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The 2010 ADA Standards Take Effect: What Hospitality, Retail Businesses and Health Care Providers Need to Know

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ADA FOCUS POINTS

- ❖ Customer Service:
Lack of Sensitivity
- ❖ Accessibility Elements:
Lack of Knowledge
- ❖ Renovations:
Lack of Access



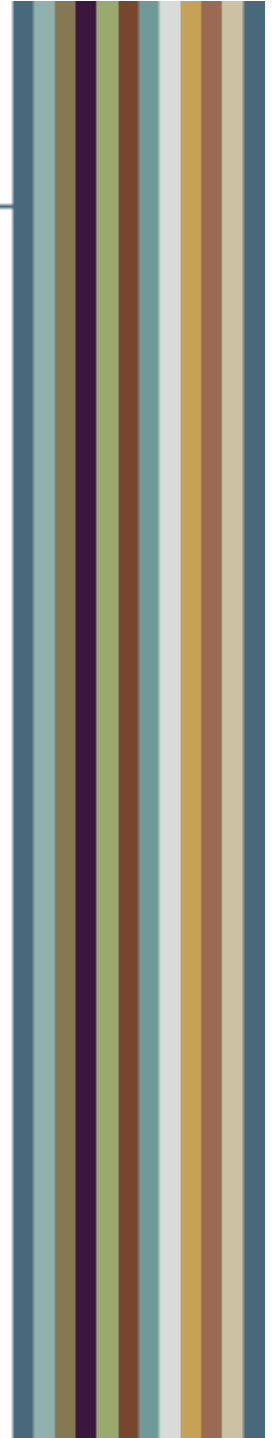
UNDERSTANDING TITLE III OF THE ADA

- Coverage
 - Places of public accommodation -- Hotels, restaurants, bars, spas, fitness centers, hospitals, doctors offices, stores, recreation centers.
 - Prohibits public accommodations from denying services to individuals with disabilities.
 - Protects individuals with disabilities and individuals associated with disabled individuals.



OBLIGATIONS OF PLACES OF PUBLIC ACCOMMODATION

- Must make goods and services *available* to individuals with disabilities on an equal basis with general public
 - Must make goods and services *usable* by people with disabilities
 - Requires the removal of architectural and structural barriers in existing facilities where *readily achievable*
- ❖ Familiarity with ADA regulations and standards is necessary to ensure compliance with the law and avoid discrimination lawsuits.



ADA STANDARDS FOR ACCESSIBLE DESIGN

Purpose

- Governs the construction and alteration of places of public accommodation



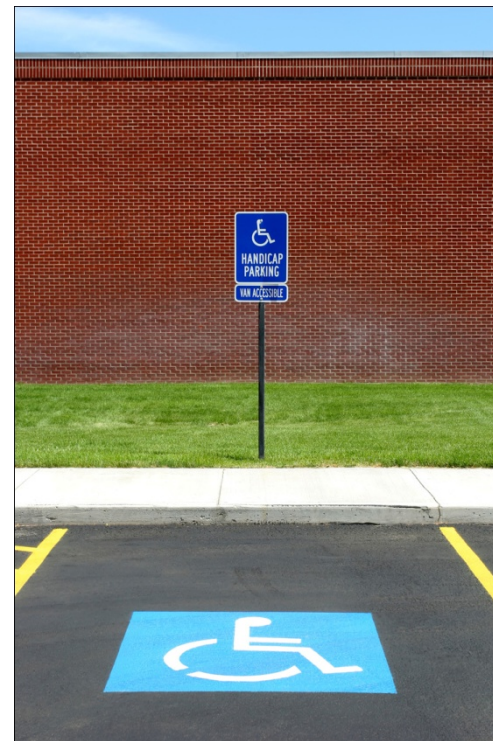
ADA Standards

- Maintained by Department of Justice
- Have been in place since 1991
- Referred to as “1991 Standards”
- 2010 Standards created “Safe Harbor”

ADA STANDARDS FOR ACCESSIBLE DESIGN

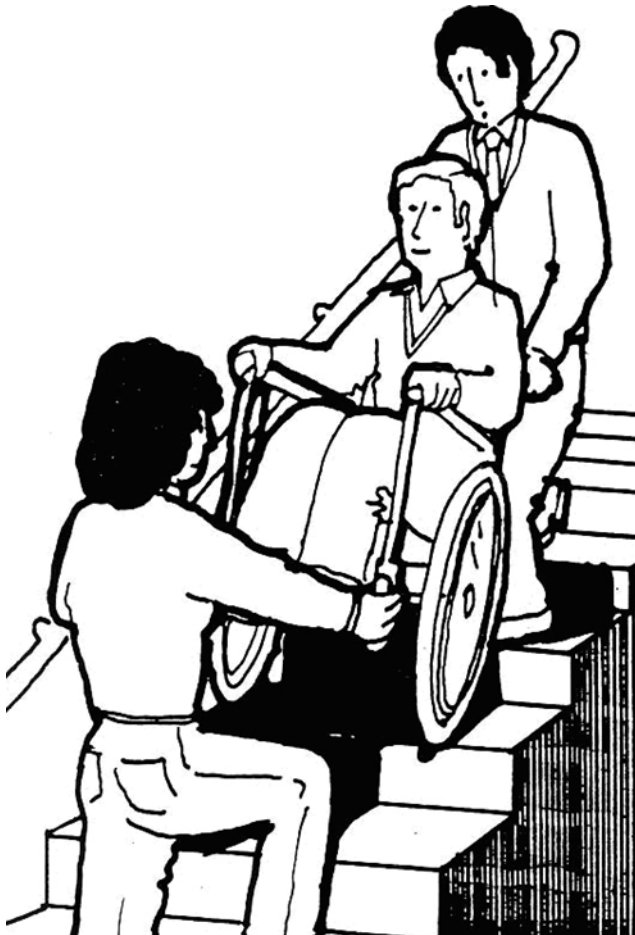
Promulgation of “2010 Standards”

- Have been in process of being revised for 10 years
- Effective date is March 15, 2012
- Delay in implementation was provided to allow businesses sufficient time to plan for implementing the new requirements
- Set minimum requirements for newly designed and constructed places of public accommodations
- Designed to limit architectural barriers and ensure public accommodations are readily accessible to and usable by individuals with disabilities



ADA STANDARDS FOR ACCESSIBLE DESIGN

Examples of architectural barriers include:



- Parking spaces with no access aisle to allow deployment of a van's wheelchair lift;
- Steps at a facility's entrance or within its serving or selling space
- Aisles too narrow to accommodate mobility devices
- Counters that are too high
- Restrooms that are too small to use with a mobility device

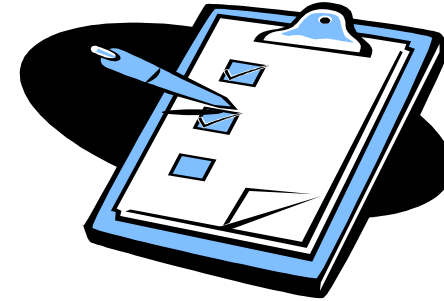
ADA STANDARDS FOR ACCESSIBLE DESIGN

2010 Standards includes new requirements not previously addressed in 1991 Standards including:

- amusement parks
- playgrounds
- golf facilities
- miniature golf courses
- recreational boating facilities
- exercise machines and equipment
- fishing piers
- swimming pools, wading pools
- spas, saunas, and steam rooms



COMPLIANCE WITH 2010 STANDARDS



- Full compliance is required to the extent that it is *not structurally impracticable*.
- Alterations to buildings or facilities that are designated as historic under State or local law, must comply to the *maximum extent feasible*.
- Must remove barriers to the extent *readily achievable*.
- Readily achievable means “easily accomplishable without much difficulty or expense.”
 - Relative to the size and financial resources of a business.

SAFE HARBOR PROVISION



- No obligation to change any element that is presently compliant with the 1991 Standards until renovations or alterations occur
- Existing facilities in compliance with the 1991 Standards stand to benefit from the safe harbor provision
- All future renovations and alterations must be done with the 2010 Standards as a guide
- Safe Harbor does not apply to facilities not previously addressed in ADA (e.g., swimming pools and exercise equipment)
 - These alterations are mandatory by March 15, 2012

OBLIGATIONS UNDER THE ADA

Accessible Entrances

- 60% of all public entrances must be accessible
- Alternate accessible entrance should be used if main entrance cannot be made accessible
 - Signs should be posted at inaccessible entrances directing individuals to accessible entrance
 - Accessible entrance must be open whenever other public entrances are open



OBLIGATIONS UNDER THE ADA

Parking

- You must provide accessible parking spaces for vans if readily achievable to do so
- 1 of every 6 accessible spaces must be van accessible
- Small businesses with very limited parking (4 or fewer spaces) must have one accessible parking space
- An accessible parking space must have access aisle allowing a wheelchair to get in and out of the vehicle



OBLIGATIONS UNDER THE ADA

Total Number of Parking Spaces Provided in Parking Facility	Minimum Number of Required Accessible Parking Spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2 percent of total
1001 and over	20, plus 1 for each 100, or fraction thereof, over 1000



OBLIGATIONS UNDER THE ADA

Shelves, Counters & Check-Out Aisles

- Located on accessible route with space to allow customers using mobility devices to access merchandise
 - Not required to take steps resulting in significant loss of selling space
- Counters – Max Height is 36”
 - Shelves may be any height
 - Clerks expected to assist customers and retrieve merchandise from high shelves
- At least one check-out aisle must be usable by people with disabilities
- When not readily achievable to make sales or service counter accessible, folding shelf or nearby accessible counter should be provided – clip board or lap board should be last resort



OBLIGATIONS UNDER THE ADA

Accessible Route to Goods & Services

- Businesses must maintain accessible route at least 3 ft. wide
 - Cannot be blocked by display racks, plants, furniture, filing cabinets, newspaper dispensers, vending or ice machines
- Temporary interruptions for maintenance or repairs are permissible
 - Staff must be available to assist
 - Must be remedied as soon as possible
- Accessible toilet stalls, dressing rooms or counters at cash register must not be cluttered with merchandise



OBLIGATIONS UNDER THE ADA

Medical Care for Individuals with Disabilities

❖ Commonly asked questions:

- Can health care provider refuse treatment due to lack of accessible medical equipment?
- Should accessible exam table should be reserved for patient with a disability?
- Must every exam room have accessible exam tables?
- What if medical staff is unfamiliar with equipment or transfers?
- If my medical office space is leased, am I responsible for ensuring examination room, waiting room and toilet rooms are accessible?

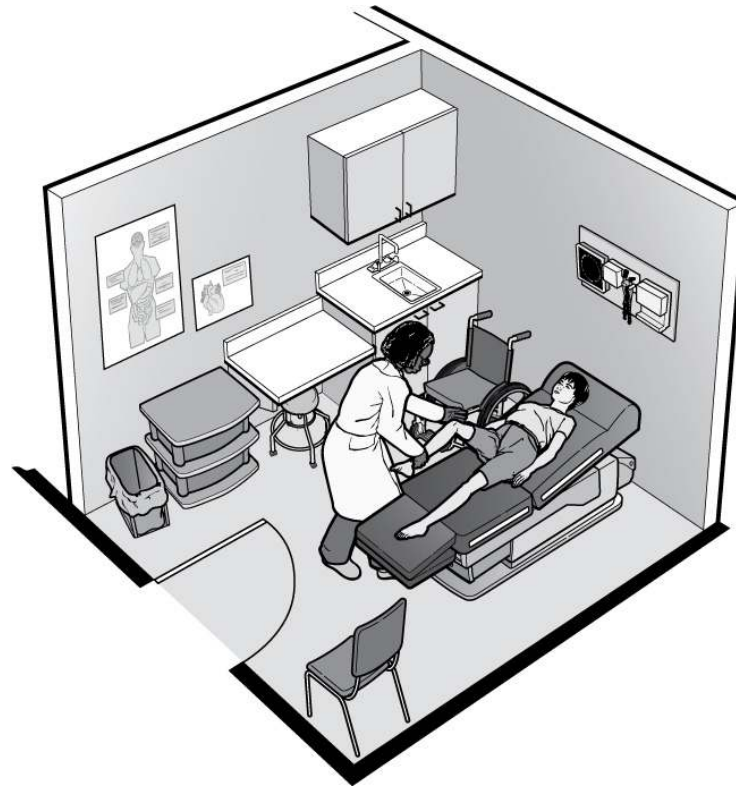


OBLIGATIONS UNDER THE ADA

Accessible Exam Rooms

❖ Requirements:

- Accessible route to and through exam room
- Entry door with adequate width, maneuvering clearance and accessible hardware
- Appropriate models and placement of accessible equipment (e.g., adjustable height table or chairs, accessible scales, portable lifts)
- Clear floor and turning space inside examination rooms



OBLIGATIONS UNDER THE ADA

Swimming Pools:

- Accessible means of entry/exit are required
 - * 2 means of entry/exit for larger pools (300 or more linear feet)



- One entry must be a sloped entry or pool lift at a fixed location



- Other entry could be transfer wall or transfer system
- Wading pool must provide sloped entry into deepest part of pool

OBLIGATIONS UNDER THE ADA

Spas and Saunas:

- If more than 1 spa, 5% of total must be accessible
 - If clusters of whirlpools, 5% of each must be accessible
- Spa treatment rooms – 5% of rooms must be accessible
- Saunas & Steam Rooms



- Contain appropriate turning space
- Doors cannot swing into clear floor space
- Accessible bench, where provided
 - May provide a readily removable accessible bench

OBLIGATIONS UNDER THE ADA

Exercise Rooms:

- At least one of each type of sitting exercise equipment must be on accessible route and have clear floor space to enable an individual with a disability to use the equipment:
 - 30 x 48 inches of clear floor space; and
 - Be on a 36-inch wide accessible route.
- For standing machines, clear floor space can be in accessible path route
- Ensure staff and trainers do not move equipment to impede accessible elements



OBLIGATIONS UNDER THE ADA

ATM's:

- Structural Elements (height, reach, accessible floor space) are entitled to safe harbor protection
- Safe Harbor does NOT apply to communication-related elements (auxiliary aids and services)
 - This includes requirements regarding voice guidance, speech output and Braille instructions
- Communication-related elements must be modified unless you can show that compliance imposes undue burden

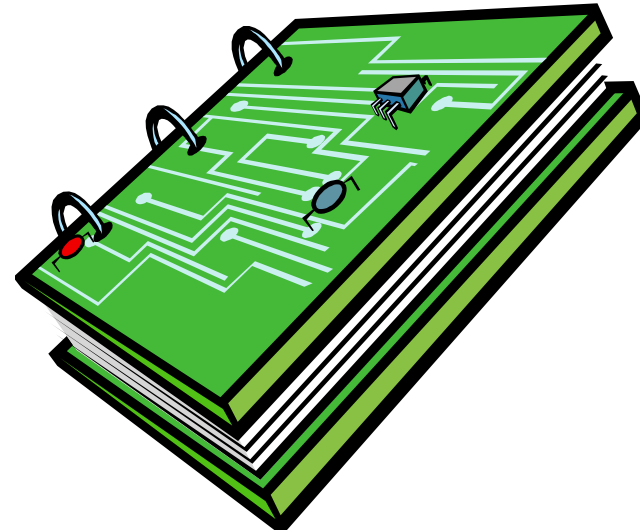


KEY POLICY & PROCEDURE REVISIONS

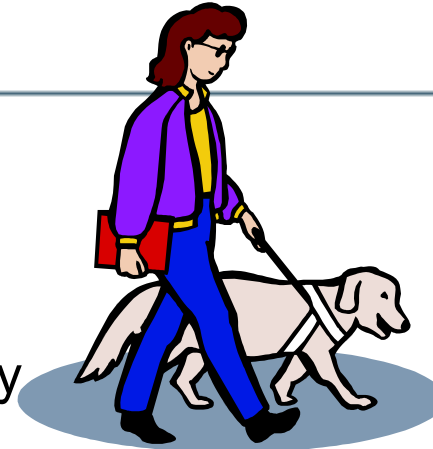
❖ Service Animals

❖ Mobility Devices

❖ Effective Communication



SERVICE ANIMALS (DOGS)



- ❖ Definition -- Dogs trained to perform work for the benefit of a person with disability
- ❖ Must permit use of service animals when task performed is related to disability – e.g., seeing eye dog
- ❖ Cannot impose surcharge or cleaning fee for use of service animals
- ❖ Only two permissible inquiries can be made:
 - Is the animal required because of a disability?
 - What work or task has the animal been trained to perform?
- * No other inquiries about an individual's disability or the dog are permitted

SERVICE ANIMALS (DOGS)

- ❖ Cannot require proof of certification or medical documentation as condition of entry
- ❖ May require the dog to be harnessed, leashed or tethered
- ❖ May only exclude service animals if:
 - The dog is out of control and the owner cannot gain control
 - The dog is not housebroken



* If dog is excluded, the individual must be allowed to enter the business without the service animal

- ❖ “Comfort,” “therapy,” or “emotional support” animals do not meet the ADA’s definition of service animal

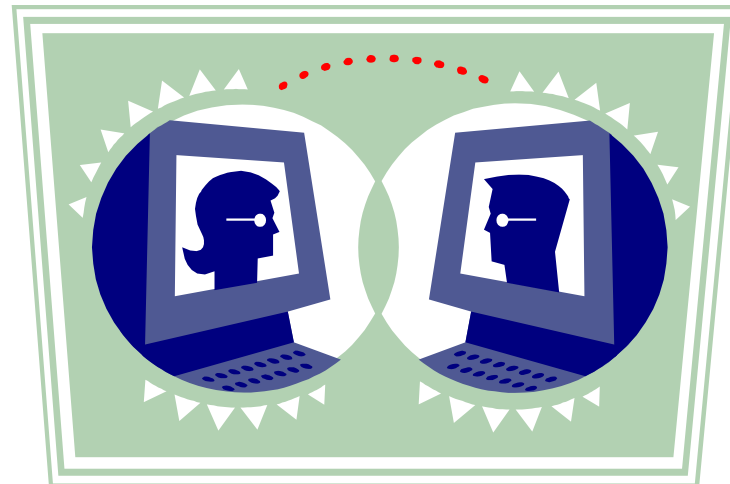
MOBILITY DEVICES

- ❖ Must permit manually powered devices (wheelchairs) intended for use by individuals with disabilities
- ❖ Must also allow use of “other power driven mobility devices” (e.g., golf carts or Segways), unless such devices cannot be operated in accordance with legitimate safety requirements (including time restrictions)
- ❖ Permissible to request a credible assurance that the device is required because of a disability
- ❖ Verbal assurance is okay
- ❖ Legitimate safety requirements based on actual risks may be imposed
- ❖ As with Service Animals, it is not permissible to ask about a person’s disability



EFFECTIVE COMMUNICATION

- ❖ Required to take steps necessary to communicate effectively with customers with vision, hearing, and speech disabilities
- ❖ May offer video remote interpreting (“VRI”) services as an auxiliary aid to provide effective communication
- ❖ Must comply with certain performance standards to ensure its effectiveness



EFFECTIVE COMMUNICATION

- ❖ Auxiliary aids must be provided in accessible formats, in timely manner, and privately
- ❖ Business is financially responsible for cost of auxiliary aid unless it can demonstrate it would result in undue burden (significant difficulty or expense)
- ❖ Cannot impose surcharge to cover cost of auxiliary aid provided
- ❖ If one method would impose undue burden, business must provide effective alternative if one exists
- ❖ Examples of common auxiliary aids and services include text telephones; Braille menus; large-print menus; interpreters; phone amplifiers; assistive listening devices; note takers; computer aided transcription services



RESERVATIONS FOR ACCESSIBLE ROOMS AT HOTELS

As of March 15, 2012, Hotel reservation systems must:

- ❖ Ensure that disabled individuals can make reservations for accessible guest rooms during the same hours and in the same manner as non-disabled individuals;
- ❖ Hold back the accessible guest rooms for individuals with disabilities until all other guest rooms of that type have been reserved;
- ❖ Remove reserved accessible rooms from all reservation systems; and
- ❖ Guarantee that the specific accessible guest room reserved through its reservation system is held for the reserving guest.



RESERVATIONS FOR ACCESSIBLE ROOMS

- ❖ Staff must be able to identify and describe accessible features of the facility offered through its reservation system:
 - the accessible room type (e.g., deluxe executive suite, deluxe king, etc.);
 - the number and size of beds (e.g., two queen beds);
 - available communications features (e.g., visual alarms and notification devices); and
 - the type of accessible bathing facility (e.g., bathtub with grab bars, transfer shower, or roll-in shower).



RESERVATIONS FOR ACCESSIBLE ROOMS

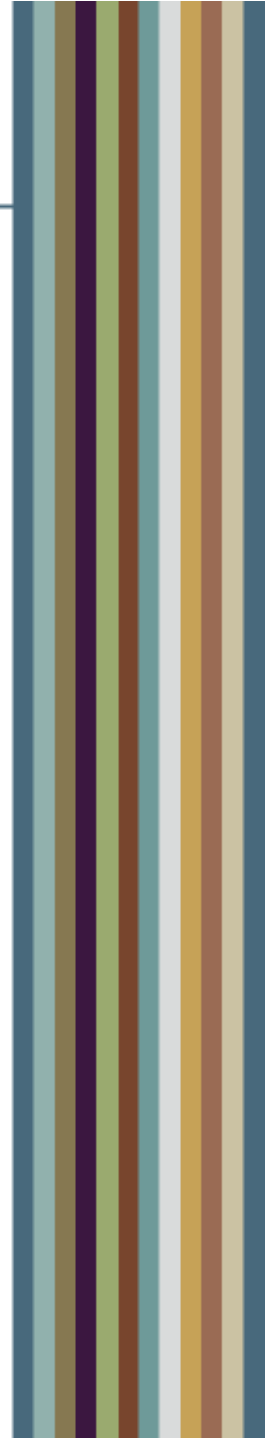
❖ For older facilities not fully compliant with 1991 or 2010 Standards, the Hotel must disclose information about:

- The facility's accessible entrances;
- Accessible paths of travel to guest check-in and other essential services (e.g., restaurants)
- Information about important features of the hotel that are not in compliance (e.g., doorway width or non-accessible check-in counters)



ADA ACTION ITEMS

- ❖ Modify policies and procedures to allow disabled guests an equal opportunity to enjoy your businesses services and amenities
- ❖ Implement policies to serve and communicate effectively with customers with disabilities
- ❖ Train Staff Members
- ❖ Remove structural and architectural barriers that limit a disabled individual's access
- ❖ Design, alter or construct facilities in accordance with ADA Accessibility Guidelines



RECENT WAVE OF PRIVATE AND DOJ LAWSUITS



- Large influx of Title III litigation
 - Due in part to promulgation of these new regulations
 - Due in part to HUGE incentive of attorneys' fees
- Suits brought by relatively few “drive by” plaintiffs suing multiple properties
- Plaintiff often is not even guest or patron of facility
- Plaintiffs aim to settle early
- Failure to comply with applicable regulations may have effect of causing DOJ to join the lawsuit
- DOJ may require one property, or all affiliated properties, to conduct a survey of its facilities and certify that the hotel complies with the ADA

FENDING OFF “DRIVE BY” PLAINTIFFS

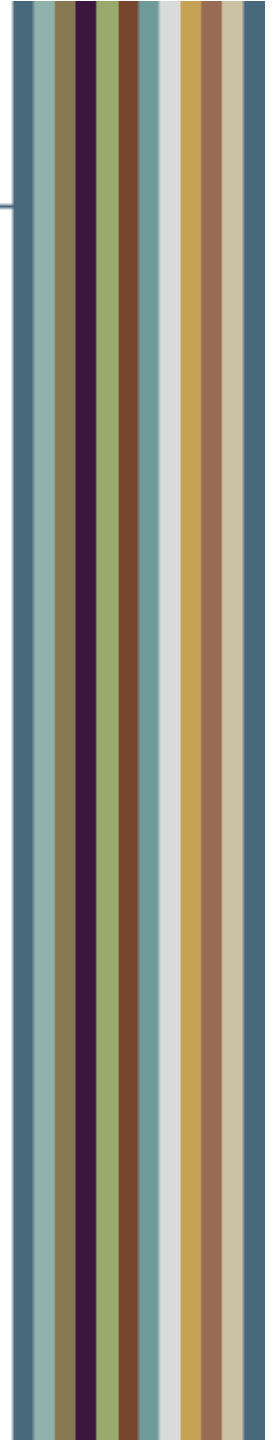
- Training is Essential
 - Good business practice
- Never have a second chance to make a first impression
 - Develop guidelines and procedures
 - Conduct regular training sessions
 - Managers set the tone
- Certain key points
 - Handle reservations with respect
 - Effective communication with vision/hearing impaired customers
 - Assist customers with mobility impairments
 - Ensure proper opening of doors; operation of lifts, etc.



TAKE AWAYS

Remove all structural or architectural barriers that limit a disabled individual's access if readily achievable

- Examples:
 - Install ramps
 - Widen doors
 - Change door handles



TAKE AWAYS

Pay special care to areas easily seen by and utilized by the public

- Entrance
- Parking
- Lobby
- Service Counters
- Bar/Restaurants
- Public Bathrooms



Most important takeaway:

- Train employees regularly to ensure staff is adequately aware of and comfortable with ADA issues

QUESTIONS?

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