

DISABILITY RIGHTS LEGISLATION OVERVIEW

Introduction

When Congress passed the Rehabilitation Act of 1973 it established, for the first time, civil rights protection for people with disabilities. Although the Rehabilitation Act was limited to federal agencies and programs operated by private entities that receive federal funds, it did establish that discrimination against people with disabilities was illegal. In 1977 the U.S. Department of Health, Education and Welfare issued regulations to implement section 504 of the act. Section 504 requires federal grantees to make their programs and jobs accessible to qualified people with disabilities.

On July 26, 1990 President George Bush signed into law the Americans with Disabilities Act (ADA). Built upon the Rehabilitation Act of 1973 and the Civil Rights Act of 1964, the ADA extends federal civil rights protection in several areas to people with disabilities. Title I states that employers may not discriminate against a person with a disability in hiring or promotion if the person is otherwise qualified for the job. Title II, Subtitle A prohibits state and local governments from discriminating against persons with disabilities. Subtitle B provides for accessibility to public transit buses, rail lines, and bus and train stations. Title III of the ADA prohibits privately owned public accommodations from denying goods and services to people based on their disabilities. Title IV requires that companies offering telephone service to the general public must also offer telephone relay service to persons who use telecommunications devices for the deaf.

Following the passage of the ADA, the 1988 Illinois Accessibility Code (IAC) was reviewed and revised to determine which standard, state or federal, was more stringent and would prevail. The revised Illinois Accessibility Code was issued on April 24, 1997. In addition, an amendment to the Environmental Barriers Act was signed on July 19, 1996 to eliminate conflicts between the state and federal accessibility standards.

The following is a brief overview of federal civil rights laws that may have an impact on the University of Illinois at Chicago:

Section 504 of the Rehabilitation Act of 1973

Section 504 prohibits both public and private entities that receive federal funds from discriminating against qualified persons with disabilities. This law requires all recipients of federal funds, whether in the form of a grant, or a contract, to review, and, if necessary, modify their programs and services to eliminate discrimination based on disability.

Section 504's aim is to ensure that people with disabilities have access to the benefits of all federally supported programs and is not limited due to disability. Under 504, the programs or activities of covered entities must be made accessible to people with disabilities unless that would cause a fundamental alteration to the program or activity, or constitute an undue hardship.

A covered entity must also make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability. This is required unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

There are several ways in which covered entities can make programs or facilities accessible, such as redesigning equipment, reassigning services to accessible buildings, assigning aides to beneficiaries, delivering services at alternative accessible sites, altering existing facilities, constructing new facilities, or through other methods that provides accessibility. Structural changes are not required if other methods would provide effective accessibility. A covered entity, in making alterations to existing buildings, is required to meet the new construction and alteration requirements of either the Uniform Federal Accessibility Standards (UFAS) or the Americans with Disabilities Act Accessibility Guidelines (ADAAG).

When an educational facility selects a method of providing program accessibility, priority must be given to the method that results in the most integrated setting appropriate in order to encourage interaction among all users, including individuals with disabilities. Although covered entities are not necessarily required to make each of their existing rooms and spaces accessible, the programs, services and activities of the entity must be accessible when viewed in their entirety.

Covered entities are required to complete a self-evaluation of their current policies and practices to identify and correct any that are not consistent with 504 requirements. The self-evaluation should include a list of interested persons consulted, a description of areas examined and problems identified, and a description of modifications made, if any. If public entities choose to remove structural barriers to achieve program accessibility, they are required to develop a transition plan. A transition plan must identify physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities, describe the methods that will be used to make the facilities accessible, specify the schedule for taking the steps necessary to achieve compliance, and indicate the official responsible for implementation of the plan.

Title I of the Americans with Disabilities Act

Title I of the Americans with Disabilities Act (ADA) prohibits employers with 15 or more employees from discriminating against qualified job applicants and workers who are, or become, disabled. The law covers all aspects of employment, including the application process and hiring, on-the-job training, advancement and wages, benefits and employer sponsored social events. A qualified disabled person is someone who, with or without a reasonable accommodation, can perform the essential functions of the job. An employer must provide reasonable accommodations for disabled applicants and workers, unless that would impose an undue hardship (defined as significantly difficult or expensive) on the owner. Potential reasonable accommodations include job-restructuring, reassignment to a vacant position, part-time or modified work schedule, assistive technology, aids or qualified interpreters, and physically modifying the work environment.

Modifying the work environment is a traditional form of providing a reasonable accommodation. It entails examining the work site, determining what barriers exist for the specific employee and providing alterations that suit that individual. Alterations can include:

- Removing architectural or communication barriers;
- Rearranging files or shelves for accessibility to people who use wheelchairs;
- Placing tactile labels on shelves and controls so that vision-impaired individuals can identify them;
- Relocating meetings to an accessible location; or
- Rearranging parking to allow a person with a mobility limitation to park at the entrance closest to his or her work site.

Providing reasonable accommodations is an individualized process through which the employer and the person with the disability discuss and arrange for the necessary changes. EEOC states in the appendix to its regulations that once a qualified individual with a disability has requested an accommodation, the employer must make a reasonable effort to determine the appropriate accommodation.

The EEOC regulations require employment activities to take place in an integrated setting. Employees with disabilities may not be segregated into separate areas or facilities. This means that architectural barriers may have to be removed or altered to provide accessibility to the workplace. However, employers are not required to make structural modifications that are unreasonable or would impose an undue hardship.

In existing facilities, structural modifications are necessary only to the extent that they constitute reasonable accommodations that will allow the disabled worker to perform the essential functions of the job. This applies to work stations as well as normal support facilities such as parking, bathrooms, drinking fountains, cafeterias, etc.

Title II of the Americans with Disabilities Act

Title II Subtitle A prohibits local and state governments from discriminating against persons with disabilities. The goal is to allow integration and choice for students, family members, employees and community members and to allow them access to all programs, services and activities of the covered entity.

Obligations

The University of Illinois at Chicago is required to comply with ADA Title II as an employer, provider of programs and as a property owner. These obligations are detailed below.

- **Employment, Policies and Programs**

Requires non-discrimination toward qualified persons with disabilities and provision of reasonable accommodations, as appropriate. Reasonable accommodations are adjustments to policies and procedures, provision of aides, equipment and/or structural modifications. These are provided on Case-by-case basis. (The same protections apply to parents with disabilities or other members of the Public who have disabilities.)

- **Properties** (including all facilities)

New construction:

Both the Americans with Disabilities Act Accessibility Guidelines (ADAAG) and the Illinois Accessibility Code (IAC) require UIC sites and facilities to be designed and constructed to be accessible.

Renovations:

Renovations to elements or primary function areas of UIC sites and related facilities must be accessible. In addition when a primary function area is renovated, up to an additional 20% of the renovation budget must be applied to providing an accessible path of travel to the altered area. Work involving structural, mechanical, electrical, maintenance and decoration may not trigger the renovation requirements. The IAC has similar requirements.

Existing facilities:

The key term of ADA Title II is *program accessibility*. This refers to the requirement for UIC to operate each program, service or activity so that when viewed in its entirety, the program, service or activity is readily accessible to and usable by individuals with disabilities. Congress recognized that requiring public entities to remove all architectural and communication barriers in existing facilities could be cost-prohibitive. They therefore put the focus on making programs, not buildings, accessible. If it is possible to provide accessibility through alternative means, such as relocating the program to an accessible location, structural changes may not be necessary. The federal regulations state explicitly that *"a public entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance..." 28 CFR sec. 35.150 (b)(1)*. To achieve program accessibility, then, nonstructural and/or structural solutions may be employed in a specific facility.

Section 35.130(b)(1)(vi) of ADA Title II states that services and programs must be delivered in the most integrated setting appropriate to the person's level of need, even if separate programs exist. Included under this requirement is the principle that integration of people with disabilities is the goal of the law.

UIC is not required to take any action that will result in a fundamental alteration to the program, activity or service; or will create an undue administrative or financial burden. If achievement of overall program accessibility causes undue financial or administrative burdens, or fundamentally alters the program, activity or service, alternative means of achieving compliance must be sought to ensure that people with disabilities can participate in or receive the benefits of the program service or activity.

ADA Compliance Plan

ADA Title II requires UIC to develop and implement a plan for achieving program accessibility in its existing facilities. The plan must contain:

- A list of the structural barriers in the facility that limit the accessibility of the program, activity or service to individuals with disabilities,
- A description of the methods to be utilized to remove the barriers,
- A schedule for removing the barriers, and
- The name of the official responsible for the plans implementation.

Title III of the Americans with Disabilities Act

Title III of the ADA prohibits private entities from discriminating on the basis of disability in places of public accommodation, and requires all newly constructed and altered places of public accommodation and commercial facilities to be designed and constructed to be accessible. Twelve categories of public accommodations have been established by Title III. Examples include: hospitals and the offices of health care providers, educational facilities including undergraduate and postgraduate private schools; places of hospitality and food service and places of entertainment. Not all sections of Title III apply to all covered entities. For example, only the new construction and alteration provisions apply to commercial facilities and some private clubs and religious entities are exempted.

Obligations

The University of Illinois at Chicago is required to comply with ADA Title III if it has places of public accommodations that are made available or leased as public accommodations to members of the public.

Places of public accommodation are required to make reasonable modifications to their practices, policies or procedures, and to provide auxiliary aids and services for persons with disabilities, unless doing so would fundamentally alter the nature of the goods, services, facilities, privileges, advantages and accommodations offered or would result in an undue burden. Auxiliary aids and services include: qualified interpreters, note-takers, telephone handset amplifiers, assistive listening systems, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TTYs), qualified readers, taped texts, audio recordings, Brailled materials, and large print materials.

A place of public accommodation may not impose or apply eligibility criteria that screen out or tend to screen out people with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations. This is unless such criteria are necessary to enable the entity to provide the goods, services or benefits it is in the business of providing.

Places of public accommodation must allow people with disabilities to participate in an equal fashion or to benefit equally from the goods, services, facilities, advantages or accommodations provided by the entity. Further, the goods, services, facilities, privileges, advantages, and accommodations must be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual. Additionally, a public accommodation shall not subject an individual or class of individuals on the basis of a disability to a denial of the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation.

A public accommodation shall not provide services to an individual with a disability that are different or separate from those provided to other individuals. This is unless such action is necessary to provide the individual with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

Existing Facilities

Title III of the ADA requires places of public accommodation to remove architectural barriers in existing facilities, including communication barriers that are structural in nature, where such removal is readily achievable. Readily achievable means "easily accomplishable and able to be carried out without much difficulty or expense". If barrier removal is not readily achievable, a place of public accommodation must make its goods or services available to people with disabilities through alternative measures that are

readily achievable. Examples of alternatives to barrier removal include relocating activities to accessible locations.

Measures taken to comply with the barrier removal requirements shall comply with the applicable requirements for alterations for the element being altered. If, as a result of compliance with the alterations requirements, the measures required to remove a barrier would not be readily achievable, a public accommodation may take other readily achievable measures to remove the barrier that do not fully comply with the specified requirements. No measure shall be taken; however, that poses a significant risk to the health or safety of individuals with disabilities or others.

The obligation of places of public accommodation to remove barriers in existing facilities includes the obligation to remove structural communication barriers. This term includes barriers that are an integral part of the physical structure of a facility. Examples of structural communication barriers include permanent signage and alarm systems.

The obligation to engage in readily achievable barrier removal is continuing. Barrier removal that was initially not readily achievable may, as a result of changed circumstances, become readily achievable in future years.

There is no requirement that entities perform an annual assessment or self-evaluation with respect to their compliance with Title III. However, it is recommended that places of public accommodation establish procedures for an ongoing assessment of their compliance with the ADA's barrier removal requirements.

Priorities for Barrier Removal

Recognizing that adequate resources may not be available to remove all barriers at one time, the Justice Department has established priorities for barrier removal in the Title III regulations. According to the department, "the purpose of these priorities is to facilitate long-term business planning and to maximize, in light of limited resources, the degree of effective access that will result from any given level of expenditure."

According to the Justice Department, physical access to a facility is listed as the first priority. This means that an accessible route(s) from parking and walkways to and through a public entrance should be the first consideration. The next priority, once entrance to the building is achieved, is to provide access to areas where programs and services are provided. This entails the provision of horizontal and vertical accessible routes from the accessible entrance(s) to and through the door(s) to rooms or areas containing programs and services. The third priority is to make restrooms accessible. This includes widening doors, providing clear maneuvering space at the entrance doors and turning space in the room, creating an accessible stall, if provided, and providing accessible fixtures. The fourth priority requires places of public accommodation to take any other measure necessary to remove any remaining barriers.

Title IV of the Americans with Disabilities Act

Title IV of the ADA states that companies offering telephone service to the general public must offer telephone relay service to persons who use telecommunications devices for the deaf (TTDs) or similar devices. Information on the provisions of Title IV provisions can be obtained from The Federal Communications Commission in Washington D.C.

Obligations

The University of Illinois at Chicago is not affected by Title IV.