

Thomson Reuters Law for the Layperson

THE AMERICANS WITH
DISABILITIES ACT

Second Edition

Margaret C. Jasper

Legal Almanac Series

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THE AMERICANS WITH DISABILITIES ACT

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by
Margaret C. Jasper

Legal Almanac Series:
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The Americans with Disabilities Act

Animal Rights Law

Auto Leasing

Bankruptcy Law for the Individual Debtor

Banks and their Customers

Becoming a Citizen
Buying and Selling Your Home
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Health Care Directives
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Home Mortgage Law Primer
Hospital Liability Law
How To Change Your Name
How To Form an LLC
How To Protect Your Challenged Child

How To Start Your Own Business
Identity Theft and How To Protect Yourself
Individual Bankruptcy and Restructuring
Injured on the Job: Employee Rights, Worker's Compensation and
Disability Insurance Law
International Adoption
Juvenile Justice and Children's Law
Labor Law
Landlord-Tenant Law
Law for the Small Business Owner
The Law of Adoption
The Law of Attachment and Garnishment
The Law of Buying and Selling
The Law of Capital Punishment
The Law of Child Custody
The Law of Contracts
The Law of Debt Collection
The Law of Dispute Resolution
The Law of Immigration
The Law of Libel and Slander
The Law of Medical Malpractice
The Law of No-Fault Insurance
The Law of Obscenity and Pornography
The Law of Personal Injury
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Motor Vehicle Law
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Privacy and the Internet: Your Rights and Expectations Under the Law
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Rights of Single Parents
Small Claims Court
Social Security Law
Special Education Law
Teenagers and Substance Abuse
Trademark Law
Trouble Next Door: What to do With Your Neighbor
Victim's Rights Law
Violence Against Women
Welfare: Your Rights and the Law
What if It Happened to You: Violent Crimes and Victims' Rights
What if the Product Doesn't Work: Warranties & Guarantees
Workers' Compensation Law
Your Child's Legal Rights: An Overview
Your Rights in a Class Action Suit
Your Rights as a Tenant
Your Rights Under the Family and Medical Leave Act
You've Been Fired: Your Rights and Remedies

INTRODUCTION

In the past, disabled individuals have faced a wide variety of obstacles that prevented them from fully participating in all that American society has to offer. They have struggled with obtaining employment, and have been denied access to many services most Americans take for granted. Due to bias, insensitivity and plain ignorance, the disabled have been subjected to discrimination and intolerance.

Acknowledging that disabled persons are as equally entitled to participate in society as non-disabled Americans, the federal government intervened to provide the disabled with effective legislation to enforce their rights. In 1990, Congress passed the Americans with Disabilities Act (ADA) in order to give civil rights protections to individuals with disabilities similar to those prohibiting discrimination on the basis of race, color, sex, national origin, age, and religion.

The ADA's purpose is to guarantee equal opportunity for the disabled with respect to employment, transportation, public accommodations, state and local government services, and telecommunications. By removing the impediments, society will benefit from the talents and skills disabled persons have to offer. In addition, by making services and accommodations—such as retail stores, hotels and restaurants—more accessible, the disabled will become an increasingly significant factor in the marketplace, and an asset to the economy.

This Almanac examines the ADA, and discusses the rights disabled individuals are entitled to under the Act. The areas governed by the ADA are explored, including employment, transportation, public accommodations, state and local government services, and telecommunications. This Almanac also gives a brief overview of legislation designed to protect the disabled in areas not covered by the ADA.

The Appendix provides selected provisions of the ADA, sample forms, and other pertinent information and data. The Glossary contains definitions of many of the terms used throughout the Almanac.

Table of Contents

ABOUT THE AUTHOR	vii
INTRODUCTION	xi

CHAPTER 1:

AN OVERVIEW OF THE AMERICANS WITH DISABILITIES ACT

IN GENERAL	1
STRUCTURE OF THE ADA	1
Subchapter I [Title I]: Employment	2
Subchapter II [Title II]: Public Services	2
Public Entities	2
Public Transportation	2
Subchapter III [Title III]: Public Accommodations and Services Operated by Private Entities	3
Title 47 - Secs. 225 and 611 [Title IV]: Telegraphs, Telephones, and Radiotelegraphs	4
Subchapter IV [Title V]: Miscellaneous Provisions	4
DISABLED PERSONS	4
JURISDICTION	5
Federal Government	5
State and Local Governments	5
The Equal Employment Opportunity Commission	5
The Department of Justice	6

CHAPTER 2:

TITLE I - EMPLOYMENT

IN GENERAL	7
COVERED EMPLOYERS	7
PROHIBITED PRACTICES	7
COVERED PERSONS	7

Disability Defined	8
Qualified Individual	9
Essential Functions	9
REASONABLE ACCOMMODATIONS	9
Disclosure	10
Undue Hardship	11
Direct Threat	11
ACCESSIBILITY	12
The United States of America v. The Board of Education of the City of Chicago	12
Accessibility Under Title I and Title III Differentiated	13
PREFERENTIAL TREATMENT	13
TAX CREDITS AND DEDUCTIONS	13
RECORDKEEPING REQUIREMENT	14
NOTICE REQUIREMENT	14
MEDICAL EXAMINATIONS	14
Drug and Alcohol Addiction	15
FILING A COMPLAINT UNDER TITLE I OF THE ADA	15
THE EEOC TECHNICAL ASSISTANCE PROGRAM	17
STATE GOVERNORS' COMMITTEES ON EMPLOYMENT OF THE DISABLED	17

CHAPTER 3: TITLE II - PUBLIC SERVICES

IN GENERAL	19
REQUIREMENTS UNDER TITLE II	20
QUALIFIED INDIVIDUAL WITH DISABILITIES	21
ACCESSIBILITY REQUIREMENTS	21
New Construction and Alterations	22
Accessibility Standards	22
Funding	22
INTEGRATED PROGRAMS	23
EMPLOYMENT	23
COMMUNICATIONS	23
Types of Auxiliary Aids	23
Emergency Telephone Services	24
FILING A COMPLAINT UNDER TITLE II OF THE ADA	24

CHAPTER 4: TITLE III - PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

IN GENERAL	27
ELIGIBILITY STANDARDS	27

DIRECT THREAT	28
AUXILIARY AIDS	28
The United States of America v. Walt Disney World	28
POLICIES AND PRACTICES	29
The United States of America v. Budget Rent a Car Systems, Inc.	29
SERVICE ANIMALS	30
The United States of America v. Shoney's Inc.	31
ARCHITECTURAL BARRIERS	32
The Architectural Barriers Act	32
Existing Facilities.	32
New Construction.	33
Altered Facilities	33
Parking	33
Entrances.	34
LEASED PREMISES	35
PRIVATELY-OWNED RESIDENCES	35
BUILDING CODES	35
TAX BENEFITS	36
FILING A COMPLAINT UNDER TITLE III OF THE ADA	36

CHAPTER 5:

TITLE IV - TELECOMMUNICATIONS

IN GENERAL	39
TELECOMMUNICATIONS RELAY SERVICES	39
Speech to Speech Access Services	40
TELECOMMUNICATIONS ACT	41
CLOSED CAPTIONING	41
FILING A COMPLAINT UNDER TITLE IV OF THE ADA.	41
Intrastate Enforcement	41

CHAPTER 6:

TITLE V - MISCELLANEOUS PROVISIONS

IN GENERAL	43
ATTORNEY'S FEES	43
COVERAGE OF CONGRESS.	43
EFFECT OF OTHER FEDERAL AND STATE LAWS.	43
ILLEGAL DRUGS AND OTHER EXCLUSIONS	44
INSURANCE UNDERWRITING	44
MEDIATION	44
RETALIATION	45
STATE IMMUNITY	45

CHAPTER 7: LAW ENFORCEMENT UNDER THE ADA

ENFORCING THE LAW	47
In General	47
Training	47
Wheelchairs and Mobility Devices	48
The Visually Impaired	48
The Hearing Impaired	48
The United States of America v. The City of Glendale	
Arizona Police Department	49
Telecommunications Devices for the Deaf	50
Architectural Concerns	50
Modification of Police Department Practices and Procedures	51
EMPLOYMENT IN LAW ENFORCEMENT	51
In General	51
Medical Examinations — Job Applicants	51
Drug Addiction	52
Alcohol Addiction	53
Polygraph Tests	53
Background Checks	53
Medical Examinations — Current Employees	54
TELEPHONE EMERGENCY SERVICES	55
In General	55
Direct Access	55
Training	55
Public Education	56
Non “911” Service Areas	56

CHAPTER 8: ADDITIONAL DISABILITY LEGISLATION AND PROGRAMS

IN GENERAL	57
THE AIR CARRIER ACCESS ACT	57
THE CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS ACT	58
THE FAIR HOUSING AMENDMENTS ACT	58
THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT	60
THE NATIONAL VOTER REGISTRATION ACT	60
THE REHABILITATION ACT OF 1973	61
Section 501	61
Section 503	61
Section 504	62
Section 508	62
THE VOTING ACCESSIBILITY FOR THE ELDERLY AND HANDICAPPED ACT	63

MISCELLANEOUS PROGRAMS	63
The Workforce Recruitment Program	63
The Business Leadership Network	64
The Outreach to Small Business Project	64
The Cultural Diversity Initiative	64
The High School/High Tech Program	65
Promoting Entrepreneurial and Self-Employment Opportunities for People with Disabilities Project	65
Youth Leadership Forums	65
Statistical Tracking of the Employment of People with Disabilities Project	65
The Employment of People with Cognitive Disabilities Project	65
The Disabled Veterans Employment Forums	65
Perspectives on Employment of People with Disabilities in the Federal Sector	66
The Job Accommodation Network	66

APPENDICES

1 - PERCENT OF PEOPLE AGE 5 TO 20 YEARS OLD WITH A DISABILITY BY STATE (2006)	67
2 - PERCENT OF PEOPLE AGE 21 TO 64 YEARS OLD WITH A DISABILITY BY STATE (2006)	71
3 - PERCENT OF PEOPLE AGE 65 YEARS AND OVER WITH A DISABILITY BY STATE (2006)	75
4 - SELECTED PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT OF 1990	79
5 - RESOURCE DIRECTORY - NATIONAL DISABILITY ORGANIZATIONS	123
6 - FEDERAL RESOURCE DIRECTORY - ADA COMPLIANCE INFORMATION	145
7 - SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE BOARD OF EDUCATION OF THE CITY OF CHICAGO - DISABILITY ACCOMMODATIONS	147
8 - DIRECTORY OF STATE GOVERNORS' COMMITTEES ON EMPLOYMENT OF THE DISABLED	155
9 - DISCRIMINATION COMPLAINT FORM - TITLE II OF THE ADA	163
10 - SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND WALT DISNEY WORLD CO. - AUXILIARY AIDS	167

11 - SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND BUDGET RENT-A-CAR SYSTEMS, INC. - PUBLIC ACCOMMODATIONS.	173
12 - SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND SHONEY'S INC. - SERVICE ANIMAL	179
13 - ACCESSIBILITY GUIDELINES FOR NEW STADIUMS.	187
14 - DIRECTORY OF STATE SPEECH TO SPEECH ACCESS SERVICES.....	191
15 - SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND GLENDALE, AZ POLICE DEPARTMENT - HEARING IMPAIRED SUSPECT	195
GLOSSARY	203
BIBLIOGRAPHY AND ADDITIONAL RESOURCES	217

CHAPTER 1:

AN OVERVIEW OF THE AMERICANS WITH DISABILITIES ACT

IN GENERAL

Recognizing that disabled persons are entitled to civil rights protections such as those already provided to individuals who are discriminated against on the basis of race, color, sex, national origin, age, and religion, the federal government has endeavored to provide disabled persons with effective legislation to enforce their civil rights. The most significant piece of legislation passed by Congress to protect and promote the rights of the disabled was the Americans with Disabilities Act of 1990 (the "ADA").

Tables indicating the percent of people with a disability, by age and state, are set forth in Appendices 1 through 3.

STRUCTURE OF THE ADA

The ADA is divided into five sections, known as "Titles." It provides for equal opportunity for all persons in the areas of employment (Title I); public services (Title II); public accommodations (Title III); and telecommunications (Title IV). The ADA was originally enacted in public law format and later rearranged and published by subject matter in the United States Code. The United States Code is divided into "titles" numbered 1 through 50. Titles I, II, III and V of the ADA have been codified in Title 42 of the United States Code, beginning at section 12101. Title IV of the original public law format has been codified in Title 47 – Telegraphs, Telephones, and Radiotelegraphs of the United States Code.

Selected provisions of the Americans with Disabilities Act as codified in the U.S. Code at 42 U.S.C. §12101 et seq (original public law sections in brackets) are set forth in Appendix 4.

Subchapter I [Title I]: Employment

Subchapter I [Title I] requires employers with 15 or more employees to provide qualified individuals with disabilities an equal opportunity to benefit from the full range of employment-related opportunities available to others. For example, it prohibits discrimination in recruitment, hiring, promotions, training, pay, social activities, and other privileges of employment. It restricts questions that can be asked about an applicant's disability before a job offer is made, and it requires that employers make reasonable accommodation to the known physical or mental limitations of otherwise qualified individuals with disabilities, unless it results in undue hardship. Religious entities with 15 or more employees are covered under Title I.

Title I is discussed in more detail in Chapter 2, Title I – Employment, of this Almanac.

Subchapter II [Title II]: Public Services

Public Entities

Subchapter II [Title II] covers all activities of state and local governments regardless of the government entity's size or receipt of Federal funding. Title II requires that state and local governments give people with disabilities an equal opportunity to benefit from all of their programs, services, and activities, including public education, employment, transportation, recreation, health care, social services, courts, voting, and town meetings.

State and local governments are required to follow specific architectural standards in the new construction and alteration of their buildings. They also must relocate programs or otherwise provide access in inaccessible older buildings, and communicate effectively with people who have hearing, vision, or speech disabilities. Public entities are not required to take actions that would result in undue financial and administrative burdens. They are required to make reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination, unless they can demonstrate that doing so would fundamentally alter the nature of the service, program, or activity being provided.

Public Transportation

The transportation provisions of Title II cover public transportation services, such as city buses and public rail transit, including subways, commuter rails, and Amtrak. Public transportation authorities may not discriminate against people with disabilities in the provision of their

services. They must comply with requirements for accessibility in newly purchased vehicles, make good faith efforts to purchase or lease accessible used buses, remanufacture buses in an accessible manner, and, unless it would result in an undue burden, provide paratransit where they operate fixed-route bus or rail systems. Paratransit is a service where individuals who are unable to use the regular transit system independently, because of a physical or mental impairment, are picked up and dropped off at their destinations.

This section is discussed in more detail in Chapter 3, Title II – Public Services, of this Almanac

Subchapter III [Title III]: Public Accommodations and Services Operated by Private Entities

Subchapter III [Title III] covers businesses and nonprofit service providers that are public accommodations, privately operated entities offering certain types of courses and examinations, privately operated transportation, and commercial facilities. Public accommodations are private entities who own, lease, lease to, or operate facilities such as restaurants, retail stores, hotels, movie theaters, private schools, convention centers, doctors' offices, homeless shelters, transportation depots, zoos, funeral homes, day care centers, and recreation facilities including sports stadiums and fitness clubs. Transportation services provided by private entities are also covered by this section.

Public accommodations must comply with basic nondiscrimination requirements that prohibit exclusion, segregation, and unequal treatment. They also must comply with specific requirements related to architectural standards for new and altered buildings; reasonable modifications to policies, practices, and procedures; effective communication with people with hearing, vision, or speech disabilities; and other access requirements. Additionally, public accommodations must remove barriers in existing buildings where it is easy to do so without much difficulty or expense, given the public accommodation's resources.

Courses and examinations related to professional, educational, or trade-related applications, licensing, certifications, or credentialing must be provided in a place and manner accessible to people with disabilities, or alternative accessible arrangements must be offered.

Commercial facilities, such as factories and warehouses, must comply with the ADA's architectural standards for new construction and alterations.

Title III is discussed in more detail in Chapter 4, Title III – Public Accommodations and Services Operated By Private Entities of this Almanac.