

ADA Coordinator

This position is required for state and local government entities that have 50 or more employees. Initially, position was envisioned to coordinate the grievance process. The national trend is that this position is now used to coordinate a variety of matters relative to ADA implementation and administration. Caution must be exercised concerning an appropriate separation of duties. It is inappropriate to have the ADA Coordinator engaged in both providing reasonable accommodations through the interactive process, and investigating issues concerning the accommodations that have been provided or denied.

ADA Grievance Procedure

A grievance process that is published, within state or local government and capable of addressing issues that may arise from access policies that impact the delivery of programs, services and activities. The grievance procedure must be widely disseminated, offer a second level review, notify the grievant of the outcome, state the ADA coordinator's name and contact information and offer assistance to a person with a disability who may not be able to complete the grievance document independently due to their disability.

Auxiliary Aids and Services

These are measures provided to ensure that appropriate access to programs and services and activities is in place upon request. Auxiliary aids and services include, but are not limited to providing documents in an alternative format such as Braille, providing sign language interpreting services, note takers, real-time captioning services or assistive listening devices.

California Relay Service

The California Relay Service was created by ADA, Title IV. It is a free service to facilitate effective telephone communication between persons who are deaf and hard of hearing and persons who are hearing. This is done via a relay operator who uses both a teletype devices and a telephone. The California Relay service may be reached at 711.

Note: Some entities have chosen to include “California Relay Service 711” on business cards and letter heads to facilitate communication.

CASp

The **Certified Access Specialist Program (CASp)** is a program administered by the State of California. CASp members have been tested and certified related to physical access requirements within the State of California. CASp members are often retained by a business to evaluate the physical access status of the sites from which goods and services are sold. To obtain more information or locate a CASp member, visit https://www.apps2.dgs.ca.gov/dsa/casp/casp_certified_list.aspx

Definition of Disability

Under California State law, Government Code Section 12926, a person with a disability is:

1. A person having a physical or mental impairment that limits a major life activity. This limitation must be considered in the unmitigated status. This means that the determination of whether the limitation exists would be considered in terms of how the individual would function without the use of medication, personal devices or habits that have been formed to mitigate the disability.
2. A person who has a record of a disability, such as described in number one.
3. A person who is regarded as having a disability, such as described in number one.

Note: *This is an abridged definition of disability under California State law. For further information, please see California Government Code 12926. The California definition of disability is being used, as it is more stringent than the definition found under the Americans with Disabilities Act of 1990 or the Americans with Disabilities Amendments Act of 2008.*

Direct Threat

Direct threat is a significant risk of substantial harm that cannot be mitigated through policy modification or reasonable accommodation. The danger must be real and not speculative or remote.

Interactive Process

The interactive process is required in the state law and federal case law, yet neither defines it clearly. Problems have occurred when disputes have arisen and the employer has not clearly documented the interactive process. For that reason, the following steps are recommended:

1. The employer becomes aware that there is a disability that impacts elements of the employment relationship.
2. The employer and employee/applicant meet to discuss the barrier in question and potential resolutions. In this stage if needed data is gathered from medical providers, consultants or the Jobs Accommodation Network.
3. After giving primary consideration to what the employee/applicant is requesting, the employer makes a prompt decision regarding what effective accommodation will be provided. Or, if the accommodation in question would result in an undue hardship the employer is not obligated to provide said accommodation.
4. The employer promptly implements the reasonable accommodation.
5. The employer initiates follow up discussions with the recipient of reasonable accommodation to ensure that the accommodation was in fact effective.

Note: *The reasonable accommodation process is ongoing and may need to be revisited at any point in the employment relationship, as disabilities and technology may change.*

Maintenance of Accessible Features Policy

This relates to the requirement set by 28 CFR 35.133 and 28 CFR 36.211 in which an entity must maintain accessible features. Policy and procedure in this area is designed to give staff guidance unifying, repairing or reporting issues within access elements on sites where programs, services and activities are conducted

Medical Inquiry

Medical inquiry is the acquisition of pertinent medical information to determine whether a bona fide legal disability exists and what limitations it may present that necessitates a reasonable accommodation. Medical inquiry should be limited in scope. Data related to genetic characteristics should not be solicited, obtained or retained. Medical information may not be lawfully stored in an employee's personnel file.

Notice of ADA Compliance

A Notice of ADA Compliance is a widely disseminated notice, within state or local government, that provides information concerning the elements of ADA compliance that the entity has in place. It is recommended that the notice of ADA compliance be accompanied by a dissemination plan.

Policy Modification Request and Fundamental Alteration

A qualified person with a disability may request that an entity modify its policies to create an appropriate level of access. A system must be in place for entertaining these requests and determining whether said request would result in a fundamental alteration of the programs, services and activities impacted. Should there be an inability to grant the initial request, other measures must be considered, if available, to address the access issue in question. Should it be determined that the request results in the fundamental alteration, a senior official should expeditiously sign off on the determination.

Program Access

A designated alternative manner in providing programs, services and activities in order to ensure that appropriate access is in place. For example, accessible meeting space may be secured on the ground floor of the building to hold meetings with people who have mobility impairments, who are not able to go to the second floor because of the absence of an elevator.

Qualified Person with a Disability

A qualified person with a disability has a disability as described above and is qualified to receive the programs, services or activities of the entity in question.

Reasonable Accommodation

Reasonable accommodation technically refers to the employment relationship. It is an adjustment that provides the employee or applicant an opportunity to participate in: the performance of essential functions of the job, the selection process or to receive benefits and privileges offered to other employees in the work situation. Reasonable accommodation solutions often vary widely. Accommodation request must be handled through an "interactive process".

Self - Evaluation

A comprehensive evaluation of all programs, services and activities, required by Title II, to ensure that access for qualified persons with disabilities is in place. The self-evaluation must be vetted with interested stakeholders. The self- evaluation was due in 1993.

Service Animal

A service animal is a dog or miniature horse that has specifically been trained to perform tasks for a person with a disability that they are not able to perform for themselves due to their disability.

***Note:** This is a subject that generates the highest number of complaints received by the US Department of Justice*

Transition Plan

A physical access evaluation, required by Title II, of all sites from which programs, services and activities are provided. The transition plan contains four parts:

1. A list of physical barriers
2. A statement of method to be utilized for mitigation of barriers
3. A statement regarding the schedule of barrier mitigation
4. The designation of an official who is responsible for the administration of the transition plan. The transition plan was due in 1992. The transition plan must be vetted with interested stakeholders.

***Note:** The intent was to create access within facilities that were online in 1992 and that new construction or remodels would be accessible.*

Undue Hardship

An undue hardship would be the provision of a reasonable accommodation that is extensive, disruptive, fundamentally alter the nature of the program or is unduly expensive. It is important to note that the expense issue is extremely difficult for a state or local government entity to use as a defense. In doing so, one would need to consider the total budget of the entity in question. For business, one would look at the resources of the business. Other resources should also be explored if applicable.

Video Remote Interpreting (VRI)

VRI is permitted in the 2010 Title II ADA regulations. It provides a system in which sign language interpreting can be conducted via video with the interpreter offsite. Caution needs to be exercised to ensure that the technical quality of the system is sufficient to appropriately transmit the information being communicated.

