



AMERICANS WITH DISABILITIES ACT: TITLE III AND KENTUCKY AGRIBUSINESSES

John N. Hancock, County Agent-at-Large and Coordinator, Kentucky AgrAbility

The Americans with Disabilities Act (ADA) was enacted in January 1992 to change people's attitudes towards disabilities. The Act is intended to be an avenue to reach the more than 43,000,000 Americans with physical and/or mental disabilities.

In Kentucky, the ADA will have a powerful impact. For example, in a typical rural county in the state, 15% of the population is age 65 or older. Older Americans face an increased likelihood of suffering a disability. So the barriers the ADA helps remove today will also be beneficial to future generations.

This same county has 450 people with a work disability; only 109 of those people are in the labor force. If the ADA created an accessible work environment, the other 341 people could productively contribute to the local economy through their participation in the labor force. That number is significant to a small rural Kentucky county with fewer than 7,000 people.

This publication will explain the situations in which the Cooperative Extension Service must comply with the requirements of ADA.

Background

The official regulations that govern what Extension must do to be in compliance with the ADA are titled, "A Comprehensive Analysis of the Americans with Disabilities Act (ADA) and Major Civil Rights/EEO Developments and their Impact on CES Employment Practices and Delivery of Programs." The various titles or sections of the ADA deal with such topics as employment, public transportation and public accommodations. Specifically, Title III, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," will affect agribusinesses across Kentucky.

Title III applies to public accommodations, commercial facilities and private entities offering certain examinations and courses, as stated in the Department of Justice Technical Assistance Manual. More specifically, ADA Title III covers:

- *Places of public accommodations,*
- *Commercial facilities, and*
- *Examinations and courses related to applications, licensing, certification, or credentialing for secondary or post-secondary education, professional or trade purposes.*

The obligations of **Title III** are for **private entities only**. State and local government entities are covered under Title II.

Public Accommodation

A place of public accommodation is a facility whose operations affect commerce and fall within at least one of the following categories:

1. Places of lodging, such as inns, hotels, motels (except for owner-occupied establishments renting fewer than six rooms).
2. Establishments serving food or drink, such as restaurants and bars.
3. Places of exhibition or entertainment, such as motion picture houses, theaters, concert halls, stadiums.
4. Places of public gathering, such as auditoriums, convention centers, lecture halls.
5. Sales or rental establishments, such as bakeries, grocery stores, hardware stores, shopping centers.
6. Service establishments, such as laundromats, dry-cleaners, banks, barber shops, beauty shops, travel services, shoe repair services, funeral parlors, gas stations, offices of accountants or lawyers, pharmacies, insurance offices, professional offices of health care providers, hospitals.
7. Public transportation terminals, depots or stations (not including facilities relating to air transportation).
8. Places of public display or collection, such as museums, libraries, galleries.
9. Places of recreation, such as parks, zoos, amusement parks.
10. Places of education, such as nursery schools, elementary, secondary, undergraduate, or post-graduate private schools.
11. Social service center establishments, such as day care centers, senior citizen centers, homeless shelters, food banks, adoption agencies.
12. Places of exercise or recreation, such as gymnasiums, health spas, bowling alleys, golf courses.

The examples included in these 12 categories are only a partial listing. Category 5, "sales or rental establishments," would include many facilities other than those specifically listed, such as video stores, carpet showrooms, athletic equipment stores, farm supply stores, and farm equipment dealerships.

Places of public accommodation must meet all obligations under Title III as defined by the Department of Justice. In order to be considered a public accommodation with Title III obligations, an entity must be private and it must own, lease, lease to own, or operate a place of public accommodation.

To put this information into real life settings, the following illustrations were obtained from the U.S. Department of Justice ADA Technical Assistance Manual.

QUESTION

What if a private entity operates, or leases space to, many different types of facilities, of which only relatively few are places of public accommodation? Is the whole private entity still a public accommodation?

ANSWER

The entire private entity is, legally speaking, a public accommodation, but it only has ADA Title III obligations with respect to the operations of the places of public accommodation.

EXAMPLE

ZZ Oil Company owns a wide range of production and processing facilities that are not places of public accommodation. It also operates a large number of retail service stations that are places of public accommodation.

In this case, ZZ Oil Company would be a public accommodation. However, only its operations relating to the retail service stations are subject to the broad Title III requirements of public accommodations. The other facilities, however, are commercial facilities and would be subject only to the requirements for new construction and alterations.

QUESTION

Do both a landlord who leases space in a building to a tenant and the tenant who operates a place of public accommodation have responsibilities under the ADA?

ANSWER

Both the landlord and the tenant are public accommodations and have full responsibility for complying with all ADA Title III requirements applicable to that place of public accommodation. The Title III regulation permits the landlord and the tenant to allocate responsibility, in the lease, for complying with particular provisions of the regulation. However, any allocation made in a lease or other contract is only effective as between the parties, and both landlord and tenant remain fully liable for compliance with all provisions of the ADA relating to that place of public accommodation.

EXAMPLE

ABC Company owns a shopping center and leases space in it to XYZ Boutique. In their lease, the parties have allocated to XYZ Boutique the responsibility for complying with the barrier removal requirements of Title III within that store.

In this situation, if XYZ Boutique fails to remove barriers, both ABC Company (the landlord) and XYZ Boutique (the tenant) would be liable for violating the ADA and could be sued by an XYZ customer. Of course, in the lease, ABC could require XYZ to indemnify it against all losses caused by XYZ's failure to comply with its obligations under the lease, but again, such matters would be between the parties and would not affect their liability under the ADA.

Individuals With a Disability Who Is Protected by the ADA?

The ADA has a three-part definition of disability, based on the definition under the Rehabilitation Act. It reflects specific types of discrimination experienced by people with disabilities, unlike the definition of disability in other laws.

Under the ADA, a **person with a disability** is one who:

1. *Has a physical or mental impairment that substantially limits one or more major life activities,*
2. *Has a record of such an impairment, and*
3. *Is regarded as having such an impairment.*

1. Impairment that Limits Major Life Activity

Physical impairment is defined by the ADA as: "Any or a physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin and endocrine."

Mental impairment is defined as: "Any or a mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities."

Under ADA an impairment is only a "disability" if it substantially limits one or more major life activities. **Major life activities** are those that an average person can perform with little or no difficulty, such as: walking, speaking, breathing, performing manual tasks, seeing, hearing, learning, caring for oneself or working.

The person's impairment must be analyzed to determine whether it substantially limits a major life activity. The following three factors are used in making these determinations:

- **Extent**—*the nature and severity of the impairment,*
- **Duration**—*how long the impairment is expected to last, and*
- **Impact**—*the permanent or long-term effect of the impairment.*

All of these factors are very important in determining whether a person is protected by the ADA. It is not the name of the impairment or condition, but rather the **effect** of an impairment or condition on someone's life. A condition or impairment may be disabling for one individual but not for another, depending on how it impacts their daily life activities.

QUESTION

Does someone with cerebral palsy always meet the ADA definition of disability?

ANSWER

Most of the time the answer would be yes. But if the condition does not have a significant impact on major life activities such as speaking, walking and performing manual tasks, then the answer is no. Again the determination must always be based on the effect of an impairment on that individual's life activities.

EXAMPLE

A person employed as a farm laborer had sustained a back injury, but was able to continue an active life, including sports, and in the meantime obtained a new job at a local factory.

ADA would not consider this person an individual with a disability because the back injury did not significantly restrict any major life activity.

However, if this same individual with a back injury also had very minor arthritis, then this individual might be classified as a person with a disability. In this case, neither of the situations alone substantially limit a major life activity, but together they have this combined effect.

TEMPORARY IMPAIRMENTS

“Temporary disabilities” may or may not be covered by the ADA. How long the disability lasts is a factor to be considered, but does not by itself determine whether a person has a disability under the ADA. Again, it goes back to whether the impairment “substantially limits” one or more major life activities.

Extent, duration and impact of the impairment, as defined above, are measured to determine if it is a disability. Temporary, non-chronic impairments that do not last for a long time and that have little or no long-term impact usually are not disabilities. This does not mean that all temporary impairments are not disabilities because no standard rule can be followed. Each case should be evaluated individually.

EXAMPLE

Injuries and illnesses such as broken limbs, sprains, concussions, appendicitis, colds or influenza are not generally considered disabilities. However, if a knee sprain or broken leg took significantly longer than normal to heal, and during this period the individual could not walk, that person would be considered to have a disability. Or, if the injury did not heal properly, and resulted in a permanent impairment that significantly restricted walking or other major life activities, that would be considered a disability.

SPECIFIC EXCLUSIONS

Illegal drug use is not reason enough for someone to be protected by the ADA. However, former drug addicts who have been successfully rehabilitated may be protected.

Other specific exclusions under the term “disability” do not include sexual and behavioral disorders such as: homosexuality, bisexuality, compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorders resulting from current illegal use of drugs.

2. Record of a Limiting Condition

People who currently are not limited in a major life activity, but have a history of a disability, are protected under Part 2 of the definition.

Part 2 protects people with a history of cancer, heart disease, or other debilitating illness, whose illnesses are either cured, controlled or in remission. It also protects people with a history of mental illness, as well as people who may have been misclassified or misdiagnosed as having a disability.

Again, this part of the definition provides protection to people who have a record of a physical or mental

impairment that substantially limits one or more major life activities.

3. Regarded as Substantially Limited

Part 3 of the definition protects people who are not substantially limited in a major life activity from discriminatory actions taken because they are perceived to have such a limitation. Such protection is necessary because, as the Supreme Court has stated and the Congress has reiterated, “society’s myths and fears about disability and disease are as handicapping as are the physical limitations that flow from actual impairments.”

The legislative history of the ADA indicates that Congress intended this part of the definition to protect people from a range of discriminatory sanctions based on “myths, fears, and stereotypes” about disability, which occur even when a person does not have a substantially limiting impairment.

An individual may be protected under this part of the definition in three circumstances:

- The individual may have an impairment which is not substantially limiting, but is treated by the employer as having such an impairment.
- The individual has an impairment that is substantially limiting because of attitudes of others toward the condition.
- The individual may have no impairment at all, but is regarded by an employer as having a substantially limiting impairment.

Additional Information

To obtain copies of the Equal Employment Opportunity Commission (EEOC) Technical Assistance Manual or other ADA informational materials contact the EEOC:

1-800-669-EEOC (voice) or
1-800-800-3302 (TDD)

EEOC
Office of Communications and Legislative Affairs
1801 L Street NW
Washington, DC 20507

Copies of these materials are also available in Braille, large print, audiotape and electronic file on computer disk. To obtain copies in an accessible format, call the EEOC at (202) 663-4395 or (202) 663-4398 (voice); (202) 663-4399 (TDD); or write to the address above.

If you have any questions or need assistance in Kentucky, please contact:

Your local County Extension Office

or
Kentucky AgrAbility
University of Kentucky
Room 304 W.P. Garrigus Building
Lexington, KY 40546-0215
1-800-333-2814

or
Kentucky Department of Vocational Rehabilitation
Capital Plaza Tower, 9th Floor
500 Mero Street
Frankfort, KY 40601
1-800-372-7172 (Voice/TDD)

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