

CHANGES IN ADA ACCESSIBILITY STANDARDS ARE ON THE WAY

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On July 26, 1990, President George H. W. Bush signed into law the Americans with Disabilities Act (ADA). The ADA provided broad anti-discrimination prohibitions against disabled individuals in several areas, including employment, state and local government services and facilities, public accommodations, and telecommunications.

Title III of the ADA contained proscriptions in the public accommodations area, which refer to establishments that cater to the public, such as hotels, motels and restaurants. To implement them, the Department of Justice (DOJ) issued regulations and adopted architectural standards issued by the Federal Access Board. These guidelines, called the ADA Accessibility Guidelines or ADAAG, took effect in 1991, imposing stricter standards for alterations begun after January 26, 1992 and new construction concluded in 1993 and later.

During the succeeding 20 years, Title III's provisions have been enforced both by the DOJ and by private suits where a prevailing plaintiff not only gets an order making facilities accessible, but also attorneys' fees and costs. The attorneys' fees can be significant and this has created an incentive for several plaintiff's firms to be active in filing suits, often for those who we call "serial plaintiffs."

WHAT'S NEW

On the 20th anniversary of the ADA, Attorney General Eric Holder issued a notice that the DOJ was adopting a new

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Rule, and replacing the 1991 ADAAG with a newer version (2010 Standards). The Rule and the standards are phased into effect in two stages. The DOJ Rule becomes effective six months after its publication in the Federal Register, while the 2010 Standards become effective 18 months after publication of the Rule in the Federal Register. The Rule was published in the Federal Register on September 15, 2010, so the effective dates are March 15, 2011 for the new Rule and March 15, 2012 for the 2010 Standards.

Any new construction in which the last building permit is issued or certified (depending upon the jurisdiction) on or after March 15, 2012, or any alterations commenced on or after March 15, 2012 must comply with the 2010 Standards. New construction or alterations commenced on or after the effective date of the Rule, but before the effective date of the 2010 Standards, can either be done in conformance with the old or the 2010 Standards. Importantly, elements that were in compliance with the 1991 ADAAG as of March 15, 2012 do not have to be brought up to compliance with the 2010 Standards unless they are subsequently altered.

Set out below is a summary of some of the changes to the architectural standards which are likely to impact the hospitality industry.

REACH RANGES

No changes were made for forward reaches, but the side-reach ranges are lowered from a maximum of 54 inches (to the highest operable part) to 48 inches and raised from a minimum of 9 inches (to the lowest operable part) to 15 inches. This will affect a number of elements, including:

- light switches, thermostats and clothes rods in accessible rooms;
- hair dryers and towel racks in bathrooms in accessible rooms; and
- hand dryers and soap- and paper-towel dispensers in accessible restrooms.

All of these items must be placed so that the highest operable part is no higher than 48 inches above the finished floor and no deeper from the face than 10 inches. If the object is more than 10 inches from the counter front for

example, the reach range is less – 44 inches for objects within 10 to 24 inches of the front.

ACCESSIBLE PUBLIC AREA RESTROOMS

The 2010 Standards provide some regulatory relief to employers. For example, men’s restrooms with only one urinal will no longer be required to provide an accessible urinal. Also, the 2010 Standards allow greater flexibility for the placement of the centerline of the wheelchair accessible toilet (between 17 and 19 inches from the wall to the centerline, as opposed to the old 18 inches to the centerline).

But the ability to install a lavatory immediately adjacent to the water closet has been eliminated from the 2010 Standards. To allow for side transfers, the 2010 Standards prohibit lavatories from overlapping the clear floor space at water closets. It is possible to design an accessible restroom that is no larger but without the lavatory adjacent to the water closet, partly because the 2010 Standards allow items like grab bars, dispensers, coat hooks and shelves to overlap the clear floor space necessary to approach the various elements.

SALES-AND-SERVICE COUNTERS

For the first time, the 2010 Standards establish different accessible lengths for counters based on the type of approach provided. If it is a forward approach, the accessible portion of the counter must be at least 30 inches long and no higher than 36 inches with knee and toe space. If it is a parallel approach, the Standard remains at 36 inches wide and no higher than 36 inches.

ACCESSIBLE ROOMS

The new Standards provide that at least one guestroom with mobility features must also provide accessible communication features. The old ADAAG required all such rooms to have communication features. Also, not more than 10% of the guestrooms required to provide communication features may be satisfied by putting those features in guestrooms with mobility accessibility. In addition, the new scoping provisions provide that both guestrooms with

communication features and those with mobility features must be dispersed among the types of rooms.

Importantly, the new Standard no longer allows a portable visual alarm option. Rooms with communication features must be equipped with a fire alarm system which is permanently installed with audible and visual alarms. They must also have visible notification devices that alert room occupants of incoming telephone calls and a door knock or bell.

For new and altered guestrooms that are not designated as accessible guestrooms, the doors must have adequate clear width to allow wheelchair passage. This includes bathroom doors. There are some other changes to accessible rooms.

ROOM RESERVATION POLICIES

Effective March 15, 2012, hotels and motels must modify their procedures to ensure that individuals with disabilities can make reservations for accessible guestrooms during the same hours and in the same manner as other individuals. The reservations service must be able to identify and describe accessible features in the hotels in enough detail to reasonably permit individuals to assess whether a given hotel or guestroom meets their accessibility needs. They must ensure that accessible guestrooms are held for use by individuals with disabilities until all other guestrooms of that type have been reserved, reserve upon request accessible guestrooms or specific types of guestrooms and guarantee that the specific guestroom reserved will be held.

FIRST TIME STANDARDS FOR RECREATIONAL AREAS

The 2010 Standards for the first time set accessibility standards for a number of areas, including pools, spas, saunas, steam rooms, gym equipment and golf courses. Because there were no existing standards, the safe-harbor provision discussed above does not apply to these elements. The new standards require at least two accessible means of entry for larger pools, and at least one accessible entry for smaller pools, as well as accessible entry for spas, saunas and steam rooms. Because many resort facilities do not have an accessible means of entry for existing pools, they will have to consider buying appropriate lifts or otherwise making these elements accessible.

The 2010 Standards require that there be an accessible route in golf courses to connect all accessible elements, as well as the golf cart rental areas, bag-drop areas, tee grounds, putting greens and weather shelters. An exception allows the accessible route requirements to be met within the boundaries of the golf course by providing a golf cart passage, as long as the specified width and curb cuts are met. Most golf courses probably already have most of the accessible paths necessary.

The new Standards require that there be an accessible route to exercise machines and equipment and provide that at least one of each type of exercise machine must meet the clear floor space requirements. Significantly, the Standards do not require changes to exercise machines or equipment in order to make them more accessible to persons with disabilities. Unfortunately, most strength training equipment and machines are considered different types and there are many types of cardiovascular exercise machines. Two machines may share a clear floor space, but providing access and sufficient clear floor space will require much thought and may result in eliminating some machines, particularly in fitness rooms with limited space.

THE BOTTOM LINE

All in all, there are hundreds of changes from the 1991 ADAAG to the 2010 Standards. And the Department of Justice is more aggressively enforcing the Act's provisions. Moreover, there is already a heightened awareness among advocacy groups and the disabled community at large, and many plaintiff's lawyers are learning that Title III lawsuits can generate significant fees.

The time to act is now. Hospitality employers should begin to put together a plan for ensuring that current facilities comply with the 1991 ADAAG, or are brought into compliance before the effective date of the 2010 Standards and that newly constructed or altered facilities are compliant with the 2010 Standards on or after the effective date.

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