
Return to Business: Serving Customers with Disabilities While Implementing COVID-19 Safety Measures

As businesses implement safety measures to protect their customers and employees from COVID-19 exposure, how can businesses ensure a facility's compliance with ADA Title III requirements?

This is a summary only; please contact a Seyfarth attorney for any legal advice or guidance needed.

The Americans with Disabilities Act (ADA) is a federal civil rights law that prohibits discrimination against individuals with disabilities. Title III of the ADA addresses that public accommodations must have facilities that are accessible to individuals with disabilities, make reasonable modifications to policies, practices and procedures to ensure equal access, and ensure effective communication with individuals with disabilities by providing them auxiliary aids and services at no additional charge. Failure to comply with the Act could result in penalties imposed by states and/or the Department of Justice and possibly injunctive relief and the award of attorneys' fees and costs as the result of litigation with private parties.

Title III Compliance in the Time of COVID-19

Although the Department of Justice has not issued guidance for public accommodations on social distancing, safety measures, and compliance with Title III, state and local orders may require the development and implementation of plans that address the needs and health of employees and customers, including those with disabilities. These plans will need to consider the following:

Changes to entrances. If the number of entrances and exits are restricted, an accessible entrance needs to remain open and the route to and through the entrance must meet all ADA requirements. The 2010 Standards Section 404 details the specific requirements for entrances including the required width of the entrance and the level of slope allowed, among others.

Changes to parking facilities. In an effort to manage capacity, some facilities close off sections of parking facilities. In these instances, the facility must maintain the required number of car and van accessible parking spaces based on the number of spaces available to the public and ensure that the route from the parking facility to the entrance is accessible. Additional considerations include modifications to provide van accessible parking if none currently exist.

Queue lines. In an effort to discourage overcrowding, facilities may limit the number of people allowed in the facility at one time and design queue lines outside the facility. These queue lines must allow for the needs of people with disabilities. For instance, it is important that the queue area be wide enough to accommodate people in wheelchairs, scooters or walkers. Some businesses may want to establish two separate queue areas with one being specifically designated for people with disabilities. Another consideration may be to provide chairs or stools for people who cannot stand for long periods of time. All businesses will need to develop a plan and provide the proper training and education for their employees to effectively manage the queue areas.

Floor markers. Floor markers are increasingly being used inside facilities to redirect traffic and enforce social distancing guidelines. But people with low vision or no vision will need assistance from employees to identify these markers. Voice guidance from a safe distance is one option but may not be practical in all situations. Another option is the use of a system accessible via a cell phone or specially designed eyeglasses that can act as the “eyes” of the person needing assistance.

Mask policy. Some businesses now require employees and customers to wear masks while inside the facility as part of the company policy. Some states and local governments have also issued orders requiring the use of face masks. This can create complications for people who are hard of hearing or deaf and rely to some extent on reading the lips of the speaker. Additionally, this places limits on ASL interpreters who use facial expressions as part of the interpretation process. In these instances, businesses will need to develop an additional method of communication such as writing a note or using a white board or possibly supplying employees with clear face shields instead of masks. Businesses should clearly document their face mask policy and train employees on how to enforce the policy with customers.

Fever screening. Some facilities may want to use fever screening as a method to determine if access to the facility can be granted. Business will need to establish that this eligibility criteria is a legitimate safety requirement and that allowing access to someone with a fever poses a direct threat to others within the facility.

Providing assistance. Business still have an obligation to assist individuals with disabilities, even during a pandemic. However, to protect the health and safety of employees, modifications will likely need to be made and employees will need the proper training on the new policies and procedures. For instance, instead of offering a blind person an arm to guide the person to a destination, the employee may need to provide verbal directions from an appropriate social distance. Additionally, policies that limit the number of people in a facility at one time may need to be modified to allow for individuals with disabilities who may require a caregiver or other companion to assist them.

Effective communication. The use of websites, mobile apps, and other technologies to deliver services as an alternative to an in-store experience as increased due to COVID-19. Business should make sure that their website and mobile apps are accessible to individuals with disabilities either through screen readers or captioning. This also would apply to kiosks or self-service devices that may be used to limit person-to-person contact as well as Telehealth visits with medical professionals.

Reducing seating capacity. If businesses require the removal of tables from dining rooms to ensure sufficient social distancing between tables, at least 5% of each type of work or dining surfaces must be accessible and must remain in service.

Use of employee bathrooms. Businesses may limit use of restrooms to employees only to reduce exposure and protect employees. However, Restroom Access Acts adopted in various states require businesses to allow access to individuals with certain disabilities. Prepare talking points for your employees so that they do not ask any improper questions of customers who ask to use the restroom due to a disability.

Material is Summarized From a May 20, 2020 Presentation By:

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