



Enforcing the ADA:

A Status Report from the Department of Justice

January - March 2009

This Status Report covers the ADA activities of the Department of Justice during the first quarter (January - March) of 2009. This report, previous status reports, and a wide range of other ADA information, including the consent decrees and formal settlement agreements mentioned in this report, are available through the Department's ADA Home Page at www.ada.gov (see page 10).

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The Americans with Disabilities Act (ADA) is a comprehensive civil rights law for people with disabilities. The Department of Justice enforces the ADA's requirements in three areas --

Title I: Employment practices by units of State and local government

Title II: Programs, services, and activities of State and local government

Title III: Public accommodations and commercial facilities

I. Enforcement

Through lawsuits and both formal and informal settlement agreements, the Department has achieved greater access for individuals with disabilities in thousands of cases. Under general rules governing lawsuits brought by the Federal Government, the Department of Justice may not file a lawsuit unless it has first unsuccessfully attempted to settle the dispute through negotiations.

A. Litigation

The Department may file lawsuits in Federal court to enforce the ADA and may obtain court orders including compensatory damages and back pay to remedy discrimination. Under title III the Department may also obtain civil penalties of up to \$55,000 for the first violation and \$110,000 for any subsequent violation.

1. New Lawsuits

Title III

U.S. v. Wales West LLC -- On January 16, 2009, the Department filed a lawsuit in the U.S. District Court for the District of Alabama against Wales West LLC, a recreational vehicle (RV) park in Silverhill, Alabama, alleging that the park management discriminated against a child because of his HIV status. The suit alleges that after a couple mentioned to park staff that their two-year-old foster child has HIV, they were told that the child would not be allowed to use the RV Resort's pool or showers because of his HIV and that the owner said he might reconsider only if the couple could produce a letter from a doctor or the health department ensuring that the child could not infect others.

U.S. v. Amsterdam Hospitality LLC; U.S. v. 49th Street Realty Corp.; U.S. v. Alphonse Hotel Corp. -- On January 13, 2009, the U.S. Attorney's Office for the Southern District of New York filed lawsuits in the U.S. District Court in Manhattan against the owners and operators of five hotels in the city's Theater District. All have significant barriers to

accessibility and were unresponsive to the Department's efforts to negotiate settlement agreements with them. The hotels are –

- Hotel Carter (614 rooms),
- Ameritania (219 rooms),
- Amsterdam Court (136 rooms),
- Radio City Suites (113 rooms), and
- Moderne (34 rooms).

These lawsuits are the result of a hotel compliance initiative being conducted by the U.S. Attorney's Office in Manhattan. Under this initiative, 48 hotels in Manhattan's Theater District were reviewed to assess compliance with the requirements of Title III, with the goal of removing barriers and improving access for guests with disabilities. (See recent settlements reached under this initiative on page 4.)

2. Amicus Briefs

The Department files briefs in selected ADA cases in which it is not a party in order to guide courts in interpreting the ADA.

Title III

Arizona v. Harkins Amusement Enterprises, Inc. -- On February 6, the Department filed an amicus brief in the U.S. Court of Appeals for the Ninth Circuit, arguing that closed captioning and audio description do not fundamentally alter the service provided by movie theaters. The State of Arizona and two individuals, one of whom is deaf and one who has low vision, sued the defendant movie theater chain alleging that it violated the ADA for failing to exhibit movies with closed captions and video descriptions. The district court granted the defendant's

motion to dismiss on the ground that plaintiffs sought impermissibly to alter the "content" of defendant's services because captions and descriptions would change audio elements into visual elements, and vice versa. As amicus, the Department argued that closed captions and video descriptions are auxiliary aids to permit individuals with sensory disabilities to enjoy a movie, and that these auxiliary aids do not alter a movie theater's service of exhibiting movies. The Department also argued that there is nothing in the ADA's text, legislative history, or regulations that indicates that closed captioning is not required.

Ault v. Walt Disney World, Co. -- On March 12, 2009, the Department filed an amicus brief in a private ADA lawsuit in the U.S. District Court for the Middle District of Florida objecting to a proposed class action settlement agreement barring the use of Segways® at Disney World. Three plaintiffs who use Segways® for mobility initiated the suit challenging Disney's refusal to modify its policy banning Segways® from the Disney theme parks in Florida. In January 2009, the court conditionally approved a class action settlement agreement that would require Disney to make a specified number of Disney-owned four-wheeled electric stand-up vehicles (ESVs) available for rent by people with disabilities at Disney resorts in both Florida and California. In its written objections, the Department urged the court to reject this settlement because of procedural flaws raising serious due process concerns, because judicial endorsement of the agreement would undermine the Department's current ADA rulemaking efforts which, among other things, address the use of Segways® and other electronic personal assistive mobility devices, and because the substantive terms of the agreement are fundamentally unfair to absent class members.

B. Formal Settlement Agreements

The Department sometimes resolves cases without filing a lawsuit by means of formal written settlement agreements.

Title III

Additional Agreements Reached with Manhattan Theater District Hotels -- In January and March, 2009, the U.S. Attorney's Office for the Southern District of New York signed agreements with the following three additional New York City hotels under a compliance review of 48 places of lodging in Manhattan's Theater District --

- Sheraton New York Hotel and Towers,
- W Hotel - The Tuscany, and
- W Hotel - The Court.

The agreements require each hotel, as applicable, to survey existing "designated" accessible guest rooms and make them truly accessible; provide an appropriate number of guest rooms accessible for persons with mobility disabilities, including a specified number with roll-in showers; disperse accessible rooms among all classes of sleeping accommodations; provide an appropriate

number of guest rooms accessible for persons who are deaf or hard of hearing; establish written policies and procedures for providing services to guests with disabilities; and take other steps, such as ensuring access for service animals, making entrances accessible, installing accessible registration counters, and providing TTY's at the front desk. To date, 17 hotels have entered into settlement agreements with the U. S. Attorney's Office under this initiative.

Milwaukee World Festival, Milwaukee, Wisconsin -- On February 3, 2009, the Milwaukee World Festival entered into a settlement agreement with the Department resolving a complaint alleging that the Marcus Amphitheater, a 23,000 seat outdoor concert venue, was inaccessible to people who use wheelchairs. The complaint alleged that the amphitheater did not have enough wheelchair and companion seating spaces and that the restrooms and concession stands were inaccessible. During settlement discussions, the Milwaukee World Festival added several dispersed wheelchair and companion spaces to the amphitheater and modified all of its concession areas and restrooms to bring them into compliance with the ADA Standards. The settlement agreement documents these accessibility improvements.

Walmart To Improve Access For People With Disabilities Nationwide -- On January 16, 2009, Wal-Mart Stores, Inc., entered into a settlement agreement with the Department to improve access for people with disabilities at Walmart stores nationwide, including Supercenters, Sam's Clubs, and Neighborhood Markets. The agreement resolves an investigation that was initiated after the Department received complaints alleging a variety of issues, including refusing to admit, or excessively questioning, customers who use service animals.

Under the settlement agreement, Walmart will adopt and implement a new policy on service animals; provide training on the new policy for all Walmart associates

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Walmart, continued

who have contact with the public; provide additional training on the policy for store management and greeters; post the new policy on its website and in employee areas at its stores; provide training for managers and greeters on their obligations under the ADA to maintain accessible features and to make reasonable modifications in policies, practices, and procedures when needed to accommodate customers with disabilities; and establish a grievance procedure under which Walmart will receive ADA complaints through a toll-free hotline, investigate the complaints, and take appropriate corrective action to resolve ADA violations. In addition, Walmart will pay \$150,000 into a fund to compensate people with disabilities whose complaints were resolved by the settlement agreement. Walmart also agreed to pay an additional \$100,000 into a fund that will be used to finance a public service campaign to increase public awareness of the rights of people with disabilities who use service animals.

C. Other Settlements

The Department resolves numerous cases without litigation or a formal settlement agreement. In some instances, the public accommodation, commercial facility, or State or local government promptly agrees to take the necessary actions to achieve compliance. In others, extensive negotiations are required. Following are some examples of what has been accomplished through informal settlements.

Title II

An individual who is deaf alleged that the emergency call box, located outside a Hawaii county police department, was inaccessible to people who are deaf or hard of hearing. The county replaced the call box with a model that includes a TTY and provided training to police department officials on its use. Additionally, the county will conduct periodic testing to ensure that the device and TTY are functional.

An individual with a mobility disability complained that the public parking garages and

parking lots of a New York municipality failed to provide an adequate number of accessible parking spaces. The municipality has now ensured that all city parking garages and lots have an appropriate number of accessible and van accessible parking spaces, located on the shortest accessible route to a public entrance.

An individual with a disability complained that an Alabama municipality did not have a transition plan and would not tell him the identity of its ADA coordinator. The municipality provided a copy of its transition plan and designated an ADA coordinator. The municipality also posted the ADA coordinator's contact information on its website, along with forms for residents who have disabilities to request accommodations and file grievances.

An individual with a mobility disability alleged that a Massachusetts municipality held a public city meeting in an inaccessible location. The city has agreed to hold all its public meetings in accessible locations and to include contact information for the ADA coordinator in all meeting notices to enable persons with disabilities to request accommodations.

An individual with a mobility disability complained that an Ohio county courthouse was inaccessible. The county has agreed to build an accessible sloped walkway or ramp leading to the main courthouse entrance, add an accessible toilet room on the ground floor, provide directional signage to the accessible toilet room, and install an accessible drinking fountain on the second floor.

The parents of a teenager who has autism alleged that a Delaware municipal library removed their son from the children's section of the library because he was making noises related to his disability. The library has agreed to reasonably modify its noise policy to accommodate individuals with disabilities and to conduct disability awareness training for its staff.

An individual who is deaf complained that the emergency services call box located outside the station of a California municipal police department was inaccessible to persons with hearing disabilities. The city has agreed to change the call box phone to a model that has a blinking light to indicate when the call is answered and police are on their way. In addition, the city will train personnel to respond to these calls.

An inmate with paraplegia, who was housed in a skilled nursing unit at a Pennsylvania state prison, complained that the prison failed to provide him with an accessible cell. The inmate further alleged that he acquired bedsores because of inadequate care from the facility. The facility moved the inmate to an accessible cell, after being evaluated by an outside medical consult, where he will remain until his bedsores clear.

An inmate with a mobility disability alleged that his request for orthopedic shoes had been denied by a North Carolina state correctional facility. The inmate was provided with orthopedic shoes.

An inmate with paraplegia complained that a Wisconsin state correctional facility took away his motorized wheelchair and personal care worker as punishment. He also alleged that the facility failed to care for a skin breakdown that ultimately required surgery. The inmate is now being housed in the infirmary to meet his medical needs and a personal care worker has been assigned to assist him as needed in day-to-day activities. His motorized wheelchair has also been returned.

An inmate with a mobility disability alleged that a Missouri state prison was inaccessible to wheelchair users. The prison has installed ramps at various facility buildings including the administrative offices, a medical treatment trailer, a religious activities trailer, the custody building, and several classrooms. Several tables in the dining room were modified for wheelchair access. In the newest housing unit, showers, toilets, and wing doors have been altered to provide access to inmates who have mobility disabilities. In addition, the prison has assigned aides to wheelchair users who have difficulty navigating portions of the complex.

An inmate who is deaf complained that a West Coast correctional department failed to provide effective communication for programs and classes he was required to complete prior to his release. The department of corrections assigned a sign language interpreter to assist the complainant in routine day-to-day conversations, as well as for transition program classes and meetings prior to his release, and designated an ADA Coordinator for each of its facilities.

Title III

An individual with a disability alleged that a California restaurant was inaccessible to individuals with mobility disabilities. The restaurant agreed to provide a ramp to the entrance and lowered a service counter.

Two individuals with disabilities, one with a seizure disorder and the other with a mobility disability, complained that they were denied entry into two Florida locations of a national grocery chain because they use service animals. The grocery chain has adopted and implemented a service animal policy for all of its stores; designated specific management employees to be responsible for questioning customers accompanied by service animals, if necessary, and ensuring that they are questioned only once; developed a training video for all store directors and managers; posted a "Service Animals Welcome" decal at the main entry door of all stores; posted the service animal policy on its public website, as well as on the employee intranet for training purposes; and committed to investigating customer complaints internally and taking appropriate action to resolve such complaints.

An individual who is deaf complained that a national chain hotel in New York did not provide a TTY for guests who are deaf or hard of hearing. The hotel owner purchased two portable hearing accommodation kits, including visual alarms, notification devices, and TTY's, and has agreed to purchase four more kits. In addition, the owner paid the complainant \$1,500.

An individual with a mobility disability alleged that the office of a national mortgage company in Colorado lacked accessible parking and an accessible entrance. The company installed

accessible spaces in its parking lot, provided a ramp to the building's main entrance, and changed the door hardware at the main entrance.

An individual who is blind complained that a Texas credit union's online bill payment service was inaccessible to customers who use audio screen readers. The credit union worked with the company providing its online bill payment software to include an alt tag providing text information for each image and graphic displayed on its bill payment web pages, enabling a person with a vision disability to understand what each image or graphic represents. The complainant has since been able to access the online bill payment service to regularly pay her bills via the credit union's website.

An individual who is deaf alleged that a Pennsylvania medical practice declined to provide her a sign language interpreter at its main office, although it was willing to provide one at a satellite office less convenient to her. The medical practice has agreed to adopt an effective communication policy requiring it to provide auxiliary aids and services at all of its locations, train its staff on the policy, post the policy in its offices, and pay the complainant \$2,000.

An individual with a mobility disability who uses a wheelchair complained that the accessible shuttle bus provided by a West Virginia casino to transport customers between several hotels and the casino was out of service on several occasions. The casino has since acquired a second accessible shuttle and has also agreed to rent an accessible shuttle bus in the event that both accessible vehicles are out of service for more than 24 hours.

II. Mediation

Under a contract with the Department of Justice, The Key Bridge Foundation receives referrals of complaints under titles II and III for mediation by professional mediators who have been trained in the legal requirements of the ADA. An increasing number of people with disabilities and disability rights organizations are specifically requesting the Department to refer their complaints to mediation. More than 400 professional mediators are available nationwide to mediate ADA cases. Over 75 percent of the cases in which mediation has been completed have been successfully resolved. Following are recent examples of results reached through mediation.

- In Georgia, a person with a disability complained that security personnel forced him to leave a shopping mall because he uses a service animal for mobility assistance and seizure detection. The mall reaffirmed its policy of allowing service animals, trained its security personnel about service animals and the ADA, added materials on service animals to its employee manual, and paid the complainant \$7,000.
- In North Carolina, a person who is blind complained that a restaurant refused to serve him and asked him to leave because he uses a service animal. The restaurant changed its policy and agreed to serve customers who use service animals, posted a “Service Animals Are Welcome Sign”, trained its staff about service animals and the ADA, and apologized to the complainant.
- A person who is deaf complained that when he attempted to place his order by writing on a napkin, an Indiana fast food restaurant refused to serve him and ridiculed him after restaurant personnel repeatedly misunderstood his written order. The misunderstanding escalated, the police were called, and the complainant was asked to leave. The restaurant added pictorial menus at the counter, that customers can use to point to their order. The restaurant also trained its staff on the ADA and paid the complainant \$30,000.
- In Oklahoma, a person who uses a wheelchair complained that five convenience stores in a nationwide chain had inaccessible parking spaces and entrances. The owner of the five franchises agreed to provide accessible parking spaces and accessible entrance ramps at each of the stores.
- In California, a person with a mobility disability complained that a car rental company failed to provide hand controls, even though he requested them in advance. After waiting 90 minutes, the complainant had to rent a car with no hand controls, causing his wife to do all the driving and inconveniencing both of them. The company trained the agent who took the reservation to properly record hand control requests and instituted annual training for reservations personnel worldwide to process requests for hand controls and other disability accommodations. The company conducted disability awareness and customer service training at the branch the complainant

had visited. Finally, the company will publish one article about ADA compliance each year for three years in an employee publication distributed worldwide, provided the complainant with a letter of apology, and paid him \$2,750.

- A couple who is blind and uses service animals alleged that a Pennsylvania cab driver refused to provide service to them. The cab company highlighted its existing nondiscrimination policy and added a statement to its training manual requiring all drivers to transport individuals with service animals, and distributed it to its drivers.
- In West Virginia, an individual who is deaf complained that a mental health facility refused to provide a sign language interpreter for an appointment. The facility changed its policy and developed new procedures for providing effective communication, including the provision of sign language interpreters for patients upon request. The facility also compiled a list of qualified sign language interpreters, trained current staff, and will train new employees, on the new policies and the ADA.
- In California, a couple with mobility disabilities complained that a fairgrounds parking lot was inaccessible. The fairgrounds installed 26 accessible parking spaces in a lot where there were already 35, and paved a previously unpaved parking area where they installed 27 accessible spaces. The fairground will monitor the use of the spaces in both lots.
- An individual with a mobility disability complained that a New Jersey city failed to provide an accessible path of travel to a city-owned beach area. The city constructed an accessible ramp to the beach from the parking area. The city also appointed an ADA coordinator, adopted an ADA grievance procedure, and published this information on its website.
- In California, an individual who uses a power wheelchair complained a department store had insufficient space between clothing racks. The store increased space between the racks, conducted employee training to ensure that merchandise is not stored in the aisles, and paid the complainant \$500.
- In Illinois, a wheelchair user complained that the restrooms at a restaurant where a family wedding reception was held were inaccessible, causing her embarrassment as she had to be carried into and out of the restroom. The restaurant installed accessible stalls with grab bars in the men's and women's restrooms, installed accessible paper towel dispensers and sinks, and paid the complainant \$1,000.
- In California, a wheelchair user complained that a 149-room hotel failed to provide her an accessible guest room despite her reservation. The complainant also alleged that hotel staff suggested that she shower on the bathroom floor of the inaccessible room and that the hotel would clean it up. The hotel renovated six guest rooms to provide accessible bathrooms, including two rooms with roll-in showers. The hotel also agreed to reduce the opening force of all public restroom doors to less than five pounds.

III. Technical Assistance

The ADA requires the Department of Justice to provide technical assistance to businesses, State and local governments, and individuals with rights or responsibilities under the law. The Department provides education and technical assistance through a variety of means to encourage voluntary compliance. Activities include providing direct technical assistance and guidance to the public through the ADA Website, ADA Information Line, and Automated ADA Fax System; developing and disseminating technical assistance materials to the public; and undertaking outreach initiatives.

ADA Website

The Department's ADA Website (www.ada.gov) provides direct access to the Department's publications, briefs, and settlement agreements, and other information about its enforcement, mediation, technical assistance, and certification programs, including proposed changes in ADA regulations and requirements, links to ADA

press releases, and links to other Federal agencies' websites that contain ADA information.

In addition, the website provides access to --

- ◆ electronic versions of the ADA Standards for Accessible Design, including illustrations and hyperlinked cross-references;
- ◆ the ADA Business Connection, with links to materials of particular interest to businesses;
- ◆ Reaching Out to Customers With Disabilities, a web-based, interactive online course that explains the requirements of title III;
- ◆ the ADA Video Gallery, with links to accessible streaming videos about the ADA; and
- ◆ online ordering forms for the ADA Technical Assistance CD-ROM and selected videos.

ADA Changes: The ADA Amendments Act of 2008 (ADAAA), which became effective on January 1, 2009, made some significant changes in the text of the ADA. The full text of the ADA as amended is available on the **ADA Website** at www.ada.gov/pubs/ada.htm. Two annotated versions, showing the changes in ~~strikeout~~ and **bold**, are also available online; one is coded so that screenreaders can detect the ~~strikeout~~ and **bold** annotations.

A full text version of the ADA as amended and an annotated version of the sections that were amended can be ordered in print from the **ADA Information Line**.

ADA Information Line

The Department of Justice operates a toll-free ADA Information Line to provide information and publications to the public about the requirements of the ADA. Automated service, which allows callers to order publications by mail or fax, is available 24 hours a day, seven days a week. ADA specialists, who can assist callers in understanding how the ADA applies to their situation, are available on Monday, Tuesday, Wednesday, and Friday from 9:30 a.m. until 5:30 p.m. and on Thursday from 12:30 p.m. until 5:30 p.m. (Eastern Time). Foreign language service is also available. To get answers to technical questions, obtain general ADA information, order free ADA materials, or ask about filing a complaint, please call:

800-514-0301 (voice)
800-514-0383 (TTY)

Automated ADA Fax System

The Automated ADA Fax System allows the public to obtain free ADA information by fax 24 hours a day, seven days a week. By calling the ADA Information Line and following the directions, callers can request specific documents to be faxed directly to their fax machines or computer fax/modems. A listing of publications and their fax codes is available online or can be ordered through the ADA Information Line.

ADA Publications and Documents

Copies of the Department's ADA regulations and technical assistance publications can be obtained by calling the ADA Information

Line, visiting the ADA Website, or writing to the address listed below. All materials are available in standard print as well as large print, Braille, audiotape, or computer disk for people with disabilities.

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Disability Rights Section - NYAV
Washington, D.C. 20530

Some publications are available in foreign languages. Spanish language documents can be accessed through the ADA Website (www.ada.gov/publicat_spanish.htm). Other Language documents can be obtained by mail.

Copies of the legal documents and settlement agreements mentioned in this publication can be obtained by writing to --

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
FOIA/PA Branch, NALC Room 311
Washington, D.C. 20530
Fax: 202-514-6195

Currently, the FOIA/PA Branch maintains approximately 10,000 pages of ADA material. The records are available at a cost of \$0.10 per page (first 100 pages free). Please make your requests as specific as possible in order to minimize your costs.

The FOIA/PA Branch also provides internet access to ADA materials at www.usdoj.gov/crt/foia/crt.htm. Links to search or visit this website are provided from the ADA Website.

IV. Other Sources of ADA Information

The **Equal Employment Opportunity Commission** offers technical assistance to the public concerning the employment provisions of title I of the ADA.

ADA publications
800-669-3362 (voice)
800-800-3302 (TTY)

ADA questions
800-669-4000 (voice)
800-669-6820 (TTY)

www.eeoc.gov

The **Federal Communications Commission** offers technical assistance to the public concerning the communication provisions of title IV of the ADA.

ADA publications and questions
888-225-5322 (voice)
888-835-5322 (TTY)

www.fcc.gov/cgb/dro

U.S. Department of Transportation, Federal Transit Administration provides information to the public on the transportation provisions of title II of the ADA.

ADA Assistance Line for regulations and complaints
888-446-4511(voice/relay)

www.fta.dot.gov/ada

The **U.S. Architectural and Transportation Barriers Compliance Board, or Access Board**, offers technical assistance to the public on the ADA Accessibility Guidelines.

ADA publications and questions
800-872-2253 (voice)
800-993-2822 (TTY)
www.access-board.gov

The **DBTAC: ADA Centers** are funded by the U.S. Department of Education through the National Institute on Disability and Rehabilitation Research (NIDRR) in ten regions of the country to provide resources and technical assistance on the ADA.

ADA technical assistance
800-949-4232 (voice & TTY)
www.adata.org

Project ACTION is funded by the U.S. Department of Transportation to provide ADA information and publications on making transportation accessible.

Information on accessible transportation
800-659-6428 (voice/relay)
www.projectaction.org

The **Job Accommodation Network (JAN)** is a free telephone consulting service funded by the U.S. Department of Labor. It provides information and advice to employers and people with disabilities on reasonable accommodation in the workplace.

Information on workplace accommodation
800-526-7234 (voice)
877-781-9403 (TTY)
www.jan.wvu.edu

V. How to File Complaints

Title I

Complaints about violations of title I (employment) by units of State and local government or by private employers should be filed with the Equal Employment Opportunity Commission. Call 800-669-4000 (voice) or 800-669-6820 (TTY) to reach the field office in your area.

Titles II and III

Complaints about violations of title II by units of State and local government or violations of title III by public accommodations and commercial facilities should be filed with --

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Disability Rights Section - NYAV
Washington, D.C. 20530

If you wish your complaint to be considered for referral to the Department's ADA Mediation Program, please mark "Attention: Mediation" on the outside of the envelope.

The Attorney General has determined that publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice.