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## The Americans with Disabilities Act: A Brief Overview

The Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101 *et seq.*, prohibits disability discrimination in many areas of life, from work to public services to commercial business. With some exceptions, the ADA covers every type of disability, including those that are physical, psychological, and emotional. Covered entities must do more than refrain from negative treatment of people with disabilities. The ADA requires changes to policies and the removal of barriers that prevent people with disabilities from enjoying equal opportunity. The ADA has three primary titles covering three main areas of public life: employment, government services, and public accommodations. Each title provides distinct protections, procedures, and remedies. This In Focus briefly reviews the ADA’s history and the key components of the three primary titles.

### History

While it is perhaps the most familiar disability rights statute, the ADA was not the first. The Architectural Barriers Act of 1968 (ABA), 42 U.S.C. §§ 4151 *et seq.*, was the first federal law to call for any entity to take affirmative steps to eliminate disability access barriers. The ABA requires most facilities newly constructed, altered, leased, or financed by the federal government to be accessible to people with physical disabilities.

The Rehabilitation Act of 1973, 29 U.S.C. §§ 701 *et seq.*, a much broader statute, was the first federal law to address disability discrimination beyond physical access. Section 504 of the Rehabilitation Act, as amended, prohibits disability discrimination in federal and federally funded programs and activities. The Rehabilitation Act remains the primary disability rights law in the federal sector, as the ADA does not apply to most parts of the federal government.

The ADA and its implementing regulations incorporate many concepts developed by Section 504 and apply them to state and local governments and many private actors. Courts recognize that the ADA is modeled after Section 504 and tend to interpret the two laws consistently. In passing the ADA and thereby expanding Rehabilitation Act protections to these other actors, Congress recognized that disability discrimination remained “serious and pervasive” and announced its intention “to provide a clear and comprehensive national mandate” to achieve its elimination. 42 U.S.C. § 12101(a)(2), (b)(1).

Beyond the ADA, other federal disability laws apply to specific areas, such as housing, education, and voting.

### What Is a “Disability” Under the ADA?

The ADA defines disability as “a physical or mental impairment that substantially limits one or more major life activities,” “a record of such an impairment,” or “being regarded as having such an impairment.” 42 U.S.C. § 12102(1). In other words, a person might experience discrimination due to a current, past, or assumed disability.

An impairment is any physiological or psychological disorder or condition. Impairments can include everything from cosmetic disfigurements to intellectual disabilities to contagious illnesses. But not every medical or physical condition is a disability. It must “substantially limit” a “major life activity” (unless the individual makes a claim based on being “regarded as” disabled). The ADA directs that this is not a demanding standard. “Major life activities” include basic activities and senses, such as walking, hearing, seeing, standing, or learning; and bodily functions, such as the immune system, endocrine system, or neurological function. A person has a disability if they are limited in a major life activity compared to most people.

Congress has advised that the term “disability” should be construed broadly, and that litigation under the ADA should focus mainly on whether discrimination has occurred, not on whether a person is actually disabled.

The ADA does not allow people without disabilities to bring claims based on someone with a disability being treated more favorably than them.

### Title I: Employment

Title I of the ADA prohibits employers, including public employers, with 15 or more employees from discriminating against qualified individuals with disabilities in the “terms, conditions, and privileges of employment.” 42 U.S.C. § 12112(a). A person is “qualified” when, either with or without reasonable accommodations, they can perform the essential functions of a job. Disability discrimination includes disparate treatment, disparate impact, and the denial of reasonable accommodations.

Disparate treatment occurs when an employer takes an adverse employment action based on a person’s disability. Disparate impact is the use of neutral standards, rules, or methods of administration that screen out or adversely affect the employment opportunities or status of people with disabilities. Everything from physical requirements to inflexible break or leave policies to the use of inaccessible software could be included. Practices that have a disparate impact on qualified individuals with disabilities are permissible only if an employer can show that they are job related and necessary for business.

Employers must also provide reasonable accommodations, that is, “[m]odifications or adjustments . . . that enable an individual with a disability” to do the job. 29 C.F.R. § 1630.2(o)(1). Examples can include removing physical barriers, job restructuring, transfers to other positions, and the provision of auxiliary aids and services (i.e., communication aids). Employers must engage in an interactive process with employees to determine what accommodations are available and reasonable.

Employers need not provide accommodations that they show pose undue administrative or financial hardship. Under this standard, an employer does not have to make a fundamental alteration to its business to accommodate an employee. An employer also need not allow a direct threat to health or safety, when that threat cannot be mitigated by an accommodation. What accommodation may be reasonable and whether it poses an undue hardship, fundamental alteration, or direct threat requires a highly fact-specific and individualized inquiry.

The Equal Employment Opportunity Commission (EEOC) primarily enforces Title I. Title I claimants must file a complaint with the EEOC or with a similar state agency before going to court. The remedies for Title I violations are the same as those under Title VII of the Civil Rights Act of 1964, covering employment discrimination based on race, sex, and religion. Successful claimants can receive injunctive relief (i.e., orders that certain acts be taken, such as reinstatement or policy changes), attorney’s fees, and, in some cases, monetary relief (subject to certain caps). Monetary relief is unavailable against state employers.

## **Title II: State and Local Government**

Title II prohibits public entities from discriminating against qualified individuals with disabilities. A public entity is any state or local government and their agencies. (Specific provisions of Title II apply to public transportation and are not addressed here.) These entities may not subject people with disabilities to discrimination or discriminate in their “services, programs, or activities.” 42 U.S.C. § 12132. Title II applies to everything from public education to sidewalk accessibility to public health programs to prisons.

Individuals must be “qualified,” either with or without reasonable modifications, to participate in public programs or receive services. Like Title I, discrimination under Title II includes disparate treatment, disparate impact, and the denial of reasonable modifications. Public entities must also provide programs “in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d). They thus must avoid unnecessarily institutionalizing or segregating people with disabilities. Covered entities must also communicate with people with disabilities as effectively as they communicate with others and must respect a disabled person’s preferred communication aids and services.

As under Title I, public entities need not provide modifications they show pose a fundamental alteration or undue burden, nor need they allow a direct threat to safety that a reasonable modification cannot mitigate.

The Department of Justice (DOJ) is the primary enforcement agency for Title II, although it coordinates with other agencies, particularly those that fund relevant public entities. Victims of discrimination may file an administrative complaint before a lawsuit, but they do not have to. The remedies under Title II derive from those under Section 504. Claimants can recover some types of monetary damages (which are uncapped) against localities for intentional discrimination. Courts have not resolved the extent to which damages are available against states. Unlike Title I, courts increasingly find that emotional distress damages are unavailable under Title II. Injunctive relief and attorney’s fees are available for any claim.

## **Title III: Public Accommodations**

Title III bars disability discrimination in public accommodations: businesses and nonprofits open to the public. The ADA defines public accommodations categorically, that is, it spells out 12 basic types of covered private entities, including, for example, sales or rental establishments, places of public gathering, and service establishments. 42 U.S.C. § 12181(7). Title III prohibits discrimination “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.” 42 U.S.C. § 12182(a). Title III also requires disability access in educational and professional courses and testing.

As in other parts of the ADA, discrimination under Title III includes disparate treatment, disparate impact, and the denial of reasonable modifications. Much like Title II, public accommodations generally must serve people with disabilities in integrated settings and ensure effective communication. Whereas Title II requires a public entity to defer to some extent to a disabled person’s preferred communication aid, Title III requires public accommodations only to consult with the disabled person to determine the appropriate approach.

When it comes to architectural barriers, both Title II and Title III require new construction to meet accessibility standards. Title III uniquely requires covered entities to improve physical accessibility in pre-ADA facilities if to do so is “readily achievable,” that is, “easily accomplishable” and not too expensive. 42 U.S.C. § 12181(9).

DOJ primarily enforces Title III. Claimants may first file a complaint with DOJ, or they can simply go to court. Damages are unavailable under Title III, except in lawsuits brought by DOJ. Aside from attorney’s fees, successful litigants are entitled to injunctive relief.

## **Considerations for Congress**

Disability discrimination is regulated by a complex set of statutes—not only the ADA, but the ABA, Rehabilitation Act, and several others. Many of these laws cross-reference each other. When legislating in this area, Congress may consider whether to amend multiple statutes. Within the ADA itself, different rules apply to different contexts. Congress may also consider, when passing new laws, if it

wants uniformity or context-specific procedures, rules, and remedies.

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