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  - Your question will be sent to the presenters; other participants will not be able to see it
- E-mail: hospitality@transcen.org

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Archive

- This webinar is being recorded and can be accessed within a few business days
  - ADA Hospitality Initiative website
    - http://adahospitality.org/content/Archives-Compliance-Webinars
ADA & Lodging

Customers and Employees with Disabilities: Growth Opportunities

Marian Vessels, Director
Nancy Horton, Information Specialist
Mid-Atlantic ADA Center

Today’s agenda

• Title I: ADA Amendments Act and employment issues
• Title III: new regulations affect customer service:
  – Reasonable modifications/policies and practices
    • Reservation systems
    • Other Power-Driven Mobility Devices (OPDMDs)
    • Service animals
  – Standards for accessible facilities
ADAAA

• Simplifies and clarifies the definition of disability
  – Likely to affect employment issues more than customer service issues on a day-to-day basis
  • May need to determine if employee meets definition (for example, following a request for reasonable accommodation)

Definition of Disability

• Physical or mental impairment that substantially limits at least one major life activity
  – Currently or in the past ("history" or "record" of)
  – Factor out positive effects of "mitigating measures;" factor in negative effects
  – Should be "construed in favor of broad coverage" and "should not demand extensive analysis"

“Regarded as”

• An individual is protected from discrimination based on an actual or perceived impairment, regardless of whether that impairment substantially limits a major life activity
  – Unless the impairment is both transitory (lasts six months or less) and minor
Employment: common problems

• Asking disability-related questions or requiring medical exams at the wrong time or under the wrong circumstances
• Failure to maintain confidentiality of medical information
• Failure to explore reasonable accommodations for employees trying to return to work with new “restrictions” following injuries or illnesses
• Failure to consider unpaid time off as a possible reasonable accommodation

Employment: the solution

• **Staff training!**
  – Many disputes arise due to lack of understanding about the ADA and its provisions, *for example* ...
    • How the ADA **differs** from other laws (e.g. the Family and Medical Leave Act)
    • How the ADA is the **same** as other laws (e.g. the Civil Rights Act) when it comes to workplace harassment

REASONABLE MODIFICATIONS

Policies, Practices, Procedures
Reasonable modifications

- Facilitate equal opportunities
- Not required to “fundamentally alter” the nature of goods or services

Reservation practices: 1

1. Individuals with disabilities must be able to make reservations for accessible rooms in the same ways and during the same times as others
   - Telephone
   - In person
   - Third party (reservation service, travel agency, etc.)

Reservation practices: 2

2. Hotels must identify and describe accessible features of the hotel and the guest rooms in enough detail that an individual with a disability can independently determine whether the facility will meet his/her needs
Reservation practices: 3

3. Hold back accessible guest rooms until all other rooms of that type have been rented

Reservation practices: 4

4. Reserve accessible guest rooms and remove them from the reservation system

Reservation practices: 5

5. Guarantee and hold the specific rooms reserved by individuals with disabilities, regardless of whether specific rooms are held for others
Third party reservation services

- Hotels need to make accessible rooms available to at least some of the third party services they use, and must provide to third party services information about the hotels’ accessible features
- If the hotel makes accessible rooms and information available, but the third party fails to provide the rooms or information to customers appropriately, the hotel will not be held responsible

OPDMD

- Other power-driven mobility device
  - Powered by batteries, fuel, or other engines (not a traditional powered wheelchair or scooter)
  - May or may not be designed primarily for individuals with mobility disabilities, but is used by them for personal locomotion
    - EXAMPLES: Golf cars, electronic personal assistance mobility devices (EPAMDs), such as the Segway® PT

OPDMDs: when and where?

- Consider
  - Type, size, weight, dimensions, and speed of device
  - Facility’s volume of pedestrian traffic (may vary at different times of day, week, month, or year)
  - Facility’s design and characteristics (e.g., indoor vs. outdoor settings, size, availability of storage for the device, if needed)
  - Legitimate safety requirements
  - Potential for substantial risk of serious harm to the immediate environment or natural or cultural resources
What can you ask OPDMD users?

• May NOT ask the nature or extent of disability, but may ask for “credible assurance” that device is needed because of disability
  — State-issued disability parking permit or other state-issued proof of disability
  — “Verbal representation, not contradicted by observable fact”

Service animal defined

• Any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability

Miniature horses

• Species other than dogs, wild or domestic, trained or untrained, are not service animals under this part of the ADA, but ...
• Reasonable policy modifications must be made to allow an individual with a disability to use a miniature horse that has been individually trained to perform work or tasks related to the individual’s disability
Dogs or miniature horses: What’s the difference?

- Service dogs must be allowed in virtually all areas where members of the public are allowed to go.
- Miniature horses are subject to a few additional considerations ...

Miniature horses: When and where?

- Consider:
  - The type, size, and weight of the miniature horse and whether the facility can accommodate these features.
  - Legitimate safety requirements that are necessary for safe operation.

What do service animals do?

- Service dogs or miniature horses must be trained to do tasks or work directly related to a person’s disability, for example ...
Examples of animals’ work

• Providing physical support and help with balance and stability for people with mobility disabilities
• Guiding individuals who are blind or have low vision
• Providing non-violent protection or rescue work
• Pulling wheelchairs

More examples of animals’ work

• Retrieving items
• Alerting individuals who are deaf or hard of hearing to sounds
• Helping people with psychiatric or neurological disabilities by preventing or interrupting impulsive or destructive behaviors
• Alerting individuals to oncoming seizures or assisting during a seizure

Active animals

• Service dogs or miniature horses must be trained to perform specific actions, tasks, or work
  – Many animals, simply by being present, provide comfort, companionship, emotional support, or other benefits, but they are not trained to do anything specific – they are not service animals under the ADA
Example:

Service dog
• Marge has a psychiatric disability; her dog Bumper can tell when Marge’s anxiety level rises, and Bumper is trained to respond by moving himself in front of Marge and nudging her away from her current location

Pet dog
• Aaron has a psychiatric disability, too; his dog Floppy is good-natured and sometimes he can even tell that Aaron is becoming anxious, but Floppy isn’t trained to do anything to help Aaron

What can you ask?

• Two questions can be asked when the answers are not obvious:
  – Is this animal needed because of a disability?
  – What work or tasks has the animal been trained to do?

• Proof or documentation may not be required for either:
  – The individual’s disability
  – The animal’s training

What can you expect?

• A service animal must be housebroken and under control
• A service animal must have a harness, leash, or tether unless ...
  – The individual, because of disability, is unable to use a leash, or
  – A leash would interfere with the animal’s work
Identification

- Many service animals wear harnesses, vests, or other items that identify them as working animals, but this kind of identification is **not required**
  - Remember, certificates, documents, or proof of the service animal's status or training can not be required

Care and supervision

- A business is not responsible for care or supervision of a service animal or miniature horse

Surcharges

- Charges or fees may not be imposed on people with disabilities to cover costs of compliance
  - For example, individuals with disabilities may not be charged fees if they are accompanied by service animals, even if guests with pets are charged fees
    - Guests can be charged for any actual damage caused by their service animals, if guests without disabilities are charged for damage caused by themselves or their pets
What about state or local laws?

- Businesses must comply with all applicable laws
  - If a provision of state/local law is better for people with disabilities, it will override an ADA provision
  - If an ADA provision is better for people with disabilities, it will override a state/local law provision

Examples of other requests to consider

- Beds with open frame, or at a height suitable for transfer from wheelchair
- Refrigeration for medications
- Refrain from using scented products (e.g., air fresheners) in individual’s room during stay

Last but not least....

- Emergency planning and evacuation
  - Consider the needs of guests and employees with disabilities!
Questions?

• Send chat to “Mid-Atlantic ADA Center”
• E-mail hospitality@transcen.org

2010 ADA STANDARDS

Buildings and Facilities

New facility standards

• New Construction
• Alterations
  – Maximum extent feasible
• Barrier Removal
  – Safe Harbor
  • Only applies to existing spaces/elements that comply with 1991 standards
  • New alterations standards apply if such existing spaces/elements are altered
Barrier removal

- Remove structural barriers when “readily achievable”
  - “… easily accomplishable and able to be carried out without much difficulty or expense”
  - Consider:
    - Nature and cost
    - Overall financial resources and operational issues (including those of parent organization, if applicable)
    - Legitimate safety requirements

- On-going obligation

New in the 2010 Standards

- Kitchens and kitchenettes
- Clothes washers and dryers
- Vending machines, change machines
- Swimming pools
- Saunas and steam rooms
- Exercise machines
- Others …

Revised in the 2010 Standards

- Parking
- Toilet rooms
- Signage
- Reach range
- Others …
Emergency alarms

- Where emergency alarm systems are provided, both audible and visual signals must be permanently installed
  - New construction
  - When existing alarm system upgraded or replaced, or new system installed

Table 224.2 Guest Rooms with Mobility Features

<table>
<thead>
<tr>
<th>Total Number of Guest Rooms Available in Facility</th>
<th>Number of Access. Rooms without Roll-in Showers</th>
<th>Number of Access. Rooms with Roll-in Showers</th>
<th>Total Number Required Access. Rooms</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 25</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>26 – 50</td>
<td>2</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>51 – 75</td>
<td>3</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>76 – 100</td>
<td>4</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>101 – 150</td>
<td>5</td>
<td>2</td>
<td>7</td>
</tr>
<tr>
<td>151 – 200</td>
<td>6</td>
<td>2</td>
<td>8</td>
</tr>
<tr>
<td>201 – 250</td>
<td>7</td>
<td>3</td>
<td>10</td>
</tr>
<tr>
<td>251 – 300</td>
<td>8</td>
<td>4</td>
<td>12</td>
</tr>
<tr>
<td>301 – 350</td>
<td>9</td>
<td>4</td>
<td>13</td>
</tr>
<tr>
<td>351 – 1000</td>
<td>2 percent of total</td>
<td>1 percent of total</td>
<td>3 percent of total</td>
</tr>
<tr>
<td>1001 and over</td>
<td>20, plus 1 for each 100, or fraction thereof, over 1000</td>
<td>16, plus 1 for each 100, or fraction thereof, over 1000</td>
<td>16, plus 1 for each 100, or fraction thereof, over 1000</td>
</tr>
</tbody>
</table>

Accessible Guest Rooms

How many?

How many?
Table 224.4 Guest Rooms with Communication Features

<table>
<thead>
<tr>
<th>Total Number of Guest Rooms Provided in Facility</th>
<th>Minimum Number of Required Guest Rooms with Communication Features</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 25</td>
<td>2</td>
</tr>
<tr>
<td>26 – 50</td>
<td>4</td>
</tr>
<tr>
<td>51 – 75</td>
<td>7</td>
</tr>
<tr>
<td>76 – 100</td>
<td>9</td>
</tr>
<tr>
<td>101 – 150</td>
<td>12</td>
</tr>
<tr>
<td>151 – 200</td>
<td>14</td>
</tr>
<tr>
<td>201 – 300</td>
<td>17</td>
</tr>
<tr>
<td>301 – 400</td>
<td>20</td>
</tr>
<tr>
<td>401 – 500</td>
<td>22</td>
</tr>
<tr>
<td>501 – 1000</td>
<td>5 percent of total</td>
</tr>
<tr>
<td>1001 and over</td>
<td>50, plus 3 for each 500 over 1000</td>
</tr>
</tbody>
</table>

Accessible features: which rooms?

- At least one of the mobility-accessible guest rooms shall also be equipped for communication accessibility, *but*
- Not more than 10% of mobility-accessible guest rooms shall be used to satisfy the requirement for communication-accessible rooms

New features, new designs
Cool pools, hot news

- Swimming pools are subject to the same basic requirements as other spaces and elements
  - New construction
  - Alterations (maximum extent feasible)
  - Readily achievable barrier removal

Swimming pools, wading pools, and spas

<table>
<thead>
<tr>
<th>MEANS OF POOL ACCESS</th>
<th>POOL TYPE</th>
<th>SLOPED ENTRY</th>
<th>LIFT</th>
<th>TRANSFER WALL</th>
<th>TRANSFER SYSTEM</th>
<th>STAIRS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small swimming (under 300 linear feet of pool wall)</td>
<td>only 1 means required</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Large swimming (300 or more linear feet of pool wall)</td>
<td>2 means required</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>User access limited to one area (wave action, leisure river, etc.)</td>
<td></td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wading</td>
<td></td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Spa</td>
<td></td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Primary means must be sloped entry or lift; secondary means can be any permitted type.*

Pool access
“Fixed” vs. portable pool lifts

- Standards apply to elements that are built-in or “fixed” (attached to a building or facility); lifts installed at existing pools must be fixed where readily achievable
- Lifts may be detached/stored when the pool is closed to the public (for example, pool is closed for the winter)

Safety concerns

- “Pool lifts have been commercially available for over 20 years. While the Board recognizes that inappropriate use of pool lifts may result in accident or injury, the Board is not aware of any incidents of injury or accidents involving pool lifts. The Board is also not aware of any evidence that shows that pool lifts are any less safe than other components of a pool facility, such as other means of pool entry, when they are used inappropriately.”
  - U.S. Access Board, 2002

RESOURCES

Agencies, Publications, and More
Tax incentives

- Tax credit for small businesses (30 or fewer employees OR $1 million or less revenue)
  - Up to $5,000 to offset costs of removing structural barriers in existing buildings, producing accessible materials (large print, Braille, etc.), and other measures
- Tax deduction for businesses of any size
  - Up to $15,000 for removing barriers in buildings or vehicles

U.S. Department of Justice

1-800-514-0301 Voice
1-800-514-0383 TTY
www.ada.gov

U.S. Access Board

1-800-872-2253 Voice
1-800-993-2822 TTY
http://access-board.gov
ADA Checklist for Readily Achievable Barrier Removal

• Existing facilities  — adachecklist.org

CHLA

• California Hotel and Lodging Association
  — We Welcome Service Animals
    • Materials and staff training videos (English and Spanish)

AHLA

• American Hotel and Lodging Association Educational Institute
  — http://www.ahlei.org/
The ADA in the Hospitality Setting

- Webinar archive and Briefing on legal issues and cases
  - http://ada-audio.org/Archives/ADALegal/index.php?type=transcript&id=2013-05-08&app=2, or visit ...

ADA National Network

1-800-949-4232 Voice/TTY
www.adahospitality.org