**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.

**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:

**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.

**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 groundbreaking or the day demolition of an existing structure commences. In this situation, if physical construction starts after March 15, 2012, the small business must use the 2010 Standards.

**ADA compliance**

People with disabilities expect businesses to take positive steps to comply with the ADA. Businesses that do not take steps to comply may face legal consequences.

**Several ways to obtain ADA compliance**

The ADA gives people with disabilities the right to file lawsuits in Federal court and obtain Federal court orders to stop ADA violations. If you are sued by an individual and you lose the case, you may have to pay the winning party’s attorney’s fees. The ADA does not permit monetary damages to be assessed against you in lawsuits brought by individuals. (Some state and local antidiscrimination laws allow compensatory damages to be assessed against you, but not the ADA.)

People with disabilities can also file complaints with the Justice Department, which can investigate and attempt to resolve the complaint.

The Justice Department is also authorized to file lawsuits in Federal court in cases of “general public importance” or where a “pattern or practice” of discrimination is alleged. If you are sued by the Justice Department and you lose the case, you will not have to pay the Department’s attorneys’ fees, but you may have to pay monetary damages for compensatory relief (but not punitive relief) and civil penalties. Civil penalties may run as high as $55,000 for a first violation or $110,000 for a subsequent violation.

Useful Web sites

<http://www.ada.gov/reachingout/intro1.htm>

<http://www.ada.gov/racheck.pdf>