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**U.S. Department of Justice**  
**Civil Rights Division**  
*Office on the Americans with Disabilities Act*

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# The Americans with Disabilities Act

## Questions and Answers

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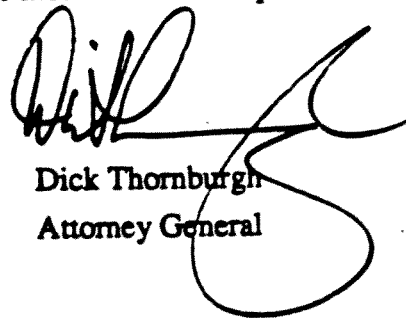
## Introduction

### A Note from the Attorney General

As a parent, as a former governor, and as Attorney General, I have personally witnessed the many faces of discrimination confronting persons with disabilities. Barriers to employment, transportation, public accommodations, public services, and telecommunications have imposed staggering economic and social costs on American society and have undermined our well-intentioned efforts to educate, rehabilitate, and employ individuals with disabilities. By breaking down these barriers, the Americans with Disabilities Act will enable society to benefit from the skills and talents of individuals with disabilities, will allow us all to gain from their increased purchasing power and ability to use it, and will lead to fuller, more productive lives for all Americans.

The Americans with Disabilities Act gives civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, sex, national origin, and religion. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, State and local government services, and telecommunications.

Fair, swift, and effective enforcement of this landmark civil rights legislation is a high priority of the Department of Justice. This booklet is designed to provide answers to some of the most often asked questions about the new legislation.



Dick Thornburgh  
Attorney General

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\* Questions and answers on employment were developed in consultation with the Equal Employment Opportunity Commission.

## Employment

- Q. What employers are covered by the ADA, and when is the coverage effective?**
- A.** The employment provisions apply to private employers, State and local governments, employment agencies, and labor unions. Employers with 25 or more employees will be covered starting July 26, 1992, when the employment provisions go into effect. Employers with 15 or more employees will be covered two years later, beginning July 26, 1994.
- Q. What practices and activities are covered by the employment nondiscrimination requirements?**
- A.** The ADA prohibits discrimination in all employment practices, including job application procedures, hiring, firing, advancement, compensation, training, and other terms, conditions, and privileges of employment. It applies to recruitment, advertising, tenure, layoff, leave, fringe benefits, and all other employment-related activities.
- Q. Who is protected against employment discrimination?**
- A.** Employment discrimination is prohibited against "qualified individuals with disabilities." Persons discriminated against because they have a known association or relationship with a disabled individual also are protected. The ADA defines an "individual with a disability" as a person who has a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or is regarded as having such an impairment.

The first part of the definition makes clear that the ADA applies to persons who have substantial, as distinct from minor, impairments, and that these must be impairments that limit major life activities such as seeing, hearing, speaking, walking, breathing, performing manual tasks, learning, caring for oneself, and working. An

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## **Employment**

individual with epilepsy, paralysis, a substantial hearing or visual impairment, mental retardation, or a learning disability would be covered, but an individual with a minor, nonchronic condition of short duration, such as a sprain, infection, or broken limb, generally would not be covered.

The second part of the definition would include, for example, a person with a history of cancer that is currently in remission or a person with a history of mental illness.

The third part of the definition protects individuals who are regarded and treated as though they have a substantially limiting disability, even though they may not have such an impairment. For example, this provision would protect a severely disfigured qualified individual from being denied employment because an employer feared the "negative reactions" of others.

- Q. Who is a "qualified individual with a disability"?**
- A.** A qualified individual with a disability is a person who meets legitimate skill, experience, education, or other requirements of an employment position that he or she holds or seeks, and who can perform the "essential functions" of the position with or without reasonable accommodation. Requiring the ability to perform "essential" functions assures that an individual will not be considered unqualified simply because of inability to perform marginal or incidental job functions. If the individual is qualified to perform essential job functions except for limitations caused by a disability, the employer must consider whether the individual could perform these functions with a reasonable accommodation. If a written job description has been prepared in advance of advertising or interviewing applicants for a job, this will be considered as evidence, although not necessarily conclusive evidence, of the essential functions of the job.

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- Q. Does an employer have to give preference to a qualified applicant with a disability over other applicants?**
- A. No.** An employer is free to select the most qualified applicant available and to make decisions based on reasons unrelated to the existence or consequence of a disability. For example, if two persons apply for a job opening as a typist, one a person with a disability who accurately types 50 words per minute, the other a person without a disability who accurately types 75 words per minute, the employer may hire the applicant with the higher typing speed, if typing speed is needed for successful performance of the job.
- Q. What is "reasonable accommodation"?**
- A.** Reasonable accommodation is any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to perform essential job functions. Reasonable accommodation also includes adjustments to assure that a qualified individual with a disability has the same rights and privileges in employment as nondisabled employees.
- Q. What kinds of actions are required to reasonably accommodate applicants and employees?**
- A.** Examples of reasonable accommodation include making existing facilities used by employees readily accessible to and usable by an individual with a disability; restructuring a job; modifying work schedules; acquiring or modifying equipment; providing qualified readers or interpreters; or appropriately modifying examinations, training, or other programs. Reasonable accommodation also may include reassigning a current employee to a vacant position for which the individual is qualified, if the person becomes disabled and is unable to do the original job. However, there is no obligation to find a position for an applicant who is not qualified for the position sought. Employers are not required to lower quality or quantity standards in

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## Employment

order to make an accommodation, nor are they obligated to provide personal use items such as glasses or hearing aids.

The decision as to the appropriate accommodation must be based on the particular facts of each case. In selecting the particular type of reasonable accommodation to provide, the principal test is that of effectiveness, i.e., whether the accommodation will enable the person with a disability to do the job in question.

- Q. Must employers be familiar with the many diverse types of disabilities to know whether or how to make a reasonable accommodation?**
- A. No.** An employer is only required to accommodate a "known" disability of a qualified applicant or employee. The requirement generally will be triggered by a request from an individual with a disability, who frequently can suggest an appropriate accommodation. Accommodations must be made on an individual basis, because the nature and extent of a disabling condition and the requirements of the job will vary in each case. If the individual does not request an accommodation, the employer is not obligated to provide one. If a disabled person requests, but cannot suggest, an appropriate accommodation, the employer and the individual should work together to identify one. There are also many public and private resources that can provide assistance without cost.
- Q. What are the limitations on the obligation to make a reasonable accommodation?**
- A.** The disabled individual requiring the accommodation must be otherwise qualified, and the disability must be known to the employer. In addition, an employer is not required to make an accommodation if it would impose an "undue hardship" on the operation of the employer's business. "Undue hardship" is defined as "an action requiring significant difficulty or expense" when considered in light of a number of factors. These factors include the nature and cost of the accommoda-

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tion in relation to the size, resources, nature, and structure of the employer's operation. Where the facility making the accommodation is part of a larger entity, the structure and overall resources of the larger organization would be considered, as well as the financial and administrative relationship of the facility to the larger organization. In general, a larger employer would be expected to make accommodations requiring greater effort or expense than would be required of a smaller employer.

- Q. Must an employer modify existing facilities to make them accessible?**
- A.** An employer may be required to modify facilities to enable an individual to perform essential job functions and to have equal opportunity to participate in other employment-related activities. For example, if an employee lounge is located in a place inaccessible to a person using a wheelchair, the lounge might be modified or relocated, or comparable facilities might be provided in a location that would enable the individual to take a break with co-workers.
- Q. May an employer inquire as to whether a prospective employee is disabled?**
- A.** An employer may not make a pre-employment inquiry on an application form or in an interview as to whether, or to what extent, an individual is disabled. The employer may ask a job applicant whether he or she can perform particular job functions. If the applicant has a disability known to the employer, the employer may ask how he or she can perform job functions that the employer considers difficult or impossible to perform because of the disability, and whether an accommodation would be needed. A job offer may be conditioned on the results of a medical examination, provided that the examination is required for all entering employees in the same job category regardless of disability, and that information obtained is handled according to confidentiality requirements specified in the Act. After an employee enters on duty, all medical examinations and inquiries must be



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job related and necessary for the conduct of the employer's business. These provisions of the law are intended to prevent the employer from basing hiring and employment decisions on unfounded assumptions about the effects of a disability.

**Q. Does the ADA take safety issues into account?**

**A. Yes.** The ADA expressly permits employers to establish qualification standards that will exclude individuals who pose a direct threat -- i.e., a significant risk -- to the health and safety of others, if that risk cannot be lowered to an acceptable level by reasonable accommodation. However, an employer may not simply assume that a threat exists; the employer must establish through objective, medically supportable methods that there is genuine risk that substantial harm could occur in the workplace. By requiring employers to make individualized judgments based on reliable medical evidence rather than on generalizations, ignorance, fear, patronizing attitudes, or stereotypes, the ADA recognizes the need to balance the interests of people with disabilities against the legitimate interests of employers in maintaining a safe workplace.

**Q. Can an employer refuse to hire an applicant or fire a current employee who is illegally using drugs?**

**A. Yes.** Individuals who currently engage in the illegal use of drugs are specifically excluded from the definition of a "qualified individual with a disability" protected by the ADA when an action is taken on the basis of their drug use.

**Q. Is testing for illegal drugs permissible under the ADA?**

**A. Yes.** A test for illegal drugs is not considered a medical examination under the ADA; therefore, employers may conduct such testing of applicants or employees and make employment decisions based on the results. The ADA does not encourage, prohibit, or authorize drug tests.

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## Employment

**Q. Are people with AIDS covered by the ADA?**

**A. Yes.** The legislative history indicates that Congress intended the ADA to protect persons with AIDS and HIV disease from discrimination.

**Q. How does the ADA recognize public health concerns?**

**A. No provision in the ADA is intended to supplant the role of public health authorities in protecting the community from legitimate health threats. The ADA recognizes the need to strike a balance between the right of a disabled person to be free from discrimination based on unfounded fear and the right of the public to be protected.**

**Q. What is discrimination based on "relationship or association"?**

**A. The ADA prohibits discrimination based on relationship or association in order to protect individuals from actions based on unfounded assumptions that their relationship to a person with a disability would affect their job performance, and from actions caused by bias or misinformation concerning certain disabilities. For example, this provision would protect a person with a disabled spouse from being denied employment because of an employer's unfounded assumption that the applicant would use excessive leave to care for the spouse. It also would protect an individual who does volunteer work for people with AIDS from a discriminatory employment action motivated by that relationship or association.**

**Q. Will the ADA increase litigation burdens on employers?**

**A. Some litigation is inevitable. However, employers who use the period prior to the effective date of employment coverage to adjust their policies and practices to conform to ADA requirements will be much less likely to have serious litigation concerns. In drafting the ADA, Congress relied heavily on the language of the Rehabilitation Act of 1973 and its implementing regulations. There is already an extensive body of law interpreting the requirements of that Act to**

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which employers can turn for guidance on their ADA obligations. The Equal Employment Opportunity Commission will issue specific regulatory guidance one year before the ADA's employment provisions take effect, publish a technical assistance manual with guidance on how to comply, and provide other assistance to help employers meet ADA requirements. Equal employment opportunity for people with disabilities will be achieved most quickly and effectively through widespread voluntary compliance with the law, rather than through reliance on litigation to enforce compliance.

- Q. How will the employment provisions be enforced?**
- A.** The employment provisions of the ADA will be enforced under the same procedures now applicable to race, sex, national origin, and religious discrimination under title VII of the Civil Rights Act of 1964. Complaints regarding actions that occur after July 26, 1992, may be filed with the Equal Employment Opportunity Commission or designated State human rights agencies. Available remedies will include hiring, reinstatement, back pay, and court orders to stop discrimination.

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## **Public Accommodations**

### **Public Accommodations**

**Q. What are public accommodations?**

**A. Public accommodations are private entities that affect commerce. The ADA public accommodations requirements extend, therefore, to a wide range of entities, such as restaurants, hotels, theaters, doctors' offices, pharmacies, retail stores, museums, libraries, parks, private schools, and day care centers. Private clubs and religious organizations are exempt from the ADA's requirements for public accommodations.**

**Q. Will the ADA have any effect on the eligibility criteria used by public accommodations to determine who may receive services?**

**A. Yes. If a criterion screens out or tends to screen out individuals with disabilities, it may only be used if necessary for the provision of the services. For instance, it would be a violation for a retail store to have a rule excluding all deaf persons from entering the premises, or for a movie theater to exclude all individuals with cerebral palsy. More subtle forms of discrimination are also prohibited. For example, requiring presentation of a driver's license as the sole acceptable means of identification for purposes of paying by check could constitute discrimination against individuals with vision impairments. This would be true if such individuals are ineligible to receive licenses and the use of an alternative means of identification is feasible.**

**Q. Does the ADA allow public accommodations to take safety factors into consideration in providing services to individuals with disabilities?**

**A. The ADA expressly provides that a public accommodation may exclude an individual, if that individual poses a direct threat to the health or safety of others that cannot be mitigated by appropriate modifications in the public accommodation's policies or procedures, or by the provision of auxiliary aids. A public accommodation will be permitted to establish objective safety criteria for the operation of its**

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business; however, any safety standard must be based on objective requirements rather than stereotypes or generalizations about the ability of persons with disabilities to participate in an activity.

- Q. Are there any limits on the kinds of modifications in policies, practices, and procedures required by the ADA?**
- A. Yes.** The ADA does not require modifications that would fundamentally alter the nature of the services provided by the public accommodation. For example, it would not be discriminatory for a physician specialist who treats only burn patients to refer a deaf individual to another physician for treatment of a broken limb or respiratory ailment. To require a physician to accept patients outside of his or her specialty would fundamentally alter the nature of the medical practice.
- Q. What kinds of auxiliary aids and services are required by the ADA to ensure effective communication with individuals with hearing or vision impairments?**
- A.** Appropriate auxiliary aids and services may include services and devices such as qualified interpreters, assistive listening devices, notetakers, and written materials for individuals with hearing impairments; and qualified readers, taped texts, and Brailled or large print materials for individuals with vision impairments.
- Q. Are there any limitations on the ADA's auxiliary aids requirements?**
- A. Yes.** The ADA does not require the provision of any auxiliary aid that would result in an undue burden or in a fundamental alteration in the nature of the goods or services provided by a public accommodation. However, the public accommodation is not relieved from the duty to furnish an alternative auxiliary aid, if available, that would not result in a fundamental alteration or undue burden. Both of these limitations are derived from existing regulations and caselaw under section 504 and are to be determined on a case-by-case basis.

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- Q. Will restaurants be required to have Brailled menus?**
- A. No, not if waiters or other employees are made available to read the menu to a blind customer.**
- Q. Will a clothing store be required to have Brailled price tags?**
- A. No. Sales personnel could provide price information orally upon request.**
- Q. Will a bookstore be required to maintain a sign language interpreter on its staff in order to communicate with deaf customers?**
- A. No, not if employees communicate by pen and notepad when necessary.**
- Q. Are there any limitations on the ADA's barrier removal requirements for existing facilities?**
- A. Yes. Barrier removal need only be accomplished when it is "readily achievable" to do so.**
- Q. What does the term "readily achievable" mean?**
- A. It means "easily accomplishable and able to be carried out without much difficulty or expense."**
- Q. What are examples of the types of modifications that would be readily achievable in most cases?**
- A. Examples include the simple ramping of a few steps, the installation of grab bars where only routine reinforcement of the wall is required, the lowering of telephones, and similar modest adjustments.**
- Q. Will businesses need to rearrange furniture and display racks?**
- A. Possibly. For example, restaurants may need to rearrange tables and**

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## **Public Accommodations**

department stores may need to adjust their layout of racks and shelves in order to permit wheelchair access.

**Q. Will businesses need to install elevators?**

**A. Businesses are not required to retrofit their facilities to install elevators unless such installation is readily achievable, which is unlikely in most cases.**

**Q. When barrier removal is not readily achievable, what kinds of alternative steps are required by the ADA?**

**A. Alternatives may include such measures as in-store assistance for removing articles from high shelves, home delivery of groceries, or coming to the door to receive or return dry cleaning.**

**Q. Must alternative steps be taken without regard to cost?**

**A. No, only readily achievable alternative steps must be undertaken.**

**Q. How is "readily achievable" determined in a multisite business?**

**A. In determining whether an action to make a public accommodation accessible would be "readily achievable," the overall size of the parent corporation or entity is only one factor to be considered. The ADA also permits consideration of the financial resources of the particular facility or facilities involved and the administrative or fiscal relationship of the facility or facilities to the parent entity.**

**Q. Who has responsibility for removing barriers in a shopping mall, the landlord who owns the mall or the tenant who leases the store?**

**A. Legal responsibility for removing barriers depends upon who has legal authority to make alterations, which is generally determined by the contractual agreement between the landlord and tenant. In most cases the landlord will have full control over common areas.**

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## **Public Accommodations**

- Q. What does the ADA require in new construction?**
- A. The ADA requires that all new construction of places of public accommodation, as well as of "commercial facilities" such as office buildings, be accessible. Elevators are generally not required in facilities under three stories or with fewer than 3,000 square feet per floor, unless the building is a shopping center, mall, or professional office of a health care provider.**
- Q. Is it expensive to make all newly constructed public accommodations and commercial facilities accessible?**
- A. The cost of incorporating accessibility features in new construction is less than one percent of construction costs. This is a small price in relation to the economic benefits to be derived from full accessibility in the future, such as increased employment and consumer spending and decreased welfare dependency.**
- Q. Must every feature of a new facility be accessible?**
- A. No, only a reasonable number of elements such as parking spaces and bathrooms must be made accessible in order for a facility to be "readily accessible." Moreover, mechanical areas, such as catwalks and fan rooms, to which access is required only for purposes of maintenance and repairs, might not need to be physically accessible if the essential functions of the work performed in those areas require physical mobility.**
- Q. What are the ADA requirements for altering facilities?**
- A. All alterations that could affect the usability of a facility must be made in an accessible manner to the maximum extent feasible. For example, if during renovations a doorway is being relocated, the new doorway must be wide enough to meet the new construction standard for accessibility. When alterations are made to a primary function area, such as the lobby of a bank or the dining area of a cafeteria, an accessible**



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## **Public Accommodations**

path of travel to the altered area must also be provided. The bathrooms, telephones, and drinking fountains serving that area must also be made accessible. These additional accessibility alterations are only required to the extent that the added accessibility costs are not disproportionate to the overall cost of the alterations. Elevators are generally not required in facilities under three stories or with fewer than 3000 square feet per floor, unless the building is a shopping center, mall, or professional office of a health care provider.

- Q. Does the ADA permit a disabled person to sue a business when that individual believes that discrimination is about to occur, or must the individual wait for the discrimination to occur?**
- A. The ADA public accommodations provisions permit an individual to allege discrimination based on a disabled person's reasonable belief that discrimination is about to occur. This provision allows a person who uses a wheelchair to challenge the planned construction of a new place of public accommodation, such as a shopping mall, that would not be accessible to wheelchair users. The resolution of such challenges prior to the construction of an inaccessible facility would enable any necessary remedial measures to be incorporated in the building at the planning stage, when such changes would be relatively inexpensive.**
- Q. How does the ADA affect existing State and local building codes?**
- A. Existing codes remain in effect. The ADA allows the Attorney General to certify that a State law, local building code, or similar ordinance that establishes accessibility requirements meets or exceeds the minimum accessibility requirements for public accommodations and commercial facilities. Any State or local government may apply for certification of its code or ordinance. The Attorney General can certify a code or ordinance only after prior notice and a public hearing at which interested people, including individuals with disabilities, are provided an opportunity to testify against the certification.**

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## **Public Accommodations**

- Q. What is the effect of certification of a State or local code or ordinance?**
- A. Certification can be advantageous if an entity has constructed or altered a facility according to a certified code or ordinance. If someone later brings an enforcement proceeding against the entity, the certification is considered "rebuttable evidence" that the State law or local ordinance meets or exceeds the minimum requirements of the ADA. In other words, the entity can argue that the construction or alteration met the requirements of the ADA because it was done in compliance with the State or local code that had been certified.**
- Q. When are the public accommodations provisions effective?**
- A. In general, they become effective on January 26, 1992.**
- Q. How will the public accommodations provisions be enforced?**
- A. Private individuals may bring lawsuits in which they can obtain court orders to stop discrimination. Individuals may also file complaints with the Attorney General, who is authorized to bring lawsuits in cases of general public importance or where a "pattern or practice" of discrimination is alleged. In these cases, the Attorney General may seek monetary damages and civil penalties. Civil penalties may not exceed \$50,000 for a first violation or \$100,000 for any subsequent violation.**

## **Miscellaneous**

**Q. Is the Federal government covered by the ADA?**

**A. The ADA does not cover the executive branch of the Federal Government. The executive branch continues to be covered by title V of the Rehabilitation Act of 1973, which prohibits discrimination in services and employment on the basis of handicap and which is a model for the requirements of the ADA. The ADA, however, does cover Congress and other entities in the legislative branch of the Federal Government.**

**Q. What requirements, other than those mandating nondiscrimination in employment, does the ADA place on State and local governments?**

**A. All government facilities, services, and communications must be accessible consistent with the requirements of section 504 of the Rehabilitation Act of 1973. Individuals may file complaints with Federal agencies to be designated by the Attorney General or bring private lawsuits.**

**Q. Does the ADA cover private apartments and private homes?**

**A. The ADA generally does not cover private residential facilities. These facilities are addressed in the Fair Housing Amendments Act of 1988, which prohibits discrimination on the basis of disability in selling or renting housing. If a building contains both residential and nonresidential portions, only the nonresidential portions are covered by the ADA. For example, in a large hotel that has a residential apartment wing, the residential wing would be covered by the Fair Housing Act and the other rooms would be covered by the ADA.**

**Q. Does the ADA cover air transportation?**

**A. Discrimination by air carriers is not covered by the ADA but rather by the Air Carrier Access Act (49 U.S.C. 1374 (c)).**

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## Miscellaneous

- Q. What are the ADA's requirements for public transit buses?**
- A.** The ADA requires the Department of Transportation to issue regulations mandating accessible public transit vehicles and facilities. The regulations must include a requirement that all new fixed-route, public transit buses be accessible and that supplementary paratransit services be provided for those individuals with disabilities who cannot use fixed-route bus service.
- Q. How will the ADA make telecommunications accessible?**
- A.** The ADA requires the establishment of telephone relay services for individuals who use telecommunications devices for the deaf (TDD's) or similar devices. The Federal Communications Commission will issue regulations specifying standards for the operation of these services.
- Q. Are businesses entitled to any tax benefit to help pay for the cost of compliance?**
- A.** As amended in 1990, the Internal Revenue Code allows a deduction of up to \$15,000 per year for expenses associated with the removal of qualified architectural and transportation barriers.

The 1990 amendment also permits eligible small businesses to receive a tax credit for certain costs of compliance with the ADA. An eligible small business is one whose gross receipts do not exceed \$1,000,000 or whose workforce does not consist of more than 30 full-time workers. Qualifying businesses may claim a credit of up to 50 percent of eligible access expenditures that exceed \$250 but do not exceed \$10,250. Examples of eligible access expenditures include the necessary and reasonable costs of removing architectural, physical, communications, and transportation barriers; providing readers, interpreters, and other auxiliary aids; and acquiring or modifying equipment or devices.

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## Resources

This document is available in the following alternate formats:

- Braille
- Large Print
- Audiotape
- Electronic file on computer disk and electronic bulletin board (202) 514-6193

For additional information on the ADA contact:



Office on the Americans with Disabilities Act  
Civil Rights Division  
U.S. Department of Justice  
P.O. Box 66118  
Washington, D.C. 20035-6118



(202) 514-0301 (Voice)  
(202) 514-0381 (TDD)  
(202) 514-0383 (TDD)

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## Resources

For more specific information about ADA requirements affecting employment contact:

**Equal Employment Opportunity Commission**  
1801 L Street NW  
Washington, DC 20507  
800-USA-EEOC (Voice)  
800-800-3302 (TDD)

For more specific information about ADA requirements affecting transportation contact:

**Department of Transportation**  
400 Seventh Street SW  
Washington, DC 20590  
(202) 366-9305  
(TDD) (202) 755-7687

For more specific information about requirements for accessible design in new construction and alterations contact:

**Architectural and Transportation Barriers  
Compliance Board**  
1111 18th Street NW  
Suite 501  
Washington, DC 20036  
800-USA-ABLE  
800-USA-ABLE (TDD)

For more specific information about ADA requirements affecting telecommunications contact:

**Federal Communications Commission**  
1919 M Street NW  
Washington, DC 20554  
(202) 634-1837  
(202) 632-1836 (TDD)