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THE AMERICANS WITH DISABILITIES ACT AMENDMENTS ACT OF 2008 – Q&A

Main Category:	Building Design
Sub Category:	ADA
Course #:	ADA-112
Course Content:	25 pgs
PDH/CE Hours:	3

OFFICIAL COURSE/EXAM

(SEE INSTRUCTIONS ON NEXT PAGE)

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ADA-112 EXAM PREVIEW

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Instructions:

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Exam Preview:

1. The Americans with Disabilities Act Amendments Act (ADAAA) of 2008 was signed into law on September 25, 2008, and became effective on January 1, 2009. The ADAAA made a number of significant changes to ____.
    a. The original ADA powers and authority
    b. Government requirements for individuals with disabilities
    c. Small business requirements for individuals with disabilities
    d. the definition of "disability"
2. The ADA Title I employment provisions apply to private employers with ___ or more employees, state and local governments, employment agencies, labor unions, agents of the employer and joint management labor committees.
    a. 5
    b. 10
    c. 15
    d. 50
3. An employer should give a slight preference to an applicant with a disability over other applicants.
    a. True
    b. False
4. For an existing facility, under title I, an employer is not required to make its existing facilities accessible until a particular applicant or employee with a particular disability needs an accommodation, and then the modifications should meet that individual's specific medical needs.
    a. True
    b. False

5. Only injured workers who meet the ADA's definition of an "individual with a disability" will be considered disabled under the ADA, regardless of whether they satisfy criteria for receiving benefits under workers' compensation or other disability laws.
    a. True
    b. False

6. An employer may not refuse to hire or may fire a person who knowingly provides a false answer to a lawful post-offer inquiry about his/her condition or workers' compensation history.
    a. True
    b. False

7. Compensatory and punitive damages also may be available in cases of intentional discrimination or where an employer fails to make a good faith effort to provide a reasonable accommodation. A charge must be filed within ____ calendar days from the date the discrimination took place.
    a. 30
    b. 90
    c. 120
    d. 180

8. A special tax credit is available to help smaller employers make accommodations required by the ADA. An eligible small business may take a tax credit of up to ___ per year for accommodations made to comply with the ADA.
    a. $1,250
    b. $2,000
    c. $5,000
    d. $10,000

9. Title II of the ADA prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities. It applies to all state and local governments, their departments and agencies, and any other instrumentalities or special purpose districts of state or local governments.
    a. True
    b. False

10. The ADA does not cover the executive branch of the federal government. The executive branch continues to be covered by title V of the Rehabilitation Act of 1973, which prohibits discrimination in services and employment on the basis of disability and which is a model for the requirements of the ADA. The ADA, however, does cover Congress and other entities in the legislative branch of the federal government.
    a. True
    b. False

The Americans with Disabilities Act Amendments Act (ADAAA) of 2008 – Questions & Answers

The Americans with Disabilities Act Amendments Act (ADAAA) of 2008 was signed into law on September 25, 2008, and became effective on January 1, 2009. The ADAAA made a number of significant changes to the definition of "disability." The law required the U.S. Equal Employment Opportunity Commission (EEOC) to amend its ADA regulations to reflect the changes made by the ADAAA. The final EEOC regulations were published in the Federal Register on March 25, 2011 and became effective on May 24, 2011.

The changes in the definition of disability in the ADAAA apply to all titles of the ADA, including title I (employment practices of private employers with 15 or more employees, state and local governments, employment agencies, labor unions, agents of the employer and joint management labor committees); title II (programs and activities of state and local government entities); and title III (private entities that are considered places of public accommodation).

The EEOC's final regulations however apply to title I of the ADA only; they do not apply to titles II and III of the ADA. Other federal agencies, such as the U.S. Department of Justice, the U.S. Department of Transportation and the U.S. Department of Labor, will need to amend their regulations to reflect the changes in the definition of disability required by the ADAAA.

Employment

Q. Which employers are covered by title I of the ADA?

A. The title I employment provisions apply to private employers with 15 or more employees, state and local governments, employment agencies, labor unions, agents of the employer and joint management labor committees.

Q. What practices and activities are covered by the employment nondiscrimination requirements?

A. The ADA prohibits discrimination in all employment practices, including job application procedures, hiring, firing, advancement, compensation, training, and other terms, conditions, and privileges of employment. It applies to recruitment, advertising, tenure, layoff, leave, fringe benefits, and all other employment-related activities.

Q. Who is protected from employment discrimination?

A. Employment discrimination against individuals with disabilities is prohibited. This includes applicants for employment and employees. An individual is considered to have a "disability" if s/he has a physical or mental impairment that substantially limits a major life activity, has a record of such an impairment, or is regarded as having such an impairment. Persons discriminated against because they have a known association or relationship with an individual with a disability also are protected.

The first part of the definition makes clear that the ADA applies to persons who have impairments and that these must substantially limit major life activities. There are two non-exhaustive lists of examples of major life activities: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working.

Major life activities also include the operation of major bodily functions, including: the immune system; special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions.

Examples of specific impairments that should easily be concluded to be disabilities include: deafness, blindness, intellectual disability, partially or completely missing limbs, mobility impairments, autism, cancer, cerebral palsy, diabetes, epilepsy, HIV infection, multiple sclerosis, muscular dystrophy, major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive-compulsive disorder, and schizophrenia.

The second part of the definition protecting individuals with a record of a disability would cover, for example, a person who has recovered from cancer or mental illness.

Under the third part of the definition, a covered entity has regarded an individual as having a disability if it takes an action prohibited by the ADA (e.g., failure to hire, termination, or demotion) based on an individual’s impairment or on an impairment the covered entity believes the individual has, unless the impairment is transitory (lasting or expected to last for six months or less) and minor.

Q. Does the ADA require that an applicant or employee with a disability be qualified for the position?

A. Yes. The ADA defines qualified to mean a person who meets legitimate skill, experience, education, or other requirements of an employment position that s/he holds or seeks, and who can perform the essential functions of the position with or without reasonable accommodation. Requiring the ability to perform "essential" functions assures that an individual with a disability will not be considered unqualified simply because of inability to perform marginal or incidental job functions. If the individual is qualified to perform essential job functions except for limitations caused by a disability, the employer must consider whether the individual could perform these functions with a reasonable accommodation. If a written job description has been prepared in advance of advertising or interviewing applicants for a job, this will be considered as evidence, although not conclusive evidence, of the essential functions of the job.

Q. Does an employer have to give preference to an applicant with a disability over other applicants?

A. No. An employer is free to select the most qualified applicant available and to make decisions based on reasons unrelated to a disability. For example, suppose two persons apply for a job as a typist and an essential function of the job is to type 75 words per minute accurately. One applicant, an individual with a disability, who is provided with a reasonable accommodation for a typing test, types 50 words per minute; the other applicant who has no disability accurately types 75 words per minute. The employer can hire the applicant with the higher typing speed, if typing speed is needed for successful performance of the job.

Q. What limitations does the ADA impose on medical examinations and inquiries about disability?

A. An employer may not ask or require a job applicant to take a medical examination before making a job offer. It cannot make any pre-offer inquiry about a disability or the nature or severity of a disability. An employer may, however, ask questions about the ability to perform specific job functions and may, with certain limitations, ask an individual with a disability to describe or demonstrate how s/he would perform these functions.

An employer may condition a job offer on the satisfactory result of a post-offer medical examination or medical inquiry if this is required of all entering employees in the same job category. A post-offer examination or inquiry does not have to be job-related and consistent with business necessity.

However, if an individual is not hired because a post-offer medical examination or inquiry reveals a disability, the reason(s) for not hiring must be job-related and consistent with business necessity. The employer also must show that no reasonable accommodation was available that would enable the individual to perform the essential job functions, or that accommodation would impose an undue hardship. A post-offer medical examination may disqualify an individual if the employer can demonstrate that the individual would pose a "direct threat" in the workplace (i.e., a significant risk of substantial harm to the health or safety of the individual or others) that cannot be eliminated or reduced below the "direct threat" level through reasonable accommodation. Such a disqualification is job-related and consistent with business necessity. A post-offer medical examination may not disqualify an individual with a disability who is currently able to perform essential job functions because of speculation that the disability may cause a risk of future injury.

After a person starts work, a medical examination or inquiry of an employee must be job-related and consistent with business necessity. Employers may conduct employee medical examinations where there is evidence of a job performance or safety problem that they reasonably believe is caused by a medical condition, examinations required by other federal laws, return-to-work examinations when they reasonably believe that an employee will be unable to do his job or may pose a direct threat because of a medical condition, and voluntary examinations that are part of employee health programs.

Information from all medical examinations and inquiries must be kept apart from general personnel files as a separate, confidential medical record, available only under limited conditions.

Tests for illegal use of drugs are not medical examinations under the ADA and are not subject to the restrictions of such examinations.

Q. When can an employer ask an applicant to "self-identify" as having a disability?

A. A pre-employment inquiry about a disability is allowed if required by another federal law or regulation such as those applicable to veterans with disabilities and veterans of the Vietnam era. Pre-employment inquiries about disabilities may be necessary under such laws to identify applicants or clients with disabilities in order to provide them with required special services. An employer also may ask an applicant to self-identify as an individual with a disability when the employer is voluntarily using this information to benefit individuals with a disability.

Federal contractors and subcontractors who are covered by the affirmative action requirements of section 503 of the Rehabilitation Act of 1973 may invite individuals with disabilities to identify themselves on a job application form or by other pre-employment inquiry, to satisfy the section 503 affirmative action requirements. Employers who request such information must observe section 503 requirements regarding the manner in which such information is requested and used and the procedures for maintaining

such information as a separate, confidential record, apart from regular personnel records.

Q. Does the ADA require employers to develop written job descriptions?

A. No. The ADA does not require employers to develop or maintain job descriptions. However, a written job description that is prepared before advertising or interviewing applicants for a job will be considered as evidence along with other relevant factors. If an employer uses job descriptions, they should be reviewed to make sure they accurately reflect the actual functions of a job. A job description will be most helpful if it focuses on the results or outcome of a job function, not solely on the way it customarily is performed. A reasonable accommodation may enable a person with a disability to accomplish a job function in a manner that is different from the way an employee who does not have a disability may accomplish the same function.

Q. What is "reasonable accommodation”?

A. Reasonable accommodation is any modification or adjustment to a job or the work environment that will enable an applicant or employee with a disability to participate in the application process or to perform essential job functions. Reasonable accommodation also includes adjustments to assure that an individual with a disability has rights and privileges in employment equal to those of employees without disabilities.

Q. What are some of the accommodations applicants and employees may need?

A. Examples of reasonable accommodation include making existing facilities used by employees readily accessible to and usable by an individual with a disability; restructuring a job; modifying work schedules; acquiring or modifying equipment; providing qualified readers or interpreters; or appropriately modifying examinations, training, or other programs. Reasonable accommodation also may include reassigning a current employee to a vacant position for which the individual is qualified, if the person is unable to do the original job because of a disability even with an accommodation. However, there is no obligation to find a position for an applicant who is not qualified for the position sought. Employers are not required to lower quality or production standards as an accommodation; nor are they obligated to provide personal use items such as wheelchairs, glasses or hearing aids.

The decision as to the appropriate accommodation must be based on the particular facts of each case. In selecting the particular type of reasonable accommodation to provide, the principal test is that of effectiveness, i.e., whether the accommodation will provide an opportunity for a person with a disability to achieve the same level of performance and to enjoy benefits equal to those of an average, similarly situated

person without a disability. However, the accommodation does not have to ensure equal results or provide exactly the same benefits.

Q. When is an employer required to make a reasonable accommodation?

A. An employer is only required to accommodate a "known" disability of a qualified applicant or employee. The requirement generally will be triggered by a request from an individual with a disability, who frequently will be able to suggest an appropriate accommodation. Accommodations must be made on an individual basis, because the nature and extent of a disabling condition and the requirements of a job will vary in each case. If the individual does not request an accommodation, the employer is not obligated to provide one except where an individual's known disability impairs his/her ability to know of, or effectively communicate a need for, an accommodation that is obvious to the employer. If a person with a disability requests, but cannot suggest, an appropriate accommodation, the employer and the individual should work together to identify one. There are also many public and private resources that can provide assistance without cost.

Q. What are the limitations on the obligation to make a reasonable accommodation?

A. The individual with a disability requiring the accommodation must be otherwise qualified, and the disability must be known to the employer. In addition, an employer is not required to make an accommodation if it would impose an "undue hardship" on the operation of the employer's business. "Undue hardship" is defined as an "action requiring significant difficulty or expense" when considered in light of a number of factors. These factors include the nature and cost of the accommodation in relation to the size, resources, nature, and structure of the employer's operation. Undue hardship is determined on a case-by-case basis. Where the facility making the accommodation is part of a larger entity, the structure and overall resources of the larger organization would be considered, as well as the financial and administrative relationship of the facility to the larger organization. In general, a larger employer with greater resources would be expected to make accommodations requiring greater effort or expense than would be required of a smaller employer with fewer resources.

If a particular accommodation would be an undue hardship, the employer must try to identify another accommodation that will not pose such a hardship. Also, if the cost of an accommodation would impose an undue hardship on the employer, the individual with a disability should be given the option of paying that portion of the cost which would constitute an undue hardship or providing the accommodation.

Q. Must an employer modify existing facilities to make them accessible?

A. The employer's obligation under title I is to provide access for an *individual* applicant to participate in the job application process and for an *individual* employee with a disability to perform the essential functions of his/her job, including access to a building, work site, needed equipment, and all facilities used by employees. For example, if an employee lounge is located in a place inaccessible to an employee using a wheelchair, the lounge might be modified or relocated, or comparable facilities might be provided in a location that would enable the individual to take a break with co-workers. The employer must provide such access unless it would cause an undue hardship.

Under title I, an employer is not required to make its existing facilities accessible until a particular applicant or employee with a particular disability needs an accommodation, and then the modifications should meet that individual's specific medical needs. However, employers should consider initiating changes that will provide general accessibility, particularly for job applicants, since it is likely that people with disabilities will be applying for jobs. The employer does not have to make changes to provide access in places or facilities that will not be used by that individual for employment-related activities or benefits.

Q. Can an employer be required to reallocate an essential function of a job to another employee as a reasonable accommodation?

A. No. An employer is not required to reallocate essential functions of a job as a reasonable accommodation.

Q. Can an employer be required to modify, adjust, or make other reasonable accommodations in the way a test is given to an applicant or employee with a disability?

A. Yes. Accommodations may be needed to assure that tests or examinations measure the actual ability of an individual to perform job functions rather than reflect limitations caused by the disability. Tests should be given to people who have sensory, speaking, or manual impairments in a format that does not require the use of the impaired skill, unless it is a job-related skill that the test is designed to measure.

Q. Can an employer maintain existing production/performance standards for an employee with a disability?

A. An employer can hold employees with disabilities to the same standards of production/performance as other similarly situated employees without disabilities for

performing essential job functions, with or without reasonable accommodation. An employer also can hold employees with disabilities to the same standards of production/performance as other employees regarding marginal functions unless the disability affects the person's ability to perform those marginal functions. If the ability to perform marginal functions is affected by the disability, the employer must provide some type of reasonable accommodation such as job restructuring but may not exclude an individual with a disability who is satisfactorily performing a job's essential functions.

Q. Can an employer establish specific attendance and leave policies?

A. An employer can establish attendance and leave policies that are uniformly applied to all employees, regardless of disability, but may not refuse leave needed by an employee with a disability if other employees get such leave. An employer also may be required to make adjustments in leave policy as a reasonable accommodation. The employer is not obligated to provide additional paid leave, but accommodations may include leave flexibility and unpaid leave.

A uniformly applied leave policy does not violate the ADA because it has a more severe effect on an individual because of his/her disability. However, if an individual with a disability requests a modification of such a policy as a reasonable accommodation, an employer may be required to provide it, unless it would impose an undue hardship.

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

A. Yes. The ADA permits employers to establish qualification standards that will exclude individuals who pose a direct threat — i.e., a significant risk of substantial harm —to the health or safety of the individual or of others, if that risk cannot be eliminated or reduced below the level of a "direct threat" by reasonable accommodation. However, an employer may not simply assume that a threat exists; the employer must establish through objective, medically supportable methods that there is significant risk that substantial harm could occur in the workplace. By requiring employers to make individualized judgments based on reliable medical or other objective evidence rather than on generalizations, ignorance, fear, patronizing attitudes, or stereotypes, the ADA recognizes the need to balance the interests of people with disabilities against the legitimate interests of employers in maintaining a safe workplace.

Q. Are applicants or employees who are currently illegally using drugs covered by the ADA?

A. No. Individuals who currently engage in the illegal use of drugs are specifically excluded from the definition of an individual with a disability protected by the ADA when the employer takes action on the basis of their drug use.

Q. Is testing for the illegal use of drugs permissible under the ADA?

A. Yes. A test for the illegal use of drugs is not considered a medical examination under the ADA; therefore, employers may conduct such testing of applicants or employees and make employment decisions based on the results. The ADA does not encourage, prohibit, or authorize drug tests.

If the results of a drug test reveal the presence of a lawfully prescribed drug or other medical information, such information must be treated as a confidential medical record.

Q. Are alcoholics covered by the ADA?

A. Yes. While a current illegal user of drugs is not protected by the ADA if an employer acts on the basis of such use, a person who currently uses alcohol is not automatically denied protection. An alcoholic is a person with a disability and is protected by the ADA if s/he is qualified to perform the essential functions of the job. An employer may be required to provide an accommodation to an alcoholic. However, an employer can discipline, discharge or deny employment to an alcoholic whose use of alcohol adversely affects job performance or conduct. An employer also may prohibit the use of alcohol in the workplace and can require that employees not be under the influence of alcohol.

Q. Does the ADA override federal and state health and safety laws?

A. The ADA does not override health and safety requirements established under other federal laws even if a standard adversely affects the employment of an individual with a disability. If a standard is required by another federal law, an employer must comply with it and does not have to show that the standard is job related and consistent with business necessity. For example, employers must conform to health and safety requirements of the U.S. Occupational Safety and Health Administration. However, an employer still has the obligation under the ADA to consider whether there is a reasonable accommodation, consistent with the standards of other federal laws, which will prevent exclusion of individuals with disabilities who can perform jobs without violating the standards of those laws. If an employer can comply with both the ADA and another federal law, then the employer must do so.

The ADA does not override state or local laws designed to protect public health and safety, except where such laws conflict with the ADA requirements. If there is a state or local law that would exclude an individual with a disability from a particular job or

profession because of a health or safety risk, the employer still must assess whether a particular individual would pose a "direct threat" to health or safety under the ADA standard. If such a "direct threat" exists, the employer must consider whether it could be eliminated or reduced below the level of a "direct threat" by reasonable accommodation. An employer cannot rely on a state or local law that conflicts with ADA requirements as a defense to a charge of discrimination.

Q. How does the ADA affect workers' compensation programs?

A. Only injured workers who meet the ADA's definition of an "individual with a disability" will be considered disabled under the ADA, regardless of whether they satisfy criteria for receiving benefits under workers' compensation or other disability laws. A worker also must be "qualified" (with or without reasonable accommodation) to be protected by the ADA. Although not all work-related injuries cause physical or mental impairments that “substantially limit” a major life activity, many on-the-job injuries may now constitute disabilities under the ADAAA’s broadened definition of “disability.”

An employer may not inquire into an applicant's workers' compensation history before making a conditional offer of employment. After making a conditional job offer, an employer may inquire about a person's workers’ compensation history in a medical inquiry or examination that is required of all applicants in the same job category. However, even after a conditional offer has been made, an employer cannot require a potential employee to have a medical examination because a response to a medical inquiry (as opposed to results from a medical examination) shows a previous on-the-job injury unless all applicants in the same job category are required to have an examination. Also, an employer may not base an employment decision on the speculation that an applicant may cause increased workers' compensation costs in the future. However, an employer may refuse to hire or may discharge an individual who is not currently able to perform a job without posing a significant risk of substantial harm to the health or safety of the individual or others if the risk cannot be eliminated or reduced by reasonable accommodation.

An employer may refuse to hire or may fire a person who knowingly provides a false answer to a lawful post-offer inquiry about his/her condition or workers’ compensation history.

An employer also may submit medical information and records concerning employees and applicants (obtained after a conditional job offer) to state workers' compensation offices and "second injury" funds without violating ADA confidentiality requirements.

Q. What is discrimination based on "relationship or association" under the ADA?

A. The ADA prohibits discrimination based on relationship or association in order to protect individuals from actions based on unfounded assumptions that their relationship to a person with a disability would affect their job performance, and from actions caused by bias or misinformation concerning certain disabilities. For example, this provision would protect a person whose spouse has a disability from being denied employment because of an employer's unfounded assumption that the applicant would use excessive leave to care for the spouse. It also would protect an individual who does volunteer work for people with AIDS from a discriminatory employment action motivated by that relationship or association.

Q. How are the employment provisions enforced?

A. The employment provisions of the ADA are enforced under the same procedures now applicable to race, color, sex, national origin, and religious discrimination under title VII of the Civil Rights Act of 1964, as amended, and the Civil Rights Act of 1991. Complaints may be filed with the Equal Employment Opportunity Commission or designated state human rights agencies. Available remedies will include hiring, reinstatement, promotion, back pay, front pay, restored benefits, reasonable accommodation, attorneys' fees, expert witness fees, and court costs. Compensatory and punitive damages also may be available in cases of intentional discrimination or where an employer fails to make a good faith effort to provide a reasonable accommodation. A charge must be filed within 180 calendar days from the date the discrimination took place. The 180 calendar day filing deadline is extended to 300 calendar days if a state or local agency enforces a law that prohibits employment discrimination on the same basis. A state’s designated human rights agency should be consulted to determine if the extended filing deadline applies.

Q. What financial assistance is available to employers to help them make reasonable accommodations and comply with the ADA?

A. A special tax credit is available to help smaller employers make accommodations required by the ADA. An eligible small business may take a tax credit of up to $5,000 per year for accommodations made to comply with the ADA. The credit is available for one-half the cost of "eligible access expenditures" that are more than $250 but less than $10,250.

A full tax deduction, up to $15,000 per year, also is available to any business for expenses of removing qualified architectural or transportation barriers. Expenses covered include costs of removing barriers created by steps, narrow doors, inaccessible parking spaces, restroom facilities, and transportation vehicles.

Q. What are an employer's recordkeeping requirements under the employment provisions of the ADA?

A. An employer must maintain records such as application forms submitted by applicants and other records related to hiring, requests for reasonable accommodation, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship for one year after making the record or taking the action described (whichever occurs later). If a charge of discrimination is filed or an action is brought by EEOC, an employer must save all personnel records related to the charge until final disposition of the charge.

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

A. The ADA requires that employers post a notice describing the provisions of the ADA. It must be made accessible, as needed, to individuals with disabilities. A poster is available from EEOC summarizing the requirements of the ADA and other federal legal requirements for nondiscrimination for which EEOC has enforcement responsibility. EEOC also provides guidance on making this information available in accessible formats for people with disabilities.

Q. What resources does the Equal Employment Opportunity Commission have available to help employers and people with disabilities understand and comply with the employment requirements of the ADA?

A. The Equal Employment Opportunity Commission has developed numerous resources to help employers and people with disabilities understand and comply with the employment provisions of the ADA.

Resources include:

- Guidance materials
- Fact sheets
- Question and answer documents

For information on how to contact the Equal Employment Opportunity Commission, see page 25-26.

The ADA National Network can assist individuals with disabilities by providing ADA information related to employment in the private sector and in state and local

governments. Additionally, the ADA National Network can help employers successfully implement the ADA. The Network can provide training and information on hiring, tax incentives, reasonable accommodations, and other strategies to facilitate compliance, improve employment outcomes, and strengthen employee loyalty. Contact the ADA National Network with your questions or to find a regional ADA National Network center near you. Call (800) 949-4232 (V/TTY); all calls are confidential.

State and Local Governments

Q. Does the ADA apply to state and local governments?

A. Title II of the ADA prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities. It applies to all state and local governments, their departments and agencies, and any other instrumentalities or special purpose districts of state or local governments. It clarifies the requirements of section 504 of the Rehabilitation Act of 1973, as amended, for public transportation systems that receive federal financial assistance, and extends coverage to all public entities that provide public transportation, whether or not they receive federal financial assistance. It establishes detailed standards for the operation of public transit systems, including commuter and intercity rail (AMTRAK).

Q. How does title II affect participation in a state or local government's programs, activities, and services?

A. A state or local government must eliminate any eligibility criteria for participation in programs, activities, and services that screen out or tend to screen out persons with disabilities, unless it can establish that the requirements are necessary for the provision of the service, program, or activity. The state or local government may, however, adopt legitimate safety requirements necessary for safe operation if they are based on real risks, not on stereotypes or generalizations about individuals with disabilities. A public entity shall furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity. Finally, a public entity must reasonably modify its policies, practices, or procedures to avoid discrimination. If the public entity can demonstrate that a particular modification would fundamentally alter the nature of its service, program, or activity, it is not required to make that modification.

Q. Does title II cover a public entity's employment policies and practices?

A. Yes. Title II prohibits all public entities, regardless of the size of their work force, from discriminating in employment against individuals with disabilities. In addition to title II's employment coverage, title I of the ADA and section 504 of the Rehabilitation Act of 1973 prohibit employment discrimination against individuals with disabilities by certain public entities.

Q. What changes must a public entity make to its existing facilities to make them accessible?

A. A public entity must ensure that individuals with disabilities are not excluded from services, programs, and activities because existing buildings are inaccessible. A state or local government's programs, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. This standard, known as "program accessibility," applies to facilities of a public entity that existed on January 26, 1992. Public entities do not necessarily have to make each of their existing facilities accessible. They may provide program accessibility by a number of methods including alteration of existing facilities, acquisition or construction of additional facilities, relocation of a service or program to an accessible facility, or provision of services at alternate accessible sites.

Q. What is a self-evaluation?

A. A self-evaluation is a public entity's assessment of its current policies and practices. The self-evaluation identifies and corrects those policies and practices that are inconsistent with title II's requirements. All public entities should have completed a self-evaluation by January 26, 1993. A public entity that employs 50 or more employees must retain its self-evaluation for three years. Other public entities are not required to retain their self-evaluations, but are encouraged to do so because these documents evidence a public entity's good faith efforts to comply with title II's requirements.

Q. What does title II require for new construction and alterations?

A. The ADA requires that all new buildings constructed by a state or local government be accessible. In addition, when a state or local government undertakes alterations to a building, it must make the altered portions accessible.

Q. How will a state or local government know that a new building is accessible?

A. A state or local government will be in compliance with the ADA for new construction and alterations if it follows the 2010 ADA Standards for Accessible Design. Effective

March 15, 2012, the 2010 ADA Standards must be used for new construction and alterations undertaken by state and local governments.

Q. What requirements apply to a public entity's emergency telephone services, such as 911?

A. State and local agencies that provide emergency telephone services must provide "direct access" to individuals who rely on a teletypewriter (TTY, also known as a telecommunication device for deaf persons or TDD) or computer modem for telephone communication. Telephone access through a third party or through a relay service does not satisfy the requirement for direct access. Where a public entity provides 911 telephone service, it may not substitute a separate seven-digit telephone line as the sole means for access to 911 services by non-voice users. A public entity may, however, provide a separate seven-digit line for the exclusive use of non-voice callers in addition to providing direct access for such calls to its 911 line.

Q. How are the ADA's requirements for state and local governments enforced?

A. Private individuals may bring lawsuits to enforce their rights under title II and may receive the same remedies as those provided under section 504 of the Rehabilitation Act of 1973, including reasonable attorney's fees. Individuals may also file complaints with eight designated federal agencies, including the Department of Justice and the Department of Transportation.

The ADA National Network can assist individuals with disabilities by providing ADA information related to access to services, programs, and activities provided by public entities. The ADA National Network is also a valuable resource for ADA coordinators in government entities in cities, towns, villages and counties, and in state agencies and departments. Contact the ADA National Network with your questions or to find a regional ADA National Network center near you. Call (800) 949-4232 (V/TTY); all calls are confidential.

Public Accommodations

Q. What are public accommodations?

A. A public accommodation is a private entity that owns, operates, leases, or leases to, a place of public accommodation. Places of public accommodation include a wide range of entities, such as restaurants, hotels, theaters, doctors' offices, pharmacies, retail stores, museums, libraries, parks, private schools, and day care centers. Private

membership clubs and religious organizations are exempt from the ADA's title III requirements for public accommodations.

Q. Does the ADA have any effect on the eligibility criteria used by public accommodations to determine who may receive services?

A. Yes. If a criterion screens out or tends to screen out individuals with disabilities, it may only be used if necessary for the provision of the services. For instance, it would be a violation for a retail store to have a rule excluding all deaf persons from entering the premises, or for a movie theater to exclude all individuals with cerebral palsy. More subtle forms of discrimination are also prohibited. For example, requiring presentation of a driver's license as the sole acceptable means of identification for purposes of paying by check could constitute discrimination against individuals who are blind or have low vision. This would be true if such individuals are ineligible to receive licenses and the use of an alternative means of identification is feasible.

Q. Does the ADA allow public accommodations to take safety factors into consideration in providing services to individuals with disabilities?

A. The ADA expressly provides that a public accommodation may exclude an individual if that individual poses a direct threat to the health or safety of others that cannot be mitigated by appropriate modifications in the public accommodation's policies or procedures or by the provision of auxiliary aids. A public accommodation will be permitted to establish objective safety criteria for the operation of its business; however, any safety standard must be based on objective requirements rather than stereotypes or generalizations about the ability of persons with disabilities to participate in an activity.

Q. Are there any limits on the kinds of modifications in policies, practices, and procedures required by the ADA?

A. Yes. The ADA does not require modifications that would fundamentally alter the nature of the services provided by the public accommodation. For example, it would not be discriminatory for a physician specialist who treats only burn patients to refer a deaf individual to another physician for treatment of a broken limb or respiratory ailment. To require a physician to accept patients outside of his or her specialty would fundamentally alter the nature of the medical practice.

Q. What kinds of auxiliary aids and services are required by the ADA to ensure effective communication with individuals who are deaf/hard of hearing or who are blind/have low vision?

A. Appropriate auxiliary aids and services for individuals who are deaf or hard of hearing may include services and devices such as qualified interpreters on-site or through video remote interpreting (VRI) services; note takers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing.

Appropriate auxiliary aids and services for individuals who are blind or have low vision may include services and devices such as qualified readers; taped texts; audio recordings; Brailed materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision.

Q. Are there any limitations on the ADA's auxiliary aids requirements?

A. Yes. The ADA does not require the provision of any auxiliary aid that would result in an undue burden or in a fundamental alteration in the nature of the goods or services provided by a public accommodation. However, the public accommodation is not relieved from the duty to furnish an alternative auxiliary aid, if available, that would not result in a fundamental alteration or undue burden. Both of these limitations are derived from existing regulations and are to be determined on a case-by-case basis.

Q. Do businesses need to have Braille materials, such as menus and sales tags, on hand in order to comply with title III?

A. Generally no, as long as a restaurant has waiters or waitresses that are qualified to read menus or retail stores have sales staff that are qualified to read sales tags to blind customers.

Q. Do businesses need to have a qualified interpreter on hand in order to communicate with a person who is deaf?

A. Generally no, not if employees are able to communicate by using pen and notepad and it is effective. However, in situations where the exchange of information is over a long duration or the information being exchanged is complex, it may be necessary for the business to provide a qualified interpreter. A business should discuss this with the person with the disability to determine which auxiliary aid or service will result in effective communication.

Q. What is the definition of a service animal under the ADA?

A. A service animal is 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. Other species of animals, whether wild or domestic, trained or untrained, are not considered to be service animals. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping individuals with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks.

Q. What type of inquiries can be made about the use of a service animal?

A. To determine if an animal is a service animal, a public entity or a private business may ask two questions: 1) Is this animal required because of a disability? and 2) What work or task has this animal been trained to perform? These inquires may not be made if the need for the service animal is obvious (e.g., the dog is guiding an individual who is blind or is pulling a person's wheelchair.) A public entity or private business may not ask about the nature or extent of an individual's disability. They also may not require documentation, such as proof that the animal has been certified, trained or licensed as a service animal, or require the animal to wear an identifying vest.

Q. Are miniature horses service animals?

A. No, however a public entity or private business shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability. Factors that a covered entity may consider in determining when such a modification is reasonable include the type, size, and weight of the miniature horse and whether the facility can accommodate these features; whether the individual has sufficient control of the animal; whether the animal is housebroken; and whether legitimate safety requirements that are necessary for operation of the business or program will be compromised.

Beyond these additional considerations, a covered entity may only make the same kinds of inquiries permitted in the case of service dogs and may not ask about the nature of the individual's disability or require documentation that the miniature horse is trained.

Q. What is the definition of a wheelchair under the ADA?

A. A wheelchair is 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. Individuals with mobility disabilities must be permitted to use wheelchairs and manually powered mobility aids, i.e., walkers, crutches, canes, braces, or other similar devices designed for use by individuals with mobility disabilities, in any areas open to pedestrian traffic.

Q. What is another power-driven mobility device (OPDMD)?

A. An OPDMD is any mobility device powered by batteries, fuel, or other engines that is used by individuals with mobility disabilities for the purpose of locomotion, whether or not it was designed primarily for use by individuals with mobility disabilities. OPDMDs may include golf cars, electronic personal assistance mobility devices, such as the Segway® Personal Transporter (PT), or any mobility device that is not a wheelchair, which is designed to operate in areas without defined pedestrian routes. Covered entities must make reasonable modifications in their policies, practices, or procedures to permit individuals with mobility disabilities to use OPDMDs unless the entity can demonstrate that the class of OPDMDs cannot be operated in accordance with legitimate safety requirements adopted by the entity.

Q. Are there any limitations on the ADA's barrier removal requirements for existing facilities?

A. Yes. Barriers must be removal when it is "readily achievable" to do so.

Q. What does the term "readily achievable" mean?

A. It means "easily accomplishable and able to be carried out without much difficulty or expense."

Q. What are examples of the types of modifications that would be readily achievable in most cases?

A. Examples include the simple ramping of a few steps, the installation of grab bars where only routine reinforcement of the wall is required, the lowering of telephones, and similar modest adjustments.

Q. Will businesses need to rearrange furniture and display racks?

A. Possibly. For example, restaurants may need to rearrange tables and department stores may need to adjust their layout of racks and shelves in order to permit access to wheelchair users.

Q. Will businesses need to install elevators?

A. Businesses are not required to retrofit their existing facilities to install elevators unless such installation is readily achievable, which is unlikely in most cases.

Q. When barrier removal is not readily achievable, what kinds of alternative steps are required by the ADA?

A. Alternatives may include such measures as in-store assistance for removing articles from inaccessible shelves, home delivery of groceries, or coming to the door to receive or return dry cleaning.

Q. Must alternative steps be taken without regard to cost?

A. No, only readily achievable alternative steps must be undertaken.

Q. How is "readily achievable" determined in a multisite business?

A. In determining whether an action to make a public accommodation accessible would be "readily achievable," the overall size of the parent corporation or entity is only one factor to be considered. The ADA also permits consideration of the financial resources of the particular facility or facilities involved and the administrative or fiscal relationship of the facility or facilities to the parent entity.

Q. Are businesses entitled to any tax benefit to help pay for the cost of compliance?

A. Yes, Businesses may be eligible for available tax credits and deductions. As amended in 1990, the Internal Revenue Code allows a deduction of up to $15,000 per year for expenses associated with the removal of qualified architectural and transportation barriers.

The 1990 amendment also permits eligible small businesses to receive a tax credit for certain costs of compliance with the ADA. An eligible small business is one whose gross receipts do not exceed $1,000,000 or whose workforce does not consist of more than 30 full-time workers. Qualifying businesses may claim a credit of up to 50 percent of eligible access expenditures that exceed $250 but do not exceed $10,250. Examples of eligible access expenditures include the necessary and reasonable costs of removing architectural, physical, communications, and transportation barriers; providing readers, interpreters, and other auxiliary aids; and acquiring or modifying equipment or devices.

Q. Who has responsibility for ADA compliance in leased places of public accommodation, the landlord or the tenant?

A. The ADA places the legal obligation to remove barriers or provide auxiliary aids and services on both the landlord and the tenant. The landlord and the tenant may decide by lease who will actually make the changes and provide the aids and services, but both remain legally responsible.

Q. What does the ADA require in new construction?

A. The ADA requires that all newly constructed facilities housing places of public accommodation, as well as commercial facilities such as office buildings, be accessible.

Q. What standards must places of public accommodation and commercial facilities follow?

A. Places of public accommodation must follow the 2010 ADA Standards for Accessible Design for barrier removal, new construction and alterations. Commercial facilities must follow the 2010 ADA Standards for Accessible Design for new construction and

alterations. The 2010 ADA Standards for Accessible Design set minimum requirements – both scoping and technical -- for newly designed and constructed or altered public accommodations and commercial facilities to be readily accessible to and usable by individuals with disabilities. Elevators are generally not required in facilities under three stories or with fewer than 3,000 square feet per floor, unless the building is a shopping center or mall; the professional office of a health care provider; a terminal, depot, or other public transit station; or an airport passenger terminal.

Q. Is it expensive to make all newly constructed places of public accommodation and commercial facilities accessible?

A. The cost of incorporating accessibility features in new construction is less than one percent of construction costs. This is a small price in relation to the economic benefits to be derived from full accessibility in the future, such as increased employment and consumer spending.

Q. Must every feature of a new facility be accessible?

A. No, only a specified number of elements such as entrances, parking spaces and drinking fountains must be made accessible in order for a facility to be "readily accessible."

Q. What are the ADA requirements for altering facilities?

A. All alterations that could affect the usability of a facility must be made in an accessible manner to the maximum extent feasible. For example, if during renovations a doorway is being relocated, the new doorway must be wide enough to meet the new construction standard for accessibility. When alterations are made to a primary function area, such as the lobby of a bank or the dining area of a cafeteria, an accessible path of travel to the altered area must also be provided.

The bathrooms, telephones, and drinking fountains serving that area must also be made accessible. These additional accessibility alterations are only required to the extent that the added accessibility costs do not exceed 20% of the cost of the original alteration. Elevators are generally not required in facilities under three stories or with fewer than 3,000 square feet per floor, unless the building is a shopping center or mall; the professional office of a health care provider; a terminal, depot, or other public transit station; or an airport passenger terminal.

Q. Does the ADA permit an individual with a disability to sue a business when that individual believes that discrimination is about to occur, or must the individual wait for the discrimination to occur?

A. The ADA public accommodation provisions permit an individual to allege discrimination based on a reasonable belief that discrimination is about to occur. This provision, for example, allows a person who uses a wheelchair to challenge the planned construction of a new place of public accommodation, such as a shopping mall, that would not be accessible to individuals who use wheelchairs. The resolution of such challenges prior to the construction of an inaccessible facility would enable any necessary remedial measures to be incorporated in the building at the planning stage, when such changes would be relatively inexpensive.

Q. How does the ADA affect existing state and local building codes?

A. Existing codes remain in effect. The ADA allows the Attorney General to certify that a state law, local building code, or similar ordinance that establishes accessibility requirements meets or exceeds the minimum accessibility requirements for public accommodations and commercial facilities. Any state or local government may apply for certification of its code or ordinance. The Attorney General can certify a code or ordinance only after prior notice and a public hearing at which interested people, including individuals with disabilities, are provided an opportunity to testify against the certification.

Q. What is the effect of certification of a state or local code or ordinance?

A. Certification can be advantageous if an entity has constructed or altered a facility according to a certified code or ordinance. If someone later brings an enforcement proceeding against the entity, the certification is considered "rebuttable evidence" that the state law or local ordinance meets or exceeds the minimum requirements of the ADA. In other words, the entity can argue that the construction or alteration met the requirements of the ADA because it was done in compliance with the state or local code that had been certified.

Q. How will the public accommodations provisions be enforced?

A. Private individuals may bring lawsuits in which they can obtain court orders to stop discrimination. Individuals may also file complaints with the U.S. Department of Justice, which is authorized to bring lawsuits in cases of general public importance or where a "pattern or practice" of discrimination is alleged. In these cases, the Justice Department may seek monetary damages and civil penalties. Civil penalties may not exceed $55,000 for a first violation or $110,000 for any subsequent violation.

The ADA National Network can assist individuals with disabilities by providing ADA information related to access to the goods and services provided by places of public accommodation. The ADA National Network can also provide businesses with information on meeting the needs of people with disabilities. Contact the ADA National Network with your questions or to find a regional ADA National Network center near you. Call (800) 949-4232 (V/TTY); all calls are confidential.

Miscellaneous

Q. Is the federal government covered by the ADA?

A. The ADA does not cover the executive branch of the federal government. The executive branch continues to be covered by title V of the Rehabilitation Act of 1973, which prohibits discrimination in services and employment on the basis of disability and which is a model for the requirements of the ADA. The ADA, however, does cover Congress and other entities in the legislative branch of the federal government.

Q. Does the ADA cover private apartments and private homes?

A. The ADA does not cover strictly residential private apartments and homes. If, however, a place of public accommodation is located in a residential setting, such as a rental/sales office, doctor's office or day care center, those portions of the residential property used for that purpose are subject to the ADA's requirements.

Q. Does the ADA cover air transportation?

A. Discrimination by air carriers in areas other than employment is not covered by the ADA, but rather by the Air Carrier Access Act (49 U.S.C. 1374 (c)).

Q. What are the ADA's requirements for public transit buses?

A. The Department of Transportation has issued regulations mandating accessible public transit vehicles and facilities. The regulations include requirements that all new fixed-route, public transit buses be accessible and that supplementary paratransit

services be provided for those individuals with disabilities who cannot use fixed-route bus service. For information on how to contact the Department of Transportation, see page 25-26.

Q. How will the ADA make telecommunications accessible?

A. The ADA requires the establishment of telephone relay services for individuals who use teletypewriters (TTYs, also known as telecommunications devices for deaf persons or TDDs), video phones, or similar devices. The Federal Communications Commission has issued regulations specifying standards for the operation of these services.

The ADA National Network can provide customized support and technical assistance to answer any additional ADA questions you may have. Contact the ADA National Network with your questions or to find a regional ADA National Network center near you. Call (800) 949-4232 (V/TTY); all calls are confidential.