# Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td>Title I: Employment Provision</td>
<td>5</td>
</tr>
<tr>
<td>Title III: Public Access Provision</td>
<td>8</td>
</tr>
<tr>
<td>Additional Resources</td>
<td>14</td>
</tr>
</tbody>
</table>

DISCLAIMER: This paper is intended for the general education of IHRSA members, and should not be considered legal advice. Individuals needing legal advice should consult an attorney who is competent in this area of the law.
Introduction

The Americans with Disabilities Act (ADA) is a federal law passed by Congress in 1990 that requires companies providing goods and services to the public to take steps to improve access and ensure equal opportunity for people with disabilities. Health clubs must be in compliance in two areas: employment (under Title I) and public accommodation (under Title III). Each provision is explained in detail in this paper.

Who is covered by the ADA?

A person is protected by the ADA if he or she has a disability, has a record of having a disability, or is regarded as having a disability. The ADA’s definition of disability is very broad. A disability is defined as a physical or mental impairment that substantially limits one or more major life activities (such as hearing, seeing, speaking, breathing, performing manual tasks, walking, reproducing, caring for oneself, learning or working). Examples of disabilities include mental retardation, epilepsy, blindness, paraplegia, schizophrenia, cancer, HIV-positive status, and AIDS.

An example of someone with a record of a disability is a person who has recovered from cancer. An example of someone who is regarded as having a disability is an individual with a severe facial disfigurement, since he or she might be denied employment because an employer fears the negative reactions of customers or coworkers.

The ADA does not cover an individual with only a minor, non-chronic condition of short duration, such as a sprain, a broken limb, or the flu.

Are there any regulations specifically relating to equipment placement in health clubs?

Yes. The 2010 ADA Standards for Accessible Design include regulations for equipment placement in health clubs. The regulations take effect on March 15, 2012. Compliance will be required for new construction, alterations, and barrier removal.
Regulations 1004 and 236, collectively, require health clubs to provide “clear floor space” adjacent to at least one of each type of exercise machine and equipment for transfer or for use by an individual seated in a wheelchair.

Advisory 236.1 of the regulations notes the following:

Most strength training equipment and machines are considered different types. Where operators provide a biceps curl machine and cable-cross-over machine, both machines are required to meet the provisions in this section, even though an individual may be able to work on their biceps through both types of equipment.

Similarly, there are many types of cardiovascular exercise machines, such as stationary bicycles, rowing machines, stair climbers, and treadmills. Each machine provides a cardiovascular exercise and is considered a different type for purposes of these requirements.

The standards may be viewed here:


Clear floor space is defined, generally, as 30 inches (760 mm) minimum by 48 inches (1220 mm) minimum. Clear floor or ground spaces required at exercise machines and equipment may overlap.

Are clubs required to provide equipment that is specifically designed for persons with disabilities?

As of January 2011, the Department of Justice is considering whether to issue regulations that would require health clubs to provide equipment that is specifically designed for persons with disabilities. IHRSA will provide updates on this issue as they become available.

Are there regulations relating specifically to pools, spas or saunas?

The standards require accessible means of entry for newly constructed or altered swimming pools, wading pools, and spas. Larger pools (300 or more linear feet) must have at least two accessible means of entry, one of which must be a sloped entry or a pool lift. Smaller pools must have at least one accessible means of entry, one of which must be a sloped entry or a pool lift. Wading pools are required to have at least one sloped entry in the deepest part of the pool. Spas also must have an accessible means of entry (e.g., pool lift, a transfer wall, or a transfer system). When located in clusters, at least 5% of the spas must be accessible.

Portable and fixed pool lifts. Existing pools must install fixed pool lifts if installation is “readily achievable.” Readily achievable means easily accomplishable and able to be carried out without much difficulty or expense. If installing a fixed pool lift is not readily
achievable, the Department of Justice allows a business to temporarily provide a non-fixed lift until providing a fixed lift becomes readily achievable. If it is not readily achievable to provide access to the existing pool, even by way of a non-fixed lift, the business need not do so until greater compliance is readily achievable. Clubs are encouraged to create a plan for full compliance to meet their ongoing “readily achievable” obligation.

In regards to clubs that purchased a portable lift prior to March 15, 2012, guidance provided by the Department of Justice states, “as a matter of prosecutorial discretion, The Department of Justice will not enforce the fixed elements of the 2010 Standards against those owners or operators of existing pools who purchased portable lifts prior to March 15, 2012 and who keep the portable lifts in position for use at the pool and operational during all times that the pool is open to guests so long as those lifts otherwise comply with the requirements of the 2010 Standards.

The standards include requirements for providing accessible turning space and an accessible bench in newly constructed or altered saunas and steam rooms. Notably, areas in the path of a swinging door may not be considered clear floor or ground space for the accessible bench.

**Does the ADA apply to common health problems such as high blood pressure or poor eyesight?**

It depends. Three June 1999 U.S. Supreme Court rulings made it clear that people with high blood pressure, poor eyesight, and other common health problems are not covered by the ADA if their conditions can be easily corrected. However, in 2008, Congress passed a law clarifying that mitigating measures, other than eyeglasses or contacts, may not be considered when determining whether an employee’s impairment substantially limits a major life activity. For example, the fact that an individual may achieve a substantial degree of mobility with the use of prosthetics may not be considered when determining whether the individual’s impairment substantially limits a major life activity.

**Is alcoholism a disability under the ADA?**

Yes, as is drug addiction. However, an employer can discipline, discharge or deny employment to an alcoholic whose use of alcohol adversely affects job performance or conduct. An employer may also prohibit the use of drugs (including alcohol) in the workplace and can require that employees not be under the influence of drugs. In addition, a public accommodation such as a health club may withhold services or benefits if an addict is engaged in the current and illegal use of drugs.

**Am I entitled to any tax relief to help pay for the cost of ADA compliance?**

Yes. To assist businesses with complying with the ADA, the IRS Code allows a tax credit for small businesses and a tax deduction for all businesses (a credit is an amount subtracted from actual taxes owed, while a deduction is subtracted from the amount of income taxed).
The tax credit is available to businesses that had total revenues of $1,000,000 or less in the previous tax year or whose workforce consists of 30 or fewer full-time employees. This credit can cover 50 percent of the eligible access expenditures in a year up to $10,250 (maximum credit of $5,000). The tax credit can be used to offset the cost of undertaking barrier removal and alterations to improve accessibility, making available a sign language interpreter or a reader for customers or employees, and for purchasing certain adaptive equipment.

The tax deduction is available to all businesses with a maximum deduction of $15,000 per year. The tax deduction can be claimed for expenses incurred in barrier removal and alterations.
Title I: Employment Provision

Under Title I of the ADA, employers with fifteen or more employees are prohibited from discriminating against a "qualified individual with a disability" with regard to job applications, hiring, promotion, discharge, compensation, training, or other conditions of employment. The law applies to recruitment, advertising, tenure, layoff, leave, fringe benefits, and all other employment-related activities. The following are some commonly asked questions about the employment provision of the ADA.

Who is a "qualified individual with a disability?"

A qualified individual with a disability is a person who meets legitimate skill, experience, education, or other requirements of an employment position that he or she holds or seeks, and who can perform the "essential functions" of the position with or without reasonable accommodation.

What is meant by "essential" functions of a job?

Requiring the ability to perform the essential functions ensures that an individual will not be considered unqualified simply because of an inability to perform marginal or incidental job functions.

Is an employer required to give preference to an applicant with a disability over other applicants?

No. The ADA does not impose any affirmative action obligations. An employer is free to select the most qualified applicant available and to make decisions based on reasons unrelated to the disability. However, an employer may not impose unnecessary eligibility criteria that screen out individuals with disabilities.

What is required to reasonably accommodate applicants and employees?

A "reasonable accommodation" is a modification or adjustment to a job or work environment that will enable a qualified applicant or employee with a disability to participate in the application process or to perform essential job functions.

Examples of reasonable accommodations include: making existing facilities used by employees readily accessible to and usable by an individual with a disability;
restructuring a job; modifying work schedules; acquiring or modifying equipment; providing qualified readers or interpreters; or appropriately modifying examinations, training, or other programs. Accommodating employees with disabilities can usually be done at little or no expense. A recent study by the Job Accommodation Network found the following:

Of the employers who gave cost information related to accommodations they had provided, 287 out of 510 (56%) said the accommodations needed by employees cost absolutely nothing. Another 191 (37%) experienced a one-time cost. Only 23 (4%) said the accommodation resulted in an ongoing, annual cost to the company and 9 (2%) said the accommodation required a combination of one-time and annual costs; however, too few of these employers provided cost data to report with accuracy. Of those accommodations that did have a cost, the typical one-time expenditure by employers was $600. When asked how much they paid for an accommodation beyond what they would have paid for an employee without a disability who was in the same position, employers typically answered around $343.

Remember that information about an employee’s medical condition is private. If asked by other employees about the accommodation, employers should answer that the modification was made to comply generally with federal law rather than specifically with the ADA.

Can a club consider health care costs when deciding whether to hire people with disabilities?

No. The Equal Employment Opportunity Commission (EEOC) declared in 1993 that employers may not refuse to hire people with disabilities because of concern about the effect on health insurance costs. This policy prohibits many forms of discrimination found in employee health plans and stipulates that employers will bear the burden of proving that discrimination is justified.

What should we do if the club and the worker are not able to come up with an effective accommodation for a disability?

Call the Job Accommodation Network, a government-sponsored service, at (800) ADA-WORK. Even if the network is unable to fashion an effective accommodation, an employer’s contact with the network can protect it if a dispute about the accommodation goes to court.

In litigation, courts are looking to determine which party was responsible for any breakdown in the accommodation process. An employer’s good-faith efforts can protect him or her from damages. Employers should document every step taken when working to find a reasonable accommodation. After an employer finds one or more
reasonable accommodations, the employer can choose which one to implement, regardless of the employee’s preference.

**How is the employment provision enforced?**

Complaints are filed with the EEOC or designated state human rights agencies. Available remedies include: hiring, reinstatement, promotion, back pay, front pay, restored benefits, reasonable accommodation, attorneys’ fees, expert witness fees, and court costs. Compensatory and punitive damages may also be available in cases of intentional discrimination or where an employer fails to make a good faith effort to provide a reasonable accommodation.

According to a study released by the Mental & Physical Disability Reporter, plaintiffs received a favorable outcome in 62% of the cases filed between 1993 and 2001 (primarily through settlement), while defendants won 97% of the cases decided by a judge or jury. And over the last few years, the number of cases brought by employees has declined.

Nevertheless, discrimination claims carry great risk. A study by the UCLA-RAND Center for Law and Public Policy found that the median jury verdict for disability discrimination in California is $233,288, and that defending a discrimination claim through to trial costs $150,000 in legal fees. Suits that are decided in favor of an employer at the summary judgment level may still cost an employer $75,000.

**Are tax credits available to businesses that employ individuals with disabilities?**

Yes, the IRS offers ‘work opportunity’ credits to businesses that employ individuals who have a physical or mental disability that results in a substantial handicap to employment. See IRS Publication 5884 for details.
Title III: Public Access Provision

Title III of the ADA guarantees people with disabilities the chance to partake ‘fully and equally’ in the programs and services offered at health clubs and other public accommodations.

How do I evaluate and improve my club’s accessibility?

1. Categorize your facility. Which of the following best describes your club?
   A. A new facility under construction
   B. An existing facility undergoing renovations
   C. An existing facility that is not undergoing renovations

   If you answered A: All new facilities must be readily accessible regardless of cost.

   If you answered B: If you are renovating an existing facility, the alterations must be readily accessible to and usable by individuals with disabilities in accordance with the 2010 ADA Standards for Accessible Design to the extent that it is technically feasible. As with new construction, cost is not to be considered. The Department of Justice Technical Assistance Manual for Title III states: "The fact that adding accessibility features during an alteration may increase the cost does not mean compliance is technically infeasible."

   If you are planning renovations, those alterations may make you responsible for changes to other parts of the club as well. For example, a renovation of an aerobics studio might require alterations to adjacent areas to create an accessible path to restrooms, telephones, or drinking fountains.

   If you answered C: Clubs making no renovations are required to remove architectural and communication barriers in public areas of their existing facilities if the removal is readily achievable.

2. Identify public accessibility problems at your club.
Inspect your facility to determine if any accessibility problems exist and begin to identify solutions. To conduct an audit, gather a team of staff and two or three additional people with various disability and accessibility expertise. If any members of your club or staff have disabilities, invite them to join your team. If none are disabled, contact local organizations that assist people with disabilities and ask them to recommend individuals to assist you.

Before you begin the audit, get a copy of an ADA checklist and audit guide designed to help businesses identify barriers, develop solutions for removing these barriers, and set priorities for implementing improvements.

During the audit, note all possible barriers in and around your club and list possible solutions. Summarize the results, and then consult with building contractors and equipment suppliers to estimate the cost of proposed modifications. If you identify barriers for which you can find no solution, see 'Additional Resources' for organizations that may be able to help.

3. Develop an implementation plan designed to achieve compliance.

If you determine that your club has barriers that should be removed but that there are no readily achievable solutions that can be made immediately, the Department of Justice recommends developing 'an implementation plan designed to achieve compliance with the ADA's barrier removal requirements.'

The ADA has identified the following four priorities for facilities to consider:

1. Accessible entrance into the facility, or 'getting in the door.'
2. Providing access to goods and services. In a club, this includes the front desk and all areas of the club that are open to members.
3. Providing access to restrooms.
4. Removing any remaining barriers.

Once you have conducted an audit, identified barriers in your club and examined some of the possible solutions, you should have the club’s key decision-makers review the results. Decide which solutions will best eliminate barriers at a reasonable cost. Develop an implementation plan, or timeline, for achieving total compliance with the ADA.

The Department of Justice’s Technical Assistance Manual states that an implementation plan, if appropriately designed and diligently executed, could serve as evidence of a good faith effort to comply with the ADA’s barrier removal requirements. A properly developed implementation plan will be to your benefit if someone files a complaint against your facility. Club owners should not assume that they won’t have a complaint filed against them, even if it appears that their club is in compliance with the ADA.

4. Conduct annual accessibility audits.
Once you have conducted an audit and developed an implementation plan, your club still has an ongoing obligation to be accessible to the disabled. The audit shouldn't be a one-time effort;

A 'Quick ADA Checklist' may be found at http://www.ada.gov/checkweb.htm.

access should be re-evaluated annually. With the proper planning, an accessibility problem that cannot be solved today can be solved tomorrow.

**How do I determine what is “readily achievable?”**

'Readily achievable' means easily accomplishable and able to be carried out without much difficulty or expense. Factors to consider include:

1. The nature and cost of the action
2. The overall financial resources of the site(s) involved; number of employees, effect on expenses and resources, legitimate safety requirements necessary for safe operation, or any other impact of the action on the operation of the site
3. The geographic separateness, and the administrative or fiscal relationship of the site(s) in question to any parent corporation or entity
4. If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities
5. If applicable, the type of operations of any parent corporation, including the composition, structure and functions of the work force of the parent corporation. If the club is owned or operated by a parent entity that operates at many different sites, you must consider the resources of both the local club and the parent entity

**What kind of barriers will it be “readily achievable” to remove?**

The Department's regulation contains a list of examples of modifications that may be readily achievable. Some of these are: installing ramps; making curb cuts in sidewalks and entrances; rearranging tables, chairs, vending machines, display racks, and other furniture; repositioning telephones; installing flashing alarm lights; widening doors; installing grab bars in toilet stalls; insulating lavatory pipes under sinks to prevent burns; installing a raised toilet seat; creating designated accessible parking spaces; installing an accessible paper cup dispenser at an existing inaccessible water fountain; and removing high pile, low density carpeting.

Each of these modifications will be readily achievable in many instances, but not all. Whether or not a measure is readily achievable is to be determined on a case-by-case basis in light of the particular circumstances presented and the factors discussed above. Businesses are not required to make changes that would result in a significant loss of selling or serving space.
What if I can’t afford barrier removal right now?

The obligation to remove barriers when readily achievable is a continuing one. This means that over time, barrier removal that wasn’t initially readily achievable may later become so because of changed circumstances.

What are my obligations if I lease my club and don’t own it?

Both the owner of a building and the tenant are responsible for Title III compliance. Since both tenants and landlords will be held responsible for violations, both parties should review the ADA.

The ADA permits landlords and tenants to allocate responsibility between themselves any way that is agreeable to both parties. An article in the National Law Journal warns that “most leases currently in force require the tenant to comply with applicable laws, codes and other governmental requirements with respect to the use, occupancy or alteration of the leased premises. Such an all-inclusive compliance clause may require the tenant to pay for the cost of compliance with ADA even if the clause does not specifically mention the action.”

Does the ADA allow clubs to consider safety factors when providing services to individuals?

Yes. The Department of Justice explains that a public accommodation may exclude an individual, “if that individual poses a direct threat to the health or safety of others that cannot be mitigated by appropriate modifications in the public accommodation’s policies or procedures, or by the provision of auxiliary aids. A public accommodation will be permitted to establish objective safety criteria for the operation of its business; however, any safety standard must be based on objective requirements, not stereotypes or generalizations about the ability of persons with disabilities to participate in an activity.”

What kinds of aid or services am I required to provide?

The Department of Justice has ruled that the ADA requires a conference sponsor of a convention event to obtain and pay for an interpreter for a hearing-impaired attendee. The ruling is significant to the club industry because if a hearing-impaired member asks a club to provide an interpreter for a program or class, the club might be required to do so. According to the Department of Justice, the cost of providing an interpreter is almost never going to be an “undue hardship” so as to excuse this accommodation. Clubs should take steps to ensure that “auxiliary aids” such as interpreters, readers, taped texts, and similar services are available, unless doing so would “fundamentally alter” the benefits provided or would result in an “undue hardship.” A club may require that members provide advance notice (i.e. upon registration) if they need special accommodations in order to allow ample time for the club to take proper action.

Auxiliary aids include a wide range of devices and services that promote effective communication. Examples for individuals who are deaf or hard of hearing include: qualified interpreters, written materials, telephone handset amplifiers, closed caption
decoders on televisions, and exchange of written notes. Examples for individuals with vision impairments include: qualified readers, taped texts, braill materials, large print materials, and assistance in locating items.

According to a Department of Justice report, a store (and presumably a club) need not have a sign language interpreter on its staff in order to communicate with deaf clients if employees communicate by pen and notepad when necessary. Similarly, a clothing store need not have brail price tags if personnel could provide price information orally upon request.

Although ADA compliance may result in some additional cost, a club may not place a surcharge on particular individuals with disabilities or groups of individuals with disabilities to cover these expenses. For example, if a club arranges for an interpreter for a deaf person who wants to attend a workshop, the deaf individual cannot be required to pay extra for that service.

**Am I required to provide personal services such as helping someone with a disability to get dressed or use the restroom?**

No. You are not required to provide assistance in the way of personal needs such as dressing, using the restroom, or eating. However, according to the Better Business Bureau's guide entitled “Access Equals Opportunity,” reasonable modifications including minimal staff assistance may be required in some situations:

“For example, staff members in some weight rooms stabilize weight lifters’ wheelchairs even if they don’t routinely provide similar assistance to other clients or members. Some facilities also provide additional instructions about the use of particular exercise machines to individuals who have cognitive impairments such as mental retardation. Likewise, some health clubs assist individuals with disabilities into and out of pools and hot tubs, and some of them have installed floor-mounted pool lifts. If staff is limited, a customer or member could be allowed to provide his or her own attendant at a waived membership rate.”

**What if the individual is unable to do some of the exercises done in the class or program?**

The ADA mandates an equal opportunity to participate in or benefit from the goods and services offered by a place of public accommodation, but it does not guarantee that an individual with a disability must achieve an identical result or level of achievement as persons without disabilities. For example, a woman who uses a wheelchair may not be excluded from a club's exercise class because she cannot do all of the exercises or derive the same result from the class as someone without disabilities.

A club may offer separate or special programs necessary to provide individuals with disabilities an equal opportunity to benefit from the programs. However, even if a separate or special program for individuals with disabilities is offered, a club cannot deny an individual with a disability participation in its regular program unless some other limitation on the obligation to provide services applies. For example, a club may
sponsor a separate basketball league for individuals who use wheelchairs, but an individual who uses a wheelchair may be excluded from playing in a regular basketball league only if the club can demonstrate that the exclusion is necessary for safe operation.

**Does the ADA require me to endure potentially damaging results to my business or property?**

No. The ADA permits consideration of factors other than the initial cost of the physical removal of a barrier. For example, if it would be inexpensive for a business to restripe its parking lot to create more accessible spaces, the loss of non-accessible parking (not just the cost of restriping) may be considered in determining whether the action is readily achievable.

Similarly, a golf course whose greens would be ruined by the use of a wheelchair or other devices, and where there is no modification available as an alternative, such as allowing a partner to “putt through,” does not have to modify its policy of restricting access to the greens for such devices.

**Is my club required to admit service animals?**

Yes. You are required to permit the use of a service animal by an individual with a disability, unless doing so would result in a fundamental alteration or jeopardize your facility’s safe operation. The local health department may tell you that only a seeing-eye or guide dog must be admitted, but the ADA provides greater protection for the disabled and requires you to admit any service animal. Service animals include any animal individually trained to do work or perform tasks for the benefit of an individual with a disability. Tasks typically performed by service animals include guiding people with impaired vision, alerting individuals with impaired hearing to sounds, providing minimal protection or rescue work, pulling a wheelchair, or retrieving dropped items. Service animals are not pets, so their admittance into your club does not affect a “no pets” policy. The service animal must be permitted to accompany the individual with a disability to all areas of the facility where customers are normally allowed to go.

Some, but not all, service animals wear special collars and harnesses, and some, but not all, are licensed and have identification papers. If you are unsure whether an animal is a service animal, ask the person if it is a service animal required because of a disability. A club may not insist on proof of state certification before permitting the entry of a service animal.

**How is the public accessibility provision enforced?**

Individuals may bring lawsuits through which they can obtain court orders to stop discrimination. Individuals may also file complaints with the Attorney General, who is authorized to bring lawsuits in cases of general public importance or where a “pattern or practice” of discrimination is alleged. In these cases, the Attorney General may seek monetary damages and civil penalties. The law caps civil penalties at $550,000 for the first offense and $1,000,000 for subsequent violations.
Additional Resources

The Americans with Disabilities Act Homepage
www.ada.gov

United States Access Board
www.access-board.gov

Inclusive Fitness Coalition
www.incfit.org

IHRSA’s ADA Webpage
www.ihrsa.org/ada

For additional questions or comments, please contact IHRSA at gr@ihrsa.org or (800) 228-4772.