



## Facilitator — October/November 2012



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### Are You in Compliance?

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The challenges and opportunities of the new ADA standards

The Americans with Disabilities Act's Standards for Accessible Design were revised this year for the first time in 20 years. The final changes went into effect on March 15. Do you know what they are and how they affect your facility?

As a civil rights law, the ADA is enforced differently than building codes. First and foremost, the ADA required existing facilities to begin "readily achievable barrier removal" on January 26, 1992. This required all facilities to identify and remove barriers as an ongoing process, not waiting until renovations, alterations or new construction are performed. Many ADA lawsuits have been filed (and won) over the past 20 years for failures to perform readily achievable barrier removal.

Fast-forward to July 26, 2010, the 20th anniversary of the signing of the ADA. The U.S. Department of Justice announced the adoption of the revised ADA Standards, which became the 2010 ADA Standards, with the effective date of March 15, 2012.

#### 2012 Changes

As of March 15, any barrier removal, alterations, additions or new construction must be performed in compliance with the 2010 ADA Standards, which have some significant changes from the original 1991 ADA Standards. Here's a snapshot of the significant changes, particularly those relevant for restaurants/retail facilities:

- The required number of van-accessible parking spaces has been increased from one of every eight accessible spaces to one of every six accessible spaces.
- The maximum cross slope has been reduced from 1:50 (2 percent) to 1:48 (2.083 percent). This is relevant for parking spaces, access aisles, curb ramps, ramps, sidewalks and walking surfaces throughout your facility.
- The maximum reach range has been reduced from a maximum of 54 inches above finished floor for a side approach to a maximum of 48 inches above finished floor for a forward or side approach.
- The use of a pull-out shelf or auxiliary counter at a transaction or service counter is no longer permitted under "equivalent facilitation." All renovated and newly constructed counters must be a maximum of 36 inches above finished floor for service or transaction or a range of 28 to 34 inches above finished floor for a work or dining surface.
- The clear floor space required in front of and beside a toilet in an accessible toilet stall or a single-user toilet room has increased. Clearance around a toilet must be a minimum of 60 inches from the side-wall and a minimum of 56 inches from the rear wall. The typical placement of the sink/lavatory beside the toilet is no longer permitted.
- The centerline for a toilet has been changed from an absolute of 18 inches from the side-wall to a range of 16 to 18 inches from the side wall.

#### Additional Considerations

Those are examples of the major changes in the scoping (how many and where) and the technical (installation) requirements in the ADA. However, there are three cycles of any facility when it relates to ADA compliance:

- Design
- Construction
- Operation

Once any ADA-compliant designs are turned over for construction, it is imperative that the contractor executes the plans, particularly as they relate to accessible features. Installing a paper-towel dispenser too high on the wall, mounting the grab bars at the wrong height or specifying dispensers that are not ADA compliant are just a few examples of the potential gaps between design and construction.

Reading a specification sheet or relying on a product marked as ADA compliant is no guarantee. There are no enforceable standards for products and dispensers in the ADA standards; nor is there an Underwriters Laboratory review. Manufacturers often place the International Symbol of Accessibility ( ) next to an item without knowing or determining whether the item is truly accessible to and usable by individuals with disabilities. A privacy lock in a restroom that requires turning is not compliant, nor is a feminine-item dispenser with a turn knob.

Finally, for the operation of your facility, how is your building operated and maintained on a daily basis? A trashcan placed next to the restroom door prevents a customer with a mobility device (wheelchair or walker) from getting close enough to open the door and leave the restroom. Placing extra chairs or highchairs in the hallways (particularly those leading to restrooms or emergency exits) obstructs the path needed for someone using a wheelchair or a walker. Mounting a shelf, banner, light or television more than 4 inches from a wall is a protruding object for someone with a visual disability if it is mounted between 27 to 80 inches above a finished floor. As important as it is to maintain the cleanliness and safety of your facilities, make the requirement of maintenance of accessible features equally important.

#### How it Impacts You

You may be thinking, I've had people with disabilities in my facility, so:

- why should i do this?
- what will happen if i don't do anything?
- what will be the return on my investment?

The answers are: Because it is a federal law. A DOJ violation can result in an initial fine of up to \$55,000, with subsequent violations of up to \$110,000. The DOJ and federal courts will also require that you remove the barriers identified in the case.

The return on your investment has several dimensions:

- Under Section 190, businesses of any size can take a business expense deduction of up to \$15,000 per year for costs of removing barriers in facilities or vehicles.
- Individuals with disabilities have \$175 billion in discretionary spending power, according to the U.S. Department of Labor. That figure is more than twice the spending power of American teenagers and almost 18 times the spending power of the American "tweens" market.
- An Open Doors Organization study estimated in 2003, diners with disabilities spend \$35 billion in restaurants. The study found that more than 75 percent of people with disabilities eat out at restaurants at least once a week.

Making your facilities user friendly is a win-win for you and your customers. Making it easier (and safer) for your customers to enter and enjoy themselves makes perfect business sense.

Your approach to ADA compliance with the newly revised ADA Standards should follow the good faith compliance efforts you've made since 1992:

- Identify barriers and make an effort to remove them. If the removal is not readily achievable, integrate the changes into your financial and construction plans.
- Be sure to include full compliance during renovations and new construction. Don't rely on the design professional or contractor saying, "Don't worry about it, we have all of the codes covered."
- Make sure your policies and procedures do not discriminate against individuals with disabilities. Service dogs that assist individuals with disabilities (including hearing, mobility, visual and those with seizure disorders, to mention a few) are permitted into establishments.
- Make sure that you maintain the accessible features from an operational standpoint. Don't put displays, signs or extra furniture in an empty space or hallway. Typically, that space is there for a reason.
- Most importantly, make sure your staff welcomes and treats all customers with respect and courtesy. Individuals with disabilities should be treated like everyone else. A positive experience is the best indicator of a return visit to your establishment. It's the right thing to do. It's the smart thing to do. And, it's the law.

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