



Legal Alert: DOJ's Amended Rule Relating to Titles II and III of the ADA Now in Effect

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On March 15, 2011, the U.S. Department of Justice's (DOJ) amended Final Rule, which institutes substantial revisions and expansions to the regulations implementing the Americans with Disabilities Act (ADA), became effective. The new regulations apply to Title II of the ADA (28 C.F.R. Part 35), which covers programs, activities, and services of public entities (such as state and local government offices, public schools, and state licensing and exam centers) and Title III of the ADA (28 C.F.R. Part 36), which covers public accommodations and commercial facilities (such as non-government offices, restaurants, retail stores, hotels, movie theaters, and sports stadiums).

One change common to both Title II and Title III is the adoption of the 2010 ADA Standards for Accessible Design. A Title II or Title III entity that undertakes new construction or alterations between September 15, 2010, and March 15, 2012, may choose to uniformly comply with either the 1991 ADA Standards for Accessible Design or the 2010 Standards. (Title II entities can also choose to comply with the Uniform Federal Accessibility Standards (UFAS)). However, after March 15, 2012, all new construction or alterations must comply with the heightened 2010 Standards.

Additionally, for elements of a public accommodation that do not comply with the requirements for those elements in the 1991 Standards, the elements must be modified, to the extent readily achievable, uniformly using either the 1991 Standards or the 2010 Standards. After March 15, 2012, elements in a public accommodation that do not comply with the requirements of the 1991 Standards for those elements must be modified using 2010 Standards, to the extent readily achievable.

Furthermore, March 15, 2012, is the date for Title II and Title III public accommodations to bring into compliance with the 2010 Standards' supplemental requirements, to the extent readily achievable, facilities for which there were no technical requirements under the 1991 Standards (such as swimming pools, play areas, marinas, or golf courses). The new regulations include a general "safe harbor" provision under which elements in covered facilities that were built or altered in compliance with the 1991 Standards or the UFAS are not required to be brought into compliance with the 2010 Standards until the elements are subject to a planned alteration after March 15, 2012.

The new regulations state that residential housing programs provided by Title II entities are covered by the ADA and, for the first time, establish

design requirements, which are set forth in the 2010 Standards, for residential dwelling units built by or on behalf of public entities with the intent that the finished units will be sold to individual owners. Additionally, the regulations clarify the requirements for detention and correctional facilities, requiring three percent of newly constructed or altered cells to be accessible.

The new regulations also establish requirements for reservations made by places of lodging covered by Title III, including procedures that will allow individuals with disabilities to make reservations for accessible guest rooms during the same hours and in the same manner as other guests, and requirements that places of lodging identify and describe accessible features of a guest room, hold back the accessible guest rooms for people with disabilities until all other guest rooms of that type have been rented, and ensure that a reserved accessible guest room is removed from all reservations systems so that it is not inadvertently released to someone other than the person who reserved the accessible room.

The regulations also provide that timeshare and condominium properties that operate like hotels are subject to Title III. The regulations limit obligations for units that are not owned or substantially controlled by the public accommodation that operates the place of lodging and state that if the physical features of the guest room interiors are controlled by their individual owners rather than by a third party operator, they are not subject to barrier removal and alterations requirements.

The new regulations also:

- Provide guidance on the sale of tickets for accessible seating and require that a venue operator accommodate an individual with a disability who acquired inaccessible seating on the secondary ticket market only when there is unsold accessible seating for that event;
- Define "service animal" as a dog that has been individually trained to do work or perform tasks for the benefit of an individual with a disability, and specifically exclude dogs that are used purely for emotional support. The regulations also permit the use of trained miniature horses as an alternative to dogs, subject to limitations;
- Distinguish between wheelchairs and "other power-driven mobility devices" used for mobility impairments, such as the Segway® PT. Wheelchairs must be permitted in all areas open to pedestrian use while "other power-driven mobility devices" must be permitted to be used unless the covered entity can demonstrate that such use would fundamentally alter its programs, services, or activities, create a direct threat, or create a safety hazard. The regulations also list factors to consider in making this determination;
- Permit video remote interpreting (VRI) services as a kind of auxiliary aid that may be used to provide effective communication. VRI is an interpreting service that uses video conference technology over dedicated lines or wireless technology offering a high-speed, wide-bandwidth video connection that delivers high-quality video images. The regulations also establish performance standards for VRI and require training for users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI system.

If you have any questions regarding the issues addressed in this Alert,

please contact the authors, Todd Aidman, taidman@fordharrison.com, or Brad Hall, brhall@fordharrison.com, or the Ford & Harrison attorney with whom you usually work.