



**LEGAL AID**  
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# ADA Compliance for Small Businesses

Presented by:

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Staff Attorney

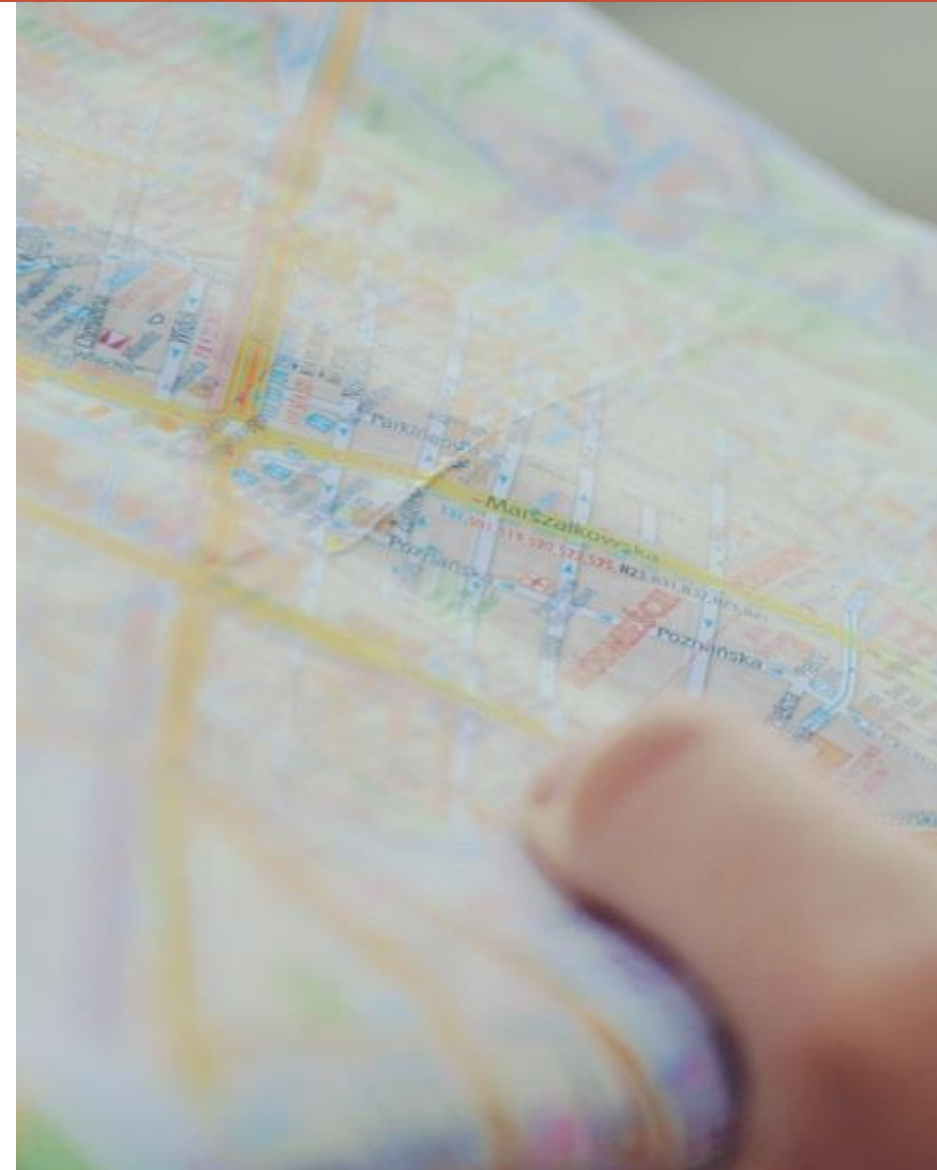
Housing and Communities Workgroup

## **Disclaimer**

Nothing presented today is legal advice. All information is for informational purposes only.



1. Overview of the Americans with Disabilities Act
2. Public Accommodations
3. Reasonable Modifications
4. Types of Assistance
5. Communicating with Customers
6. Service Animals
7. Wheelchairs and Other Mobility Devices
8. Structural Barriers and Accommodations
9. Tax Credits and Deductions
10. Website Accessibility





- It depends on your lease. It is important that you check your lease before signing to see who is responsible for ADA compliance.

2.3 **Compliance.** Lessor warrants that to the best of its knowledge the improvements on the Premises and the Common Areas comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances ("**Applicable Requirements**") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said

- This lease states that while the building is delivered to the tenant in compliance with the ADA law, any changes the tenant makes must be in compliance with the ADA and the tenant is responsible for any violation of the ADA based on those changes.

- For example, the actual empty building may be compliant with the ADA—it may already have a wheelchair ramp, and wide doorways
- But if someone starts a restaurant, and adds furniture to the building and other things, then they are responsible to make sure that any additions and changes to the building still make it ADA compliant.
- If the ADA compliance issue is based on the original building, the landlord would be responsible, if it's based on any changes then the tenant would be responsible.
- This is only the situation for **this** lease, check your own lease!

- Make sure to check your lease also to see if the building has been inspected for compliance with the ADA

**49. Accessibility; Americans with Disabilities Act.**

(a) The Premises:

have not undergone an inspection by a Certified Access Specialist (CASp). Note: A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

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# The Americans with Disabilities Act

- The Americans with Disabilities Act (ADA) is a federal civil rights law that protects people with disabilities. This includes prohibiting the exclusion of people with disabilities from everyday activities like shopping at local businesses.
- In order to meet the goals of the ADA, the federal government has issued requirements (the 2010 Americans with Disabilities Act Standards) for private businesses of all sizes, both for-profit and non-profit.

# The Americans with Disabilities Act

- Under the ADA, “disability” means:
  - Having a physical or mental impairment that substantially limits one or more major life activities (such as personal care, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working);
  - Having a record of such an impairment (such as a condition in remission);  
or
  - Being regarded as having such an impairment (such as a person who has severe burns but has no impairments).
- 42 U.S.C. § 12102(2); 28 C.F.R. § 36.104.

# The Americans with Disabilities Act

- Two California statutes, the Unruh Act and the California Disabled Persons Act, incorporate the ADA into California civil rights law, allowing people with disabilities to sue a violating business to recover monetary damages. The Unruh Act provides for statutory damages of \$4,000 per offense, and the California Disabled Persons Act provides for statutory damages of \$1,000 per offense.
- By contrast, Title III of the ADA provides only for injunctive relief (i.e. bringing a lawsuit against a violating business to force it to comply with the ADA) rather than monetary damages. In this way, California state law expands the scope of the federal ADA.

- The ADA establishes requirements for “public accommodations”—businesses that provide goods or services to the public.
- There are 12 categories of public accommodations. These include:
  - stores, restaurants, bars, service establishments, theaters, hotels, recreational facilities, private museums and schools, doctors’ and dentists’ offices, shopping malls, and other businesses

- Businesses that fall within the 12 categories will be subject to the requirements of the ADA regardless of the size of the business or the age of their buildings.
- Commercial facilities that do not provide goods or services directly to the public (e.g. office buildings, factories, warehouses) are only subject to the ADA's requirements for new construction and alterations.



# Reasonable Modifications

- In order to accommodate people with disabilities, your business may be required to make “reasonable modifications” to its rules or policies.
- Anything that would result in a “fundamental alteration”—a change in the essential nature of your business—is not required.

# Reasonable Modifications

- A restaurant is not required to prepare special dishes for customers who have disabilities. This would be a “fundamental alteration” in the nature of the restaurant’s services. However, if it is easy to omit a sauce or ingredient from a dish that is listed on the menu, a customer can request that the item be omitted. This would not be considered a fundamental alteration.



- **Examples:**
  - A day care center must allow a child with diabetes to have an extra snack.





- Examples:
  - A clothing store must allow two people in a dressing room if a person with disabilities requires a companion. BUT the clothing store does not have to provide dressing assistance if it would not offer that service to other customers.



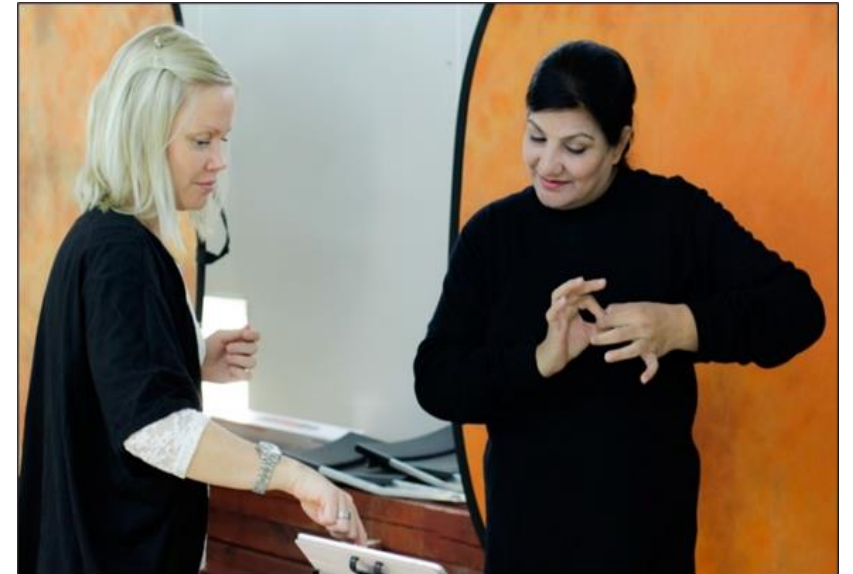
- Customers with disabilities may need different types of assistance to access your goods and services.
- Examples:
  - Retrieving merchandise from high shelves.
  - Assistance in navigating the aisles of a store.
  - Assistance in reading product labels and instructions.

# Communicating with Customers



- Businesses must take steps necessary to communicate effectively with customers with vision, hearing, and speech disabilities. The method of communication will vary depending on the abilities of the customers and on the complexity of the communications that are required.

- *Examples:*
  - A salesclerk may exchange written notes with a person who is deaf.
  - A sign language or oral interpreter may be necessary to discuss cancer treatment options.



- Is an emotional therapy dog protected under the ADA?



- A blanket policy not allowing pets from entering your business may run afoul of the ADA with respect to persons with disabilities who rely on service animals for support.
- A “service animal” is a dog that is individually trained to do work or perform tasks for an individual with a disability.
- “Comfort,” “therapy,” or “emotional support” animals are not service animals under the ADA and are not protected under the ADA.





- Service animals must be harnessed, leashed, or tethered, unless these devices interfere with the animal's work or the individual's disability prevents him or her from using these devices.
- Individuals who cannot use such devices must maintain control of the animal through voice, signal, or other effective controls.

- Businesses may exclude service animals only if:
  - 1) the dog is out of control and the handler cannot or does not regain control; or
  - 2) the dog is not housebroken.
- If a service animal is excluded, the individual must be allowed to enter the business without the service animal.
- If it is not clear whether the dog is a service animal, a business may ask only two questions:
  - 1) Is the animal required because of a disability?
  - 2) What work or task has the animal been trained to perform?



# Wheelchairs and Other Mobility Devices

- Businesses cannot prevent people with disabilities from using mobility devices in all areas that customers may enter.
- This may include “other” mobility devices such as Segways and golf carts, depending on the establishment’s ability to reasonably accommodate such a mobility device given the mobility device’s size, weight, dimensions, speed, and other safety concerns.
- You must allow the customer to enter with the device unless the business owner can demonstrate legitimate safety requirements that prevents the customer from safely entering—not based on speculation or stereotypes.

# Wheelchairs and Other Mobility Devices

- Businesses may ask individuals using an alternative mobility device (e.g. Segway, golf cart) for credible assurance that the device is required because of a disability. Such proof may include a disability placard or verbal affirmation. Note that a business should not try to question the nature of a customer's disability.



- Architectural barriers are physical features that limit or prevent people with disabilities from obtaining the goods or services that are offered. They can include parking spaces, entrance steps, door handles, narrow aisles, high counters, and fix tables.
- The ADA requires that small businesses remove architectural barriers in existing facilities when it is “readily achievable” to do so.



- “Readily achievable” means “easily accomplishable without much difficulty or expense.” This requirement is based on the size and resources of a business, as well as broader trends such as an economic downturn.
- The ADA Standards for Accessible Design can be a helpful resource for determining when removal of an architectural barrier may be required.

- When a business removes barriers, it should follow the design requirements for new construction in the ADA Standards for Accessible Design (Standards). In some cases, existing conditions, limited resources or both will make it not "readily achievable" to follow these Standards fully. If this occurs, barrier removal measures may deviate from the Standards so long as the measures do not pose a significant risk to the health or safety of individuals with disabilities or others.

- The ADA regulations recommend the following priorities for barrier removal:
  - Providing access to your business from public sidewalks, parking areas, and public transportation.
  - Providing access to the goods and services your business offers.
  - Providing access to public restrooms.
  - Removing barriers to other amenities offered to the public, such as drinking fountains.

- Where even a single step prevents people with disabilities from entering your business, installing a ramp or a lift, or regrading the walkway can provide an accessible route.
- If the main entrance cannot be made accessible, an alternate accessible entrance can be used.



# Accessible Routes to Goods and Services

- The path a person with a disability takes to enter and move through your business is called an “accessible route.”
- This route, which must be at least three feet wide, must remain accessible and not be blocked by items such as vending or ice machines, newspaper machines, furniture, or filing cabinets.
- Shelves and counters must be on an accessible route with enough space to allow customers using mobility devices to access merchandise.





# Accessible Routes to Goods and Services

- Where barriers prevent access to these areas, they must be removed if readily achievable. However, businesses are not required to take any steps that would result in a significant loss of selling space.

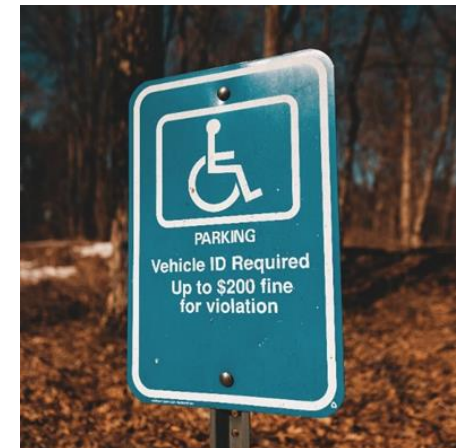


# Accessible Routes to Goods and Services

- People with disabilities need to access tables, food service lines, and condiment and beverage bars in restaurants, bars, or other establishments where food or drinks are sold.
- There must be an accessible route to all dining areas, including raised or sunken dining areas and outdoor dining areas, as well as to food service lines, service counters, and public restrooms.



- Businesses must provide accessible parking spaces for cars and vans if it is readily achievable to do so. One of every six spaces must be van accessible.
- Small businesses with four or fewer spaces must have one accessible parking space, but no signage is required.
- An accessible parking space must have an access aisle to allow a person using a wheelchair or other mobility device to get in and out of the car or van.



# Existing Facilities Safe Harbor

- **Safe Harbor:** In order to comply with the 2010 standards, further modifications are not required of a business that was built or altered in compliance with the 1991 Standards — even if the new standards have different requirements for them.
- If a business chooses to alter elements that were in compliance with the 1991 Standards, the safe harbor no longer applies to those elements.
- New requirements for elements in existing facilities that were not addressed in the original 1991 Standards are not subject to the safe harbor.

# New Construction and Alterations

- When a small business alters any of its facilities, it must make the alteration accessible, to the extent it is feasible.
- “Alteration” can include remodeling, renovating, rehabilitating, reconstructing, changing or rearranging structural parts or elements, changing or rearranging plan configuration of walls and full-height partitions, or making other changes that affect (or could affect) the usability of the facility.
- Normal maintenance, such as reroofing, painting, or wallpapering, is not an alteration.



- The California Building Code requires that business owners make improvements whenever they are doing construction or renovation, typically under a building permit.
- All newly renovated areas must meet the accessibility standards, and businesses may also be required to ensure accessibility of the building's main entrance, the route to the renovated areas, and bathrooms, drinking fountains or signs serving the renovated area.
- If the cost of construction is under the state valuation threshold (which changes every year), you can limit the costs of accessibility improvements outside of the area of remodel to 20% of overall construction costs.

- Building inspectors will check whether the renovations covered by your building permit meet the accessibility requirements under the building code. However, your entire business location must still comply with the ADA barrier removal requirements.



- A professional Certified Access Specialist (CASp) can inspect your location and provide a written evaluation which certifies compliance with state and federal disability access laws. If your business is not in compliance, the CASp inspector will provide a report explaining the steps to achieve full compliance. The CASp inspector can help you develop a timeline for removing readily achievable barriers to access.





- A professional Certified Access Specialist (CASp) can inspect your location before you sign the lease

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- To assist businesses with complying with the ADA, Section 44 of the IRS Code allows a tax credit for small businesses and Section 190 of the IRS Code allows a tax deduction for all businesses.
- The tax credit is available to businesses that have total revenues of \$1,000,000 or less in the previous tax year or 30 or fewer full-time employees. This credit can cover 50% of the eligible access expenditures in a year up to \$10,250 (maximum credit of \$5000).
- The tax deduction is available to all businesses with a maximum deduction of \$15,000 per year. The tax deduction can be claimed for expenses incurred in barrier removal and alterations.

- The Department of Justice has not yet released regulations outlining the requirements for website accessibility—however, it has indicated that the ADA’s accessibility requirements apply to business websites.
- An ADA compliant website could include captioned videos and images as well as information (such as webinar presentations, important forms, or web text) available as PDFs that can be accessed by a person with low vision or who is using an assistive technology device.



- **ADA Website** – [www.ADA.gov](http://www.ADA.gov)
- **ADA Information Line** – 800-514-0301 (Voice) 800-514-0383 (TTY)  
“Reaching Out to Customers with Disabilities” explains the ADA’s requirements for businesses in a short 10-lesson online course ([www.ada.gov/reachingout/intro1.htm](http://www.ada.gov/reachingout/intro1.htm))
- **ADA National Network (DBTAC)** – Ten regional centers are funded by the U.S. Department of Education to provide ADA technical assistance to businesses, States and localities, and persons with disabilities. 800-949-4232 (Voice and TTY) [www.adata.org](http://www.adata.org)

- **Access Board** – Offers technical assistance on the ADA Accessibility Guidelines. 800-872-2253 (voice) 800-993-2822 (TTY) Internet [www.access-board.gov](http://www.access-board.gov)
- **Equal Employment Opportunity Commission (EEOC)** – The EEOC offers technical assistance on the ADA provisions for employment which apply to businesses with 15 or more employees. Employment questions 800-669-4000 (voice) 800-669-6820 (TTY) Employment documents 800-669-3362 (voice) 800-800-3302 (TTY) [www.eeoc.gov](http://www.eeoc.gov)
- **Small Business Administration** – 800-827-5722 (voice/relay) (800-U ASK SBA) [www.sba.gov](http://www.sba.gov)

- Have you checked your lease to see who is responsible for ADA compliance?



Please visit [www.LALegalHelp.com](http://www.LALegalHelp.com)  
to request assistance.



Thank you for joining us

Have a nice day!