

Americans with Disabilities Act (ADA) Compliance – Fiction vs. Facts

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A Little History

The Americans with Disabilities Act (ADA) is a Federal Civil Rights Law affecting nearly every employer and business that comes in contact with the public. The ADA, which had unrivaled support in Congress by both Republicans and Democrats, was signed into law on July 26, 1990 and since that time businesses, employers, builders, architects, advocacy groups and the courts have been implementing and interpreting it.

As with most complex laws and issues, hundreds of “so called Experts” sprang up to tell us exactly what the law said and what we needed to do to comply. Unfortunately most of the experts simply saw the chance to make a quick buck and had very little training or experience with the real meaning or intent of the law. As a result many businesses got bad advice, false information and, in some cases, actually exposed themselves to even more compliance problems.

In an attempt to prevent misinformation, Congress set aside funds to train a small group of Technical Assistance Consultants (TAC’s) through the US Department of Justice and the EEOC. This group, known as the National ADA Training and Implementation Network, is made up of 150 people from across the country who received specific, in-depth Federal ADA training and they are still, 14 years later, actively providing education, technical assistance and attempting to dispel the myths about ADA Compliance.

Fiction VS. Facts

The Department of Justice gives several examples of myths about ADA Compliance that have been encountered as a result of misinformation. Some of those examples include:

FICTION: The ADA is rigid and requires businesses to spend lots of money to make their existing facilities accessible.

FACT: The ADA is based on common sense. It recognizes that altering existing structures is more costly than making new construction accessible. The law only requires that public accommodations (e.g. stores, banks, hotels, and restaurants) remove architectural barriers in existing facilities when it is "readily achievable", i.e., it can be done "without much difficulty or expense."

FICTION: The ADA requires businesses to remove barriers overnight.

FACT: Businesses are only required to do what is readily achievable at that time. A small business may find that installing a ramp is not readily achievable this year, but if profits improve it will be readily achievable next year. Businesses are encouraged to evaluate their facilities and develop a long-term plan for barrier removal that is commensurate with their resources.

FICTION: The ADA requires extensive renovation of all state and local government buildings to make them accessible.

FACT: The ADA requires all government programs, not all government buildings, to be accessible. "Program accessibility" is a very flexible requirement and does not require a local government to do anything that would result in an undue financial or administrative burden. Local governments have been subject to this requirement for many years under the Rehabilitation Act of 1973. Not every building, nor each part of every building needs to be accessible. Structural modifications are required only when there is no alternative available for providing program access.

FICTION: Sign language interpreters are required everywhere.

FACT: The ADA only requires "effective communication", which in many situations may simply mean providing written materials or exchanging notes.

FICTION: The ADA forces business and government to spend lots of money hiring unqualified people.

FACT: No unqualified job applicant or employee with a disability can claim employment discrimination under the ADA. Employees must meet all the requirements of the job and perform the essential functions of the job with or without reasonable accommodation. No accommodation must be provided if it would result in an undue hardship on the employer.

FICTION: Accommodating workers with disabilities costs too much.

FACT: Reasonable accommodation is usually far less expensive than many people think. In most cases, an appropriate reasonable accommodation can be made without difficulty and at little or no cost. A study commissioned by Sears indicates that of the 436 reasonable accommodations provided by the company between 1978 and 1992, 69% cost nothing, 28% cost less than \$1,000, and only 3% cost more than \$1,000.

FICTION: Some businesses are “Grandfathered” and therefore do not need to comply with the ADA.

FACT: While “Existing Facilities” (**built prior to Jan. 1992**) have lesser standards, nearly all employers & businesses that have contact with the public have ADA Responsibilities.

FICTION: The government is no help when it comes to paying for accessibility.

FACT: Not so. Federal tax incentives are available to help meet the cost of ADA compliance.

If we look at ADA Compliance for our businesses with a simple, common sense approach it doesn’t need to be as frightening as some would have us believe.

Here are the 6 basic steps toward compliance:

- Establish a “Compliance File” to document all of our Compliance Efforts
- Make sure our facility has been evaluated for physical accessibility
- Make sure our policies have been reviewed for potential discrimination
- Make sure our job descriptions and employment policies have been reviewed
- Establish a plan to correct any identified problems **and** put the plan into action
- Document everything that we do related to compliance (audits, workshops, trainings, meetings, barrier removal, accommodations...Everything!)

It is difficult to use the excuse that compliance is too expensive if we never have an evaluation of our facility, policies and employment practices to actually determine the potential problems, possible solutions and actual costs.

We should also add a few resources to our “Compliance File”:

- A list of qualified American Sign Language Interpreters in the local area
- The number for the National TTY Relay Operator – “711”
- The contact information for the “Job Accommodation Network”**
- 1 (800) 526-7234 and jan@jan.wvu.edu
- IRS Tax incentive information for qualified compliance efforts

*** The Job Accommodation Network (JAN) is a Federally funded project that assists in identifying possible solutions to specific accommodation needs and, according to a recent conversation that I had with a DOJ representative, one of the first things they check for in the event of a complaint, is to see if the business or employer has contacted JAN to ask for help..*

The **FACTS** are that ADA Compliance does not have to put us out of business or even be stressful for that matter and if each business doesn't have someone on staff that has ADA knowledge or expertise, there are people trained to help. We encourage everyone to look beyond the myths and be proactive, rather than wait to be the next ADA Enforcement Statistic.

Randy G. Wagoner is a nationally recognized ADA/Access Expert. He is a member of the National ADA Training & Implementation Network and the National Association of ADA Coordinators. Mr. Wagoner is a wheelchair user and 1 of 150 people nationwide who received Federal Training as ADA Compliance Consultants through the EEOC and US DOJ. He is the Owner and Lead Consultant of [Wagoner & Associates, Inc.](#)

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