

# Complying with New ADA Standards for Accessibility

The U.S. Department of Justice adopted the 2010 American with Disabilities Act (ADA) Standards for Accessible Design on Sept. 15, 2010. During an initial transition period, covered public and private entities starting new construction or performing alterations had the option of following either the old 1991 Standards for Accessible Design or the new 2010 Standards. But as of March 15, 2012, all construction projects and modifications must comply with the 2010 standards.

## A BRIEF HISTORY OF THE ADA

The ADA was signed into law on July 26, 1990. The law defines a disability as a “physical or mental impairment that substantively limits a major life activity” and promotes equal treatment for all Americans with disabilities through substantive provisions governing, among other things, employment (Title I), public services (Title II) and public accommodations (Title III).

The ADA was amended in 2008 in response to a number of U.S. Supreme Court decisions that dramatically narrowed its intended scope. The amendment enabled the practical enforcement of the law through a more expansive interpretation of the term disability, including adding examples of “major life activities,” such as “caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working.” It clarified that an individual’s impairment must be determined without consideration of ameliorative measures (e.g., hearing aids).

Since the ADA was enacted, it has spawned a litigation subculture of cases



brought against covered businesses and facilities for failure to satisfy certain accessibility requirements. Because there is no designated governmental enforcement arm of the ADA, issues of compliance often are spurred by the threat of lawsuit. In addition to the obvious social and economic benefits of non-discriminatory practices, there is good reason for businesses to stay informed and endeavor to meet all compliance obligations given that the ADA permits plaintiffs to recover their attorneys’ fees.

## NEW AND REVISED COMPLIANCE REQUIREMENTS

The 2010 standards intend to clarify and refine issues concerning the practical application of the ADA, including harmonizing federal and state guidelines for compliance and adding new minimum scoping and technical requirements for accessibility concerning both new construction and design renovations. Specifically, the standards address, add to and amend the 1991 edition with respect to Titles II and III of

the ADA. Title II prohibits discrimination against qualified individuals with disabilities in all programs, activities and services of public entities—including access to all public services, programs, activities and buildings. Title III states public accommodations (a broad term that encompasses entities such as restaurants, hotels, theaters, retail stores, museums, libraries, parks, private schools and day care centers) may not discriminate on the basis of disability. Title III further requires places of public accommodation to remove barriers in existing facilities when such a result is “readily achievable.”

The 2010 standards governing barrier removal can be divided into two groups: new rules and revised rules. The new rules promulgated address areas not previously covered by the ADA and, as such, didn’t carry prior compliance requirements. They cover a broad range of facilities, primarily in the recreation sector.

- Certain amusement park rides must be accessible and located on accessible routes.

- A certain number of accessible boat slips must be available, depending on the size of the boating facility in question. Fishing piers must provide accessible routes and 25 percent of handrails/guardrails must be at a height of no more than 45 inches.
- At least one type of each piece of exercise equipment offered must be on an accessible route and offer clear floor space to permit use by an individual with a disability.
- Golf and miniature golf facilities must offer accessible routes or golf cart passages. Half of all holes on a miniature golf course must be accessible. The holes must be consecutive, with an accessible route to the course entrance or exit available from the last accessible hole.
- Play areas for children ages 2 and older must include accessible ground level and elevated play components, accessible routes, and ramps and transfer systems.
- Accessible means of entry and exit are required for swimming pools. Saunas and steam rooms must be accessible, offer appropriate turning space and, where provided, an accessible bench.

The 2010 standards also add new compliance requirements for certain public facilities.

- At least one of each type of certain inmate cells, as well as medical facilities and visiting areas, must be accessible in detention and correctional facilities.
- Each courtroom, including jury and witness areas and judicial and employee work stations, must be accessible.
- Certain requirements must be met for residential dwelling units provided by public entities under ADA Title II.

In addition to new rules, the 2010 standards implement comprehensive and material revisions to the 1991 standards. Following is a sampling of the many changes.

- Side reach requirements were lowered from 54 inches to 48 inches.
- Single-room toilets must accommodate forward, side and parallel approaches.
- Direct entrances from a parking structure into another facility must be accessible.
- Work areas must include accessible common circulation paths within common employee work areas (subject to certain exceptions).

### WHO MUST COMPLY AND WHEN?

The 2010 standards include an element-by-element safe harbor provision. Facilities already in compliance with the barrier removal requirements of the 1991 standards have no duty to act. Because these standards have been in place for 20 years, it is highly probable the March 15 deadline had little practical effect for many covered Title II and III entities. For example, a facility presently meeting the prior 54-inch standard would not need to retrofit just to meet the new 48-inch standard.

However, compliant entities must be cognizant of the 2010 standard requirements in case of future renovations. If any aspect of a facility undergoes renovation, all aspects of the new component (as well as access to the new component) must comply with the 2010 standards. Even a business owner who re-lines a parking lot must ensure the quantity and measurements of the new spaces meet the 2010 standards for accessibility.

While the 2010 standards' safe harbor provision was intended to ease the financial burden on the owners of compliant facilities, it does not provide wholesale protection. Rather, the 2010 standards' new rules (i.e., elements not previously addressed in the 1991 standards) are not subject to the safe harbor provision and must be complied with as "readily achievable" (i.e., as soon as possible). For example, the 1991 standards did not contain scoping or technical requirements with respect to swimming pools; therefore, all facilities containing pools must now meet the 2010 standards' new requirements.

### MORE THAN JUST BARRIERS

In addition to covering construction issues, the 2010 standards include new requirements governing issues such as ticketing and seating in public assembly areas (e.g., concert venues and sports arenas); the use of service animals; accessibility for wheelchairs and other power-driven mobility devices; and policies on reservations for places of public lodging. These changes took effect March 15 and should be fully utilized.

### CONTINUED EXEMPTIONS

Although the 2010 standards update and alter many aspects of the ADA, certain

groups, entities and facilities remain exempt from compliance. For instance, religious entities (including places of worship) do not have to comply with the requirements of Title III. Likewise, Title III does not apply to "private clubs," which are characterized by a nonprofit ownership structure, high degree of member control and substantial membership fees.

Properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under state or local law also may be exempt from compliance. While these facilities must comply with the 2010 standards to the "maximum extent feasible," they are not required to remove barriers if the process would destroy the "historic significance" of the property. In that case, alternative standards may be employed.

### WHAT LIES AHEAD

While March 15 should not have prompted most covered entities to hit the panic button, ADA compliance should remain a high priority. Here are a few tips to remember going forward:

- **Break down barriers.** Barrier removal under the ADA is an ongoing obligation. If a facility's barriers do not meet at least the 1991 standards, they should be addressed immediately.
- **Have a plan.** The 2010 standards should be automatically used in all new construction projects. Additionally, develop a transition plan concerning existing facilities and how the standards will affect future developments, modifications and renovations.
- **Know the law.** Effective compliance starts with a solid understanding of the ADA and the requirements it places on a particular project or organization. Building a strong, knowledgeable team will help save time, effort and money down the road.

Through practical planning, covered entities can execute an effective strategy that complies with not only the letter, but more importantly the spirit of the ADA.

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