

## The Americans with Disabilities Act (ADA)

### *What you, your business and your clients need to know in order to become compliant*

1. **What is ADA?** The ADA is a wide-ranging civil rights law that prohibits discrimination based on disability. Disability discrimination occurs when an employer or other entity covered by the ADA treats an individual with a disability unfavorably or less favorably because she has a disability or a history of disability. The law requires an employer or other entity to provide reasonable accommodation to an employee or applicant with a disability, unless doing so would cause significant difficulty or expense (“undue hardship”). The Department of Justice (DOJ) is the federal agency charged with enforcing the ADA.
2. **What sections of ADA apply to swimming pools, wading pools and spas?**
  - a. Title II (Public Industry) – Title II prohibits disability discrimination by all public entities at the local and state levels. Examples of Title II entities include school districts, municipalities, cities, and counties.
  - b. Title III (Private Industry) – Title III prohibits disability discrimination by any place of public accommodation (commercial facilities). Examples of Title III entities include a place of recreation, a place of education, and a place of lodging.
3. **What are the permitted means of access?** Pool lifts, sloped entries (ramps), transfer walls, transfer systems, or stairs. The criteria that each of these means of access must meet can be found in chapter 10, section 1009, of the revised ADA guidelines, a link can be found through the PHTA website. What type of means of access that must be used and how many means of access required, depend on the structure.
4. **What are the swimming pool specific requirements?** Both Title II and Title III entities are required to provide “accessible means of entry for pools.” Larger pools (greater than 300 linear feet of pool wall) require at least two means of access and smaller pools (less than 300 linear feet of pool wall) require at least one means of access. When providing only one means of access, it must either be a pool lift or sloped entry (ramp). Wave action pools, leisure rivers, sand bottom pools, and other pools where user access is limited to one area are not required to have more than one means of access provided that means is either a pool lift, a sloped entry, or a transfer system. Catch pools that have a catch pool edge on an accessible route are not required to provide a means of access. *\*Note: 1) The ADA recommends that when using more than one means of access, the means be different, i.e., a lift and a transfer wall, and be provided in different locations in the pool. 2) Pool walls at diving areas and areas along pool walls where there is no pool entry because of landscaping or adjacent structures are still to be counted when determining the linear feet of pool wall.*
5. **What are the wading pool specific requirements?** Both Title II and III entities are required to provide “accessible means of entry for wading pools.” Wading pools must have at least one

means of access and that means must be a sloped entry (ramp). The sloped entry must extend to the deepest part of the wading pool, but it is not required to provide handrails.

6. **What are the spa specific requirements and how does the ADA apply to portable spas/hot tubs?** The ADA does not distinguish between in-ground and portable spas. Both Title II and III entities that have any type of spa, in-ground or portable, are required to provide at least one “accessible means of entry.” The means of access can either be a lift, transfer wall, or transfer system. When spas are provided in a cluster (adjacent to each other) only one spa must provide a means of access.
7. **Do the new requirements apply to both existing and new swimming pools, wading pools and spas (in-ground and portable) that fall under the Title II or III categories?** Yes, the permitted means of access must be provided on all installations no later than March 15, 2012. However, it is highly recommended these means of access be added to both new and existing construction as soon as possible.
8. **Are there service requirements for ADA equipment?** Yes, mandated features must be maintained in working order. The regulations provide a “Maintenance of Accessible Features” provision which states that “a public accommodation shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities.”
9. **How will these requirements be enforced?** Enforcement will vary from state to state, but does not change the fact this is the law. Direct action against noncompliance facilities may be taken by local building or health officials enforcing state or health building codes that reference the new guidelines. Individuals may also file civil lawsuits against noncompliant facilities. Indirect enforcement can occur when a local government becomes ineligible for a federal grant unless all facilities are in compliance.
10. **How does the ADA affect existing state and local building codes?** Existing codes remain in effect. The ADA allows the Attorney General to certify that a state law, local building code, or similar ordinance that establishes accessibility requirements meets or exceeds the minimum accessibility requirements for public accommodations and commercial facilities. Any state or local government may apply for certification of its code or ordinance.
11. **What financial assistance is available to employers/owners to help them make reasonable accommodations and comply with the ADA?** A special tax credit is available to help smaller employers make accommodations required by the ADA. Information discussing the tax credits and deductions is contained in the Department of Justice’s ADA Tax Incentive Packet for Businesses available from the ADA Information Line. Information about the tax credit and tax deduction can also be obtained from a local IRS office, or by contacting the Office of Chief Counsel, Internal Revenue Service.
12. **Where can I learn more about these requirements?** PHTA has developed a webinar, “Obligations and Opportunities Under the 2010 ADA Regulations” presented by John Caden of



SR Smith, LLC, that is now up and ready for purchase from the Education On The Go page of the website. Information can also be found at [www.ADA.gov](http://www.ADA.gov). Manufacturers of products that provide accessible means of entry also have information that can be found on their websites.

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## **Background and History of ADA**

The original Americans with Disabilities Act was signed into law on July 26, 1990. The law was divided into five subparts but for the swimming pool and spa industry the relevant sections are Public Entities and Public transportation (Title II) and Public Accommodations and Commercial Facilities (Title III).

The original enforcement guidelines did not provide accessibility standards for swimming pools and spas. However, in 2004, the Department of Justice issued enforcement guidelines that included pools and spas. At that point they were just that—guidelines—and now law.

In July 2010, the Department of Justice announced its final rule making. The revised regulations were then published in the Federal Register on September 16, 2010 and will take effect on March 15, 2011. Compliance with these regulations will be required no later than March 15, 2012.

## **Swimming Pool, Wading Pool, and Spa Accessibility**

The swimming pool, wading pool, and spa guidelines that are now part of the ADA law are virtually the same for both Public Entities (Title II) and Public Accommodations (Title III) facilities. They stipulate that any swimming pool with under 300 linear feet of pool wall must provide one means of access, and that means must be either a pool lift or a sloped entry. In addition, any pool that has over 300 linear feet of pool wall must provide two means of access, which can be any of the five designated means of access: pool lifts, sloped entries, transfer walls, transfer systems, or accessible pool stairs. The criteria that each of these means of access must meet can be found in chapter 10, section 1009 of the revised ADA guidelines. Wading pools must have one means of entry and that must be a sloped entry. Spas, both in-ground and portable, also must have one means of entry, which can be either a lift, transfer wall, or transfer system. The specific requirements that swimming pools, wading pools and spas must meet can be found in chapter 2, section 242 of the revised ADA guidelines.

## **Exclusions**

There are some exceptions from the accessibility guidelines. Title II facilities can be excluded if they can prove that modifications would significantly alter the historic nature of the building. They could also be excused if they could demonstrate that making such modifications would create undue financial hardship for the facility. Title III facilities can be excluded if they can demonstrate that reasonable accommodations are not readily achievable. However, the Department of Justice has made it very clear



that, given the flexibility and cost of a pool lift, it would be very difficult for any entity to escape their responsibility to provide access to a swimming pool.

### **Enforcement**

ADA regulations are enforced directly and indirectly. Most direct enforcement is a result of civil lawsuits initiated by a plaintiff who sues for non-compliance. If the plaintiff prevails, the court usually issues a court order that requires the defendant to remedy the violation, and attorney's fees for the plaintiff. There are generally no monetary awards provided to the victorious plaintiff.

The ADA is also enforced indirectly by requiring compliance prior to receiving licenses, certifications, or grants from prevailing authorities. For example, prior to a local government receiving a federal grant, it must provide proof of compliance with a wide array of regulations ranging from environmental mandates to equal opportunity programs to ADA compliance. In addition, in most localities, any new construction or building modification will not receive a certificate of occupancy without meeting all relevant ADA requirements. Many states will adopt the latest guidelines into their state or local building codes.