

## New Americans with Disabilities Act regulations: What you need to know

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**IN MARCH 2012**, the most significant Americans with Disabilities Act (ADA) changes took effect since the measure became law in 1991. While the new requirements are more evolutionary than revolutionary, the new design and construction requirements affect most commercial real estate in at least some fashion. All areas on premises used by the public—as well as many employee-use areas—inside and outside a facility have been impacted.

Among those most affected are retail establishments, especially those with multiple public areas and locations such as hotels, bank branches and retail chains. Buildings with large areas used by the public such as healthcare facilities, schools and libraries also face major consequences from new ADA regulations. Owners and occupiers of virtually any large commercial real estate space used by the public or several employees must accommodate the new ADA standards.

### **Don't take the changes lightly**

Perhaps the most important thing to know about the updated ADA regulations is that they need to be taken seriously. Here are some sobering statistics about non-compliance:

- The number of claims for ADA violations for mental disabilities such as anxiety, manic-depressive, post-traumatic and other psychological disorders rose almost 225% between 2007 and 2012, from 1,585 to 3,555. Settlement value of these claims jumped 313% during the same period, from \$4.3 to \$13.5 million.
- Dollar settlements for physical disability ADA non-compliance claims increased even more sharply during the same 2007-2012 period, surging 238% from \$34 to \$82 million.

Penalties for ADA non-compliance can be as moderate as a warning and immediate problem remediation if authorities feel a violator's intentions were good. However, they can increase to multi-million dollar remediation budgets and other restrictions for what authorities consider large-scale violations (see sidebar). Compliance is also good business. Many associations publish guides and rating systems that evaluate businesses such as hotels and retailers according to accessibility for disabled persons. Being perceived as proactive in enabling access for everyone builds a positive image among users of all ability levels.

## Five points to understand

While owners and occupiers should review the latest version of ADA regulations carefully for implications to their portfolios, here are a “top five” list of highlights to understand:

**1** Lodging facilities and other businesses with recreation features have new requirements regarding access to customer amenities such as fitness areas, saunas, steam rooms and pools. Accessible routes and maneuvering clearance are required for each type of fitness equipment. Saunas and steam rooms have retrofit requirements to provide accessible doors, turning space and benches. And all pools and spas are required to provide a lift or other approved means of access.

**2** There are new requirements regarding service animals and mobility devices that will impact all facilities that cater to the public. People with disabilities are now allowed to use miniature horses for assistance. Also, Segways have been approved as acceptable mobility devices for people with disabilities.

**3** Any development or remodeling completed using the previous 1991 ADA standards before the new changes became effective in 2012 will be “grandfathered” as compliant with the ADA. However, if any element that meets the 1991 requirements is altered, it must then meet the newer standards, and the “safe harbor” no longer applies.

**4** Changes in ADA side reach ranges will have impacts on sales floors, restrooms, service counters and other public-facing areas. The side reach range of equipment in accessible areas has been reduced to be no higher than 48 inches (compared to 54 inches previously) and no lower than 15 inches (instead of 9 inches before). These tolerances and other dimension requirements must be carefully considered in new designs to assure smooth traffic flow in retail and other public areas.

**5** One focus of increased clearance is altered single-user bathrooms, including accessible guest rooms in hotels. For example, toilet stalls with full height partitions are required to be larger under the most recent ADA standards. Also, there are more stringent requirements for dispersion of accessible guestrooms throughout the classes and

## Top 3 most common ADA non-compliance violations

- Lack of equal access for individuals with disabilities across a large retail portfolio of stores and/or kiosk locations, such as bank ATMs
- ADA violations in construction commenced after 1993, and not grandfathered in according to the law
- Online reservations and other information systems that are inadequate for persons wanting accessible offerings (such as hotel rooms)

types of rooms in hotels, and the use of construction tolerances is more limited in the previous ADA standards. Alterations to primary function areas may trigger additional ADA requirements that are outside the planned scope of work.

### Expertise is key

ADA regulations are a very specialized set of rules not well understood by typical corporate real estate executives. Developing and performing adequate surveys, designing and implementing effective solutions—sometimes across hundreds of properties—requires expertise in ADA-related architectural design and project management. For maximum cost efficiency and risk mitigation, organizations should consider engaging third-party experts with deep experience in making portfolios accessible and ADA compliant.



For more information on [ADA regulations, facility audits](#) and Jones Lang LaSalle's [Multi-site services](#) contact:

Kevin Hughes  
Vice President  
Project and Development Services  
+1 312 228 2766  
[kevin.hughes@am.jll.com](mailto:kevin.hughes@am.jll.com)