

Summary of the Americans with Disabilities Act of 1990

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National Conference of State Legislatures
December 29, 2008
Updated February 10, 2009 (New text shaded)

The Americans with Disabilities Act of 1990 gives civil rights protections to individuals with disabilities similar to protections given to individuals on the basis of race, national origin, sex, age, and religion. It guarantees equal opportunity for individuals with disabilities to access public accommodations, to compete for employment opportunities, to use transportation facilities and state and local government services and telecommunications.

Title I of the act prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against persons with disabilities, including job applicants, in all employment practices. An individual is considered to have a disability if he or she has a physical or mental impairment that substantially limits one or more major life activities, has a record of an impairment, or is regarded as having an impairment. Employers with 15 or more employees are required to comply with the act's requirements.

Title II of the act prohibits discrimination against individuals with disabilities in all programs, activities, and services of public entities. It applies to all state and local governments, their departments and agencies, and any other instrumentalities or special purpose districts of state or local governments. This includes public and private entities that provide public transportation. In regards to private entities, the act provides that "no individual shall be discriminated against on the basis of disability in the ...enjoyment of ... public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce."

Title II requires public entities:

- That purchased or leased new buses, rapid rail vehicles, new light rail vehicles for regular transit services be readily accessible to and usable by persons with disabilities, including those who use wheelchairs.
- That provide fixed route service to also provide paratransit and other special transportation services to persons with disabilities, including those who use wheelchairs. The service has to be comparable to regular transit services for persons without disabilities, or is comparable in response time to regular transit services provided to persons without disabilities.
- To provide paratransit and special transportation services within their service area.
- That purchase or lease new vehicles for a public demand responsive transit service ensure that these vehicles are readily accessible to and usable by persons with disabilities, including those who use wheelchairs.

Title II requires private entities primarily involved in fixed route transportation:

- That purchase or lease a new vehicle (other than an automobile, a van with a seating capacity of less than 8 passengers, including the driver, or an over-the-road bus) ensure that the vehicle is accessible and usable by persons with disabilities, including those who use wheelchairs.

Title II requires private entities primarily involved in demand responsive transportation:

- That purchase or lease a new vehicle (other than an automobile, a van with a seating capacity of less than 8 passengers, including the driver, or an over-the-road bus) ensure that the vehicle is accessible and usable by persons with disabilities, including those who use wheelchairs.
 - **Exception:** Compliance isn't required if the new vehicle is to be used for demand response services, and the company provides an equal level of service to the disabled as they do the general public.

In 1991 the U.S. Department of Transportation (DOT)¹ published a rule to implement and explain the transit related provisions of the ADA. They provide that:

- A public entity operating a fixed route system has to provide a complementary paratransit or other special service to persons with disabilities. To qualify as complementary, the service has to:
 - Provide service within a width of three-fourths of mile on every side of each fixed route, so essentially it is a mile and a half boundary.
 - Provide paratransit service to any ADA eligible person at a specified time in response to that person's request made the previous day. Reservations can be taken by an agent or by a computer.
 - Charge a fare that does not exceed twice the fare that would be charged to a person paying a full fare at the similar time of day on the entity's fixed route.
 - Provide service during the same hours as the fixed route service.
- The public entity cannot:
 - Impose restrictions on the type of trip
 - Restrict the number of trips a person can take
 - Impose waiting lists for access to the service
 - Have a pattern or practice that significantly limits the availability of the service, e.g. untimely pickups, trip denials or missed trips, or trips with excessive lengths.
- A personal attendant, family member or a friend who is accompanying the disabled individual is allowed to ride with him/her.
- The public entity has to develop a process for establishing the eligibility of persons who are able to ride the paratransit service.

¹ According to the Attorney Advisor for the FTA, FTA rules carry the same authority as DOT rules. Many of DOT's rules are implemented by the modes (FTA, FHWA, FRA, etc.). U.S. DOT rules that are implemented by the modes include 49 CFR part 5, FOIA regulations; 49 CFR parts 18 and 19, collectively known as the common grant rule; 49 CFR parts 27, 37 and 38, implementing the Rehabilitation Act and the Americans with Disabilities Act; 49 CFR part 20, lobbying restrictions, etc. The FTA does not engage in rulemaking in those areas.

- Allow visitors (persons who do not reside in the entity's jurisdiction) to access the complementary service. The service has to be available to the visitor for any combination of 21 days during a 365 day period.

New Freedom Program (49 USC § 5317) funds are available to public transportation service providers whose services go beyond those required by the ADA. ADA complementary paratransit services can be eligible for funding under the New Freedom program so long as the projects are new and go beyond the ADA.² "New" is defined as not operational as of August 10, 2005 or the project did not have an identified funding source before August 10, 2005.

Examples of new public transportation projects are:

- Travel training;
- Enhancing paratransit beyond ADA requirements (see below for details); and,
- Feeder services (transit service that provides access to commuter rail, commuter bus, intercity rail, and intercity bus stations).

Examples of going beyond the ADA are:

- Supporting new mobility management and coordination programs among public transportation providers and other human service agencies providing transportation;
- Purchasing vehicles to support new accessible taxi, ride sharing, and/or vanpooling programs;
- Supporting administration and expenses related to new voucher programs for transportation services offered by human service providers; and,
- Supporting new volunteer driver and aide programs.

Olmstead v. L.C., 527 U.S. 581 (1999)

In 1999 the U.S. Supreme Court interpreted Title II of the ADA to require states to place persons with mental disabilities in community settings rather than institutions if a qualified professional determines the placement is appropriate; the person does not oppose the placement; and, the state can reasonably accommodate the placement. In a 6-3 decision authored by Justice Ruth Bader Ginsburg the court ruled that unjustified segregation in institutions is discrimination because it perpetuates unwarranted assumptions that people with disabilities are incapable or unworthy of participating in community life, and because confinement in an institution severely curtails everyday life activities.

Title II provides that "[a] public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." This regulation requires states to offer community services to residents of institutions, when certain conditions are met. The conditions are that: (1) the residents could be appropriately served in the community, and (2) to serve the residents in a community setting would not fundamentally alter the state's service system or be an undue burden on the state.

² This is subject to change because of the FTA's January 15, 2009 proposed rule to expand the type of projects funded under the New Freedom program. Please see the *Summary of FTA's Proposed Expansion of Eligible New Freedom Projects* for an explanation of the rule.

The New Freedom Program is a direct consequence of the *Olmstead* decision. In 2001, President Bush signed Executive Order 13217, "Community-Based Alternatives for Individuals with Disabilities. The Executive Order states "The United States is committed to community-based alternatives for individuals with disabilities and recognizes that such services advance the best interests of the United States" and calls upon the Federal government to assist States and localities to swiftly implement the decision of the United States Supreme Court in *Olmstead v. L.C.* The order directs six federal agencies to "evaluate the policies, programs, statutes and regulations of their respective agencies to determine whether any should be revised or modified to improve the availability of community-based services for qualified individuals with disabilities." Even though the Department of Transportation was not mentioned in the order, it joined the implementation effort, along with Veterans Affairs, the Small Business Administration, and the Office of Personnel Management.