

Each day your Missouri Municipal League staff answers dozens of questions on municipal issues. This column reviews some of the most common questions the League staff receives. This issue's column will focus on the Americans with Disabilities Act. Most questions and answers for this FAQ stem directly from information available on the Great Plains ADA center website (gpadacenter.org). As with all legal matters, municipal officials are urged to consult their city attorney for guidance in the specific problems faced by their municipality. Answers provided in this column should serve only as a general reference.

Q. DOES THE ADA APPLY TO STATE AND LOCAL GOVERNMENTS?

Title II of the ADA prohibits discrimination against qualified individuals with disabilities in all programs, activities and services of public entities. It applies to all state and local governments, their departments

and agencies, and any other instrumentalities or special purpose districts of state or local governments. It clarifies the requirements of Section 504 of the Rehabilitation Act of 1973 for public transportation systems that receive federal financial assistance, and extends coverage to all public entities that provide public transportation, whether or not they receive federal financial assistance. It establishes detailed standards for the operation of public transit systems, including commuter and intercity rail (such as AMTRAK).

Q. HOW DOES TITLE II AFFECT PARTICIPATION IN A STATE OR LOCAL GOVERNMENT'S PROGRAMS, ACTIVITIES AND SERVICES?

A state or local government must eliminate any eligibility criteria for participation in programs, activities and services that screen out or tend to screen out persons with disabilities, unless it can establish that the

requirements are necessary for the provision of the service, program or activity. The state or local government may, however, adopt legitimate safety requirements necessary for safe operation if they are based on real risks, not on stereotypes or generalizations about individuals with disabilities. Finally, a public entity must reasonably modify its policies, practices or procedures to avoid discrimination. If the public entity can demonstrate that a particular modification would fundamentally alter the nature of its service, program or activity, it is not required to make that modification.

Q. DOES TITLE II COVER A PUBLIC ENTITY'S EMPLOYMENT POLICIES AND PRACTICES?

Yes. Title II prohibits all public entities, regardless of the size of their work force, from discriminating in employment against qualified individuals with disabilities. In



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addition to Title II's employment coverage, Title I of the ADA and Section 504 of the Rehabilitation Act of 1973 prohibits employment discrimination against qualified individuals with disabilities by certain public entities.

Q. WHAT CHANGES MUST A PUBLIC ENTITY MAKE TO ITS EXISTING FACILITIES TO MAKE THEM ACCESSIBLE?

A public entity must ensure that individuals with disabilities are not excluded from services, programs and activities because existing buildings are inaccessible. A state or local government's programs, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. This standard, known as "program accessibility," applies to facilities of a public entity that existed on Jan. 26, 1992. Public entities do not necessarily have to make each of their existing facilities accessible. They may provide program accessibility by a number of methods including alteration of existing facilities, acquisition or construction of additional facilities, relocation of a service or program to an accessible facility or provision of services at alternate accessible sites.

Q. WHAT DOES TITLE II REQUIRE FOR NEW CONSTRUCTION AND ALTERATIONS?

The ADA requires that all new buildings constructed by a state or local government be accessible. In addition, when a state or local government undertakes alterations to a building, it must make the altered portions accessible.

Q. HOW WILL A STATE OR LOCAL GOVERNMENT KNOW THAT A NEW BUILDING IS ACCESSIBLE?

State or local governments are required to comply with the minimum accessibility standards set forth in the *2010 ADA Standards for Accessible Design*. These are minimum standards and a public entity may provide features that are above the minimum standards.

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Q. WHAT REQUIREMENTS APPLY TO A PUBLIC ENTITY'S EMERGENCY TELEPHONE SERVICES, SUCH AS 911?

State and local agencies that provide emergency telephone services must provide "direct access" to individuals who rely on a TDD or computer modem for telephone communication. Telephone access through a third party or through a relay service does not satisfy the requirement for direct access. Where a public entity provides 911 telephone service, it may not substitute a separate seven-digit telephone line as the sole means for access to 911 services by nonvoice users. A public entity may, however, provide a separate seven-digit line for the exclusive use of nonvoice callers in addition to providing direct access for such calls to its 911 line.

Q. WHAT ARE THE ADA'S REQUIREMENTS FOR PUBLIC TRANSIT BUSES?

The Department of Transportation has issued regulations mandating accessible public transit vehicles and facilities. The regulations include requirements that all new

fixed-route, public transit buses be accessible and that supplementary paratransit services be provided for those individuals with disabilities who cannot use fixed-route bus service.

Q. HOW ARE THE ADA'S REQUIREMENTS FOR STATE AND LOCAL GOVERNMENTS ENFORCED?

Private individuals may bring lawsuits to enforce their rights under Title II and may receive the same remedies as those provided under Section 504 of the Rehabilitation Act of 1973, including reasonable attorney's fees. Individuals also may file complaints with eight designated Federal agencies, including the Department of Justice and the Department of Transportation. □