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On the Horizon

Joan W. Stein

Are you ready for the new ADA rules, requirements and deadlines?

Imagine if a restaurant was foolish enough to neglect one of the largest and fastest-growing minority groups in the United States. This group has the greatest spending power of all U.S. consumers—and yet sometimes they are treated like second-class customers. It's this group—people with disabilities—that the Americans with Disabilities Act seeks to protect. And the way your restaurant implements the Act can have a huge impact on your business.

July 26, 2010 was a day meant for celebration; it was the 20th anniversary of the signing of the Americans with Disabilities Act. But the U.S. Department of Justice seized the moment to take a long-awaited action. They announced the adoption of the 2010 ADA Standards for Accessible Design.

The first 18 years of enforcement of the ADA were quite active, with allegations of non-compliance and some significant “grey areas” emerging. The DOJ took the time and opportunity to update the federal requirements based on advancements in technology and attempt to make the ADA more consistent with building codes.

But DOJ officials also created requirements for areas not previously covered, including children's environments, outdoor recreation and judicial settings. They also clarified or expanded policies on items such as effective communication, accessible seating and ticket sales at assembly areas, and policies related to transient lodging and the use of motorized mobility devices, to name a few.

The Final Word?

Many in the field will recognize these requirements as the Final Guidelines, which were published by the U.S. Access Board in July 2004. And, despite the wishful thinking of many design professionals, the 2004 Final Guidelines did not become enforceable standards for Title II and Title III entities until the DOJ adopted them in July 2010. A number of the technical changes to the requirements now reflect those found in the International Building Code and the American National Standards Institute A.117 requirements.

Some believe that the 2010 standards are more stringent than the 1991 standards, while others believe they are less stringent. Both of these statements are correct.

Reach ranges, clear floor space at a toilet, the number of van-accessible parking spaces and access from all levels of a parking facility are a few examples in which the new standards are more stringent. But the standards also allow for a range of 16 to 18 inches for the centerline of a toilet and reduce the number of wheelchair seat locations, companion seats and aisle seats in assembly areas. These changes can have a significant impact on how a facility is designed and constructed.

The New Rules

As good facility managers already know, policies, procedures and operational issues can demand just as much attention as the day-to-day operation of a restaurant.

The changes made by the DOJ involve more than design and construction issues. There are a host of new requirements for policies and procedures that impact all public accommodations.

The biggest changes for facility managers came in the form of the new and more-detailed rules related to policies and procedures. Here is a snapshot of these new rules:

1. The DOJ has clarified what is considered to be a “service animal.” Basically, dogs that perform a function for an individual with a disability, which can include those who detect a person's impending seizure, who alert deaf or hard-of-hearing individuals, etc., are considered service animals. For public accommodations, an individual's comfort animal (cat or other species) is not considered a service animal. A restaurant cannot exclude or refuse to allow a service animal to accompany the individual with a disability, nor can they require or ask for documentation or certification for the service animal. If there is a question about the service animal, best practices point to asking the individual to describe what tasks or functions the animal performs for them.

2. The DOJ has become very specific in its requirements for “effective communication.” Your restaurant's visual and audible communication to customers must also be usable by someone with a visual or hearing disability. Provide large-font and Braille menus. Staff can offer to read menu boards or tell customers the daily specials. These are small changes that are helpful to a wide range of people who are either losing their sight or cannot read. Many restaurants use hand-held pagers to alert patrons that their table is ready. The vibrating, blinking devices are a perfect example of effective communication for everyone—even customers with visual or hearing disabilities.

3. With the expanded use of motorized mobility devices, such as scooters, the DOJ has also defined a “power-driven mobility device.” Segways are useful for individuals who cannot walk long distances but can stand. While you cannot ask someone to prove their disability, certain situations may allow for an initial discussion about a person's need for mobility assistance within a restaurant. Unless you can demonstrate sufficiently that bringing a Segway (or other mobility device) into your facility will cause harm or be a direct threat, simply welcome the customer.

Everyday ADA

Determining how all these ADA changes affect your restaurant can be difficult. Here's a quick and relatively easy reference guide for you to follow.

Dates for use and enforcement

The 2010 ADA Standards for Accessible Design and the Title III Final Rule Amending 28 CFR Part 36: Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities was published in the Federal Register on September 15, 2010. These standards created the following enforcement dates:

The rules regarding effective communication, service animals and power-driven mobility devices became effective on March 15, 2011.

If barrier removal, alterations or new construction is permitted (or begins) at your restaurant between September 15, 2010, and March 14, 2012, you can choose to use either the 1991 or 2010 ADA Standards.

Barrier removal, alterations or new construction that is permitted (or begins) after March 15, 2012, must comply with the 2010 Standards.

If a facility has elements that comply with the 1991 Standards, it becomes a “Safe Harbor” under the 2010 ADA Standards.

Once you choose a standard (either 91 or 2010), you must apply that standard to your entire building.

Safe Harbors

The Safe Harbor provision applies if you have performed readily achievable barrier removal since 1992, and you are confident that those modifications were compliant with the 1991 ADA Standards. In addition, any alterations or new construction since 1992 must be in full compliance with the 1991 ADA Standards.

In this case, those altered areas and elements will not have to comply with the 2010 Standards until they become part of a renovation, alteration or new construction. The DOJ is encouraging businesses to determine whether they are in compliance with the current standards so they will know where they stand with the Safe Harbor provisions.

The Safe Harbor rule applies on an element-by-element basis. For example, a lavatory in a restroom that complies with the 1991 Standards can be a Safe Harbor, even if the water closets in that same restroom do not comply. However, when the restroom is modified after March 2012, the lavatories would have to comply with the 2010 Standards.

Getting Started

Confirm the status of all existing projects.

Download the 2010 ADA Standards for Accessible Design from the DOJ website at www.ada.gov.

Don't assume that complying with the building code will cover you for ADA compliance.

If you haven't done any renovations or new construction, make sure you've completed a thorough ADA evaluation of your facility. The requirement for "readily-achievable barrier removal" started in January 1992 and still applies today.

Coordinate efforts with others in your organization who may have responsibilities for security, sales or operations to review (or develop) policies and procedures. This communication is critical.

Remember two important truths:

1. The ADA is a complaint-driven law, and it's not going away.
2. People with disabilities represent the largest and fastest-growing minority in the United States, with the greatest spending power. Don't lock customers out and risk a lawsuit (or bad publicity) at the same time. Be proactive in your ADA- compliance efforts and maximize the return on your investment. It's the right thing-and the smart thing-to do.

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