

**CITY OF NEW ORLEANS
CHIEF ADMINISTRATIVE OFFICE**

POLICY MEMORANDUM NO. 94

AUGUST 24, 1992

TO: All Departments, Boards, Agencies and Commissions

FROM: Leonard D. Simmons, Jr., Chief Administration Officer

SUBJECT: IMPLEMENTATION OF AMERICANS WITH DISABILITIES ACT
(ADA) OF 1990

1. PURPOSE.

The purpose of this memorandum is to announce the implementation of the Americans with Disabilities Act (ADA) of 1990 by the City of Orleans for employees and citizens.

2. BACKGROUND.

P.L. 101-336 was signed into law by President George Bush on July 26, 1990. It was passed pursuant to extensive lobbying by disability rights organizations during the 1980's. The previous Rehabilitation Acts of 1973, Section 503 and Section 504, pertained primarily to federal contractors, subcontractors, and recipients of financial assistance. Basically, the provisions of the ADA are viewed as enforcing the Fourteenth Amendment by eliminating overt or covert discriminatory practices emanating from the conducting of public sector or commercial activities. It is estimated that some 43,000,000 Americans have one or more physical or mental disabilities. This represents about one-sixth (1/6) of the American population.

3. COVERAGE.

- a. As in other types of civil rights legislation that have been passed, the ADA addresses the elimination of discriminatory practices in such critical areas as Employment (Title I), Public Services (Title II), Public Accommodations and Services operated by private entities (Title III), Telecommunications (Title IV) and Miscellaneous (Title V). The ADA applies to both the private sector and the public sector.
- b. The ADA broadly defines a "disability." It is considered "a physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarded as having had such an impairment." Major life activities include the following; caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. In addition persons who have known

relationships or associations with individuals who have disabilities are covered by the ADA in the areas of employment and public accommodation.

- c. This definition does not include current illegal use of drug psychoactive substance use disorders resulting from current illegal drug use, on-the-job alcohol abusers, sexual behavior disorders, compulsive gambling, kleptomania, and pyromania.
- d. The Equal Employment Opportunity Commission (EEOC) and the U.S. Attorney General will be the primary enforcing agencies. The EEOC has issued regulations for Title I, inclusive of consequential penalties, for monitoring ADA compliance and for filing charges. The U.S. Department of Justice has issued regulations for Title II.

4. SPECIFIC TITLES – TITLE I EMPLOYMENT.

- a. For the first time, there is a single uniform federal ban on disability-based discrimination covering all but the smallest employers.
- b. All aspects of employment are regulated by this act. An employer cannot engage in disability-based discrimination against qualified persons in the following areas: job applications/procedures; compensation; benefits; training; advancement; termination; and, other terms and conditions of employment. Employers are prohibited from execution of contracts or other relationships with entities that may engage in disability-based discrimination.
- c. An employer must provide reasonable accommodation of the disability if so indicated by the employee or applicant and such accommodation is not an undue hardship upon the employer.
- d. “Undue Hardship” refers to any accommodation that would be unduly costly, expensive, substantial, or disruptive, or would fundamentally alter the nature or operation of a business or service. However, the ADA requires employers to incur more than just de minimis costs in order to accommodate the disabled.
- e. Posters announcing ADA requirements will need to be posted in conspicuous work site locations readily accessible to the public and employer’s work force.
- f. The employer’s medical examinations must meet specific requirements. Applicants’ and employees’ medical records must be stored separately personnel records. Medical records are extremely confidential. Disclosure is limited to supervisors and managers who must be cognizant of work restrictions or accommodations, personnel rendering medical or other assistance in emergency situations, and governmental officials’ investigating ADA complaints.

5. SPECIFIC TITLES – TITLE II – PUBLIC SERVICES.

- a. State and political subdivisions cannot deny disabled persons of public services, programs, or activities. The salient areas affected would be accessibility of buildings, roadways, communication processes, and transportation barriers enabling a person to participate in the program, etc. The governmental entity must provide auxiliary aids and services for disabled persons to participate in all services, programs, and activities under the auspices of a public entity.
- b. The ADA provisions for this title parallel the Rehabilitation Act of 1973. The City is currently in compliance with Sections 503 and 504 of the Rehabilitation Act of 1973.
- c. A department and an agency must assess its current policies, practices and services. Such formal assessment must be completed by January 226, 1993. Even activities and services provided by all types of contracts must be reviewed. Such items to be assessed are the following, but not limited to, physical facilities, communication processes with the public, participants of programs, or use of services such as licensing requirements. Copies of all finalized formal plans will be sent to the Chief Administrative Office by February 1, 1993.
- d. The evaluation process will address immediate modification of current practices or policies not complying with the ADA. Self-assessments must be documented and kept on file for at least three (3) years. Notification must be given to the public about these evaluations. Interested parties must be given the opportunity to submit comments.
- e. Self-assessment needs to be performed only for those activities, etc., which were not subject to the Rehabilitation Act of 1973. Any structural changes deemed necessary for compliance will be established in a transition plan.
- f. Communications with disabled persons is regulated by Title II. Disabled persons must be given opportunities to engage in regular and emergency services and programs via TDD (Telecommunication Devices for the Deaf), computer modems, or equally effective telecommunication systems.

6. OTHER TITLES – TITLES III, IV, AND V.

- a. Title III and Title IV involve public accommodations and services, and telecommunications respectively. These regulations do not seem applicable to a governmental entity at this time.

- b. The provisions of Title V are a hodgepodge of related topics to the ADA, but unrelated to each other in this particular section.

7. COMPLIANCE PROCEDURES.

- a. Two (2) committees have been established to ensure the City's compliance with the ADA. These committees are comprised of various City personnel from departments and agencies whose programs and operations are most representative of the ADA's impact. Committee I on employment practices will consist initially of the following departments: the Chief Administrative Office (Personnel Management and General Services Division; the City Civil Service Department; and, the Law Department. Committee II on public services will consist of several departments and agencies. The Property Management Director will head Committee II. Selected departments and agencies will be notified of selection to this committee via separate written communications from the Chief Administrative Officer.
- b. CAO Policy Memorandum NO. 54 (Revised) will be considered as complementing the City's ADA policy statement. All departments, boards, agencies and commissions should have designated EEO representatives pursuant to CAO Policy Memorandum No. 54 (Revised). Revised data should be submitted to the Chief Administrative Office as to department/agency EEO personnel involved in EEO activities as the departmental/agency's representative. Needed information is the employee's name, class of work, office address, and office telephone number. This person will work with the Chief Administrative Office in the resolution of all EEO employee grievances inclusive of alleged ADA violations.
- c. The grievance procedures basically will be the same ones outlined in this office's Policy Memorandum NO. 54 (Revised). That policy memorandum cites procedures for both employees and citizens. The grievance forms attached to current CAO Policy Memorandum No. 54 (Revised) should be replaced with those attached to this policy memorandum. Minor language revisions have been made to reflect ADA implementation.
- d. Any questions concerning possible legal ramifications as consequences of ADA provisos should be addressed to the City Attorney's Office, Fifth Floor, City Hall, or telephone 565-6200.
- e. Any state or local laws addressing disabilities, which exist concurrently or are enacted pursuant to the ADA, AND which set more stringent standards for providing services and programs, and employment opportunities for disabled persons will prevail over the federal ADA.

8. ENFORCEMENT.

- a. Title I, Employment, will be enforced by the local federal district office of the Equal Employment Opportunity Commission (EEOC) and the U.S. Attorney General.
- b. Title II, Public Services, will be enforced by the U.S. Attorney General and the U.S. Secretary of Transportation.

9. TRAINING.

- a. Regularly scheduled informational sessions will be held for departmental and agency directors and deputy directors at the regularly scheduled monthly meetings. These meetings will update and supplement ADA data as it develops.
- b. Personnel officers and other managerial and administrative personnel will be scheduled to attend training sessions to be conducted jointly by the Chief Administrative Office and the City Civil Service Department.
- c. Once administrative and managerial personnel attend CAO/Civil Service Department-sponsored training sessions, then the department/agency will be responsible for the in-house training of its employees who are involved in ADA activities.

10. GENERAL COMMENTS ON UNINTENTIONAL TITLE I DISCRIMINATION.

- a. There should be caution as to what constitutes essential job functions for a class of work. Job structure should be such that major job activities in no way adversely affect a person with a disability.
- b. Performance evaluations should not discriminate on the basis of disability or perpetuate the discrimination of others who are subject to or who exercise common administrative control.
- c. Persons who are qualified to hold a job and who themselves have failed to claim a disability should not be denied employment opportunities because of a known relationship with a disabled person, e.g., such as a disabled spouse.
- d. If an otherwise qualified person with known physical and mental limitations asks for reasonable accommodations, then the employer's failure to provide such without defensible declaration of "undue hardship" could be reviewed as ADA violations.
- e. Qualification standards or other similar types of selection criteria that fail to reflect essential job functions should not be used.

- f. Entering into contracts with companies or persons that subject the City to prohibited ADA discrimination must be avoided.

11. GENERAL COMMENTS ON UNINTENTIONAL TITLE II DISCRIMINATION.

- a. Programs and services should be available to all those who want to use or participate in them. This means that programs and services will need to publicize that assistance is available to the disabled upon request by the individual.
- b. Such assistance may take form of the following: Telecommunications Devices for the Deaf (TDD); signing interpreters; readers; taped text or other effective methods of making visual materials available to those with visual impairments; acquisition or modifications of equipment or devices; and, other similar services and actions.
- c. When informational brochures on City services such as recreation programs, health services, welfare assistance, etc., are printed, they should include a statement of non-discrimination such as:

“The City of New Orleans is complying with The Americans with Disabilities Act of 1990 and does not discriminate against individuals with disabilities. For information call (504) ___-___ or TTY/Voice (504) 586-4475.”

- d. Departments and agencies conducting public hearings and meetings must ensure that notices of public hearings and meetings shall include the following statement:

“The meeting site is generally accessible to disabled persons. If you are disabled and need assistance to participate, please call (504) ___-___ or TTY/Voice (504) 586-4475.”

*The department, board, agency, or commission responsible for conducting the public hearing or meeting will provide its telephone number so that disabled persons can call to obtain assistance/information regarding the meeting.

- e. All letterhead, informational pamphlets, notices of public hearings, and meetings should display prominently the words “Equal Opportunity Employer” at the bottom of the document of communication. These words must appear in conjunction with any other statements of non-discrimination cited in this memorandum or other statutory required non-discrimination statements for various programs or activities.

- f Public entities are required to disseminate sufficient information to applicants, employees, and other interested persons to inform them of their rights. Requirements may include publication of information in handbooks, manuals, and pamphlets that are distributed to employees or to the public, use of posters in service centers and other public places, and even television or radio broadcasts aired as public service announcements. The notices must comply with requirements for communication with the sight-impaired, hearing-impaired, and other disabled individuals.
- g In addition, public entities must furnish adequate information and signage at inaccessible entrances to facilities, to direct disabled individuals to accessible entrances or to a location where they can obtain information about accessible facilities.

12. PROCEDURES.

- a. Appointing Authorities shall distribute this memorandum to all persons responsible for personnel procedures in a department or agency.
- b. A copy of this memorandum along with a copy of the CAO Policy Memorandum No. 54 (Revised) shall be displayed publicly in each departmental personnel section responsible for maintaining and for administering personnel policies and procedures. Also, a copy of this memorandum shall be posted in the same location as the poster mentioned in the following paragraph.
- c. When posters are received from the EEOC, the Chief Administrative Office will notify departments and agencies that the posters may be obtained from the Chief Administrative Office.
- d. Immediately, the physical facilities should be assessed for any type of impediments which limit access or functions of disabled employees and the public. Areas which seem to be out of compliance should be cited. Departments and agencies should determine what is readily achievable and associated costs being estimated.

13. STANDARD SPECIFICATIONS FOR MAKING BUILDINGS AND FACILITIES ACCESSIBLE TO AND USABLE BY DISABLED PERSONS AND TRANSITION PLANS.

- a. Municipal buildings and facilities must meet certain standards which make the buildings and facilities used by the public and the employees accessible and functional by all disabled persons. Previously, the standards addressed non-ambulatory and semi-ambulatory disabilities, and disabilities of incoordination and aging.

- b. The current standards are found in the Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities published by the U.S. Architectural & Transportation Barriers Compliance Board, 1111 18th Street., N.W., Suite 501, Washington, D.C. 20036-3894—Area Code (202) 653-7834 V/TDD or Area Code (202) 653-7863 Fax. Other recognized standards are the Uniform Federal Accessibility Standards.
- c. Departments and agencies should coordinate all non-employment assessment activities with the Property Management Department and the CAO-Capital Projects Section. The City is required to modify only those items which exceed requirements of the Rehabilitation Act of 1973, Sections 503 and 504.
- d. These informal assessments needed completion by July 26, 1992. Once needs are established, then a transition plan must set forth the steps required to complete any necessary structural changes to existing facilities. If the entity already has completed a transition plan under Section 504, then the new plan needs only to supplement it.
- e. Where structural changes in existing facilities are required, those changes must be made by January 26, 1995. No matter whether other structural changes to existing facilities are being made, a schedule for providing curbed ramps or other sloped areas where pedestrian walks cross curbs must be provided.
- f. The plan needs to identify physical obstacles in the public entity's facilities that limit accessibility of its programs or activities for individuals with disabilities.
- g. The plan needs to describe, in detail, the methods that will be used to make the facilities accessible.
- h. The plan needs to specify the schedule for coming into compliance, and specify the steps to be taken during each year of the transition period.
- i. The plan needs to identify the departmental or agency official responsible for implementation of the plan.

14. FORMAL SELF-EVALUATION

- a. Under Title II, state and local governments must identify and must correct any policy or practice that is inconsistent with the ADA's non-discrimination requirements. The formal evaluation must be completed no later than January 26, 1993.
- b. The review must include opportunities for public comment. Any public jurisdiction that conducted a similar self-evaluation under Section 504 may

limit its new self-evaluation to programs not addressed in the original review. It will be the department's/agency's responsibility to issue salient, public notification to the community that public input is elicited.

- c. Jurisdictions with fifty (50) or more employees must keep the self—evaluation on file for at least three (3) years. The self-evaluation must include:
 - (1) A list of interested persons consulted;
 - (2) A description of the areas examined and any problems identified; and,
 - (3) A description of any modifications made.
- d. All copies of these formal evaluations must be filed with the Chief Administrative Office, Personnel Management and General Services Division, by February 1, 1993. However, departments and agencies will submit drafts of preliminary formal evaluations by October 1, 1992, to the Chief Administrative Office. Committees I and II will review these initial formal assessments. Committees then will advise departments and agencies of necessary modifications or will recommend other procedures to comply with the ADA.
- e. Committee I will address all phases of employment practices. Such salient topics will include the review and the monitoring of all personnel policies, the developing of the in-house ADA training curricula, and developing procedures for making reasonable accommodations with respect to employment practices. These areas are not inclusive of the scope of this committee, but depict general activities in which committee members will be involved.
- f. Committee II will address all phases of public services. The accessibility of current programs and services to the public will be considered. Physical facilities to be renovated, constructed, or altered in any manner will be under the auspices of this committee. Furthermore, the actual operation of programs and services meeting ADA guidelines and reasonable accommodation requests not related to employment practices will be included in this committee's scope.

15. MISCELLANEOUS

- a. Departments and agencies should think of how to handle emergency evacuation plans. Items to be considered are the following: know who are the disabled employees; make sure they have means to recognize an evacuation alert; how to handle a disabled citizen if there is an emergency; and, what special equipment will be needed for the evacuation process.

- b. Departments and agencies will need to take steps to remove medical information from employees' files. Items which should not appear in individual employees' files are pre-employment and medicals conducted during employment, substance abuse screenings, medical records or other related medical documents as prescriptions, or worker's compensation claims. Doctors' certificates obtained as consequences of existing City Civil Service Rules and Regulations may remain in an individual's personnel file. Any other medical items which may be questionable as to being retained in an employee's file should be approved by the City Attorney's Office. That office can be contacted at 565-6200.
- c. Only supervisors or managers who have a need to know medical data in case of emergencies or emergency medical personnel should be apprised of the person's disability.
- d. Departments and agencies should review all contracts and leases to make sure the agreements do not directly or indirectly violate the ADA.
- e. Departments and agencies should become familiar with items generally considered as "reasonable accommodation" of a disabled person's request. A list is attached to this policy memorandum. It should not be considered as an all encompassing listing, but a basic representation of what may be requested. An employer, however, is not required to incur "undue hardship" to accommodate someone.
- f. No medical information may be asked for during an interview of an applicant. A job applicant cannot be asked if he or she is an individual with a disability. The employer may not ask about the nature or severity of a disability. The employer yet may ask the applicant whether or not he or she has the ability to perform job-related functions. A medical exam can be required only after an offer of employment is made to a job applicant and prior to the applicant's beginning employment duties and if medical examinations are required for all positions in this class of work.
- g. The City's substance abuse policy is permitted by the ADA. It will remain in effect.
- h. All programs and services provided by departments and agencies must be accessible and offer disabled persons opportunities to participate in such endeavors.
- i. Persons who incur a temporary impairment are covered by the ADA as long as the condition meets the definition that a major life activity is limited. (Refer to Section 3 (b) of this policy memorandum). Thus, someone with a broken leg seemingly would be covered because his/her ability to walk is impaired.

16. REASONABLE ACCOMMODATION

- a. A listing of possible items which can be used as satisfying reasonable accommodation requests is attached to this policy memorandum. This listing is not inclusive, but a sample of what ADA guidelines and advocacy groups consider representative of reasonable accommodation.
- b. Copies of any reasonable accommodation requests (both Title I and Title II) received by a department or agency should be sent to Personnel Management and General Services Division of the Chief Administrative Office. Copies of these requests should be forwarded within three (3) days of receipt by a department or agency.
- c. An employing department or agency has a responsibility to inform employees and applicants of its duty to make reasonable accommodations. However, the duty to accommodate generally is not triggered until an employee or an applicant requests a specific accommodation.
- d. Reasonable accommodation should be viewed as a problem-solving approach. Usually, the individual with the disability will know precisely what accommodations that he or she needs to perform a job, to apply for employment, or to participate in programs and services. As individual is entitled to reasonable accommodation if (s)he meets the ADA definition of “a qualified individual with a disability.”
- e. Reasonable accommodation should concentrate on the ability to perform essential job functions or to receive equal benefits and privileges of employment or to ensure equal opportunity in the application process. In considering an accommodation, the focus should be on the abilities and limitations of the individual-not the particular physical or mental condition qualifying the individual for coverage under the ADA.
- f. Departments and agencies will be requested for reasonable accommodations pertaining to programs and services (Title II). The accessibility requirements under Title II are established in the United States Department of Justice regulations. That entity has an Office on the Americans with Disabilities Act.
- g. The City’s Committee II will be coordinating reasonable accommodation requests for programs and services unrelated to employment practices. It is advisable that changes or modifications to programs and services conform to standardized guidelines. A single accommodation should be analyzed and should be implemented as an item that could meet future requests, or be expanded to a group of individuals rather than just an individual.

17. REVIEW CAO POLICY MEMORANDUM NO. 54 (REVISED)

- a. While this policy memorandum formally announces the ADA, it supplements the City's overall promulgation of its commitment to equal opportunities for its employees and the public. Appointing Authorities are urged to remind their staffs of the provisions of CAO Policy Memorandum No. 54 (Revised). It established overall EEO/Affirmative Action procedures for the City. Any references using the word "handicap" should now have the words "disabled" or "disability" substituted in lieu of any references to the words "handicap" or "handicapped."

18. LEGAL ADVICE.

- a. Departments and agencies should contact the City Attorney's Office anytime that there are questions about the ADA's causing possible legal actions.

19. INQUIRIES.

- a. Questions concerning employment practices for Classified Service Personnel should be addressed to the City Civil Department at 565-6790. Questions concerning employment practices for Unclassified Service Personnel should be addressed to the Personnel Management and General Services Division of the Chief Administrative Office at 565-6550 or 565-6511.
- b. Questions concerning physical facilities' meeting ADA compliance should be addressed to the Capital Projects Section of the Property Management Department at 565-6040. Questions concerning any of the above topics plus those questions about programs and services administered by department or agency should be addressed to the City Attorney's Office at 565-6200.

Leonard D. Simmons Jr.
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LDS/JMR/jl

Enclosures: Reasonable Accommodations Listing (Samples)
Employee's EEO Grievance Procedure
Employee's Grievance Form (CAO Form I)
Citizen's Grievance Procedure

