

## **The Americans with Disabilities Act – Communication Accommodations Project**

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### *A Resource for Voluntary Compliance with the ADA*

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#### A JOINT PROGRAM OF

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#### **OBLIGATIONS OF ATTORNEYS TO MEET THE NEEDS OF DEAF INDIVIDUALS UNDER THE AMERICANS WITH DISABILITIES ACT**

Title III of the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et seq., and the implementing regulation adopted by the U.S. Department of Justice, 28 C.F.R. Part 36, require places of public accommodation to be accessible to individuals with disabilities. Places of public accommodation include any “office of an accountant or lawyer, pharmacy, insurance office, professional office of health care provider, hospital or other service establishment,” regardless of the size of the office or the number of employees. 28 C.F.R. #36.104 (emphasis added).

Under Title III, lawyers and other professionals have the obligation to communicate effectively with their clients:

- (c) Effective communication. A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities.

28 C.F.R. 36.303.

Unless a lawyer can communicate effectively and accurately with a client, there is a grave risk of not understanding the client’s problems and giving incorrect or improper service or advice. Similarly, clients may not understand legal advice, instructions and warnings unless there is effective communication. Sign language interpreters, transcription services, and written materials are a few examples of “auxiliary aids and services” that may be needed to provide effective professional advice and services to a deaf client. 29 C.F.R. 36.303 (b)(1).

The Department of Justice regulation defines a “qualified interpreter” as follows:

Qualified interpreter means an interpreter who is able to interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary.

28 C.F.R. 36.104. The Department warns that family members and friends may not be able to provide impartial or confidential interpreting, even if they are skilled sign users:

In certain circumstances, notwithstanding that the family member or friend is able to interpret or is a certified interpreter, the family member or friend may not be qualified to render the necessary interpretation because of factors such as emotional or personal involvement or considerations of confidentiality that may adversely affect the ability to interpret ‘effectively, accurately, and impartially.’

56 Fed. Reg. 33553 (July 26, 1991).

When there is a dispute between the lawyer and the deaf individual as to the appropriate auxiliary aid, the Justice Department strongly urges the professional to consult with the deaf person about the effectiveness of a proposed auxiliary aid. It also cautions that complex discussions, such as those about legal issues, may require interpreter service if that is the communication method used by the deaf individual:

It is not difficult to imagine a wide range of communications involving areas such as health, legal matters, and finances that would be sufficiently lengthy or complex to require an interpreter for effective communication.

56 Fed. Reg. 35567 (July 26, 1991) (emphasis added). The Department of Justice emphasizes that places of public accommodation must “ensure that an individual with a disability will not be excluded, denied services, segregated or otherwise treated differently from other individuals because of the use of inappropriate or ineffective auxiliary aids.” Id.

The lawyer may not include the cost of interpreter services in the client’s bill. The regulation explicitly states that auxiliary aids and services may not be financed by a surcharge on the disabled individual. 28 C.F.R. 36.301 (c). The cost of providing sign language interpreters for the deaf clients is part of the cost of doing business; it is similar to the cost of a ramp, elevator, disabled parking place or other physical accessibility feature which may be reflected in an attorney’s office rent, but may not be passed on to clients with disabilities.

A lawyer or other place of public accommodation is not required to provide auxiliary aids and services if providing the service would “fundamentally alter the nature of the services...or would result in an undue burden, i.e., a significant difficulty or expense.” 28 C.F.R. #36.303 (a). Factors to consider in determining whether a place of public accommodation will experience an undue burden include the cost of the auxiliary aid or service, the overall financial resources of the business or practice, the number of employees, the effect of providing the aid or service on the resources and operation of the business, and the difficulty of locating or providing the aid or service. In most instances, the reasonable hourly fee of a sign language interpreter for occasional meetings with deaf clients would not be considered an undue burden for a successful business or law practice.

**FACTS ABOUT  
DISABILITY-RELATED TAX PROVISIONS**  
(by US Equal Employment Opportunity Commission)

The Internal Revenue Code has three disability-related provisions of particular interest to businesses as well as people with disabilities.

**DISABLED ACCESS TAX CREDIT**  
(Title 26, Internal Revenue Code, Section 44)

This new tax credit is available to “eligible small businesses” in the amount of 50 percent of “eligible access expenditures” that exceed \$250 but do not exceed \$10,250 for a taxable year. A business may take the credit each year that it makes an eligible access expenditure.

Eligible small businesses are those businesses with either:

- ?? \$1million or less in gross receipts for the preceding tax year; or
- ?? 30 or fewer full-time employees during the preceding tax year

Eligible access expenditures are amounts paid or incurred by an eligible small business for the purpose of enabling the business to comply with the applicable requirements of the Americans with Disabilities Act (ADA). These include amounts paid or incurred to:

- ?? remove architectural, communication, physical, or transportation barriers that prevent a business from being accessible to, or usable by, individuals with disabilities;
- ?? provide qualified readers, taped texts, and other effective methods of making materials accessible to people with visual impairments;
- ?? provide qualified interpreters or other effective methods of making orally delivered materials available to individuals with hearing impairments;
- ?? acquire or modify equipment or devices for individuals with disabilities; or
- ?? provide other similar services, modifications, materials or equipment.

Expenditures that are not necessary to accomplish the above purposes are not eligible. Expenses in connection with new construction are not eligible.

“Disability” has the same meaning as it does in the ADA. To be eligible for the tax credit, barrier removals or the provision of services, modifications, materials or equipment must meet technical standards of the ADA Accessibility Guidelines were applicable. These standards are incorporated in Department of Justice regulations implementing Title III of the ADA (28 CFR Part 36; 56 CFR 35544, July 26, 1991).

Example: Company A purchases equipment to meet its reasonable accommodation obligation under the ADA for \$8,000. The amount by which \$8,000 exceeds \$250 is \$7,750. Fifty percent of \$7,750 is \$3,875. Company A may take a tax credit in the amount of \$3,875 on its next tax return.

Example: Company B removes a physical barrier in accordance with its reasonable accommodation obligation under the ADA. The barrier removal meets the ADA Accessibility Guidelines. The company spends \$12,000 on this modification. The amount by which \$12,000 exceeds \$250 but not \$10,250 is \$10,000. Fifty percent of \$10,000 is \$5,000. Company B is eligible for a \$5,000 tax credit on its next tax return.

**TAX DEDUCTION TO REMOVE  
ARCHITECTURAL AND TRANSPORTATION  
BARRIERS TO PEOPLE WITH DISABILITIES  
AND ELDERLY INDIVIDUALS**

(Title 26, Internal Revenue Code, section 190)

The IRS allows a deduction up to \$15,000 per year for “qualified architectural and transportation barrier removal expenses” Expenditures to make a facility or public transportation vehicle owned or leased on connection with a trade or business more accessible to, and usable by, individuals who are handicapped or elderly are eligible for the deduction. The definition of a “handicapped individual” is similar to the ADA definition of an “individual with a disability.” To be eligible for this deduction, modifications must meet the requirements of standards established by IRS regulations implementing section 190.

**TARGETED JOBS TAX CREDIT**

(Title 26, Internal Revenue Code, section 51)

Employers are eligible to receive a tax credit up to 40 percent of the first \$6,000 of first-year wages of a new employee with a disability who is referred by state or local vocational rehabilitation agencies, a State Commission on the Blind, or the U.S. Department of Veterans Affairs, and certified by a State Employment Service. There is no credit after the first year of employment. For an employer to qualify for the credit, a worker must have been employed for at least 90 days or have completed at least 120 hours of work for the employer. The tax Extension Act of 1991, Public law 102-227, extended this tax credit through June 30, 1992.

IRS Publication No. 907, providing information on these provisions, may be obtained by calling 1-800-829-2676. For further information, contact the Internal Revenue Service, Office of the Chief Counsel, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044, (202) 566-3292 (voice only).