

AMERICANS WITH DISABILITIES ACT of 1990

Mandate for Full Accessibility



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Legislative victories in disability rights culminated with the passage of the Americans with Disabilities Act of 1990 (ADA), a comprehensive civil rights law that removes barriers to equal opportunity and provides full societal access for all individuals with disabilities (1). Extending the basic framework of Titles II and VI of the Civil Rights Act of 1964 for coverage and enforcement and Section 504 of the Rehabilitation Act of 1973 for a definition of discrimination, ADA, for the first time in history, guarantees to persons with disabilities sweeping protection against discrimination in both public and private services (1,2).

When the legislation was passed, it changed the manner of providing transportation in the United States. ADA has become what no other federal transportation legislation has ever been: a mandate for full accessibility in the transportation industry. ADA resolves a long-standing policy debate between the disability community and the transit industry over the

provision of accessible transportation services. This debate, although couched in terms of "fixed route versus paratransit," was primarily a debate about a civil right to public transportation in light of the costs of making transportation systems accessible. For more than two decades, federal policy governing accessible transportation fluctuated between focusing on costs and legal principle. Such constant shifts confused state and local governments, transit systems, and the disability community (3). In the ADA, the federal government issued a clear mandate that ended the policy debate by supporting full accessibility, standardizing accessible transportation services, and establishing requirements for both public and private operators (4).

ADA not only resolves the public transit issue, it has far-reaching implications for the entire transportation industry. Its accessibility requirements cover all modes of public and private transportation except air travel, which is covered by the Air Carriers Access Act of 1986 and related U.S. Department of Transportation (DOT) regulations. This systems-change legislation affects federal highways, transit systems,

private transportation providers, airports, and water transportation. An overview of the transportation provisions of ADA and related regulations and progress made in their implementation are provided in this article. Given ADA's major impact, the primary focus is on public transit.

Americans with Disabilities Act

ADA's civil rights protections cover a wide spectrum of qualified individuals with disabilities. Disability is broadly defined to include all individuals who have, have had a record of, or are regarded as having physical or mental impairments that substantially limit one or more major life activities. Major life functions include seeing, hearing, speaking, walking, breathing, performing manual tasks, learning, caring for oneself, and working. Estimates suggest that this definition covers 43 million Americans, which may be a conservative estimate given the increasing aging population and escalating numbers of persons with other covered infectious diseases and conditions.

Major statutory provisions divided into titles cover employment, activities of state and local governments, public services,

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HOW NEW REQUIREMENTS WILL BE PHASED IN

TABLE 1 How New Requirements Are Being Phased In

| Public Accommodations | State/Local Government | Employment | Telecommunications |
|---|---|--|---|
| January 26, 1992: Public places such as restaurants, doctors' offices, supermarkets, retailers, museums, schools and day-care centers must be fully accessible. Private clubs and religious groups are exempt. Businesses must: <ul style="list-style-type: none"> Remove physical barriers or offer alternative methods of service Provide a range of communication aids for those with hearing, vision or speech impairments | January 26, 1992: Programs, services, activities, and jobs must be accessible on an equal basis to people with disabilities. New buildings and areas modified during alteration must be accessible. | July 26, 1992: Employers with 25 or more workers may not discriminate against otherwise qualified individuals or job applicants. | July 26, 1993: Public phone companies must offer operators 24 hours a day to relay calls for people who are hearing and/or speech impaired who use special telephone equipment. |
| January 26, 1993: New buildings must be fully accessible to all disabled. | | July 26, 1994: Law applies to employers with 15 or more workers. | |

transportation, public accommodations, and telecommunications. To ease the transition, ADA provides for phased-in compliance deadlines. As the full requirements of the law are gradually phased in, the law will remove most barriers to societal participation of persons with disabilities. The effective dates of the statutory and regulatory requirements are shown in Tables 1 and 2.

Transportation Provisions

Particularly significant for transportation, ADA changed the way transportation providers are required to administer their programs of accessible transportation. Extending the antidiscrimination mandate of Section 504 of the Rehabilitation Act of 1973, which covers "qualified persons with disabilities" in federally assisted and conducted services and programs, Title II, Subtitle A, prohibits discrimination on the basis of disability in public programs, services, and activities of state and local governments, whether or not they are recipients of federal funds. According to Title II, Subtitle A, Section 201 (5):

"Qualified individual with a disability" is defined as an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers,

or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or participation in programs or activities provided by a public entity.

Title II, Subtitle B, provisions present detailed obligations that public operators of bus and rapid, light commuter and intercity rail systems must meet to make their systems accessible to persons with disabilities. Private contractors who "stand in the shoes" of public operators are also subject to Title II statutory requirements. Title III extends ADA's antidiscrimination mandate into the private sector and provides statutory guidance for "specified transportation provided by private operators" (104 Stat 355) (6,7):

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce.

Except for the transportation requirements, the U.S. Department of Justice (DOJ) is charged with the responsibility of establishing final regulations and accessibility standards for Titles II and III.

TABLE 2 ADA Timetable

| TRANSPORTATION |
|--|
| August 26, 1990: Public transit vehicles ordered after this date must have lifts and other features for people with disabilities. |
| January 26, 1992: Alternative service (paratransit) must be provided to individuals with disabilities who cannot use the regular transit system. ADA Paratransit Plan |
| July 26, 1992: Joint Paratransit and Key Station Plans |
| January 26, 1993: First annual update of Paratransit Plan |
| May, 1993: OTA Study Report* |
| July 26, 1993: Key stations must be accessible. |
| July 26, 1994: OTRB Regulations |
| January 26, 1995: Detectable warnings required on rail platforms One rail/AMTRAK car per train accessible |
| July 26, 1996: OTRB Regulations effective for large operators |
| July 26, 1997: OTRB Regulations effective for small operators |
| Full compliance ADA Paratransit Requirements |
| *See accompanying article. |

Regulations implementing the transportation provisions for Titles II and III were promulgated by DOT on September 6, 1991 (8). To ensure consistency and uniform standards for accessibility, in Title V, ADA requires the collaboration of the Architectural and Transportation Barriers Compliance Board (Access Board) to issue minimum guidelines to assist DOJ and DOT in establishing accessibility standards under Titles II and III.

State and Local Governments

Under Title II, local and state governments with responsibility for public streets, roads, or walkways must provide curb ramps at existing pedestrian crosswalks. In scheduling the installation of curb ramps, priority must be given to walkways servicing state and local government offices and facilities, transportation, places of public accommodation, and employers. In new construction, curb ramps must be provided at any intersection having curbs or other barriers to entry from a street-level pedestrian walkway (9).

Federal Highways

Streets, roads, or walkways are also covered by Title II. Additional statutory authority for the accessibility of federal roads and highways comes from the Federal Highway Act of 1973, Section 504 of the Rehabilitation Act of 1973, and the Surface Transportation Act of 1978. Curb cut installation at all pedestrian crosswalks constructed or replaced with federal funds has been required since July 1976 under the Federal Highway Act of 1973. By 1979 both Section 504 and the Surface Transportation Act required accessible rest areas in new facilities constructed with federal funds and in all existing rest areas on Interstate highways, where the majority of rest areas were already accessible; and as other existing roads were improved with federal funds. DOT's Section 504 regulations require that newly constructed, federally financed highway rest areas, overpasses, underpasses, and ramps be designed and constructed according to ADA accessibility standards.

Access Board-proposed rules to implement Title II requirements for state and local governments include guidelines for

public rights of way. Proposed guidelines specify curb ramps at intersections with curbs in existing and newly constructed or altered streets, roads, pedestrian walkways, and highways. Pedestrian overpasses, underpasses, ramps, and roadside emergency communication systems must be accessible to persons with disabilities. Accessibility requirements affect not only persons with physical impairments, but individuals with sensory impairments as well. For example, in addition to allowing operation from the roadside shoulder by a person in a wheelchair, the guidelines propose that roadside communication systems provide both visual and auditory acknowledgment of receipt of calls. The Access Board will issue final guidelines in late 1993.

Public Providers of Public Transportation

ADA requires that public operators make their transportation services, facilities, and communication systems accessible to persons with disabilities. Accessibility is phased in as new vehicles are purchased or leased and facilities are altered or constructed. Alternative services must be provided for persons with disabilities who cannot use the fixed-route services.

Vehicles

ADA does not require transit systems to purchase new vehicles or retrofit existing buses, rail cars, or historic vehicles. However, effective August 26, 1990, the law requires that public fixed-route operators purchase or lease accessible vehicles exclusively. Public demand-responsive operators are also required to acquire accessible vehicles, unless their systems when viewed in entirety provide equivalent levels of service for persons with disabilities. Public van pools and demand-responsive airport ground transportation systems are considered demand-responsive systems. Public airport fixed-route ground transportation systems, considered commuter bus systems, are not subject to the rule for complementary paratransit.

New or leased rail, commuter, and AMTRAK vehicles must be accessible and existing systems must have at least "one

car per train" accessible by 1995. Because accessible used rail cars and buses may not be as plentiful, "good faith efforts" must be made to locate accessible vehicles before purchasing or leasing inaccessible vehicles. Rail cars and buses, remanufactured to extend their use by five years,

New or leased rail, commuter, and AMTRAK vehicles must be accessible and existing systems must have at least "one car per train" accessible by 1995.

must be accessible to the maximum extent feasible. AMTRAK cars remanufactured to extend their use by ten years must be accessible.

Complementary Paratransit

Paratransit, comparable to the fixed-route service for the general public, must be provided for persons with disabilities who cannot use the fixed-route systems. Comparability is defined according to six service criteria: service area, days and hours of service, fares, response time, trip purpose, and capacity constraints. To ensure that paratransit is provided to passengers whose disabilities prevent them from using the mainline service, DOT rules establish three categories of ADA eligibility:

1. Riders who cannot independently ride, board, or disembark a fixed route vehicle;
2. Riders who can independently use the fixed route service, but for whom a vehicle is not available at the time and/or place of travel; and
3. Riders, who, due to the combination of a disability-related condition and environmental barriers, cannot reach the bus or rail stop.

By now all fixed-route operators should have submitted to the Federal

Transit Administration (FTA) required initial ADA Paratransit Plans and their 1993 annual updates describing progress toward compliance. Full compliance with all service criteria is required by January 26, 1997, from which operators will be granted relief only if they prove that compliance will cause an undue financial burden.

Facilities

Construction or alteration of any facility used in providing fixed-route or demand-responsive public transportation undertaken after January 26, 1992, must be accessible to individuals with disabilities, including wheelchair users. Key stations in rapid and light rail systems must be accessible by July 26, 1993, unless a time extension is granted. Time extensions may be granted up to 30 years, provided two thirds of all key stations are accessible within 20 years. New commuter rail and AMTRAK stations must be accessible. Key stations must be accessible by July 26, 1993, unless a waiver is granted. Commuter rail key stations may be provided time extensions up to 20 years from ADA enactment. Existing AMTRAK stations must be accessible by July 26, 2010.

Communication

ADA requires that transit systems ensure effective communication with persons with disabilities, including persons with sensory and cognitive impairments. This rule affects operations as well as print materials and facility public address systems. For example, information about all transportation services must be available in accessible formats such as Braille, large print, and/or audiocassette tape. Communication available via telephone must be accessible through teletypewriters (TTY) and other appropriate technology or services such as qualified readers and interpreters. To facilitate on-board announcements and communication, public address systems are required in new buses longer than 22 feet. Operators are required to announce major stops, intersections, and transfer points. At multiple vehicle stops, it is the operators' responsibility to assist persons with visual impairments in identifying a specific bus. Public address systems

in transportation facilities require visual display systems. Other aspects of facility-related communication accessibility include signage, TTYs, and alarm systems.

Private Providers of Public Transportation

Accessibility requirements for private providers of public transportation are specified in Title III. Significantly different from previous disability policies, ADA prohibits discrimination against persons with disabilities in public transportation services provided by private operators.

Taxi companies may not refuse service or assistance in stowing mobility aids for wheelchair users and other individuals with disabilities, or charge higher fares.

The law differentiates between primary and secondary private operators of public transportation.

Private Transportation Businesses and Companies

Excluding automobiles and over-the-road coaches, private fixed-route operators "primarily" in the transportation business must purchase or lease accessible vehicles with a seating capacity of eight or more passengers. Smaller vehicles (minivans) must also be accessible unless an equivalent level of accessible service is available. Demand-responsive operators must purchase accessible vehicles unless vehicle availability ensures equivalent accessible service. Private jitney or shuttle service is subject to the requirements for private operators primarily in the business of demand-responsive service.

Although subject to the same ADA requirements as other private demand-responsive providers, taxi companies do not have to purchase accessible automobiles. Although not required by law to do

so, taxi companies that choose to purchase or lease vans or other vehicles must ensure that these vehicles are accessible unless the companies can demonstrate equivalent levels of accessible service. Taxi companies may not refuse service or assistance in stowing mobility aids for wheelchair users and other individuals with disabilities, or charge higher fares. If readily achievable, automobile and van rental companies should provide vehicles equipped with hand controls (10).

Hotels, Convention Centers, University Transportation Systems, and Other Secondary Private Providers Private providers "not primarily" in the transportation business must purchase or lease accessible vehicles only if the vehicles have a 16-passenger seating capacity and will be used in regularly scheduled service. Smaller vehicles must be accessible unless an equivalent level of accessible service is available. Similar to public transportation, discrimination in private transportation includes discriminatory eligibility criteria, inaccessible facilities, and the refusal to provide auxiliary aids and services or remove barriers.

Over-the-Road Buses

Accessibility requirements for over-the-road buses (OTRBs) are discussed in the accompanying article, "The Impact of the Americans with Disabilities Act on Bus Service" (see page 22).

Water Transportation

Considered as places of public accommodation, cruise ships, ferries, and other passenger vessels are covered under Title II or III and are subject to ADA and its implementing regulations. A Federal Advisory Committee is being planned to convene in 1994 to initiate the ADA rule promulgation process for water transportation for persons with disabilities.

By allowing phased-in accessibility, the federal government acknowledges that time is needed for full-scale accessibility in the transportation industry. Although all final regulations have yet to be promulgated, the statute and its implementing rules have already had a major impact on transportation service planning, admin-



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Wheelchair user Pam Whitaker, of Phoenix, Arizona, disembarks from rear door of bus using lift.

istration, and delivery to persons with disabilities.

Implementation

July 26, 1993, marked the third anniversary of the ADA and implementation appears to be well under way. The response of the transit industry has been positive and key developments necessary to facilitate ADA compliance are taking place daily (11). As the knowledge base and experience with implementation grows, several pertinent issues regarding ADA requirements have emerged. The following discussion presents an overview of implementation progress and issues of concern in transportation.

Vehicle Accessibility

Efforts to meet ADA vehicle accessibility requirements are ongoing. Accessibility grows nationwide as transit systems purchase only lift-equipped vehicles. Preliminary data from a national survey of transit providers suggest that nationwide, fleet accessibility has reached 52 percent (Unpublished data, National Easter Seal Society, 1993). The American Public Transit Association (APTA) reports that nationwide, 37 systems have reached 100 percent accessibility (12).

AMTRAK

AMTRAK has implemented a three-year research and demonstration program to

improve access to intercity rail passenger service for passengers with disabilities. "All Aboard America" is an effort funded by the National Institute on Disability and Rehabilitation Research to develop a cost-effective onboard lift for AMTRAK trains. Activities include acquiring, installing, and testing several prototype lift devices on in-service AMTRAK trains.

Complementary Paratransit

The first-year paratransit plans of U.S. transit systems indicate a general willingness to meet compliance, although most systems will require the full five-year phase-in period to do so (13). Although the vast majority (90 percent) of the 540 plans received by FTA are now in compliance, requirements for ADA complementary paratransit have clearly emerged as the major implementation issue.

Determining ADA Paratransit Eligibility

High costs complicated by funding uncertainty have been further compounded by complex political and operational issues surrounding ADA paratransit eligibility. Despite regulatory guidance, many transit systems find the eligibility determination process problematic. Pre-ADA paratransit eligibility was loose and varied, primarily based on disability and age, whereas the new requirements narrowly define the population to be served. Stringent requirements applied on a trip-

by-trip basis present technical challenges for which many transit systems are not equipped. Improved service levels and lenient certification procedures are serving to increase paratransit demand. Many systems willingly admit "grandfathering" current paratransit users. To further fuel demand, most consumers with disabilities are not moving to fixed-route service.

Senior Displacement

ADA may well be the only civil rights legislation responsible for consumer loss of services. According to a recent American Association of Retired Persons study (14) current senior paratransit users will be displaced by persons with disabilities. One in five transit systems studied indicated that they will have to deny service to non-ADA-eligible seniors, in light of limited financial resources.

Operating Costs

Given the dwindling budgets of the states and localities, grave concerns have been raised about paratransit operating costs. Funding uncertainty, exacerbated by increasing demand, has produced a consensus that the capacity constraints service criteria will be the most difficult to meet. At this juncture, only two transit systems have requested undue financial burden waivers, for which both requests were denied. However, it is highly likely that waiver requests will escalate with the approach of compliance deadlines.

Key Rail Stations

Unlike ADA complementary paratransit plans, FTA does not approve or disapprove ADA Key Station Plans. However, FTA does review and act on requests for time extensions for meeting station accessibility by July 26, 1993. Recent FTA guidelines indicate that requests for time extensions will be granted for key stations needing at least \$220,000 in alterations. The costs of nonstructural changes can be factored in only if a station needs a structural change. All required 37 Key Station Plans, representing 708 light, rapid, commuter, and AMTRAK key stations have been reviewed. Of the total 401 time extensions requested, FTA granted 219.

Detectable Tactile Warnings

DOT rules to require detectable tactile warnings on rail platform edges sparked controversy in the disability community and the transit industry. Although transit systems did not oppose the need for tactile strips, they raised concerns about the safety and maintenance of the requisite technology and its application to rail platforms. A related concern is the necessity to make large financial investments in technology, such as tactile strips, which has had limited testing in actual use. Although such technical issues remain unresolved, at the center of the controversy for most disability advocates is a primary concern about the safety of rail passengers who are blind or otherwise visually impaired.

Originally required by July 26, 1993, the prescribed installation of detectable warnings in key stations was suspended by DOT until January 26, 1995, pending results of several research efforts under way. The Access Board will be sponsoring research on the need for detectable warnings and has reserved proposing accessibility guidelines for state and local government entities. The Access Board has also proposed suspending requirements for detectable warnings for entities covered by Title III of the ADA until January 1995.

Conclusion

ADA's ultimate goal to provide equal access for persons with disabilities has far-reaching implications for transportation, particularly public transit. Initial implementation efforts in transportation have been positive; transit systems nationwide, demonstrating a willingness to comply with the letter and spirit of the law, are moving in the right direction. Financial uncertainties have become apparent as providers compare the costs of implementation with limited financial resources. ADA is an expensive federal mandate without designated funding. Implementation is proceeding and it is too early to determine how these emerging issues will be resolved. Problem solving—now primarily in the hands of transit operators, will require creative and innovative solu-

tions, but more importantly, cooperation and collaboration with the disability community.

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Impact of the Americans with Disabilities Act on Bus Service

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In congressional debate over the Americans with Disabilities Act of 1990 (ADA), particular difficulty developed around the issue of access for individuals with disabilities to transportation on buses with a high passenger deck, defined in the act as over-the-road buses (OTRBs). These buses are most often used in scheduled service that takes passengers from city to city, or on local and regional tours and charter trips.

Uncertain about the feasibility and cost of OTRB accessibility technologies, Congress was concerned that the burden of implementing ADA might cripple an already struggling industry, and thus cause the loss of intercity, charter, and tour bus service for many citizens. To ensure that regulations issued by the U.S. Department of Transportation (DOT) would be based on accurate, objective information and fully reflect the needs of both the bus industry and the disability community, Congress directed the Office of Technology Assessment (OTA) to study this issue. OTA released the report *Access to Over-the-Road Buses for Persons with Disabilities* in May 1993.

Within a year of the release of the OTA study, DOT must issue regulations to inform OTRB operators of their compliance obligations under ADA. These regulations take effect for large operators in July 1996 and for small operators in July 1997, although the President may delay implementation for up to one year.

What Is Accessible Service?

OTA found that an accessible OTRB allows persons with disabilities to board and, where applicable, remain with their aids while riding on the OTRB—with only minimal assistance from bus company personnel. Accessible OTRBs have

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