



# Top 10 Takeaways

## Introduction to the ADA

### 1 ADA Overview

The “Americans with Disabilities Act,” or ADA, gives civil rights protection to individuals with disabilities. The ADA was oriented originally towards physical accessibility of public buildings, and it prohibits discrimination in employment including the hiring practices of private sector businesses. Recent interpretation and application extends the ADA to include the Internet as well, for example online shopping and publicly available notices and documentation. There are 4 major sections of the ADA.

### 2 To Whom Does ADA Apply

The ADA applies to those who have a disability, or who have an association with an individual with a disability. The ADA defines a disabled individual as a person who has a physical or mental impairment that limits one or more major life activities, a person who has a history or record of such impairment or a person perceived by others as having such impairment.

### 3 Title I

Title I requires employers with 15 or more employees to provide individuals with disabilities the same employment-related opportunities as others. It prohibits discrimination in aspects of employment including but not limited to recruitment, hiring, promotions, training, pay and social activities.

### 4 Title II

Title II requires that state and local government give people with disabilities an equal opportunity to benefit from all of their programs, services, and activities. Examples include public education, employment, recreation, health care, social services, courts, voting, and town meetings.

## 5 Title III

Title III addresses businesses and nonprofit service providers that are places of public accommodation, as well as private entities offering certain types of courses and examinations, or privately operated transportation and commercial facilities. Public accommodations are private entities that own, lease, lease to, or operate certain kinds of facilities.

## 6 Title IV

Title IV addresses telephone and television access for people with hearing and speech disabilities. It requires common carriers (telephone companies) to establish interstate and intrastate telecommunications relay services (TRS) 24 hours a day, 7 days a week. Title IV also requires closed captioning of Federally funded public service announcements.

## 7 Private Sector Lawsuits

In 1999, the National Federation of the Blind brought litigation against America Online (AOL) because its website and dial-up software were inaccessible to the blind. In August 2004, Priceline.com and Ramada.com agreed to remediate their websites. Investigations conducted by the New York Attorney General's Office in 2003 had found that parts of these websites were not accessible to screen reader software. In 2012, the US District Court of Massachusetts ruled that a website can be a public accommodation. The National Association of the Deaf brought action against Netflix for Netflix's quote, "failure to provide equal access to its video streaming website, 'Watch Instantly,' for deaf and hearing impaired individuals."

## 8 The DOJ and the ADA

The DOJ has been especially active since 2014 in issuing settlement agreements and consent decrees requiring that an organization remediate its websites, appoint ADA Coordinators specifically tasked with website and mobile application accessibility, and institute policies supporting accessibility. These website remediation requirements in the enforcement agreements arise from three sources: 1) Complaints specifically about lack of website accessibility, 2) Comprehensive reviews of counties through Project Civil Access (PCA), and 3) Complaints about physical access, where lack of website access was also discovered during the DOJ investigation.

## 9 State-Level Enforcement of the ADA

State agencies and Attorney General Offices have exerted pressure on businesses to make websites accessible under state non-discrimination statutes. New York and Massachusetts' Attorney General offices have been especially active. State agencies follow federal ADA mandates and will seek to enforce them through their own state equivalents.

## 10 ADA Guidance, Context, and Caveats

Compliance requirements vary from case to case. The majority of recent case settlements involving internet accessibility require, at a minimum, best efforts to conform to a set of international industry standards for web accessibility. The standards that are nearly always cited are the Web Content Accessibility Guidelines 2.0 Level A and AA, or WCAG. The cases generally settle as soon as the courts determine that the website/mobile application is covered under the ADA. the closest thing to current official policy is a recent DOJ "Advanced Notice of Proposed Rulemaking (ANPRM) relating to Nondiscrimination on the Basis of Disability. This ANPRM is for "Accessibility of Web Information and Services of State and Local Government Entities and Public Accommodations." It indicates that the DOJ regards WCAG as a likely choice for the web-based portion of services, for organizations covered under the ADA.