

Americans with Disabilities Act

Congress enacted the Americans with Disabilities Act (ADA) in 1990 to remedy widespread discrimination against persons with disabilities (PWD). After thoroughly investigating the problem, Congress concluded that there was a need for a national mandate to eliminate discrimination against PWD, and to integrate them into the nation's economic and social mainstream. Congress enacted that mandate in the ADA. The ADA forbids discrimination against individuals with disabilities in major areas of public life, including employment (Title I of the Act), public services (Title II), and public accommodations (Title III).

Title III of the ADA states a "general rule" of nondiscrimination in public accommodations: "No individual shall be discriminated against 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 by any person who owns, leases (or leases to), or operates a place of public accommodation." (42 U.S.C. § 12182(a).) Among its specific prohibitions, "Title III of the ADA prohibits discrimination on the basis of disability ... both with respect to the accessibility of their physical facilities and with respect to their policies and practices." (*Moeller v. Taco Bell Corporation* (N.D.Cal.2004) 220 F.R.D. 604, 606.)

Congress adopted two distinct standards for regulating building accessibility: one to apply to facilities existing before January 26, 1993, and the other to apply to facilities newly constructed or altered on or after January 26, 1993 (42 U.S.C. §§ 12182(b)(2)(A)(iv), 12183(a).) A congressional committee remarked that the distinction between existing and new facilities "reflects the balance between the need to provide access for persons with disabilities and the desire to impose limited cost on businesses. Because retrofitting existing structures to make them fully accessible is costly, a far lower standard of accessibility has been adopted for existing structures." (H.R. Rep. No. 101-485(III), 2d Sess., p. 60 (1990).)

Under the ADA, "existing facilities" must remove architectural barriers "where such removal is readily achievable," meaning "easily accomplishable and able to be carried out without much difficulty or expense." (42 U.S.C. §§ 12181(9), 12182(b)(2)(A)(iv).) If removal of architectural barriers from an existing facility is not readily achievable, the facility must make its goods and services available to PWD through "alternative methods if such methods are readily achievable." (42 U.S.C. § 12182(b)(2)(A)(v).) In contrast, new and altered facilities must be "readily accessible and usable," and must comply with extensive and detailed regulations, amounting to a federal building code, known as the ADA Accessibility Guidelines (42 U.S.C. § 12183(a); 28 C.F.R. § 36, App. A (2007).)

As previously noted, the ADA prohibits discrimination on the basis of disability in places of public accommodation with respect to the accessibility of their physical facilities and with respect to their policies and practices (*Moeller v. Taco Bell Corporation*, *supra*, 220 F.R.D. at p. 606.) In the ADA's specific prohibitions section, discrimination is defined to include "a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services,

facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations.” (42 U.S.C. § 12182(b)(2)(A)(ii).)

The ADA also permits reliance on state laws that provide greater protection (42 U.S.C. § 12201(b).) In describing the ADA's relationship with other laws, the ADA states: “Nothing in this chapter shall be construed to invalidate or limit the remedies, rights, and procedures of any federal law or law of any state or political subdivision of any state or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this chapter....”