

What Triggers ADA Compliance?

by Quenda Behler Story

The owners of a local restaurant recently approached me with questions about whether some work they were planning required compliance with ADA (Americans with Disabilities Act). They wanted to know how the ADA would treat an expansion of eating space from inside the building to an existing patio outside the building. Actually, their questions were more pointed: Would they have to do something about the public bathroom, in which only undernourished children could find room to turn around? Would they have to alter the sidewalk entrance with the hundred-year-old double doors that even people who are not disabled have trouble getting through?

as code compliance. The regulatory agency sees remodeling or altering the use — which includes expanding that use or changing to another use — as requiring that the building be brought into compliance. The law is not, however, intended to put people out of business; in fact, the law states that meeting ADA standards in existing buildings is “... intended to be substantially less rigorous than ... for new construction.” The idea is that the necessary modifications for existing businesses should be readily accomplished without excessive difficulty or expense.

Cosmetic redecorating and ordinary maintenance generally do not require ADA compliance. The requirements are

ADA rules operate much the same as building codes — a change in use usually requires a building to be brought into compliance

I hate making those phone calls where you have to admit to somebody that you might have been wrong, so I did a little investigating. Here's what I discovered.

Existing buildings. First of all, the ADA applies only to commercial uses or public accommodations — such as a restaurant. If you are working on a residential building, then you don't have to worry about the ADA unless the building is intended for short-term rentals (like a motel).

When it comes to existing buildings that fall within its authority, the ADA rules operate pretty much the same way

triggered only when the building is being remodeled or the use is being altered in some way. In the case of the restaurant I mentioned earlier, for example, expanding the eating area beyond the footprint of the original eating area onto the patio probably requires ADA compliance, even though the patio is already in place, because it would require some physical changes to the building and the patio. If, however, the expansion could be accomplished without any remodeling or physical alteration at all, would that also trigger ADA? It is a “change” in the primary use, so I think it would, but I'm not

sure. (If answering these legal questions was easy, we wouldn't need all those lawyers, would we?)

Cost Priorities

The most important question here, though, is the cost of the ADA work. Because this restaurant business is a small "mom and pop" operation, the owners can't afford costly modifications. If the work is too expensive, would they have to abandon the whole project? In other words, does cost have any relevance here?

Yes, it does. A rough guide provided by the federal regulations states that the costs of meeting ADA standards shouldn't exceed 20% of the total project cost. That does not mean, however, that if the costs exceed 20%, you can just forget the whole thing: You still have to do what you can. If you can't do all of the work, you ought to do some of it.

The ADA supplies a priority list to help you with your decisions about what you should do now and what you could put off. The first priority is access to the building from the sidewalk. Makes sense, right? If a disabled person can't get in, what difference does it make how accessible the facilities are inside? So, the restaurant owners should start by looking at those fancy hundred-year-old doors.

Suppose, though, that a handicapped-accessible entrance would so change the character of the building that it would adversely affect the whole restaurant. Maybe the restaurant specializes in "Nineteenth Century Fine Dining," or perhaps the post between the double doors that restricts egress holds up the entire building corner. What then? Because it's an alteration to an existing building, if the modification is not feasible or if the costs are disproportionate, then it's okay to look around for an alternate entrance that could be made handicapped-accessible.

The second priority involves the "path

of access." Could a disabled person guide a wheelchair through the restaurant, or are the tables, counters, or other stuff so arranged that he or she couldn't get past them? The goal is to create a path of travel that a wheelchair can pass through in a continuous, unobstructed way — the way that a person walking would pass through.

Next comes the rest room, which any restaurant patron should be able to use. To make the rest room accessible for someone in a wheelchair will require a wide entrance door, at least one wide toilet stall, and grab bars.

More than just doors and rest rooms must be made ADA compliant when a property is being remodeled. The location of electrical switches, telephones, and other devices are specified, as are limits on how far objects can protrude from a wall.

The building in which this restaurant is situated also has apartments upstairs. The fact that the restaurant has to comply with ADA standards does not mean, however, that the apartments also have to be brought into compliance, because the ADA does not usually apply to residences. But even if the apartments were commercial spaces in the same building, it's probable that those shops would not have to be made ADA compliant unless the landlord was improving the whole building.

The requirements of the ADA are both comprehensive and complex. Hard-and-fast answers aren't readily available, especially in the gray areas, because the law hasn't been in place long enough. The legislation does, however, make a determined effort to balance the needs of small existing businesses with the rights of the disabled to go to the places where everyone else can go.



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