



# District of Columbia Office of Disability Rights



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## ADA Title II: State & Local Government Overview

### **What is the ADA?**

The Americans with Disabilities Act of 1990 (ADA) is a Federal law that provides civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion. The ADA guarantees equal opportunity for individuals with disabilities in public accommodations (such as stores, restaurants, and hotels), employment, state and local government services, and transportation.

### **What is Title II?**

The ADA has five sections or “titles” which each address different areas of the law. Title II of the ADA addresses state and local governments, such as the District of Columbia. Title II protects qualified individuals with disabilities from discrimination on the basis of disability in accessing services, programs, or activities.

### **Who are individuals with disabilities?**

The ADA protects three categories of individuals from discrimination based on their disability:

- ◆ Individuals who *have* a physical or mental impairment that substantially limits one or more major life activities – including such conditions as blindness, deafness, cerebral palsy, cancer, heart disease, mental retardation, brain injury, emotional or mental illness, and specific learning disabilities.
- ◆ Individuals who have *a record of* a physical or mental impairment that substantially limits a major life activity, including people who have recovered from mental or emotional illness, drug addiction, heart disease, or cancer.
- ◆ Individuals who are *regarded as* having such a disability, regardless of whether they have the disability. Common examples are someone who is obese or someone who is scarred due to injury, where there is no functional impairment, but people may regard the person as having a disability.
- ◆ The ADA also protects people from discrimination based on their *association* with someone with a disability or from acts of *retaliation* for asserting ADA rights.

## **Who are “qualified” individuals with disabilities?**

To be qualified, the individual must meet the essential eligibility requirements for receipt of services or participation in District programs, activities, or services with or without:

- ◆ Reasonable modifications to a public entity’s rules, policies, or practices;
- ◆ Removal of architectural, communication, or transportation barriers; or
- ◆ Provision of auxiliary aids and services.

Health and safety factors can be taken into account in determining who is qualified. An individual who poses a “direct threat” to the health or safety of others is not qualified. A direct threat is a significant risk of substantial harm to the health or safety of others that cannot be eliminated or reduced to an acceptable level by accommodations or modifications to the program. This threat must be real and may not be based on generalizations or stereotypes about the effects of a particular disability.

## **What are the requirements of Title II?**

**Equality in participation and benefits:** Persons with disabilities must have an equally effective opportunity to participate in or benefit from District programs, services, and activities. Examples:

- ◆ A deaf or hard of hearing individual does not experience equal opportunity to benefit from attending a public meeting unless s/he has access to what is said through an interpreter or by being provided with an assistive listening device or real-time captioning.
- ◆ A wheelchair user will not have an equal opportunity to participate in a program if applications must be filed on the second floor of a building without an elevator.
- ◆ Use of printed information alone is not equally effective for those with low vision who cannot read regular written material.

**Reasonable modifications:** The District must reasonably modify its policies, practices, or procedures to ensure access and equal opportunity to individuals with disabilities.

Examples:

- ◆ A municipal zoning ordinance requires a set-back of 12 feet from the curb in the central business district. In order to install a ramp to the front entrance of a pharmacy, the owner must encroach on the set-back by three feet. Granting a variance in the zoning requirement may be a reasonable modification of policy.
- ◆ A government provides emergency food, shelter, and cash grants to individuals who can demonstrate their eligibility. The application process, however, is extremely lengthy and complex. When many individuals with intellectual and mental disabilities apply for benefits, they are unable to complete the application process successfully. As a result, they are effectively denied benefits to which they are otherwise entitled. In this case, the government agency has an obligation to make reasonable modifications to its application process to ensure that otherwise eligible individuals are not denied needed benefits. Modifications to the relief program might include simplifying the application process or providing applicants who have intellectual and mental disabilities with individualized assistance to complete the process.

- ◆ A person is required to appear in traffic court for a morning appointment. However, because of the person's disability, or the medication that she is on to manage her disability, she is unable to make a morning appointment. The court would have an obligation to provide her with a court appointment that she would be able to attend.
- ◆ Other examples include allowing a person with a mobility limitation to sit down while "waiting in line," or simply being more patient with a person who takes longer to express himself or be understood, because of a disability.

### **What is effective communication?**

The District of Columbia must ensure that its communications with people with disabilities are as effective as its communications with others. The District is required to provide appropriate *auxiliary aids and services* where necessary to ensure effective communication. Primary consideration must be given to the choice of auxiliary aid requested by the person with a disability. Whatever accommodation is requested, the DC government agency must seek to provide it unless it is determined to result in either a fundamental alteration in the program, or an undue financial or administrative burden. Examples of auxiliary aids and services include:

- ◆ Deaf or hard of hearing: qualified interpreters, notetakers, real-time captioning, written materials, assistive listening systems, open or closed captioning, TTYs, and exchange of written notes (if the communication is not complex).
- ◆ Blind or low vision: qualified readers; audiotape, Braille, or large print materials, audio-descriptions of Powerpoint or video presentations; and assistance in locating items.
- ◆ Speech disability: TTYs, computer terminals (take turns typing back and forth (if the communication is not complex)).

**Integrated setting (“mainstreaming”):** DC residents with disabilities cannot be excluded from regular programs or required to accept accommodations. The District may offer separate or special programs when necessary to provide people with disabilities an equal opportunity to benefit from the programs. Examples:

- ◆ A recreation department sponsors a separate basketball team for wheelchair users.
- ◆ A museum offers a tour for blind people to permit them to touch and handle specific objects on a limited basis (but cannot exclude a blind person from the standard tour).

**Eligibility criteria and medical inquiries:** The District's eligibility criteria for participation in its programs, services, or activities must not screen out or tend to screen out people with disabilities, except in rare instances when such requirements are necessary. A program cannot request medical information unless it can demonstrate that each piece of information requested is needed to ensure safe participation in the program.

**Safety:** The District may impose legitimate safety requirements necessary for the safe operation of its services, programs, and activities. Safety requirements must be based on real risks, not on speculation, stereotypes, or generalizations about people with disabilities.

**Surcharges:** Although providing accommodations may result in some additional cost, the District may not place a surcharge only on particular individuals with disabilities to cover expenses. For example, there can be no extra program charge to a deaf person for interpreter services, or to groups of people with disabilities, but fees may be increased for all participants to cover the cost of those accommodations.

**Personal services and devices:** The District of Columbia is not required to provide people with disabilities with personal or individually prescribed devices (wheelchairs, hearing aids or communication devices) or to provide services of a personal nature (such as assistance in eating, toileting or dressing) unless providing such services are part of the services offered by the program.

**Maintenance of accessible features:** The District of Columbia must ensure that equipment and accessibility features of facilities are in good working order and accessible to individuals with disabilities. Isolated or temporary interruptions in access due to maintenance and repair of accessible features are acceptable.

## **What are the requirements for facility access?**

The District of Columbia must ensure that all of its programs, activities, and services are accessible to individuals with disabilities. One key aspect of that is facilities access.

**New Construction:** Any facility or part of a facility that is constructed by a state or local government entity after January 26, 1992 must be built in strict compliance with accessibility codes and regulations, so that it is readily accessible to and usable by people with disabilities.

**Alteration and Renovation of Existing Construction:** When alterations made after January 26, 1992 affect the usability of a facility, the altered portion (as well as the path of travel, toilets, drinking fountains, and public phones) must be made accessible to people with disabilities. Alterations to primary function areas also trigger a requirement to make the path of travel, restrooms, fountains, and phones serving the area accessible.

**Buildings Existing Before January 26, 1992:** The District is not necessarily required to make every pre-ADA facility fully compliant with current accessibility codes. However, all District services, programs, or activities must be accessible to and usable by people with disabilities when viewed in their entirety. This is called “overall program access.” For example, not all pre-ADA swimming facilities must be accessible, but there must be an alternate and proximate swimming facility that is accessible.

Program accessibility can be achieved a number of ways. Structural options include altering existing facilities or constructing new ones. Nonstructural options include:

- ◆ Acquisition or redesign of equipment
- ◆ Assignment of aides to assist individuals with disabilities
- ◆ Provision of services at alternate accessible sites

The District must give priority to the option that results in the most integrated setting appropriate to encourage interaction among all users, including those with disabilities.

## **What are the administrative requirements?**

### **District of Columbia Government ADA Coordinators**

Under Title II of the ADA, all public entities must designate a person or persons whose job it is to mediate complaints and to ensure compliance with the ADA and other disability rights laws. The District of Columbia has designated the Office of Disability Rights (ODR) to oversee the District's obligations under the ADA. ODR oversees the ADA Coordinators in the various District agencies; advises the public about the ADA and the District's compliance obligations; and coordinates the investigation of grievances filed by the public alleging discrimination in District programs, services, or activities. The Office of Disability Rights, in conjunction with the Department of Human Resources and the Office of Human Rights, is responsible for overseeing ADA Compliance for all District disability-related employment issues.

District agencies are required to conduct an ADA self-evaluation of their programs, services, activities, and facilities and to develop an ADA Compliance Plan identifying physical, programmatic, and communication changes needed to comply with the ADA.

### **For additional information, please contact:**

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