

Town of Winamac

Transition Plan



ADA Consultants of Indiana P.O. Box 248 Waynetown, IN 47990 Phone: 765-234-2ADA (2232)

www.adaconsultantsofindiana.com



BF & S Lafayette Office 10 North Third Street Lafayette, IN 47901 Tel: (765) 423-5602

Fax: (765) 742-5321 Email: <u>BFS@bfsengr.com</u> www.bfsengr.com

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Town of Winamac ADA Transition Plan

Introduction

The Americans with Disabilities Act (ADA) is a civil rights law that protects individuals with disabilities. This law provides equal access for individuals with disabilities in employment, public accommodations, transportation, state and local government services and telecommunications. There are five titles to the ADA and many requirements, regulations, & guidelines under the ADA law. The Town of Winamac is considered an ADA Title II entity. Under Title II and Title III of the ADA regulations, law prohibits public entities, such as any Town of Winamac facility, from discriminating against or excluding a person access to programs, services, or activities on the basis of disability. We must ensure that the following issues are compliant with ADA Title II and accessible to people with disabilities:

- All services and programs offered by the entity
- All aspects of the employment relationship
- Government services carried out by contractors/partners/grant recipients
- Activities of local legislative and judicial branches

In other words, no qualified individual with a disability can be excluded from participation in or denied benefit from services, programs or activities of a public entity.

Five Titles of the ADA

Title I

Equal Employment Opportunity for Individuals with Disabilities

This Title is designed to remove barriers that would deny qualified individuals with disabilities access to the same employment opportunities and benefits available to others without disabilities. Employers must reasonably accommodate the disabilities of qualified applicants or employees, unless an undue hardship would result.

Title II

Nondiscrimination of the Basis of Disability in State and Local Government Services

This Title prohibits discrimination on the basis of disability by public entities. The public entity

is required to provide access to programs, services and activities provided by the state or local government, when viewed in their entirety.

Title III

Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities

This Title prohibits discrimination on the basis of disability by private entities in places of public accommodation. Examples include hotels, restaurants, golf courses, private schools, day care centers, health clubs, etc.

Title IV

Telecommunications

This Title requires telephone companies to have developed interstate and intrastate telephone relay services in every state.

Title V

Miscellaneous Provisions

The final Title contains a variety of provisions relating to the ADA as a whole, including its relationship to other laws and its impact on insurance providers and benefits.

Application of the ADA to the Town of Winamac

The Town of Winamac is covered under ADA, Title I - Employment, and Title II - Programs, Services and Activities. The ADA requires the Town to make all its programs, services and activities readily accessible and useable by qualified persons with a disability when the programs, services and activities are viewed in their entirety. The Self Evaluation and Transition Plan are cornerstones to documenting and ensuring the Town's effort to create and maintain inclusion as mandated by the ADA.

This document will guide the planning and implementation of necessary programs and facility modifications over the next several years. The ADA self-evaluations and Transition Plan are significant in that they establish the Town's ongoing commitment to the development and maintenance of policies, programs and facilities that includes all citizens. The final product is considered a "working" or "living" document and will be modified when barriers are removed or alterations are made.

In 2017, ADA Consultants of Indiana in partnership with BF & S Engineering was hired to assist the Town with a comprehensive evaluation assessing the Town's compliance with the 2010 ADA

Requirements & Guidelines and the Section 504 of the Rehabilitation Act of 1973. ADA Consultants of Indiana will provide guidance to the Town staff member's using both of these requirements for self-evaluation assessments of the Town of Winamac's facilities, programs and services. Each action item will be listed within the individual facility reports. ADA Consultants of Indiana offered recommendations to remedy any compliance issues, and together with BF & S Engineering assisted the ADA Coordinator with the composition of this transition plan.

The information outlined in the following report is a summary of the general recommendations provided by ADA Consultants of Indiana.

Any comments, additions or suggestions about this plan may be directed to the ADA Coordinator.

Program Location & Staffing:

Bradley Zellers
Town Manager
ADA Coordinator
120 W. Main St.
Winamac, IN 46996
Ph. (574) 946 – 3451
Fax (574) 946 – 3436
Townmanager@townofwinamac.com

Ms. Melanie Berger Clerk-Treasurer Title VI Coordinator 120 W. Main St. Winamac, IN 46996 Ph. (574) 946 – 3451 Fax (574) 946 – 3436 Clerk@townofwinamac.com Winamac Town Council meets at 6:00 p.m. Eastern, on the second Monday of every month at the Winamac Municipal Utilities Complex located at 623 West 11th Street, Winamac Indiana.

Town Council Members:

Tom J. Murray – Council President

James Watkins – Vice President

Dan Vanaman - Member

Judy Heater - Member

Alvin Parish - Member

Police Department: 623 W. 11th St. (Marshal, Michael Buchanan)

Electric Department: 623 W. 11th St. (Superintendent, Doug Shorter)

Waste Water Department: 1950 S. US Highway 35 (Superintendent, Bradley Zellers)

Water Department: 530 N. Plymouth Rd. (Superintendent, Jeremy Beckner)

<u>Parks and Recreation Board:</u> Offices at intersection of Washington & Monticello Streets

Courtney Poor-President

Bradley Zellers-Vice President

Jon Chapman-Member

Chris Schramm-Member

Pat Bawcum-Member

Park Manager, Dave DeLorenzo

Garbage and Recycling: Outsourced to Advanced Disposal

Volunteer Fire Department: 120 West Main St.

ADA Compliance Self Evaluation & Transition Plan:

The Town of Winamac's complete Title II ADA Self-Evaluation can be requested from the town Manager. It is available in alternative formats upon request.

Requirements of Access to Programs, Services and Activities:

The U.S. Department of Justice (USDOJ) serves as the legislative agency for the ADA and has suggested 13 points of program access for the Self Evaluation Review. These 13 points and administrative requirements were used to set the scope of the review along with all Title II Requirements under the ADA when performing the following comprehensive review of the Town of Winamac's programs, services, and activities. The first point of review, listed below, is reason for this Transition Plan.

1. A public entity must examine each program to determine whether any physical barriers to access exist. It should identify steps that need to be taken to enable these programs to be made accessible when viewed in their entirety. If structural changes are necessary, they should be included in the transition plan.

Public Involvement

In accordance with Title II requirements for ADA, a public entity with more than 50 employees must provide an opportunity to interested persons, including individuals with disabilities to participate in the development of the Transition Plan by submitting comments. This section of the transition plan will be used for recording public comments, participation, input, and meetings.

Date:

Sidewalk and Curb Ramp Inventory:

The sidewalk and curb ramp inventory was arranged by the Town of Winamac to be completed by BF&S Engineering during the year of 2017. Digital mapping will be provided to the Town Manager upon completion and will be available upon request from the ADA Coordinator thereafter.

The maps will identify locations where non-compliant ramps and sidewalks exist. The Town will use these maps to program and prioritize repairs on an annual and on-going basis.

Access Compliance Assessments of Facilities:

The following appendixes are available by the Town of Winamac ADA Coordinator upon request in alternative formats. Facility assessments will be available to the public for 3 years. The Town Manager performed physical evaluations that outlined physical barriers and recommended corrections. Each item is prioritized according to 28 C.F.R. § 36.304 Removal of Barriers. The Town of Winamac will provide a projected date for completion of each non-compliant item and name a person responsible for the remediation of each issue within the report. Upon completion of each correction of a non-compliant issue, the person responsible for carrying out that action will initial and date in that section provided within the report. The Town of Winamac's facilities that were evaluated include:

Town Hall & Volunteer Fire Department, located at 120 West Main St.

Police Department & Municipal Building, located at 623 West 11th St.

Waste Water Treatment Facility, 1950 South US Highway 35

Water & Street Department Facility, 530 North Plymouth Road

Winamac Town Park, located two blocks east of the Pulaski County Courthouse

Rinehart Park, located at the intersection of 15th & Market Streets

Veteran's Memorial Park, located at the intersection of Highway 35 & Washington Street

To request an alternate format or a copy of the physical evaluations, please contact the ADA Coordinator.

Action Items for the ADA Transition Plan

This section of the report will be used to record action items regarding the Transition Plan



April 6, 2017: ADA Consultants of Indiana and BF & S Engineering submitted this Transition Plan to the Town of Winamac.



August 1, 2017: ADA Consultants of Indiana provided assistive information to Town staff members for completing reports for self-evaluations of access to programs, services, activities.

Appendix A--Web Version Request for Auxiliary Aids and Services Form

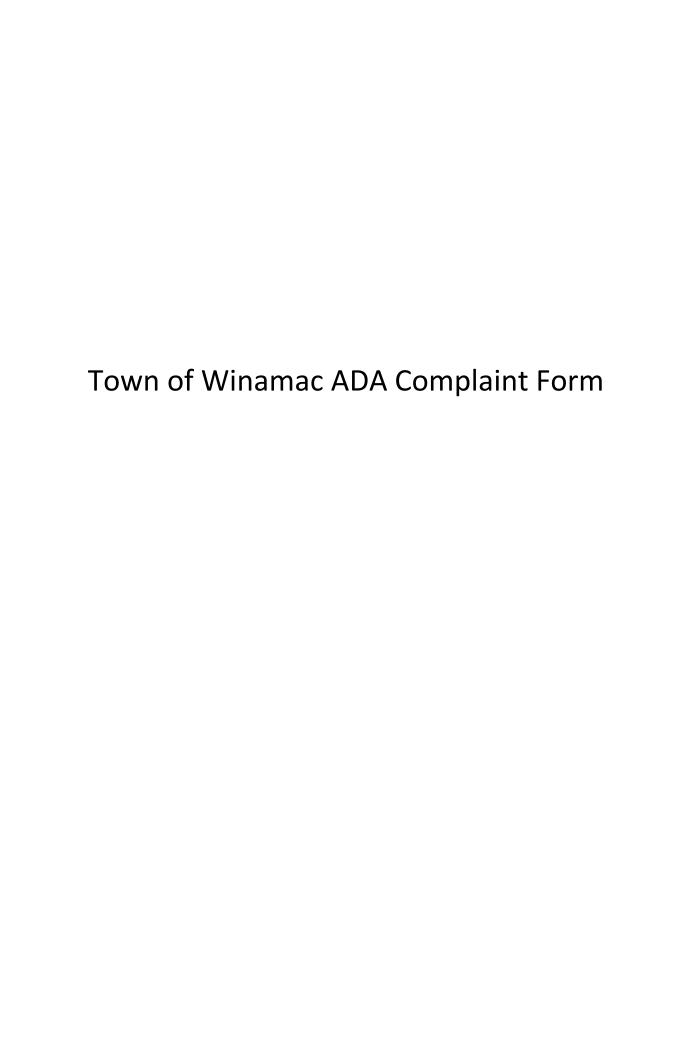
Request for Auxiliary Aids and Services Form

SECTION A (To be filled out by the person taking the request)		
Name of person making the request:Click here to enter text.		
Best way to contact requester: phone \square email \square		
Contact Information: phone_Click here to enter text. email_Click here to enter text.		
Date:Click here to enter text. Time:_Click here to enter text.		
Type of Auxiliary Aid/Service requested: _Click here to enter		
text		
SECTION B (To be filled out by the ADA Coordinator)		
Nature of Auxiliary Aid/Service provided:		
Sign Language Interpreter $\ \Box$ Certified Interpreter $\ \Box$ Qualified Staff $\ \Box$		
Video Remote Interpretive services $\ \square$ Large Print $\ \square$ Assistance Filling Out Forms $\ \square$		
Video Relay Services $\ \square$ Relay Indiana $\ \square$ Written Material $\ \square$ CART $\ \square$		
Other If other, please describeClick here to enter text		
Alternative Auxiliary Aid or Service provided, including information on CD, audiotape, Braille, large		
print of translated materials:Click here to enter text		
Date and time provided:Click here to enter text		

Appendix A-- Printable Version Request for Auxiliary Aids and Services Form

Request for Auxiliary Aids and Services Form

SECTION A (To be filled out by the person taking the	request)
Name of person making the request:	
Best way to contact requester: phone \Box	email 🗆
Contact Information: phone	email
Date: Time:	
Type of Auxiliary Aid/Service requested:	
SECTION B (To be filled out by the ADA Coordinator)	
Nature of Auxiliary Aid/Service provided:	
Sign Language Interpreter Certified Interp	reter \square Qualified Staff \square
Video Remote Interpretive services ☐ Large Pr	int \square Assistance Filling-out Forms \square
Video Relay Services ☐ Relay Indiana ☐ \	Written Material $\ \square$ CART $\ \square$
Other If other, please describe	
Alternative Auxiliary Aid or Service provided, includir print of translated materials:	
Date and time provided:	



Town of Winamac Complaint Form Americans with Disabilities Act (ADA)

Section 1:

Please fill in completely and legibly. If the information is incomplete or it cannot be read, the complaint will not be investigated.

Last Name	Middle Initial	First Name	
Street Address	City	State	Zip Code
Telephone Number (inclu	ding area code)	Best time to call	this number
AlternateTelephone Numb	per (including area code)	Best time to call this number	
Email Address			
inconsistent with Title II of	e description of the specific the Americans with Disab cumentation supporting th	ilities Act (use add	
Section 3: Please provide the specifi	c location(s) of the ADA is	sues prompting this	s complaint.

Please provide the date when the ADA non-compliance occurred/was noted.		
Section 5: Please state as specifically as possible what you think should be done to resolve the complaint.		
Please sign and date this form.	_	
Signature	 Date	
Mail completed complaint form to:		

Section 4:

Bradley Zellers

ADA Coordinator and Town Manager

120 W. Main St.

Winamac, Indiana 46996

For Office Use Only:		
Date Received	Date Investigated	
Results (with supporting documentation	n or photographs):	
Date Complainant Contacted	Method of Contact	[] Phone [] Letter [] Email
	Complaint Resolved?	[] Yes [] No

Town of Winamac Communication Provision of Auxiliary Aids and Services Policy

EFFECTIVE COMMUNICATION & PROVISION OF AUXILIARY AIDS AND SERVICES FOR PERSONS WITH DISABILITIES

POLICY:

The Town of Winamac will take appropriate steps to ensure that persons with disabilities, including persons who are deaf, hard of hearing, or blind, or who have other sensory or manual impairments, have an equal opportunity to participate in our services, activities, programs and other benefits. The procedures outlined below are intended to ensure effective communication with all members of the public. The procedures also apply to, among other types of communication, communication of information contained in important documents, including but not limited to waivers of rights, consent to treatment forms, financial and insurance benefits forms, etc.. All necessary auxiliary aids and services shall be provided without cost to the person being served.

All staff will be provided written notice of this policy and procedure, and staff that may have direct contact with individuals with disabilities will be trained in effective communication techniques, including the effective use of interpreters. The Town will be using *The Disability Guidelines & Etiquette Handbook* **Appendix B** of this document, as a guide for practices and procedures when interacting with persons with disabilities.

PROCEDURES:

1. Identification and assessment of need

The Town of Winamac provides notice of the availability of and procedure for requesting auxiliary aids and services through notices on our website and in our brochures, handbooks, letters, print/radio /television advertisements, etc. and through notices posted in public meeting rooms and in each Town department office. When an individual self-identifies as a person with a disability that affects the ability to communicate or to access or manipulate written materials or requests an auxiliary aid or service, staff will consult with the individual to determine what aids or services are necessary to provide effective communication in particular situations.

When an auxiliary aid is requested, staff will fill out the *Request for Auxiliary Aids and Services Form*, *Appendix A* of this document. Fill out section A of the form completely and give to the Town's ADA Coordinator immediately or within an hour of receipt of the request in order to provide adequate time to accommodate the request.

2. Provision of Auxiliary Aids and Services

All requests for auxiliary aids and services should be directed to the Town's ADA Coordinator. The ADA Coordinator is responsible for providing these aids and services in a timely manner. If a person knows in advance that they will need a particular aide or service, the Town requests a 48 hour advance notice in order to better accommodate the request.

The ADA Coordinator is also responsible for maintaining records of all requests for auxiliary aids and services.

The name and contact information of Town of Winamac's ADA coordinator is listed below:

Bradley Zellers
Town Manager
ADA Coordinator
120 West Main St.
Winamac, IN 46996
(574) 946-3451
townmanager@townofwinamac.com

Town of Winamac shall provide the following services or aids to achieve effective communication with persons with disabilities:

A. For Persons Who Are Deaf or Hard of Hearing

- (i) For persons who are deaf/hard of hearing and who use sign language as their primary means of communication, Bradley Zellers is responsible for providing effective interpretation or arranging for a qualified interpreter when needed. In the event that an interpreter is needed, she is responsible for obtaining an outside interpreter if a qualified interpreter on staff is not available. The agencies that the Town has made arrangements with and their information are listed in Town of Winamac's Disability Guidelines and Etiquette Handbook for Employees.
- (ii) Communicating by Telephone with Persons Who Are Deaf or Hard of Hearing

The Town of Winamac utilizes relay services for external telephone calls with TTY users. We accept and make calls through a relay service. The state relay service number for Relay Indiana is 711 or 1-800-743-3333. The instructions for using this service are located in the *Disability Guidelines and Etiquette Handbook*

- (iii) For requests for other auxiliary aids and services, staff will contact, Town of Winamac ADA Coordinator, Bradley Zellers.
- (iv) Some persons who are deaf or hard of hearing may prefer or request to use a family member or friend as an interpreter. However, family members or friends of the person will not be used as interpreters unless specifically requested by that individual and <u>after</u> an offer of an interpreter at no charge to the person has been made by the facility. Such an offer and the response will be documented in the person's file. If the person chooses to use a family member or friend as an interpreter, issues of competency of interpretation, confidentiality, privacy and conflict of interest will be considered. If the family member or friend is not competent or appropriate for any of these reasons, competent interpreter services will be provided.

NOTE: Children and other residents will <u>not</u> be used to interpret, in order to ensure confidentiality of information and accurate communication.

B. For Persons Who are Blind or Who Have Low Vision

- (i) Staff will communicate information contained in written materials concerning treatment, benefits, services, waivers of rights, and consent to treatment forms and any other important information by reading out loud and explaining these forms to persons who are blind or who have low vision. In addition, all of the staff are available to assist persons who are blind or who have low vision in filling out forms and in otherwise providing information in a written format.
- (ii) For requests for other auxiliary aids and services, staff will contact, Town of Winamac ADA Coordinator, Bradley Zellers.

C. For Persons with Speech Impairments

- (i) To ensure effective communication with persons with speech impairments, staff will contact Town of Winamac ADA Coordinator, Bradley Zellers.
- (ii) For requests for other auxiliary aids and services, staff will contact, Town of Winamac ADA Coordinator, Bradley Zellers.

D. For Persons with Manual Impairments

- (i) Staff will assist those who have difficulty in manipulating print materials by holding the materials and turning pages as needed.
- (ii) For requests for other auxiliary aids and services, staff will contact, Town of Winamac ADA Coordinator, Bradley Zellers.

Maintenance of Auxiliary Aids and Equipment

The ADA Coordinator, Bradley Zellers, will be responsible for the maintenance of all auxiliary aids, equipment, and accessible features.

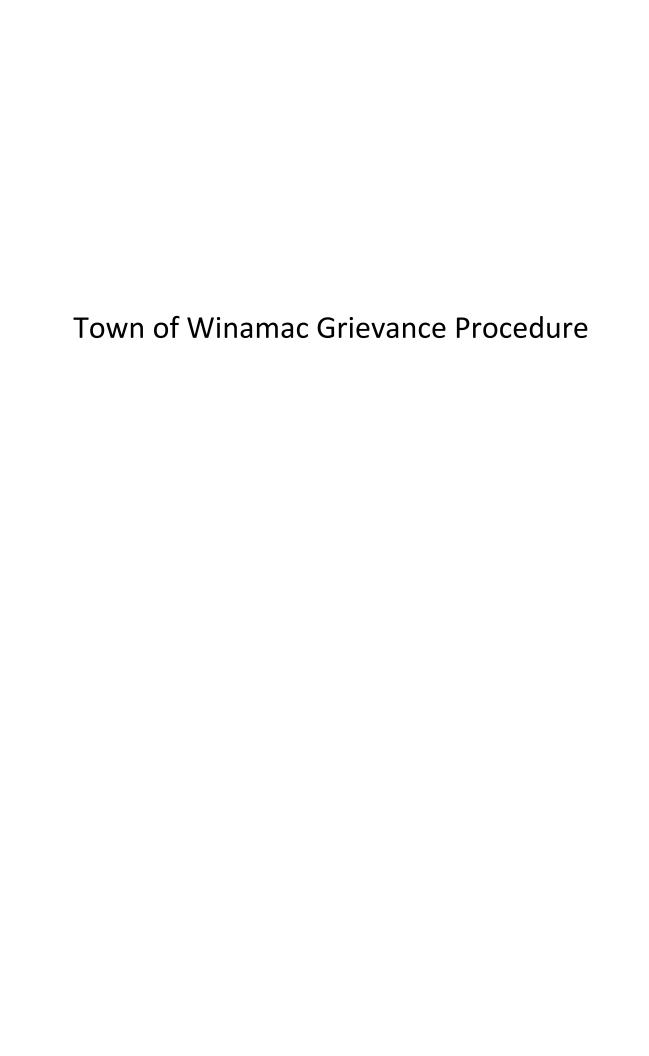
28 CFR 35.130-135.135

II-3.10000 Maintenance of accessible features. Public entities must maintain in working order equipment and features of facilities that are required to provide ready access to individuals with disabilities. Isolated or temporary interruptions in access due to maintenance and repair of accessible features are not prohibited.

A. Procedure for Maintenance of Accessible Features

(i) The ADA Coordinator will check all accessible features within all Town facilities monthly, ensuring all parts are intact and in working order, batteries are charged/or are working. If any features are not working properly, they should be fixed immediately. If maintenance of any feature requires more than 24 hrs, document the issue and the amount of time taken to remedy the problem.

(ii) For assistive listening systems and devices, the ADA Coordinator will use specifications outlined in the 2010 ADA Standards for Accessible Design Section 706, regarding checking and maintaining the operation of assistive listening systems and devices.



TOWN OF WINAMAC GRIEVANCE PROCEDURE UNDER THE AMERICANS WITH DISABILITIES ACT

This Grievance Procedure is established to meet the requirements of the Americans with Disabilities Act of 1990 ("ADA"). It may be used by anyone who wishes to file a complaint alleging discrimination on the basis of disability in the provision of services, activities, programs, or benefits by the Town of Winamac. The Town's Personnel Policy governs employment-related complaints of disability discrimination.

The complaint should be in writing and contain information about the alleged discrimination such as name, address, phone number of complainant and location, date, and description of the problem. Alternative means of filing complaints, such as personal interviews or a tape recording of the complaint will be made available for persons with disabilities upon request.

The complaint should be submitted by the grievant and/or his/her designee as soon as possible but no later than 60 calendar days after the alleged violation to:

Bradley Zellers
ADA Coordinator and Town Manager
120 W. Main St.
Winamac, Indiana 46996

Within 15 calendar days after receipt of the complaint, the ADA Coordinator Bradley Zellers and his designee will meet with the complainant to discuss the complaint and the possible resolutions. Within 15 calendar days of the meeting, the ADA Coordinator Bradley Zellers or his designee will respond in writing, and where appropriate, in a format accessible to the complainant, such as large print, Braille, or audio tape. The response will explain the position of the Town of Winamac and offer options for substantive resolution of the complaint.

If the response by the ADA Coordinator Bradley Zellers or his designee does not satisfactorily resolve the issue, the complainant and/or his/her designee may appeal the decision within 15 calendar days after receipt of the response to the Town Council.

Within 15 calendar days after receipt of the appeal, the Town Council will meet with the complainant to discuss the complaint and the possible resolutions. Within 15 calendar days of the meeting, the Town Council will respond in writing, and where appropriate, in a format accessible to the complainant, such as large print, Braille, or audio CD. The response will explain the position of the ADA Coordinator and offer options for substantive resolution of the complaint if different from those indicated by the subcommittee in the first step.

All written complaints received by Bradley Zellers or his designee, appeals to the Town Council, and responses from these two offices will be retained by the Town of Winamac for at least three years.

Town of Winamac Notice of Non-Discrimination

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT

In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990 ("ADA"), the Town of Winamac will not discriminate against qualified individuals with disabilities in its services, programs, or activities.

Employment: The Town of Winamac does not discriminate on the basis of disability in its hiring or employment practices and complies with all regulations promulgated by the U.S Equal Employment Opportunity Commission under title I of the ADA

Effective Communication: The Town of Winamac will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in the Town of Winamac's programs, services, and activities, including qualified sign language interpreters, documents in Braille, and other ways of making information and communications accessible to people who have speech, hearing, or vision impairments.

Modifications to Policies and Procedures: The Town of Winamac will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all of its programs, services and activities. For example, individuals with service animals are welcomed in the Town of Winamac's offices, even where pets are generally prohibited.

Anyone who requires an auxiliary aid or service for effective communication, or modification of policies or procedures to participate in a program, service, or activity of the Town of Winamac, should contact Bradley Zellers at (574) 946-3451 as soon as possible but no later than 48 hours before the scheduled event.

The ADA does not require the Town of Winamac to take any action that would fundamentally alter the nature of its programs or services, or impose an undue financial or administrative burden.

Complaints that a program, service, or activity of the Town of Winamac is not accessible to persons with disabilities should be directed to the ADA Coordinator Bradley Zellers.

The Town of Winamac will not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the cost of providing auxiliary aids/services or reasonable modifications of policy, such as retrieving items from locations that are open to the public but are not accessible to persons who use wheelchairs.

Town of Winamac Policy on Other Power Driven Mobility Devices

Town of Winamac Policy for Use of Mobile Devices

In accordance with the Americans with Disabilities Amendments Act and subsequent regulations, it is the policy of the Town of Winamac that mobility devices used by individuals with disabilities are generally permitted in all facilities and programs, as described below.

Definitions:

- "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." This definition includes mobility scooters.
- A "mobility disability" includes a wide range of disabilities, including circulatory and respiratory disabilities that make walking difficult or impossible.
- An "Other Power-Driven Mobility Device (OPDMD)"is defined as any mobility device powered by batteries, fuel, or other engines whether or not designed primarily for use by individuals with mobility disabilities that are used by individuals with mobility disabilities for the purpose of locomotion. Included in the OPDMD category are: golf carts, electronic personal assistance mobility devices (e.g. Segway® PT) and any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair.

Use of Wheelchairs and OPDMDs:

The Town of Winamac will make reasonable modifications to permit individuals with mobility disabilities to use OPDMDs as long as operation of the mobility device is in accordance with legitimate safety requirements, including operation at a safe speed limit, and care in observation of pedestrians. The Town of Winamac prohibits the use of fuel driven engines inside our buildings, as fumes have been deemed a direct threat to others. The Town of Winamac is not responsible for the storage of these devices.

As needed and on an individual basis, the Town will determine additional appropriate use of OPDMD's based upon assessment factors the DOJ regulations allow, the Department has considered the following factors:

- 1. The type, size, weight, dimensions and speed of the device;
- 2. The individual facility's volume of pedestrian traffic; which may vary at different times of the day, week, month, or year;



- 3. The facility's design and operational characteristics;
- 4. Whether legitimate safety requirements can be established to permit the safe operation of the OPDMD at the individual facility;
- 5. Whether the use of the other power-driven mobility device creates a substantial risk of serious harm to the immediate environment or natural or cultural resources.

Those persons with mobility disabilities may contact the **Town of Winamac ADA Coordinator**, **Bradley Zellers** (574) 946-3451, about use of devices that are currently prohibited within Town buildings/facilities, (e.g., motorized OPDMDs) but may provide you with better access in a safe manner.

Requests for Accommodations:

Visitors:

Visitors using wheelchairs and Other Power Driven Mobility Devices are welcome in all areas of the Town that are open to the public. Specific questions related to the use of these devices can be directed to the ADA Coordinator.

Employees:

Employees requesting reasonable accommodations, including the use of Other Power Driven Mobility Devices should contact the ADA Coordinator.

The contact information for the Town of Winamac ADA Coordinator is listed below:

Bradley Zellers Town Manager ADA Coordinator 120 West Main St. Winamac, IN 47996 (574) 946-3451, TTY 711

To request this information in an alternative format, please contact Bradley Zellers-Town of Winamac ADA Coordinator at the information listed above.



Town of Winamac Self Evaluation Report Draft

ADA Consultants of Indiana

P.O. Box 248 Waynetown, Indiana 47990 (765) 234-2ADA

www.adaconsultantsofindiana.com

The Town of Winamac ADA Self-Evaluation and Transition Plan Report

Access to programs, services and activities.

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References:

- -The United States Department of Justice
- -Americans with Disabilities Act
- -ADA Technical Assistance Manuals
- <u>ADA.gov</u>; a website hosted by the DOJ with links to multiple areas applicable to the Americans with Disabilities Act.
- ADA National Network
- U.S. Access Board
- Great Lakes ADA Center
- Accessibility Online; ADA training programs through audio conferences and webinars
- -Section 504 and 508 of the Rehabilitation Act
- -Equal Employment Opportunity Commission

Abbreviations:

ADA – Americans with Disabilities Act

DOJ – Department of Justice

CRT –**Court**

CFR – Code of Federal Regulations

AG-Attorney General

RIN – Regulatory Information Number

U.S. - United States

EEOC – Equal Employment Opportunity Commission

Section 504 - Section 504 of the Rehabilitation Act of 1973

ADAAA – Americans with Disabilities Act Amendments Act (of 2008)

Entity Information:

Winamac's Town Hall houses the Town Manager and Clerk-Treasurer's Office. The Town of Winamac's Police Department and Utility Services is located on the west end of town.

Services offered by the Town of Winamac:

Water and wastewater utilities and trash pick-up which includes utility billing, public meetings, accept phone calls, emails, and in-person questions from the public, limited police services include handgun permits and police/crash reports, park amenities include Outdoor recreation areas, playground equipment and benches.

Date of Evaluation:

4/6/2017

Facility Addresses:

Town Hall Town of Winamac 120 West Main St. Winamac, IN 47996

Officials responsible for the facility:

Bradley Zellers Town Manager / ADA Coordinator
Melanie Berger Clerk Treasurer / Title VI Coordinator

Town Council Members

Tom J. Murray – Council President

James Watkins – Vice President

Dan Vanaman - Member

Judy Heater - Member

Alvin Parish - Member

Evaluation Consultant:

David Meihls, Title II & III Consultant, ADA Consultants of Indiana

Report Preparation:

David Meihls, Principal Consultant, ADA Consultants of Indiana

Current Code:

DEPARTMENT OF JUSTICE

Americans with Disabilities Act Title II Regulations

28 CFR Part 35

[CRT Docket No. 105; AG Order No. 3180- 2010]

RIN 1190-AA46

Nondiscrimination on the Basis of Disability in State and Local Government Services

AGENCY: Department of Justice, Civil Rights Division

Published: September 15, 2010 Effective: March 15, 2011

Intent of this report:

The following report has been prepared for the Town of Winamac, IN and its residents regarding programs, services, and activities provided by the Town. It is intended to serve as a guide as they strive to become compliant with the Americans with Disabilities Act laws and regulations. Under Title II of the ADA, public entities are required to conduct a self-evaluation to ensure that persons with disabilities are not excluded from or denied participation in their programs, services and activities. This report is a "snap shot" of the Town's programs, services, & activities and how they measure up to current ADA requirements. It addresses non-compliance issues found within each department and general findings across all Town departments.

Title II Technical Assistance Manual II-8,2000 Self Evaluation

As part of the self-evaluation, a public entity should:

- 1) Identify all of the public entity's programs, activities, and services; and
- 2) Review all the policies and practices that govern the administration of the public entity's programs, activities, and services.

Normally, a public entity's policies and practices are reflected in its laws, ordinances, regulations, administrative manuals or guides, policy directives, and memoranda. Other practices, however, may not be recorded and may be based on local custom.

The U.S. Department of Justice (USDOJ) serves as the primary enforcement agency for the ADA and has suggested 13 points of program access for the Self Evaluation review. These 13 points and administrative requirements were used to set the scope of the review along with all Title II Requirements under the ADA when performing the following comprehensive review of the Town of Winamac's programs, services, and activities.

- 1) A public entity must examine each program to determine whether any physical barriers to access exist. It should identify steps that need to be taken to enable these programs to be made accessible when viewed in their entirety. If structural changes are necessary, they should be included in the transition plan (see II-8.3000).
- 2) A public entity must review its policies and practices to determine whether any exclude or limit the participation of individuals with disabilities in its programs, activities, or services. Such policies or practices must be modified, unless they are necessary for the operation or provision of the program, service, or activity. The self-evaluation should identify policy modifications to be implemented and include complete justifications for any exclusionary or limiting policies or practices that will not be modified.

- 3) A public entity should review its policies to ensure that it communicates with applicants, participants, and members of the public with disabilities in a manner that is as effective as its communications with others. If a public entity communicates with applicants and beneficiaries by telephone, it should ensure that TDD's or equally effective telecommunication systems are used to communicate with individuals with impaired hearing or speech. Finally, if a public entity provides telephone emergency services, it should review its policies to ensure direct access to individuals who use TDD's and computer modems.
- 4) A public entity should review its policies to ensure that they include provisions for readers for individuals with visual impairments; interpreters or other alternative communication measures, as appropriate, for individuals with hearing impairments; and amanuenses for individuals with manual impairments. A method for securing these services should be developed, including guidance on when and where these services will be provided. Where equipment is used as part of a public entity's program, activity, or service, an assessment should be made to ensure that the equipment is usable by individuals with disabilities, particularly individuals with hearing, visual, and manual impairments. In addition, a public entity should have policies that ensure that its equipment is maintained in operable working order.
- 5) A review should be made of the procedures to evacuate individuals with disabilities during an emergency. This may require the installation of visual and audible warning signals and special procedures for assisting individuals with disabilities from a facility during an emergency.
- 6) A review should be conducted of a public entity's written and audio-visual materials to ensure that individuals with disabilities are not portrayed in an offensive or demeaning manner.
- 7) If a public entity operates historic preservation programs, it should review its policies to ensure that it gives priority to methods that provide physical access to individuals with disabilities.
- 8) A public entity should review its policies to ensure that its decisions concerning a fundamental alteration in the nature of a program, activity, or service, or a decision that an undue financial and administrative burden will be imposed by title II, are made properly and expeditiously.
- 9) A public entity should review its policies and procedures to ensure that individuals with mobility impairments are provided access to public meetings.
- 10) A public entity should review its employment practices to ensure that they comply with other applicable nondiscrimination requirements, including section 504 of

the Rehabilitation Act and the ADA regulation issued by the Equal Employment Opportunity Commission.

- 11) A public entity should review its building and construction policies to ensure that the construction of each new facility or part of a facility, or the alteration of existing facilities after January 26, 1992, conforms to the standards designated under the title II regulation.
- 12) A review should be made to ascertain whether measures have been taken to ensure that employees of a public entity are familiar with the policies and practices for the full participation of individuals with disabilities. If appropriate, training should be provided to employees.
- 13) If a public entity limits or denies participation in its programs, activities, or services based on drug usage, it should make sure that such policies do not discriminate against former drug users, as opposed to individuals who are currently engaged in illegal use of drugs.

The content of this report was developed from self-evaluations performed by David Meihls of ADA Consultants of Indiana. It is required for public entities to comply with all Title II regulations; however there are many ways to meet these requirements.

The Town of Winamac is taking a proactive approach by pursuing equality to program access. This report contains general findings that reflect most or all departments. The recommendations and suggestions provided to reach compliance are based on information supplied by Department of Justice and other resources considered to be best practice.

Instructions:

Employees need to record actions taken within each section of the report regarding the findings. Include actions under the Administrative Requirements section and Access to Programs, Services, and Activities section.

Example:

MM/DD/YYYY: Posted the Notice of Non-Discrimination on the office door and on the bulletin board in the employee lounge.

Implemented by: (Name) John Smith - (Title) ADA Coordinator/Town Manager

General Information:

Reference- Americans with Disabilities Act Title II, Part 35 Nondiscrimination on the Basis of Disability in State and Local Government Services (as amended by the final rule published on September 15, 2010)

Subpart B—General Requirements

§ 35.130 General prohibitions against discrimination

(a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

(b)

- (1) A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—
 - (i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
 - (ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
 - (iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;
 - (iv) Provide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others;
 - (v) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program;
 - (vi) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;
 - (vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.
- (2) A public entity may not deny a qualified individual with a disability the opportunity to participate in services, programs, or activities that are not separate

or different, despite the existence of permissibly separate or different programs or activities.

- (3) A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration—
 - (i) That has the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;
 - (ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities; or
 - (iii) That perpetuates the discrimination of another public entity if both public entities are subject to common administrative control or are agencies of the same State.
- (4) A public entity may not, in determining the site or location of a facility, make selections—
 - (i) That have the effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination; or
 - (ii) That has the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the service, program, or activity with respect to individuals with disabilities.
- (5) A public entity, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.
- (6) A public entity may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may a public entity establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. The programs or activities of entities that are licensed or certified by a public entity are not, themselves, covered by this part.
- (7) A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.
- (8) A public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.

- (c) Nothing in this part prohibits a public entity from providing benefits, services, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities beyond those required by this part.
- (d) A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(e)

- (1) Nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit provided under the ADA or this part which such individual chooses not to accept.
- (2) Nothing in the Act or this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.
- (f) A public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.
- (g) A public entity shall not exclude or otherwise deny equal services, programs, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.
- (h) A public entity may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. However, the public entity must ensure that its safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

Complete Title II Regulations are available at www.ada.gov

General Findings:

Administrative Requirements

ADA Coordinator

A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and fulfill its responsibilities under Title II, including the investigation of complaints. A public entity shall make available the name, office address, and telephone number of any designated employee.

← Findings:

1. The Town has less than 50 employees; however they have appointed an ADA Coordinator to address compliance issues. Bradley Zellers has been appointed the ADA Coordinator of the Town of Winamac.

ADA Coordinator Information

Bradley Zellers
Town Manager
ADA Coordinator
120 West Main St.
Winamac, IN 47996
(574) 946-3451 TTY: 711

<u>28 CFR Part 35 Subpart A—General § 35.107 Designation of responsible employee and adoption of grievance procedures (a)</u>

- 1. We recommend continued training regarding the ADA to increase knowledge of the current regulations and standards, keep-up with new legislation regarding the ADA, adequately assist Town staff with ADA issues, and maintain maximum accessibility throughout the Town. www.ada.gov is an excellent resource for up-to-date information. We suggest completing the ADA Coordinator Training and Certification Program; Information can be accessed through www.adacoordinator.org.
- 2. We recommend adding the specific name of the ADA Coordinator to the Notice of Non-discrimination and Grievance Procedure and change these documents as needed if a different person is designated to the position. Revise any other ADA documents in the same manner. Under the ADA, the Grievance Procedure must be adopted and published according to state and local statues.

Public Notice of Non-Discrimination

A public entity must provide information on title II's requirements to applicants, participants, beneficiaries, and other interested persons. The notice shall explain title II's applicability to the public entity's services, programs, or activities. A public entity shall provide such information as the head of the public entity determines to be necessary to apprise individuals of title II's prohibitions against discrimination.

ℰ✓ **Findings**:

1. A Non-Discrimination Notice exists within previous transition plan; however, it is not posted throughout all Town departments and facilities. The Notice does contain the specific name of the ADA Coordinator.

28CFR Part 35 Subpart A—General § 35.106 Notice.

2. It is required that all information be available in alternative formats.

28CFR Part 35 Subpart E—Communications § 35.160 General. (b)(1) (2)

- 1. The Notice is an ongoing requirement so it is recommended to post the Notice within each department and in public areas of each Town facility. Provide each department with a copy of the notice, ensure all the staff are aware of it and understand it. It is also recommended to include it with job applications, in program handbooks, activity schedules, announce at public meetings, and publish it as a legal notice.
 - We recommend adding the specific name of the ADA Coordinator to the Notice of Non-discrimination and change this document as needed if a different person is named as the ADA Coordinator.
- 2. Provide large print documents by changing the font size or enlarging the document on a copier upon request. Keep CD's/flash drives on hand to provide documents in other file formats if requested. Make arrangements with vendors and other agencies to provide this document and all other written documents in alternative formats such as Braille. We also suggest putting a statement at the bottom of your documents similar to the following: "To request this information in an alternative format, please contact: (department head name or ADA Coordinator and contact information).

Grievance Procedure

All public entities with 50 or more employees must establish, adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by title II.

€ Findings:

1. The town has less than 50 employees; however, A *Grievance Procedure* exists and will be adopted by the Winamac Town Council when the ADA Transition Plan is adopted. The grievance procedure will be posted on the website or available within each department of the Town.

ADA Toolkit for State and Local Governments Chapter 2 ADA Coordinator, Notice and Grievance Procedure: Administrative Requirements under Title II of the ADA, C. Establishing and Publishing Grievance Procedures

28 CFR Part 35 Subpart A—General § 35.107 Designation of responsible employee and adoption of grievance procedures (b)

2. It is required that all information be available in alternative formats.

28CFR Part35 Subpart E—Communications § 35.160 General. (b)(1) (2)

- 1. The Grievance Procedure must be adopted by the Town Council. We suggest distributing and posting the Grievance Procedure within each of the Town's departments. We recommend the Town to update or change this document as needed if a different person is named as the ADA Coordinator.
- 2. Provide large print documents by changing the font size or enlarging the document on a copier upon request. Keep CD's on hand to provide documents in other file formats if requested. Make arrangements with vendors and other agencies to provide this document and all other written documents in alternative formats such as Braille. We also suggest putting a statement at the bottom of your documents similar to the following: "To request this information in an alternative format, please contact: (department head name or ADA Coordinator and contact information).

Access to Programs, Services, and Activities

Facility Evaluation for Structural Barriers

A public entity must examine each program to determine whether any physical barriers to access exist. It should identify steps that need to be taken to enable these programs to be made accessible when viewed in their entirety. If structural changes are necessary, they should be included in the transition plan.

← Findings:

1. The Town's facilities have been evaluated for physical barriers by Town Manager Bradley Zellers. The reports for these evaluations are available in the Town Hall upon request.

A public entity may not, in determining the site or location of a facility, make selections—

- o (i) That have the effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination; or
- (ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the service, program, or activity with respect to individuals with disabilities.

In choosing among available methods for meeting Program Accessibility requirements, a public entity shall give priority to those methods that offer services, programs, and activities in the most integrated setting appropriate.

28 CFR Part 35, Subpart B General Requirements, §35.130 General prohibitions against discrimination (b)(4)(i)(ii)

28 CFR Part 35, Subpart D Program Accessibility, 35.150 Existing Facilities (a),(b)(1),(d)

Recommended Corrections:

We recommend performing remediations to all identified physical barriers addressed within each of the facility evaluation reports starting with all Priority 1's, in order to provide access to programs and services at all facilities.
 In addition, in choosing among available methods for meeting the Program Accessibility requirement, a public entity shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting. Due to the volume and nature of the programs and services offered at the Town

Hall, providing physical access is a prime method for reaching this requirement.

Effective Communication & Auxiliary Aids and Services

All State and local government agencies are required to take steps to ensure that their communications with people with disabilities are as effective as communications with others. Simply put, "effective communication" means that whatever is written or spoken must be as clear and understandable to people with disabilities as it is for people who do not have disabilities. The effective communication requirement applies to ALL members of the public with disabilities, including job applicants, program participants, and even people who simply contact state or local government agencies seeking information about programs, services, or activities.

- 1. Information is provided within the Transition Plan regarding a resource list with contact information for local agencies that provide auxiliary aids and services.
- 2. The staff has received information provided to serve as self training materials regarding Effective Communication and Auxiliary Aids and Services.
- 3. A policy regarding Effective Communication and Auxiliary Aids and Services is provided within the Transition Plan.
- 4. The public shall be aware of the Town's policy for Effective Communication and the Provision of Auxiliary Aids and Services and specific procedures for providing auxiliary aids and services by means of Public Notices displayed within Town Departments and Facilities.
- 5. A statement for providing auxiliary aids and services exists in the Town's Notice of Non-Discrimination, and shall be included in literature or public notices for specific services or individual events.
- 6. Designation of a responsible person/department shall be completed for the maintenance of accessible features for all Town owned buildings and departments. (i.e.; assistive listening devices, future installation of looping systems, computer terminals, TTY's, speech synthesizers, and any other accessible features of technical devices or equipment that the Town obtains)
 - a) A public entity shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the Act or this part.
 - b) This section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs.

28 CFR Subpart B General Requirements § 35.133 Maintenance of Accessible Features
28 CFR Part35 Subpart E—Communications § 35.160 General

- We recommend locating local resource agencies and developing a resource list containing contact information for agencies that provide auxiliary aids and services to provide better availability and more options to acquire aids and services in a timely manner.
- 2. We recommend providing training for Effective Communication and Auxiliary Aids and Services.
- ADA Consultants of Indiana has developed a policy for the Town of Winamac.
 Implement and/or adopt <u>The Town of Winamac's Policy for Effective</u>
 <u>Communication & The Provision of Auxiliary Aids and Services for Persons with Disabilities</u>. This policy also includes <u>The Disability Guidelines and Etiquette</u>
 <u>Handbook</u> and the ADA resource list mentioned above in Finding #1.
- Suggest that once <u>The Town of Winamac's Policy for Effective Communication & The Provision of Auxiliary Aids and Services for Persons with Disabilities</u> has been adopted/implemented to publicize the existence of said policy.
- 5. We suggest including a statement in advertisements for public events letting the public know that auxiliary aids and services are available upon request. i.e.:
 - This event (meeting) is being held in an accessible location. To request an accommodation for this event (meeting) or request this information in an alternative format, please contact: Bradley Zellers, ADA Coordinator, at: 120 West Main St., Winamac, IN 46996; or (574)-946-3451, TTY 711.
- 6. We recommend designating an individual such as the ADA Coordinator, A Council Member, Mayors Assistant, Town Manager or other designee to be responsible for the maintenance of accessible features, (i.e.; assistive listening devices, future installation of looping systems, computer terminals, TTY's, speech synthesizers, and any other accessible features of technical devices or equipment that the Town obtains). We recommend including the designation in Disabilities.

Alternate Formats

There are many ways you can provide equal access to communications for people with disabilities. These different ways are provided through "auxiliary aids and services". In order to be effective, auxiliary aids and services must be provided in alternative formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with the disability.

ℰ♪ Findings

1. It is required that all information be available in alternative formats. Most of the Town's forms, flyers, and other material in print that are used and available to the public may be currently available in alternative formats.

Subpart E—Communications § 35.160 General. (b)(1) (2)

2. The Town does not currently use Audio/Visual materials for the public. If in the future, Audio/Visual materials are used by the Town for communications with the public (such as; advertising on television or radio, training videos or audio recordings) should contain closed captioning and detailed audio description.

<u>Best Practices Toolkit for State and Local Governments, Chapter 3: General Effective</u>

Communication Requirements under Title II of the ADA, B5a Public Television and Videos

- 1. Provide large print documents by changing the font size or enlarging the document on a copier upon request. Keep CD's on hand to provide documents in other file formats if requested. Make arrangements with vendors and other agencies to provide this document and all other written documents in alternative formats such as Braille.
- 2. When the Town uses radio advertising, public service announcements on television, training video, audio recordings, or any other type of audio/visual materials they need to ensure they have closed captioning and detailed audio description where appropriate. The information contained within the media should also be available in an alternative format if requested.
- See Recommended Correction #5 in the Effective Communication section of this report regarding an example of an advertising statement that can be used.

Advertising & Portrayal of Persons with Disabilities in Printed and/or Audio/Visual Materials

A public entity, may not directly or through contractual or other arrangements, utilize criteria or methods of administration that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability.

A review should be conducted of a public entity's written and audio-visual materials to ensure that individuals with disabilities are not portrayed in an offensive or demeaning manner.

€ Findings:

Information contained in written and audio-visual materials should not contain
pictures, words or phrases or anything that portrays individuals with disabilities in an
offensive or demeaning manner. When the Town creates and sends out newsletters
to the public monthly and the Town Council passes ordinances for various town
issues, policies, and practices.

28 CFR Part 35 Subpart General Requirements 35.130 General prohibitions against discrimination (b)(3)(i)

<u>Title II Technical Assistance Manual, II-8.0000 Administrative Requirements, II-8.2000 Self-Evaluation, Areas that need careful examination include the following: 6)</u>

- 1. The Town should specifically review their newsletters and ordinances. In addition, should review any booklets, flyers, recordings, videos, webpages, and any other audio/visual materials provided to the public by the Town. Check for pictures and/or images that may be demeaning. Check for terms such as "mentally retarded", "differently abled", "physically challenged". Look for phrases that put the disability first instead of the person; i.e.: "Epileptics", "handicapped people", "hearing impaired persons". Discard or change/update any offensive materials. Ensure when acquiring or developing new materials that they use "person –first" language and acceptable terms.
 - o Information regarding disability etiquette and acceptable terms can be found in the Town of Winamac "Disability Guidelines and Etiquette Handbook for Employees". This handbook has been developed by ADA Consultants of Indiana and is currently under review by the Town Council and the ADA Coordinator. Use this resource when developing new materials for the Town and when reviewing any existing written and audio-visual materials.

Telecommunications

Public entities that use telephones must provide equally effective communication to individuals with disabilities. Also when a public entity uses an automated attendant system, including, but not limited to voicemail and messaging, or interactive voice response system, for receiving and directing incoming telephone calls, that system must provide effective real-time communication with individuals using auxiliary aids and services, including Internet-based relay systems. Additionally, a public entity shall respond to telephone calls from a telecommunications relay service established under Title IV of the ADA in the same manner it responds to other telephone calls.

€ Findings:

 The Town accepts calls from the general public and TTY capabilities do not exist in any of the Town facilities. The majority of the staff are not trained in accepting relay service calls enabling communication with persons who are deaf or hard of hearing or have speech impairments.

28 CFR Subpart E-Communications §35.161 Telecommunications (a)

2. A TTY number or Relay number is not listed with Town phone numbers where printed, posted, or advertised allowing persons who are deaf or hard of hearing or those who have speech impairments to call the Town.

28 CFR Subpart E—Communications § 35.160 General. (b)(1) (2)

- 1. It is recommended that the Town establish a means to accept and make phone calls to persons who are deaf or hard of hearing and/ or have speech impairments. Relay Indiana is a free relay service provider that is available, more information regarding this service is located within the <u>Town of Winamac "Disability</u> <u>Guidelines and Etiquette Handbook for Employees".</u> As an alternative, TTY equipment can be purchased for each phone that receives calls from the public.
- 2. Whether it is a service provider or TTY equipment chosen for use; the TTY telephone number or the relay provider's telephone number should be listed wherever a Town phone number is listed; places included but not limited to: letterhead, flyers, posted information, mailings, pamphlets, booklets, advertisements (printed, audio, or video), utility bills, forms, applications, etc.

Modifications to Policies and Procedures

A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

€ Findings:

- 1. The Notice of Non-Discrimination contains a statement regarding modifications to policies, practices and procedures. The Town of Winamac's Transition Plan also contains a similar statement.
- 2. The Town shall implement policies regarding Service Animals and Mobile Devices (including Other Power Driven Mobile Devices).

28 CFR Part 35 Subpart B—General Requirements § 35.130 General prohibitions against discrimination.(b)(7)

<u>Title II Technical Assistance Manual, II-8.0000 Administrative Requirements, II-8.2000 Self-Evaluation, Areas that need careful examination include the following: 2)</u>

- 1. Provide training to all Town staff regarding ADA Regulations that are applicable to the Town, including making modifications to policies, practices and procedures. (See the training section of this report.)
- 2. ADA Consultants of Indiana have prepared Service Animal and OPDMD (Other Power Driven Mobile Devices) policies for the Town to review and adopt. We recommend that the Town implement and/or adopt these policies.

Access to Public Meetings

A public entity should review its policies and procedures to ensure that individuals with mobility impairments are provided access to public meetings. When audio amplification is provided for public meeting and/or events, assistive listening devices are required.

€ Findings:

1. Assistive listening devices shall be purchased and provided at sites for public meetings and signage should be provided letting persons with hearing disabilities know they are available.

<u>Title II Technical Assistance Manual, II-8.0000 Administrative Requirements, II-8.2000 Self-Evaluation, Areas that need careful examination include the following: 9)</u>

2. Information regarding the accessibility of public meeting sites shall be present on meeting notifications.

<u>28CFR Subpart B-General Requirements §35.130 General prohibitions against discrimination</u> (b)(4)

Recommended Corrections:

1. When audio amplification is provided, assistive listening systems are required. Where listening devices are provided, they shall comply with the 2010 Standards for Accessible Design; 219, 216.10, 703.7.2.4, 706, including signage requirements. Regular maintenance of all audio equipment is recommended.

28 CFR Part 35 Subpart B— General Requirements §35.133 Maintenance of accessible features 28 CFR Part 35 Subpart E-Communications §35.163 Information and signage(a)

- 2. We suggest including a statement in advertisements for public meetings letting the public know that the meeting is being held in an accessible location. i.e.:
 - This meeting (event) is being held in an accessible location. To request an accommodation for this meeting (event) or request this information in an alternative format please contact Bradley Zellers, ADA Coordinator, at: 120 West Main St., Winamac, IN 47996; or (574)-946-3451, TTY 711.

Employment Practices

A public entity should review its employment practices to ensure that they comply with other applicable nondiscrimination requirements, including Section 504 of the Rehabilitation Act and the ADA regulation issued by the Equal Opportunity Employment Commission.

€ Findings:

- 1. The Town will evaluate its employment practices and policies in regards to the ADA.
- 2. Employment issues regarding the ADA can be very complex and should be analyzed on an individual basis. Each Supervisor along with the Council Members are involved in the hiring, discipline, and termination process. Employment issues regarding the ADA should be carefully and individually considered in order to avoid violations of the ADA and potential litigation. Persons with disabilities must be provided with the equal opportunities in all aspects of employment.

28 CFR Part 35 Subpart C- Employment §35.140 Employment discrimination prohibited.

<u>Title II Technical Assistance Manual, II-8.0000 Administrative Requirements, II-8.2000 Self-Evaluation, Areas that need careful examination include the following: 10)</u>

Job Accommodation Network

Title I of the ADA

Equal Employment Opportunity Commission

Recommended Corrections:

- We recommend replacing all content within any policy that portrays individuals with disabilities in an offensive or demeaning manner. Examples of some words, but not limited to: "Handicap" and "Disadvantages" could be offensive towards individuals with disabilities.
- 2. We recommend referring to <u>Title I of the ADA</u>, the <u>Job Accommodation Network</u>, and the <u>Equal Opportunity Employment Commission</u> for guidance regarding each specific situation that is encountered by the Town and the Town Council. We also recommend looking at previous case law regarding Employment issues on <u>Project Civic Access</u>; these cases allow you to see how the courts interpreted certain situations. ADA Consultants of Indiana are always available to assist you with any questions you may have regarding employment.

There are many different factors to consider in regards to Tile I of the ADA.

Below are just a couple examples;

- Employers cannot ask questions about disability or use medical examinations until after you make someone a conditional offer of employment.
- Employers must provide a reasonable accommodation if a person with a disability needs one in order to apply for a job, or enjoy benefits equal to those you offer other employees.

We recommend all Town Council members and supervisors receive online training regarding Title I of the ADA. If questions regarding persons with disabilities in the area of employment, they should seek advice from the Town Council Members or ADA Consultants of Indiana.

ADA Consultants of Indiana provided the Town of Winamac with copies of documents from the EEOC; <u>The ADA: Your Responsibilities as an Employer</u> and <u>The Americans with Disabilities Act: A Primer for Small Business</u>. It is recommended that these documents be distributed to and read by each Town Council Member.

Former Drug Use

If a public entity limits or denies participation in its programs, activities, or services based on drug usage, it should make sure that such policies do not discriminate against former drug users, as opposed to individuals who are currently engaged in illegal use of drugs.

1. Recommendations below.

28 CFR Subpart B-General Requirements §35.131 Illegal use of drugs

Title II Technical Assistance Manual, II -3.0000 General Requirements, II-3.8000 Illegal use of drugs.

Recommended Corrections:

- 1. Former Drug Use
 - a. In regards to program access, we recommend ensuring access to all programs, services and activities of the Town to those patrons who formerly engaged in illegal drug usage.
 - b. In regards to employees/volunteers, we recommend ensuring equal opportunities in all areas of employment to those applicants/employees/volunteers who formerly engaged in the use of illegal drugs.

For more guidance regarding this issue refer to the links noted in the Employment Practices section above.

ADA Training

A review should be made to ascertain whether measures have been taken to ensure that employees of a public entity are familiar with the policies and practices for the full participation of individuals with disabilities. If appropriate, training should be provided to employees.

1. The Town of Winamac employees shall receive training in regards to the many aspects of the ADA and Section 504. All employees, especially those having contact with the public, have a need for a wide range of disability information in order to appropriately address the Disability Civil Rights issues that may come before them as they conduct business.

<u>Title II Technical Assistance Manual, II-8.0000 Administrative Requirements, II-8.2000 Self-Evaluation, Areas that need careful examination include the following: 12)</u>

Recommended Corrections:

1. Provide training to the ADA Coordinator, Town Council, and all Town staff/volunteers regarding the ADA and how it applies specifically to Title II entities and their Town's programs, services, and activities.

Information and guides have been provided to the Town staff covering the following areas:

- o Effective Communication/Understanding Policies & Handbook
- o PROWAG/Shared Use Paths
- o Law Enforcement
- o Emergency Management

Emergency Evacuation and Disaster Procedures

A review should be made of the procedures to evacuate individuals with disabilities during an emergency. This may require the installation of visual and audible warning signals and special procedures for assisting individuals with disabilities from a facility during an emergency.

G Findings:

- 1. Emergency Evacuation routes shall be posted in common use spaces or public areas.
- 2. Procedures shall be reviewed to assist persons with disabilities that are in Town Facilities during an emergency.

<u>Title II Technical Assistance Manual, II-8.0000 Administrative Requirements, II-8.2000 Self-Evaluation,</u> <u>Areas that need careful examination include the following: 5)</u>

- 1. Post emergency evacuation plans. Be sure to also include procedures for other disasters such as a tornado or earthquake also.
- 2. It is recommended that the Town develop procedures to assist persons with disabilities that are in Town Facilities with evacuation, tornado and earthquake procedures.

Historic Preservation

If a public entity operates historic preservation programs, it should review its policies to ensure that it gives priority methods that provide physical access to individuals with disabilities.

28 CFR Subpart D-Program Accessibility §35.150 Existing Facilities (a) General (2) & (3)

Contracts for Services

A public entity, in providing any aid, benefit, or service may not directly or through contractual, licensing or other arrangements, on the basis of disability – deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service.

ℰ✓ Findings:

- 1. The Town has several contracts or arrangements with other agencies such as: town trash and recycling services. We would like to advise you of the following:
 - a. Title II entities are responsible for ensuring that the agencies that they have contracts/arrangements for services with, comply with Title II regulations in supplying those services.
 - Public entities may not discriminate on the basis of disability in contracting for the purchase of goods and services.
 Example: A municipal government may not refuse to contract with a cleaning service company to clean its government buildings because the company is owned by an individual with disabilities or employs individuals with disabilities.

CFR 28 Subpart B General Requirements §35.130 General prohibitions against discrimination. (b) (1)

Title II Technical Assistance Manual, II -3.0000 General Requirements, II-3.7100 Contracting.

- 1. Provide an ADA compliance statement, clause, or provision in contracts with agencies that provide services for or in conjunction with the Town. The statement, clause or provision should include language stating;
 - a. (1) the Town's obligations to comply with Title II regulations under the ADA in all of its programs, services and activities and
 - (2) that the agency supplying services to the Town must provide said services in a manner that complies with Title II of the ADA.
 - b. Ensure that when selecting companies, businesses, individuals etc. to provide services for the Town, persons with disabilities are equally considered for the task(s).

Website

Many persons with disabilities use screen-reader technology to access information and services on the internet. Section 508 of the Rehabilitation Act requires that 508 recipients must follow the accessibility guidelines for web content. Under the ADA, in order to provide equal access to programs, services, and activities offered to the public via the website, websites are required to be accessible to persons with disabilities.

In order to assist with this process, ADA consultants has noted and suggested the following:

- 1. The Town's website shall be tested for accessibility. A web based accessibility checker will be used and recommendations for corrective measures will be followed.
- 2. The Effective Communication requirements for title II entities apply to any information the Town makes available to the public including information posted to their own website, any social media sites, blogs, etc. The Town has developed a webpage. The Town is responsible for ensuring documents, forms, information, photos, maps, videos, etc. that are uploaded to the Town's website and any other sites are accessible. Many existing documents, forms, photos, maps, videos, etc. that will be uploaded onto the Town's website and other sites may not currently be accessible.

28 CFR Subpart E—Communications § 35.160 General. (a)(1)

<u>Best Practices Toolkit for State and Local Governments, Chapter 3: General Effective</u> <u>Communication Requirements under Title II of the ADA, B5a Public Television and Videos.</u>

<u>Best Practices Toolkit for State and Local Governments, Chapter 5: Website Accessibility under</u> Title II of the ADA

Recommended Corrections:

1. We recommend testing the Town's website for accessibility and making necessary changes to provide accessibility.

The Department of Justice strongly encourages Title II and Title II Entities to follow Web Content Accessibility Guidelines 2.0 that have been developed by the Web Accessibility Initiative (WAI) of the World Wide Web Consortium (W3C). WAI has created recognized voluntary international guidelines for Web accessibility. These guidelines, set out in the Web Content Accessibility Guidelines (WCAG), detail how to make Web content accessible to individuals with disabilities. The most recent and updated version of the WCAG is 2.0. According to the WAI, the WCAG 2.0 "applies broadly to more advanced technologies; is easier to use and understand; and is more precisely testable with automated testing and human evaluation."

Therefore, we recommend following the new guidelines for the Town's local web site to become accessible. Ensure any new contracts (see the <u>Contracts for Services</u> section) with your web provider or other outside services, such as record storage services, online payment services, etc. use the most current guidelines under Section 508 and the ADA.

- 2. We recommend all persons affiliated with the Town employees and contractors - who design, develop, maintain, or otherwise have responsibility for content and format of its website(s) or third party websites used by the Town of Winamac (Internet Personnel) to read the technical assistance documents; Accessibility of State and Local Government Websites to People with Disabilities and ADA Toolkit: Website Accessibility Under Title II of the ADA. Make sure any type of software the Town uses to provide services is accessible also. It is recommended, when creating new documents, that they be labeled with headings. Pictures, logos, and photos should be labeled with alt text. Ensure the correct reading order of the document. Videos should contain closed captioning and visual descriptors; research if the site you are uploading to does or does not support closed captioning and video descriptors. Use the accessibility checker tools in your computers software programs to aid in this process. Older documents that are frequently used may need to be altered or re-created to make them accessible. To meet the needs of persons with disabilities when providing accessible websites, we recommend the Town to take the following steps of action:
 - a. Establish, implement, and post online a policy that its web pages will be accessible and create a process for implementation;
 - b. Ensure that all new and modified web pages and content are accessible;
 - c. Develop and implement a plan for making existing web content more accessible;
 - d. Provide a way for online visitors to request accessible information or services by posting a telephone number or e-mail address on its home page; and Periodically (at least annually) enlist people with disabilities to test its pages for ease of use.

Fundamental Alteration and Undue Burden

A public entity should review its policies to ensure that its decisions concerning a fundamental alteration in the nature of a program, activity, or service, or a decision that an undue financial and administrative burden will be imposed by title II, are made properly and expeditiously.

Findings:

 No guidance or policy exists regarding this issue, however a brief statement regarding fundamental alterations and/or undue burden is provided in the Town's Notice of Non-Discrimination.

28 CFR Subpart D-Program Accessibility §35.150 Existing Facilities (a) General (3)

Recommended Corrections:

1. We would like to provide you with the specific requirements under Title II of the ADA:
In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with 35.150(a) of Subpart D would result in such alteration or burdens.

The decision that compliance would result in such alteration or burdens must be made by the head of the public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity and must be accompanied by a written statement of the reasons for reaching that conclusion.

If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the public entity.

Temporary Events

The ADA applies to both temporary and permanent services, programs, and activities of the Town. Facilities and structures that are built or altered for temporary use must comply with the ADA Standards (except for construction trailers). In addition, the policies and operations for the event must meet the nondiscrimination requirements of the ADA. When planning temporary events such as a town festival or concert, the town should review ADA title II requirements and the ADA Standards.

Effective communication requirements also apply to temporary events.

€ Findings

1. The Town of Winamac does not hold, sponsor, or take part in any temporary events throughout the year.

<u>ADA Guide for Small Towns, Part 2—Typical Issues: Program Accessibility and Effective</u> Communication, K Temporary Events

- 1. If temporary events are to be held in the future, we recommend the following solutions for temporary events:
 - a. The 2010 ADA Standards for Accessible Design can provide guidance to help event planners place temporary accessible parking spaces in appropriate locations, provide an accessible route throughout the site, and provide other accessible features for food service, toilet facilities (including accessible portable toilets), assembly area seating, public telephones, etc., where such elements or facilities are provided for the public. It is very important to consider accessibility requirements when the event is in the planning stage so that accessible facilities can be identified and incorporated in a manner that does not require extensive construction or last-minute modifications.
 - b. It may be necessary to provide qualified sign language interpreters or other auxiliary aids and services as requested, such as print material in a large-print format or on computer disk. A town may choose when to provide interpreters and publicize a schedule for interpreters and other auxiliary aids and services. It should also provide auxiliary aids or services in response to individual requests, unless to do so would result in undue financial and administrative burdens. Promotional material for a temporary event should explain how the public can request a particular auxiliary aid or service and be informed of when specific auxiliary aids and services may be available.
 - c. Provide Accessible Portable Toilet Facilities (ADA Porta-Potties).

Public Involvement and Participation

A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments.

ℰ♪ Findings

1. The Town of Winamac should seek out public participation and involvement in their self-evaluation process and in regards to their transition plan. See the <u>Public Involvement</u> section of the Town's Transition Plan for details.

28 CFR Subpart A General §35.105 Self -evaluation (c)(1)

Recommended Corrections:

1. ADA Consultants of Indiana will provide the Town of Winamac an Areas of Concern Form. We recommend providing this document along with a comment sheet (in alternative formats if necessary) to Town patrons with known disabilities and disability advocate groups within the community. We also recommend soliciting comments from the public by posting an excerpt in the newspaper, on the Town's website and on a flyer stating that the Town is going through its self -evaluation and is requesting comments/feedback from the public; post the Self-Evaluation Report on the website and make it available by email, mail, or hard copies to be picked up at Town Hall or other designated locations. Take into consideration all comments received when making changes and corrective actions to ensure the accessibility of all citizens with disabilities.

END OF REPORT

This concludes the report findings of this ADA Self- Evaluation. Questions regarding the evaluation and this report may be directed to the Principal Consultant David Meihls.

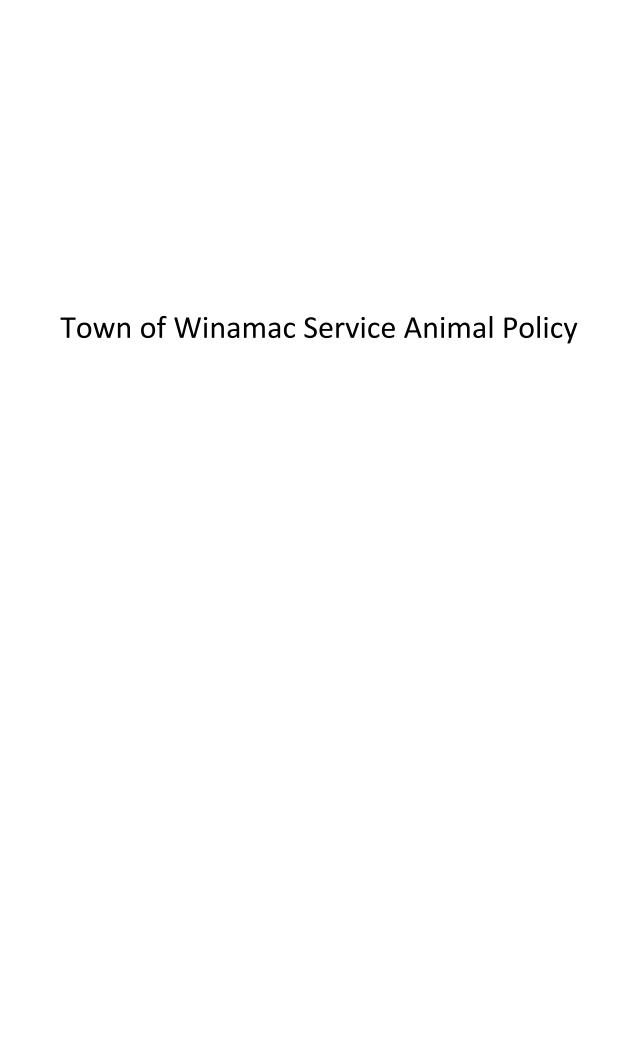
David Meihls

ADA Consultants of Indiana

P.O. Box 248 Waynetown, IN 47990

(765) 234-2ADA

david@adaconsultantsofindiana.com



Town of Winamac's Policy on Service Animals

The Town of Winamac complies with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504). Under the ADA, businesses and organizations that serve the public must allow people with disabilities to bring their service animals into all areas of their facilities where members of the public are normally allowed to go. Among other things, the ADA and Section 504 require the Town to make reasonable modifications to its policies, practices, or procedures to permit the use of a Service Animal by members of the public, faculty, staff or visitor with a disability.

Definition of Service Animal

The ADA defines a Service Animal as "any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability." Importantly, other species of animals, whether wild or domestic, trained or untrained, are not Service Animals for the purpose of the ADA. However, the Town of Winamac will make reasonable modifications for a miniature horse that has been individually trained to do work or perform tasks for the benefit of the individual with a disability.

When assessing whether a dog is a Service Animal, the dog must be trained to do work or perform tasks that are directly related to the individual's disability - such as guiding people who are blind; alerting people who are deaf; pulling wheelchairs; alerting and protecting a person experiencing a seizure; or performing other special tasks. Service animals are working animals, not pets.

The crime deterrent effects of a dog's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for purposes of determining if a dog is a Service Animal under this policy.

Verification of Service Animal

Service animals are not required to be certified, trained, or licensed as a Service Animal. They are not required to wear any identifying tags or clothing. Service animals also are not limited to a specific breed or size of dog. Some individuals with service animals may have "hidden" disabilities such as diabetes or epilepsy, therefore it may not be apparent that the animal is a service animal.

In situations where it is apparent that the person has a disability or the animal is clearly marked as a service animal;

Employees of the Town of Winamac will not ask about the nature or extent of an individual's disability.

However, when it is not readily apparent that the person with the animal has a disability or the animal accompanying the individual is a service animal, the staff of the Town of Winamac may ask the individual two questions permitted by the ADA;

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- 1. Is the animal required because of a disability?
 - if "yes", ask question 2
 - if "no", you may ask the individual to remove the service animal
- 2. What work or task has the dog has been trained to perform.
 - Answers given should be things such as; retrieving items for me, alerting me when I am about to have a seizure, etc.
- The Town of Winamac will not require or request that the Service Animal perform the tasks it has been trained to perform
- The Town of Winamac will not require documentation, such as proof that the dog has been certified, trained, or licensed as a Service Animal.

Care and supervision of Service Animal

The individual with the disability using a Service Animal is responsible for the care or supervision of a Service Animal. The Service Animal must be under the control of the individual at all times and must have a harness, leash, or other tether. If the use of a harness, leash, or other tether would interfere with the performance of the work or tasks performed by the Service Animal or is impractical because of an individual's disability, a harness, leash, or other tether may not be required. However, in that case, the individual must be able to control the Service Animal by other effective means such as voice controls or signals.

A Service Animal is generally permitted to accompany the individual with a disability to Town facilities where members of the public, staff, and faculty are allowed to go. However, the Town may ask the individual with a disability to remove a Service Animal from any of its facilities if: (1) the Service Animal is out of control and the individual with a disability does not take effective action to control it; or (2) the Service Animal is not housebroken. The Town may also ask the individual with a disability to remove a Service Animal from any of its facilities if the use or presence of the Service Animal poses a direct threat to the health or safety of others or if the animal's behavior, such as barking, is unreasonably disruptive to the other participants within the facility.

The Town may impose legitimate safety requirements on the use or presence of a Service Animal that are necessary for safe operation of its facilities. There are some facilities that are not safe for use or presence of Service Animals and from which the Town may exclude Service Animals on a case-by-case basis based on actual risks.

The individual with a disability must abide by current town/city, county, and state ordinances/laws/regulations pertaining to licensing, vaccination, and other requirements for animals (It is the individual's responsibility to know and understand these ordinances, laws and regulations).

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The individual with a disability is responsible to clean up after and properly dispose of the animal's feces in a safe and sanitary manner.

The Town will not ask for or require an individual with a disability to pay a surcharge or to comply with other requirements generally not applicable to people without pets. However, an individual with a disability may be charged any damage caused by his or her Service Animal.

Requesting a Reasonable Modification

Anyone wishing to utilize a Service Animal at Town facilities and Town sponsored activities should contact:

Bradley Zellers Town Manager ADA Coordinator 120 West Main St. Winamac, IN 47996 (574) 946-3451, TTY 711

To request this information in an alternative format, please contact Bradley Zellers-Town of Winamac ADA Coordinator.

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Town of Winamac Suggestive Phrases for Ads and Forms

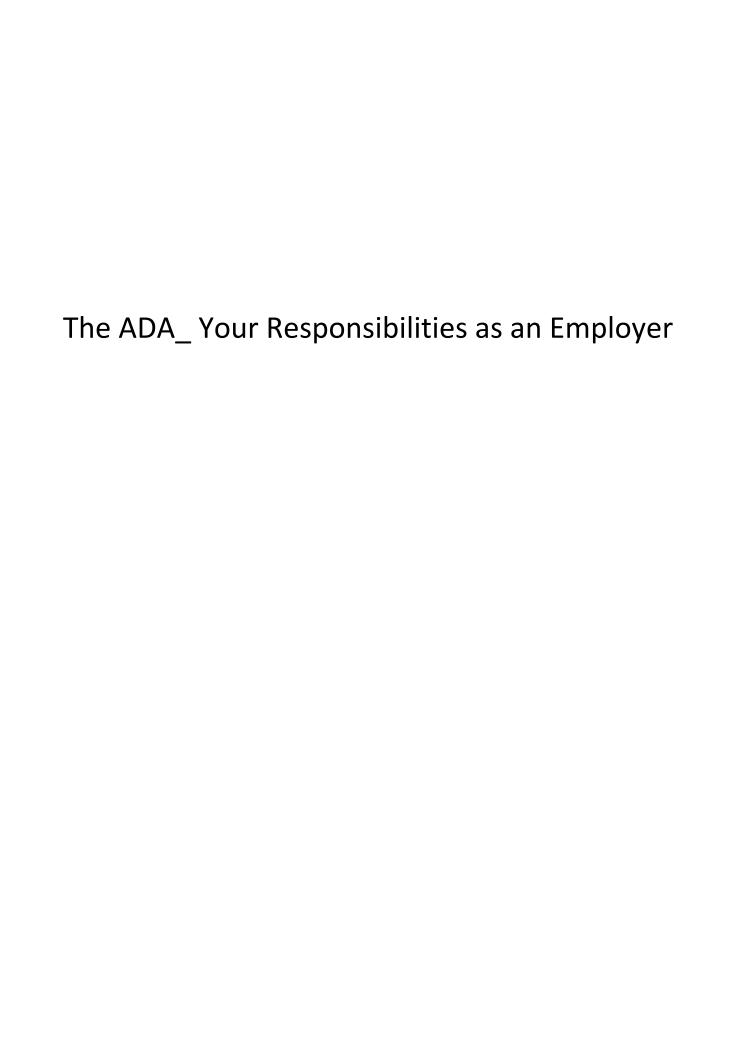
Suggested Phrases for Providing Accessibility

The following phrases are provided as suggestions to provide persons with disabilities with equal access to programs and services;

- Use for advertisement of events, meetings, etc. on radio, television, website, flyers, brochures, in public announcements, etc.
 - To request an accommodation for (event, meeting) please contact;
 Bradley Zellers, Town Manager phone: (574) 946-3451; TTY: 711
 - This (event, meeting) will be held at an accessible site.
- Use for forms, letters, publications, informational posters/flyers & brochures/pamphlets, booklets, etc.
 - To request this (information, form, flyer, brochure etc.) in an alternative format please contact;
 Bradley Zellers, Town Manager phone: (574) 946-3451; TTY: 711
- > Use for both of the above:
 - To request an accommodation for this (event, meeting, etc.) or to request this (information) in an alternative format, please contact: Bradley Zellers, Town Manager phone: (574) 946-3451; TTY: 711
- Use wherever your phone # is listed; such as: documents, forms, flyers, ads, booklets, pamphlets, etc.
 - Ex:
 Town of Winamac
 120 West Main St.
 Winamac, IN 47996

(574) 946-3451, TTY: 711





The ADA: Your Responsibilities as an Employer

ADDENDUM

Since The Americans with Disabilities Act: Your Responsibilities as an Employer was published, the Supreme Court has ruled that the determination of whether a person has an ADA "disability" must take into consideration whether the person is substantially limited in performing a major life activity when using a mitigating measure. This means that if a person has little or no difficulty performing any major life activity because s/he uses a mitigating measure, then that person will not meet the ADA's first definition of "disability." The Supreme Court's rulings were in Sutton v. United Airlines, Inc., 527 U.S. ____ (1999), and Murphy v. United Parcel Service, Inc., 527 U.S. ____ (1999).

As a result of the Supreme Court's ruling, this document's guidance on mitigating measures, found in the section "Additional Questions and Answers on the Americans with Disabilities Act," is superseded. Following the Supreme Court's ruling, whether a person has an ADA "disability" is determined by taking into account the positive and negative effects of mitigating measures used by the individual. The Supreme Court's ruling does not change anything else in this document.

For more information on the Supreme Court rulings and their impact on determining whether specific individuals meet the definition of "disability," consult the *Instructions for Field Offices: Analyzing ADA Charges After Supreme Court Decisions Addressing "Disability" and "Qualified,"* which can be found on EEOC's website at www.eeoc.gov.

Notice Concerning The Americans With Disabilities Act Amendments Act Of 2008

The Americans with Disabilities Act (ADA) Amendments Act of 2008 was signed into law on September 25, 2008 and becomes effective January 1, 2009. Because this law makes several significant changes, including changes to the definition of the term "disability," the EEOC will be evaluating the impact of these changes on this document and other publications. See the <u>list of specific changes to the ADA</u> made by the ADA Amendments Act.

The Americans with Disabilities Act of 1990 (ADA) makes it unlawful to discriminate in employment against a qualified individual with a disability. The ADA also outlaws discrimination against individuals with disabilities in State and local government services, public accommodations, transportation and telecommunications. This booklet explains the part of the ADA that prohibits job discrimination. This part of the law is enforced by the U.S. Equal Employment Opportunity Commission and State and local civil rights enforcement agencies that work with the Commission.

Are You Covered?

Job discrimination against people with disabilities is illegal if practiced by:

- private employers,
- state and local governments,
- employment agencies,
- labor organizations, and
- labor-management committees.

The part of the ADA enforced by the EEOC outlaws job discrimination by:

- all employers, including State and local government employers, with 25 or more employees after July 26, 1992, and
- all employers, including State and local government employers, with 15 or more employees after July 26, 1994.

Another part of the <u>ADA</u>, enforced by the U.S. Department of Justice, prohibits discrimination in State and local government programs and activities, including discrimination by all State and local governments, regardless of the number of employees, after January 26, 1992.

Because the <u>ADA</u> establishes overlapping responsibilities in both <u>EEOC</u> and DOJ for employment by State and local governments, the Federal enforcement effort will be coordinated by <u>EEOC</u> and DOJ to avoid duplication in investigative and enforcement activities. In addition, since some private and governmental employers are already covered by nondiscrimination and affirmative action requirements under the Rehabilitation Act of 1973, <u>EEOC</u>, DOJ, and the Department of Labor will similarly coordinate the enforcement effort under the <u>ADA</u> and the Rehabilitation Act.

What Employment Practices are Covered?

The ADA makes it unlawful to discriminate in all employment practices such as:

- recruitment
- pay
- hiring
- firing
- promotion
- job assignments
- training
- leave

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- lay-off
- benefits
- all other employment related activities.

The <u>ADA</u> prohibits an employer from retaliating against an applicant or employee for asserting his rights under the <u>ADA</u>. The Act also makes it unlawful to discriminate against an applicant or employee, whether disabled or not, because of the individual's family, business, social or other relationship or association with an individual with a disability.

Who Is Protected?

Title I of the <u>ADA</u> protects qualified individuals with disabilities from employment discrimination. Under the <u>ADA</u>, a person has a disability if he has a physical or mental impairment that substantially limits a major life activity. The <u>ADA</u> also protects individuals who have a record of a substantially limiting impairment, and people who are regarded as having a substantially limiting impairment.

To be protected under the <u>ADA</u>, an individual must have, have a record of, or be regarded as having a substantial, as opposed to a minor, impairment. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, caring for oneself, learning or working.

An individual with a disability must also be qualified to perform the essential functions of the job with or without reasonable accommodation, in order to be protected by the <u>ADA</u>. This means that the applicant or employee must:

- satisfy your job requirements for educational background, employment experience, skills, licenses, and any other qualification standards that are job related; and
- be able to perform those tasks that are essential to the job, with or without reasonable accommodation.

The <u>ADA</u> does not interfere with your right to hire the best qualified applicant. Nor does the <u>ADA</u> impose any affirmative action obligations. The <u>ADA</u> simply prohibits you from discriminating against a qualified applicant or employee because of her disability.

How Are Essential Functions Determined?

Essential functions are the basic job duties that an employee must be able to perform, with or without reasonable accommodation. You should carefully examine each job to determine which functions or tasks are essential to performance. (This is particularly important before taking an employment action such as recruiting, advertising, hiring, promoting or firing).

Factors to consider in determining if a function is essential include:

- whether the reason the position exists is to perform that function,
- the number of other employees available to perform the function or among whom the performance of the function can be distributed, and
- the degree of expertise or skill required to perform the function.

Your judgment as to which functions are essential, and a written job description prepared before advertising or interviewing for a job will be considered by <u>EEOC</u> as evidence of essential functions. Other kinds of evidence that <u>EEOC</u> will consider include:

- the actual work experience of present or past employees in the job,
- the time spent performing a function,
- the consequences of not requiring that an employee perform a function, and
- the terms of a collective bargaining agreement.

What Are My Obligations to Provide Reasonable Accommodations?

Reasonable accommodation is any change or adjustment to a job or work environment that permits a qualified applicant or employee with a disability to participate in the job application process, to perform the essential functions of a job, or to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities. For example, reasonable accommodation may include:

- acquiring or modifying equipment or devices,
- job restructuring,
- part-time or modified work schedules,
- reassignment to a vacant position,
- adjusting or modifying examinations, training materials or policies,
- providing readers and interpreters, and
- making the workplace readily accessible to and usable by people with disabilities.

Reasonable accommodation also must be made to enable an individual with a disability to participate in the application process, and to enjoy benefits and privileges of employment equal to those available to other employees.

It is a violation of the <u>ADA</u> to fail to provide reasonable accommodation to the known physical or mental limitations of a qualified individual with a disability, unless to do so would impose an undue hardship on the operation of your business. Undue hardship means that the accommodation would require significant difficulty or expense.

What is the Best Way to Identify a Reasonable Accommodation?

Frequently, when a qualified individual with a disability requests a reasonable accommodation, the appropriate accommodation is obvious. The individual may suggest a reasonable accommodation based upon her own life or work experience. However, when the appropriate accommodation is not readily apparent, you must make a reasonable effort to identify one. The best way to do this is to consult informally with the applicant or employee about potential accommodations that would enable the individual to participate in the application process or perform the essential functions of the job. If this consultation does not identify an appropriate accommodation, you may contact the EEOC, State or local vocational rehabilitation agencies, or State or local organizations representing or providing services to individuals with disabilities. Another resource is the Job Accommodation Network (JAN). JAN is a free consultant service that helps employers make individualized accommodations. The telephone number is 1-800-526-7234.

When Does a Reasonable Accommodation Become An Undue Hardship?

It is not necessary to provide a reasonable accommodation if doing so would cause an undue hardship. Undue hardship means that an accommodation would be unduly costly, extensive, substantial or disruptive, or would fundamentally alter the nature or operation of the business. Among the factors to be considered in determining whether an accommodation is an undue hardship are the cost of the accommodation, the employer's size, financial resources and the nature and structure of its operation.

If a particular accommodation would be an undue hardship, you must try to identify another accommodation that will not pose such a hardship. If cost causes the undue hardship, you must also consider whether funding for an accommodation is available from an outside source, such as a vocational rehabilitation agency, and if the cost of providing the accommodation can be offset by state or federal tax credits or deductions. You must also give the applicant or employee with a disability the opportunity to provide the accommodation or pay for the portion of the accommodation that constitutes an undue hardship.

Can I Require Medical Examinations or Ask Questions About an Individual's Disability?

It is unlawful to:

- ask an applicant whether she is disabled or about the nature or severity of a disability, or
- to require the applicant to take a medical examination before making a job offer.

You can ask an applicant questions about ability to perform job-related functions, as long as the questions are not phrased in terms of a disability. You can also ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will perform job-related

functions.

After a job offer is made and prior to the commencement of employment duties, you may require that an applicant take a medical examination if everyone who will be working in the job category must also take the examination. You may condition the job offer on the results of the medical examination. However, if an individual is not hired because a medical examination reveals the existence of a disability, you must be able to show that the reasons for exclusion are job related and necessary for conduct of your business. You also must be able to show that there was no reasonable accommodation that would have made it possible for the individual to perform the essential job functions.

Once you have hired an applicant, you cannot require a medical examination or ask an employee questions about disability unless you can show that these requirements are job related and necessary for the conduct of your business. You may conduct voluntary medical examinations that are part of an employee health program.

The results of all medical examinations or information from inquiries about a disability must be kept confidential, and maintained in separate medical files. You may provide medical information required by State workers' compensation laws to the agencies that administer such laws.

Do Individuals Who Use Drugs Illegally Have Rights Under the ADA?

Anyone who is currently using drugs illegally is not protected by the <u>ADA</u> and may be denied employment or fired on the basis of such use. The <u>ADA</u> does not prevent employers from testing applicants or employees for current illegal drug use, or from making employment decisions based on verifiable results. A test for the illegal use of drugs is not considered a medical examination under the <u>ADA</u>; therefore, it is not a prohibited pre-employment medical examination and you will not have to show that the administration of the test is job related and consistent with business necessity. The ADA does not encourage, authorize or prohibit drug tests.

How will the ADA Be Enforced and What Are the Available Remedies?

The provisions of the <u>ADA</u> which prohibit job discrimination will be enforced by the U.S. Equal Employment Opportunity Commission. After July 26, 1992, individuals who believe they have been discriminated against on the basis of their disability can file a charge with the Commission at any of its offices located throughout the United States. A charge of discrimination must be filed within 180 days of the discrimination, unless there is a state or local law that also provides relief for discrimination on the basis of disability. In those cases, the complainant has 300 days to file a charge.

The Commission will investigate and initially attempt to resolve the charge through conciliation, following the same procedures used to handle charges of discrimination filed under Title VII of the Civil Rights Act of 1964. The <u>ADA</u> also incorporates the remedies contained in Title VII. These remedies include hiring, promotion, reinstatement, back pay, and attorneys fees. Reasonable accommodation is also available as a remedy

under the ADA.

How Will EEOC Help Employers Who Want to Comply with the ADA?

The Commission believes that employers want to comply with the <u>ADA</u>, and that if they are given sufficient information on how to comply, they will do so voluntarily.

Accordingly, the Commission conducts an active technical assistance program to promote voluntary compliance with the <u>ADA</u>. This program is designed to help employers understand their responsibilities and assist people with disabilities to understand their rights and the law.

In January 1992, <u>EEOC</u> published a Technical Assistance Manual, providing practical application of legal requirements to specific employment activities, with a directory of resources to aid compliance. <u>EEOC</u> publishes other educational materials, provides training on the law for employers and for people with disabilities, and participates in meetings and training programs of other organizations. <u>EEOC</u> staff also will respond to individual requests for information and assistance. The Commission's technical assistance program is separate and distinct from its enforcement responsibilities. Employers who seek information or assistance from the Commission will not be subject to any enforcement action because of such inquiries.

The Commission also recognizes that differences and disputes about the <u>ADA</u> requirements may arise between employers and people with disabilities as a result of misunderstandings. Such disputes frequently can be resolved more effectively through informal negotiation or mediation procedures, rather than through the formal enforcement process of the <u>ADA</u>. Accordingly, <u>EEOC</u> will encourage efforts to settle such differences through alternative dispute resolution, providing that such efforts do not deprive any individual of legal rights provided by the statute.

Additional Questions and Answers on the Americans with Disabilities Act

Q. What is the relationship between the <u>ADA</u> and the Rehabilitation Act of 1973?

A. The Rehabilitation Act of 1973 prohibits discrimination on the basis of handicap by the federal government, federal contractors and by recipients of federal financial assistance. If you were covered by the Rehabilitation Act prior to the passage of the <u>ADA</u>, the <u>ADA</u> will not affect that coverage. Many of the provisions contained in the <u>ADA</u> are based on Section 504 of the Rehabilitation Act and its implementing regulations. If you are receiving federal financial assistance and are in compliance with Section 504, you are probably in compliance with the <u>ADA</u> requirements affecting employment except in those areas where the <u>ADA</u> contains additional requirements. Your nondiscrimination requirements as a federal contractor under Section 503 of the Rehabilitation Act will be essentially the same as those under the <u>ADA</u>; however, you will continue to have additional affirmative action requirements under Section 503 that do not exist under the <u>ADA</u>.

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Q. If I have several qualified applicants for a job, does the ADA require that I hire the applicant with a disability?

A. No. You may hire the most qualified applicant. The <u>ADA</u> only makes it unlawful for you to discriminate against a qualified individual with a disability on the basis of disability.

Q. One of my employees is a diabetic, but takes insulin daily to control his diabetes. As a result, the diabetes has no significant impact on his employment. Is he protected by the <u>ADA</u>?

A. Yes. The determination as to whether a person has a disability under the <u>ADA</u> is made without regard to <u>mitigating measures</u>, such as medications, auxiliary aids and reasonable accommodations. If an individual has an impairment that substantially limits a major life activity, she is protected under the <u>ADA</u>, regardless of the fact that the disease or condition or its effects may be corrected or controlled.

Q. One of my employees has a broken arm that will heal but is temporarily unable to perform the essential functions of his job as a mechanic. Is this employee protected by the <u>ADA</u>?

A. No. Although this employee does have an impairment, it does not substantially limit a major life activity if it is of limited duration and will have no long term effect.

Q. Am I obligated to provide a reasonable accommodation for an individual if I am unaware of her physical or mental impairment?

A. No. An employer's obligation to provide reasonable accommodation applies only to known physical or mental limitations. However, this does not mean that an applicant or employee must always inform you of a disability. If a disability is obvious, e.g., the applicant uses a wheelchair, the employer "knows" of the disability even if the applicant never mentions it.

Q. How do I determine whether a reasonable accommodation is appropriate and the type of accommodation that should be made available?

A. The requirement generally will be triggered by a request from an individual with a disability, who frequently can suggest an appropriate accommodation. Accommodations must be made on a case-by-case basis, because the nature and extent of a disabling condition and the requirements of the job will vary. The principal test in selecting a particular type of accommodation is that of effectiveness, i.e., whether the accommodation will enable the person with a disability to perform the essential functions of the job. It need not be the best accommodation or the accommodation the individual with a disability would prefer, although primary consideration should be given to the preference of the individual involved. However, as the employer, you have the final discretion to choose between effective accommodations, and you may select one that is least expensive or easier to provide.

Q. When must I consider reassigning an employee with a disability to another job as a reasonable accommodation?

A. When an employee with a disability is unable to perform her present job even with the provision of a reasonable accommodation, you must

consider reassigning the employee to an existing position that she can perform with or without a reasonable accommodation. The requirement to consider reassignment applies only to employees and not to applicants. You are not required to create a position or to bump another employee in order to create a vacancy. Nor are you required to promote an employee with a disability to a higher level position.

Q. What if an applicant or employee refuses to accept an accommodation that I offer?

A. The <u>ADA</u> provides that an employer cannot require a qualified individual with a disability to accept an accommodation that is neither requested nor needed by the individual. However, if a necessary reasonable accommodation is refused, the individual may be considered not qualified.

Q. If our business has a health spa in the building, must it be accessible to employees with disabilities?

A. Yes. Under the <u>ADA</u>, workers with disabilities must have equal access to all benefits and privileges of employment that are available to similarly situated employees without disabilities. The duty to provide reasonable accommodation applies to all non-work facilities provided or maintained by you for your employees. This includes cafeterias, lounges, auditoriums, company-provided transportation and counseling services. If making an existing facility accessible would be an undue hardship, you must provide a comparable facility that will enable a person with a disability to enjoy benefits and privileges of employment similar to those enjoyed by other employees, unless this would be an undue hardship.

Q. If I contract for a consulting firm to develop a training course for my employees, and the firm arranges for the course to be held at a hotel that is inaccessible to one of my employees, am I liable under the <u>ADA</u>?

A. Yes. An employer may not do through a contractual or other relationship what it is prohibited from doing directly. You would be required to provide a location that is readily accessible to, and usable by your employee with a disability unless to do so would create an undue hardship.

Q. What are my responsibilities as an employer for making my facilities accessible?

A. As an employer, you are responsible under Title I of the <u>ADA</u> for making facilities accessible to qualified applicants and employees with disabilities as a reasonable accommodation, unless this would cause undue hardship. Accessibility must be provided to enable a qualified applicant to participate in the application process, to enable a qualified individual to perform essential job functions and to enable an employee with a disability to enjoy benefits and privileges available to other employees. However, if your business is a place of public accommodation (such as a restaurant, retail store or bank) you have different obligations to provide accessibility to the general public, under Title III of the <u>ADA</u>. Title III also will require places of public accommodation and commercial facilities (such as office buildings, factories and warehouses) to provide accessibility in new construction or when making alterations to existing structures. Further information on these requirements may be obtained from the U.S. Department of Justice, which enforces Title III. (See page 22).

Q. Under the ADA, can an employer refuse to hire an individual or fire a current employee who uses drugs illegally?

A. Yes. Individuals who currently use drugs illegally are specifically excluded from the <u>ADA</u>'s protections. However, the <u>ADA</u> does not exclude:

- persons who have successfully completed or are currently in a rehabilitation program and are no longer illegally using drugs, and
- persons erroneously regarded as engaging in the illegal use of drugs.

Q. Does the ADA cover people with AIDS?

A. Yes. The legislative history indicates that Congress intended the ADA to protect persons with AIDS and HIV disease from discrimination.

Q. Can I consider health and safety in deciding whether to hire an applicant or retain an employee with a disability?

A. The <u>ADA</u> permits an employer to require that an individual not pose a direct threat to the health and safety of the individual or others in the work-place. A direct threat means a significant risk of substantial harm. You cannot refuse to hire or fire an individual because of a slightly increased risk of harm to himself or others. Nor can you do so based on a speculative or remote risk. The determination that an individual poses a direct threat must be based on objective, factual evidence regarding the individual's present ability to perform essential job functions. If an applicant or employee with a disability poses a direct threat to the health or safety of himself or others, you must consider whether the risk can be eliminated or reduced to an acceptable level with a reasonable accommodation. **Q. Am I required to provide additional insurance for employees with disabilities?**

A. No. The <u>ADA</u> only requires that you provide an employee with a disability equal access to whatever health insurance coverage you provide to other employees. For example, if your health insurance coverage for certain treatments is limited to a specified number per year, and an employee, because of a disability, needs more than the specified number, the <u>ADA</u> does not require that you provide additional coverage to meet that employee's health insurance needs. The <u>ADA</u> also does not require changes in insurance plans that exclude or limit coverage for pre-existing conditions.

Q. Does the ADA require that I post a notice explaining its requirements?

A. The <u>ADA</u> requires that you post a notice in an accessible format to applicants, employees and members of labor organizations, describing the provisions of the Act. <u>EEOC</u> will provide employers with a poster summarizing these and other Federal legal requirements for nondiscrimination. <u>EEOC</u> will also provide guidance on making this information available in accessible formats for people with disabilities.

For more specific information about ADA requirements affecting *employment* contact:

Equal Employment Opportunity Commission

P.O. Box 7033 Lawrence, Kansas 66044 (800) 669-4000 (Voice), (800) 669-6820 (TDD)

For more specific information about ADA requirements affecting public accommodations and State and local government services contact:

Department of Justice

Office on the Americans with Disabilities Act Civil Rights Division P.O. Box 66118 Washington, DC 20035-6118 (202) 514-0301 (Voice) (202) 514-0381 (TDD) (202) 514-0383 (TDD)

For more specific information about requirements for accessible design in new construction and alterations contact:

Architectural and Transportation Barriers

Compliance Board

1111 18th Street, NW Suite 501 Washington, DC 20036 800-USA-ABLE 800-USA-ABLE (TDD)

For more specific information about <u>ADA</u> requirements affecting transportation contact:

Department of Transportation

400 Seventh Street, SW Washington, DC 20590 (202) 366-9305 (202) 755-7687 (TDD)

For more specific information about ADA requirements for telecommunications contact:

Federal Communications Commission

1919 M Street, NW Washington, DC 20554 (202) 634-1837 (202) 632-1836 (TDD)

For more specific information about federal disability-related tax credits and deductions for business contact:

Internal Revenue Service

Department of the Treasury 1111 Constitution Avenue, NW Washington, DC 20044 (202) 566-2000

This booklet is available in Braille, large print, audiotape and electronic file on computer disk. To obtain accessible formats call the Office of Equal Employment Opportunity on (202) 663-4395 (voice) or (202) 663-4399 (TDD), or write to this office at 1801 L Street, N.W., Washington, D.C. 20507.

This page was last modified on August 1, 2008.

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Pre-Offer, Disability-Related Questions: Dos and Don'ts



Practical Solutions • Workplace Success

Fact Sheet Series

Pre-Offer, Disability-Related **Questions: Dos and Don'ts**

Job Accommodation Network PO Box 6080 Morgantown, WV 26506-6080 (800)526-7234 (V) (877)781-9403 (TTY) jan@askjan.org askjan.org



A service of the U.S. Department of Labor's Office of Disability Employment Policy

JAN'S ACCOMMODATION FACT SHEET SERIES

PRE-OFFER, DISABILITY-RELATED QUESTIONS: DOS AND DON'TS

Title I of the Americans with Disabilities Act (ADA) limits an employer's ability to ask disability-related questions or to require medical examinations at three stages of employment: pre-job offer, post-job offer, and during employment. This publication provides information regarding the limitations on disability-related questions at the pre-offer stage. This stage includes job applications and job interviews.

What is a disability-related question?

A disability-related question is a question that is likely to elicit information about a disability. On the other hand, if there are many possible answers to a question and only some of those answers would contain disability-related information, that question is not disability-related.

What questions can employers ask at the pre-offer stage?

In general, employers cannot ask disability-related questions at the pre-offer stage. This means that employers cannot directly ask whether an applicant has a particular disability. It also means that employers cannot ask questions that are closely related to disability.

Why does the ADA prohibit pre-offer disability-related questions?

In the past, some employment applications and interviewers requested information about an applicant's physical and/or mental condition. This information was often used to exclude applicants with disabilities before their ability to perform the job was even evaluated. As a result, Congress established a process within the ADA to isolate an employer's consideration of an applicant's non-medical qualifications from any consideration of the applicant's medical condition.

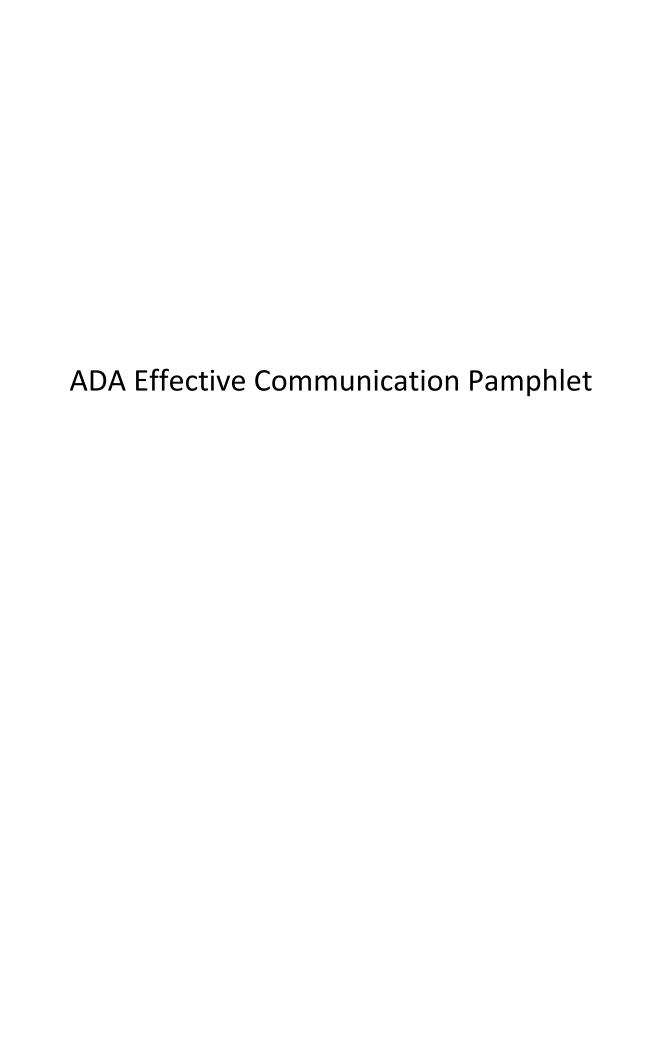
For additional information, visit Pre-employment Disability-Related Inquiries and Medical Exams (EEOC guidance) at http://www.eeoc.gov/policy/docs/preemp.html.

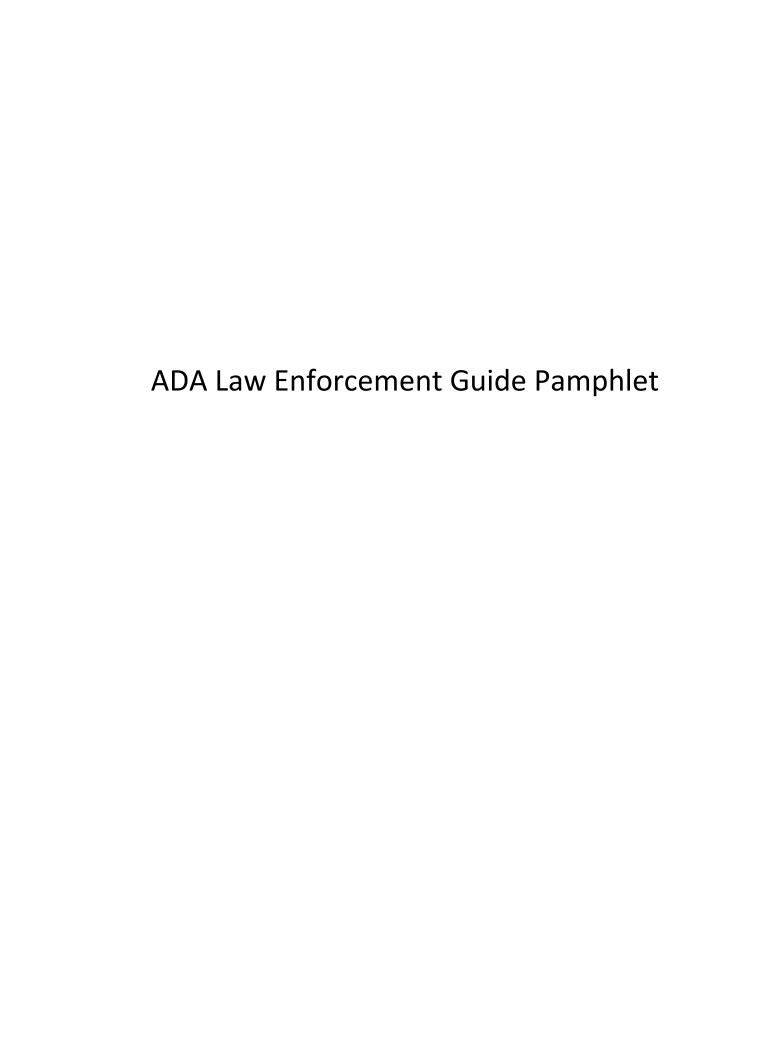
The following are some examples of permissible and impermissible pre-job offer questions under the ADA:

questions under the ADA:		
Job Performance		
DO	DON'T	
-Are you able to perform the essential function of the job you are seeking, with or without accommodations?	-Do you have any physical or mental impairment that would keep you from performing the job you seek? -What physical or mental impairments do you have that would affect your job performance?	
Attendance Requirements		
DO	DON'T	
-Can you meet our attendance requirements? -How many days were you absent from your last job? -How many Mondays or Fridays were you absent last year on leave other than approved vacation leave?	-How many days were you sick during your last job?	
History of Injury		
DO	DON'T	
-How did you break your leg?	-Do you break bones easily? -Do you expect the leg to heal normally?	
Drug Use		
DO	DON'T	
-Are you currently using illegal drugs?	-What medications are you currently taking?	
-Have you ever used illegal drugs?	-How often did you use illegal drugs in the past? -Have you ever been addicted to drugs? -Have you ever been treated for drug addiction?	
	-Have you ever been treated for drug abuse?	
Alcohol Use	abuse?	
DO	abuse? DON'T	
	abuse?	

Updated 3/24/10.









General Guidelines for ALL Disabilities

Overview of Key Points Interacting With All People Who Have A Disability:

- Speak Naturally & Directly To The Individual. Treat Adults Like Adults. Avoid Patronizing & Condescending Attitudes.
- Identify Yourself & Explain Why You Are There. Clearly Communicate To The Person Before Taking Any Action or Asking Them To Do Something. Then Ask Them If They Understand and/or Need Your Assistance. Do NOT Give Assistance Without Talking To The Person First. Offer Help If The Need Seems Obvious, But Do Not Insist. Though It May Be Important To Move The Person, Respect Their Independence To The Extent Possible. If The Assistance Is Requested, Follow The Person's Instructions.
- If The Person Seems Confused or Agitated, Reduce Distractions.
 Turn Off Emergency Lights & Sirens If Possible. Identify Yourself & Explain Why You Are There. Speak Slowly, Using Short Words In A Calm Voice.
- Some Persons With Disabilities May Appear Disoriented & Confused When All That Is Really "Wrong" is that They Can Not Hear.
 See If The Person May Have A Hearing Aid. If So, Check To See If It Is Available & Working.
- Ask Simple Questions About What Happened. Wait For A Response. Repeat Question If Necessary. Avoid "YES" or "NO" Questions.
- Give One Direction At A Time. Multiple Directions May Increase Confusion & Agitation.
- Provide Simple Choices. You May Get Incorrect Reponses If Multiple Choices Are Offered, Because The Person May Only Respond To The Last Option Stated.
- Explain ANY Written Material (Including Miranda Information, or Posted Signs) In Everyday Words.
- If The Person Is Not Responding, Seek The Assistance of The Person's Caregiver or Personal Assistant, Who May Be Able To Assist You With Communications, Interpreting The Person's Meaning, and/or Dealing With Behaviors.
- 10. Be Cautious About Interpreting Behavior. For Instance, Cerebral Palsy or Epilepsy Can Be Mistaken For Drunkenness. What Seems Like Non-Compliant Behavior Could Simply Be Lack of Understanding or Fear.

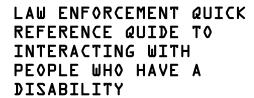


ADA Consultants of Indiana

P.O. Box 248 Waynetown, IN 47990

Ph.: (765) 234-2ADA
Website: www.adaconsultantsofindiana.com







"To The Greatest Degree Possible, Treat Individuals With A Disability The Same Way You Would Treat Anyone Else In The Same Situation..."



SECTION 504 & The Americans With Disability Act

Both the Americans with Disabilities ACT (ADA) and Section 504 of the Rehabilitation Act of 1973 REQUIRE Law Enforcement to Offer to Victims of Crimes with Disabilities an EQUAL Opportunity to Benefit From and Participate in ALL Programs and Services Provided By The Law Enforcement Agency.

Officers Must Also Provide for Equal Communication with People with Disabilities and MUST Make Reasonable Modifications to Policy, Practice, and Procedure to Accommodate Crime Victims with Disabilities Unless Doing So Would Fundamentally Alter The Service or Program. OFFICERS Also Have A Responsibility to Respond to Suspects and Arrested Persons with Disabilities According To The ADA & Section 504.

List Your Agency's Contact Information For Obtaining An Interpreter, An Assistive Listening Device, or Other Communication Aid or Service Below:

Name Of Interpreter's Organization:

OTHER:

Name Of American Sign Language Interpreter:	
Phone Number to Contact:	
Alternative Contact:	
Alternate Contact's Phone Number:	
Location Of TDD / TT / TTY:	



Acknowledgeable Tips

If the Person Is...

- 1. Not Seeming To Understand
- 2. Preoccupied
- 3. Having Trouble Concentrating
- 4. Over Stimulated or Agitated
- Having Trouble With Reality
- 6. Believing in Delusions
- 7. Disoriented or Confused
- 8. Fearful
- 9. Changing Emotions

You Should...

- Ask your questions using different words, using direct, concrete phrases. Wait for a response. Also, check for hearing loss.
- 2. Get Their Attention First.
- 3. Be Brief, Repeat Instructions or Commands
- 4. Remove Distractions. Be Calm. And Give Firm, Clear Instructions
- 5. Be Simple, Direct, and Truthful
- 6. Ignore, Do NOT Argue. Redirect The Current Situation.
- Check For A Hearing Loss. If There is None, Redirect The Person To The Current Situation. Use Direct, Concrete Phrases. Give One Direction At A Time
- 8. Reassure Their Safety
- Stay Calm or Ignore Their Emotional Behavior But Stay Alert To The Situation

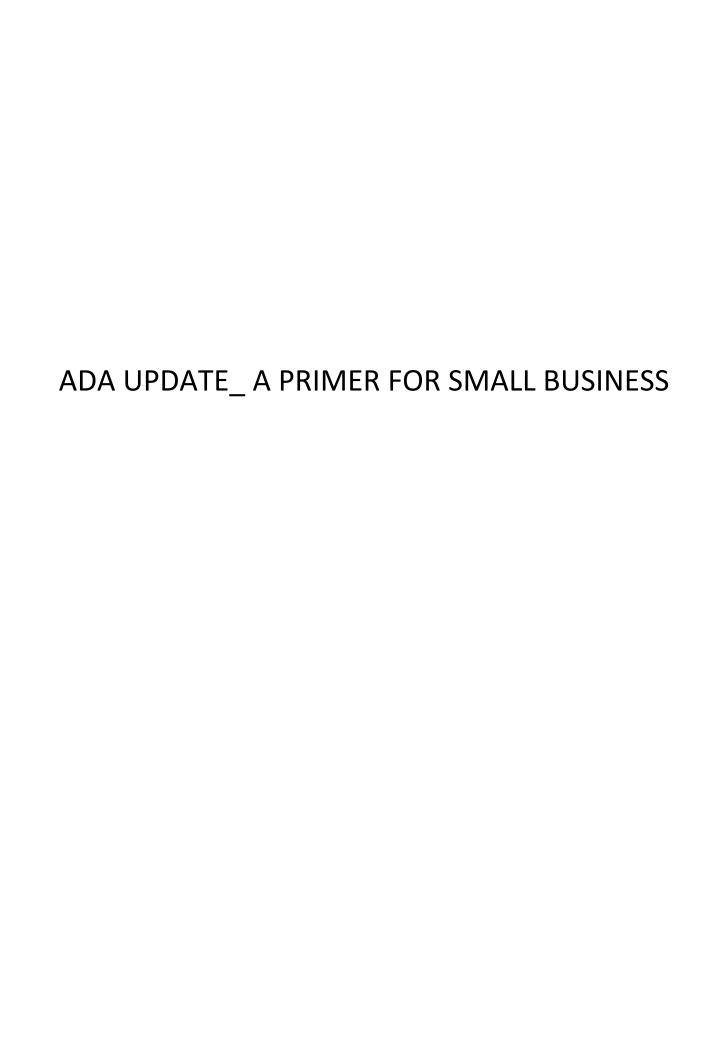
"Person First Language"



Acceptable Terms:

Unacceptable Terms:

A Person With A Disability	Cripple, Cripples
Disability	Handicap, Handicapped Person or Handicapped
People With Cerebral Palsy, Peo- ple With A Spinal Cord Injury, Polio, A Stroke	Victim. People With Disabili- ties Do NOT Like To Be Per- ceived As Victims For The Rest Of Their Lives
Has A Disability, Has A Condition of (e.g. Spina Bifida) or Born Without Legs/Arms	Defective, Defect, Deformed, Vegetable. These Words Are Offensive, Dehumanizing, Degrading, & Stigmatizing
Deafness/Hearing Impairment. *Deafness Refers To A Person Who Has Total Loss Of Hearing. **Hearing Impaired Refers to a Person Who Has A Partial Loss Of Hearing	Deaf & Dumb Is As BAD As It Sounds. The Inability To Hear, Speak, or See Does Not Indicate Intelligence
Intellectually Disabled	Mentally Retarded, Moron, Imbecile, & Idiot. These Are OFFENSIVE to People Who Bear The Label
Use A Wheelchair or A Crutches; A Wheelchair User; Walks With Crutches.	Confined/Restricted To A Wheelchair, Wheelchair Bound. People Who Use A Mobility Device Do NOT Regard Them As Confining. Viewed As Liberating, A Means Of Getting Around
Able-Bodied, Able To Walk, See, Hear, Etc.; People Who Are Not Disabled	Healthy, When Used To Contrast With "Disabled". Healthy Implies That The Person With A Disability Is Unhealthy
People Who Do Not Have A Disability	Normal, When Used As The Opposite Of Disabled, This Implies That The Person Is Abnormal



U.S. Department of Justice

Civil Rights Division

Disability Rights Section



ADA UPDATE: A PRIMER FOR SMALL BUSINESS



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ADA INFORMATION RESOURCES

The Department of Justice has revised its regulations implementing the Americans with Disabilities Act (ADA). This rule takes effect on March 15, 2011, clarifies issues that have arisen over the past 20 years, and contains new requirements, including the 2010 Standards for Accessible Design (2010 Standards). This document provides guidance to assist small business owners in understanding how this new regulation applies to them.

New Customers

More than 50 million Americans – 18% of our population – have disabilities, and each is a potential customer. People with disabilities are living more independently and participating more actively in their communities. They and their families want to patronize businesses that welcome customers with disabilities. In addition, approximately 71.5 million baby boomers will be over age 65 by the year 2030 and will be demanding products, services, and environments that meet their age-related physical needs. Studies show that once people with disabilities find a business where they can shop or get services in an accessible manner, they become repeat customers.

People with disabilities have too often been excluded from everyday activities: shopping at a corner store, going to a neighborhood restaurant or movie with family and friends, or using the swimming pool at a hotel on the family vacation. The ADA is a Federal civil rights law that prohibits discrimination against people with disabilities and opens doors for full participation in all aspects of everyday life. This publication provides general guidance to help business owners understand how to comply with the Department's revised ADA regulations and the 2010 Standards, its design standards for accessible buildings. The ADA applies to both the built environment and to policies and procedures that affect how a business provides goods and services to its customers. Using this guidance, a small business owner or manager can ensure that it will not unintentionally exclude people with disabilities and will know when it needs to remove barriers in its existing facilities. If you are planning to build a new facility or alter an existing one, please see New Construction and Alterations for specific guidance on these types of projects. Businesses should consult the revised ADA regulations (www.ada.gov/regs2010/ADAregs2010.htm) and the 2010 Standards (www.ada.gov/2010ADAstandards_index.htm) for more comprehensive information about specific requirements.

Who is Covered by the ADA?

Businesses that provide goods or services to the public are called "public accommodations" in the ADA. The ADA establishes requirements for 12 categories of public accommodations, which include stores, restaurants, bars, service

establishments, theaters, hotels, recreational facilities, private museums and schools, doctors' and dentists' offices, shopping malls, and other businesses. Nearly all types of businesses that serve the public are included in the 12 categories, regardless of the size of the business or the age of their buildings. Businesses covered by the ADA are required to modify their business policies and procedures when necessary to serve customers with disabilities and take steps to communicate effectively with customers with disabilities. The ADA also requires businesses to remove architectural barriers in existing buildings and make sure that newly built or altered facilities are constructed to be accessible to individuals with disabilities. "Grandfather provisions" often found in local building codes do not exempt businesses from their obligations under the ADA.

Commercial facilities, such as office buildings, factories, warehouses, or other facilities that do not provide goods or services directly to the public are only subject to the ADA's requirements for new construction and alterations.

Compliance Dates

Businesses need to know two important deadlines for compliance. Starting March 15, 2011, businesses must comply with the ADA's general nondiscrimination requirements, including provisions related to policies and procedures and effective communication. The deadline for complying with the 2010 Standards, which detail the technical rules for building accessibility, is March 15, 2012. This delay in implementation was provided to allow businesses sufficient time to plan for implementing the new requirements for facilities. In addition, hotels, motels, and inns have until March 15, 2012, to update their reservation policies and systems to make them fully accessible to people with disabilities.

Compliance Dates	
March 15, 2011	General Non-Discrimination Requirements
March 15, 2012	Hotel Reservation Policies
March 15, 2012	2010 Standards

For additional details, see, *ADA 2010 Revised Requirements: Effective Date/ Compliance Date* at www.ada.gov/revised effective dates-2010.htm.

GENERAL NONDISCRIMINATION REQUIREMENTS

Policies and Procedures

Your business, like all others, has formal and informal policies, practices, and procedures that keep it running smoothly. However, sometimes your policies or procedures can inadvertently make it difficult or impossible for a customer with a disability to access your goods and services. That is why the ADA requires businesses to make "reasonable modifications" to their usual ways of doing things when serving people with disabilities. Most modifications involve only minor adjustments in policies. For example, a day care center that has two scheduled snack times must modify this policy to allow a child with diabetes to bring food for an extra snack if necessary. A clothing store must modify a policy of permitting only one person at a time in a dressing room for a person with a disability who is shopping with a companion and needs the companion's assistance to try on clothes. Anything that would result in a fundamental alteration – a change in the essential nature of your business – is not required. For example, a clothing store is not required to provide dressing assistance for a customer with a disability if this is not a service provided to other customers.



Allowing a second person in a dressing room is one way to modify policies.

Customers with disabilities may need different types of assistance to access your goods and services. For example, a grocery store clerk is expected to assist a customer using a mobility device by retrieving merchandise from high shelves. A person who is blind may need assistance maneuvering through a store's aisles. A customer with an intellectual disability may need assistance in reading product labels and instructions. Usually the customer will tell you up front if he or she needs

assistance, although some customers may wait to be asked "may I help you?" When only one staff person is on duty, it may or may not be possible for him or her to assist a customer with a disability. The business owner or manager should advise the staff person to assess whether he or she can provide the assistance that is needed without jeopardizing the safe operation of the business.





Retrieving out of reach items and describing items for sale are ways to provide assistance to customers with disabilities.

Service Animals

Often businesses such as stores, restaurants, hotels, or theaters have policies that can exclude people with disabilities. For example, a "no pets" policy may result in staff excluding people with disabilities who use dogs as service animals. A clear policy permitting service animals can help ensure that staff are aware of their obligation to allow access to customers using service animals. Under the ADA's revised regulations, the definition of "service animal" is limited to a dog that is individually trained to do work or perform tasks for an individual with a disability. The task(s) performed by the dog must be directly related to the person's disability. For example, many people who are blind or have low vision use dogs to guide and assist them with orientation. Many individuals who are deaf use dogs to alert them to sounds. People with mobility disabilities often use dogs to pull their wheelchairs or retrieve items. People with epilepsy may use a dog to warn them of an imminent

seizure, and individuals with psychiatric disabilities may use a dog to remind them to take medication. Service members returning from war with new disabilities are increasingly using service animals to assist them with activities of daily living as they reenter civilian life. Under the ADA, "comfort," "therapy," or "emotional support animals" do not meet the definition of a service animal.



Service animals provide many types of assistance for people with disabilities.

Under the ADA, service animals must be harnessed, leashed, or tethered, unless these devices interfere with the service animal's work or the individual's disability prevents him from using these devices. Individuals who cannot use such devices must maintain control of the animal through voice, signal, or other effective controls. Businesses may exclude service animals only if 1) the dog is out of control and the handler cannot or does not regain control; or 2) the dog is not housebroken. If a service animal is excluded, the individual must be allowed to enter the business without the service animal.

In situations where it is not apparent that the dog is a service animal, a business may ask only two questions: 1) is the animal required because of a disability; and 2) what work or task has the animal been trained to perform? No other inquiries about an individual's disability or the dog are permitted. Businesses cannot require proof of certification or medical documentation as a condition for entry.

Wheelchairs and Other Power-Driven Mobility Devices

People with mobility, circulatory, or respiratory disabilities use a variety of devices for mobility. Some use walkers, canes, crutches, or braces while others use manually-operated or power wheelchairs, all of which are primarily designed for use by people with disabilities. Businesses must allow people with disabilities to use these devices in all areas where customers are allowed to go.



Devices categorized as wheelchairs must be permitted.

Advances in technology have given rise to new power-driven devices that are not necessarily designed for people with disabilities, but are being used by some people with disabilities for mobility. The term "other power-driven mobility devices" is used in the revised ADA regulations to refer to any mobility device powered by batteries, fuel, or other engines, whether or not they are designed primarily for use by individuals with mobility disabilities for the purpose of locomotion. Such devices include Segways®, golf cars, and other devices designed to operate in non-pedestrian areas. Public accommodations must allow individuals who use these devices to enter their premises unless the business can demonstrate that the particular type of device cannot be accommodated because of legitimate safety requirements. Such safety requirements must be based on actual risks, not on speculation or stereotypes about a particular class of devices or how they will be operated by individuals using them.

Businesses must consider these factors in determining whether reasonable modifications can be made to admit other power-driven mobility devices to their premises:

• The type, size, weight, dimensions, and speed of the device;

- The business's volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);
- The business's design and operational characteristics, such as its square footage, whether it is indoors or outdoors, its placement of stationery equipment or devices or furniture, and whether it has storage space for the device if requested by the customer;
- Whether legitimate safety standards can be established to permit the safe operation of the device; and
- Whether the use of the device creates a substantial risk of serious harm to the environment or natural or cultural resources or poses a conflict with Federal land management laws and regulations.

Using these assessment factors, a business may decide that it can allow devices like Segways® in its facilities, but cannot allow the use of golf cars in the same facility. It is likely that many businesses will allow the use of Segways® generally, although some may decide to exclude them during their busiest hours or on particular shopping days when pedestrian traffic is particularly dense. Businesses are encouraged to develop written policies specifying when other power-driven mobility devices will be permitted on their premises and to communicate those policies to the public.

Businesses may ask individuals using an other power-driven mobility device for a credible assurance that the device is required because of a disability. An assurance may include, but does not require, a valid State disability parking placard or other Federal or State-issued proof of disability. A verbal assurance from the individual with a disability that is not contradicted by your observation is also considered a credible assurance. It is not permissible to ask individuals about their disabilities.

Communicating with Customers

Communicating successfully with customers is an essential part of doing business. When dealing with customers who are blind or have low vision, those who are deaf or hard of hearing, or those who have speech disabilities, many business owners and employees are not sure what to do. The ADA requires businesses to take steps necessary to communicate effectively with customers with vision, hearing, and speech disabilities.

Because the nature of communications differs from business to business, the rules allow for flexibility in determining effective communication solutions. What is required to communicate effectively when discussing a mortgage application at a bank or buying an automobile at a car dealership will likely be very different from what is required to communicate effectively in a convenience store. The goal is to find practical solutions for communicating effectively with your customers. For example, if a person who is deaf is looking for a particular book at a bookstore, exchanging written notes with a sales clerk may be effective. Similarly, if that person is going to his or her doctor's office for a flu shot, exchanging written notes would most likely be effective. However, if the visit's purpose is to discuss cancer treatment options, effective

communication would likely require a sign language or oral interpreter because of the nature, length, and complexity of the conversation. Providing an interpreter guarantees that both parties will understand what is being said. The revised regulations permit the use of new technologies including video remote interpreting (VRI), a service that allows businesses that have video conference equipment to access an interpreter at another location.



Exchange of written notes may be appropriate for casual interactions.

It is a business's responsibility to provide a sign language, oral interpreter, or VRI service unless doing so in a particular situation would result in an undue burden, which means significant difficulty or expense. A business's overall resources determine (rather than a comparison to the fees paid by the customer needing the interpreter) what constitutes an undue burden. If a specific communications method would be an undue burden, a business must provide an effective alternative if there is one.



Complex transactions will likely require more formal means of communication, such as a sign language interpreter.

Many individuals who are deaf or have other hearing or speech disabilities use either a text telephone (TTY) or text messaging instead of a standard telephone. The ADA established a free telephone relay network to enable these individuals to communicate with businesses and vice versa. When a person who uses such a device calls the relay service by dialing 7-1-1, a communications assistant calls the business and voices the caller's typed message and then types the business's response to the caller. Staff who answer the telephone must accept and treat relay calls just like other calls. The communications assistant will explain how the system works if necessary.



Businesses must answer calls placed through the telephone relay service.

The rules are also flexible for communicating effectively with customers who are blind or have low vision. For example, a restaurant can put its menu on an audio cassette or a waiter can read it to a patron. A sales clerk can find items and read their labels. In more complex transactions where a significant amount of printed information is involved, providing alternate formats will be necessary, unless doing so is an undue burden. For example, when a client who is blind visits his real estate agent to negotiate the sale of a house, all relevant documents should be provided in a format he can use, such as on a computer disk or audio cassette. It may be effective to e-mail an electronic version of the documents so the client can use his or her screen-reading technology to read them before making a decision or signing a contract. In this situation, since complex financial information is involved, simply reading the documents to the client will most likely not be effective. Usually a customer will tell you which format he or she needs. If not, it is appropriate to ask.



Reading a menu to a customer who is blind is one way to provide effective communication.

MAKING THE BUILT ENVIRONMENT ACCESSIBLE

People with disabilities continue to face architectural barriers that limit or make it impossible to access the goods or services offered by businesses. Examples include a parking space with no access aisle to allow deployment of a van's wheelchair lift, steps at a facility's entrance or within its serving or selling space, aisles too narrow to accommodate mobility devices, counters that are too high, or restrooms that are simply too small to use with a mobility device.

The ADA strikes a careful balance between increasing access for people with disabilities and recognizing the financial constraints many small businesses face. Its flexible requirements allow businesses confronted with limited financial resources to improve accessibility without excessive expense.

The ADA's regulations and the ADA Standards for Accessible Design, originally published in 1991, set the standard for what makes a facility accessible. While the updated 2010 Standards retain many of the original provisions in the 1991 Standards, they do contain some significant differences. These standards are the key for determining if a small business's facilities are accessible under the ADA. However, they are used differently depending on whether a small business is altering an existing building, building a brand new facility, or removing architectural barriers that have existed for years.

Existing Facilities

Element-by-Element Safe Harbor

If your business facility was built or altered in the past 20 years in compliance with the 1991 Standards, or you removed barriers to specific elements in compliance with those Standards, you do not have to make further modifications to those elements – even if the new standards have different requirements for them – to comply with the 2010 Standards. This provision is applied on an element-by-element basis and is referred to as the "safe harbor." The following examples illustrate how the safe harbor applies:

The 2010 Standards lower the mounting height for light switches and thermostats from 54 inches to 48 inches. If your light switches are already installed at 54 inches in compliance with the 1991 Standards, you are not required to lower them to 48 inches.

The 1991 Standards require one van accessible space for every eight accessible spaces. The 2010 Standards require one van accessible space for every six accessible spaces. If you have complied with the 1991 Standards, you are not required to add additional van accessible spaces to meet the 2010 Standards.

The 2010 Standards contain new requirements for the input, numeric, and function keys (e.g. "enter," "clear," and "correct") on automatic teller machine (ATM) keypads. If an existing ATM complies with the 1991 Standards, no further modifications are required to the keypad.

If a business chooses to alter elements that were in compliance with the 1991 Standards, the safe harbor no longer applies to those elements. For example, if you restripe your parking lot, which is considered an alteration, you will now have to meet the ratio of van accessible spaces in the 2010 Standards. Similarly, if you relocate a fixed ATM, which is considered an alteration, you will now have to meet the keypad requirements in the 2010 Standards. The ADA's definition of an alteration is discussed later in this publication.

The revised ADA rules and the 2010 Standards contain new requirements for elements in existing facilities that were not addressed in the original 1991 Standards. These include recreation facilities such as swimming pools, play areas, exercise machines, miniature golf facilities, and bowling alleys. Because these elements were not included in the 1991 Standards, they are not subject to the safe harbor. Therefore, on or after March 15, 2012, public accommodations must remove architectural barriers to elements subject to the new requirements in the 2010 Standards when it is readily achievable to do so. For example, a hotel must determine whether it is readily achievable to make its swimming pool accessible to people with mobility disabilities by installing a lift or a ramp

as specified in the 2010 Standards.

New Requirements in the 2010 Standards Not Subject to the Safe Harbor

- Amusement rides
- Recreational boating facilities
- Exercise machines and equipment
- Fishing piers and platforms
- Golf facilities
- Miniature golf facilities
- Play areas

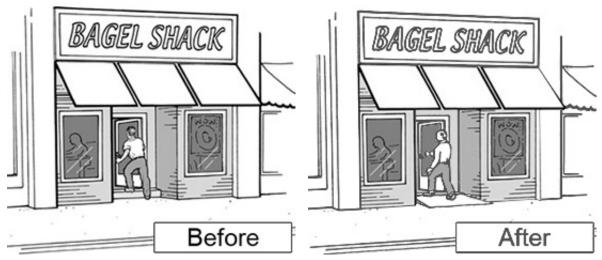
- Saunas and steam rooms
- Swimming pools, wading pools, and spas
- Shooting facilities with firing positions
- Residential facilities and dwelling units
- Miscellaneous
 - Team or player seating
 - Accessible route to bowling lanes
 - Accessible route in court sports facilities

Readily Achievable Barrier Removal

The ADA requires that small businesses remove architectural barriers in existing facilities when it is "readily achievable" to do so. Readily achievable means "easily accomplishable without much difficulty or expense." This requirement is based on the size and resources of a business. So, businesses with more resources are expected to remove more barriers than businesses with fewer resources.

Readily achievable barrier removal may include providing an accessible route from a parking lot to the business's entrance, installing an entrance ramp, widening a doorway, installing accessible door hardware, repositioning shelves, or moving tables, chairs, display racks, vending machines, or other furniture. When removing barriers, businesses are required to comply with the Standards to the extent possible. For example, where there is not enough space to install a ramp with a slope that complies with the Standards, a business may install a ramp with a slightly steeper slope. However, any deviation from the Standards must not pose a

significant safety risk.



Removing barriers, such as a step to an entrance, is required when readily achievable.

Determining what is readily achievable will vary from business to business and sometimes from one year to the next. Changing economic conditions can be taken into consideration in determining what is readily achievable. Economic downturns may force many public accommodations to postpone removing some barriers. The barrier removal obligation is a continuing one and it is expected that a business will move forward with its barrier removal efforts when it rebounds from such downturns. For example, if a restaurant identified barriers under the 1991 Standards but did not remove them because it could not afford the cost, the restaurant has a continuing obligation to remove these barriers when it has the financial resources to do so.

Barrier Removal Before March 15, 2012

Businesses removing barriers before March 15, 2012, have the choice of using either the 1991 Standards or the 2010 Standards. You must use only one standard for removing barriers in an entire facility. For example, you cannot choose the 1991 Standards for accessible routes and the 2010 Standards for restrooms. (See, *ADA 2010 Revised Requirements: Effective Date / Compliance Date* at www.ada.gov/revisedeffectivedates-2010.htm). Remember that if an element complies with the 1991 Standards, a business is not required to make any changes to that element until such time as the business decides to alter that element.

Readily Achievable Barrier Removal, New Construction, and Alterations		
Compliance Date Applicable Standard		
Until March 15, 2012	1991 Standards or 2010 Standards	
On or after March 15, 2012	2010 Standards	

Priorities for Barrier Removal

Understanding how customers arrive at and move through your business will go a long way in identifying existing barriers and setting priorities for their removal. Do people arrive on foot, by car, or by public transportation? Do you provide parking? How do customers enter and move about your business? The ADA regulations recommend the following priorities for barrier removal:

- Providing access to your business from public sidewalks, parking areas, and public transportation;
- Providing access to the goods and services your business offers;
- Providing access to public restrooms; and
- Removing barriers to other amenities offered to the public, such as drinking fountains.

Businesses should not wait until March 15, 2012 to identify existing barriers, but should begin now to evaluate their facilities and develop priorities for removing barriers. Businesses are also encouraged to consult with people with disabilities in their communities to identify barriers and establish priorities for removing them. A thorough evaluation and barrier removal plan, developed in consultation with the disability community, can save time and resources.

In some instances, especially in older buildings, it may not be readily achievable to remove some architectural barriers. For example, a restaurant with several steps leading to its entrance may determine that it cannot afford to install a ramp or a lift. In this situation, the restaurant must provide its services in another way if that is readily achievable, such as providing takeout service. Businesses should train staff on these alternatives and publicize them so customers with disabilities will know of their availability and how to access them.



When barrier removal is not possible, alternatives such as curbside service should be provided.

Parking

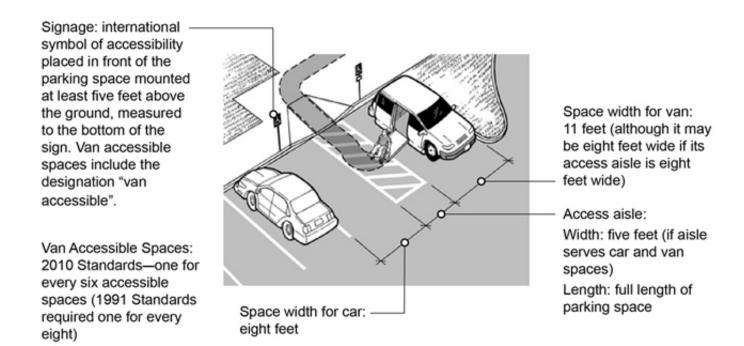
If your business provides parking for the public, but there are no accessible spaces, you will lose potential customers. You must provide accessible parking spaces for cars and vans if it is readily achievable to do so. The chart below indicates the number of accessible spaces required by the 2010 Standards. One of every six spaces must be van accessible.

Total Number of Parking Spaces Provided in Parking Facility	Minimum Number of Required Accessible Parking Spaces
1 to 25	1
26 to 50	2

51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2 percent of total
1001 and over	20, plus 1 for each 100, or fraction thereof, over 1000

Small businesses with very limited parking (four or fewer spaces) must have one accessible parking space. However, no signage is required.

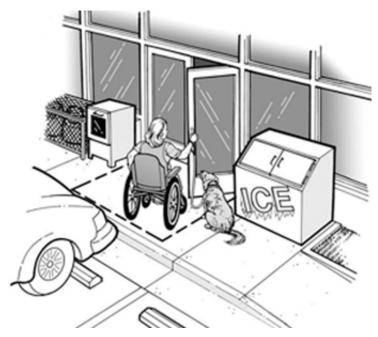
An accessible parking space must have an access aisle, which allows a person using a wheelchair or other mobility device to get in and out of the car or van.



An overview of accessible parking requirements

Accessible Entrances

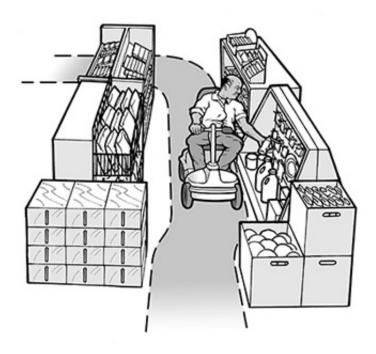
One small step at an entrance can make it impossible for individuals using wheelchairs, walkers, canes, or other mobility devices to do business with you. Removing this barrier may be accomplished in a number of ways, such as installing a ramp or a lift or regrading the walkway to provide an accessible route. If the main entrance cannot be made accessible, an alternate accessible entrance can be used. If you have several entrances and only one is accessible, a sign should be posted at the inaccessible entrances directing individuals to the accessible entrance. This entrance must be open whenever other public entrances are open.



Ensuring that items do not block the accessible route allows independent access.

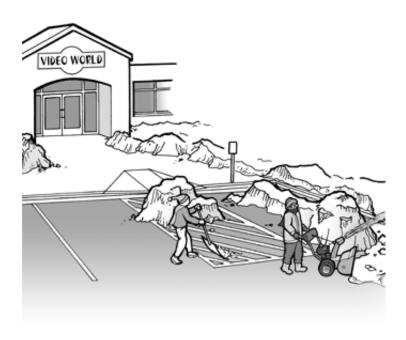
Accessible Route to Goods and Services

The path a person with a disability takes to enter and move through your business is called an "accessible route." This route, which must be at least three feet wide, must remain accessible and not be blocked by items such as vending or ice machines, newspaper dispensers, furniture, filing cabinets, display racks, or potted plants. Similarly, accessible toilet stalls, dressing rooms, or counters at a cash register must not be cluttered with merchandise or supplies.



An accessible route allows customers using mobility devices to access items for sale.

Temporary access interruptions for maintenance, repair, or operational activities are permitted, but must be remedied as soon as possible and may not extend beyond a reasonable period of time. Businesses must be prepared to retrieve merchandise for customers during these interruptions. For example, if an aisle is temporarily blocked because shelves are being restocked, staff must be available to assist a customer with a disability who is unable to maneuver through that aisle. In addition, if an accessible feature such as an elevator breaks down, businesses must ensure that repairs are made promptly and that improper or inadequate maintenance does not cause repeated failures. Businesses must also ensure that no new barriers are created that impede access by customers with disabilities. For example, routinely storing a garbage bin or piling snow in accessible parking spaces makes them unusable and inaccessible to customers with mobility disabilities.



Snow or other debris in accessible parking spaces and access aisles must be removed as soon as possible.

Shelves, Sales and Service Counters, and Check-Out Aisles

The obligation to remove barriers also applies to merchandise shelves, sales and service counters, and checkout aisles. Shelves and counters must be on an accessible route with enough space to allow customers using mobility devices to access merchandise. However, shelves may be of any height since they are not subject to the ADA's reach range requirements. Where barriers prevent access to these areas, they must be removed if readily achievable. However, businesses are not required to take any steps that would result in a significant loss of selling space. At least one check-out aisle must be usable by people with mobility disabilities, though more are required in larger stores. When it is not readily achievable to make a sales or service counter accessible, businesses should provide a folding shelf or a nearby accessible counter. If these changes are not readily achievable, businesses may provide a clip board or lap board until more permanent changes can be made.



A lowered counter and clear floor space are critical components of an accessible service counter.

Food and Restaurant Services

People with disabilities need to access tables, food service lines, and condiment and beverage bars in restaurants, bars, or other establishments where food or drinks are sold. There must be an accessible route to all dining areas, including raised or sunken dining areas and outdoor dining areas, as well as to food service lines, service counters, and public restrooms. In a dining area, remember to arrange tables far enough apart so a person using a wheelchair can maneuver between the tables when patrons are sitting at them. Some accessible tables must be provided and must be dispersed throughout the dining area rather than clustered in a single location.



Restaurants must provide access to self-service items.

Where barriers prevent access to a raised, sunken, or outdoor dining area, they must be removed if readily achievable. If it is not readily achievable to construct an accessible route to these areas and distinct services (e.g., special menu items or different prices) are available in these areas, the restaurant must make these services available at the same price in the dining areas that are on an accessible route. In restaurants or bars with only standing tables, some accessible dining tables must be provided.

New Construction and Alterations

The ADA requires that all new facilities built by public accommodations, including small businesses, must be accessible to and usable by people with disabilities. The 2010 Standards lay out accessibility design requirements for newly constructed and altered public accommodations and commercial facilities. Certain dates in the construction process determine which ADA standards – the 1991 Standards or the 2010 Standards – must be used.

If the last or final building permit application for a new construction or alterations project is certified before March 15, 2012, businesses may comply with either the 1991 or the 2010 Standards. In jurisdictions where certification of permit

applications is not required, businesses can also choose between the 1991 or 2010 Standards if their jurisdiction receives their permit application by March 15, 2012. Businesses should refer to their local permitting process. Where no permits are required, businesses may comply with either the 1991 or 2010 Standards if physical construction starts before March 15, 2012. Start of physical construction or alterations does not mean the date of ceremonial ground breaking or the day demolition of an existing structure commences. In this situation, if physical construction starts after March 15, 2012, the business must use the 2010 Standards.

Alterations

When a small business undertakes an alteration to any of its facilities, it must, to the maximum extent feasible, make the alteration accessible. An alteration is defined as remodeling, renovating, rehabilitating, reconstructing, changing or rearranging structural parts or elements, changing or rearranging plan configuration of walls and full-height partitions, or making other changes that affect (or could affect) the usability of the facility.

Examples include restriping a parking lot, moving walls, moving a fixed ATM to another location, installing a new sales counter or display shelves, changing a doorway entrance, replacing fixtures, flooring or carpeting. Normal maintenance, such as reroofing, painting, or wallpapering, is not an alteration.

2010 ADA Standards Basics

Chapter 1: Application and Administration

Contains important introductory and interpretive information, including definitions for key terms used in the 2010 Standards.

Chapter 2: Scoping

Sets forth what elements and how many of them must be accessible. Scoping covers newly constructed facilities and altered portions of existing facilities.

Note: The 2010 Standards do not address barrier removal. The revised regulations, however, require that barrier removal must comply with the 2010 Standards to the extent it is readily achievable.

Chapters 3 – 10: Design and Technical Requirements

Provides design and technical specifications for elements, spaces, buildings, and facilities.

Common Provisions for Small Business

Accessible Route

Section 206 and Chapter 4

Parking Spaces

Sections 208 and 502 specifically address parking spaces. The provisions regarding accessible route (section 206 and chapter 4), signs (section 216), and, where applicable, valet parking (section 209) also apply.

Passenger Loading Zones

Sections 209 and 503

Sales and Service

Sections 227 and 904 specifically cover sales and service areas, such as check-out aisles and sales and service counters. Section 226.1, exempts sales and service counters from the technical requirements of 902 (dining surfaces and work surfaces).

Dining Surfaces

Sections 226 and 902 specifically address fixed dining surfaces. The provisions regarding accessible routes in section 206.2.5 (Restaurants and Cafeterias) and 226.2 (Dispersion) also apply to dining surfaces.

Dressing, Fitting, and Locker Rooms

Sections 222 and 803 cover dressing, fitting, and locker rooms. The provisions on doors in sections 206.5 and 404 usually apply.

STEPS FOR SUCCESS

Being proactive is the best way to ensure ADA compliance. Evaluate access at your facility, train your staff on the ADA's requirements, think about the ADA when planning an alteration or construction of a new facility, and, most importantly, use the free information resources available whenever you have a question.

Assessing Your Facility

The revised ADA regulations give businesses 18 months (until March 15, 2012) before they must comply with the 2010 Standards. The purpose of this phase-in period is to provide businesses sufficient time to plan and comply. Businesses are strongly encouraged to assess their facilities now to determine what architectural barriers exist. Until March 15, 2012, you have the choice of using the 1991 Standards or the 2010 Standards to remove architectural barriers, alter, or construct a new facility. Businesses that use the 1991 Standards during this phase-in period can take advantage of the safe harbor provision. Beginning March 15, 2012, only the 2010 Standards can be used.

Staff Training

A critical and often overlooked component of ensuring success is comprehensive and ongoing staff training. You may have established good policies, but if front line staff are not aware of them or do not know how to implement them, problems can arise. Businesses of all sizes should educate staff about the ADA's requirements. Staff need to understand the requirements on modifying policies and practices, communicating with and assisting customers, and accepting calls placed through the relay system. Many local disability organizations, including Centers for Independent Living, conduct ADA trainings in their communities. The Department of Justice or the ADA National Network can provide local contact information for these organizations.

Tax Credit and Deduction

To assist small businesses to comply with the ADA, the Internal Revenue Service (IRS) Code includes a Disabled Access Credit (Section 44) for businesses with 30 or fewer full-time employees or with total revenues of \$1 million or less in the previous tax year. Eligible expenses may include the cost of undertaking barrier removal and alterations to improve accessibility, providing sign-language interpreters, or making material available in accessible formats such as Braille, audiotape, or large print.

Section 190 of the IRS Code provides a tax deduction for businesses of all sizes for costs incurred in removing architectural barriers in existing facilities or alterations. The maximum deduction is \$15,000 per year.

ADA INFORMATION RESOURCES

U.S. Department of Justice

For more information about the revised ADA regulations and 2010 ADA Standards, please visit the Department

of Justice's ADA Website or call our toll-free number.

ADA Website

http://www.ADA.gov/

ADA Information Line 800-514-0301 (Voice) 800-514-0383 (TTY)

24 hours a day to order publications by mail.

M-W, F 9:30 a.m. 5:30 p.m., Th 12:30 p.m. 5:30 p.m. (Eastern Time) to speak to an ADA Specialist. All calls are confidential.

"Reaching Out to Customers with Disabilities" explains the ADA's requirements for businesses in a short 10-lesson online course (www.ada.gov/reachingout/intro1.htm).

ADA National Network (DBTAC)

Ten regional centers are funded by the U.S. Department of Education to provide ADA technical assistance to businesses, States and localities, and persons with disabilities. One toll-free number connects you to the center in your region:

800-949-4232 (Voice and TTY) http://www.adata.org/

Access Board

For technical assistance on the ADA/ABA Accessibilty Guidelines:

800-872-2253 (Voice) 800-992 -2822 (TTY)

Internal Revenue Service

For information on the Disabled Access Tax Credit (Form 8826) and the Section 190 tax deduction (Publication 535 Business Expenses):

800-829-3676 (Voice) or 800-829-4059 (TTY)

This publication is available in alternate formats for persons with disabilities.

This document has been developed for small businesses in accordance with the Small Business Regulatory Enforcement Flexibility Act of 1996.

Duplication of this document is encouraged.

For more information about the ADA, please visit our website or call our toll-free number.

PDF Version of this Document

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