

Making Archives Accessible for People with Disabilities

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Introduction

A. Barrier Removal

Most archives function as a public accommodation and as an employer. Research rooms, lecture halls, and exhibit areas are public accommodations. Employment opportunities range from custodial to the highest level of professional staff. An archives should be prepared to meet and deal with a variety of disabilities that may involve restricted abilities for walking, seeing, hearing, speaking, perceiving or understanding, or physical coordination.

B. Barrier-Free Environments

All new construction must be barrier free, i.e., accessible. Barrier removal pertains to older construction that is being altered, renovated, or refurbished. If barrier removal is not readily achievable (easily accomplished, without much difficulty or expense), an archives is permitted to implement accessible alternatives. For example, when access to the main front entrance is not readily achievable, an alternative side entrance can be made accessible. Moving an exhibit from an inaccessible area to one that is accessible, which is called program access, is acceptable when removal of architectural barriers is not readily achievable. The point is to create a physical environment so that people with disabilities receive goods and services that are not inferior to the products available to the general public.¹

¹ Public Law 101-336–July 26, 1990. An Act to Establish a Clear and Comprehensive Prohibition of Discrimination on the Basis of Disability. “The Americans with Disabilities Act of 1990.” (ADA) Title III “Public Accommodations and Services Operated by Private Entities.” SEC 301 Definitions, (9) “Readily Achievable.”

C. Reasonable Accommodations

An archives must provide reasonable accommodations in employment when it employs 15 or more full-time staff members for 20 or more weeks a year. In smaller archives, provisions for reasonable accommodation are voluntary. In the context of employment, a reasonable accommodation is a change, alteration, or modification in the work environment so that a person with a disability can perform the essential functions of a job. An obvious reasonable accommodation is to provide a work area that is accessible to an employee using a wheelchair. This includes access to restrooms, cafeterias, testing facilities, career advancement, and employment-related benefits. A not-so-obvious reasonable accommodation is to grant leave for medical treatment related to a disability. An employer is required to provide a reasonable accommodation, unless it would cause an undue hardship, which is defined as “an action requiring significant difficulty or expense.” This term is used to denote a fundamental change in the product, a change in working conditions that affects or inconveniences other workers, or a change that compromises the health or safety of the employee with a disability or other employees.²

D. Readily Achievable and Undue Hardship

The terms “Readily Achievable” and “Undue Hardship” appear throughout this leaflet and in the literature dealing with barrier removal and reasonable accommodations. Readily Achievable is used with removing architectural barriers and making buildings and other facilities accessible; and Undue Hardship is used with the provision of reasonable accommodation. Barrier removal (making facilities accessible) is required if the action is readily achievable. Employers are required to provide reasonable accommodation unless the provision of reasonable accommodation would cause an undue hardship. The application of both terms is more subjective than objective. Both terms are defined rather broadly in the Americans with Disabilities Act. Readily Achievable is an action that is “easily accomplished and able to be carried out without much difficulty or expense.” Undue Hardship is an

² ADA, Title I Employment, SEC 101 Definitions (10) “Undue Hardship.”

“action requiring significant difficulty or expense.” When calculating whether an action is readily achievable or an undue burden the Americans with Disabilities Act (ADA) recommends these factors:

1. the nature and cost of the action;
2. the financial resources needed to carry out the action, and how the action will impact employment, financial resources, and expenses;
3. the financial resources, size of the business, number of employees, and number and location of its various facilities; and
4. type of operation; composition, structure, and function of the workforce; and the geographic separateness, and administrative or fiscal relationship of the facility to the covered (parent) entity.³

The Equal Employment Opportunity Commission (EEOC) further explains that undue hardship “refers not only to the financial difficulty, but to reasonable accommodations that are unduly extensive, or disruptive, or those that would fundamentally alter the nature or operation of the business. An employer must assess on a case-by-case basis whether particular accommodation would cause undue hardship.” A similar observation can be made about the term Readily Achievable. It waives the requirements for making public accommodations accessible, when the action would be excessive in proportion to the financial stability and size of the public accommodation. It does not waive the requirement to make goods and services accessible (they must be moved to an accessible location), but it postpones the action of making a public accommodation accessible until such time when the accessibility feature can be incorporated with the general reconstruction of the area.⁴

E. Essential Functions or Elements of a Job

The essential functions of a job distinguish it from other jobs. In general, the designation of essential functions is left to the discretion of the employer. The

³ ADA, Title I, SEC. 101 (10); ADA, Title III, SEC. 301 (9)

⁴ Enforcement Guidance: Reasonable Accommodations and Undue Hardship Under the Americans with Disabilities Act. (Washington, DC: EEOC) www.eeoc.gov/docs/accommodation.html, p. 4.

essential functions may require special training or expertise, credentials or licenses, or similar certificate that recognizes a person's ability to carry out certain job-related duties. When asked to determine the essential functions of a job, the EEOC looks at job descriptions and job announcements for guidance. So, if an archives wants its new secretary to answer the telephone and take messages, these elements should appear in the job description and posting announcing the job vacancy.⁵

F. Commitment from Staff and Administrators Is Necessary

Successful implementation of a barrier-free environment and the provision for reasonable accommodations depends largely on the commitment and the creativity of the staff and administrators. In some cases, especially with regard to older buildings, an alternative to the published guidelines or standards may be acceptable. The use of alternative designs, products, or technologies is permitted when the result is access and usability for people with disabilities that is substantially equivalent or greater than the accessibility and usability provided to the general public. An archives may avoid providing access to an inaccessible upper level floor by moving an exhibit (or other items of public accommodation) to an accessible area; or it may arrange to have records brought from an inaccessible area to an accessible area as an accommodation for a researcher who cannot get to the inaccessible area. With regard to employment, the need for reasonable accommodation is addressed on a case-by-case basis, and no person should be denied employment, training, or opportunities for career advancement because of the need for a reasonable accommodation.⁶

G. Identifying Barriers for Removal

An initial step toward making your archives accessible is to survey the facility and to note public areas that have barriers. Voluntary survey forms are available online

⁵ ADA, Title I, SEC 101 (8) "Qualified Individual with a Disability," and (9) "Reasonable Accommodations." U.S. Equal Employment Opportunity Commission, *The Americans with Disabilities Act —Your Responsibility as an Employer*. (EEOC-Bk 17) pp. 3–4.

⁶ EEOC, "Reasonable Accommodation and Undue Hardship," pp. 4–5; 9; Questions and Answers. (Washington, DC: U.S. Equal Employment Opportunity Commission and the U.S. Department of Justice) www.usdoj.gov/crt/ada/qandaeng.htm. p. 4.

at the Access Board web site: *www.access-board.gov*. The following are examples of questions you can ask as you survey your archives: Are the doorways and halls wide enough for a wheelchair or for wheelchairs to pass each other going in the opposite directions? Is there elevator access if the archives is on multiple floors? Is there space for a researcher using a wheelchair in the research room? Can tables and chairs be moved to accommodate a wheelchair? Are you able to assist a deaf or blind person? Can you direct the person to an agency where he or she can get help? Can you help or accommodate a person with little or no speech, or lack of cognitive or dexterity abilities?

H. Establishing a Committee on Access

In conjunction with the survey, an advisory committee, which includes members with disabilities, representing as many disabilities as possible, should be established early in the process; the committee and the archives should plan a long-term and permanent relationship. After the architectural barriers are removed, the committee should continue to function and be available to give advice as changes in the population, social and cultural attitudes, physical environment, financial resources, and technology create new challenges for accommodating people with disabilities. Because of changes in financial resources and technology, decisions of whether an action is readily achievable or a reasonable accommodation would no longer impose an undue burden are in need of constant reevaluation, upgrading, and updating. An advisory committee can be helpful in upgrading and updating provisions for making public facilities accessible and for providing reasonable accommodation.

I. Access: Good Practice and the Right Thing to Do

Providing for access to areas of public accommodation and adopting policies of reasonable accommodation in employment is good practice and the right thing to do. The overriding concern is to have a physical and attitudinal environment in which people with disabilities can function and interact with colleagues and friends who

are not disabled. People with disabilities must have the opportunity to obtain the full benefit of employment and access to public accommodations. Access to public areas and reasonable accommodations in employment are the means to a goal; but in and of themselves, they are not the goal. The goal is to ensure that people with disabilities receive and benefit from the goods and services of an archives; and that qualified people with disabilities have the same or equal opportunities for employment, career advancement, and other benefits and privileges associated with employment as their non-disabled colleagues. Access to public areas and accommodations in employment for people with disabilities must be, as much as possible, integrated with the facilities available to patrons and employees who do not have disabilities. The purpose of this technical leaflet is to help your archives reach this goal.

PART ONE

Archives as a Public Accommodation

I. ACCESSIBLE ROUTE

A. All Public Areas Must Be Connected by an Accessible Route

The accessible route begins at public transportation stops or parking lots and can include all curb ramps, walks, doorways, research rooms, exhibit areas, lecture halls, ramps, elevators, platform lifts, halls, corridors, aisles, skywalks, tunnels, and other elements that connect the services and other public accommodations of a facility. An accessible route does not include stairs, steps, or escalators. The route is configured to accommodate wheelchairs; to ensure safe walking conditions for pedestrians with ambulatory disabilities; to eliminate protrusions, debris, or litter that would obstruct the passage of people with low or no vision; and, in general, provide safe navigation for all people. Loading docks, kitchen facilities, or similar locations should not be designated as the accessible entrance, unless it is normally used as an entrance for the general public.⁷

Surfaces should be stable, firm, and slip resistant. Carpet, if it is used, should be securely attached and have a firm cushion, pad, or backing. The pile thickness should be no more than 1/2 inch. Space in gratings should be no more than

⁷ ADA Accessibility Guidelines for Buildings and Facilities” (ADAAG) 4.3– Accessible Route. In *Code of Federal Regulations, Part 36 (28 CFR Part 36)* Revised as of July 1, 1994. Department of Justice, *Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities*, pp. 490–563.

½ inch, and elongated openings should be placed perpendicular to the dominant direction of travel. A running slope along the route should not be raised by a ratio of more than 1:20 or more than one foot in 20 feet. This ratio is a raise of no more than 5 percent. The cross slope along the accessible route should never exceed 2 percent or 1:50. If the surface level rises or falls ½ inch or more, the grade must be serviced by a ramp, elevator, or platform lift. An accessible route should also serve as a means of egress during an emergency and should connect with an area of rescue assistance or have a horizontal (floor level) exit.⁸

B. Wheelchair Accommodations

At least 50 percent of all public entrances must be accessible, and at least one must be a ground floor entrance. At the doors the passageway must be at least 32 inches wide. The floor area at a non-automated doorway should provide clearance so a person using a wheelchair can open the door. Revolving doors or turnstiles at doorways should be removed or an accessible path around them, designed to facilitate the same use pattern, should be established. At a distance no more than 24 inches from a door the accessible route should widen to 36 inches for continuous passage. A width of 60 inches is necessary to accommodate two wheelchairs, traveling either side-by-side or in opposite directions. Where the width is less than 60 inches, passing spaces at least 60 by 60 inches must be located at intervals that do not exceed 200 feet. A clear 60-by-60-inch space is necessary for a wheelchair to make a 180-degree turn. A 30-by-48-inch space should be available so the wheelchair can leave the accessible route to view a display, use a card catalog, or to rest. The space must provide for either a forward reach (wheelchair facing or perpendicular to the object) or side reach (wheelchair parallel to the object). The forward reach height can be no more than 48 inches, with a low reach of 15 inches above the floor. The side reach can be as high as 54 inches or as low as 9 inches above the floor. If the reach is

⁸ ADAAG 4.1.3(9)—number of exits required by local fire and safety regulations; 4.5.3—Carpet, 4.5.4—Gratings, 4.3.7—Slope, 4.3.8—Changes in Level, and 4.3.10—Egress.

obstructed, adjustments for clearance should be made. There must be clear access from this space back to the accessible route.⁹

C. Safety for People with Vision Impairments

An accessible route must be free of all obstructions. In addition to accommodating wheelchairs, the accessible route must provide clear and safe passage for pedestrians, especially those with low or no vision. Walkways must be free of protrusions, debris, or other items that may obstruct passage or cause bodily harm because they are not seen. At exterior sites or interior corridors, halls or rooms are required to have a floor-to-ceiling clearance of 80 inches; if this clearance is reduced, there should be a barrier around the protrusion to protect and warn people who have vision difficulties. Wall-mounted objects, such as telephones, that are more than 27 inches above the floor, should not protrude more than 4 inches from the wall. An object mounted on the wall below 27 inches may protrude any distance since it is detectable by a cane. However, within the 27-to-80-inch range, freestanding objects mounted on pylons or posts may overhang 12 inches, provided that none of the protrusions reduce the clear width of the accessible route or maneuvering space.¹⁰

D. Wheelchair Accommodations in Parking Facilities

Accessible parking is required when self-parking spaces are provided for employees or visitors. Accessible parking spaces, access aisles, and the accessible route, which the aisle should be part of or provide access to, should all be 96 inches wide. One out of eight accessible spaces should be designated for van parking. These spaces may be in an area not normally used for parking if the area is equivalent or better in terms of distance to an accessible building, cost, or convenience. The accessible route should provide the shortest possible distance to an accessible entrance. The minimum number of required accessible parking spaces is determined by the number of provided parking spaces. For instance, there should be at least one accessi-

⁹ ADAAG 4.1.3(7)(a)(i)–Public Entrances; 4.2.1-6–Space Allowances and Reach Ranges; 4.4.3–Width; 4.3.4–Passing Space; 4.13.2–Revolving Doors and Turnstiles; 4.13.5–Clear Width; and 4.13.6–Maneuvering Clearances at Doors. Width; and 4.13.6 44w

¹⁰ ADAAG 4.4–Protruding Objects



ble space for every 25 to 100 spaces. Parked vehicles should not intrude on or reduce the accessible route. Two accessible parking spaces may share a common access route. Parking spaces and access aisles should be level and surface slopes should be no greater than 1:50 or 2 percent. If the parking space and access route are covered the minimum clearance should be 114 inches. At passenger loading zones the access aisle must be 5 feet (60 inches) wide and 20 feet (240 inches) long. Proper signage should be posted to designate an accessible parking space.¹¹

E. Signage Must Be Properly Constructed and Displayed

Numbers and letters should be no less than 3 inches high. Their actual height is

¹¹ ADAAG 4.1.2(a)–self parking; (b)–van parking; (c)– passenger loading zones; . . . (e)–valet parking; and 4.6–Parking and Passenger Loading Zones.

determined by the distance from which they are to be seen. Their width is relative to their height: the width-to-height ratio is between 3:5 and 1:1; and the stroke width to height ratio is between 1:5 and 1:10. Letters and numbers should be raised $1/32$ of an inch and be accompanied by Grade 2 Braille. Raised characters should be at least $5/8$ inch but no more than 2 inches high. Pictograms should be accompanied by an equivalent verbal translation placed directly below the display. Signage background should be nonglare, and the symbols should contrast favorably with the background.

Signage that identifies permanent rooms and spaces should be mounted on the wall adjacent to the latch side of the door. When this is not possible, the sign should be placed on the nearest adjacent wall. The sign should be mounted so that its center is 60 inches above the surface or finished floor. Signs should be mounted, free of obstructions, so a person can get as close as 3 inches to the sign.

Proper signage is necessary to provide information about the facility. It should indicate the availability and location of accessible features; it also should provide direction to and information about functional areas. Moreover, signage should indicate the location of rooms. The international symbol of accessibility, a stick drawing of a person sitting in a wheelchair, should be used to identify accessible facilities, elements, and spaces such as parking spaces, loading zones, entrances, and restrooms. Inaccessible entrances should have signage indicating the location of accessible entrances. In addition, signage should identify telephones with volume control, the location of text telephones, and the location of assistive listening systems.¹²

F. Alarm Systems Should Provide Visual and Audio Warnings

Emergency warning systems (alarms), when they are provided, should include both audible and visual alarms. Both alarm systems should be placed in all common areas such as halls, lobbies, restrooms, meeting rooms, research rooms, lecture rooms, work areas, and work stations. Visual alarms should be integrated into the facility's alarm system

¹² ADAAG 4.1.2(7)—Building Signage; 4.1.3(16)—Building Signage; and 4.30—Signage

In case of emergency an archives should have a plan for the care and protection of its staff and guests with disabilities. Part of this plan is the establishment of an area of rescue assistance and an arrangement for emergency evacuation. Signage, displaying the international sign of accessibility, should identify each area of rescue assistance and must be illuminated when lighting is required. Exits that are not accessible should have signage that directs people to the areas of rescue assistance.

Areas of rescue assistance are places where people can safely wait for assistance or further instructions for evacuation in case of emergency. These areas should provide communications with officials responsible for the evacuation and should have direct access to an exit. An area of rescue assistance should provide spaces for two wheelchairs; each space should be 30 by 48 inches. Each floor should have at least one area of rescue assistance, and there should be at least one area for every 200 people. In general, areas of rescue assistance should be smoke and fire proof for one hour and provide for quick evacuation once help has arrived. Stairways adjacent to the area of rescue assistance should be 48 inches wide between the handrails.

Areas of rescue assistance are not required in buildings or facilities having a supervised automatic sprinkler system. However, even where buildings or facilities have sprinkler systems, managers need to develop plans to evacuate people with disabilities in the event there is a need for an emergency evacuation, especially now that there are threats of non-fire emergencies that might require evacuations.¹³

II. Accommodations in the Research Room and Exhibit Halls

A. Archivists Must Deal with a Variety of Disabilities

Procedures for responding to disability needs should be established before a person with a disability enters the research room. Research room staff must be prepared to respond to various needs. Staff members should be able to recognize a disability

¹³ ADAAG 4.3.11—Areas of Rescue Assistance; and 4.28—Alarms.

and be able to render requested assistance or refer the patron to a source of assistance. Employees who can converse in sign language should be available to assist in the research room. For deaf researchers policies regarding the use of records and behavior in the research room should be clearly written. A list of outside agencies that would supply readers, recorders, or interpreters should be available. Archives with open stacks and self-service arrangements in microfilm reading rooms and motion picture viewing rooms will have to develop a policy for providing alternative, but equal, access for people who cannot get into stack areas or mount film. Staff may render assistance by mounting film, retrieving documents, or turning pages. The cost, both in terms of payment for the outside services and the time staff volunteers in rendering assistance, may be charged to the archives, unless these accommodations impose an undue hardship.

B. Avoid Situations That May Result in Unequal Treatment

A delicate issue that the research room staff may face is when to withhold a document because of concern it might be damaged. A rule of thumb to follow is to concentrate on the record and not the individual using the record. Suppose, for instance, that a researcher with dexterity problems requests records. The document cannot be withheld because of anticipation it might be damaged. A photocopy might be offered; or the document could be enclosed in a polyester (Mylar) sleeve. Withholding the original from public use and having a photocopy ready for all researchers is another possibility. The latter solution eliminates all questions about equal access.

C. Counter Tops and Aisles Must Be Adjusted to Accommodate Wheelchairs

In research rooms a portion of the service counters or desks must be between 28 and 34 inches from the floor. If this accommodation is not provided, staff can conduct discussions at a desk that is at the proper height for a person using a wheel-

chair. In this situation the staff person should be seated to avoid standing and looking down at the person in the wheelchair.

The aisle between tables should be wide enough (36 inches) to allow passage of a wheelchair. If the tables and chairs are not attached to the floor, they can be moved to accommodate a wheelchair. If the tables and chairs are attached, 5 percent (or at least one) should accommodate a patron using a wheelchair. There should be sufficient space under the table (27 inches, floor to the underside of the table top) so the person using the wheelchair can sit comfortably, and there should be ample floor space (30 by 48 inches, including space under the table) so that the wheelchair can be used as a seat at the table.

Shelves or drawers in cabinets or displays, assuming a side approach, can be no higher than 54 inches or lower than 9 inches from the floor; if a front approach is required, the maximum high reach is 48 inches and the low reach is no lower than 15 inches from the floor. If there are obstructions (a writing or study surface) then the reach range is reduced. The aisle between stacks, card catalogs, or magazine display racks should be 36 inches wide; the aisle may widen to 42 inches at points to permit movement around the wheelchair. If there is a turnstile, an accessible passage around it should be available. A portion of the check-out counter, 36 inches long and whose top is no higher than 36 inches from the floor, should be available to patrons using wheelchairs and have an approach to and from an accessible route.¹⁴

D. All Programs and Services Must Accommodate People with Disabilities

Separate and specialized services must not preclude the opportunity for people with disabilities to take part in programs offered to the general public. If separate services are offered to accommodate a special need, the person with a disability cannot be denied the opportunity to participate fully in an integrated setting. Thus, an archives may set off a section to service people with disabilities but cannot deny the person with a disability the opportunity to use facilities available to the general public.

¹⁴ ADAAG 4.2.5–Forward Reach; 4.2.6–Side Reach; 4.1.3.2–Revolving Doors and Turnstiles; 4.1.3(18)– Fixed or Built-in Seating or Tables; 4.3.2–Fixed or Built-in Seating and Tables; 7.2(1)–Sales and Information Counters; 8.2–Reading and Study Areas; 8.3–Check-Out Areas; 8.4–Card Catalogs and Magazine Displays; 8.5–Stacks.

Except in a few instances, an archives should not ask a person about a disability unless the question is for the purpose of determining how to assist the patron. An archives, or any other place of public accommodation, cannot impose a surcharge on people with disabilities (unless the charge is imposed equally on the general public) to cover the cost of an accommodation. Nor can the archives require the person with a disability to be accompanied by an attendant. Asking for a driver's license and no other form of identification may be a violation of the ADA because a person's disability may preclude obtaining a driver's license.¹⁵

E. Safety Requirements and Rules Must Be Based on Actual Risks

Speculation, stereotypes, or generalizations about people with disabilities cannot be the rationale for rules or regulations that restrict the movement or access of people with disabilities. Rules prohibiting animals in the research room may have to be modified to accommodate people who use service animals. Safety requirements may be imposed only if they are necessary for the safe operation of the research room. A person may not be denied service because of his or her association with a person with a disability (HIV, for example). Nevertheless, an archives or any other public accommodation may impose legitimate safety requirements that are necessary for safe operation.¹⁶

F. Accommodations That Make Exhibit Areas Accessible

Exhibitions halls can be made accessible by:

1. removing architectural barriers to allow wheelchair access;
2. adjusting the height and angle of an exhibit so that it can be viewed by a person using a wheelchair;
3. using alternative formats, such as Braille or audio recordings, to describe exhibits for patrons with low or no vision;
4. having sign-language interpreters available for tours that may include people with hearing loss; or

¹⁵ Americans with Disabilities Act of 1990 (ADA) Title III—Public Accommodations and Service Operated by Private Entities, SEC 302. Prohibition of Discrimination by Public Accommodations.

¹⁶ ADA, Title III, sec. 302 (b)(1)(A)(B)(C)(E); *Federal Register*, 56, No. 144 (July 26, 1991), pp. 35558, 35564, 35596.

5. providing program access by moving an exhibit from an inaccessible area to an accessible one.

G. When Barriers Cannot Be Removed: Alternative Solutions

When barrier removal is too expensive (or for other reasons), a temporary solution can be implemented until the barrier can be removed. An example of this approach can be found at the National Archives Building in Washington, DC. For years, as an accommodation to people using wheelchairs and others who had difficulty walking, the National Archives and Records Administration provided an alternative entrance to its primary exhibit area, the Circular Gallery and the Rotunda, at the National Archives Building. The entrance from Constitution Avenue to this exhibit area was approached by a long flight of steps. The alternative was to have people who were unable to navigate steps enter the building at an accessible entrance on the Pennsylvania Avenue side of the building and take an elevator up to the exhibit area. This area was properly ramped so that people could view the current exhibit in the Circular Gallery and the Charters of Freedom in the Rotunda.

With the completed renovation of the National Archives Building, the removal of barriers and the installation of accessible features were actions that were readily achievable and usable by people with disabilities. Elevators and ramps were installed so that people with





disabilities can use the same entrance as the general public. Children and people using wheelchairs can view the Charters of Freedom because they will be displayed in cases with a front 28 inches above the floor and a display area rising at a 25-degree angle when viewed from the front.¹⁷

H. Accommodating Wheelchairs and the General Public

At the National Archives, exhibits are arranged so they can be comfortably viewed by people using wheelchairs and the general public. The determination of the positioning, height, and angle of the display is the result of a cooperative effort by the National Archives, the Smithsonian Institution, and people using wheelchairs. People with disabilities were invited to view mock display cases, which were adjusted to angle and height. Conservators were involved in the process to ensure that the documents were not damaged by angles that were too steep. During the process the height and

¹⁷ Linda Wheeler. "225 Years of History on Hiatus." *Washington Post*. (July 1, 2001) p. C1+; Interview of Rick Blondo, National Archives and Records Administration. Spring 2000.

¹⁸ Blondo.

angle of the cases were adjusted to determine the best position. Now that this determination has been made, the height and angle are permanent.¹⁸

III. Use of Elevators, Platform (Wheelchair) Lifts, Stairs, and Ramps

A. Elevators Accommodate Changes in Floor Levels

An accessible route should include at least one or more elevators that connect with all public areas; this rule applies to each level, including the mezzanine, of all multistory buildings. Freight elevators, unless they are used as a combination freight and passenger elevator, should not be designated as the accessible elevator. Elevators should self-level within a one-half inch of the floor landings, and elevator doors must open and close automatically. The floor area of elevator cars must provide space for wheelchair users to enter, maneuver within reach of the controls, and exit. Control buttons should be accessible to people with low or no vision and to people using wheelchairs. The buttons should be identified by both Braille and by raised standard alphabet characters, Arabic numerals, and other standard symbols. The call button for the main entry level should be indicated by a raised star. All indicators should be placed to the left of the button to which they apply; permanently attached plates are acceptable indicators. The buttons should illuminate when pushed and extinguish when the elevator arrives at the designated floor. As an accommodation for people using wheelchairs the button panel should be no higher than 54 inches when the wheelchair makes a side approach and no higher than 48 inches when the approach is from the front. Emergency controls, whose center line must be 35 inches from the floor, should be placed at the bottom of the control panel. If cars have center door openings, the control panel should be placed on the front wall; if the cars have side opening doors, the panel should be placed either at the side wall or the front wall next to the panel. There should be a visual position indicator above

the panel that activates with the floor number and an audio signal as the elevator stops at or passes a floor.

In elevator lobbies call buttons should be mounted so their center is 42 inches above the floor. Mounted objects beneath the button should not project more than 4 inches. Call buttons should have a minimum diameter of $\frac{3}{4}$ inch and have visual signals to indicate it is being used. Visual and audio signals should announce the arrival and departure of cars. The visual signal, at least 2 $\frac{1}{2}$ inches in size should be at least 72 inches from the floor and visible from the area of the call button. Floor indicators, at least 2 inches high, raised and in Braille, should be placed on each door jam at least 60 inches above the floor. Elevators doors should remain open 3 seconds in response to a call. At least 5 seconds should elapse from the announcement that an elevator is answering a call until the doors start to close.¹⁹

B. Platform Lifts Can Substitute for Elevators in Limited Circumstances

When platform lifts are used they should comply with guidelines regarding clear space, maneuverability, positioning, usability of controls, and safety. These lifts, complying with applicable state regulations and ADA guidelines, may be used to

1. provide an accessible route to a performing area;
2. ensure that people using wheelchairs can see the stage and that spaces for wheelchairs are available throughout auditoriums and similar areas;
3. allow access to rooms not open to the general public, such as equipment or projection control rooms, whose occupant capacity is no more than five people; and
4. facilitate access to raised platforms.²⁰

C. All Stairs, in a Flight of Stairs, Must Have Uniform Risers and Treads

Treads (the stepping area) must have a depth or length, as measured from riser (the back of the step) to riser, of no less than 11 inches. The front edge of the tread, the nosing, should be rounded with a radius no greater than $\frac{1}{2}$ inch. Handrails should

¹⁹ ADAAG 4.1.3(5)–Passenger Elevators; 4.10–Elevators.

²⁰ ADAAG 4.1.1–Platform Lifts.

be continuous on both sides of the stairs; the inside handrail should be continuous on stairs that switchback or feature a dogleg configuration. Non-continuous handrails should extend 12 inches beyond top riser and 12 inches beyond the bottom riser plus the width of one tread beyond the bottom riser. At the top the extension should be parallel with the floor or ground surface. At the bottom, the handrail should continue to slope for the distance of the width of one tread from the bottom of the riser; the remainder of the extension should be horizontal. From the handrail to the wall there should be a clear space of 1½ inches. The top of the handrail gripping surface should be between 34 and 38 inches above the front of the step; the gripping surface should not be interrupted by newel posts or other obstructions; the ends of handrails should be either rounded or returned smoothly to the floor, wall, or post; and handrails should not rotate within their fittings.²¹

D. Any Slope Rising More Than 5 Percent Is a Ramp

Five percent is expressed as 1:20 (meaning rising 1 inch for every 20-inch run; slightly over a 5-percent grade). The maximum slope for a ramp in new construction is 1:12, which is slightly over an 8-percent grade. Existing construction ramps may exceed this ratio if the 1:12 formula cannot be met. A ramp run should rise no more than 30 inches;



²¹ ADAAG 4.9–Stairs.

there should be a level area or landing at the bottom and top of each run. The minimum clear width of a ramp is 36 inches. The landing must be as wide as the ramp and at least 60 inches long. The landing needs to be 60 by 60 inches if the ramps change direction. There should be a handrail on both sides of a ramp if its run has a rise of greater than 6 inches or a horizontal projection greater than 72 inches. Handrails on ramps should follow the configuration for stairs as described in part III (p. 19).²²

IV. Telephones, Water Fountains, Public Assembly Areas, and Restrooms

A. Telephones

If an archives provides public (pay) telephones, then at least one public telephone on each floor, or in each bank of phones (a bank being a cluster of two or more phones) must be accessible. This means there must be a clear space (30 by 48 inches) under the phone so a wheelchair can rest. Except for certain situations, the space can provide for a frontal or side approach to the phone. The space must have an accessible route. Operating parts from a frontal approach can only be 48 inches from the floor; a side approach allows for operating parts to be 54 inches from the floor. Telephones must not protrude more than 4 inches into an accessible route.

Accessible telephones must be hearing aid compatible and have volume controls with a range of 12dbA to 18dbA above normal. If there is an automatic reset, a range above 18dbA is permitted. Telephones must have push-button control where service for such equipment is available. In addition, 25 percent, but never less than one, of all other public telephones must be equipped with volume controls and be dispersed among all types of telephones.

When an archives has four or more pay telephones, including phones on the exterior of a site, there should be at least one interior text telephone. Text telephones used with a pay telephone must be permanently affixed, or adjacent, to the tele-

²² ADAAG 4.8—Ramps.

phone enclosure. If an acoustic coupler is used, the cord must be long enough to allow connection of the text telephone and the telephone receiver. Pay telephones designed to accommodate a text telephone must be equipped with a shelf and an electrical outlet within or adjacent to the telephone enclosure. The telephone handset must be capable of being placed flush on the surface of the shelf. The shelf must be capable of accommodating a text telephone and have a minimum 6-inch-vertical clearance in the area where the text telephone is to be placed. A portable text telephone may be made available at a check-in /check-out desk for use at a nearby pay telephone.²³

B. Water Fountains Must Accommodate Wheelchairs and Pedestrians

If only one water fountain or watercooler is provided on a floor, access should be provided to drinking water for people using wheelchairs and those who have difficulty stooping. This goal can be accomplished by having a fountain with a high-low feature or other means that will accomplish the desired accessibility. When a floor has more than one fountain, 50 percent should be accessible. On an accessible fountain, the spouts, located at the front of the unit, should rise no more than 36 inches above the floor. The water trajectory should be nearly parallel to the front of the fountain and rise at least 4 inches high to allow a cup to be filled. On fountains with a round or oval bowl, the water trajectory should be within 3 inches of the front edge. Operation should require only one hand and not require tight grasping, pinching, or twisting of the wrist. Nor should operation require pressure of more than 5 pounds. Under a wall-mounted fountain the knee clearance from the floor to the bottom of the fountain should be 27 inches, at least 30 inches wide, and 17 to 19 inches deep. The clear space should be 30 by 48 inches and allow a forward-facing approach. For free-standing fountains there will



²³ ADAAG 4.1.3(17)–Public Telephones; 4.4–Protruding Objects; 4.31–Telephones.

not be any knee clearance under the unit, but the clear space (30 by 48 inches) for a wheelchair should be configured to allow a side approach.²⁴

C. Public Assembly Areas Must Accommodate Wheelchairs

Meeting rooms, auditoriums, or lecture halls with 4 to 25 fixed-permanent seats should have at least one location for a wheelchair. Two wheelchair spaces are required when the fixed permanent seating is between 26 and 50. In assembly areas with 51 to 300 permanent seats 4 wheelchair locations are required. Six wheelchair locations are required when the seating capacity is between 301 and 500. And one additional wheelchair location is required for each 100-seat increase beyond 500. In addition, 1 percent, but not less than one, of all fixed seats must be aisle seats with removable or folding armrests on the aisle side. The accessible locations should be identified, and positions should be posted at the ticket office. Readily removable seats may be installed in wheelchair locations when the locations are not required to accommodate wheelchairs.

Locations for wheelchairs, either 30 by 48 inches or 42 by 48 inches, must be connected to an accessible route that can also serve as a means of egress in case of an emergency. Wheelchair locations should be placed so that people using wheelchairs can select their seating location and can choose from a range of ticket prices. The line of sight for people using wheelchairs must be comparable to the line of sight offered to the general public. Next to each wheelchair location there should be a fixed companion seat. A space, 48 by 66 inches, is required to accommodate wheelchairs parked side by side. An accessible route should connect the wheelchair seating area with the stage or other places used by performers.

In assembly areas with fixed seating for 50 or more people and an audio amplification system, a permanent assistive listening system (ALS) should be installed. Other assembly areas can have an ALS or sufficient electrical outlets or wiring to support portable ALS. The number of receivers should equal at least 4 percent of

²⁴ ADAAG 4.1.3(10)–Drinking Fountains; 4.15–Drinking Fountains and Watercoolers.

the seating, but in no case should less than two receivers be available. If the listening system serves the individual fixed seating, the seats should be located within 50 feet of the stage and provide an unobstructed view of the stage.²⁵

D. Restrooms Must Accommodate Wheelchairs

If restrooms are provided, then each public and common-use restroom must accommodate wheelchairs. Accessible restrooms must connect to an accessible route. Doorways should provide a clear opening of 32 inches when measured from the face of the door to the opposite stop. Doors should swing to at least a 90-degree angle into a clear space (but not a clear space required for a fixture), ensuring maneuvering room for wheelchairs, and requiring no more than 5 pounds of pressure to open. The hardware should enable easy operation of the door with one hand. Power or automatic doors should open and close slowly at a rate of no faster than three seconds.

Within a restroom there should be a clear turning space, whose diameter is 60 inches so a wheelchair can make a 180-degree turn. If a person can enter a toilet stall from the latch side, the clearance for wheelchair maneuvering needs to be 42 inches; the required maneuvering space for other approaches is 48 inches. The depth of toilet stalls can vary from 56 inches, to 59 inches, to 60 inches and more. A 56-inch depth requires that the toilet be mounted on the back wall; a 59-inch depth allows the toilet to be mounted on the floor; and at 60 inches, the requirement that the stall partitions be 9 inches above the floor to provide for toe clearance is no longer necessary.

Toilets, whether mounted on the back wall or the floor, should be positioned so their center is 18 inches from the closest side wall or reference wall. The top of the



²⁵ ADAAG 4.1.3(19) 4.33–Assembly Areas.

toilet seat should be 17 to 19 inches above the floor. Two grab bars, one mounted on the back wall, and the other on the reference wall, should be 33 to 36 inches above the floor. Along the back wall the grab bar should be 42 inches long and mounted so that it is no less than 6 inches from the reference wall. The grab bar on the reference wall should be 36 inches long and mounted so it is 12 inches from the back wall. The toilet paper dispenser is mounted on the reference wall. Its bottom is 19 inches from the floor, and the side facing the front of the stall is 36 inches from the back wall. Flush controls should be placed so that a person using a wheelchair can operate them easily with one hand from either a frontal or side approach.

Around urinals there should be a clear floor space (30 by 48 inches) that adjoins or overlaps an accessible route and provides for a frontal approach. Flush controls mounted no more than 44 inches from the floor should be easy to operate and require no more than 5 pounds of pressure to activate. Sinks should be mounted so the tops are no more than 34 inches above the clear floor space (30 by 48 inches, making a maximum 19 inches under the lavatory) which provides for a frontal approach and adjoins or overlaps the accessible route. The knee space, from the floor to the under side of the basin, should be 27 inches. There should be a depth of 19 inches from the front of the lavatory to the back wall; this depth is reduced to 17 inches at the joint of the drain pipe and basin. There should be at least 8 inches from the front of the lavatory to the joint with the drain to allow for knee space. The drain should extend no lower than 9 inches above the floor. Hot water and drain pipes should be insulated. The bottom edge of the mirrors should be no lower than 40 inches above the floor.²⁶



²⁶ ADAAG 4.1.3(11)–Toilet Facilities; 4.16–Water Closets; 4.17–Toilet Stalls; 4.18–Urinals; 4.19– Lavatories and Mirrors; and 4.22–Toilet Rooms.

V. Access and Accommodations in an Academic Institution: Hofstra University

An example of an institution that committed itself to making its facilities accessible is Hofstra University. The initial impetus for this commitment dates back as far as 1948, when the university hired a person with a disability to be an instructor in the Psychology Department. During the ensuing years, Hofstra increasingly opened its facilities to the higher education of people with disabilities. In the early 1960s, it established the Program for the Higher Education of the Disabled (PHED) and undertook a variety of initiatives to make the campus accessible. Some of these initiatives included recruitment, retention, and creating an atmosphere of tolerance and understanding.

By 1981, Hofstra had spent several million dollars to make its campus accessible. The accommodations included 15 elevators; a mile of ramps; the redesign of more than 100 restrooms; curb cuts in the parking areas; changes in signage; the lowering of drinking fountains, telephones, and towel dispensers; and the installation of automated doors. One of Hofstra's vice presidents has observed that the PHED effort was not only a humanitarian gesture, but it also enabled the university to widen the pool of qualified applicants.²⁷

VI. Technical Assistance and Enforcement

Technical assistance and workshops regarding architectural barrier removal and provisions for access to public accommodation are available from several sources. Technical assistance prepared by the Department of Justice can be ordered or downloaded from the web site: www.ada.gov. The Architectural and Transportation Barrier Compliance Board (the Access Board) also offers technical assis-

²⁷ Geri E. Solomon. "Hofstra University's Commitment to Making Our Campus Barrier Free." (New Brunswick, New Jersey: Mid-Atlantic Regional Archives Conference, Spring 2000 Conference, Session on Archives and Disabilities), May 19, 2000.

tance and workshops about barrier removal. Information about these programs is available at the Access Board web site: www.access-board.gov. Another source of information is the ADA Information Center for the Mid-Atlantic Region (www.adainfo.org) which services Pennsylvania, West Virginia, Virginia, Maryland, and Delaware. Inquiries from New York and New Jersey should be addressed to the Northeast Disability and Business Technical Assistance Center (NETAC) (www.nedbtac.org). For links to technical assistance centers in other regions of the United States, go to www.adata.org.

The DOJ and the Access Board also enforce the requirements for barrier removal and receive complaints about non-compliance. The DOJ focuses on public accommodations in the private sector and in state and local government. The Access Board focuses on non-compliance issues in the public sector, i.e., Federal agencies or recipients of Federal funds.²⁸

With regard to the private sector, the DOJ's enforcement responsibilities do not preclude an individual from initiating civil action in court for relief. The court may permit the attorney general to intervene if he or she feels that case has general public importance. Without jeopardizing his or her right to take an issue to court, a person may file a complaint with the Department of Justice. The Department will attempt to resolve the dispute through mediation or an Alternative Dispute Resolution process. If a satisfactory agreement is not reached, the complainant or the DOJ can take the issue to court.

Complaints are handled in a slightly different manner by the Access Board. Once the Board receives a complaint, it investigates to determine if there is an architectural barrier in violation of the Architectural Barriers Act of 1968. When the Board finds a violation, it notifies the responsible facility and requests the facility to develop a plan of action and a schedule for removing the barrier. In this endeavor the Board assists the facility and monitors the situation until the corrective action is confirmed as complete. The complainant is then notified and given a chance to

²⁸ DOJ enforcement procedures are described at 28 CFR 485 (July 1, 1994, edition). Enforcement procedures for the Access Board are on its web site.

review the Board's decision to close the case. There are times when the Board does not have jurisdiction over a facility, but the facility voluntarily agrees to take the necessary corrective action to remove the barrier. Sometimes a complaint cannot be resolved; in these very rare cases, the Board initiates legal proceeding to get the required corrective action.

PART TWO

Archives as an Employer

I. Reasonable Accommodations for Employment

A. Reasonable Accommodations Facilitate Productivity

A reasonable accommodation enables a qualified person with disability to perform the essential functions of a job. It is an adjustment to the application process, the job itself, the work environment, the work procedures, or work practices and policies that enable a person with a disability to enjoy the benefits and privileges of employment. Reasonable accommodations can include “making existing facilities used by employees readily accessible to and usable by individuals with disabilities; job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modification of equipment or devices; appropriate adjustment or modifications of examinations, training materials or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.”²⁹

B. Reasonable Accommodations Address Employee Needs

Other accommodations might include workstation modifications; adaptation of information technology; placement of visual warning signals; development of

²⁹ ADA, Title I—Employment, SEC 101, Definitions, (9) Reasonable Accommodations.

emergency evacuation procedures; the installation of adaptive equipment on a computer, thus, enabling a blind employee to send and receive messages; and the conversion of all public address announcements so they can be read in electronic format by employees who are deaf.

C. Affirmative Action Is Required in the Federal Sector

Federal agencies and recipients of Federal funds or contracts must take affirmative action or positive initiatives to hire, retain, and promote people with disabilities; and to ensure that employees with disabilities enjoy the benefits and privileges of employment. Under the Federal affirmative action program, agencies must accommodate a person's disability, but the person must otherwise be qualified and capable of doing the job for which he or she was hired or to which he or she was promoted. In this context affirmative action appears to mean the active recruitment of people with disabilities, ensuring that reasonable accommodations are in place, making sure the employee with disabilities is aware of training opportunities and is ready for advancement opportunities, and that employees with disabilities can enjoy the benefits and privileges of employment. The affirmative action mandate, however, does not obligate Federal sector employers to employ or retain people with disabilities who are not otherwise qualified or cannot do the job. Federal sector employers are not required to create a position for a person with a disability. Private companies and other enterprises that do not receive Federal contracts or other Federal monies are not required to have an affirmative action plan to hire, promote, and retain people with disabilities.³⁰

D. New Freedoms Initiatives

Upon taking office President George W. Bush announced his New Freedoms initiatives designed to increase the independence of Americans with disabilities. Among the initiatives was a proposal for greater use of assistive and universally designed technologies to enhance employment opportunities for people with disabilities. The goal is to ensure that individuals with disabilities have access to the best technolo-

³⁰ Rehabilitation Act of 1973 (Public Law 93 - 112) Title V—Miscellaneous, SEC. 501.

gies currently available and to the improved technologies as they are developed in the future. More Federal investment in assistive technology is proposed, along with improved Federal collaboration and promotion of private-public partnerships for the purpose of increasing access to this technology for individuals with disabilities. There is recognition that assistive and universally designed technologies can be powerful tools for improving the quality of life and the ability to engage in productive work for millions of individuals with disabilities and provide opportunities even for those with the most severe disabilities.³¹

E. Essential Functions Are Peculiar and Vital to a Job

Essential functions define the character of a job and how it is performed. Essential functions are those elements that are critical to the job and are necessary for the quality and integrity of a product. Essential functions may be identified by observing the work process, by reading the job description, or by considering both the production process and the job description.³²

F. Benefits and Privileges Are Entitlements Rooted in a Person's Job

Benefits and privileges of employment are those items that enhance the quality of life. They can include, but are not limited to, opportunities (including training available to all employees) for advancement; purchasing health and life insurance; entering employee retirement programs; participating in office parties; and using employee fitness facilities, break rooms, and cafeterias.³³

G. Variation of Rules Regarding the Employment of People with Disabilities

An archives, unless it has 15 or more employees each day for 20 weeks a year, is not required by the ADA to employ or provide reasonable accommodations for people with disabilities. However, small archives are not precluded from employing people with disabilities and should understand the concept and intent of providing reasonable accommodations. State archives and other archives that receive funding, grants, or contracts

³¹ George W. Bush, "Fulfilling America's Promise to Americans with Disabilities." (Washington, DC: *White House News*), p. 1. www.whitehouse.gov/news/freedominitiative/freedominitiative.html.

³² ADA, Title I (8) Essential Functions of a Job; and EEOC-Bk 17, p. 3. "How are Essential Functions Determined."

³³ ADA, Title I, SEC 102-Discrimination, (a) General Rule; and EEOC-Bk 17, p. 12.

from the Federal Government must, under provisions of the Rehabilitation Act of 1973, provide reasonable accommodations in employment and have an affirmative action program for the hiring, retaining, and promoting of people with disabilities. Except for the affirmative action provision, the requirements for reasonable accommodations in the private and public sectors are essentially the same.

II. Examples of Reasonable Accommodations

A. Making Existing Facilities Accessible and Usable by People with Disabilities

This includes restrooms, cafeterias, and break rooms.

B. Changes in Working Conditions

This can include modifications in times of arrival and departure, job restructuring, part-time or modified work schedules, and periodic breaks.

C. Acquiring or Modifying Equipment

This would include such items as keyboards, headsets for telephones, and TTY adaptors for telephones.

D. Modifying Procedures for Evaluating Applicants or Current Employees

The purpose is to ensure that the disability, unless it is being tested as a factor in the employment, is not a barrier in testing the skills or knowledge of the employee or applicant. The modifications can include changes in examinations or how they are administered, training materials, or policies; or providing qualified readers or sign-language interpreters, and other similar aids.

E. Enhancements to the Work Environment

This includes making the workstation accessible by modifying it to fit the needs of an individual employee, adoption of information technology, placement of visual

warning signals, development of emergency evacuation procedures, and other enhancements that will accommodate the needs of a person with a disability.

F. Modification of Workplace Policy

For instance, suspending a rule against eating at one's desk to accommodate insulin-dependent diabetes is a reasonable accommodation.

G. Reassignment to a Vacant Position

Job reassignment or transfer need only occur if all other attempts to accommodate an employee's disability have failed. On the other hand, the reassignment or transfer may take place if it is voluntarily agreed to by the employee and employer. A reassignment or transfer need not occur if the result would be an undue hardship. Employers are under no obligation to create a job for the purpose of accommodating a disability; nor is an employer obligated to assign an employee to a position for which he or she is not qualified. In other words, the employee must be able to perform the essential functions of the job to which he or she is reassigned or transferred. The reassignment must be to an equivalent position and cannot constitute a promotion. If the reassignment is to a lower position, the employer is required to maintain the employee's current salary, unless under similar circumstances employees who are not disabled do not retain their original salaries. An employer does not have to provide any training other than is normally provided to an employee who is reassigned.³⁴

H. Installation of Adaptive Equipment on a Computer

This equipment will enable a blind employee to send and receive messages; or allow users who have trouble maneuvering a mouse to execute functions from the keyboard.

I. Providing an Electronic Version of All Announcements

When announcements are made over the public address system, they should also be available on computer terminals. This provision can be an accommodation for deaf employees.

³⁴ EEOC. "Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act," pp. 18–20. www.eeoc.gov/docs/accommodations.html; EEOC. "Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation," p. 11. www.eeoc.gov/press/10-20-00.html.

J. Leave for Medical Purposes Related to an Employee's Disability

Employers must allow the employee to exhaust his or her accrued paid leave and then grant unpaid leave for any additional days the employee may be away from work. An employer does not have to provide paid leave beyond that which is provided to similarly situated employees. An employer cannot apply a restrictive leave policy if an employee requests leave for reasons related to a disability. Under this circumstance, an employer must grant additional leave time unless it can show

1. there is an alternative accommodation (that does not interfere with the employee's ability to address his or her medical needs) that is just as effective and would enable the employee to perform the essential functions of his or her position; or
2. that granting additional leave would result in an undue hardship. When leave is granted as a reasonable accommodation the employee is entitled to return to his or her job (unless the employer can show that holding the job open is an undue hardship) and should not be penalized for work not performed during the leave period. If the employer cannot hold the position open, it must consider whether there is a vacant, equivalent, position to which the employee on medical leave can be assigned.³⁵

K. Accommodations for Violations of Standards of Conduct

An employee cannot be disciplined or discharged solely because of a disability; however, an employee's disability does not "excuse violation of a uniformly applied standard-of-conduct rule that is job-related and consistent with business necessity." Thus, even though a disability is the trigger for violating rules of conduct in the workplace, an employer may discipline a disabled employee who engages in workplace misconduct such as violence, threats of violence, stealing, or destruction of property if the same discipline is applied to other employees. An employer, however, unless he or she can show an undue hard-

³⁵ EEOC. "Enforcement Guidance: Reasonable Accommodations and Undue Hardship," pp. 13-14.

ship and except where the punishment for violation is termination, must provide a reasonable accommodation so the employee does not violate the conduct standard in the future.³⁶

L. Work at Home

An employer may agree to a work-at-home program if it is an effective reasonable accommodation.

III. Reasonable Accommodations at the National Archives

A qualified archivist with spastic motion in his arms and hands was assigned a project of developing a catalog of motion pictures relating to World War II. The project required evaluating and selecting entries for the catalog, viewing and describing the film, and preparing each entry for the catalog. These were the essential functions, which the archivist ably performed. The non-essential function, which was critical to the project but required assistance from the archivist's colleagues, was retrieving reel-to-reel film from the stacks and placing it on the projector. The archivist was able to work with video cassettes; and when possible, and in keeping with the policy of the archives, the reel-to-reel picture was transferred to a cassette. The card catalog and much of the written material necessary to the project was accessible to the archivist.

There is a lesson to be learned from this situation: accessibility and reasonable accommodations can be used in tandem to enhance the participation of people with disabilities so they become an integrated and accepted element of the workforce. This point is illustrated by other accommodations. For instance, to accommodate the pace at which he works, the archivist is responsible for managing his own time and completing a project in a timely manner. The development of word processing and other elements of information technology have, for this archivist, eased the burden of producing written products.³⁷

³⁶ EEOC, "Enforcement Guidance: Reasonable Accommodations and Undue Hardship," p. 22.

³⁷ From the experience of Frank H. Serene, National Archives and Records Administration, 1988

IV. Reasonable Accommodations for Applicants and the Hiring Process

A. Access to Information

Applicants with disabilities must have access to information about job openings. This means that job announcements must be posted in accessible locations and be available in alternative formats (Braille or audiotape). Interview and testing sites, whether at the workplace or at an off-site location, must be accessible; and qualified sign-language interpreters, readers, or recorders should be retained, if necessary, for testing and interviewing. The employer must ensure that these accommodations are available at convenient locations and as frequently given to the general population. The exams can be administered at an accessible facility or by providing an alternative comparable arrangement, such as providing the examination at a person's home with a proctor. These accommodations are not required if they would fundamentally alter the measurement of the skills or knowledge that the examination is intended to test or results in an undue hardship.

B. Neutralizing the Disability

Tests, interviews, and other methods of evaluating a candidate's skills and aptitude must neutralize, or make inconsequential, his or her disability, unless the intent is to measure the effect of the disability. Employers can inquire whether there is a need for an accommodation and may inquire whether the applicant can perform the essential job-related functions. But an employer cannot ask if the candidate has a disability, until a conditional offer of employment is made. If the disability has been voluntarily disclosed or is apparent, it can be discussed before the offer of employment is made.³⁸

C. Accommodations for Testing and Evaluating

There are a variety of accommodations for testing and evaluating the knowledge and skills of job candidates who have disabilities. A person with dexterity or cog-

³⁸ ADA, Title I, SEC. 102(b)(7); EEOC, "Enforcement Guidance: Reasonable Accommodations and Undue Hardship," p. 10.

nitive disabilities may be granted additional time to take the exam. For blind or low vision candidates there can be provisions to supply taped exams, qualified readers, recorders, or large print answer sheets. Candidates who are deaf or have low hearing may require sign-language interpreters.

D. Accommodation Needs Are Not Valid Reasons to Reject an Applicant

An employer cannot reject an applicant because of the anticipated need for a reasonable accommodation. Factors, based on disability, that limit, segregate, or classify job applicants in ways that adversely affects opportunities or the status of the individual are prohibited under the ADA. This prohibition extends to contracts with employment agencies, labor unions, training and apprenticeship programs, insurance benefits, or functions (such as office picnics, for instance) that are benefits of employment.³⁹

V. Reasonable Accommodations for New Hires and Veteran Employees

A. Accommodation Is Confidential Information

An employer may not tell other employees that an individual is receiving reasonable accommodation.⁴⁰

B. Requesting a Reasonable Accommodation

Requests for an accommodation do not have to be formal. A simple request, which can occur in casual conversation with one's supervisor or employer, that an adjustment or change at work is necessary because of a medical condition is sufficient to start the process for the implementation of a reasonable accommodation. After the process is started the employer may require documentation, in the form of a written application or a physician's evaluation, that an employee has a disability and is entitled to a reasonable accommodation. The employer, private sector or Federal

³⁹ ADA, Title I, SEC. 102(b)(5B) denial based on need to make reasonable accommodations

⁴⁰ EEOC, "Enforcement Guidance: Reasonable Accommodations and Undue Hardship," p. 24.

agency, may also develop formal procedures that require a written application for a reasonable accommodation and a description of the accommodation. The request for reasonable accommodation is usually made by the employee, but it can be made by a family member, friend, health professional, or other representative of the employee. In some, but rare, circumstances, the employer or supervisor may initiate discussions about the need for a reasonable accommodation. This discussion can take place, however, only if the employer or supervisor knows the employee has a disability, is experiencing workplace problems because of a disability, and the disability is preventing the person from asking for an accommodation.⁴¹

Prior to providing the accommodation, the employer and employee may engage in informal discussions about the need for and type of accommodation. The employer may request documentation of an employee's disability, unless the individual has already submitted sufficient documentation to support claims for reasonable accommodation, and both the disability and the need for a reasonable accommodation are apparent. If the employee cannot suggest an appropriate accommodation, the employer and the individual should work together to identify one. The employer is required to provide an accommodation that is effective (i.e., enables the employee to perform the essential function of a job) but is not required to provide the accommodation that is desired by the employee. The employee may decline the accommodation proposed by his or her employer. However, if, by rejecting the accommodation, the employee cannot perform the essential functions of a job, he or she may not be qualified for the position.⁴²

C. Questions about Accommodations Must Relate to the Application Process

All applicants should receive information about the application process and have the opportunity to ask for a reasonable accommodation. An individual applicant should not be asked if he or she needs an accommodation, unless the person's disability is apparent or unless the individual has voluntarily disclosed his or her disability. The application process may involve interviews, timed written tests, or a job demonstration. Applicants needing an accommodation (for instance an

⁴¹ EEOC, "Enforcement Guidance: Reasonable Accommodations and Undue Hardship," pp. 4–5, 23.

⁴² EEOC, "Enforcement Guidance: Reasonable Accommodations and Undue Hardship," pp. 4–9.

extended time period to take a test) should make his or her needs known to the employer and test administrator.⁴³

D. Questions about Accommodations Must Relate to Job Performance

All candidates who receive conditional offers of employment should be asked the same or similar questions about whether the prospective employee will need an accommodation to either get to the work site or to perform the essential functions of a job. An employer cannot decline to promote or hire a person with a disability because of the anticipated need for an accommodation. Questions about a person's disability must relate to his or her ability to perform the essential functions of a job and are permissible when (1) they are consistent with business (or archival) practices; (2) a disability is a factor in causing unsatisfactory job performance; and (3) a person requests a reasonable accommodation. The request for a reasonable accommodation must be based on a disability that restricts a person's ability to work, perform manual tasks, see, hear, speak, or walk.

E. Questions about Accommodations Must Relate to the Benefits and Privileges of Employment

This means that an employee with a disability must have opportunity equal (unless the accommodation creates an undue hardship) with other employees for wages commensurate with the job; job security; health, life, and other insurance; career advancement, including access to training and testing; access to employee credit unions, break rooms, cafeterias, fitness rooms, lounges, transportation, parties to celebrate birthdays and retirements; other social functions; and other amenities associated with employment. Deaf and hard-of-hearing employees can be accommodated with electronic or written versions of announcements that may be made over a public address system. Flashing or strobe lights serve a similar function by alerting deaf or low hearing employees of impending dangers or the need to

⁴³ EEOC, "Enforcement Guidance: Reasonable Accommodations and Undue Hardship," p. 10

evacuate a building. On the other hand, employees with vision impairments are accommodated by the receipt of Braille or oral versions of information that is distributed in written form to other employees. Testing and training sites may have to be moved to accessible locations. At test sites some employees may require sign-language interpreters, others may require readers, while others may require extra time to take a test. For some of those taking the test, the time element may have to be completely suspended. The requirement to accommodate disabilities extends to contractors and unions.⁴⁴

F. Accommodations Are Required Only for Known Disabilities

An employer is required to provide accommodations only for *known* disabilities; and the employer, unless the disability is apparent, may request documentation of the disability and related functional limitations. The employer can require no more medical information than is necessary to establish an ADA disability. This information can be provided by a health care professional chosen by the employee; only when the medical information is insufficient can the employee be required to see a health care professional of the employer's choice.⁴⁵

G. Access to Facilities Provided for Employees

Besides providing reasonable accommodations that enable a person with a disability to perform the essential functions of a job, the employer must provide access to the building, work site, equipment, and to all facilities provided by the employer for employees. This includes vending areas, cafeterias, lounges, auditoriums, counseling services, and company-provided transportation, unless these accommodations would cause an undue hardship. Other non-work areas that must be accessible, even though they are not areas of public accommodation, include employee spaces used for purposes other than job-related tasks, such as break rooms, lounges, and locker rooms. Also, employees with disabilities can-

⁴⁴ ADA, Title I, SEC. 102(a), 102(b)(2); EEOC, "Enforcement Guidance: Reasonable Accommodations and Undue Hardship," pp. 11–12; and EEOC–Bk 17, p. 12.

⁴⁵ EEOC, "Enforcement Guidance: Reasonable Accommodations and Undue Hardship," pp. 6–8; EEOC–Bk 17, p. 11.

not be excluded from fitness rooms provided for employees. Such facilities must be accessible and safe for employees with disabilities.⁴⁶

H. Accommodations Are Implemented on Case-by-Case Basis

Each request for a reasonable accommodation must be determined on its merit; in other words, the decision of whether or not a reasonable accommodation is appropriate is made on a case-by-case basis. In making this determination, the employer must consider whether the accommodation is needed; if needed, whether the accommodation would be effective; and if effective, whether providing the accommodation would impose an undue hardship. If the accommodation is not effective, then the employer must propose an alternative accommodation. If an alternative accommodation cannot be provided, then the employer must attempt to reassign the employee to a vacant position for which he or she is qualified, unless the reassignment would cause an undue hardship. If an effective reasonable accommodation cannot be provided or if the employee refuses the reasonable accommodation that is offered and, as a result, the employee cannot perform the essential functions of the job, the employee is not qualified.⁴⁷

I. As Employees Gain Tenure They May Need Additional Accommodations

Providing reasonable accommodations is an organic and continuous process that must be adaptable as a person's disability changes or the job functions are modified to meet new demands. Provisions of accommodations are made on an individual basis. Disabilities differ from person to person, and there are variations in job requirements. An employer may be asked to provide more than one accommodation. If an individual requests multiple reasonable accommodations, he or she is entitled only to those accommodations that are necessitated by a disability and will provide equal employment opportunity. Decisions of whether or not to grant or provide a reasonable accommodation should be made on a case-by-case basis.

⁴⁶ Americans with Disabilities Act (ADA); Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA); Accessibility Guidelines (Notice of Proposed Rule Making; *Federal Register*, November 16, 1999) Architectural and Transportation Barriers Compliance Board (Access Board) p. 7; EEOC-Bk 17, p. 12.

⁴⁷ EEOC, "Enforcement Guidance: Reasonable Accommodations and Undue Hardship," pp. 9, 21.

Discussions about the need for an accommodation are usually initiated by the employee, a relative, or a friend of the employee. The request for an accommodation can come in casual conversation or a formal written request, but it must be linked to a disability.⁴⁸

VI. Actions Not Required Under the Reasonable Accommodations Standards

A. Create a Job

An employer is not required to create a job for a person with a disability or to find a position for a candidate who has not met the job qualifications for which he or she is applying.

B. Lower Standards

An employer is not required to lower standards. He or she may agree, however, to lower production quality or quantity standards.⁴⁹

C. Relocate or Eliminate Essential Functions

An employer is not required but may choose as a reasonable accommodation to relocate or eliminate the essential functions of a job.⁵⁰

D. Change Supervisors

An employer is not required to change supervisors as a reasonable accommodation, although changes in supervisory practices may be required.⁵¹

⁴⁸ ADA, Title I, SEC. 102(b)(5)(B) prohibits denial based on the need for a reasonable accommodation; SEC. 103(a) actions that are job related and consistent with business necessity are not prohibited; EEOC, "Enforcement Guidance: Reasonable Accommodations and Undue Hardship," pp. 5, 10, 23.

⁴⁹ EEOC, "Enforcement Guidance: Reasonable Accommodations and Undue Hardship," p. 3.

⁵⁰ EEOC, "Enforcement Guidance: Reasonable Accommodations and Undue Hardship," p. 3.

⁵¹ EEOC, "Enforcement Guidance: Reasonable Accommodations and Undue Hardship," p. 21.

E. Modify Work Hours

An employer is not required to grant a request for modified work hours if it would significantly disrupt (i.e., impose an undue hardship) production. However, an employer can make suggestions for an alternative accommodation involving a different time or change the production schedule.⁵²

F. Provide Personal Items

An employer is not required to provide personal use items such as a prosthetic limb, wheelchair, eye glasses, hearing aids, or similar devices if they are also needed off the job. However, items that may be considered personal may be required as reasonable accommodations where they are specially designed or required to meet job-related rather than personal needs.⁵³

VII. Exceptions to the General Standards for Reasonable Accommodations

A. Test for or Screen out a Disability

Under circumstances that are job related and consistent with business practices or necessity an employer may use tests or criteria that screen out people because of a disability. For instance, the ability to climb a ladder when placing boxes on high shelves is an essential function of a job. Note, if climbing a ladder is an essential function of the job, it better be in the posted job description.⁵⁴

B. Preference to Members of Religious Institutions

Religious institutions, and other entities, may give preference in employment to members of their congregation to perform work connected with the activities of a particular church, corporation, association, educational establishment, or society.⁵⁵

⁵² EEOC, "Enforcement Guidance: Reasonable Accommodations and Undue Hardship," pp. 25–26.

⁵³ EEOC, "Enforcement Guidance: Reasonable Accommodations and Undue Hardship," p. 3.

⁵⁴ ADA, Title I, SEC. 103(a).

⁵⁵ ADA, Title I, SEC. 103(c).

C. Monitor the Taking of Medication

An employer is under no obligation to monitor an employee to ensure that he or she takes his or her medication. Even if the employee fails to take medication, to obtain medical treatment, or use an assistive device, an employer is still under obligation to provide reasonable accommodations. However, an employee who cannot perform the duties of a job because he or she does not take the medication is not qualified for the job. An employer, nevertheless, must provide reasonable accommodation to deal with the side effects of a disability or taking related medication.⁵⁶

VIII. Guidance, Technical Assistance, Recordkeeping, and Enforcement

A. Guidance, Technical Assistance, and Recordkeeping

The EEOC (www.eeoc.gov) provides guidance and technical assistance to Federal agencies and private sector employers. Federal agencies and private sector employers can obtain advice on the implementation of reasonable accommodations from the Job Accommodation Network (JAN; www.jan.wvu.edu). The Office of Personnel Management (OPM; www.opm.gov) provides directives on affirmative action, hiring, retaining, promoting, and reasonable accommodations in Federal agencies. For one year, an employer must maintain initial action records relating to hiring, requests for reasonable accommodation, promotion, training, transfer, layoff or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship. If a charge of discrimination is filed or an action is brought by the EEOC, an employer must save all personnel records related to the charge until final disposition of the charge.

B. Enforcement

Laws and other rulings requiring reasonable accommodations that facilitate the employment of people with disabilities in the private sector and in Federal agencies

are enforced through a complaint process administered by the EEOC. State Fair Employment Practices Agencies may also be involved if the failure to provide reasonable accommodation violates state anti-discrimination policies. In the Federal sector, the Merit Systems Protection Board (MSPB) is contacted if a complaint contains an issue within the Board's jurisdiction. If the complainant has access to the grievance process, he or she may choose to grieve the complaint; but in electing the grievance process, the complainant forecloses further involvement or action by the EEOC. Private law suits may eventually be filed, but a charge of job discrimination (as it is called when employers fail to put reasonable accommodations in place) must be filed initially with the EEOC. Complaints against Federal agencies must exhaust the administrative process before a civil action can be filed in Federal court.

After conducting an investigation of a case from the private sector or a Federal agency, the EEOC may dismiss the case. Or, upon finding discrimination, it may impose one or more of the following remedies:

1. advising all employees of their rights, including their right to be free of retaliation when they report discrimination;
2. action to correct the source of discrimination;
3. placement in the position the person would have occupied if the discrimination had not occurred;
4. compensatory damages;
5. back pay (when applicable) and lost benefits; and
6. stopping the specific discriminatory practices involved.

Charges of employment discrimination in the private sector may be filed in person or by mail at the nearest EEOC office. A charge of job discrimination must be filed within 180 days of the alleged violation; if state or local anti-discrimination laws are involved, the time for filing a complaint is extended to 300 days.

Employees of Federal agencies or applicants for jobs at Federal agencies initiate complaints of job discrimination by contacting the agency's Equal Employment

Opportunity counselor. This initial contact must be made within 45 days of the alleged discriminatory action.

In response to the initial contact, the counselor will arrange for either counseling or an Alternative Dispute Resolution (ADR), whichever is preferred by the complainant. At the counseling session the complainant receives information concerning his or her rights and obligations, including the right to participate in the grievance procedure. There is also an attempt to informally resolve the issue. Usually, the counseling is complete within 30 days. The ADR program should be complete within 90 days. If at the conclusion of counseling or ADR the complaint is not satisfactorily resolved or dismissed, a Notice of Final Interview is issued to the complainant. In the Notice, the complainant is informed that he or she has 15 days to file a formal complaint with the agency.

The agency has 180 days to answer the complaint. The agency can dismiss all or some of the charges. At the end of this period the complainant can demand an immediate decision from the agency and has 30 days to ask for a hearing before an EEO administrative judge.

The judge then issues a decision within 180 days and sends the decision to the complainant and the agency. If the agency does not respond within 40 days, the judge's decision becomes the final action of the agency. However, the complainant may be notified by agency that it will not fully implement the judge's decision. This final order also must advise the complainant of his or her right to appeal to the EEOC or to file a civil action in Federal court. The filing of a civil action terminates the EEOC appeals process. At the same time the agency must file an appeal with the EEOC. A complainant has 30 days to appeal an agency's decision, and the agency has 40 days to appeal an administrative judge's decision.

If the complaint involves MSPB issues the complainant may appeal the agencies decision to the Board or ask the Board for a hearing. The complainant may petition the EEOC to review the Board's decision regarding claims of job discrimination.



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