

Navigating ADA guidelines

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Story Highlights

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Hoteliers staff properties with dynamic, gregarious, energetic employees and highlight experiences premised on comfort, adventure and good times. Where do disabilities fit in?

Hotel owners and management companies must navigate the Americans with Disabilities Act on at least two main fronts: employee relations and guest accommodations. Federal and state agencies monitor and police employment environments and complaints, while disability advocacy groups and private attorneys often prosecute claims based on inadequate public accommodations.

Employee relations

Recent amendments to the ADA have expanded the Act's scope and muddied the waters for human-resource professionals trying to manage a traditionally high-turnover workforce while at the same time avoiding claims of discrimination and harassment. A few of the most common stumbling blocks encountered in the hotel industry include:



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- **Snap judgments.** The Americans with Disabilities Act Amendments Act changes are still working their way through agency enforcement decisions and the courts but one aspect is abundantly clear: The scope of "disabilities" entitled to protection has greatly expanded, as has the Equal Employment Opportunity Commission's appetite for pursuing claims based on "perceived disabilities." The end result is that employers should not make snap decisions about which medical conditions qualify as disabilities and which are merely short-term or less serious health concerns.
- **Exhausted leave doesn't equate to termination.** Many employers confuse leave under the Family and Medical Leave Act or an employee's entitlement to paid time off with the obligation to accommodate an employee's disability. Thus, unfortunately, many employers mistakenly use the exhaustion of such leave as the jumping off point for termination decisions without additional consideration. In fact, an employee's use of FMLA or other leave is a separate determination and has little or no bearing on an employee's right to reasonable accommodations, which may take the form of additional leave, depending on the circumstances.
- **Interactive dialogue.** The EEOC and most judges and juries are big on the interactive dialogue in disability cases. Even where an employee does not have an actual disability, the EEOC is more likely to find a "perceived disability" in instances where the employer made decisions without involving the subject employee. The fortunate converse is the EEOC looks favorably on employers who have explored options, even when it's determined no reasonable accommodations exist. At its most rudimentary level, the interactive dialogue requires an employer to engage a potentially disabled employee about any limitations and brainstorm about possible reasonable accommodations. Significantly, the interactive dialogue does not require the parties to reach a mutually agreeable resolution but only to interact in good faith when presented with a disability accommodation issue.

Guest accommodations for disabilities

The ADA public accommodations standards are designed to ensure accessibility for individuals with a wide variety of disabilities. Obviously, on a macro level, that's also good business—broadening the demographics of the potential guest pool. However, on a practical operations level, the standards present a minefield for hotel operators.

Some of the most common stumbling blocks for new or remodeled hotels and other hotel facilities include:

- **Lifts for pools and spa.** In 2010, when the U.S. Department of Justice issued requirements of fixed lifts for pools and other spas in hotel facilities, it set off a firestorm of debate. Since then, the compliance deadline was pushed back to 31 January 2013, and further clarified the requirements to provide an exception when it is not "readily achievable" to provide fixed lifts for already-existing pools.
- **Parking spaces.** Depending on the amount of parking spaces available, a certain number must be handicap accessible. A standard accessible space includes a 5-foot wide access aisle.
- **Exterior routes.** Each subject facility must have at least one accessible route that allows access for persons using wheelchairs or other mobility

devices.

- **Building entrances.** Hotel entrances should have either automated doors or sufficiently wide doorways and accessible door hardware.
- **Interior routes.** Similarly, interior routes avoiding stairs or abrupt vertical drops should be made available for guests using mobility devices.
- **Food service areas.** Restaurants or other areas where food may be served should ensure at least 5% of the available seats meet ADA standards and food-and-drink dispensers are accessible to persons in wheelchairs.
- **General guestrooms.** Even “non-accessible” guestrooms should be minimally accessible, including sufficiently wide passages and restrooms to allow persons with mobility aids to visit.
- **Accessible guestrooms.** Depending on the overall number of guestrooms, hotels must provide a certain amount that accommodates guests who are hearing impaired and/or allow mobility-impaired guests to use the sleeping and bathing areas, including fully accessible (roll-in) showers and lavatories.
- **Reservations.** On an operational level, hotels should ensure reservation services and rates for similar rooms are fully available for guests with disabilities.

Hotels have long been in the business of accommodating guests. Now best practices are defined and measured not only by guest satisfaction and repeat stays but also by statute and regulation.

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