

ADA Facility Definitions (for Private Entities)

Accessible Route. ⁴*A continuous unobstructed path connecting all accessible elements and spaces of a building or facility. Interior accessible routes may include corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible routes may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps, and lifts.*

Act – ¹*Public Law 101-336 - This Act may be cited as the “Americans with Disabilities Act of 1990”.*

ADA Regulations – ³*Title III - Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities (28 CFR Part 36)*

ADA Standards – ⁴*Appendix A to 28 CFR Part 36 (the ADA Regulations issued by DOJ), it is sometimes called the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG). ADAAG was the original document written by the US ATCBC (the Access Board) as guidance to the Department of Justice who, in July of 1991, adopted it to become the ADA Standards.*

Alteration. ⁴*An alteration is a change to a building or facility made by, on behalf of or for the use of a public accommodation or commercial facility, that affects or could affect the usability of the building or facility or part thereof Alterations include, but are not limited to, remodeling renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement of the structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, re-roofing, painting or wallpapering, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.*

³**§36. 403(c) Alterations To An Area Containing A Primary Function.**

§36.403(c)(1) Alterations that affect the usability of or access to an area containing a primary function include, but are not limited to –

§36. 403(c)(1)(i) Remodeling merchandise display areas or employee work areas in a department store;

§36.403(c)(1)(ii) Replacing an inaccessible floor surface in the customer service or employee work areas of a bank;

§36.403(c)(1)(iii) Redesigning the assembly line area of a factory; or

§36.403(c)(1)(iv) Installing a computer center in an accounting firm.

§36,403(c)(2) For the purposes of this section, alterations to windows, hardware, controls, electrical outlets, and signage shall not be deemed to be alterations that affect the usability of or access to an area containing a primary function.

(From the Preamble to Title III regulations section related to 36.402): Normal maintenance, re-roofing painting or wallpapering, asbestos removal, or changes to mechanical and electrical systems are not alterations unless they affect the usability of building or facility.

Barriers to People with Disabilities – characteristics of spaces, elements, or services covered under the *ADA Regulations* or *ADA Standards for New Construction* that do not comply with those Standards. Not all barriers are required to be removed by the *Act* or by the *ADA Regulations*.

Commercial Facilities³ means facilities --

- (1) *Whose operations will affect commerce;*
- (2) *That are intended for nonresidential use by a private entity; and*
- (3) *That are not –*
 - (i) *Facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968, as amended (42-USC-3601 – 42-USC-3631);*
 - (ii) *Aircraft; or*
 - (iii) *Railroad locomotives, railroad freight cars, railroad cabooses, commuter or inter-city passenger rail cars (including coaches, dining cars, sleeping cars, lounge cars, and food service cars), any other railroad cars described in section 242 of the Act or covered under title II of the Act, or railroad rights-of-way. For purposes of this definition, “rail” and “railroad” have the meaning given the term “railroad” in section 202(e) of the Federal Railroad Safety Act of 1970 (45-USC-431(e)).*

Facility³ means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

⁴All or any portion of buildings, structures, site improvements, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property located on a site.

to the **Maximum Extent Feasible**³ §402(c) *The phrase “to the maximum extent feasible,” as used in this section, applies to the occasional case where the nature of an existing facility makes it virtually impossible to comply fully with applicable accessibility standards through a planned alteration. In these circumstances, the alteration shall provide the maximum physical accessibility feasible. Any altered features of the facility that can be made accessible shall be made accessible. If providing accessibility in conformance with this section to individuals with certain disabilities (e.g., those who use wheelchairs) would not be feasible, the facility shall be made accessible to persons with other types of disabilities (e.g., those who use crutches, those who have impaired vision or hearing, or those who have other impairments).*

⁵The Senate Report provides guidance on what the phrase “maximum extent feasible” means – *The phrase “to the maximum extent feasible” has been included to allow for the occasional case in which the nature of an existing facility is such as to make it virtually impossible to renovate the building in a manner that results in its being entirely accessible to and usable by individuals with disabilities. In all such cases, however, the alteration should provide the maximum amount of physical accessibility feasible.*

Thus, for example the term “to the maximum extent feasible” should be construed as not requiring entities to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member unless the load-bearing structural member is otherwise being removed or altered as part of the alteration. (S. Rept. 101-116, at 68)

New Construction – facilities constructed for first occupancy after January 26, 1993 where the construction documents were submitted for permitting after January 26, 1992.

Subpart D – New Construction And Alterations ³ §36.401

³§36.401(a) GENERAL.

§36.401(a)(1) *Except as provided in paragraphs §36.401(b) and §36.401(c) of this section, discrimination for purposes of this part includes a failure to design and construct facilities for first occupancy after January 26, 1993, that are readily accessible to and usable by individuals with disabilities.*

§36.401(a)(2) *For purposes of this section, a facility is designed and constructed for first occupancy after January 26, 1993, only –*

§36.401 (a)(2)(i) *If the last application for a building permit or permit extension for the facility is certified to be complete, by a State, County, or local government after January 26, 1992 (or in those jurisdictions where the government does not certify completion of applications, if the last application for a building permit or permit extension for the facility is received by the State, County, or local government after January 26, 1992); and*

§36.401(a)(2)(ii) *If the first certificate of occupancy for the facility is issued after January 26, 1993.*

Path of Travel.

§403(e)(1) *A “path of travel” includes a continuous, unobstructed way of pedestrian passage by means of which the altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach (including sidewalks, streets, and parking areas), an entrance to the facility, and other parts of the facility.*

§36.403(e)(2) *An accessible path of travel may consist of walks and sidewalks, curb ramps and other interior or exterior pedestrian ramps; clear floor paths through lobbies, corridors, rooms, and other improved areas; parking access aisles; elevators and lifts; or a combination of these elements.*

§36.403(e)(3) *For the purposes of this part, the term “path of travel” also includes the restrooms, telephones, and drinking fountains serving the altered area.*

Primary Function.

³§36.403(b) *A “primary function” is a major activity for which the facility is intended. Areas that contain a primary function include, but are not limited to, the customer services lobby of a bank, the dining area of a cafeteria, the meeting rooms in a conference center, as well as offices and other work areas in which the activities of the public accommodation or other private entity using the facility are carried out. Mechanical rooms, boiler rooms, supply storage rooms, employee lounges or locker rooms, janitorial closets, entrances, corridors, and restrooms are not areas containing a primary function.*

Alterations To An Area Containing A Primary Function: ⁴4.1.6(2) *In addition to the requirements of 4.1.6(1), an alteration that affects or could affect the usability of or access to an area containing a*

primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, unless such alterations are disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General). Costs exceeding 20% of the cost of the alteration are considered disproportionate.

Place Of Public Accommodation³ *means a facility, operated by a private entity, whose operations affect commerce and fall within at least one of the following categories --*

- (1) An inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of the establishment as the residence of the proprietor;*
- (2) A restaurant, bar, or other establishment serving food or drink;*
- (3) A motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;*
- (4) An auditorium, convention center, lecture hall, or other place of public gathering;*
- (5) A bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;*
- (6) A Laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;*
- (7) A terminal, depot, or other station used for specified public transportation;*
- (8) A museum, library, gallery, or other place of public display or collection;*
- (9) A park, zoo, amusement park, or other place of recreation;*
- (10) A nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;*
- (11) A day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and*
- (12) A gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.*

Public Accommodation³ *means a private entity that owns, leases (or leases to), or operates a place of public accommodation.*

Readily Achievable³ means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable factors to be considered include –

- (1) The nature and cost of the action needed under this part;
- (2) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;
- (3) The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;
- (4) If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and
- (5) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity. (See also attached “What Contributes to the Determination of Readily Achievable”.)

Reasonable Accommodation⁶ §TM-J-3.1 OVERVIEW OF LEGAL OBLIGATIONS

- An employer must provide a reasonable accommodation to the known physical or mental limitations of a qualified applicant or employee with a disability unless it can show that the accommodation would impose an undue hardship on the business.
- Reasonable accommodation is any modification or adjustment to a job, an employment practice, or the work environment that makes it possible for an individual with a disability to enjoy an equal employment opportunity.
- The obligation to provide a reasonable accommodation applies to all aspects of employment. This duty is ongoing and may arise any time that a person’s disability or job changes.
- An employer cannot deny an employment opportunity to a qualified applicant or employee because of the need to provide reasonable accommodation, unless it would cause an undue hardship...
- ... If the cost of an accommodation would impose an undue hardship on the employer, the individual with a disability should be given the option of providing the accommodation or paying that portion of the cost which would constitute an undue hardship.

Sources of Definitions

- 1 Definition from ADA Public Law 101- 336
- 2 Definition from ADA Title I Regulations
- 3 Definition from ADA Title III Regulations
- 4 Definition from The ADA Standards at § 3.5.
- 5 Definition from Senate Report 101-116
- 6 Definition from EEOC’s Title I Technical Assistance Manual