



# **Alaska Department of Transportation & Public Facilities**

## **Americans with Disabilities Act (ADA) – A basic guide to compliance**

Civil Rights Office



## Why we need the ADA

- Historically, society has tended to isolate and segregate individuals with disabilities. The ADA was passed in an effort to assure equality of opportunity, full participation, independent living, and economic sufficiency for those with disabilities.



## Purpose of the ADA

The ADA's purpose is to prohibit discrimination and exclusion from programs, services, or activities based on disability.

# **The Americans with Disabilities Act (ADA)**

“No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.”

28 C.F.R. Part 35 § 35.130

# **Nondiscrimination under Federal grants and programs**

“No otherwise qualified individual with a disability in the United States shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

29 U.S.C. § 749(a)

# Why Two Laws?

Prior to the passage of the ADA in 1990, there were few laws specifically addressing the rights and needs of people with disabilities.

The laws that were passed, prior to the ADA, only addressed some of the issues faced by people with disabilities and generally did not apply to non-government business and organizations.

It wasn't until the Rehabilitation Act of 1973 that discrimination on the basis of disability was prohibited. Most laws passed prior to this Act provided opportunities or benefits to people with disabilities, but didn't prohibit discriminatory treatment.



## Real Life Examples

- If you are wondering how an opportunity or benefit can be granted to someone and they can still be discriminated against in receiving the opportunity/benefit imagine this:



## Example #1

- A person who doesn't have the ability to use his legs and uses a wheelchair may qualify for certain government benefits. To receive these benefits s/he has to go to the third floor of the State office building. The State office building doesn't have an elevator. So, s/he is entitled to these benefits offered by the State, but there is no way for her/him to receive them. S/He is effectively being excluded from participating and being denied the benefits of the program.



## Example #2

- That same person is qualified for a position with the State. Telephonic interviews are conducted, and he is hired for the position. After mentally reviewing the interview he realizes that he was never asked if he needed any accommodations for the position. In other words, he never mentioned that he uses a wheelchair. When he calls back to ask if his office space will be wheelchair accessible, he is told “NO” and since the office is not wheelchair accessible he should look for work elsewhere as the position will now be given to someone else.

# Federal Laws Supporting People with Disabilities

- National Vocational Rehabilitation Act of 1920
- Social Security Act of 1935
- Wagner-O'Day Act of 1938
- Randolph-Sheppard Act of 1938
- Vocational Rehabilitation Act of 1954
- Wagner-Peyser Act Amendments of 1954
- Social Security Amendments of 1956
- National Defense Education Act of 1958
- Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963
- Mental Retardation Facilities and Community Mental Health Centers Construction Act Amendments of 1965
- Social Security Act Amendments of 1965
- Elementary and Secondary Education Act of 1965
- Elementary and Secondary Education Act Amendments of 1966
- Fair Labor Standards Amendments of 1966
- Elementary and Secondary Education Amendments of 1967
- Handicapped Children's Early Education Assistance Act of 1968
- Vocational Education Act Amendments of 1968
- Architectural Barriers Act of 1968
- Developmental Disabilities Services and Facilities Construction Amendments of 1970
- Urban Mass Transportation Act Amendment of 1970
- Javits-Wagner-O'Day Act of 1971

# Federal Laws Supporting People with Disabilities

- Social Security Amendments of 1972
- Small Business Investment Act Amendments of 1972
- Rehabilitation Act of 1973
- Education Amendments of 1974
- Headstart, Economic Opportunity, and Community Partnership Act of 1974
- Housing and Community Development Act of 1974
- Developmentally Disabled Assistance and Bill of Rights Act of 1975
- Education for All Handicapped Children Act of 1975
- Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978
- Civil Rights Commission Act of 1978
- Department of Education Organization Act of 1979
- Civil Rights of Institutionalized Persons Act of 1980
- Job Training Partnership Act of 1982
- Education of the Handicapped Act Amendments of 1983
- Child Abuse Prevention Treatment Act Amendments of 1984
- Developmental Disabilities Act of 1984
- Rehabilitation Act Amendments of 1984

# Federal Laws Supporting People with Disabilities

- Consolidated Omnibus Budget Reconciliation Act of 1985
- Education of the Handicapped Act Amendments of 1986
- Handicapped Children's Protection Act of 1986
- Employment Opportunities for Disabled Americans Act of 1986
- Education of the Deaf Act of 1986
- Rehabilitation Act Amendments of 1986
- Air Carrier Access Act of 1986
- Protection and Advocacy for Mentally Ill Individuals Act of 1986
- Developmental Disabilities and Bill of Rights Act Amendments of 1987
- Technology-Related Assistance for Individuals with Disabilities Act of 1988
- Fair Housing Act Amendments of 1988
- Omnibus Reconciliation Act of 1989
- Television Decoder Circuitry Act of 1990
- Americans with Disabilities Act of 1990

# What Happened After the ADA?

The ADA went a long way to help people with disabilities, but this was just a start. After being signed into law the Supreme Court and lower courts interpreted the language of the Act to require individuals with physical or mental impairments to prove their disability was “substantially limiting a major life activity.” In other words, the Court was focused on the disability rather than the treatment received.

In 2008 Congress passed the ADA Amendments Act. With this Act, Congress changed the definition of the term “disability,” clarified and broadened the definition, and required the courts to focus on whether the treatment was discriminatory rather than whether the person with the impairment fits the technical definition of the term “disability.”



# Disability defined

**Disability** means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

28 C.F.R. 35 § 35.104



## Physical and Mental Impairment Defined

- A *physical* impairment is a physiological disorder or condition, cosmetic disfiguration or anatomical loss impacting one or more body systems. Examples of body systems include neurological, musculoskeletal (the system of muscles and bones), respiratory, cardiovascular, digestive, lymphatic and endocrine.
- A *mental* impairment is a mental or psychological disorder.



## Substantially Limits Defined

- An impairment “substantially limits” a major life activity if the person cannot perform a major life activity the way an average person in the general population can, or is significantly restricted in the condition, manner or duration of doing so.



## Examples of major life activities

- Walking
- Seeing
- Hearing
- Breathing
- Caring for oneself
- Sitting
- Standing
- Lifting
- Thinking
- Working
- Reproduction
- Manual tasks central to daily life.



## Qualified individual with a disability

Someone who would qualify for a program, but for their disability.

If that is the case, you must attempt to:

1. Make reasonable modifications to rules, policies, or procedures;
2. Remove physical and communication barriers; and
3. Provide auxiliary aids or services for effective communications.



## Examples of modifications:

- Accepting a government-issued I.D. card instead of a Driver's License as proof of identification.
- Permitting a personal attendant to help a person with a disability to use a public restroom designed for the opposite gender.
- Permitting a service animal in a place where animals are typically not allowed.



# Modification $\neq$ Fundamental alteration

A modification does not required a fundamental alteration of the nature of the program, service, or activity.

A fundamental alteration is a change that makes the original program, service, or activity no longer the same.



## Fundamental Alteration

### Example #1

A woman who uses a wheelchair has requested that A-town alter the incline of one of the trails that is part of the City's Park program. The trail is designed for use by mountain bikes.

- Paving the trail would alter the fundamental nature of the program (trail), which is provide a rugged inclined terrain for mountain biking.

NOTE: If a wheelchair user takes part in this type of recreation through the use of a special bike or wheelchair, then he or she should be allowed.



## Fundamental Alteration Example #2

A woman with severe physical limitations requesting a hotel to provide her with someone to help her use the restroom. The hotel does provide a housekeeping service.

- Providing personal care services would fundamentally alter the nature of the service, which is to provide a cleaning service for guests.



# Effective Communication

- Providing effective communication means offering auxiliary aids and services to enable someone with a disability to participate in the program, service or activity.



## Examples of Effective Communication

- Open and closed captioning
- Transcription services
- Written materials
- Assisted listening devices
- Note takers
- Qualified interpreters
- TDD
- Videotext displays
- Telephone handset amplifiers
- Telephone compatible with hearing aids



## Reasonable accommodation

If a facility, program, service, or activity is not accessible, then a reasonable accommodation must be made.

If a reasonable accommodation is made, the cost of providing the accommodation should not be passed onto the person requesting the accommodation.



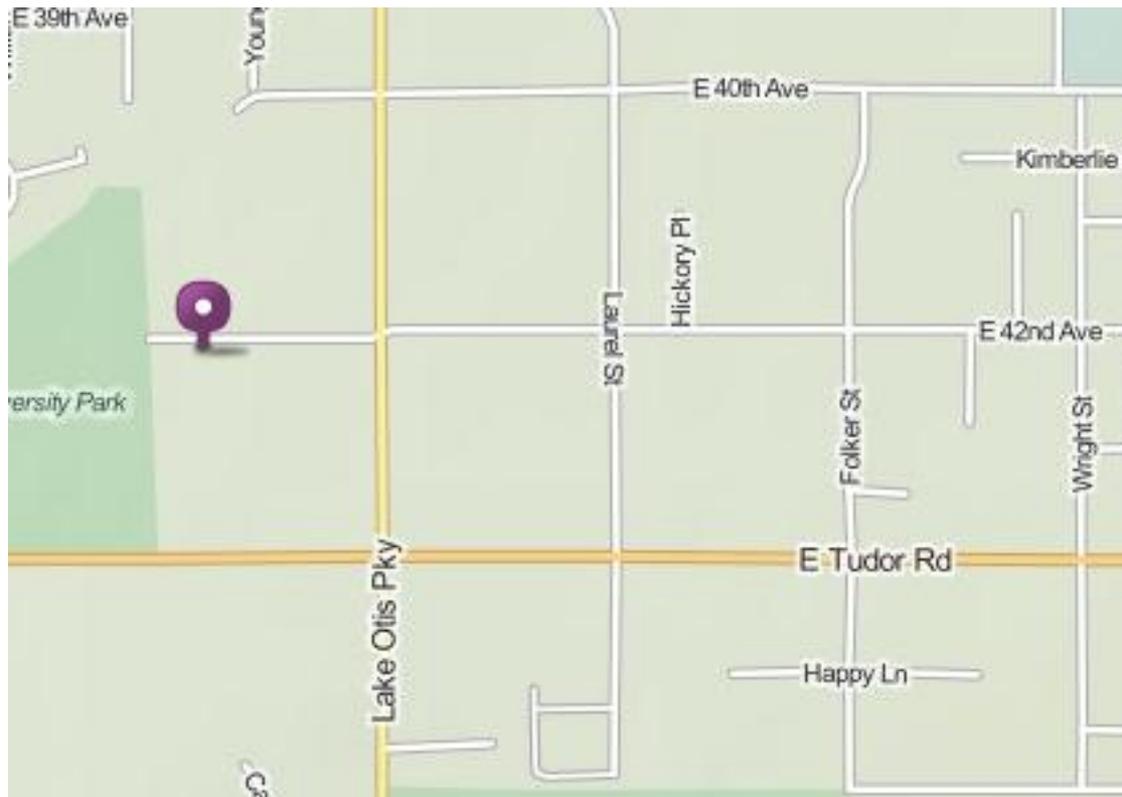
# Reasonable Accommodations

Generally do NOT involve

- Lowering standards
- Compromising safety
- Providing personal use items (glasses, hearing aids, wheelchairs, etc.)
- Providing personal care assistance (unless offered as a service)



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