



THE AMERICANS WITH DISABILITIES ACT: A GENERAL OVERVIEW

The Americans with Disabilities Act of 1990, or ADA, is a broad, transformative federal civil rights statute that mandates the elimination of discrimination and the integration of persons with disabilities into the mainstream of American life. The ADA is divided into three titles. Title I governs discrimination in employment relationships, Title II governs discrimination in public entities, and Title III covers discrimination in public accommodations. This fact sheet will provide a broad overview of all three titles, but will focus more on Titles II and III, as those are the two that relate most to advocacy organizations.

Who is defined as having a disability?

An **individual with a disability** is any person who:

- (1) Has a **physical or mental impairment** that **substantially limits** one or more **major life activities**;
- (2) Has a **record** of such an impairment (e.g. a history of depression or alcoholism); or
- (3) Is **regarded** as having such an impairment (i.e. a person is not actually disabled, but is treated as though s/he is).

Note: When Congress amended the ADA in 2008, the definition of “disability” was broadened so that proving the existence of a disability was not a demanding standard and could be assessed individually.

TITLE I

What does Title I of the ADA do?

Title I prohibits:

- (1) **Discrimination** against “qualified individuals” with “disabilities” in job application procedures, hiring, firing, advancement, compensation, training, and other areas of employment;
- (2) **Retaliation** against any individual because s/he has opposed any unlawful act or practice; or
- (3) **Coercion, intimidation, threats, harassment or interference** with any individual in the exercise or enjoyment, or because that individual aided or encouraged any other individual in the exercise of, any rights under the ADA.

Who is a “qualified individual” with a disability?

A **qualified individual with a disability** is a person who, with or without **reasonable accommodation**, can perform the **essential functions** of the job in question.

Note: Unless it would impose undue hardship or lower quality/production standards, a reasonable modification is an adjustment or modification that enables an individual with a disability to enjoy equal employment opportunities. A defense to providing a reasonable accommodation is “direct threat to self or others.”

Who does Title I of the ADA apply to?

Title I only protects employees who work for **employers with 15 or more employees**, including state or local governments.

Note: If an employer does not fall under Title I, then federal employees are still covered under Section 501 of the Rehabilitation Act, and MN employees are covered under the MN Human Rights Act.

TITLE II

What does Title II of the ADA do?

Title II says that a **qualified person with a disability** shall **not be excluded** from participation in, or be **denied the benefits** of, a **public entity**. In other words, it prohibits a public entity from discriminating against a qualified individual with a disability.

What is a public entity?

A **public entity** is:

- (1) Any **state or local government** (state legislatures);
- (2) Any **department, agency, special purpose district, or other instrumentality of a state or local government** (state courts, social service systems, law enforcement agencies, public school systems), or any **activities, services, and programs of public**

<p>How can a public entity violate Title II, according to ADA's regulations?</p>	<p>entities (town meetings, fire departments, employment); or</p> <p>(3) Any commuter authority defined by statute.</p> <p>Note that this covers all state and local government activities, whether or not they get federal funds. There are a number of different ways a public entity can violate Title II, including:</p> <ol style="list-style-type: none"> (1) Excluding a person with a disability from a service, program, or activity just because they have a disability; (2) Giving the person with a disability an opportunity to participate/benefit from the aid or service that is not equal to/not as effective as providing equal opportunity as that afforded to others; or (3) Providing different or separate aids or services to individuals with disabilities than are provided to others, unless it is necessary to do so to ensure they receive the same benefits as provided to others.
<p>What are public entities required to do to accommodate persons with disabilities?</p>	<p>Public entities must:</p> <ul style="list-style-type: none"> • Provide programs and services in an appropriate integrated setting, unless separate or different measures are necessary to ensure equal opportunity. <p>Note: The ADA does not require an individual with a disability to accept an accommodation, aid, service, or opportunity which they choose not to accept.</p> <ul style="list-style-type: none"> • Ensure that communication with persons with disabilities is as effective as communication with others and furnish appropriate services to afford equal opportunity (e.g. providing qualified interpreters, assistive listening headsets, television captioning, readers, taped texts, large print materials, etc.). • Make reasonable modifications in policies, practices and procedures when necessary to avoid discrimination (e.g. rescheduling hearings, allowing a support person to sit with the individual with a disability, allowing service animals, etc.).
<p>Are there any exceptions to a public entity's responsibilities?</p>	<p>Yes. A public entity is not required to take action that:</p> <ol style="list-style-type: none"> (1) Would result in a fundamental alteration of its program, service, or activity; or (2) Would produce undue financial or administrative burdens. (3) A defense is "direct threat to others."
<p>What can <u>ADVOCATES</u> do to help survivors with disabilities?</p>	<p>Advocates for survivors with disabilities may be in a position to promote equal access.</p> <ul style="list-style-type: none"> • Advocates can request an accommodation by the court or an attorney, such as changing the time of a hearing to better accommodate medical/medication needs, asking the court to provide frequent recesses due to a survivor's medical condition, or declining ITV testimony when this is likely to be confusing or threatening to a survivor. • Advocates in social services, healthcare or other benefits can help a survivor apply for benefits over the phone rather than in person, including housing, or allow designated representatives to apply on behalf of the survivor.
<p><u>TITLE III</u> What does Title III of the ADA do?</p>	<p>Title III prohibits any public accommodation from discriminating against an individual "on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation."</p>
<p>What constitutes as a public accommodation?</p>	<p>Public accommodations are private entities that own, operate, lease or lease to businesses that provide goods and services to the public. Title III applies to all sizes of businesses and to non-profits. Examples include:</p> <ul style="list-style-type: none"> • Establishments serving food or drink (restaurant, bar), places of lodging (inn, hotel, motel), or places of exhibition/entertainment (movie theatre, concert hall, stadium); • Places of public gathering (auditorium, convention center), sales or rental establishments (bakery, grocery or clothing store, shopping center), or service establishments (bank, gas station, office of an accountant or lawyer, hospital); • Station used for public transportation (terminal, depot), places of public display or collection (museum, library), or places of recreation (park, zoo, amusement park);

Are SEXUAL ASSAULT PROGRAMS places of public accommodation?

- **Places of education** (nursery, elementary, secondary, undergraduate, or postgraduate private school), **social service center establishment** (day care center, senior citizen center, homeless shelter), or **places of exercise or recreation** (gym, spa, golf course).

Yes! Sexual assault programs ARE places of public accommodation, including those operated by tribes. A sexual assault program's **obligation to accommodate** may include permitting a service animal in a group setting, **changing a policy or practice to accommodate a disability** (i.e. examining a "zero tolerance" rule regarding a yelling caller who may have a mental disability, or allowing more time for a caller with cognitive barriers).

How can a public accommodation violate Title III, according to ADA's regulations?

There are a number of different ways a public accommodation can violate Title III, including:

- (1) **Denying an individual*** the opportunity to **participate** in or **benefit** from the goods or services** of any entity;
- (2) Affording the individual* an **unequal benefit or opportunity to participate** compared to that afforded other individuals without disabilities;
- (3) **Providing a different or separate** good or service** from that provided to other individuals, **unless** it is **necessary** to provide the individual/class of individuals* with a disability an opportunity that is as effective as that provided to others;
- (4) Using **methods of administration** that have the effect of discriminating on the basis of disability or that perpetuate the discrimination of others who are subject to common administrative control; or
- (5) Discriminating against an individual* who doesn't have a disability on the basis that they are known to have a relationship/association with a person with a disability.

*Individuals/classes of individuals are clients/customers of a public accommodation.

**Goods or services includes facilities, privileges, advantages, or accommodations of an entity.

What are public accommodations required to do to accommodate persons with disabilities?

Public accommodations must:

- Make **reasonable physical modifications**, and **modifications in policies, practices and procedures** to ensure an individual with a disability can **fully and equally enjoy** any goods or services**;
- Offer goods or services** to an individual with a disability in the **most integrated setting appropriate** to the needs of the individual;
- Take necessary steps to ensure that **no person with a disability is excluded, denied services, segregated or otherwise treated differently** because of the **absence of auxiliary aids** and services (i.e. qualified interpreters, assistive listening headsets, etc.);
- **Remove architectural and communication barriers** that are structural in nature in existing facilities **where** such removal is **readily achievable** (i.e. easily accomplishable and able to be carried out without much difficulty or expense).

Note: If not readily achievable, an entity should use alternative methods to accommodate if available.

Are there any exceptions to a public accommodation's responsibilities?

Yes. A public accommodation is **not** required to:

- (1) Make modifications or provide auxiliary aids and services **if** it can **demonstrate** that **making the requested modifications/providing the requested auxiliary aids and services would fundamentally alter the nature of the goods, services, facilities, etc.** and would result in an **undue burden**.
- (2) **Direct Threat Defense:** A public accommodation is not required to permit an individual with a disability to participate or benefit from what it offers where it can **show that the person poses a direct threat (or significant risk) to the health or safety of others**.

Recommendations:

Note: it is important to use people first language when speaking of or to a person with a disability. See <http://www.txddc.state.tx.us/resources/publications/People1st.pdf>

Other resources:

For additional information, see the Disability Law Center's website: <http://www.mndlc.org/> or for legal aid, contact them at 612-332-1441.

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