



On July 26, 1990, President George H. W. Bush signed into law the Americans with Disabilities Act (“ADA”) saying these words, “Let the shameful wall of exclusion finally come tumbling down.” One of the most important civil rights law to be enacted since the Civil Rights Act of 1964, the ADA prohibits discrimination against people with disabilities.

What does the ADA mean for state and local governments in the delivery of their programs, services, and activities, as well as their employment practices? In the broadest sense, it requires that state and local governments be accessible to people with disabilities.

LEGAL LANDSCAPE: Overview of the laws, regulations, and other legal requirements.

The Rehabilitation Act of 1973

Broader than any disability law that came before it, Section 504 of the Rehabilitation Act made it illegal for the federal government, federal contractors, and any entity receiving federal financial assistance to discriminate on the basis of disability. Section 504 obligates state and local governments to ensure that persons with disabilities have equal access to any programs, services, or activities receiving federal financial assistance. Covered entities also are required to ensure that their employment practices do not discriminate on the basis of disability.

The Americans with Disabilities Act of 1990

The ADA is built upon the foundation laid by Section 504 of the Rehabilitation Act. It uses as its model Section 504's definition of disability and then goes further. While Section 504 applies only to entities receiving federal financial assistance, the ADA covers all state and local governments, including those that receive no federal financial assistance. The ADA also applies to private businesses that meet the ADA’s definition of “public accommodation” (restaurants, hotels, movie theaters, and doctors’ offices are just a few examples), commercial facilities (such as office buildings, factories, and warehouses), and many private employers.

While the ADA has five separate titles, Title II is the section specifically applicable to “public entities” (state and local governments) and the programs, services, and activities they deliver. The Department of Justice (“DOJ” or the “Department”), through its Civil Rights Division, is the key agency responsible for enforcing Title II and for coordinating other federal agencies’ enforcement activities under Title II.

In addition, the Department has the ability to enforce the employment provisions of Title I of the ADA as they pertain to state and local government employees. DOJ is the only federal entity with the authority to initiate ADA litigation against state and local governments for employment violations under Title I of the ADA and for all violations under Title II of the ADA.

The ADA Standards for Accessible Design (the ADA Standards)

The ADA Standards for Accessible Design, or the “ADA Standards,” refer to the requirements necessary to make a building or other facility architecturally (physically) accessible to people with disabilities. The ADA Standards identify what features need to be accessible, set forth the number of those features that need to be made accessible, and then provide the specific measurements, dimensions and other technical information needed to make the feature accessible.

NOTE: On occasion the acronym ADAAG is used to refer to the ADA Standards. ADAAG stands for the Americans with Disabilities Act Accessibility Guidelines, which are issued by the United States Architectural and Transportation Barriers Compliance Board (“Access Board”). ADAAG is not the same as the ADA Standards. The Department’s regulations must be consistent with the ADAAG, but the ADAAG contains guidelines, not enforceable standards.

Uniform Federal Accessibility Guidelines (UFAS)

These are the architectural standards originally developed for facilities covered by the Architectural Barriers Act, a law that applies to buildings designed, built, altered or leased by the federal government. They also are used to satisfy compliance in new or altered construction under Section 504. State and local governments have the option to use UFAS or the ADA Standards to meet their obligations under Title II of the ADA. However, if states and local governments choose to use the ADA Standards, the elevator exemption contained in the ADA Standards may not be used.

NOTE: Only, only one set of standards may be used for any particular building. In other words, you cannot pick and choose between UFAS and the ADA Standards as you design or alter a building. DOJ also uses UFAS for certain special-use facilities when the ADA Standards have no scoping or technical provisions, such as for prisons and jails.