

MARSH

## Facility Management Compliance with the ADA

Midwestern Higher Education Compact (MHEC)



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### Agenda

- ADA History and Background
- ADA Structure and Applicability
- ADA Enforcement
- Advantages and Disadvantages of the ADA
- ADAAG
- Role of Consultants
- Summary/Questions

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### ADA History

- Signed into law July 26, 1990 by George H. W. Bush
- ADA Amendments Act of 2008 signed by George W. Bush (ADAAA)

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### ADAAA Intended to:

- Provide broader protections for disabled workers
- Reverse court decisions deemed by Congress to be too restrictive
- Delineates "major life activities"
- Adopts 2010 ADA Standards for Accessible Design
- Effective March 15, 2011
- Compliance required for new construction and alternations on March 15, 2012.
- Between 9/15/2010 and 3/15/2012, covered entities may choose between 1991 Standards, Uniform Federal Accessibility Standards (UFAS) and the 2010 Standards.

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### Key Considerations

- ADA is a complaint-driven law
- Most complaints are generated by individuals with disabilities, their families or disability-rights organizations.
- Private lawsuits can be filed directly in federal courts by those who believe their civil rights have been violated.
- ADA does not have an inspection mechanism analogous to OSHA and relies on entities to proactively comply.
- ADA is a civil rights law and not a building code.

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### ADA Sections

Title I	Employment
Title II	Public Services and Transportation
Title III	Public Accommodations
Title IV	Telecommunications
Title V	Miscellaneous Provisions

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### Title I

- Employers may not discriminate against a person with a disability in hiring or promotion if the person is otherwise qualified for the job.
- Employers must provide reasonable accommodation to persons with disabilities, including such steps as job restructuring and modification of equipment.



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### Title II

- Subtitle A prohibits state and local governments from discriminating against persons with disabilities. (Based primarily upon the Rehabilitation Act of 1973 – Section 504)
- Subtitle B provides for accessibility to public transit buses, rail lines, and bus and rail stations.



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### Title III

- Persons with disabilities are to be provided accommodations and access equal to or similar to, that available to the general public.



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## Title IV

- Companies offering telephone service to the general public must offer telephone relay service to persons who use telecommunications devices for the deaf (TDDs) or similar devices.



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## Title V

- Discusses relationships with other regulations.
- Prohibits retaliation and coercion.



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## Title II vs Title III

- Public entities are not subject to Title III of the ADA, which covers only private entities. Conversely, private entities are not subject to Title II.
- Unlike private entities under Title III, public entities are not required to remove barriers from each facility, even if removal is readily achievable.
- A public entity must make its programs accessible.
- Physical changes to a building are required only when there is no other feasible way to make the program accessible.
- Public entities may choose between ADAAG and UFAS for new construction and alternations.



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## New Construction and Alterations

- Public entities must ensure that newly constructed buildings and facilities are free of architectural and communication barriers that restrict access by individuals with disabilities.
- When a public entity undertakes alterations to an existing building, it must ensure that the altered portions are accessible.
- The ADA does not mandate retrofitting of existing buildings to eliminate barriers.
- Public entities may choose between two technical standards for accessible design:
  - UFAS
  - ADA Title III

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## What is a Disability?

- To be protected under the ADA, you must have, have a record of, or be regarded as having a substantial impairment that significantly limits or restricts a major life activity.
  - Hearing
  - Seeing
  - Speaking
  - Walking
  - Breathing
  - Performing manual tasks
  - Caring for one self
  - Learning
  - Working

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## What are not considered Disabilities?

- Environmental, cultural, and economic disadvantages
- Homosexuality and bisexuality
- Pregnancy
- Physical characteristics
- Common personality traits
- Normal deviations in height, weight or strength

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## ADA Enforcement

- Litigation
- Amicus briefs (Guidance when DOJ not involved)
- Consent decrees (negotiated settlement on or after action filed)
- Formal settlement agreements (suit not filed, fairly common for public entities)
- Informal settlements
- Mediation (Key Bridge Foundation receives referrals of Title II and III complaints.)



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## ADA Enforcement

- For Title II complaints, the individual may file a complaint with the DOJ and/or file a private lawsuit, seeking injunctive relief, money damages and reasonable attorney fees.
- For title III complaints, action can include private suits and DOJ suits.
  - **Private Suits**—Injunctive relief and attorney fees but no money damages.
  - **DOJ Suits**—Injunctive relief, money damages and possibly civil penalties (\$50,000/\$100,000)



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## Filing a Complaint

- In general, complaints must be filed within 180 days of the alleged discrimination.
  - **EEOC**—Employment/Title I
  - **DOJ**—Accessibility/Titles II and III



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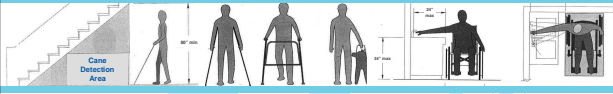
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## Advantages and Disadvantages



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## Intended Positive Outcomes

- Heightened awareness of challenges faced by the disabled
- Increased employment/self-sufficiency of disabled
- Removal of physical and procedural barriers
- Morally the right thing to do

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## Actual Adverse Impacts

- Reduction in employment rate for disabled
- Increased cost of implementation
- Serial complainants

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### Crusading Advocates or Shakedown Artists

- Increasing instances of plaintiffs filing multiple suits, using a small group of lawyers
- Cost of settlement often less than legal defense expenses with very few exceptions, no real barrier to serial litigation
- In California, the UNRUH Civil Rights Act adds monetary damages to the attorney fees allowed by the ADA



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### Accessibility

- ADAAG provides barrier removal guidance for both public (Title II) and private (Title III) entities.
- Triggers:
  - Existing facilities when barrier removal is “readily achievable” (Title III)
  - New construction (Titles II and III)
  - Alterations (Titles II and III)



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- All state and local government entities with 50 or more employees that intended to undertake “structural changes” to achieve compliance with Title II to develop by 7/26/92 a transition plan.
- Transition plans are required when state or local governments are required or choose to make structural changes to comply with ADA.



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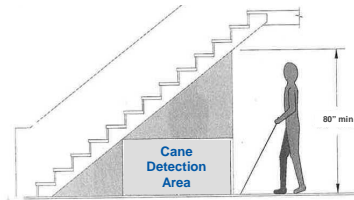
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### Head Room [4.4.2]

Circulation paths must provide at least 80 inches of vertical clearance. Otherwise, fixed barriers detectable by canes must define areas with less clearance. Gates, rails, curbs and other fixed elements such as planters, can serve as barriers. This is important at open stairways and along sloped walls.



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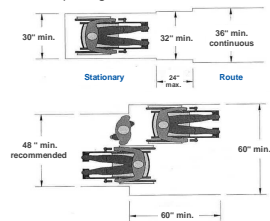
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### Wheelchair Passage Width [4.2.1]

A minimum width of 30 inches is generally sufficient for stationary space. Additional clearance is needed for maneuvering and sway. A clear width of at least 48 inches (recommended but not required) allows for comfortable flow for people who use wheelchairs and people who are ambulatory. Space at least 60 inches wide is the minimum width that allows passage of two wheelchairs.



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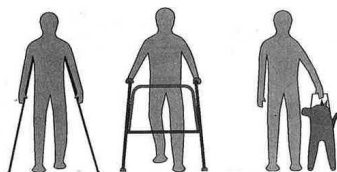
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### Passing Space [4.2.2]

A continuous clear width of 36 inches is the minimum needed by people who use walking aids or service animals.



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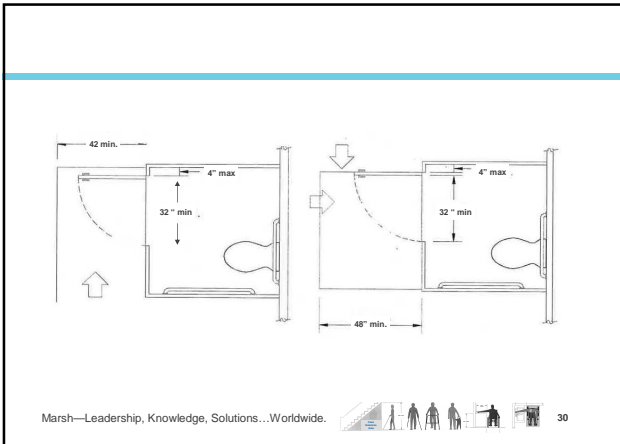
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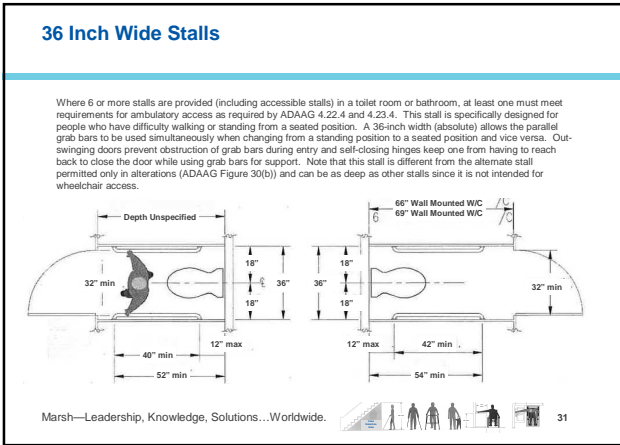
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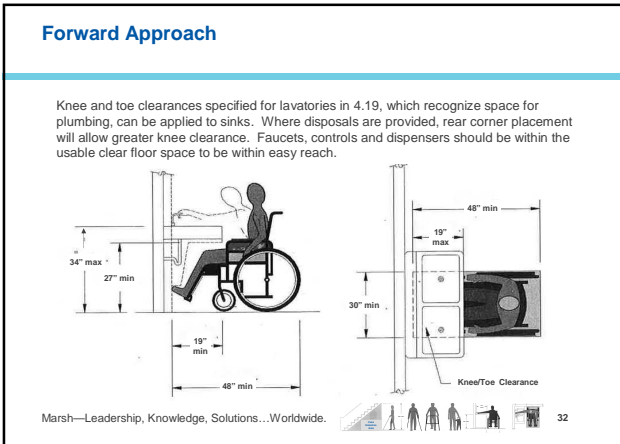
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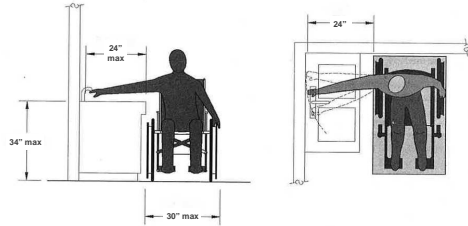
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## Side Approach

Side reach depth is important to consider in the design and location of sinks. Sinks located in corners may not be fully within reach and the space to the rear of the side approach space cannot be reached.



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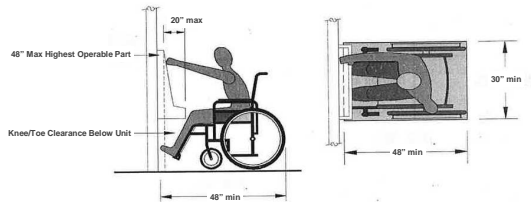
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## Forward Approach

A maximum height of 48 inches is required for a forward reach. Clear floor space must be provided to the face of the unit since the seated forward reach does not extend much beyond the toes. Toe/knee clearance below the unit makes this reach easier by allowing a closer approach.



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## Role of Consultants

- Attorneys
- Inspectors
- Reasonable accommodation resources (Title I)

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## Title II Recommendations

- Self evaluation of all programs, activities, services and related policies and practices (Due 1/26/93—retention for 3 years if 50 employees)
- Identify any physical barriers
- Develop transition plan for structural modifications (plan due 7/26/92, modifications due 1/26/95)
- Self evaluation and transition plans must be posted publicly if 50 or more employees.
- Designate at least one employee responsible for coordinating ADA compliance efforts if 50 employees or more.
- Adopt and publish grievance procedures (grievance/resolution procedures are not sole recourse for complainant).

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## Excellent References

- **www.ada.gov**
  - “Guidance on the 2010 ADA Standards for accessible design”
  - “Checklist for readily achievable barrier removal”
  - “ADA Accessibility Guidelines for Buildings and Facilities (ADAAG)”
  - “ADA Title II Technical Assistance Manual”
- **ADAAG Manual—A guide to the Americans with Disability Act Accessibility Guidelines** (U.S. Architectural and Transportation Barriers Compliance Board, July 1998)
- **Boma International's ADA Compliance Guidebook**—A checklist for your Building (Building owners and Managers Association International)

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- Summary
- Questions



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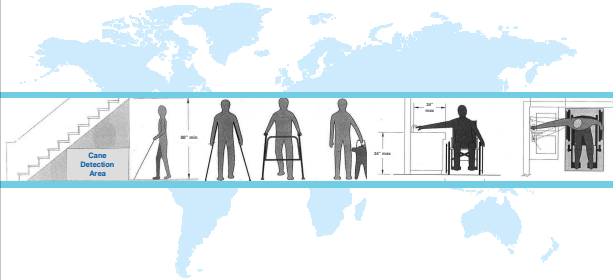
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