

## **SPECIAL ALERT:**

### **Federal Agencies Take Action to Promulgate New ADA Accessibility Standards by Jonathan R. Mook<sup>1</sup>**

On July 26, 2010 – the 20<sup>th</sup> anniversary of the signing of the Americans with Disabilities Act into law – the U.S. Department of Justice (“DOJ”) issued a final rule adopting new ADA Accessibility Guidelines for the construction and alteration of virtually all commercial buildings in the United States.<sup>2</sup> The new guidelines apply to all businesses open to the public, such as retail stores, movie theaters and sports arenas and stadiums. They also govern how commercial facilities, such as office buildings, warehouses, and factories, must be constructed or renovated in order to be accessible to the disabled.

#### New 2010 Standards

The 2010 ADA Standards replace the 1991 Standards previously adopted by the Justice Department. The new standards maintain the basic structure and requirements of the old standards; however, the 2010 ADA Standards contain updated technical requirements in a number of areas, including:

- Criteria for basic elements considered to be “building blocks” for ensuring accessibility, such as ground and floor surfaces, wheelchair turning spaces, and reach ranges.
- Accessible routes, including walking surfaces, doors, ramps and elevators.
- Site and building elements, including requirements for parking and stairways.

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<sup>2</sup> See Department of Justice, Civil Rights Division, Final Rule, Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, available at [http://www.ada.gov/regs2010/titleIII\\_2010/reg3\\_2010.html](http://www.ada.gov/regs2010/titleIII_2010/reg3_2010.html).

- Plumbing elements, including drinking fountains and toilets in bathrooms.
- Communication elements, including fire alarms, signs, telephones, and assistive listening devices.
- Special rooms and spaces, including assembly areas, locker rooms, kitchens and kitchenettes, and medical care facilities.
- Built-in furnishings and equipment, including those for dining and work surfaces, sales and service counters, and checkout aisles.
- Recreational facilities and play areas.

The standards incorporate further requirements for

- Hotel reservations and accessible guest rooms;
- Ticketing policies of public accommodations;
- Auxiliary aids and services;
- Seating and assembly areas;
- Examinations and courses; and
- Mobility devices.

Additionally, the 2010 ADA Standards include changes to the Justice Department’s existing regulations pertaining to service animals to clearly establish what constitutes a “service animal” that may accompany a disabled individual in a public accommodation.

Finally, the 2010 ADA Standards address the provisions of goods and services on passenger vessels operated by private entities not primarily engaged in the business of transporting people. This includes accessibility requirements for the boarding process, safety policies, routes on the vessel, and communication.

The provisions of the new Department of Justice rule will take effect six months from the

date they were published in the Federal Register. However, the requirements related to new construction and alterations will not take effect until 18 months from the publication date.

### **DOJ Requests for Comments on Proposed Accessibility Regulations**

In addition to promulgating a final rule on the 2010 ADA Accessibility Standards, on July 26, 2010 the Department of Justice also invited public comment on three anticipated regulations dealing with Web accessibility, movie captioning, and accessible equipment and furniture. Comments on the Department of Justice's rulemaking proposals are to be submitted on or before January 24, 2011. Those comments will be considered as the Justice Department moves forward in promulgating regulations.

#### Web Accessibility Standards

The Justice Department is considering revising its existing regulations implementing Title III of the ADA to establish requirements for making the goods, services, privileges, accommodations, or advantages offered by public accommodations via the Internet or the World Wide Web (Web), accessible to individuals with disabilities. In furthering this goal, the Justice Department has issued an Advance Notice of Proposed Rule Making to solicit public comments on various issues relating to the potential requirements of Web accessibility.<sup>3</sup>

Prior to finalizing proposed regulations, DOJ is seeking public comment on the proposed regulatory text and is soliciting responses to specific questions pertaining to Web site access. One of those questions pertains to the type of Web accessibility standards that should apply as

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<sup>3</sup> See Department of Justice, Civil Rights Division, Advance Notice of Proposed Rule Making, Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities and Public Accommodations, 75 Fed. Reg. 43460 (2010).

part of any Justice Department regulation. The Web accessibility initiative of the World Wide Web has created voluntary international guidelines for Web accessibility, and Web accessibility standards exist for federal government agencies under Section 508 of the Rehabilitation Act of 1973. The Justice Department is considering whether it should adopt either of these existing technical standards or, whether it should craft its own performance standards for achieving Web site accessibility. Other issues include the resources and services available to public accommodations to make their Web sites accessible and the effective date to require compliance with any Web accessibility standards that DOJ may promulgate.

### Accessible Movies

In addition to its consideration of Web site accessibility, the Justice Department also is considering revising its Title III regulations to require movie theater owners and operators to screen movies with close captioning or video description for individuals who are deaf or hard of hearing or who are blind or have low vision. As part of its process, the Department of Justice has issued an Advance Notice of Proposed Rule Making to solicit public comment on various issues relating to close captioning and video description.<sup>4</sup>

More specifically, the Justice Department has sought comment on a potential sliding compliance schedule whereby a percentage of movie screenings offering close captioning and video description would increase on a yearly basis from 10% in the first year until 50% in the fifth year. Thereafter, all showings of at least one half of the movie screens at the theater would need to offer captioning and video description. Additionally, the Department is seeking input on

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<sup>4</sup> See Department of Justice, Civil Rights Division, Nondiscrimination on the Basis of Disability; Movie Captioning and Video Description, 75 Fed. Reg. 43467 (July 26, 2010).

whether the calculation of the number of movies to be captioned and video described should be based upon the number of screens located in a particular theater facility, the number of screens owned by a particular movie theater company, or the number of different movies being screened in a particular theater facility.

Other questions concern whether captioning and video described movies should begin on the day of their release at the theater or later, and whether movie theater owners and operators should have the option of using open captioning as an alternative to other captioning requirements. Finally, the Department has solicited comments as to whether any category or type of movie theater should be exempted from regulation, such as drive-in theaters or small entities and independent movie houses.

#### Accessible Equipment and Furniture

The third Advance Notice of Proposed Rule Making issued by the Department of Justice under Title III pertains to the accessibility of equipment and furniture used in programs and services provided by public accommodations.<sup>5</sup> Although some types of fixed equipment and furniture are explicitly covered by the existing ADA standards, there are no specific provisions in the current regulations governing the accessibility of equipment and furniture that are not fixed. Accordingly, to ensure equal opportunity of access for all services and programs of a public accommodation, the Justice Department has invited comments on mandating accessibility standards for the following types of equipment and furniture:

- Medical equipment and furniture, including medical examination and treatment

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<sup>5</sup> See Department of Justice, Civil Rights Division, Nondiscrimination on the Basis of Disability by State and Local Governments and Places of Public Accommodation; Equipment and Furniture, 75 Fed. Reg. 43452 (July 26, 2010).

tables and chairs, accessible scales, radiological diagnostic equipment, lifts, infusion pumps, rehabilitation equipment, ancillary equipment, and hospital beds and gurnies;

- Exercise equipment and furniture;
- Accessible golf carts;
- Beds in guest rooms of hotels and motels, nursing homes and other care facilities, and other places of public accommodation;
- Electronic and information technology, including kiosks, interactive transaction machines, point of sale devices, and automated teller machines.
- Other types of equipment and furniture such as pool chairs that permit individuals who use wheelchairs to enter a pool, computer terminals in public libraries, and access to television in public accommodations such as hotels, hospitals, nursing homes and other care facilities.

### Cruise Ships

Recent ADA rulemaking initiatives are not limited to the Justice Department. On July 6, 2010, the U.S. Department of Transportation (“DOT”) issued ADA regulations to protect the rights of passengers with disabilities aboard passenger vessels, such as cruise ships.<sup>6</sup> Unlike the new accessibility regulations of the Department of Justice, DOT had not previously issued final rules for accessible passenger vessels. Under the new DOT final rule, disabled passengers cannot be denied access to vessels, charged extra for accessibility-related services, or be required to furnish their own attendants. The rule takes effect November 3, 2010. Additionally, DOT is seeking public comment on additional topics concerning regulations dealing with emotional support animals and mobility aids of persons with disabilities.

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<sup>6</sup> See Department of Transportation, Final Rule, Transportation for Individuals with Disabilities; Passenger Vessels, 75 Fed. Reg. 38878 (July 6, 2010).

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If you have any questions about these federal agency initiatives or would like to learn more about the new ADA Accessibility Standards and the other initiatives by the Justice Department and Department of Transportation to promulgate additional accessibility standards, please contact Jonathan Mook at [jmook@dimuro.com](mailto:jmook@dimuro.com).