

Title III of the ADA: Provision of Auxiliary Aids

Title III of the Americans with Disabilities Act (ADA) gives rights of equal access to places of public accommodation. For deaf and hard of hearing people, Title III requires businesses and agencies to remove many frustrating barriers to communication.

Title III covers a wide range of places of public accommodation, including retail stores and the wide range of service businesses such as hotels, theaters, restaurants, doctors' and lawyers' offices, optometrists, dentists, banks, insurance agencies, museums, parks, libraries, day care centers, recreational programs, social service agencies and private schools. It covers both profit and non-profit organizations. Unlike the employment section, which only applies to employers with 15 or more employees, this part of the ADA applies to all such offices and businesses, regardless of size.

Places of public accommodation must give persons with disabilities equal opportunity to participate in and to benefit from their services. They cannot provide unequal or separate benefits to persons with disabilities. They must modify their policies and practices when necessary to provide equal access to services and facilities.

In order to provide equal access, all public accommodations are required to provide auxiliary aids and services to ensure effective communication. The ADA also requires removal of structural communication barriers that are in existing facilities, and installation of flashing alarm systems, permanent signage, and adequate sound buffers.

The U.S. Department of Justice regulation to Title III of the ADA, 28 C.F.R. Part 36, and the Analysis that accompanies it, 56 Fed. Reg. 35544 - 35691 (July 26, 1991), explain in detail the requirements of the law. Public accommodations are required to provide auxiliary aids to enable a person with disabilities to communicate effectively: A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. 28 C.F.R. §36.303(c).

A comprehensive list of auxiliary aids and services required by the ADA for deaf and hard of hearing people includes: qualified interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunication devices for deaf persons [TTYs], videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments. 28 C.F.R. 36.303(b)(1).

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The term qualified interpreter is defined in the regulation to mean: ". . . an interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary." 28 C.F.R. 36.104.

The Analysis to this regulation makes it clear that Congress, as well as the Department of Justice, "expects that public accommodations will consult with the individual with a disability before providing a particular auxiliary aid or service." 56 Fed.Reg. at 35567. The Department of Justice also states: "It is not difficult to imagine a wide range of communications involving areas such as health, legal matters, and finances that would be sufficiently lengthy or complex to require an interpreter for effective communication." 56 Fed.Reg. At 35567.

The most important consideration is the type of service that will be necessary to give "effective communication" to a deaf individual. For example, in addition to providing an interpreter, it may be necessary to change seating arrangements or lighting so that there is a clear line of sight to the interpreter, and so that the interpreter is clearly visible. Businesses may need to instruct employees to accept TTY relay calls, even though such calls take longer to complete than regular voice calls. Policies and practices may have to be altered in order to provide access. A business that normally would not permit a customer to bring in an animal must give access to "hearing ear" and "seeing eye" dogs.

A public accommodation may deny an auxiliary aid only if it can demonstrate that providing the aid would fundamentally alter the nature of the service, or would constitute an undue burden or expense. If the public accommodation is able to demonstrate that there is a fundamental alteration or an undue burden in the provision of a particular auxiliary aid it must, however, be prepared to provide an alternative auxiliary aid, where one exists. 28 C.F.R. §36.303(f).

Whether or not a particular auxiliary aid constitutes an "undue burden" is difficult to decide. It depends on a variety of factors, including the nature and cost of the auxiliary aid or service and the overall financial and other resources of the business. The undue burden standard is intended to be applied on a case-by-case basis. Undue burden is not measured by the amount of income the business is receiving from a deaf client, patient or customer. Instead, undue burden is measured by the overall financial impact on the whole entity. Therefore, it is possible for a business to be responsible for providing auxiliary aids even if it does not make a sale or receive income from a deaf customer, if the cost of the aid would not be an undue burden on its overall operation.

The Department of Justice does not permit a public accommodation to charge a person for the cost of the auxiliary aid provided. The Title III regulation states: A

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public accommodation may not impose a surcharge on a particular individual with a disability . . . to cover the costs of measures, such as the provision of auxiliary aids . . . that are required to provide that individual . . . with the nondiscriminatory treatment required by the Act or this part. 28 C.F.R. 36.301(c).

The cost of interpreters and other auxiliary aids may entitle a business to an income tax credit, as well as the usual business-related expense deduction. Congress has amended the Internal Revenue Code to provide business tax incentives for removing barriers or increasing accessibility. The "Tax Deduction to Remove Architectural and Transportation Barriers to People with Disabilities and Elderly Individuals" (Title 26, I.R.C. Section 190) allows a deduction for qualified barrier removal expenses not to exceed \$1500 for any taxable year. The "Disabled Access Tax Credit" (Title 26, I.R.C. Section 44) is available to eligible small businesses. It provides a tax credit of 50 per cent of eligible access expenditures that exceed \$250 but do not exceed \$10,250, made for the purpose of complying with the ADA. For more information on these tax provisions, contact the IRS, Office of the Chief Counsel, PO Box 7604, Ben Franklin Station, Washington DC 20044, (202) 622-3110 (DC area) or 800-829-1040 (voice), 800-829-4059 (TTY).

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