

Q. If I make improvements to an old building do I have to comply with ADA regulations?

A. If alterations are made to an existing restaurant or other public accommodation after January 26, 1992, the altered portion of the facility must be handicapped accessible to the maximum extent feasible (42 USC § 12183(a)(2)). DOJ has indicated that it will construe this provision to apply to alterations that require a state, county, or local government permit. According to DOJ's regulations, "alterations" include remodeling, renovation, and changes in structural parts or configuration of walls but exclude normal maintenance, painting, or asbestos removal.

"To the maximum extent feasible" means that features being altered must be made handicapped accessible unless it is not technically feasible. When a proposed alteration to an existing restaurant or other public accommodation could affect the usability of, or access to, an area containing a primary function, the path of travel to the altered area and to the bathrooms, telephones and drinking fountains serving that area must be made accessible, unless the cost of the path-of-travel alterations are disproportionate to the cost and scope of the overall alterations (42 USC § 12183(a)(2)). The cost is disproportionate if it exceeds 20 percent of the cost of the underlying alteration (28 CFR § 36.403(f)). In this case, the path of travel must be made handicapped accessible without going over the 20 percent, giving priority to those elements that provide the greatest access.

Q. What other types of barriers need to removal to comply with the ADA?

A. Unfortunately the ADA does not provide a complete list of all potential accessibility barrier issues. A CASp report will be able to give you a full report of compliance issues under the ADA and its amendments, similar California law and local building codes. However, the ADA does provide some examples of what types of barriers you might need to consider. Some of these include installing ramps, making curb cuts into sidewalks and entrances, repositioning shelves, adjusting counters and tables, rearranging furniture, widening doors and installing accessible door handles, providing grab bars in restrooms, insulating sink pipes, or repositioning things used in a restroom.

HAVE MORE QUESTIONS?

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AMERICANS WITH DISABILITIES ACT

QUESTIONS AND ANSWERS FOR SMALL BUSINESSES



Q. What is the Americans with Disabilities Act?

A. The Americans with Disabilities Act of 1990 (“ADA”) is a federal law that regulates how owners and operators of public accommodations make their facilities accessible to members of the disabled community. Under the ADA, places of public accommodation must remove accessibility barriers if they are “readily achievable.”

Q. Ok, but how does it affect me and my establishment?

A. For ADA purposes, a restaurant is a place of public accommodation subject to the act's accessibility standards. This means that any restaurant opened for first occupancy after January 26, 1993 must be readily accessible to people with disabilities, unless it is structurally impracticable to meet the requirements. The standard applies to everything from parking spaces to entrances, dining areas, and restrooms.

Restaurants that opened for first occupancy before the 1993 cutoff date do not have to be fully accessible. But they must remove architectural and communication barriers if readily achievable and, if not readily achievable, provide an alternative method of making goods and services available to people with disabilities. Also, if any major renovations take place after January 26, 1992, the renovated area of the facility must be made readily accessible to people with disabilities, to the maximum extent feasible.

More information on the ADA is available at the Department of Justice (DOJ) webpage at <http://www.usdoj.gov/crt/ada/adahom1.htm>

Q. What happens if I don't bring my establishment “up to code”?

A. You could be targeted by an ADA lawsuit. Opportunistic lawyers and individuals are taking advantage of the ADA and similar California laws to shake down a wide range of businesses. Over the last few years, some lawyers and individuals have filed thousands of lawsuits and made easy money in the process. Aside from the costs of hiring a lawyer to defend you in these cases, you and your business might be on the hook for expensive repairs and suffer bad publicity that affects your revenues.

Q. I want to make renovations and updates more accessible, but how do I start?

A. It is a good idea to renovate your establishment to make it more accessible to avoid the costs of litigation and potentially expand your customer base. However, because the ADA and similar building codes can be complex, it might be helpful to hire a Certified Access Specialist (CAsp). The CAsp will conduct an inspection of your business and will be able to identify all potential accessibility issues and how you need to correct them. With various individuals waiting to pounce on businesses like yours that may have only the slightest noncompliance, a CAsp inspection is a valuable service.

Q. What kinds of accessibility issues will I need to correct under the ADA?

A. The ADA prioritizes various types of barrier removal issues and business owners should try to make renovations based on this and similar laws. First, the ADA requires you take measures to provide access to your establishment from public sidewalks, parking and public transportation. This might require installing ramps, widening entrances and repainting for accessible parking spaces. Second, the ADA requires you take measures to provide access to areas where goods and services are made available to the public.

Q. What if my business has been like this for a long time?

A. ADA requires owners of restaurants and other public accommodations that predate the 1993 cutoff date to remove barriers where readily achievable (e.g., eliminate turnstiles, widen doors, and install ramps). When not readily achievable, they must provide an alternative method of making their goods and services available to people with disabilities. “Readily achievable” means “easily accomplishable and able to be carried out without much difficulty or expense” (42 USC § 12181(8)). Readily achievable modifications include lowering telephones and installing grab bars where only routine wall reinforcement is required.