

# PUBLICATION

---

## No More Drive-Bys — 15 Ways to Get and Stay ADA Compliant

April 14, 2010

Several years ago, jurisdictions in Nebraska, Oklahoma, California and Florida were plagued with what has now been termed Americans with Disabilities Act (ADA) “drive-by” law suits. Members of law firms in various cities were essentially driving by various restaurants, hotels and retail establishments to determine whether these facilities were in compliance with the ADA. If they were not in compliance, the firm would “recruit a customer” with a disability to patronize the business and subsequently file a lawsuit on behalf of the “customer” based on the facility’s noncompliance.

In August 1995, Barrier Free Environments and Adaptive Environments Center, Inc. developed a checklist to assist businesses in assessing their facilities’ accessibility. Businesses must first understand they are not required to meet all of the requirements of the ADA if the changes needed to achieve compliance are not “readily achievable.” The Department of Justice, which enforces the ADA, defines “readily achievable” as “easily accomplished without much difficulty or expense.” The checklist notes that businesses should focus on the four priorities recommended by the Title III regulations for planning readily achievable barrier removal projects:

1. Accessible approach and entrance;
2. Access to goods and services;
3. Access to rest rooms and
4. Any other measures necessary.

Businesses should be mindful of their obligations to provide access to all potential customers and make sure that the facilities are in line with the local, state and federal laws and regulations governing accessibility. The following are a few initial considerations businesses can make with minimal effort:

- Is at least one out of every 25 parking spaces in the business's parking lot designated and marked for the disabled?
  - Are those parking spaces at least eight feet wide with a level access aisle next to it that is at least five feet wide?
  - Are the spaces located near the business's accessible entrance?
  - Are at least one in every eight parking spaces designated for the disabled large enough to accommodate a lift-equipped van?
- Do the curbs leading toward the business's accessible entrance have curb cuts or ramps to facilitate accessibility?
- Is the entrance to the business at least 32 inches wide? Are the door handles no higher than 48 inches?
- Does the hardware on the business's doors consist of doorknobs, a handle with a thumb latch or some other apparatus that requires manipulation such as tight grasping, pinching or twisting of the wrist?
- If certain entrances are not accessible, is there a sign that directs the individual to the accessible entrance?

- Are the pathways to the service areas free of stairs? If not, is there an alternate route a disabled customer may use?
- If customers are required to make transactions at a counter, is there a portion of the counter that is no more than 36 inches high?
- Are shelves designed for self-service within reach of a person in a wheelchair?
- Do inaccessible bathrooms have appropriate signage indicating that they are not accessible?
- Is the restroom doorway at least 32 inches wide?
- Is there one accessible toilet stall in the bathroom?
- In the context of hotels and motels:
  - Are accessible guest rooms/ suites dispersed among the various classes of guest rooms/suites available at the facility, taking into account room size, cost, amenities provided and the number of beds provided?
  - Are the guest rooms equipped with visual alarms that will alert those who are deaf or hard of hearing of danger?
  - If there are 50 or more guest rooms, is there an adequate number of rooms containing a rollin shower with a permanently attached fold-down seat?
  - Do the hardware of faucets, fixed lamps, drapery controls, and heating and air conditioning controls in spaces required to be accessible require manipulation such as tight grasping, pinching or twisting of the wrist?
- For permanent rooms and spaces, is identification signage mounted 60 inches from the floor and adjacent to the latch-side of the door? Can the signage be read by persons who are blind or have low vision?
- If there are drinking fountains or public telephones in the establishment, is the path of travel at least 36 inches wide?

This list does not address each and every requirement imposed by the ADA and should not serve as a substitute for a full audit performed by a qualified engineer. Nevertheless, it can serve as a starting point that may help a business forestall “drive by” law suits.