

# ELEMENTS AND ESSENTIALS OF THE ADA

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Disability always has been and always will be a natural part of the human condition.

Simply a form of human variation, disability is universally present across racial, gender, age and socioeconomic lines. Moreover, disability represents the only minority group that anyone can join at any time and, when all human impairments are taken into account, people with disabilities by far encompass the largest minority group in the United States. A person's disability is usually not something that defines the individual in any significant way, other than how they may experience stigma, abuse and/or discrimination that pertains to their disability. Actually, many disabilities would not be any more relevant to a person's identity than their eye or hair color if it were not for negative societal experiences. Because of the deep-rooted and pervasive discrimination against individuals with disabilities, the long overdue civil rights legislation of the 20th century was essential.

The first piece of disability rights legislation in the United States was the Architectural Barriers Act of 1968, which required federal buildings to be accessible to citizens with mobility impairments. Next came the Rehabilitation Act of 1973, which ended up being the precursor to the landmark Americans with Disabilities Act (ADA). Passing the Rehabilitation Act was a hard fought battle, particularly the Section 504 regulations, which prohibited discrimination against people with disabilities in any program that received even a dollar from the federal government. This important legislation improved inclusion and accessibility in many places, such as in schools and post offices, at national parks and on military installations. It also opened up job opportunities for individuals with disabilities within the federal government — the largest employer in the world. The Rehabilitation Act, most notably Section 504, was a game changer for Americans with disabilities, and it was a prelude for much bigger things to come (see Figure 1).

Other disability rights legislation followed, such as the Education for All Handicapped Children Act of 1975 which prohibited disability discrimination in education (this was later renamed the Individuals with Disabilities Education Act, IDEA, in 1990). Then came the Air Carrier Access Act of 1986,


**FIGURE 1**

The Rehabilitation Act of 1973, not the ADA, mandates accessibility in National Parks, and a percentage of the on-park cabins must also be accessible. Here is a picture of me at my rented accessible cabin at the Badlands National Park in South Dakota.

which prohibits discrimination on the basis of disability in air travel, and the 1988 Amendment to the Fair Housing Act, which added people with disabilities to the list of groups that may not be discriminated against in housing practices such as renting or purchasing a home. These laws set the stage for the granddaddy of all disability rights laws: the Americans with Disabilities Act of 1990.

## WHAT IS THE ADA?

The ADA is the most far-reaching, comprehensive piece of civil rights legislation in the world and was enacted to protect the basic rights of individuals with disabilities. The ADA is comprised of five titles that will be discussed in this article as each relate to different areas of public life. The legislation prohibits discrimination against people with disabilities in several areas, including employment, transportation, public accommodations, communications, and access to state and local government programs and services.

Thousands of stories were gathered by disability rights advocates and activists and shared with members of Congress in the years prior to the passage of the ADA. As a result, the findings of Congress included: “that physical or mental disabilities in no way diminish a person’s right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination.

Historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem” ([www.eeoc.gov](http://www.eeoc.gov)).

As a wheelchair user, I cannot fully imagine what my quality of life would be like now had the ADA not been implemented 30 years ago. What I do know for sure is that it would not be nearly as good. The ADA of 1990 has undoubtedly helped millions of individuals with disabilities live with more dignity and independence. Before this critical bipartisan legislation overwhelmingly passed in the United States Congress and was signed into law by George H.W. Bush on July 26, 1990, it was perfectly legal to refuse to allow a wheelchair user into a movie theater, and state, “We don’t allow your kind in here” (this actually happened in 1988). It was legal for a business owner to tell someone who was blind or deaf they would not be hired because of their disability. Further, there were physical and technological barriers everywhere — a significant lack of access to the community for people with all sorts of impairments. Because there have been countless positive changes regarding accessibility and inclusion as a result of the ADA’s passage, every day I feel extremely grateful for those activists who fought the hard fight in the ‘60s, ‘70s and ‘80s to get several disability rights laws passed. As a side note, if you are interested in the historical disability rights movement, I highly recommend researching Ed Roberts, Judy Heumann and the 504 Sit-in, as well as Justin Dart and the Capitol Crawl.

## WHO IS PROTECTED UNDER THE ADA?

Generally speaking, the definition of disability is complicated. First, as a universal form of human variation, it exists on a spectrum. Also, some people are born with disabilities while others acquire them during the human lifespan — many not until very late in life. There are several different types of disabilities: mobility-related impairments such as muscular dystrophy or spina bifida; sensory disabilities such as blindness, low vision, hearing or speech impairments; psychiatric disabilities such as schizophrenia or bipolar disorder; learning disabilities like dyslexia or a language processing disorder; and intellectual disabilities that impact life skills. Then you have medical disabilities that do not fit neatly into any typical disability category (but are still usually covered under the ADA), such as cancer, stroke, heart disease and arthritis. One thing is for sure, though who is and is not considered to have a disability cannot be universally agreed upon. Society has its own definition, the Social Security Administration, another, but for the purposes of this article, we will concentrate only on the official definition used by the ADA.

To qualify for protections under the ADA, an individual must: 1) have a physical or mental impairment that substantially limits one or more of the major life activities of the individual; 2) have a record of such impairment; and/or 3) be regarded as having such an impairment

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([ada.gov](http://ada.gov)). While alcoholism is included as a disability (an individual may not be currently using alcohol to be covered), other socially undesirable behaviors, such as pedophilia, compulsive gambling, kleptomania, and pyromania are excluded from the ADA.

As a response to misinterpretation of the ADA's definition of disability by the Supreme Court in several cases during the 1990s, the Americans with Disabilities Amendments Act (ADAAA) was passed in 2008. One important thing the ADAAA accomplished was to clarify and essentially expand the ADA's definition of disability to ensure the protection from discrimination initially intended by Congress. As a result, someone who is HIV positive or who has diabetes is undoubtedly covered. Obesity is also covered as long as there is a secondary health complication such as hypertension or sleep apnea. Because of the ADAAA, there is also no question that psychiatric disabilities such as post-traumatic stress disorder, obsessive-compulsive disorder and generalized anxiety disorder are covered impairments.

### THE ADA: DISCUSSION OF TITLE I

Title I prohibits employment discrimination on the basis of disability and applies to any business with 15 or more employees (Gower, 2017). Title I is enforced by the Equal Opportunity Employment Commission (EEOC) and through private lawsuits. Employment practices covered under Title I include application, promotion, testing, medical examinations, hiring, layoff/recall, assignments, termination, evaluation, compensation, disciplinary actions, leave, training and benefits (Gower, 2017). Basically, everything job-related. It is important for employers to remember Title I should not be viewed as affirmative action because it only provides the same access to employment everyone should have. The federal government, including the Department of Defense, are exempt from Title I (and the rest of the ADA). Other legislation addresses protections from disability discrimination within the federal government's agencies, and in the case of employment, Section 501 of the Rehabilitation Act of 1973 applies.

A very important aspect of Title I is that the law requires an employer to provide "reasonable accommodations" to an employee or job applicant with a disability, unless doing so would cause significant difficulty or expense for the employer ([eeoc.gov](http://eeoc.gov)). A reasonable accommodation is defined as any change in the work environment to help a person with a disability apply for a job, perform the duties of a job or enjoy the benefits and privileges of employment. Examples of reasonable accommodations include job restructuring, flexible scheduling and providing a qualified interpreter. Other examples of reasonable accommodations are providing a reader for someone who is blind or adding a power door opener with wall button at a heavy door for a wheelchair user. Examples of accommodations that are not considered reasonable are changing an employee's supervisor or excusing a violation for conduct uniformly applied (Gower,

2017). Moreover, Title I does not expect a business to change production standards, and the same level of performance is required from an individual with a disability as employees without disabilities. According to the ADA, having a disability does not mean an employee can perform at a lower standard.

Under Title I, it is against the law to ask a job applicant if they have a disability or to ask about their disability, even if it the disability is obvious. An employer may not ask questions about an applicant's medical condition or require a medical examination before making a conditional job offer ([eeoc.gov](http://eeoc.gov)). The ADA also does not require applicants to voluntarily disclose they have a disability unless they will need a reasonable accommodation for the application process. For example, someone with diabetes might require a break from an interview to eat a snack or monitor her glucose levels. If a job applicant voluntarily reveals he has a disability, under Title I, an employer may not ask follow-up questions except to ask the applicant if he will need a reasonable accommodation and what type ([eeoc.gov](http://eeoc.gov)). The employer must also keep any information an applicant discloses about his or her medical condition confidential (Gower, 2017).

### THE ADA: DISCUSSION OF TITLE II

Title II prohibits discrimination against people with disabilities in all programs and services within state and local governments. The agencies and departments within state and local governments also must abide by Title II. This means that not only is a city or state government office mandated to comply, but also public schools, community colleges, city police departments and public libraries. A Title II entity must reasonably modify its policies, practices or procedures to avoid discrimination. For example, if a person needs and requests a sign language interpreter at a city's town hall meeting, one must be provided (advance notice of 48-72 hours is customary).

While Title II is enforced by the Department of Justice and through private lawsuits, a city's ADA coordinator can also be instrumental in helping with barrier removal and disability inclusion. Any town or city with 50 or more employees must have at least one responsible employee to coordinate ADA compliance. The ADA coordinator is responsible for coordinating the efforts of the government entity to comply with Title II and investigating any complaints that the entity has violated

Title II ([ada.gov](http://ada.gov)). Official grievance procedures must be established, and the ADA coordinator's contact information must be provided to anyone in order to file a complaint. The complaint should be submitted by the grievant no later than 60 days after the alleged violation. Within 15 calendar days after receipt of the complaint, the ADA coordinator must meet with the complainant to discuss the problem and possible resolutions. Examples of valid Title II grievances include 1) a wheelchair user comes to the end of the sidewalk and notices a pothole on the curb ramp which blocks their access to cross the street, 2) a student is told they may not bring their service animal to school, and 3) an individual who uses a walker for mobility shows up to their public pool to find the pool's parking lot has no designated accessible parking spaces. If a person runs across a Title II violation, they do not have to file a grievance with the city or state first. They may file a private lawsuit or complaint with the Department of Justice, if they choose.

## THE ADA: DISCUSSION OF TITLE III

Title III prohibits discrimination on the basis of disability in the activities of places of public accommodations. Examples of Title III entities include restaurants, stores, salons, health clubs, stadiums, museums, theaters, doctors' offices, shopping malls, recreation facilities and day care facilities. This part of the ADA sets minimum standards for creating physical accessibility features, like wheelchair ramps and accessible restrooms.

There are two ways to enforce Title III of the ADA. One may file a complaint with the Department of Justice or file a private lawsuit. The most common Title III violations can be avoided by using the manual 2010 ADA Standards for Accessible Design, set forth by the Department of Justice (Title II entities must comply with these Standards as well). I keep two copies of this 277-page manual of technical specs in the car with me: one for my own reference and one to share with the business owner or manager who potentially needs assistance fixing one or more ADA violations. While ignorance of the ADA's legal requirements is not a valid reason to be non-compliant, I find helping businesses owners out, sharing concerns and informed suggestions, sometimes does the trick. It is sometimes the easier route to take rather than filing a Department of Justice complaint or private lawsuit.

There are countless examples of Title III non-compliance I have run across in my 22 years as a wheelchair user. Here are just a few personal stories.

A franchise location of a car rental agency in Huntsville, Alabama, refused to install hand controls in a rental car I had reserved weeks in advance. Knowing it was a clear Title III violation, I filed a complaint with the Department of Justice, who ended up sponsoring mediation. The car rental agency refused mediation,

so I went to corporate to settle the matter. As a result, they were forced into compliance by the company's headquarters. As a side note, a 2014 Department of Justice settlement set a precedent for all rental car agencies. The 25 largest airport locations must install hand controls with 24 hours notice, 48 hours for most other locations, and 72 hours for rural locations.

A hotel in San Antonio, Texas, had significant ADA violations in the accessible room in which I was staying. The required shower bench was installed on the wall opposite of where the shower controls were located, so there was no way someone with a mobility impairment could sit on the bench and use the required handheld shower head. The bathroom did not have the required roll under sink (see Figure 2), and the thermostat was not ADA compliant as it was too high. I decided to take the advocacy route and speak with the hotel's manager. Then I found out from the manager that the property did not have the required number of ADA rooms. I contacted an ADA attorney for help, who filed a lawsuit for me. Consequently, the hotel agreed to become ADA compliant without going to court.

I showed up at a doctor's office in Fayetteville, North Carolina, to find out they had no accessible exam table. Since the building was otherwise ADA compliant (e.g., accessible parking, accessible entrance, elevator, accessible restroom), I decided to simply talk to the doctor about getting an accessible exam table since I knew one was required. I did not follow up with legal action. I checked on the situation several months later and the doctor did in fact purchase an accessible exam table. This is an example of successful disability advocacy.

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FIGURE 2

Roll under sinks are an accessibility feature required in ADA rooms at hotels and in ADA housing. This picture was taken in my ADA home at the military installation, Fort Bragg, in North Carolina. The Department of Defense mandates that 5% of homes on all U.S. military installations must be ADA compliant.





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I recently met a friend at a restaurant in Saint Joseph, Missouri, for lunch and found no accessible parking. With no other option, I parked sideways. Then I realized there were vehicles parked close together in front of the accessible entrance with no room for a wheelchair user to enter or exit. Clearly this business needed accessible parking which was also close to the accessible entrance. After waiting for a car to move so I could enter, I went in and immediately spoke to the owner. His response was, "The fire department was just here, and they didn't say anything about it." I explained that in most municipalities there are no ADA inspectors per se and that it was essentially up to people with disabilities to enforce the ADA through enforcement mechanisms. He said he would look into it. I gave him my card and told him I would help him do the job right, at no charge to him. Even though I should not have to educate a business owner on any business law, especially a 30 year old act, I'll check back on the situation in a couple months to make sure he removed the barrier (see Figure 3 for an additional note on accessible parking).

### THE ADA: DISCUSSION OF TITLE IV

Title IV prohibits discrimination on the basis of disability in telecommunications. It specifically addresses telephone and television access for people with speech and hearing impairments. The title requires that telephone companies provide telecommunication relay services that allow individuals with speech or hearing impairments to communicate using a TTY (also known as a TDD) or other non-voice device. The telephone companies must have established interstate and intrastate telecommunications relay services 24 hours a day, 7 days a week (relay services may be accessed by dialing 7-1-1). Title IV also requires that all television public service announcements produced or funded in whole or in part by the federal government include closed captioning. The Federal Communications Commission (FCC) enforces Title IV of the ADA.

### THE ADA: DISCUSSION OF TITLE V

Title V, the least talked about title, contains several miscellaneous provisions. It covers insurance issues, explains the relationship between the ADA and other previously existing laws and defines explicit restrictions against retaliation or coercion against anyone with a disability who exerts their civil rights. Further, Title V supplies supplemental guidelines pertaining to regulations by the Architectural and Transportation Barriers Compliance Board. Title V also contains provisions that apply to the EEOC's enforcement of Title I ([www.eeoc.gov](http://www.eeoc.gov)).

### COMMON MYTHS ABOUT THE ADA

The biggest myth pertaining to the Americans with Disabilities Act is that some businesses and/or buildings are "grandfathered" and do not have to comply. My late and great friend, Chuck Graham, one of the most knowledgeable disability rights advocates I have



FIGURE 3

Here is a picture of a truck illegally parked in the access aisle of an accessible parking space in a Kansas City shopping area. It is very important to never park in an access aisle because people with mobility impairments need that extra space to enter and exit their vehicles.

ever known, used to explain, "There are no relatives in the ADA. No aunts, uncles, brothers, sisters, grandmothers and nope, no grandfathers!" Further, the U.S. Department of Justice explicitly states, "There is no grandfather clause in the ADA" (U.S. Department of Justice, Civil Rights Division, Disability Rights Section, [ada.gov](http://ada.gov)). While I have heard this myth came about shortly after the ADA was passed, I do not have any idea where it originated.

So, are there any entities that are legally able to "get away with" not complying with the ADA? Well, it's a little complicated. First, any building constructed on or after January 26, 1992, must be fully ADA compliant. No excuses. Additionally, any building renovated on or after January 26, 1992, must remove barriers using the ADA Standards for Accessible Design. If a building was constructed before January 26, 1992, and has not been renovated since that date, barriers must still be removed if "readily achievable" (under Title III). Under Title II, barriers must be removed if it will not cause "undue hardship." The verbiage is different for a reason.

Undue hardship requires a higher standard. Title II entities (local and state) are expected to make programs and buildings accessible unless it is impossible without changing the nature of the program, while businesses are given a little more leeway. A Title III entity, such as a restaurant, would be expected to ramp one or two steps at the front of

their old building if there is room to do so (and there almost always is). The court is generally going to view this particular barrier removal as “readily achievable,” especially since the ADA is 30 years old. Conversely, let’s say the same restaurant has a flight of 10 stairs to enter their establishment, and it’s a mom-and-pop facility that is not highly profitable. The court would most likely not expect the establishment to install an expensive elevator (unless it is decided the business can indeed afford it). Having no place to put an elevator is also sometimes a factor.

Another common myth about the ADA pertains to something we disability advocates like to refer to as “historical hysteria.” While historical buildings are given more leeway than most places, contrary to (somewhat) popular belief, just because a structure is on the National Historical Registry does not mean it automatically is exempt from the ADA. In fact, it must be made accessible to the greatest extent possible. If it is possible to make a historical place accessible without threatening or destroying its historical significance, then it must be made accessible. For an example of the successful addition of an accessibility feature being incorporated into a historical building, see Figure 4.

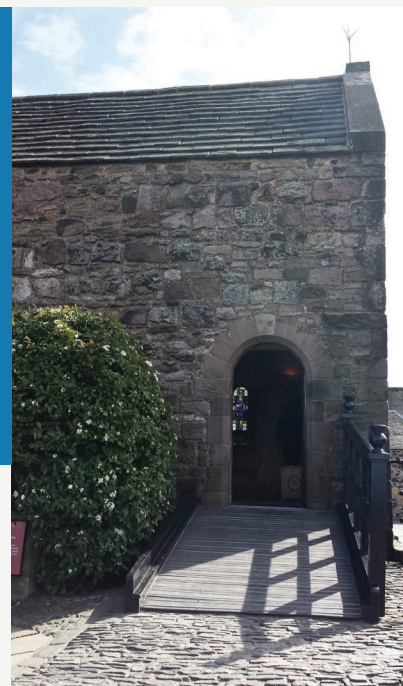
The following Title I myth is pretty common: “The ADA forces employers to hire unqualified individuals with disabilities.” This is simply untrue. The fact is, applicants who are unqualified for a job cannot claim discrimination under the ADA. Under the ADA, to be protected from discrimination in hiring, an individual with a disability must be qualified, which means he or she must meet all requirements for a job and be able to perform its essential functions with or without reasonable accommodations (U.S. Department of Labor, Office of Disability Employment Policy, [www.dol.gov](http://www.dol.gov)).

The ADA has, in my opinion, been instrumental at not only reducing discrimination towards people with disabilities in many areas of daily life, but it also has contributed to a cultural shift. Though the change in mindset is moving at what seems to be a glacial pace, disability less often evokes pity than it did decades ago. More people are internalizing that disability is a natural human difference, and it is more often viewed as just another aspect of diversity than it used to be. The experience of living with a disability is even seen as inherently valuable by some people. Before the ADA, you did not hear a positive term like neurodiversity in a conversation about autism. You did not hear the term ableism used to describe the marginalization of and discrimination towards people with disabilities. People are getting more comfortable with these topics.

ADA compliance alone does not always result in meaningful inclusion, but it has certainly been helpful. The ADA has essentially allowed millions more people to go out into their communities, and these individuals proved themselves to society, knowingly or unknowingly. When you turn on the television nowadays, you may see a woman who uses a wheelchair as the romantic lead in a movie. You very

#### FIGURE 4

Although the ADA does not apply in other countries, some nations do have accessibility legislation they’ve modeled after the ADA. Here is a picture of a ramp added to Saint Margaret’s Chapel at the castle in Edinburgh, Scotland. This is a perfect example of how it is possible to add an aesthetically pleasing accessibility feature to a historical building. Original construction of this chapel took place between the years 1045-1093!



well may run into a wheelchair-using nurse, doctor, attorney, social worker, teacher, or stockbroker. There are

fashion models with Down syndrome, well-known billionaires on the autism spectrum, and comedians with cerebral palsy. At least some of this cultural shift can be attributed to the positive effects of the ADA.

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#### REFERENCES

- GOWER, W.S. (OCTOBER 20, 2017). TITLE I EMPLOYMENT GUIDELINES. ADA COORDINATOR TRAINING. LECTURE CONDUCTED FROM NORTHEAST ADA CENTER, BUFFALO, NY.
- UNITED STATES DEPARTMENT OF JUSTICE. CIVIL RIGHTS DIVISION. DISABILITY RIGHTS SECTION. [WWW.ADA.GOV](http://WWW.ADA.GOV)
- UNITED STATES DEPARTMENT OF LABOR. OFFICE OF DISABILITY EMPLOYMENT POLICY. [WWW.DOL.GOV](http://WWW.DOL.GOV)
- UNITED STATES EQUAL OPPORTUNITY COMMISSION. [WWW.EEOC.GOV](http://WWW.EEOC.GOV)
- UNITED STATES FEDERAL COMMUNICATIONS COMMISSION. DISABILITY RIGHTS OFFICE. [WWW.FCC.GOV/ACCESSIBILITY](http://WWW.FCC.GOV/ACCESSIBILITY)

*Kelly Narowski, MA, ADAC, has vast experience as a disability rights advocate, professional speaker and as a subject matter expert on disability law and policy. She is certified as an ADA coordinator from the University of Missouri, holds a Master of Arts in Disability Studies from the City University of New York and is currently working on a master’s in psychology from Northcentral University. She currently serves on the board of directors for the Midland Empire Center of Independent Living. Narowski is a military spouse, animal lover and, having visited 47 countries, she is an avid traveler who has a passion for educating individuals with mobility impairments about accessible travel. She frequently speaks about disability-related topics at conferences, schools and for military audiences.*

