

Q. What is the ADA?

A. The Americans with Disabilities Act (ADA) is a federal law to stop discrimination against people with disabilities. It applies to:

- Many private and public employers (Title I)
- State and local government agencies (Title II)
- Places of public accommodation (Title III)
- Transportation facilities (Titles II and III)
- Telephone companies (Title IV)
- U.S. Congress (Title V)

In addition to the law itself, the U.S. Department of Justice, the Federal Communications Commission, the Equal Employment Opportunity Commission, the Architectural and Transportation Barriers Compliance Board, and the U.S. Department of Transportation have written federal regulations to explain the requirements of the law. The answers to the questions in this booklet are, in large part, taken from the Department of Justice's (DOJ's) regulations at 28 C.F.R. Parts 35 and DOJ's analysis of those regulations, which can be found at 56 Fed. Reg. 35694 *et seq.* (July 26, 1991) for Title III. Specific requirements for structural accessibility are taken from the ADA Accessibility Guidelines (ADAAG), found in Appendix A to 28 C.F.R. Part 36.

Q. What kinds of “auxiliary aids and services” must be provided to people with hearing loss?

A. The Department of Justice lists the following examples of auxiliary aids and services:

Qualified interpreters, note takers, computer-aided transcriptions services, written materials, telephone handset amplifiers, assistive listening systems, assistive listening devices, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDDs) and videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments.

28 C.F.R. 35.104; 28 C.F.R. 36.303 (b)(1). This list is not intended to include every possible auxiliary aid or service. People with hearing impairments use a wide variety of techniques to communicate. New methods or equipment might become available as technology advances. The most important thing to consider is what the person needs in order to communicate effectively in a particular situation. *See generally* DOJ Analysis at 56 Fed. Reg. At 35567, 35711-12.

Q. When is a deaf person entitled to an interpreter?

A. An interpreter should be used when the deaf person needs this service to communicate effectively and to get equal access to services. Whether or not an interpreter is needed depends on:

- The deaf person's communication skills;

- The context of the communication;
- The number of people involved;
- The importance of the communication; and
- Whether the information is complex or lengthy.

For example, the Justice Department explains that an interpreter may be necessary in situations involving communications regarding health, legal matters, and finances. *See* DOJ Analysis at 56 Fed. Reg. At 35567, 35712.

Q. Who is a “qualified” interpreter?

A. A qualified interpreter is defined to mean “an interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary.” 228 C.F.R. 35.104 (*See also* Fed. Reg. At 35701); 28 C.F.R. 36.104. (*See also* 56 Fed. Reg. At 35553.) The definition recognized that the interpreting skill needed for some types of communication may be higher than for other types of communication. For example, an interpreter in a doctor’s office must be able to interpret complex medical terminology. Similarly, a highly skilled interpreter may be needed for a court proceeding or a theater production.

The Department of Justice regulations to implement Title III provide a comprehensive list of auxiliary aids and services required by the ADA. Qualified interpreters are included in this list of auxiliary aids. The regulation defines “qualified interpreter” to mean “an interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary.” This definition focuses on the interpreter’s actual ability to make communication effective in a particular interpreting situation. In certain circumstances, a family member or friend may not be qualified to interpret because of factors such as emotional or personal involvement or considerations of confidentiality that may adversely affect the ability to interpret “effectively, accurately, and impartially.”

Q. Can asking family members or friends of the deaf person to interpret satisfy the obligation to provide effective communication?

A. Generally, no. Family members often do not have sufficient sign language skills to interpret accurately. Even if they are skilled in sign language, a family member or friend may not be “qualified” in certain situations, because of emotional or personal involvement or the deaf individual’s need for privacy. DOJ Analysis at 56 Fed. Reg. At 35553, 35701.

Q. Who pays for the interpreter or other auxiliary aid?

A. Interpreters and other auxiliary aids must be provided free of charge. A deaf person may not be held responsible, directly or indirectly, for the costs of an auxiliary aid. For example, the cost of an interpreter for a doctor’s appointment may not be passed on to a deaf patient through an insurance company. 28 C.F.R. 35.130(f); 28 C.F.R. 36.301(c).

Q. What places of public accommodation must comply with Title III of the ADA?

- (1) **A.** Places of public accommodation are facilities that are “operated by a private entity, whose operations affect commerce.” 28 C.F.R. 36.104. The law applies to more than five million private businesses and establishments in 12 different categories. For example, it covers hotels, restaurants, movies and theaters, auditoriums, doctors’ offices, lawyers’ offices, offices of other professionals, funeral homes, hospitals, nursing homes, drug stores, insurance agencies, retail stores, museums, banks, libraries, parks, private schools and colleges, amusement and recreation facilities, exercise spas, and day care centers.
- (2) **Public Accommodation** – The following privately operated entities are considered public accommodations for purposes of this title, if the operations of such entities affect commerce.
- A. An inn, hotel, motel, or other similar place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;
 - B. A restaurant, bar, or other establishment serving food or drink;
 - C. A motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;
 - D. An auditorium, convention center, or lecture hall or other place of public accommodation;
 - E. A bakery, grocery store, clothing store, hard-ware store, shopping center, or other similar retail sales establishment;
 - F. A Laundromat, dry-cleaners, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other similar service establishment;
 - G. A terminal, depot, or other station used for public transportation;
 - H. A museum, library, gallery, and other similar place of public display or collection;

Q. Does the ADA apply only to larger businesses?

A. No. Title III of the ADA applies to all places of public accommodation, regardless of the size of the business or number of employees.

Q. May I pass the cost for the interpreter back to the individual requiring the accommodation?

A. Paragraph (c) of 36.301 provides that public accommodations may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the cost of measures, such as the provision of auxiliary aids and services, barrier removal, alternatives to barrier removal, and reasonable modifications in

policies, practices, and procedures, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.

A number of commentators inquired as to whether deposits required for the use of auxiliary aids, such as assistive listening devices, are prohibited surcharges. It is the Department's view that reasonable, completely refundable, deposits are not to be considered surcharges prohibited by this section. Requiring deposits is an important means of ensuring the availability of equipment necessary to ensure compliance with the ADA.

Other commentators sought clarification as to whether 36.301(c) prohibits professionals from charging for the additional time that it may take in certain cases to provide services to an individual with disabilities. The Department does not intend 36.301(c) to prohibit professionals who bill on the basis of time from charging individuals with disabilities on that basis. However, fees may not be charged for the provision of auxiliary aids and services, barrier removal, alternatives to barrier removal, reasonable modifications in policies, practices, and procedures, or any other measures necessary to ensure compliance with the ADA.

In addition, 36.301 prohibits the imposition of criteria that "tend to" screen out an individual with a disability. This concept, which is derived from current regulations under Section 504 (see e.g., 45 CFR 84.13), makes it discriminatory to impose policies or criteria that, while not creating a direct bar to individuals with disabilities, indirectly prevent or limit their ability to participate. For example, requiring presentation of a driver's license as the sole means of identification for purposes of paying by check would violate this section in situations where, for example, individuals with severe vision impairments or developmental disabilities or epilepsy are ineligible to receive a driver's license and the use of an alternate means of identification, such as another photo I.D. or credit card, is feasible.

A public accommodation may, however, impose neutral rules and criteria that screen out, individuals with disabilities, if the criteria are necessary for the safe operation of the public accommodation. Examples of safety qualifications that would be justifiable in appropriate circumstances would include height-requirements for certain amusement park rides or a requirement that all participants in a recreational rafting expedition be able to meet a necessary level of swimming proficiency. Safety requirements must be based on actual risks and not on speculation, stereotypes, or generalizations about individuals with disabilities.