

# PUBLICATION

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## Miniature Horses Welcome: DOJ Enacts Revised ADA Regulations Implementing Title II and Title III

August 19, 2010

With the 20th anniversary of the ADA on Friday, July 23, 2010, Attorney General Eric Holder signed final regulations revising DOJ's Title II and Title III regulations, including its ADA Standards for Accessible Design. This is the first major revision to the regulations to Titles II and III since they were originally promulgated in 1991. The revised regulations will impact state and local governments and all businesses that open their doors to the public. In general, the final rules will take effect six months after the date upon which they are published in the Federal Register. Compliance with the 2010 Standards for Accessible Design is not required until 18 months after the date of publication.

The 2010 Standards contain significant changes to elements previously covered by the 1991 Standards, including single-user toilet rooms, common use circulation paths in employee work areas, accessible parking and public entrances. In addition, these regulations cover several new elements, including exercise facilities. The final regulations provide a safe harbor for elements in existing facilities that comply with the 1991 Standards. These elements do not have to be changed until they are altered.

The new regulations also contain a new service animal provision. The most notable change is that the definition of a "service animal" generally refers only to dogs, with a narrow exception for the use of trained miniature horses. Service animals may perform work or tasks for the benefit of an individual with a disability, including physical, sensory, psychiatric, intellectual or other mental disabilities. The service animal may assist an individual during a seizure, alert an individual to the presence of allergens, and help persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. While "protection from danger" is an important function service animals can perform, service animals trained to provide "aggressive protection" are not appropriate service animals under the regulations. In addition, the provision of emotional support, well-being, comfort or companionship is not covered as service animal work.

The new auxiliary aides and services provision expands the list of technologies that may be used to provide effective communication, including video remote interpreting (VRI), real-time computer-aided transcript services and other video-based telecommunications products and systems. Specific definitions for "qualified interpreter" and "qualified reader" are also included.

Another new provision in the regulations distinguishes between the use of wheelchairs and manually-powered mobility aides (such as crutches and walkers), and the use of "other power-driven mobility devices." Entities covered by the regulations must accommodate the use of wheelchairs and manually-powered mobility aides in all areas open to pedestrian use. Covered entities must also permit the use of "other power-driven mobility devices" by individuals with mobility disabilities. This is the case unless a covered entity can demonstrate that such devices cannot be permitted because of safety requirements.

Finally, on July 26, 2010, the DOJ issued four new Advance Notices of Proposed Rulemakings to establish accessibility requirements for, among other things, websites, equipment, furniture and next generation 9-1-1 service. New regulations along these lines, when and if implemented, will impact retail, hospitality, banking and health care industries, all of which have complex websites and furnish electronic equipment for customer use.

Covered entities are strongly encouraged to review and update their accessibility policies, practices and procedures to ensure compliance with these new regulations. For additional advice concerning the practical implementation of these and other provisions of Titles II and III of the ADA, contact your Baker Donelson attorney or any of our nearly 70 Labor & Employment attorneys, located in *Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; and Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee.*

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