

## FREQUENTLY ASKED QUESTIONS (FAQ)

After practicing Disability Rights Law since 1998, These are the most common questions potential clients ask me when they would like to enforce their rights. If you have any others, please email me. Here are a few of the FAQs:

### **1. What is discrimination under the ADA?**

Discrimination, under the ADA, is when a person with a disability does not enjoy a full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation, which includes most businesses with a physical location. This includes:

- a) Policies and procedures that screen out or treat a person with a disability differently from anyone else, unless such policies are necessary;
- b) Failing to provide auxiliary aids and services, such as interpreters for the deaf, or Braille for the visually impaired;
- c) Failing to remove architectural barriers to access that are readily achievable or constructing new facilities in an accessible manner.

The ADA is a comprehensive law, and has many regulations, as well as guidance which provide more information as to what is an architectural barrier and the requirements of a public accommodation to comply with the law. For more information, see [www.ADA.gov](http://www.ADA.gov).

### **2. I have been discriminated against, why can't I get damages under the ADA?**

Because Congress said so. The ADA is one of the only civil rights acts that do not provide damages for the aggrieved person, unless the action is brought by the [Department of Justice](#). The result of the lawsuit is usually a settlement which provides for the removal of the barrier, and your attorney's fees and costs. However, there are some other laws which may allow damages:

- (a) If the public accommodation is a place of lodging, entertainment, or food service establishment, there is a monetary remedy under the [Florida Civil Rights Act](#)
- (b) If the entity receives any federal financial assistance, such as receipt of [Medicaid](#), [Medicare](#), or [federal student grants](#), it may be liable under the Rehabilitation Act of 1973
- (c) Counties, such as Miami-Dade, have [county ordinances](#) which provide for damages after an administrative process.

### **3. What do I need to prove to bring an action under the ADA?**

Primarily, you need to show that there is a barrier to access in a public accommodation. In addition, you need to intend to visit the public accommodation in the future and there must be a probability that you will suffer the discrimination when you return. Also, you must be willing to go through the federal court litigation process, which includes disclosing a lot of information about your life and disability, and undergo questioning under oath, mediation, and possibly a trial. There

is always a risk that you may lose, and when you do so, you may be liable for costs, and if the case has no basis in law or fact, you may be liable for fees.

**4. I really need to have an intention to go back to a place that discriminated against me?**

Yes. Not only must you intend to go back, there must be a probable date. For example, Disability Independence Group is currently appealing a case where the trial court stated that a boy with ulcerative colitis, and had his colon removed, did not have a case against his local hospital and the specialty children's hospital because, though it was possible, it was not definite that he would go back for inpatient treatment at a hospital despite his condition. While in many circumstances, its simple to state that a person would go back to a supermarket or restaurant that discriminated against them and they had to sue.

**5. Why would anyone go through all of this trouble to sue for access if they received no money and had to spend so much time to fix a place that did not care enough to be accessible?**

Someone needs to take a stand for what is right. After 25 years of the existence of the law, there may have been hundreds of persons who have faced similar barriers and decided that they were not going to bother. There have been people that have accepted segregation as a way of life. However, with segregation, there are less opportunities with employment, housing, and community participation.