



Small Business and the Americans with Disabilities Act, Title III: Feasible Compliance Options

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Abstract

The Americans with Disabilities Act (ADA) was an important civil rights victory for people with disabilities, granting them equal access to public life. Title III of the ADA requires public establishments to be accessible in both their business practices and their physical structures. Business owners who fully comply with the law serve the interests of a more ethical society, but small business owners may think that complying with the ADA is too complicated and burdensome. This research discusses feasible solutions for small business owners who find it difficult to comply with Title III of the ADA. Criteria for analysis include legal requirements, financial and time costs, and the interests of people with disabilities. The researcher concludes that education, careful planning, and creative solutions can make ADA compliance both profitable for business owners and beneficial to society as a whole.

In 1990, the United States Congress passed the Americans with Disabilities Act (ADA) with nearly unanimous support (Worsnop, 1996). The purpose of the law was to prevent discrimination against individuals with disabilities with regard to full participation in public life. Title III of the ADA gives equal access to commercial goods and services that are available to the general public, stating,

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation. (Americans with Disabilities Act, 1990, § 12182a).

A "place of public accommodation" is defined as any place that is open to the general public and whose operations affect commerce. Examples include hotels, restaurants, concert halls, public meeting halls, sales and retail establishments, doctors' offices, museums, parks, schools, day cares, and gyms (Americans with Disabilities Act, 1990). The list is extensive, and basically includes any place where the owner or operator can reasonably expect to grant access to the general public.

Discriminatory practices which are disallowed include denial of participation and unequal or separate participation, whether the discrimination occurs overtly or through more subtle means, such as operating a business in a building where structural barriers prevent some individuals from accessing the building. Whenever a business makes structural alterations, they must incorporate accessible designs into the renovations. With regard to structural barriers which were already in place at the time Title III went into effect in 1992, business owners are obligated to continually improve accessibility however they reasonably can and to remove barriers when it is "readily achievable" to do so (Americans with Disabilities Act, 1990). The ADA defines readily achievable as "easily accomplishable and able to be carried out without much difficulty or expense" (Americans with Disabilities Act, 1990, § 12181.9). In determining the achievability of any proposed alterations, the law takes a case-by-case approach, considering factors such as the nature and cost of the proposed action, the business' size and financial resources, and the potential effect of the proposed action on expenses, resources, and facility operations (Americans with Disabilities Act, 1990).

The purpose of this research is to identify the most feasible options for small business owners to comply with Title III of the ADA. The scope includes only those businesses that qualify for a small business tax incentive for ADA compliance. Businesses qualify if they have 30 or fewer full-time employees or less than one million dollars in annual revenue (U.S. Department of Justice Civil Rights Division, 2011). The application of the ADA to larger businesses, franchises, properties on the National Register of Historic Places, or businesses that operate without a physical location are all beyond the scope of this inquiry.

Problem

The ADA addresses an ethical issue of civil rights. It represents a rethinking of this country's approach to people with disabilities by framing discriminatory public practices as the problem, rather than framing a person's disability as a problematic public burden. Julie Lellis (2011) argues:

the passage of the Americans with Disabilities Act was an attempt to position the concept of civil rights for people with disabilities in the minds of the public – to illustrate that people with disabilities are no less deserving than all citizens. (p. 809)

Title III of the ADA closely replicates the 1964 Civil Rights Act title II (Lellis, 2011), which prohibits racial discrimination in places of public accommodation, indicating that Congress recognized the rights of individuals with disabilities as civil rights. It is clear, then, that ADA compliance is important not just for business owners to avoid lawsuits and fines, but also for the interests of an ethical society.

This is why it is essential to work to minimize business owners' difficulties in complying with the ADA. While the majority of small businesses owners are, in fact, in compliance with the ADA and feel favorably toward the law (Moore, Moore, & Moore, 2006), there are some important concerns in the business community. At the time of the law's enactment, detractors feared that the lack of a benchmark establishing a clear definition of "readily achievable" barrier removal would make it too difficult for business owners to understand their responsibilities. Small business owners were considered particularly vulnerable because, as Peter Eide of the U.S. Chamber of Commerce said, "smaller employers don't have the time and expertise to determine how to comply with the regulations, which are voluminous" (as cited in Worsnop, 1996, para. 5). The other main concern was for undue financial hardships associated with barrier removal (Worsnop, 1996). Although the ADA has undergone two revisions since 1996, businesses still don't have their benchmark, and many small businesses still can't afford large-scale renovations.

Small business owners need to reach out to the many free resources available to help them understand their legal responsibilities, and they need to find compliance options that maximize accessibility and respect small business' limited resources.

Criteria for Analysis

The main criteria used to create the most feasible solutions are legal requirements, financial and time costs, and the interests of individuals with disabilities. Legal requirements are weighed most heavily because illegal inaccessibility hurts individuals with disabilities and can lead to costly fines and lawsuits for business owners. A law review revealed that small business owners generally are not threatened by Title III lawsuits (Mezey, 2004), but the ethical problems of noncompliance and the severity of potential consequences to the business' reputation and finances should be sufficient reason to prioritize following the law. Cost weighs in second because when businesses cannot survive due to excessive construction costs all consumers suffer, including individuals with disabilities. Therefore, following legal requirements and lowering costs both naturally lead to fulfilling the third criterion: the interests of individuals with disabilities.

Recommendations

Education

The first step to ADA compliance is education. Congress intentionally wrote the "readily achievable" provision to be open and flexible. This allows for fair application in unforeseen circumstances and respects the differences in available resources from one business to the next, but it can make it difficult for business owners to determine what actions they need to take to comply with the law (Griffin, 1991). Understanding the law is ultimately the business owner's responsibility, but there are resources available that every business owner should take advantage of. The Department of Justice and the Small Business Administration both produce free materials explaining the law in laymen's terms and giving compliance suggestions to business owners. These resources are available on the departments' websites. The Department of Justice also operates a toll-free hotline for business owners to call with ADA related questions during regular business hours. The operators on the hotline may be able to give business owners recommendations which are more specific to their individual circumstances, since the law takes a

case-by-case approach to defining legal responsibilities. Many communities also have independent living centers which often offer free public education on accessibility issues (U.S. Department of Justice Civil Rights Division, 2011). Business owners should take advantage of all educational resources available because doing so increases their chances of successfully implementing legal business practices, which in turn serves the best interests of individuals with disabilities. Also, the suggested educational materials carry no financial cost. While education may cost quite a bit of time, it is still a feasible option because it is an essential part of ensuring legality.

Another essential piece of education is employee training. In order for nondiscriminatory policies to be effective, all employees must be aware of those policies. A business owner who does everything else correctly, but neglects proper employee training may believe that his/her business is fully accessible. However, a poorly trained employee could easily refuse to allow a service animal to enter the building, for example, thereby placing the business in illegal noncompliance. Therefore, business owners should include education on nondiscrimination policies in their standard new-hire training programs, and they should remind employees of those policies on an ongoing basis. Moore and colleagues (2006) found that the majority of business owners work toward ensuring that their managers are familiar with ADA requirements, but it is unclear whether lower-level employees tend to receive relevant training. Because of the complexity of the ADA, it would not be feasible for business owners to train employees to understand the law to the same degree that the owners themselves must understand it. However, for very little time and money, business owners could easily make a list of nondiscrimination expectations for their staff. Expectations might include policies like leaving main access routes free from temporary obstructions and retrieving requested items off of high shelves for customers who cannot reach. Adding this education into already scheduled routine training sessions further minimizes costs.

Increasing Customer Base

Business owners who are concerned about the financial burden of ADA compliance should consider the market share benefits associated with compliance. A U.S. Department of Justice (2011) publication estimates that 18 percent of the population has a disability, representing an estimated 175 billion dollars in annual discretionary funds. Accessible businesses don't just gain business from individuals with disabilities, but also from the people who accompany those individuals into the establishment. In the 2000 census, 20.9 million families reported at least one family member with a disability (Wang, 2005), and as baby-boomers have continued to age, that figure has likely increased. Considering the average household size of 2.6 people (U.S. Census Bureau, 2009), that's more than 54 million potential new customers across the country for businesses that become accessible. What's more, the U.S. Department of Justice Civil Rights Division (2011) notes studies showing that once an individual with a disability finds an accessible business, he/she tends to become a repeat customer. In addition to the benefits for small business owners, the interests of people with disabilities are served when they gain more local business options where they can participate in public life.

Marketing techniques are outside the scope of this report, but small business owners are encouraged to research the best ways to inform the community of their accessibility features so that they can benefit from an increased customer base.

ADA Compliance Plan

The best way to minimize costs associated with ADA compliance is through organization and planning. When a business includes access features into routine renovations, it

adds less than 1 percent to the cost (Griffin, 1991). If the business neglects careful planning, though, and completes construction alterations only to find that the new design is inaccessible, the cost of going back and fixing the error will likely be much higher. To ensure that this doesn't happen, every business should create an ADA compliance plan and keep records of all steps taken to improve accessibility. A compliance plan should include an assessment of all existing barriers, a prioritization of necessary alterations, and a timeline for completing proposed alterations. For any proposed alterations which are not immediately financially feasible, the compliance plan should include temporary solutions to work around the barrier until the barrier can be more permanently removed.

To assess accessibility issues, some business owners may choose to hire a professional consultant. This option will likely be the most expensive, but it is also the most likely to result in a thorough and fully compliant plan. Because a thorough assessment is most likely to lead businesses to legal compliance, and it's the most likely option to maximize accessibility in the interests of individuals with disabilities, any business owner with the financial means to hire a professional consultant should do so.

If a professional consultation is not financially feasible, then a free copy of the handbook, *Americans with Disabilities Act Accessibility Guidelines* from the Department of Justice website can be used as a reference to identify potential barriers. This option will cost the business owner more time and produce a less reliable compliance plan, so it's not recommended for businesses that can afford a consultation. Business owners who use this option should especially make use of the Department of Justice's hotline to ensure effective planning.

Once accessibility issues are identified, business owners should prioritize renovations based on the guidelines published by the U.S. Department of Justice Civil Rights Division (2011). Priority number one should be to create an accessible entrance with an accessible route from the sidewalk or parking lot. Second, ensure full access to the primary areas where customers access goods and services – for example, display shelves, shopping aisles, dining tables, and check-out counters. Next, when public restrooms are provided, make them accessible to all customers. Finally, if all the previously mentioned areas are fully accessible, then businesses should ensure full access to all other amenities they offer to customers, such as drinking fountains and telephones.

Proceeding with construction in this order is legal and it benefits business owners and individuals with disabilities because it allows customers with disabilities to patronize the business as early as possible, before the entire property is fully accessible. Once a customer can enter the store, then a staff member can assist him/her in obtaining desired goods and services even if, for example, the shopping aisles aren't yet sufficiently wide enough for the customer to maneuver a wheelchair through. Later, when the customer can enter the business and browse the retail area independently, he/she can enjoy more of the benefits of public participation, and the business owner may be more likely to benefit from the customer's loyalty and impulse purchases.

Creative solutions. When a business owner begins removing accessibility barriers according to the compliance plan, he/she should keep in mind that the ADA allows for flexibility and creativity so that businesses can overcome barriers in the ways that work best for them. For example, imagine a business in an old building with stairs at the entrance finds that there is not sufficient space to build a ramp at that entrance. Imagine the business also does not have the necessary funds to construct an alternate door. Although it would be ideal to allow all customers to enter the building, the business can still give some access to patrons who use wheelchairs if

they offer a carry-out or delivery service. Meanwhile, that business' compliance plan should indicate a goal of building an accessible entrance as soon as the funds become available.

Final Thoughts

When small business owners follow Title III of the Americans with Disabilities Act, it can benefit both business owners and the general public. The most feasible compliance options are those that consider legality, cost, and the interests of individuals with disabilities. Small business owners should educate themselves and their employees about their legal obligations and take advantage of the community and federal resources available to assist them in their education. They should use careful planning when considering barrier removal options, keeping in mind the need to prioritize barriers and ensure a fully compliant plan before beginning major alterations. When there are not sufficient funds for an immediate and permanent solution to a particular barrier, employees can personally assist customers to work around the barrier by performing services such as retrieving items from inaccessible areas of the store or reading menus aloud. Business owners should also keep in mind that expenditures to improve accessibility may be balanced by increased income when a new group of consumers can access the business. Future research should look at the best ways for a newly renovated and accessible business to market to individuals with disabilities and their families.

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