

## Top Ten ADA Title III Regulatory Changes

Apr 14, 2011 Top Ten

By Gregg E. Clifton, Esq., Jackson Lewis LLP Joseph J. Lynett, Esq., Jackson Lewis LLP

This resource is sponsored by:  
Jackson Lewis LLP



Authored by [Gregg E. Clifton](#), Esq., and [Joseph J. Lynett](#), Esq., Jackson Lewis LLP

The Americans with Disabilities Act (“ADA”), signed into law on July 26, 1990, is a comprehensive civil rights law that seeks to prevent discrimination based on disability. Title III of the ADA requires “public accommodations” to accommodate disabled patrons, customers and members of the public to ensure that disabled individuals can equally access and enjoy the goods and services offered by the public accommodation as non-disabled individuals. Places of public accommodation include virtually all facilities that are open to the public, such as hotels, restaurants, bars, theaters, stadiums, arenas, museums, libraries, parks and other entertainment venues.

Coinciding with the 20th anniversary of the ADA last July, Attorney General Eric Holder signed final regulations substantially revising the Department of Justice’s Title III regulations. The new regulations are intended to provide consistency with the Department’s current policies and published guidance, to reflect the Department’s experience since the ADA Standards for Accessible Design were first published in 1991, and to address and respond to public comments and concerns pertaining to the existing regulations. The changes adopted by these new regulations add a comprehensive set of new accessibility requirements which generally mandate a higher level of access for individuals than the standards contained in the 1991 regulations.

This Top Ten summarizes key aspects of the new ADA Title III Regulations.

### 1. Effective Date and Safe Harbor Provision

The new regulations became effective March 15, 2011. On March 15, 2012, both new construction and alterations will be required to be in compliance with the new standards. However, the regulations do provide a safe harbor for elements in existing facilities that comply with the 1991 regulations as of March 15, 2012. These elements will not have to be changed until they are altered. Otherwise, all new construction, alterations, and barrier removal taking place after March 15, 2012 will have to comply with the new regulations. Public accommodations that have existing elements that are covered for the first time under the new regulations will have to comply with the new standards for those elements to the extent that it is readily achievable.

### 2. Accessible Seating

Covered entities must comply with the following requirements:

- 500 to 5,000 seats: Six wheelchair spaces and companion seats plus one additional wheelchair space for each additional 150 seats (or fraction thereof) between 501 through 5,000
- More than 5,000 seats: At least 36 wheelchair spaces and companion seats plus one additional wheelchair space for each 200 seats (or fraction thereof) over 5,000
- Premium Seating Standards: Each luxury box, club box and suite in an arena, stadium or grandstand is required to be wheelchair accessible and to contain wheelchair and companion seating
- Sightlines: Significant new technical requirements for providing lines of sight over seated and standing spectators

### **3. Ticket Sales**

Tickets for disabled seating must be available for purchase during the same hours, stages, through the same methods of distribution, in the same types and numbers of ticketing sales outlets, and under the same terms and conditions as other tickets sold for the same event or series of events.

### **4. Season Tickets**

- No ownership rights: A process must be established so that when season tickets are sold out and accessible seating is released to non-disabled individuals, the non-disabled individuals do not receive automatic reassignment of accessible seating for future seasons or series.
- With ownership rights: If accessible seating tickets are forfeited or returned, individuals with mobility disabilities or disabilities that require accessible seating must be provided an opportunity to purchase such tickets in accessible seating areas.

### **5. Other Ticketing Changes**

- Ability to purchase multiple tickets: With certain limited exceptions, for each ticket for a wheelchair space purchased by a disabled individual or other person at his or her request, three additional tickets for the seats in the same row and contiguous with the wheelchair space shall be made available for purchase (provided they are available at time of purchase).
- Ticket transfers: Tickets for accessible seating may be transferred to third parties by the ticket holder under the same terms and conditions and to the same extent as other spectators holding the same type of ticket.
- Tickets purchased in the secondary market: A disabled individual must be permitted to acquire tickets in the secondary ticket market under the same terms and conditions as other individuals who acquire tickets in the market.
- Ticket pricing: Accessible seating pricing cannot be higher than the price for other tickets in the same seating section for the same event or series of events.

### **6. Accessible Routes**

- Tiered dining: Accessible routes must be provided to 25 percent of the tiered dining areas in sports facilities.
- Press boxes: Guidelines provide limited exceptions for small press boxes that (1) are located in bleachers with entrances only on one level, or (2) are free-standing structures 12 feet or more above grade. Further, the exceptions apply only when the aggregate area of all press boxes does not exceed 500 square feet.
- Public entrances to new construction: Increases the percentage that must be ADA accessible from 50 percent to 60 percent.
- Stairs: Newly constructed stairs that are part of a means of egress must comply with the

requirements for accessible stairs, including accessible treads, risers and handrails.

## **7. Parking Requirements**

The new regulations require an accessible route adjoining each access aisle in a lot to accessible entrances. In addition, one in six disabled parking spots must be van accessible. Further, mechanical access parking garages must now have an accessible passenger loading zone.

## **8. Accessible Bathrooms**

Where six or more toilet compartments and urinals are provided in a multi-user restroom, the restroom must have at least one ambulatory accessible compartment; men's lavatories with only one urinal are no longer required to have an accessible urinal. Where multiple single-user toilet rooms are clustered at one location, only 50 percent are required to be accessible (not 100 percent). The new regulations also contain other technical changes, including changes regarding water closet location and grab bars, clearance, doors, toilet paper dispensers, etc.

## **9. Service Animals**

The new regulations define "service animal" as a dog that has been individually trained to do work or perform tasks for the benefit of an individual with a disability. Other animals, whether wild or domestic, do not qualify as service animals. Dogs that are not trained to perform tasks that mitigate the effects of a disability, including dogs that are used purely for emotional support, are not service animals.

## **10. Wheelchairs and Mobility Devices**

The new regulations draw distinctions between wheelchairs and "other power-driven mobility devices," which include a range of devices not designed for individuals with mobility impairments, such as the Segway® PT, but which are often used by individuals with disabilities as their mobility device of choice. Specifically, wheelchairs must be permitted in all areas open to pedestrian use, while other power-driven mobility devices must be permitted to be used unless the covered entity can demonstrate that such use would fundamentally alter its programs, services, or activities, create a direct threat, or create a safety hazard.

The information in this Top Ten should not be construed as legal advice or legal opinion on specific facts and should not be considered representative of the views of its authors, its sponsors, and/or the ACC. This Top Ten is not intended as a definitive statement on the subject addressed. Rather, it is intended to serve as a tool providing practical advice and references for the busy in-house practitioner and other readers.