

Sedgwick<sub>LLP</sub>

# **Americans with Disabilities Act: Proceed with Caution**

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James Brown  
Sean Patterson  
Sedgwick LLP

# The Americans with Disabilities Act of 1990

## 42 U.S.C.A. § 12101, *et seq.*, (the “ADA”)

### I. INTRODUCTION

- The ADA was enacted to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.
- The protections set forth in the ADA are enforced by the United States Department of Justice, and through civil suit.
- Title II of the ADA sets forth how these protections are applied to public agencies.
- Unfortunately the compliance requirements set forth in the ADA are an often misused avenue for litigation against state and local government.

## II. LEGAL STANDARD

### A. Protected Individuals and Application to State and Local Government

- The ADA applies to anyone who qualifies as an individual with a disability. An individual with a disability is a person who:
  - 1. has a physical or mental impairment that substantially limits\* one or more major life activities\*\*;
  - 2. has a record of such an impairment; or
  - 3. is regarded as having such an impairment.
- \* The term “substantially limits” is construed broadly and in favor of expansive coverage by the DOJ.
- \*\* Examples of a “major life activity” include:
  - caring for oneself or performing manual tasks;
  - Seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing;
  - learning, reading, concentrating, thinking, communicating, and working;
  - Operation of a major bodily function (e.g., immune system, neurological, brain, respiratory, circulatory);
  - Heart Disease, Diabetes, Drug addiction, alcoholism, Dyslexia, ADHD

## The ADA's Four Subparts

- Title I: bars disability discrimination by an “employer, employment agency, labor organization, or joint labor-management committee.”  
42 U.S.C. § § 12111(2), 12112
- Title II: prohibits discrimination on the basis of disability by “public entities,” which results in the denial of access to programs, services and activities operated by state and local governments.  
42 U.S.C. § § 12131(1), 12132
- Title III: bars disability discrimination in public accommodations, and bars disability discrimination by “any person who owns, leases (or leases to), or operates a place of public accommodation.”  
42 U.S.C. § 12181(7)(J), § 12182
- Title IV: forbids retaliation against anyone for opposing actions made unlawful under the ADA or for participating in a charge under the ADA. It also forbids coercion or intimidation against anyone exercising his or her rights under the statute.  
42 U.S.C. § 12203(a), § 12203(b)

## B. Standard of Review Under Title II

### Under Title II:

To prove a public program or service violates Title II, a plaintiff must show:

- (1) he is a “qualified individual with a disability”;
- (2) he was either excluded from participation in or denied the benefits of a public entity’s services, programs or activities, or was otherwise discriminated against by the public entity; and
- (3) such exclusion, denial of benefits, or discrimination was by reason of his disability.

*Weinreich v. Los Angeles Cty. Metro. Transp. Auth.*, 114 F.3d 976, 978 (9th Cir. 1997).

# TITLE II: REQUIREMENTS & REGULATIONS

- Public entities are required to “operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.” 28 C.F.R. § 35.150(a) (2012).
- A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.” 28 C.F.R. § 35.130(b)(7) (2011).
- Plaintiff bears the burden of establishing an ADA violation.
- Burden shifts to defendant after plaintiff demonstrates that an accommodation offered by a defendant is unreasonable.
- The regulation and enforcement of state and local government’s compliance with Title II is overseen by the U.S. Department of Justice.
- A private citizen can also sue in federal court for alleged discrimination in violation of the ADA.

# TITLE II: DAMAGES & REMEDIES

## Available Remedies for Title II Violation

- Injunctive and declaratory relief;
- Recovery of costs and attorney's fees;
- Compensatory damages\*;
- No punitive damages available.

\*may be available where plaintiff has complied with the Government Tort Claims Act and can prove intentional discrimination on the part of the defendant under a "deliberate indifference" standard.

## C. Abuse of the ADA's Protection and Potential Cost of Litigation

### 1. *John Doe v. Superior Court*

- A self-represented party in a family law action requested multiple types of accommodation for claimed disabilities.
- Some requests were denied for failure to comply with the local procedural requirements and other reasons.
- The party then filed a civil complaint in the United States District Court alleging (among other causes) that these denials violated Title II of the ADA, The Rehabilitation Act, and The Bane Act.
- This one lawsuit gave rise to:
  - 3 years of active litigation;
  - 107 motions filed by Plaintiff;
  - 91 motions were opposed and denied; and
  - 5 separate appeals
- Final Result: Complete exoneration for client but only after tens of thousands of dollars and hundreds of hours were spent defending against this Party's claims.

## TAKE AWAYS: STEPS TO TAKE FOR PROTECTION AND COMPLIANCE

### 2. Recommendations to minimize the risk of an ADA claim:

- Create written procedures for receiving and responding to requests for disability accommodation and/or complaints re denial of access;
- Prepare and publish guidelines for submitting complaints and/or requests for accommodation;
- Perform regular reviews of all services and facilities for compliance with access requirements, and independent review for new construction/renovation;
- Provide all employees who are in contact with the public with (at least) annual instruction on compliance with these written procedures, and maintain records documenting same;
- Designate and train an employee with responsibility for overseeing administration of these programs (i.e., an ADA Coordinator); and
- Insure that all applicable private contractors are complying with the ADA guidelines (and/or have an agreement in place through which the contractor expressly agrees to defend and indemnify the agency for any such alleged violations).