reasonable modifications in policies, practices, or procedures to permit the use of “other power-driven mobility devices” by individuals with mobility disabilities, unless the public accommodation can demonstrate that such devices cannot be operated with legitimate safety requirements that the public accommodation has adopted.





## ADA – Mobility Device FAQs

### Does the ADA define “other power-driven mobility devices”?

- Yes. The ADA defines this term as “any mobility device powered by batteries, fuel, or other engines – whether or not designed primarily for use by individuals with mobility disabilities for the purpose of locomotion, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair;
- Examples: Segways and golf carts.



## ADA – Mobility Device FAQs

### **How does a public accommodation determine whether to permit use of a particular mobility device as a “reasonable modification”?**

- Public accommodations may consider several factors, including:
  - The type, size, weight, dimensions, and speed of the device;
  - The facility’s volume of pedestrian traffic (which may vary at different times of the day, week, month or year);
  - The facility’s design and operational characteristics (e.g., whether business is conducted indoors, its square footage, the density and placement of stationary devices, and the availability of storage for the device if requested by the user);
  - Whether legitimate safety requirements can be established to permit the safe operation of the mobility device in the specific facility; and
  - Whether the use of the other device creates a substantial risk of serious harm to the immediate environment.



# ADA – Mobility Device FAQs

**May public accommodations ask an individual using a wheelchair or other power-driven mobility device questions about the nature and extend of his/her disability?**

- No.





## ADA – Mobility Device FAQs

### **May public accommodations require proof of an individual's need to use a mobility device?**

- Public accommodations may require an individual who uses a mobility device to provide “credible assurance” that he/she needs to use the mobility device. “Credible assurance” may be either of the following:
  - A valid, state-issued disability parking placard or card, or state-issued proof of disability, or
  - A verbal representation that is consistent with “observable fact.”



# ADA – Top 11 Changes

1. **Reservations**
2. **Water Closet Clearances**
3. **Power Mobility Devices**
4. **Vanity Equity**
5. **Service Animals**
6. **Parking**
7. **Guestroom Door Signage**
8. **Pools & Spas**
9. **Reach Range Requirements**
10. **Exercise Equipment**
11. **Service Counters**





## ADA – New Regulations?

### **DOJ is now proposing additional regulations in three new areas of accessibility:**

- Furniture & Exercise Equipment;
  - (e.g., bed height and clearance, exercise equipment, EIT equipment, communications equipment for accessible rooms)
- Website Accessibility;
- Self-Service Electronic Information Technology Equipment.



# ADA – Enforcement

## Department of Justice Enforcement

- Through lawsuits and settlement agreements, the Department of Justice has achieved greater access for individuals with disabilities in hundreds of cases. Under general rules governing lawsuits brought by the Federal government, the Department of Justice may not sue a party unless negotiations to settle the dispute have failed.
- The Department of Justice may file lawsuits in federal court to enforce the ADA, and courts may order compensatory damages and back pay to remedy discrimination if the Department prevails. Under title III, the Department of Justice may also obtain civil penalties of up to \$55,000 for the first violation and \$110,000 for any subsequent violation.
- [WWW.ADA.GOV/settlemt.htm](http://WWW.ADA.GOV/settlemt.htm) lists nearly 40 recent settlements against lodging industry.



## ADA – DOJ Activity

### DOJ Activity to Note:

- **Hilton Agreement:**

- Pay \$50,000 to the United States;
- Survey all post-1993 properties for ADA compliance;
- Require all owners to bring hotels into compliance;
- Agree that all future builds with comply with ADA;
- Retain independent ADA monitor(s);
- Provide ADA training to staff;
- Appoint ADA contacts.





# ADA – DOJ Activity

## DOJ Activity to Note:

- **New York Theater District:**

- Requested ADA compliance data from 40+ properties;
- Asked properties to sign agreements;
- DOJ sued five hotels.



United States Attorney  
Southern District of New York

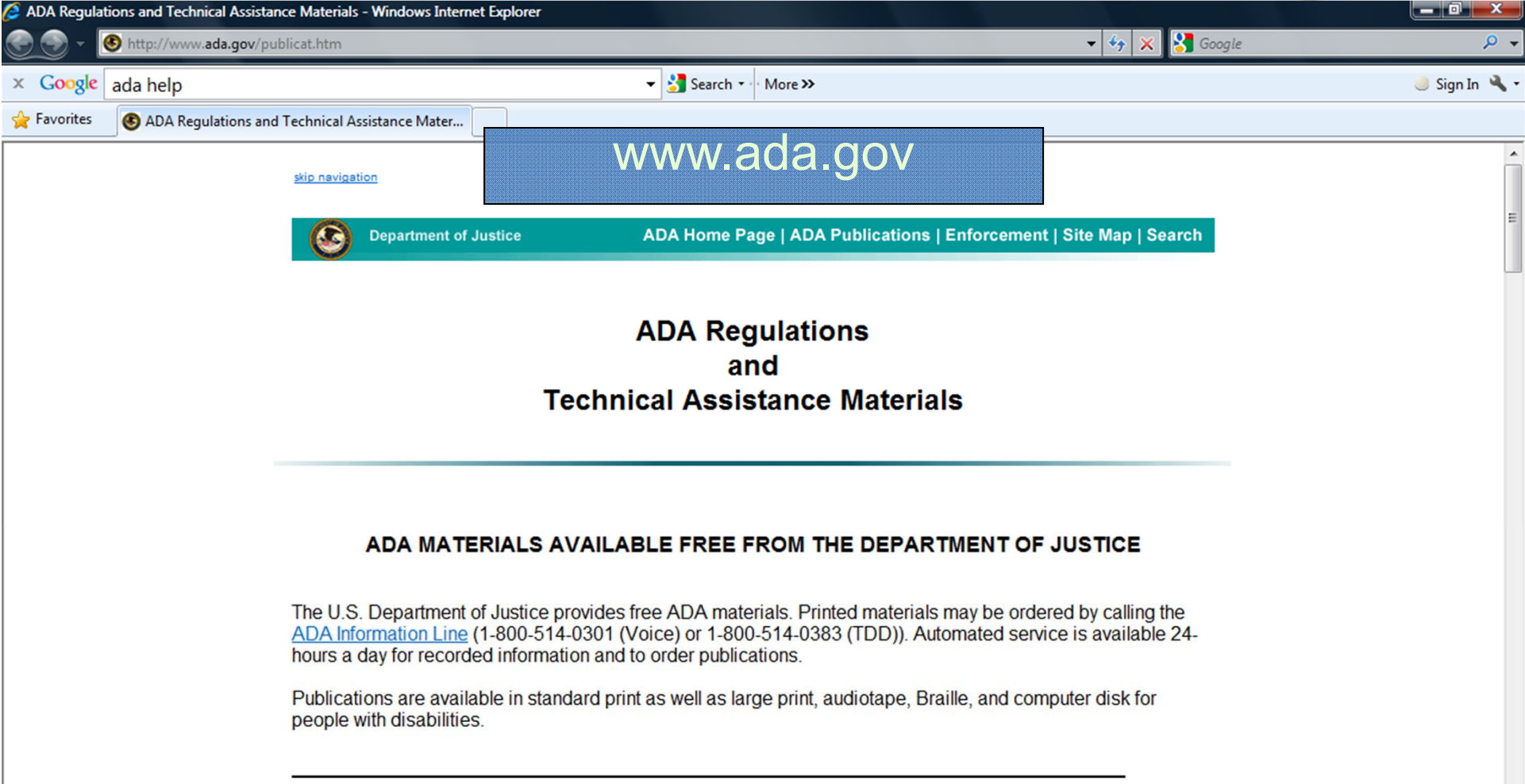
CONTACT: YUSILL SCRIBNER,  
JANICE OH,  
EDELI RIVERA  
PUBLIC INFORMATION OFFICE  
(212) 637-2600

MANHATTAN U.S. ATTORNEY MARKS 20th ANNIVERSARY OF THE  
AMERICANS WITH DISABILITIES ACT BY ENTERING INTO  
THIRTY-FIRST SETTLEMENT AGREEMENT WITH  
TIMES SQUARE HOTEL

PREET BHARARA, the United States Attorney for the  
Southern District of New York, announced today that his Office



# ADA – Resources



ADA Regulations and Technical Assistance Materials - Windows Internet Explorer

http://www.ada.gov/publicat.htm

ada help

ADA Regulations and Technical Assistance Mater...

**www.ada.gov**

skip navigation

Department of Justice | ADA Home Page | ADA Publications | Enforcement | Site Map | Search

## ADA Regulations and Technical Assistance Materials

---

### ADA MATERIALS AVAILABLE FREE FROM THE DEPARTMENT OF JUSTICE

The U.S. Department of Justice provides free ADA materials. Printed materials may be ordered by calling the [ADA Information Line](#) (1-800-514-0301 (Voice) or 1-800-514-0383 (TDD)). Automated service is available 24-hours a day for recorded information and to order publications.

Publications are available in standard print as well as large print, audiotape, Braille, and computer disk for people with disabilities.

# ADA – Resources

Americans with Disabilities Act - AH&LA - Windows Internet Explorer

http://www.ahla.com/content.aspx?id=30927

www.ahla.com

American Hotel & Lodging Association

member login

search  go home | press room | membership | governmental affairs | conventions & events | programs & initiatives

Issues | press releases & advisories | HotelPAC | take action | LAS | useful links

Home > Government Affairs

**Americans with Disabilities Act**

about us  
information center  
message board  
career center powered by hcareers  
data center powered by STR  
find hotel products/services

The Americans with Disabilities Act (ADA) was signed into law by President George Bush in July, 1990. This landmark legislation prohibits discrimination on the basis of a disability. Title III of the ADA requires that commercial facilities that are open to the public (including lodging properties) allow individuals with disabilities to participate equally in the goods and services they offer. Title III mandates modifications in policies, practices, and procedures; the provision of auxiliary aids and services; the provision of accessible transportation services when transportation services are offered; and the removal of architectural and communication barriers. Other titles of the ADA deal with employment, public services and telecommunications.

AH&LA's members have spent billions of dollars since 1990 making their facilities accessible to individuals with disabilities in compliance with the ADA. They have done so not only because it is the law but because their mission is to make every guest feel comfortable and welcome.

Long awaited changes to the Accessibility Guidelines of the Americans with Disabilities Act were recently issued mandating numerous changes on lodging requirements under the ADA. Most of the changes will not apply to the lodging industry until 2012, but some hotels may need to review current compliance to determine if changes are necessary immediately.

**Members may access the following resource:**

- ▶ New Regulations from the Justice Department
- ▶ Webinar: A Hotelier's Guide to New Title III ADA Regulations



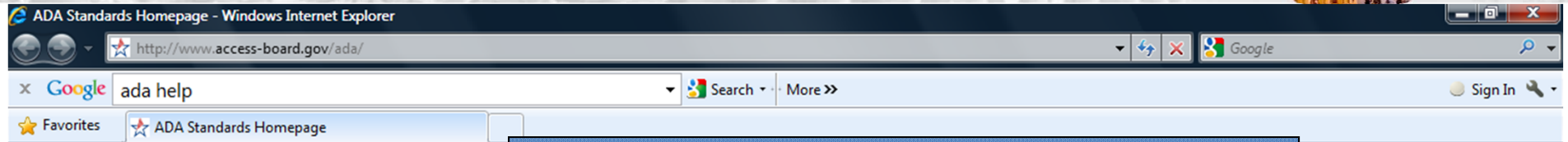
## New AH&LEI Video: Enabling Independence: Service for Guests with Disabilities

Traveling is an independent activity that all should be able to enjoy. This DVD training program from the Educational Institute helps you fulfill the latest ADA non-discrimination requirements so you can deliver great service to guests with disabilities. This video focuses on specific service interactions and highlights property features that enable independence for your guests.

- The video addresses the following topics:
  - ❖ Guests with Mobility Disabilities (including new mobility devices)
  - ❖ Guests Who Are Blind or Have Low Vision
  - ❖ Guests Who Are Deaf Or Hard of Hearing
  - ❖ Guests Who Have Speech Disabilities
  - ❖ Guests With Learning or Mental Disabilities
  - ❖ Service Animals
  - ❖ Emergency Situations
  - ❖ 10 Scenario-based vignettes that offers the opportunity for additional discussion about servicing guests with disabilities
- Program includes:
  - ❖ One DVD - Bilingual (English and Spanish)
  - ❖ One Leader's Guide - English
  - ❖ One Learner's Guide - Bilingual (English and Spanish)

**Available October 2011**

# ADA – Resources



[www.access-board.gov/ada](http://www.access-board.gov/ada)

## ADA Standards Homepage

[Guidelines and Standards](#) | [Home](#)

ADA standards govern the construction and alteration of places of public accommodation, commercial facilities, and state and local government facilities. The Department of Justice (DOJ) maintains ADA standards that apply to all ADA facilities except transportation facilities, which are subject to similar standards issued by the Department of Transportation (DOT). Federal facilities are covered by [standards](#) consistent with those of the ADA issued under a different law, the Architectural Barriers Act (ABA).

### ADA STANDARDS

- [DOJ's 2010 ADA Standards](#) (effective March 15, 2012, but can be used now instead of the 1991 standards)
- [DOJ's 1991 ADA Standards](#) (usable until March 15, 2012)
- [DOT's ADA Standards for Transportation Facilities](#) (2006)
- [Which Standard to Follow](#)
- [Guide to the Standards](#)

#### Regulations

ADA regulations issued by DOJ and DOT provide important information on using the standards:

- [DOJ's ADA regulations](#) (updated on September 15, 2010)
- [DOT's ADA regulations](#) and [notice](#) implementing the 2006 standards

### ADA GUIDELINES

The Access Board's ADA Accessibility Guidelines (ADAAG) serve as the minimum baseline for the standards. The guidelines and standards are very similar, but only the standards have legal authority. However, the guidance provided here is relevant to the standards. In its last update, the Board harmonized the ADA guidelines with the ABA guidelines for federal facilities and published them jointly. In addition, the Board and the International Code Council (ICC) worked cooperatively to harmonize the ADA and ABA guidelines and access provisions in the International Building Code (IBC).



The latest ADA standards are closely based on the Board's updated *ADA and ABA Accessibility Guidelines* but include several additional requirements. If using a copy of

# ADA – Resources

The screenshot shows a Windows Internet Explorer browser window displaying the website [www.universaldesign.com](http://www.universaldesign.com/). The browser's address bar shows the URL, and the search bar contains the text "universal designers and consultants takoma park salmen". The website's header includes a navigation menu with links for Home, About Us, Universal Design Basics, Events, Education, Publications, Products, and Services. A search bar and a "LOGIN" button are also visible. The main content area features a "What's New" section with the article "What is Universal Design? Finding UD Information". To the right, there are sections for "News" (titled "Is Universal Design the Next Big Thing?"), "Articles" (titled "Assume They Want Your Help"), and "Discussions" (titled "What does universal design mean to you?"). At the bottom of the page, there is a carousel of images with left and right navigation arrows. The images include a hand using a blue assistive device, a close-up of a light switch, and a large fountain at night.

# ADA – Resources

Minh N. Vu - Labor & Employment Attorney - Seyfarth Shaw LLP - Windows Internet Explorer

http://www.seyfarth.com/index.cfm/fuseaction/attorney.attorney\_detail/object\_id/70e17126-ff99-4dae-b7a8-64d4ed2ed1d0/MinhVu.cfm

universal designers and consultants takoma park salmen

www.seyfarth.com

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## Our People

**Minh N. Vu**  
Partner



Washington, D.C.  
(202) 828-5337  
[mvu@seyfarth.com](mailto:mvu@seyfarth.com)

**Biography**

Ms. Vu is a partner in the Labor and Employment department in the firm's Washington, D.C. office. Ms. Vu is a litigator with special experience in handling all types of discrimination matters in employment, housing, and public accommodations. She is also one of the leading disability law attorneys in the country.

After many years of litigating cases at all levels of the federal judicial system and before state and federal agencies, Ms. Vu joined the U.S. Department of Justice where she served as Counselor to the Assistant Attorney General for Civil Rights. In that position, Ms. Vu oversaw the enforcement of the Americans with Disabilities Act (ADA), the Fair Housing Act (FHA), the Rehabilitation Act, as well as Title VII of the Civil Rights Act of 1964. She also represented the Department of Justice on the U.S. Access Board, the federal agency charged with creating accessibility guidelines for public accommodations and commercial facilities.

Since returning to the private sector, Ms. Vu has handled a variety of complex disability and employment law matters. Ms. Vu has defended public

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**Practice Areas**

**Practices**

- Labor & Employment
  - Workplace Counseling & Solutions
  - Single-Plaintiff Litigation

**Related Focus**

- Representative Engagements
- Press/News
- Publications
- Presentations
- Events



## ADA – Guidance

### **Between now and March 15, 2012:**

- Bring newly-covered elements into compliance with 2010 Standards to the extent doing so is “readily achievable”;
- Review existing elements that will be subject to stricter or different specifications under 2010 Standards. If not compliant with the 1991 Standards, decide whether to bring them into compliance with 1991 Standards to take advantage of safe harbor;
- Contact ATM provider to discuss cost and process for adding communications features required by 2010 Standards;
- Revise hotel reservations process.





## ADA – Guidance

### Other Considerations:

- Consider whether there is a need for a policy for other power-driven mobility devices;
- Review and update effective communication policy as needed;
- Review and update service animal policies based on new regulations (but beware state specific requirements);
- Visit [www.ahla.com](http://www.ahla.com)

# ADA – Legislative Options

abc 30 HD  
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HOME  
NEWS

Enter search phrase SEARCH SEE IT ON TV? CHECK HERE FOLLOW US

Local  
**Americans with Disabilities Act Lawsuit Frustrates Valley Business Owners**  
Tuesday, April 13, 2010



## Court Caps Man at More Than 400 Lawsuits

Californian sued under Americans With Disabilities Act

Nov 18, 2008 11:58 AM CST

## Betancourt v Burning Hills Hotel

**Court Name:**  
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

**Case Number**  
4:2009cv00293

**Date Filed:**  
5/19/2009

**Case Type:**  
Americans With Disabilities Act (ADA)

**Inquire About Your Potential Case**

Call us at (800) 689-0024 or [Inquire Online](#)

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**Morgan Business Trial Group Brings Action against The Peabody Orlando Hotel for Violations of the Americans with Disabilities Act**



# ADA – Legislative Options

## ADA Notification Act

- **H.R. 881** introduced by Congressman Duncan Hunter (R-Ca);
- 90-Day Waiting Period;
- Notification of violation required;
- Six cosponsors (bi-partisan);
- House Judiciary Committee;
- No Senate Companion
  - (Inouye sponsored last Senate bill)



# **Title I of the Americans with Disabilities Act as amended by ADA Amendments Act of 2008**



## ADA Amendments Act

- An employer may not discriminate against an employee on the basis of disability in any aspect of the employment relationship.
- The activities covered include:
  - Outreach, Application Process, Testing
  - Interviewing, Hiring, Assignments
  - Evaluation, Discipline, Medical Examinations
  - Compensation, Promotion, On-the-Job Training
  - Layoff/Recall, Termination, Leave
  - Benefits of employment e.g., health insurance





# ADA Amendments Act

## Definition of Disability

An individual with a disability is one who:

- has,
- has a record of, or
- is regarded as having

a physical or mental impairment that substantially limits a major life activity.

- Now, disability “shall be construed in favor of broad coverage” and “should not require extensive analysis.”
- Now need not prevent, significantly or severely restrict the performance of a major life activity.



## ADA Amendments Act

### Guidance for Employers:

- Assume employee is covered;
- Develop written plan;
  - Address training
  - Appoint key contacts
  - Document, document, document
- Consider accommodation options;
- Review policies;
- Can ask questions...
- But not too much (HIPPA, Privacy);
- Condition may be temporary (broken leg).

# Test Your KNOWLEDGE

# NEW ADA Regulations

New ADA regulations were issued September, 2010, but how prepared are you for the transition?

1. Which areas are affected by the 2010 regulations?

- A. Swimming pools
- B. Golf courses
- C. Shooting ranges
- D. All the above

2. How much space is now required around a toilet?

- A. 2 feet
- B. 3 feet
- C. 5 feet
- D. 6 feet

3. True or False:

An accessible room is to be reserved solely for persons requiring the accessibility features.

4. Which properties are affected by the new regulations?

- A. Only newly-constructed properties
- B. Only properties with more than 50 rooms
- C. Only properties built or renovated after 1991
- D. All properties

5. A temporarily impaired employee must receive “reasonable accommodation.” Does this mean you must:

- A. Provide a guest room for relaxation during their break.
- B. Find another comparable job they are physically able to perform.
- C. Provide paid leave until they are healed.
- D. Alter the manner in which their day-to-day duties are performed.

6. Which of the following is used to determine what is considered an “essential function” of a particular job:

- A. How much time is spent on the task.
- B. How important the task is to the overall position.
- C. Who else is available to fulfill certain responsibilities.
- D. All of the above.

7. Is pregnancy considered an impairment?

- A. Yes.
- B. Only in the last trimester.
- C. Only if the position requires physical labor.
- D. Only if there are complications with the pregnancy.



# Test Your KNOWLEDGE

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## Contact Information

### QUESTIONS?

**Kevin Maher**

Senior Vice President for Governmental Affairs  
American Hotel & Lodging Association (AH&LA)  
(202) 289-3147 / [kmaher@ahla.com](mailto:kmaher@ahla.com)