

**OTHER ADA REQUIREMENTS**  
**THAT RELATE TO TRANSPORTATION**  
**(TITLES II AND III)**  
**OUTLINE**

**I. General Requirements**

A. No Exclusion of People with Disabilities

May not deny person with a disability goods or services

B. No Discrimination Through Contract

C. Integrated Settings

1. Must offer goods and services in most integrated setting appropriate to the needs of the individual
2. If specialized programs are offered, individuals with disabilities may participate in general programs if they prefer
3. An individual may not be required to accept an accommodation the individual chooses not to accept

D. Eligibility Criteria

1. It is discrimination to apply eligibility criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless such criteria can be shown to be necessary for the provision of goods and services
2. May impose legitimate safety requirements but they must be based on actual risks and on facts about particular individuals, not on speculation or stereotypes

E. Modification in Policies

1. It is discrimination to fail to make reasonable modifications in policies, practices, and procedures when necessary to afford goods and services to a person with a disability unless the public

accommodation or state or local government can demonstrate that modifying the policy or practice would fundamentally alter the nature of the goods and services provided

2. Service animals

F. Association

May not deny goods and services to an individual or entity because of the known disability of another individual with whom the first individual or entity has a relationship or association

G. No surcharges

Surcharges cannot be imposed to cover the cost of compliance with the ADA solely on people with disabilities

H. Insurance

I. Protection Against Retaliation and Harassment

J. Regulation of Smoking Allowed

**II. Limits on the Obligation of a Public Accommodation or State or Local Government**

A. Direct Threat

B. Personal Devices and Services

Need not be provided to people with disabilities unless such devices and services are normally provided to all the customers or clients of a public accommodation or state or local government

C. Illegal Use of Drugs and Alcohol

**III. Auxiliary Aids and Services**

A. Auxiliary aids and services means measures to ensure communication accessibility. Examples include:

1. Qualified interpreters, assistive listening systems, decoders, open and closed captioning, TDD's, etc.
2. Qualified readers, audio recordings, Braille materials, large print materials, materials on computer disk, etc.
3. Speech synthesizers, computer terminals, communication boards, etc.

4. Acquisition or modification of equipment or devices
- B. Auxiliary aids and services must be provided if necessary to avoid segregating or excluding an individual with a disability or denying goods or services unless providing them would fundamentally alter the nature of the goods and services or be an undue burden (undue burden means an action requiring significant difficulty or expense)
  - C. Primary consideration must be given to the request of an individual with a disability for a particular auxiliary aid unless:
    1. State or local government or public accommodation can demonstrate another effective means of communication exists (the auxiliary aid chosen must result in effective communication) or
    2. Choice of individual would be fundamental alteration or undue burdens

#### **IV. Enforcement - Title II (State and Local Government)**

- A. Internal Grievance Procedure and Designation of Responsible Person
  1. All state and local governments with 50 or more employees must designate at least one employee to coordinate the government's effort to comply with the ADA. This employee must ensure that any complaints alleging failure to comply are investigated
  2. All state and local governments with 50 or more employees must adopt and publish voluntary grievance procedures providing for resolution of complaints about noncompliance with the ADA
- B. Filing Administrative Complaints with the Federal Government
  1. Must be filed within 180 days of incident of discrimination though deadline may be extended for good cause
  2. Where to file
    - a. General Complaints -- file with one of these three:
      - i. Federal Agency Which Provides Funding to the State or Local Government
      - ii. Eight agencies Designated for State and Local Government Enforcement
        - a) Department of Agriculture

- b) Department of Education
  - c) Department of Health and Human Services
  - d) Department of Housing and Urban Development
  - e) Department of Interior
  - f) Department of Justice
  - g) Department of Labor
  - h) Department of Transportation
- iii. Department of Justice

Complaints may be sent to:

Coordination and Review Section  
P. O. Box 66118  
Civil Rights Division  
U.S. Department of Justice  
Washington, D.C. 20035-6118

- b. Employment Complaints -- file with one of these three:
- i. Federal Agency Which Provides Funding to the State or Local Government
  - ii. Eight agencies Designated for State and Local Government Enforcement (same as above)
  - iii. Equal Employment Opportunity Commission
3. The Administrative Complaint Process
- a. Designated agencies will accept all complete complaints and notify complainant of acceptance
  - b. Designated agencies will investigate complaint, attempt informal resolution, and if resolution is not achieved, issue to the complainant and the state or local government a Letter of Findings
  - c. If Letter of Findings finds noncompliance, agency will notify DOJ and initiate negotiations to secure voluntary compliance. Where voluntary compliance is secured, voluntary compliance agreement will be executed

- d. If negotiations are unsuccessful, agency will refer to DOJ. DOJ may file a lawsuit

C. Private Lawsuits

1. May be filed at any time, even if no administrative complaint has been filed
2. Remedies include:
  - a. Court order that state or local government comply with ADA
  - b. Attorney's fees
  - c. It is very likely that money damage awards will be available

D. Alternative Dispute Resolution (voluntary)

Any individual with a disability who pursues ADR should consider filing administrative complaint first due to 180 days time limit on filing complaints

**V. Enforcement - Title III (Public Accommodations)**

A. By Individuals

1. Complaint with Department of Justice -- DOJ will process administrative complaints and pursue selected cases
2. Private Lawsuit
  - a. Can result in:
    - i. Court order to comply with law
    - ii. Attorney's fees
    - iii. No money damages
  - b. If building is being newly constructed or altered in violation of ADA, lawsuit can be filed before construction is completed
3. Alternative Dispute Resolution (voluntary)

B. Attorney General May Bring Lawsuit

1. For pattern or practice of discrimination or case of general public importance
2. Can result in:
  - a. Same kind of injunctive relief as in private suits
  - b. Fines
    - i. Up to \$50,000 for the first violation
    - ii. Up to \$100,000 for subsequent violations
    - iii. Good faith efforts will be considered
  - c. Compensatory damages for the individual if requested by DOJ (but punitive damages not available)
- C. Grace period allowed after general deadline of January 26, 1992 before the smallest public accommodations can be sued
  1. Businesses with 25 or fewer employees and gross receipts of \$1,000,000 or less cannot be sued until July 26, 1992
  2. Businesses with 10 or fewer employees and gross receipts of \$500,000 or less cannot be sued until January 26, 1993
  3. However, additional time is not allowed in cases of violations of new construction or alterations provisions