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HOW TO OPEN YOUR BUSINESS TO 43 MILLION AMERICANS

UMASS/AMHERST



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What Every Business Should Know about Being in Compliance with **The Americans with Disabilities Act**

It's an opportunity!

... and

it's the LAW!

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This document provides general information to promote voluntary compliance with the Americans with Disabilities Act (ADA). It was prepared under a grant from the Boston Foundation as part of the Community Compliance Campaign. Interpretations and opinions in this document are those of the Massachusetts Office on Disability and do not necessarily reflect the views of the Dept. of Justice or the Equal Employment Opportunity Commission. The ADA and its regulations should be consulted for further guidance. (Information for this pamphlet compiled by Nancy Blackmore; cover design by Sam Johnson & Son, Inc.)

Massachusetts Office on Disability (MOD)

One Ashburton Place
Boston, Massachusetts 02108
(617)-727-7440 (voice/tty)
1-800-322-2020 (voice/tty)

WHAT IS THE ADA?

The Americans with Disabilities Act of 1990 (ADA) is a federal statute that extends to persons with disabilities the same civil rights that have been afforded to persons on the basis of color, race, and gender. This law guarantees equal opportunity and prohibits discrimination against persons with disabilities in: private and public sector employment; places of public accommodation; state, county, and municipal services; public and private transportation services; and telecommunications services offered to the public.

WHO IS PROTECTED BY THE ADA?

Legal protection is extended to people who: have a physical or mental impairment that substantially limits one or more of the major life activities such as walking, seeing, hearing, learning, or working; have a record of such an impairment; or are regarded as having such an impairment

HOW DOES THE ADA AFFECT BUSINESSES?

Titles I and III of the ADA apply to businesses. Title I prohibits businesses from discriminating against employees and job applicants with disabilities. Title III prohibits businesses from discriminating against customers and clients with disabilities. Architectural and communication barriers, as well as policies or practices that prevent or deny equal access to the use of goods, services and facilities must be removed or modified.

WHAT YOU NEED TO KNOW

Employing Persons with Disabilities

Title I of the ADA sets out regulations for employers with regard to employing "qualified individuals with disabilities" (i.e. persons who meet qualification criteria and can perform the essential functions of the job with reasonable accommodation where necessary). If you are: an employer (public or private); an employment agency; a labor organization; or a joint labor-management committee, you are required to:

- *Eliminate discriminatory procedures and practices* from all terms and conditions of employment (application, hiring, discharge, training, and promotion procedures and practices).
- *Provide reasonable accommodations* (adjusting or modifying training materials, equipment or physical work environments; restructuring jobs; providing readers or sign language interpreters)

When providing accommodations to employees with disabilities an employer need not make an accommodation that would cause "undue hardship" ("undue hardship" is determined by factors such as cost of accommodation, employer size, financial resources and nature of business). Generally speaking this means that an accommodation would be unduly costly, extensive, substantial or disruptive, or would fundamentally alter the nature or operation of the business itself.

These requirements are effective as of: 7/26/92 for employers of 25 or more employees; 7/26/94 for those of 15 or more.

However, it is important to note that Massachusetts has had an employment anti-discrimination statute in effect since 1984 (Massachusetts General Law Chapter 151B Section 4). This statute applies to all employers of 6 or more employees, irrespective of the requirements of Title I of the ADA (Please note: government agencies need to comply regardless of number of employees.)

MAKING YOUR GOODS, SERVICES, AND FACILITIES ACCESSIBLE

Title III stipulates that private entities, regardless of size, doing business with or serving the public or operating, leasing, or leasing to a place of public accommodation, must make their goods, services, and facilities usable by customers and clients with disabilities. Places of public accommodation include, but are not limited to: hotels, hospitals, theaters, restaurants, museums, retail stores, social service agencies, places of recreation and places of education. Public accommodations must:

◦ *Eliminate or modify discriminatory policies and practices* (e.g. forbidding seeing-eye dogs in restaurants or accepting only a driver's license for a check payment).

◦ *Ensure effective communication* by providing auxiliary aids and services to customers and clients who have visual, cognitive, hearing or speech disabilities (e.g. for persons who are blind, print material such as menus must be available in braille or on audio tape or may be read aloud by wait persons; for a person who is deaf, sign language interpreters or paper and pencil must be provided). Because the range of sensory

disabilities is so great, customers should be consulted as to their preferred method of communication -- effectiveness is the critical factor. The type of auxiliary aid or service must reflect the nature of the situation. For instance, using pencil and paper with a deaf person may be appropriate for discussing styles in a hair salon, but a qualified sign language interpreter would be necessary when discussing open heart surgery at a doctor's office.

° **Remove architectural barriers** in existing buildings if such removal is "readily achievable" (i.e. able to be accomplished easily and without much difficulty or expense). Barrier removal is an ongoing obligation. Structural changes which are readily achievable should be done each year until the facility is fully accessible. Priorities for barrier removal in existing buildings include:

1. Getting into the facility (e.g. provide an accessible route of travel to entrance; install directional signs to the accessible entrance; allocate accessible parking; provide curb cuts; install ramps; widen doorways; change door hardware to lever-handle type to facilitate opening with a closed fist; adjust door pressure to open easily and close slowly; and lower thresholds).

2. Getting to goods and services (e.g. install interior ramp; rearrange display racks or tables; remove obstructing furniture).

3. Making restrooms accessible, if open to the public (e.g. increase stall size; install grab bars; change hardware; raise sinks; lower mirrors and dispensers).

4. Everything else (e.g. replace difficult-to-reach controls; install visual emergency alarms; lower public phones and install volume control devices).

° **Devise alternate ways of providing the service** if architectural barrier removal is not readily achievable (e.g. offer home delivery, curb, door or sidewalk service; relocate activities to accessible sites).

° **Comply with ADA Accessibility Guidelines (ADAAG)** in construction and design of all buildings and facilities. Alterations after January 26, 1992 must comply with ADAAG. If alterations include a primary function area (e.g. dining-room, sales space, conference room) an additional 20% above the cost of alterations should be spent for providing an accessible path of travel, accessible restrooms, accessible telephones, and accessible drinking fountains. New facilities designed and built with an occupancy date after January 26, 1993 must be fully accessible.

Massachusetts Architectural Access Board (AAB) regulations must also be followed in construction and alterations. (Please note that the AAB design standards and formulas for alterations are different than that which is set out in the ADAAG. Compliance with the standard that provides the greatest accessibility is required.)

Both landlords and tenants are responsible for ADA compliance. They may allocate those responsibilities through lease, contract or an informal agreement.

These rules are in effect as of 1/26/92 for all businesses.

INCENTIVES

Business tax credits and deductions are available for making accessibility improvements. Under section 44 of the Internal Revenue Service Code (the Disabled Access Credit), businesses with gross receipts of \$1 million or less for the taxable year, or with 30 or fewer full-time employees, can take credits of up to \$5,000 annually for "eligible access expenditures" made to comply with the ADA (e.g. removing architectural, communication, physical or transportation barriers; providing sign language interpreters, readers or similar services; modifying or acquiring equipment or materials). Credits are available for expenses incurred after November 5, 1990. Additionally, section 190 of the Internal Revenue Service Code (the Barrier Removal Deduction) allows businesses to deduct up to \$15,000 annually for "qualified architectural and transportation barrier removal expenses" -- expenses specifically attributable to removal of existing barriers (steps, narrow doors, inaccessible parking spaces, toilet facilities, or transportation vehicles). Deductions are available beginning with the taxable year 1991.

ENFORCEMENT

The ADA emphasizes voluntary compliance with the Act by employers and businesses. Negotiation should be the primary means of settling disputes and complaints under the Act.

For acts of discrimination in employment under Title I of the ADA, complaints may be filed with the Equal Employment Opportunity Commission (EEOC).

Remedies for violations may include various types of equitable relief, including front and back pay, reinstatement, and in some cases medical expenses. For willful discrimination court orders include compensatory and punitive damages. The Massachusetts employment statute is enforced by the Massachusetts Commission Against Discrimination (MCAD).

Non-compliance with Title III of the ADA may result in private party lawsuits, complaints filed with the Department of Justice, and Attorney General lawsuits with severe monetary penalties. The ADA is not enforced through local building inspectors or any other local agency.

REMEMBER...

These regulations are designed to help you open your business to a diverse and creative population of consumers, numbering in the millions!



RESOURCE LIST

For further information regarding issues presented in this pamphlet, contact the appropriate organization(s) listed below.

General Information

New England Disability and Business Technical Assistance Center:

145 Newbury Street
Portland, ME 04101
1-800-949-4232 (voice/tty)
(207) 874-6535 (voice/tty)

**ADA Technical Assistance Hotline
Disability Rights Education and Defense Fund**

2212 6th Street
Berkeley, CA 94710
1-800-466-4232 (voice/tty)

Massachusetts Office on Disability

One Ashburton Place
Boston, MA. 02108
1-800-322-2020(voice/tty)
(617) 727-7440 (voice/tty)

Architecture

Access Board

1331 F Street NW, Suite 1000
Washington, D.C. 20004-1111
1-800-872-2253 (voice/tty)
(202) 272-5434 (voice/tty)

Public Accommodations (Title III)

**U.S. Department Of Justice(DOJ)
Civil Rights Division, Office on the
Americans with Disabilities Act**

P.O. Box 66738
Washington, D.C. 20035-9998
(202) 514-0301 (voice)
(202) 514-0383 (tty)

Employment (Title I)

**Equal Employment Opportunity
Commission (EEOC):**

1801 L Street, NW
Washington, D.C. 20507
1-800-669-3362 (voice)
1-800-800-3302 (tty)

**Job Accommodation Network,
ADA Information Line:**

1- 800- 232-9675 (voice/tty)