

Understanding the New 2010 Americans with Disabilities Act

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Why Am I Here?

A Recent Consent Decree Agreement Included

- 1.The ILA must certify compliance by 1/3 of its 550 stores within a year, another third within two years, and the last third within three years of the effective date of the CD.**
- 2.... must maintain a call button notification system at all fueling positions.**
- 3.... must deposit the sum of \$1.5 million dollars in an interest-bearing account for purposes of compensating potential complainants who may have been harmed by non-compliance with the ADA. ... must also publish a weekly notice for 90 days following the CD to potential victims of disability discrimination, and post the same on its website.**
- 4.... must make initiate a program to improve accessibility of its website in multiple phases, beginning with a comprehensive Website Accessibility Assessment.**
- 5.Delivery trucks and other vehicles will be precluded from blocking or obstructing accessible parking spaces, routes or curb ramps, and personnel shall be trained to check the location of delivery trucks to ensure accessibility, under penalty of discipline.**
- 6.All fuel dispenser operating mechanisms and controls must be modified so as to bring them into compliance, and to ensure that they do not exceed a maximum side reach range of 48 inches.**

Why Am I Here?

Sec.36.302

Modifications in policies, practices, or procedures.

Miniature horses. (i) a public accommodation shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability.

Disclaimer

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CHANGES IN DISABILITY ACCESS REQUIREMENTS

TITLE III - THE LEGAL ASPECTS

BACKGROUND

Overview of the Law – ADA Title III

Title III provides, “No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to) or operates a place of public accommodation.”

PUBLIC ACCOMMODATION

- Includes convenience stores and petroleum retailers
- Applies if you own, operate, lease or lease to a public accommodation
- Parties can allocate financial responsibility but not liability.

TITLE III PROVIDES THAT A “PUBLIC ACCOMMODATION”:

- May not impose special eligibility criteria
- Must make reasonable modifications in policies, practices or procedures
- Must provide auxiliary aids and services
- Must remove physical barriers and communication barriers where readily available to do so
- Must not retaliate

TITLE III CONSTRUCTION

Existing: Pre January 26, 1993

- Barrier removal that is readily achievable
- Continuing obligation

Alterations: commenced after January 26, 1992

- Made so altered area is “readily accessible” to and usable by” disabled individuals

New: All new construction whether public accommodation or commercial facility after January 26, 1993 had to comply with ADA Standards for Accessible Design (1991 ADAAG)

Access Board issued revised Accessibility Guidelines in 2004 that are more consistent with model codes

- All new organization
- Addressed new areas Changed standards
- Not adopted by DOJ under ADA until 2010

Important Dates

On September 15, 2010, Department of Justice – issued revised regulation in Federal Register

- Revised Rule – March 15, 2011
- Revised Architectural Standards – 2010 ADAAG - March 15, 2012

SAFE HARBOR

- If in compliance with 1991 ADAAG before March 15, 2012
- No changes needed
- If altered after March 15, 2012, then altered elements must comply with 2010 ADAAG to maximum extent feasible
- Previous barrier removal that did not meet 1991 ADAAG subject to continuing barrier removal obligations

MAJOR CHANGES TO REGULATIONS

- Other power-driven mobility devices (e.g., Segway)
 - Must permit unless can demonstrate cannot be operated in accordance with legitimate safety requirements
- May ask person using to provide “credible assurance” that the device is required because of disability

MAJOR CHANGES TO REGULATION

- “Service animal” limited to dogs
 - Clarifies when a service animal may be removed
 - Not housebroken
 - Out of control
 - May ask if required because of disability and what work or task the animal performs.

ENFORCEMENT

DOJ

- Consent Decree
- Fines -- \$55,000-\$110,000
- Other relief

DOJ CONSENT DECREES

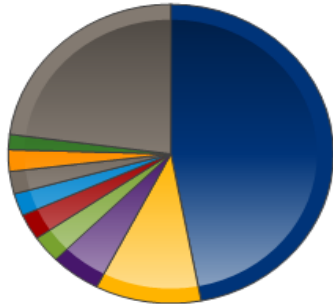
- Little General Store, Inc. – October 2003
- Sunoco, Inc. – November 2005
- Twin Cities Avanti Stores LLC – July 2006
- Quik Trip – July 2010

TITLE III LAWSUITS



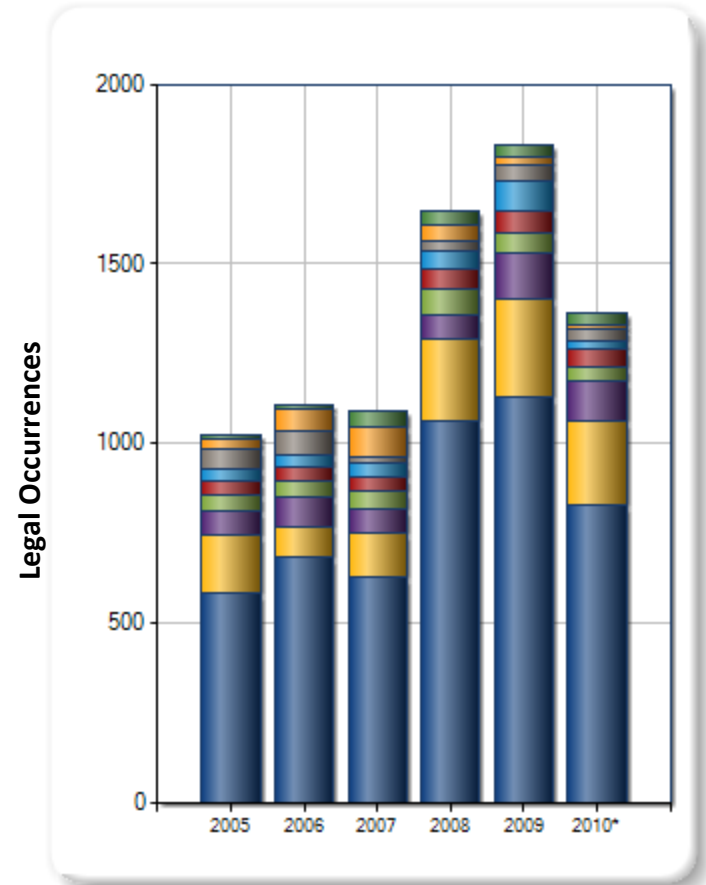
FEDERAL NOS: CIVIL RIGHTS: ADA-OTHER ... COURT TRENDS & ANALYSIS

Courts Distribution



| Courts | Occurrences | % |
|--|-------------|--------------|
| U.S. District Courts > California – Federal Courts | 4913 | 47.0% |
| U.S. District Courts > Florida – Federal Courts | 1101 | 10.5% |
| U.S. District Courts > New York – Federal Courts | 520 | 5.0% |
| U.S. District Courts > New Jersey – Federal Courts | 306 | 2.9% |
| U.S. District Courts > Texas – Federal Courts | 293 | 2.8% |
| U.S. District Courts > Pennsylvania – Federal Courts | 254 | 2.4% |
| U.S. District Courts > Hawaii – Federal Courts | 252 | 2.4% |
| U.S. District Courts > Ohio – Federal Courts | 245 | 2.3% |
| U.S. District Courts > Virginia – Federal Courts | 172 | 1.6% |
| Other Courts (Full List) | 2393 | 22.9% |

Courts Trend



***Data for partial year only**

PRIVATE LAWSUIT

- In U.S. District Court or State Court
- No prior complaint to agency or “right to sue” letter is required
- No compensatory or punitive damages
- No fines
- Attorneys fees
- Injunctive relief

RECOMMENDATIONS

1. Survey existing facilities
2. Make obvious corrections first
3. Redesign prototypes for new stores –
get input from experienced architect
 - **Get input from an experienced
ADA architect**

RECOMMENDATIONS

4. Train or retrain personnel in dealing with and assisting disabled patrons
5. If sued, get **an attorney experienced in Title III litigation**
6. Consider costs of litigation versus costs of compliance

CHANGES IN DISABILITY ACCESS REQUIREMENTS

TITLE III – FACILITIES COMPLIANCE

ADA Facilities Compliance

- **New Construction** (after 9/15/2010)
 - **Fully comply** with 1991 ADA Standards, or
 - **Fully comply** with 2010 ADA Standards
- **Alterations** (after 9/15/2010)
 - **Fully comply** with 1991 ADA Standards, or
 - **Fully comply** with 2010 ADA Standards
- **Existing Facilities** (opened before 1/26/1993)
 - **Remove barriers to people with disabilities**
 - Use Alternative Methods (not a good defense)

ADA Facilities Requirements

- There are almost a thousand ADA facility requirements that apply to convenience stores
- We are going to look very quickly at a few dozen of the most critical ones that are being ignored by too many in the industry

Top Priorities for DOJ & Advocates

- Fuel, Window Washing & Paper Towels
- Air, Water, & Vacuums
- Accessible Parking and Access Aisles
- Access to the Entrance
- Drinks & Food
- Toilet Rooms
- Sales and Service Counters
- ATMs & Vending Machines

Fuel, Window Washing & Paper Towels



- This is the most critical problem from the users' perspective and they want independent access whenever fuel can be purchased, windows cleaned, or oil levels checked.

Fuel, Window Washing & Paper Towels

- 1991 Standards require that controls required for operation be within one of the reach ranges specified in the Standards
- 2010 Standards clarify that it applies to at least one of each type of fuel dispensers

Fuel, Window Washing & Paper Towels

- 1991 Standards require all controls to be within 54” of the surface where a wheelchair user would sit sideways to operate the controls (not to the top of the curb) and no more than 10” away from the 30” x 48” clear floor space where the wheelchair user sits.
- 2010 Standards limit this same reach maximum to 48” above the drive surface and clarify that it must be level ($\leq 2\%$ slope).

Fuel, Window Washing & Paper Towels

- There must be an accessible route from the accessible dispenser(s) to the entrance.
 - Limited slopes ($\leq 5\%$) and cross slopes ($\leq 2\%$) except at ramps or curb ramps at up to 8.3%
 - Maintained at all times to be at least 36" wide
- The accessible dispenser(s) should be on the shortest route to the entrance
- 2010 Standard specifically exempts gas pump nozzles from 5 pound operating force limit

Air, Water, & Vacuums

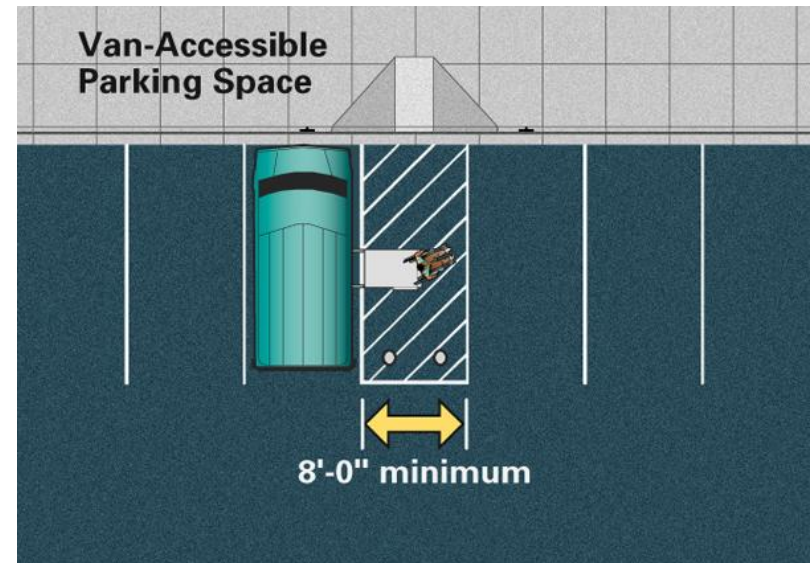
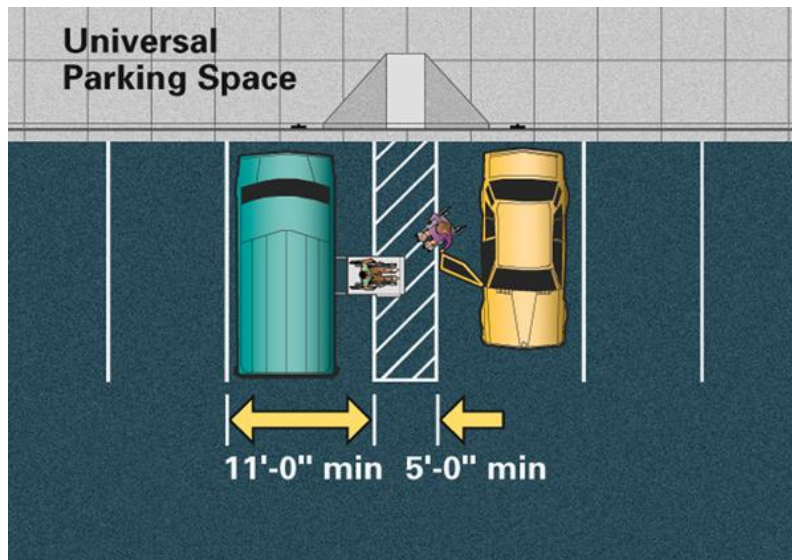
- Controls must be accessible
 - 30” x 48” clear floor space at controls
 - Within reach ranges
 - Operable with one hand, without tight grasping, pinching, or twisting of the wrist (?)
 - With less than 5 pounds of force (?)
- On an accessible route to the entrance (?)

Accessible Parking and Access Aisles

- Accessible space(s) must be on the shortest accessible route to the entrance
 - DOJ interprets that as immediately in front of the entrance or as close as a curb ramp can be placed to meet the Standards

Accessible Parking and Access Aisles

- Must have an access aisle
- Surfaces must be level ($\leq 2\%$)
- Proper signage must be provided



Access to the Entrance

- Accessible route to entrance from public transportation stops, accessible parking spaces, public streets or sidewalks (“and” sidewalks in 2010 Std.)
 - Stable, firm, and slip resistant surfaces
 - Limited slopes ($\leq 5\%$) and cross slopes ($\leq 2\%$) except at ramps or curb ramps which may slope up to 8.3%
 - Maintained at all times to be at least 36” wide
 - Gaps & level changes limited to 1/2” max.

Self-Serve Drink & Food Dispensers



Self-Serve Drink & Food Dispensers

- Controls, cups, lids, straws, utensils, and condiments must all be accessible
 - 30” x 48” clear floor space at controls
 - Within reach ranges (46”, 48” or 54”)
 - Operable with one hand, without tight grasping, pinching, or twisting of the wrist
 - With less than 5 pounds of force



Drinks & Food

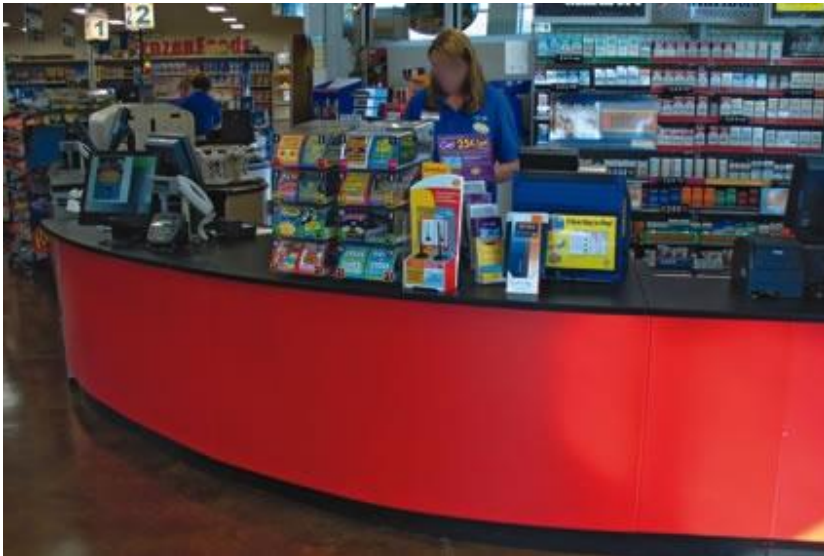
- 50% of shelves in self-service food lines must be within reach ranges
 - This applies to shelves for foods that are **not pre-packaged**, like donuts or hot breakfast sandwiches
 - Only 50% are required to be accessible because, as a policy, it is assumed that the full range of choices can always be distributed onto the accessible shelves

Toilet Rooms

- There are dozens of specific requirements for toilet rooms that must all be met – too many to cover here, but most importantly...
- The 2010 Standards will no longer allow a lavatory within the 60” wide toilet fixture clear floor space. This will increase the size of single user toilet rooms.
- Accessories not already within reach by 3/15/12 will have to be lowered to 48” max.

Sales and Service Counters

- A section which is at least 36” wide must be no higher than 36” above the floor
- It must be kept clear of sales items and other obstructions



ATMs & Vending Machines

- **ATMs**
- Must have a compliant clear floor space
- Controls must be within reach ranges
- Must be “independently usable by persons with visual impairments”



ATMs & Vending Machines

- **Vending Machines**
- Must be on an accessible route
- Must have a compliant clear floor space
- Controls must be within reach ranges
- Controls must be operable with a closed fist or open hand



ATMs & Vending Machines

- **Interactive Transaction Machines**
- New standards and regulations are expected to cover these. Advocates are pushing for blind-friendly controls. It would be prudent to push your vendors.



Additional Resources

- 1991 ADA Standards
 - <http://www.ada.gov/stdspdf.htm>
- 2010 ADA Standards
 - <http://www.access-board.gov/ada-aba/ada-standards-doj.cfm>
- Register to receive updates on compliance requirement changes and publications
 - www.AccessUpdates.com

Common Questions

- Can't we just provide fueling assistance instead of lowering fuel dispensers?
- Fueling assistance is considered an “alternative method” under the ADA and it is allowed ONLY when it is not, and has not ever been, readily achievable to provide physical access through barrier removal. If you've added or replaced any dispensers at that facility since 1/26/92 there is no defense for not having an accessible dispenser with all controls within 54” of vehicular level (48” under 2010 Stds.).

Common Questions

- Do all pre-packaged food, drinks, & retail items have to be within reach of wheelchair users and little people?
- Pre-packaged food, drinks, & retail items are **not** required to be within any of the reach ranges specified in the ADA Standards, however they must be on an accessible route which is 36” wide. (1991 Stds - 4.1.3(12)(b) & 2010 Stds - 225.2.2)

Common Questions

- How does the ADA define “Alteration” and what additional requirements does an alteration trigger?
- Alterations cannot reduce accessibility below what is required by the ADA Standards unless it is allowed by the 2010 Standards when they are being used
- Altered elements must meet the ADA Standards
- Any alteration to a primary function area triggers an obligation to spend up to 20% more on the “Path of Travel” serving the altered area

Questions?



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Thank you!