

# The Americans with Disabilities Act

Practical Information You Can Use

## The Mission of the Miami-Dade County Internal Services ADA Office

**A civil rights-focused office that ensures the County's programs, services, and facilities are accessible to and usable by people with disabilities.**

What is the ADA?\*

(\*It's not a person, place or group.)



**Federal civil rights law :** protections to individuals with disabilities like those provided to individuals on basis of race, color, sex, national origin, age, & religion.

Guarantees equal opportunity for individuals with disabilities in employment, State & local gov't. services, public accommodations, telecommunications, & transportation.

# **How does the ADA apply to employment?**

**Title I prohibits employers from discriminating against qualified individuals with disabilities in employment, including:**

- job application procedures
- hiring
- firing
- advancement
- compensation
- training, &
- other terms, conditions, & privileges of employment.

Not everyone with a medical condition is protected by the law: *person must be qualified for the job and have a disability as defined by the law.*

**A person can show that he/she has a disability in one several ways:**

1. Has a physical or mental impairment
2. Has a record of such impairment: having a history of, or having been misclassified as having, a physical or mental impairment (such as cancer that is in remission)
3. Is regarded as disabled: being perceived or treated as having a an impairment whether or not the individual has one.



Whether a person has an impairment is determined without considering impact of mitigating measures.

**Mitigating measures:** any treatment, medication, device, or other measure used to eliminate, mitigate, or compensate for the effect of an impairment. Incl: prescription meds, glasses, hearing aids, prostheses, special diet, reasonable accommodations, etc.



# DISABILITY DISCRIMINATION UNDER THE ADA

- When an employer treats a qualified individual with a disability who is an employee or applicant **unfavorably** because he/she has a **disability**.
- When an employer treats an applicant or employee **less favorably** because he/she has a **history** of a disability.
- The law also protects people from discrimination based on their relationship with a person with a disability **EXAMPLE:** discriminating against an employee because she is her husband's primary caregiver.

# REASONABLE ACCOMMODATION

Employer must provide **reasonable accommodation** to an employee or job applicant with a disability, unless doing so would cause **significant difficulty or expense** for the employer.

A reasonable accommodation is **any change in the work environment (or in the way things are usually done)** to help a person with a disability apply for a job, perform the duties of a job, or enjoy the benefits and privileges of employment.

**Possible reasonable accommodations include:**

- making existing facilities accessible;
- job restructuring;
- part-time or modified work schedules;
- acquiring or modifying equipment;
- changing tests, training materials, or policies;
- providing qualified readers or interpreters; and
- reassignment to a vacant position.

**Accommodation must be effective in meeting the needs of the individual:**

- enables individual to perform essential functions of the position, or
- enables applicant with a disability to have an equal opportunity to participate in application process and to be considered for a job.

**An employer doesn't have to provide an accommodation if doing so would cause undue hardship to the employer.**

**Undue hardship:** if accommodation would be too difficult or too expensive to provide, in light of the employer's size, financial resources, and the needs of the business.

**Cannot refuse** to provide an accommodation just because it involves **some cost**.

Employer does not have to provide the exact accommodation the employee or job applicant wants. If more than one accommodation works, the employer may choose which one to provide.



When an individual decides to request accommodation, the individual or his/her representative must let the employer know that s/he needs an adjustment or change at work for a reason related to a medical condition.

To request accommodation, an individual may use "plain English" and need not mention the ADA or use the phrase "reasonable accommodation."

**Title II prohibits state and local governments from refusing to allow a person with a disability to participate in a service, program, or activity simply because the person has a disability.**

**EXAMPLES:**

- *County may not refuse to allow a wheelchair user to use parks and recreational facilities.*
- *County may not refuse to allow a person with epilepsy to board a bus.*

Safety requirements that are necessary for the safe operation of a program may be imposed if they are based on actual risks and **not on mere speculation, stereotypes, or generalizations** about individuals with disabilities.



The County must make reasonable modifications in policies, practices, and procedures that deny equal access to individuals with disabilities, unless a fundamental alteration in the program would result.

***EXAMPLE: an exception to the rule prohibiting dogs in public areas (buildings, buses, trains, etc.) in order to admit service dogs assisting individuals with disabilities.***



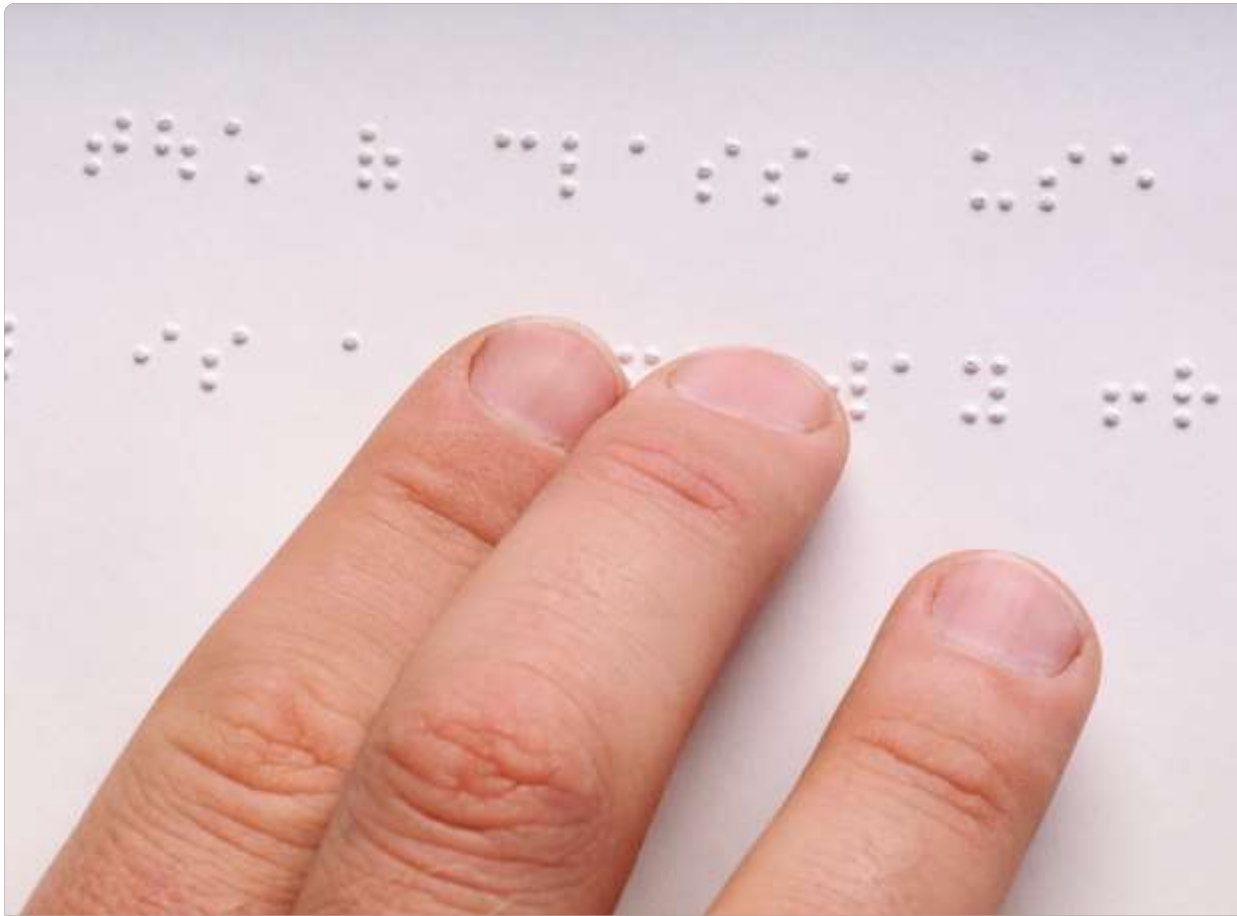
The ADA requires the County to provide programs and services in an integrated setting, unless separate or different measures are necessary to ensure equal opportunity.



**Even when separate programs are required, an individual with a disability still has the right to choose to participate in the regular program.**

The County must ensure that it **communicates as effectively** with persons with disabilities as it does with those who don't have disabilities.

Sometimes this means that the County must provide **“auxiliary aids”** when communicating with individuals with hearing, vision, or speech impairments.



"Auxiliary aids" include sign language interpreters, assistive listening headsets, TV captioning, phones with volume control, written words recorded on audiotape, large print materials and Brailled materials.

The best way to find out what auxiliary aid is the right one is to **ask the person who needs it.**



When communications are very short and simple, exchanging notes with someone who is deaf or has a speech impairment is considered acceptable.\*

**How does the ADA apply  
to public accommodations?**



To be considered a public accommodation, an entity must be private and it must own; lease; lease to; or operate a place of public accommodation.

## **ADA Title III**

# Definition of “Public Accommodation”

**A facility whose operations affect commerce and fall within at least one of the following 12 categories:**

- Places of lodging
- Establishments serving food or drink
- **Places of exhibition or entertainment**
- Places of public gathering
- Sales or rental establishments (e.g. , bakeries, grocery stores, hardware stores, shopping centers)
- Service establishments (e.g. , laundromats, dry-cleaners, banks, barber shops, beauty shops, travel services, shoe repair services, funeral parlors, gas stations, offices of accountants or lawyers, pharmacies, insurance offices, professional offices of health care providers, hospitals);
- Public transportation terminals, depots, or stations
- Places of public display or collection (e.g., museums, libraries, galleries);
- Places of recreation (e.g. , parks, zoos, amusement parks);
- Places of education
- Social service center establishments (e.g. , day care centers, senior citizen centers, homeless shelters, food banks, adoption agencies); and
- Places of exercise or recreation (e.g. , gymnasiums, health spas, bowling alleys, golf courses).



A public accommodation may not discriminate against an individual with a disability in its operations.

Individuals with disabilities **may not be denied full and equal enjoyment of the "goods, services, facilities, privileges, advantages, or accommodations."**

The phrase "goods, services, facilities, privileges, advantages, or accommodations" applies to **whatever type of good or service a public accommodation provides** to its customers or clients.

In other words, a public accommodation must ensure **equal opportunity for individuals with disabilities.**



**Equal opportunity to participate**

**Equal opportunity to benefit; and**

**Receipt of benefits in the most integrated setting appropriate.**

## Relationship between ADA Title II and Title III

Public entities – such as Miami-Dade County -- are not subject to ADA Title III, which covers only private entities. Conversely, private entities are not subject to Title II.

In many situations, however, public entities have a close relationship to private entities that are covered by title III, with the result that certain activities may be at least indirectly affected by both titles.



A privately owned restaurant in a State park operates for the convenience of park users under a concession agreement with a State parks dep't. As a public accommodation, the restaurant is subject to Title III & must meet those obligations. The parks dep't is subject to title II, & is obligated to ensure by contract that the restaurant is operated in a manner that enables the parks dep't. to meet its Title II obligations, even though the restaurant is not directly subject to Title II.

A city engages in a joint venture with a private corp. to build a new professional sports stadium. Where public & private entities act jointly, the public entity must ensure that Title II requirements are met; & the private entity must ensure compliance with Title III. Consequently, the new stadium would have to be built in compliance with both Titles II & III.





A private, nonprofit corp. operates a number of group homes under contract with a State agency for benefit of individuals with mental disabilities. These particular homes provide a significant enough level of social services to be considered Title III places of public accommodation. The State must ensure that its contracts are carried out in accordance with Title II, & private entity must ensure that homes comply with Title III.

**The ADA prohibits discriminatory denial of services or benefits to individuals with disabilities.**

Under the Civil Rights Act of 1964, a restaurant cannot refuse to admit an individual because of his or her race. Under the ADA, it cannot refuse to admit an individual merely because he or she has a disability.

**ILLUSTRATION:** A theater cannot refuse to admit an individual with Down Syndrome to a performance merely because of the individual's disability.

**The ADA mandates an equal opportunity to participate in or benefit from the goods and services offered by a place of public accommodation,** but does not guarantee that an individual with a disability must achieve an identical result or level of achievement as persons without disabilities.

**ILLUSTRATION:** An individual who uses a wheelchair may not be excluded from an exercise class at a health club because he or she cannot do all of the exercises and derive exactly the same result from the class as persons without disabilities.



**A primary goal of the ADA is the equal participation of individuals with disabilities in the "mainstream" of American society.**

- Individuals with disabilities must be integrated to the maximum extent appropriate.
- Separate programs are permitted where necessary to ensure equal opportunity. A separate program must be appropriate to the particular individual.
- Individuals with disabilities cannot be excluded from the regular program, or required to accept special services or benefits.

**Any separate or special programs must, however, be specifically designed to meet the needs of the individuals with disabilities for whom they are provided.**

**EXAMPLE:** Museums generally do not allow visitors to touch exhibits because handling can cause damage to the objects. A museum may offer a special tour for individuals with vision impairments during which they are permitted to touch and handle specific objects on a limited basis. (It cannot, however, exclude a blind person from the standard museum tour.)

Even if a separate or special program for individuals with disabilities is offered, a **public accommodation cannot deny an individual with a disability participation in its regular program**, unless some other limitation on the obligation to provide services applies.

**EXAMPLE:** ABC theater offers reduced rate tickets for individuals with disabilities and requires appropriate documentation for eligibility for the reduced rates. ABC cannot require an individual who qualifies for the reduced rate to present documentation or accept the reduced rate, if he or she chooses to pay the full price.

Public accommodations must maintain in working order equipment/features required to provide ready access. Isolated or temporary interruptions in access due to maintenance and repair are permitted.

Where a public accommodation must provide an accessible route, the route must remain free of obstacles such as furniture, filing cabinets or potted plants. Similarly, accessible doors must remain unlocked during business hours.

**ILLUSTRATION 1:** Placing a vending machine on the accessible route to an accessible restroom would be a violation if it obstructed the route.

**ILLUSTRATION 2:** Placing ornamental plants in an elevator lobby may be a violation if they block the approach to the elevator call buttons.

**BUT:** An isolated instance of placement of an object on an accessible route would not be a violation, if the object is promptly removed.

Although it is recognized that mechanical failures in equipment such as elevators or automatic doors will occur from time to time, the obligation to ensure that facilities are readily accessible to and usable by individuals with disabilities would be violated, **if repairs are not made promptly or if improper or inadequate maintenance causes repeated and persistent failures.**



A public accommodation may not impose eligibility criteria that screen out persons w/ disabilities from enjoying goods, services, privileges, advantages, or accommodations offered to those w/o disabilities, unless it can show that such requirements are necessary.

**EXAMPLE:** A cruise ship discovers that an individual who uses a wheelchair has made a reservation for a cruise and plans to travel independently. The cruise line notifies the individual that she **must** bring a "traveling companion" or her reservation will be cancelled. **Requiring** a traveling companion as an eligibility criterion violates the ADA, unless the cruise line demonstrates that its policy is necessary for some compelling reason.

**A public accommodation must reasonably modify its policies, practices, or procedures to avoid discrimination.** If the public accommodation can demonstrate, however, that a modification would fundamentally alter the nature of the goods or services, it provides, it is not required to make the modification.

**EXAMPLE: A science museum includes a planetarium.** During the shows, the lights are turned down so patrons can see the stars and planets projected onto the dome. The management would not have to leave the lights on to accommodate a patron whose disability has taken away his night vision. Leaving the lights on would fundamentally alter the planetarium's programs.



A public accommodation is not required to provide individuals with disabilities with personal or individually prescribed devices (i.e. wheelchairs, glasses, hearing aids, etc.) or to provide services of a personal nature, such as assistance in eating, toileting, or dressing. **BUT** the phrase "services of a personal nature" is not to be interpreted as referring to minor assistance.

For example, **measures taken as alternatives to barrier removal**, such as retrieving items from shelves or providing home delivery, or **actions required as modifications in policies, practices, and procedures**, such as a waiter's removing the cover from a customer's straw, a kitchen's cutting up food into smaller pieces, or a bank's filling out a deposit slip, would **not** be considered "services of a personal nature."

A public accommodation is required to make available appropriate auxiliary aids and services where necessary to ensure effective communication. The type of auxiliary aid/service necessary to ensure effective communication **will vary in accordance with the length and complexity of the communication** involved.

**Public accommodations should consult with individuals with disabilities wherever possible to determine what type of auxiliary aid is needed to ensure effective communication.**

While consultation is strongly encouraged, the ultimate decision as to what measures to take to ensure effective communication rests in the hands of the public accommodation, provided that the method chosen results in effective communication.

**EXAMPLE:** S has tickets to a play. When S arrives at the theater, the usher notices that S is an individual who is blind and guides S to her seat. An usher is also available to guide S to her seat following intermission. With the provision of these services, a Brailled ticket is not necessary for effective communication in seating S.



A.O. 10-10 outlines duties & responsibilities of County dep'ts for ADA compliance. Each ADA Coordinator is tasked with carrying out an annual review of existing programs, policies, & procedures for ADA compliance. Depart. policies & SOPs that affect customers with disabilities are to be developed in consultation with ADA Office.

DID YOU KNOW? The County Procedures Manual includes **eight procedures related to ADA compliance** and access for people with disabilities:

- No. 425: Reasonable Accommodation
- No. 426: ADA Grievances
- No. 546: Built Environment
- **No. 579: Providing Effective Communication to Persons with Disabilities**
- **No. 581: Service Animals**
- No. 582: Accessible Special Events
- **No. 583: Mobility Devices**
- **No. 584: Ticketing**

One of the most serious consequences . . . is the dehumanizing negative evaluations we attach to people when they have been plastered with a damning label. Because we have slapped a label on them, we assume we have identified the essence of this person semantically branded . . . The power of labels to stigmatize, create self-fulfilling prophecies and reduce or enhance self-images is awesome . . . Until we learn to appreciate the power of language and the importance of using it responsibly, we will continue to produce negative social consequences for those victimized by dangerous language habits.

-- J. Dan Rothwell, *Telling It Like It Isn't: Language Misuse and Malpractice/What We Can Do About It*

## What is People-First Language?

- A way of speaking and referring to people with disabilities that respects them as human beings, rather than dehumanizes them.
- Emphasizes the person first and their disability second.
- Uses language that is objective rather than words that are subjective or have pejorative connotations.



# EXAMPLES

## YES

- People with disabilities
- People with AIDS
- Kate has (a diagnosis of) autism.
- Bob has a mobility disability or impairment.
- Nora uses a wheelchair/is a wheelchair user.
- Tom has a mental health condition.
  
- Children without disabilities
- Tonya has a developmental disability.
- Pedro has multiple sclerosis.

## NO

- The handicapped or disabled
- AIDS victims/AIDS patients
- Kate is autistic.
- Bob is a quadriplegic/cripple.
  
- Nora is confined to a wheelchair/is wheelchair bound.
- Tom is emotionally disturbed/mentally ill/crazy.
- Normal/healthy/typical children
- Tonya is retarded.
  
- Pedro is stricken/afflicted with MS; is an MS victim.

# Breaking Down Barriers

**Tolerance, understanding, and respect.**



You can offer assistance to a someone with a disability, but wait until your offer is accepted before you help.

**The person with a disability will know the best way to assist him/her.**



- Listen to the person with the disability. Don't make assumptions about what he/she can or cannot do.
- When speaking with a person with a disability, talk directly to the person, not through his or her companion. This applies when speaking with someone who is deaf and uses an interpreter.

If the someone has a speech impairment and you are having trouble understanding what he/she is saying, ask the person to repeat rather than pretend you understand.

I'M WALLY'S  
SERVICE MONKEY.  
I'LL BE FIELDING ANY  
QUESTIONS DIRECTED  
AT WALLY.



Dilbert.com DilbertCartoonist@gmail.com

WITH ALL DUE  
RESPECT, A BUSINESS  
MEETING IS NO PLACE  
FOR A MONKEY.



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WITH ALL DUE RESPECT,  
THAT WAS A STRONGER  
ARGUMENT BEFORE I  
SAW YOUR POWERPOINT  
SLIDES.



# **A Word About Service Animals**

**NO EXOTIC SPECIES  
PRIMARYLY DOGS  
\*OCCASIONALLY MINI HORSES**



Cannot require the owner to present any special ID cards or proof that animal has been certified, trained, or licensed as a service animal.

May ask **(1)** if animal is a service animal & **(2)** what tasks the animal has been trained to perform.

Cannot ask questions about the nature or extent of owner's disability.

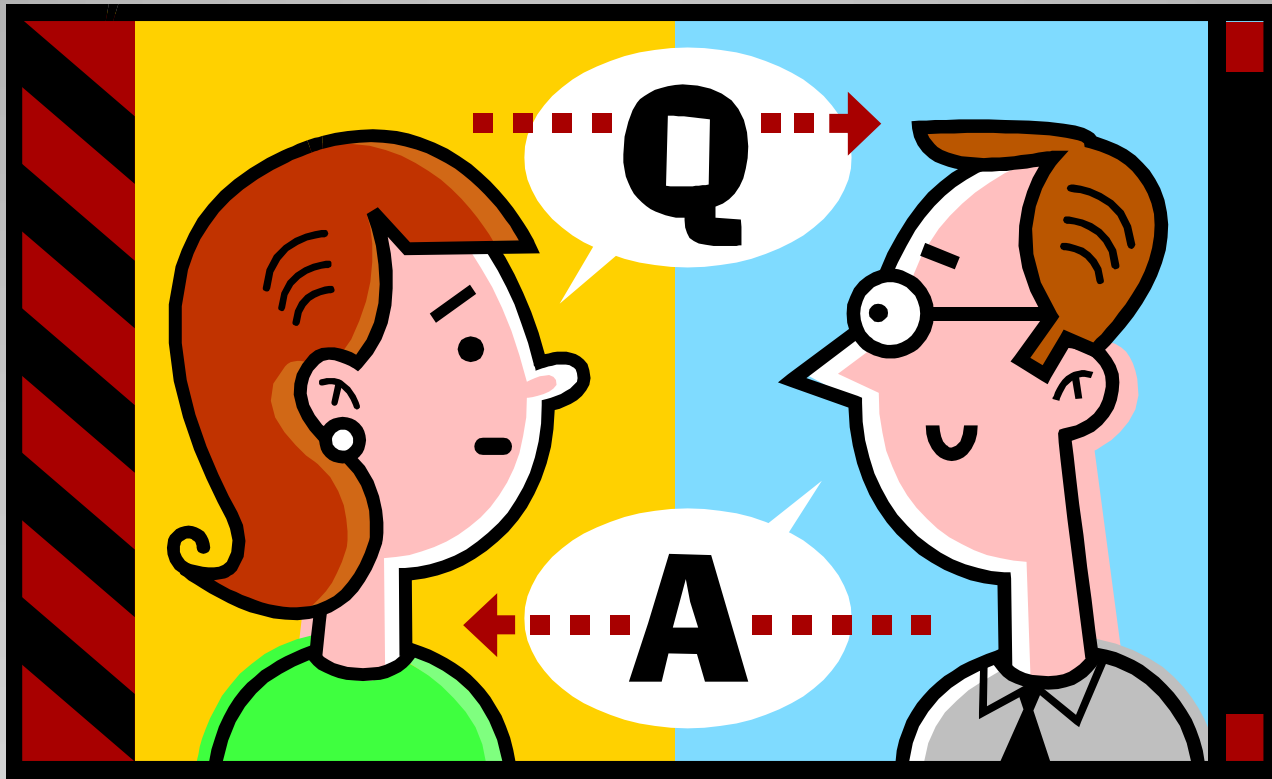


# Owner's Obligations

A service animal must have a harness, leash, or other tether, unless the owner is unable to utilize such measures because of a disability.

Owner cannot be asked to remove his/her service animal from the premises **unless**:

- The animal is **out of control** and owner does not take effective action to control it (for example, a dog lunges or shows other aggressive behavior) or
- The animal is **not housebroken**.



**QUESTIONS?**