



# Return to Business:

## Serving Customers with Disabilities While Implementing COVID-19 Safety Measures

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**Seyfarth Shaw LLP**

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# Agenda

- 01** ADA Background
- 02** Physical Accessibility Considerations
- 03** Masks, Fever Screening, and Maintaining Social Distance
- 04** Effective Communication Considerations (Websites, Apps, Telehealth)
- 05** Seating Capacity, Companions, Service Animals and Use of Employee Restrooms

# Speakers

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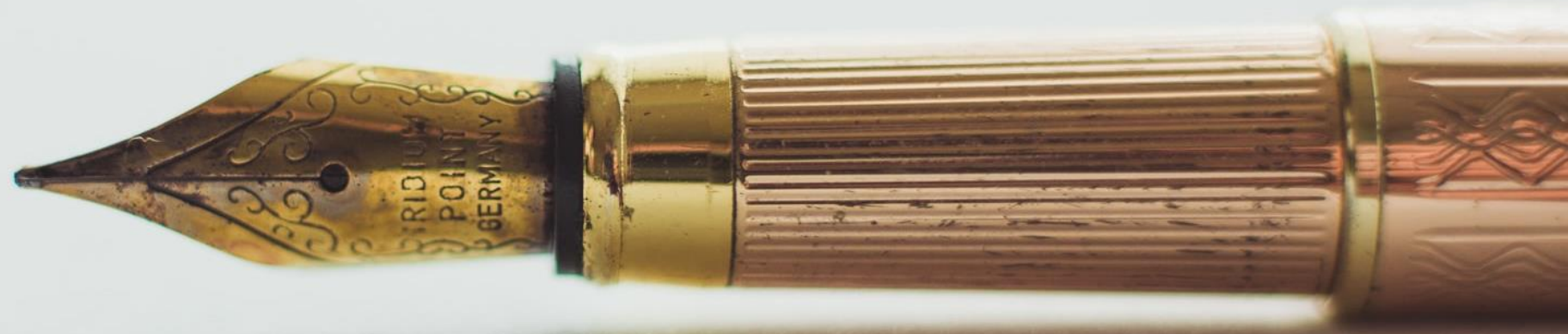
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# ADA Background

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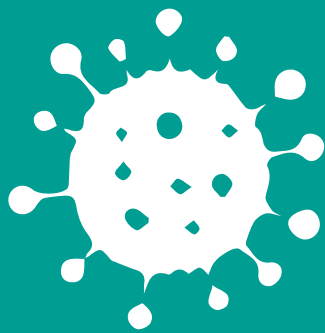
- The Americans with Disabilities Act (ADA) is a federal civil rights law that prohibits discrimination against individuals with disabilities.
- Signed into law by President George H.W. Bush on 7/26/90.
- Covers five key areas:
  - Employment (Title I)
  - State and Local Government Activities (Title II)
  - Public Transportation (Title II)
  - **Public Accommodations (Title III)**
  - Telecommunications (Title IV)

**\*\*\* Today's focus = Title III**

# ADA Background

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- Under Title III of the ADA, public accommodations must:
  - have facilities that are accessible to individuals with disabilities (e.g., members of the public);
  - make reasonable modifications to policies, practices, and procedures when necessary to ensure that individuals with disabilities have equal access to public accommodations' goods, services, facilities, privileges, advantages, and accommodations; and
  - ensure effective communication with individuals with disabilities by providing them auxiliary aids and services at no additional charge
- Remedies:
  - Private party: Injunctive relief, attorneys' fees & costs (possible damages/penalties under state corollary laws)
  - DOJ Action: Penalties \$75,000/\$150,000; injunctive relief, damages



## ADA Issues & Compliance in the Time of COVID-19

- No DOJ guidance for public accommodations on social distancing and safety measures & compliance with Title III
  - Contrast: EEOC issued guidance to employers for protecting employees in the workplace
- *Consult experienced ADA counsel in developing and implementing plans that address the needs and health of employees and customers, including those with disabilities*





# Points of Entry/Drive Thru Only Service

- **Issues:**

- Entrance selected to remain open may not be the accessible entrance
- Route to entrance may be rerouted and include barriers such as changes in level, excessive slopes, or narrow walkways
- Installation of body temperature scanners may narrow path of travel and block access for wheelchair or scooter users
- Drive thru only service excludes people who can't drive because of disability

- **Compliance Considerations:**

- Accessible entrance must be the one that remains open when facility is open (see 2010 Standards Section 404 for all requirements);
- Route to and through entrance:
  - must be 36" wide and clear with no changes in level or excessive slopes;
  - cannot narrow to less than 32" for a length of more than 24"
  - cannot have any turnstiles or other obstructions

# Changes to Parking Facilities

- **Issues:**

- Public parking facilities may be closed to discourage overcrowding
- Valet parking may be discontinued to reduce spread of virus, potentially impacting vehicles that require van accessible parking where self-parking has none

- **Compliance Considerations:**

- Maintain the required number of car and van accessible parking spaces based on the number of spaces available to the public (see 2010 Standards Section 208)
- If van accessible parking was only provided through valet because self-parking does not have van accessible spaces, develop plan for providing access to van accessible parking



# Queue Lines

- **Issues:**

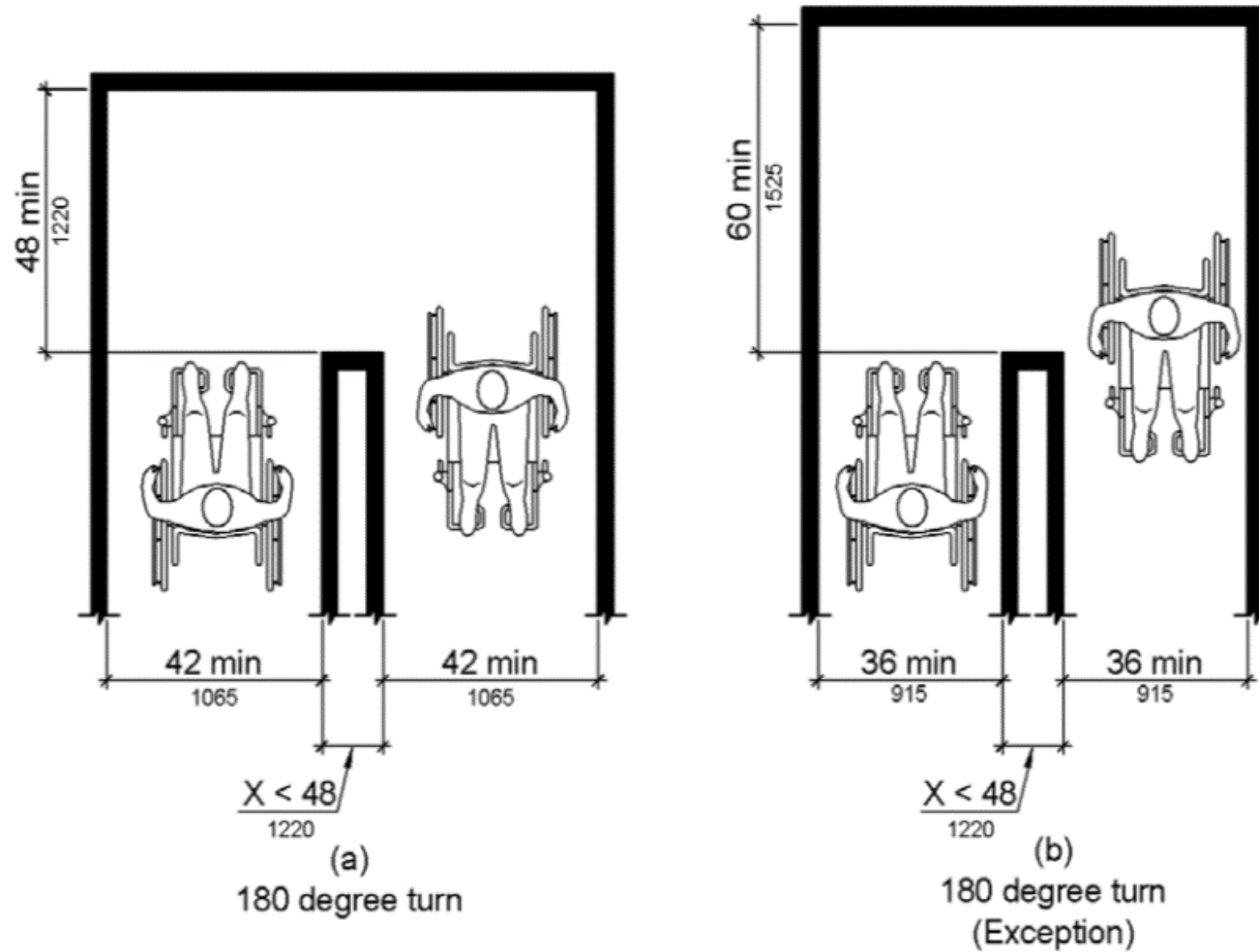
- Stores create new queue lines for customers who have to wait to get into a facility
- Queue lines are too narrow for mobility devices (e.g. wheelchair and scooter users)
- Customers with mobility disabilities can't wait in long lines



- **Compliance Considerations:**

- Stanchions must provide 36" of width measured from the base
- More width is required for U-turns (see diagram)
- Separate shorter priority line with ISA symbol can be created for persons using mobility devices and disability parking placard
- Provide folding chairs for people who cannot stand for long periods of time

# Queue Line Width at U-Turn



# Floor Markers and Directional Arrows for Social Distancing

- **Issues:**

- People who are blind or have low vision cannot see the floor markers or directional arrows

- **Compliance Considerations:**

- Employees must provide assistance with voice guidance while social distancing
- Consider contracting with a service such as Aira which connects blind customers with agents who can see what the customer would see through a mobile phone and provide voice guidance



# Mask Policy

- **Issues:**

- Deaf/hard of hearing lip readers can't read lips when employees wear masks
- ASL interpreters can't fully translate behind mask
- Customers claim they can't wear mask because of a disability

- **Compliance Considerations:**

- Business must come up with another way to communicate with customer (e.g. both parties exchange notes using white board and pen for simple transactions)
- Consider clear face shields for interpreters instead of mask
- In anticipation of mask objectors, business must document "legitimate safety reasons" for requiring mask (e.g. government requirement, official guidances for safety)
- Consider and implement alternative way of delivering services to mask objector without facility entry or contact with employees



I am ***exempt*** from ALL REGULATION mandating face mask usage in public. Wearing a face mask poses a health risk to me.

Under the ADA and HIPAA, I am NOT required to disclose my medical condition to anyone.

Department of Justice ADA Violation information line: **800-514-0301**  
Organizations and businesses can be fined up to **\$75,000** for the first ADA violation and **\$150,000** for any subsequent violation

**ATTN GOVERNMENT AGENTS**

PLEASE PROVIDE LAWFUL AND NECESSARY CONSIDERATION TO AID THE BEARER IN THE UNIMPEDED EXERCISE OF CONSTITUTIONALLY PROTECTED RIGHTS. THANK YOU FOR YOUR UNDERSTANDING AND ASSISTANCE.

# Fever Screening

- **Issues:**

- Businesses want to screen guests/customers and exclude those with a fever

- **Compliance Considerations:**

- Must establish that this eligibility criteria is a “legitimate safety requirement”
- Documentation for eligibility criteria
- Related defense is to show that the individual with a fever poses a “direct threat”
- Both defenses are highly fact intensive and will be scrutinized by courts





# Maintaining Distance

- **Issues:**

- Providing assistance to customers with disabilities for a variety of tasks in a business while maintaining social distance
- Limiting numbers of people in a business to ensure social distancing

- **Compliance Considerations:**

- Remind employees of their obligation to provide assistance while maintaining distancing measures (e.g., instead of offering a blind person an arm to guide the person to a destination, provide verbal wayfinding directions)
- Make reasonable modifications to a policy limiting numbers of people in a business for individuals with disabilities who may require a caregiver or other companion to assist them





## **Effective Communication:** Use of Websites, Mobile Apps, and Other Technologies to Deliver Services

- **Issues:**

- Increased traffic to websites and mobile apps as alternative to in-store experience
- People with visual disabilities use screen reader technology (e.g., JAWS, Voiceover)
- People with hearing disabilities read captions

- **Compliance Considerations:**

- Are your website and mobile apps accessible?
- Litigation risk based on explosion in lawsuits even before Covid-19
- Do you have an Accessibility Statement?



## Effective Communication: Telehealth Visits

- **Issues:**
  - Medical visits provided via Skype, FaceTime, or dedicated website/app platform
  - Deaf/hard of hearing patients need to be able to communicate effectively with medical professionals
- **Compliance Considerations:**
  - Burden/cost cannot be placed on patient with disability
  - Complexity matters: Consider remote ASL interpreter, real-time captions, etc.
  - Must accommodate caregiver



## Limiting Access for Service Animals

- **Issues:**
  - Concerns that admitting service animals will contribute to virus spread
- **Compliance Considerations:**
  - Can exclude animal if:
    - Customer does not answer two permitted questions; or
    - Animal is out of control and handler does not take effective action; or
    - Not housebroken
  - CDC: animals, including service animals, not contributing to virus spread

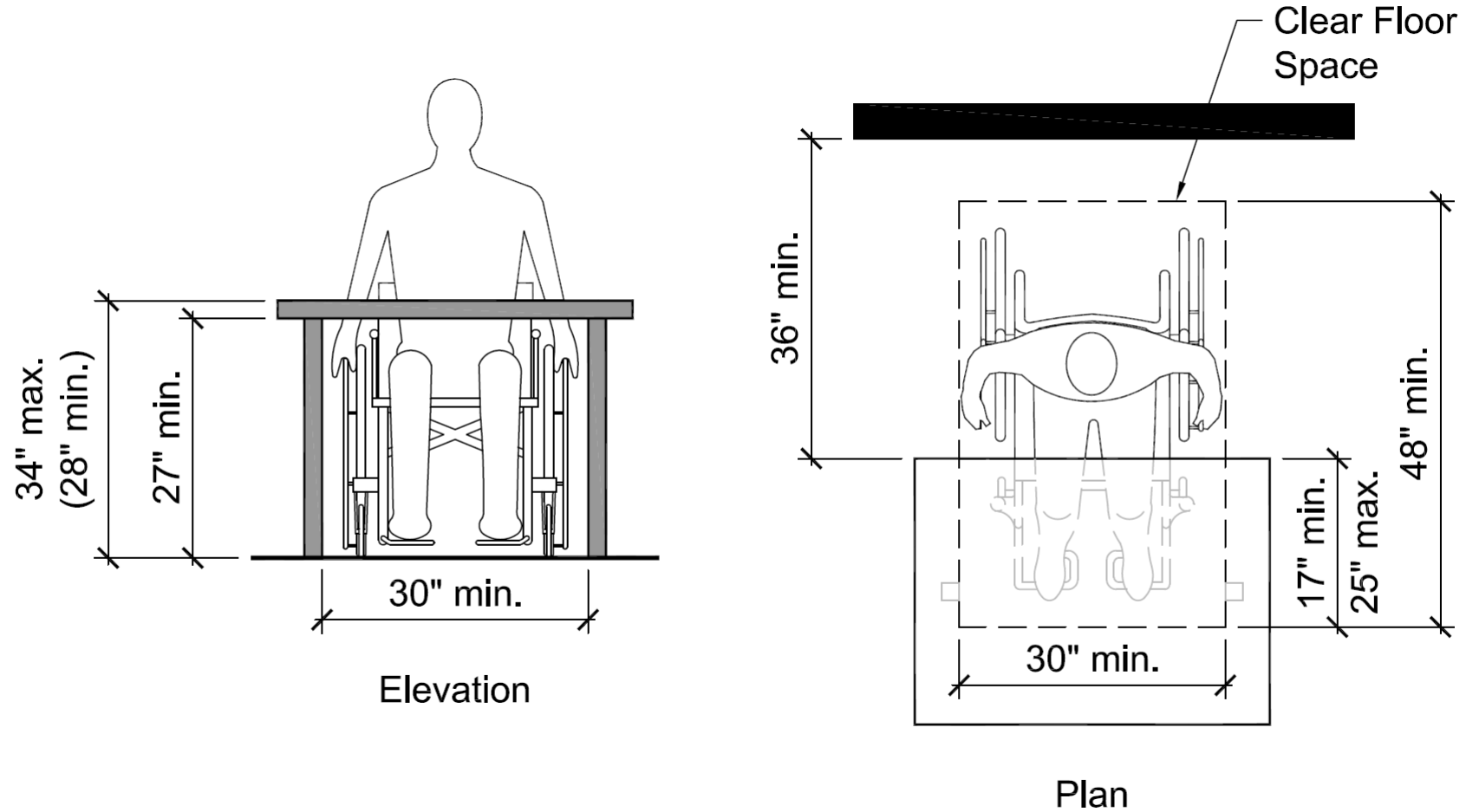
## Reducing Seating Capacity

- **Issues:**
  - Removal of tables from dining rooms to ensure sufficient social distance between tables
- **Compliance Considerations:**
  - At least 5% of each type of work or dining surfaces must be accessible
  - Ensure that the required number of accessible tables remain in service

# Accessible Table Examples



# Accessible Table Requirements



# Use of Employee Only Restrooms

- **Issues:**
  - Businesses may limit use of restrooms to employees only to reduce exposure and protect employees
- **Compliance Considerations:**
  - ADA's reasonable modifications to policies and principle applies
  - Restroom Access Acts adopted in various states require businesses allow individuals with certain disabilities use for individuals with certain disabilities
  - Prepare talking points so employees do not ask any improper questions of customers who ask to use the restroom due to a disability





## **Additional Resources :**

### **ADA Title III Blog**

<https://www.adataitleiii.com/>

### **ADA Title III & Public Access Team**

<https://www.seyfarth.com/services/practices/advisory/ada-title-iii-and-public-access.html>

### **COVID-19 Resource Center**

[www.seyfarth.com/returntobusiness](http://www.seyfarth.com/returntobusiness)





**Questions?**

**Thank you!**