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Legislation & Regulations

Federal Actions

DOJ; Accessibility; Title II, III Regulations

The Department of Justice (DOJ) amended its regulations addressing the Americans with Disabilities Act (ADA) Title II, 42 U.S.C. §§12131-165, and Title III, 42 U.S.C. §§12181-189, discrimination based on disability in state and local government services and by public accommodations and commercial facilities. The regulations also adopted the 2010 ADA Standards for Accessible Design (Standards), which are consistent with the 2004 guidelines published by the U.S. Architectural and Transportation Barriers Compliance Board (Access Board), with some modifications. *See* 28 MPDLR 805.

Both the Title II and III regulations address the sale of tickets for accessible seating, service animals, wheelchairs and other power-driven mobility devices that are used by, but not designed for, individuals with mobility impairments, and effective communication. Title II and III entities that sell tickets for a single event or a series of events must ensure that persons with disabilities have an equal opportunity to buy tickets for accessible seating during the same hours and stages of ticket sales; through the same distribution methods; in the same types and number

of ticketing sales outlets; and under the same terms and conditions as other tickets sold. In addition, these entities must identify and describe the features of the available accessible seating, so that the disabled person can independently assess whether the seating meets his or her needs. Also, for each ticket purchased for a wheelchair space, three additional tickets in the same row that are contiguous with the wheelchair space must be available for purchase, provided that three seats are available. Moreover, the price of tickets for accessible seating cannot be higher than that for other tickets in that section.

Regarding service animals, the regulations define them as dogs that are “individually trained to do work or perform tasks for the benefit of” individuals with physical, sensory, psychiatric, intellectual, or other mental disability. The work or tasks performed must be directly related to the person’s disability. Dogs whose sole function is to provide emotional support, comfort, therapy, companionship, or therapeutic benefits or to promote emotional well-being are not covered. Trained miniature horses are allowed as an alternative to a dog if the entity can accommodate the type, size, and weight of the horse and its presence does not compromise legitimate safety requirements.

With respect to mobility devices, Title II and III entities must allow persons with mobility impairments to use wheelchairs and manually-powered mobility aids (e.g., walkers, canes, crutches, canes, and braces). A “wheelchair” is defined as “a manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor, or of both indoor and outdoor locomotion” and includes mobility scooters. Moreover, in determining whether to allow the use of other power-driven mobility devices, such as Segways, entities must focus on the appropriateness of the use at a specific facility, rather than whether it is necessary for the individual to use the device. Factors to consider include the type,

size, weight, dimensions, and speed of the device; the facility's volume of pedestrian traffic; the facility's design and operational characteristics (e.g. whether the business is indoors and has storage availability); whether legitimate safety requirements will permit the safe operation of the device; and whether its use creates a substantial risk of serious harm to the immediate environment or natural or cultural resources, or conflicts with federal land management laws.

With respect to effective communication, the regulations include video remote interpreting services—defined as an interpreting service that uses video conference technology over dedicated lines or wireless technology offering a high speed, wide-bandwidth video connection that delivers high quality images—as a type of auxiliary aid. Users must have adequate training so that they may quickly and efficiently operate the system.

Furthermore, the Title II regulation clarifies the requirements that apply to detention and correctional facilities. Entities that operate or manage adult and juvenile justice jails, detention, and correctional facilities and community correctional facilities are prohibited from excluding—on the ground that the facility is inaccessible to or unusable by these persons with disabilities—qualified detainees and inmates with disabilities from participating in or receiving the benefits of the entity's services, programs, or activities, as well as from subjecting them to discrimination. Inmates and detainees must be housed in the most integrated setting appropriate to their needs. Moreover, at least one of each type of general and special holding cells, general and special housing cells, medical care facilities, and visiting areas must be accessible. In addition, three percent of newly constructed or altered cells must be accessible.

The Title III regulation requires places of lodging to allow persons with disabilities to reserve accessible guest rooms during the same hours and in the same manner as non-disabled guests. These places must identify and describe the room's accessible features, and hold

accessible guest rooms until all other guest rooms of that type have been rented and the accessible room requested is the only one remaining. The reservation requirements do not apply to guest rooms and other rental units in timeshares, vacation communities, and condo-hotels where some or all of the units are owned and controlled by individual owners and rented out to the public. Places of lodging have 18 months from the Federal Register publication date to comply with the requirements.

Finally, the Standards establish accessibility requirements for recreation facilities such as amusement rides, fishing piers and platforms, swimming pools, golf courses, and play areas for children, as well as for public facilities such as detention and correctional facilities, judicial facilities, and residential dwelling units provided by public entities that are not subject to Department of Housing and Urban Development regulations implementing the Rehabilitation Act §504, 29 U.S.C. §794. Courtrooms must also have accessible jury boxes, witness stands, jury deliberation areas, judges' benches, and other employee work areas.

Significantly, the Standards change the Access Board's 1991 ADA Standards for Accessible Design, 28 C.F.R. pt. 36, App. A (2009), that apply to Title II and Title III entities. Examples of the changes include requirements for side reach range, toilet clearance in a single user toilet room, assembly areas, common use circulation paths in employee work areas, location of accessible routes, direct access entrances from parking structures, and transient lodging guest rooms. New construction and alterations by Title II entities and barrier removal by Title III entities must comply with these Standards 18 months after their date of publication in the Federal Register. Prior to this deadline, Title II entities may choose between either the 1991 or 2010 Standards or the Uniform Federal Accessibility Standards, and Title III entities may choose between the 1991 or the 2010 Standards. Existing building elements that comply with the 1991

Standards do not have to comply with the 2010 Standards unless they are altered.

Website Accessibility; Movie Captioning & Video Descriptions; Text & Video Calls to 911 Centers; Accessible Equipment & Furniture; Title II, III

On July 26, 2010, the Department of Justice (DOJ) gave advance notice that it is considering revising its regulations implementing the Americans with Disabilities Act (ADA) Title II, 42 U.S.C. §§12131-165, and Title III, 42 U.S.C. §§12181-189, that address four areas: website accessibility (*75 Fed. Reg. 43460*); movie captioning and video descriptions (*75 Fed. Reg. 43467*); video calls to 9-1-1 centers (*75 Fed. Reg. 43446*) and accessible equipment and furniture (*75 Fed. Reg. 43452*). Comments from the public are due 180 days after July 26, 2010.

Regarding accessibility to websites used by public entities and public accommodations to provide products or services to the public, the DOJ seeks comments on whether it should adopt the Web Content Accessibility Guidelines, which were established by the Web Accessibility Initiative of the World Wide Web Consortium; the Electronic and Information Technology Accessibility Standards that apply to federal government agencies under §508 of the Rehabilitation Act; or performance standards rather than specific technical standards. The DOJ also seeks comments on coverage limitations; compliance issues; the effective date of the regulations; their cost and benefits; and their impact on small entities.

For movies shown at movie theatres, the DOJ seeks comment on its Title III proposal to require 10 percent of movie screens to offer closed captioning and video descriptions within the first year, and 50 percent by the fifth year. The DOJ also asks whether movie theater owners and operators should provide individuals with disabilities advance notice of those movies that provide captioning and video description, and whether theater personnel should be trained on the

operation of this equipment in order to assist persons with disabilities. Additional questions address digital cinema, equipment and technology, and costs and benefits.

Regarding access to 9-1-1 for persons with disabilities under Title II, the DOJ recognizes the increasing number of call centers that are moving towards an Internet-enabled network—Next Generation 9-1-1—that allows the public to make a 9-1-1 call via voice, text, or video over the Internet and directly communicate with center personnel. The DOJ seeks comments on what devices and modes of communication individuals with disabilities use to make calls, including 9-1-1 calls, and how to ensure that any new Internet Protocol-based 9-1-1- centers can receive direct calls from these devices.

Finally, the DOJ seeks comments on several categories of equipment and furniture used by state and local government entities and public accommodations that pose accessibility challenges to persons with disabilities: medical and exercise equipment and furniture; beds in hotels, hospitals, and nursing homes; golf carts; ATMs; and point of sale devices, such as retail store self-checkout stations.