

## [New ADA Public Accommodation Regulations Provide a Good Opportunity for Businesses to Review Their Policies and Procedures](#)

September 8, 2010 by [Adam Santucci](#)

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Most employers have at least some basic understanding of the Americans with Disabilities Act's (ADA) prohibition against discrimination on the basis of an employee's disability. Fewer are aware that the ADA contains separate provisions concerning public accommodation requirements for businesses open to the public. In its most basic form, Title III of the ADA requires virtually all facilities open to the public - including restaurants, hotels, motels, retailers, medical facilities, health clubs, museums, libraries, parks, day care facilities and entertainment venues - to remove architectural and communications barriers from their facilities to ensure access to persons with disabilities. The driving force behind the statute is to allow persons with disabilities to participate equally in the goods and services offered by places of public accommodation.

In conjunction with the 20th anniversary of the ADA's enactment, the [Department of Justice](#) recently rolled out several new revisions to the [ADA public accommodation regulations](#). In implementing the new regulations, the Department of Justice has made clear that the new standards should be viewed as "more than incremental changes" to the previously applicable 1991 standards. To that end, in many ways, the new regulations create heightened accessibility requirements for public accommodations.

It is important to note that the new rules contain a "safe harbor" provision. Covered entities that were built or altered in compliance with the 1991 standard will not be required to comply with the 2010 standards unless or until existing facilities are altered in the future. However, new requirements that were not a part of the 1991 standards are not subject to the safe harbor provision. Businesses should begin planning now to achieve compliance with the 2010 standards with regard to these new elements.

The new regulations modify the 1991 standards with respect to single toilet user rooms, reach ranges, assembly areas, common use circulation paths in employee work areas, fitting rooms, disbursement of accessible guest rooms in places of public lodging, accessible parking, urinals, and sales and service counters - just to name a few. Additionally, the new regulations address a number of brand new accommodation requirements for golf and miniature golf courses, amusement park rides, playgrounds, swimming pools, exercise equipment and other public accommodations.

The latest regulations targeting barriers to places of public accommodation specifically include the following:

### **Service Animals**

The new ADA regulations now make clear that only dogs (and in limited circumstances miniature horses) can act as service animals. To qualify as a service animal, the dog must be individually trained to do work or perform tasks for the benefit of a disabled individual. Under the new rules, animals that merely provide emotional support and comfort to their owners do not qualify as service animals. The new rules also contain provisions regarding what questions a provider of a public accommodation may ask a person purporting to be with a service animal.

### **Wheelchair and Other Mobility Device Accessibility**

The regulations mandate that public accommodations allow the use of wheelchairs and manually powered mobility aids in all areas open to the public. According to the new rules, public accommodations must also permit the use of “other power-driven mobility devices” (e.g. golf carts, Segways, etc.) unless they can show the use of such devices would create a safety hazard to others. The burden is on the provider of the public accommodation to show that the mobility device creates a safety hazard if it wishes to limit or exclude their use on the business’ premises.

### **Lodging Reservations**

The regulations also contain new provisions that will have a significant impact on how hotels and other places of lodging do business. Key provisions include a requirement that hotels and other places of public lodging hold back accessible rooms until they are the last to sell. Additionally, handicap accessible rooms may no longer be double booked by hotel staff. Further, hotel reservation systems must identify the accessible features of the hotel and its guest rooms so that disabled persons may make an informed decision when choosing where to seek lodging.

### **Conclusion**

The new regulations implementing the above-described changes are tedious and contain a multitude of caveats and intricacies. Business owners should sit down with legal counsel, designers and key personnel to develop a full understanding of the new regulations so that policies and practices can be appropriately modified to ensure ADA compliance. A failure to do so could lead to substantial expense in the form of avoidable lawsuits and civil penalties to the business.

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