

CITY OF NEW ORLEANS
CHIEF ADMINISTRATION OFFICE

POLICY MEMORANDUM NO. 94 (R)

April 16, 2019

TO: All Departments, Boards, Agencies, and Commissions

FROM: Gilbert Montano, Chief Administrative Officer 

SUBJECT: AMERICANS WITH DISABILITIES ACT (ADA) OF 2016

I. PURPOSE.

Over the past twenty-seven years, the United States Department of Justice Civil Rights Division has published amendments and revisions to the Americans with Disabilities Act of 1991. The purpose of this memorandum is to provide a policy update for the aforementioned revisions.

A. DEFINITIONS.

1. *Disability.* Having a physical or mental impairment which substantially limits one or more major life activities, having a record of such an impairment or being regarded as having had such an impairment.

Physical or mental impairment. Any physiological disorder or condition, cosmetic, disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs, cardiovascular; reproductive, digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as intellectual developmental disorder, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

- a. *Major life activities.* Functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
- b. *Record of such impairment.* History of, or has been misclassified as having a mental or physical impairment that substantially limits one or more major life activities even though one may not have a disability.
- c. *Regarded as having an impairment.* Physical or mental impairment that does not substantially limit major life activities but that is treated as an impairment by a recipient as constituting such a limitation; has physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or has none of the impairments defined above but is treated as having such impairment.

2. *Illegal use of drugs.* Possession, use or distribution of drugs which are unlawful and defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).
3. *Manually powered mobility aids.* Includes but is not limited to walkers, crutches, canes, braces, or other similar devices designed for use by individuals with mobility disabilities, in any areas open to pedestrian traffic.
4. *Other power-driven mobility device.* Any mobility device powered by batteries, fuel, or other engines, whether or not designed primarily for use by individuals with mobility disabilities and used by individuals with mobility disabilities for the purpose of locomotion. Examples include golf cars, electronic personal assistance mobility devices (EPAMDs), such as the Segway® PT.
5. *Reasonable accommodations.* Includes making existing facilities used by employees readily accessible to and usable by individuals with disabilities.
6. *Safe harbor.* Provision in which an entity is not required to make changes to meet the 2010 Standards if the facility was in compliance with the 1991 Standards or the Uniform Federal Accessibility Standards (UFAS) as of March 15, 2012. The provision remains in effect until the entity decides to alter a facility for reasons other than the ADA.
7. *Undue hardship.* Refers to any accommodation that would be unduly costly, expensive, substantial, disruptive, or would fundamentally alter the nature or operation of a business or service.

B. BACKGROUND.

President George Bush signed Public Law 101-336 on July 26, 1990. The previous Rehabilitation Act of 1973, Sections 503 and 504, pertained primarily to federal contractors, subcontractors, and recipients of financial assistance. The ADA is a comprehensive civil rights law for people with disabilities, enforcing the Fourteenth Amendment by eliminating overt or covert discriminatory practices emanating from conducting public or commercial activities.

On September 15, 2010, the Department of Justice published the revised regulations for Titles II and III of the Americans with Disabilities Act of 1990 (ADA). The new standards set minimum scoping and technical requirements for newly designed, constructed, or altered State and local government facilities, public accommodations, and commercial facilities to be readily accessible to and usable by individuals with disabilities. Specifically, the revisions address waiver of implementation if an entity is able to demonstrate that it is structurally impracticable to meet the accessibility requirements. The ADA consists of four titles: Employment (Title I), Public Services (Title II), Public Accommodations and Services (Title III), Telecommunications (Title IV), and Miscellaneous (Title V).

C. COVERAGE.

The City of New Orleans¹ shall not discriminate, exclude from participation, deny benefits, or otherwise subject any applicant, employee, or resident to discrimination on the basis of disability under any program or activity operated, contracted, or agreed upon for by the City.

1. Covered disabilities include physical or mental impairment; such as orthopedic, visual, speech, or hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual developmental disorder, emotional or mental illness, specific learning disabilities, Human Immunodeficiency Virus (HIV) disease, tuberculosis, drug addiction, or alcoholism.
2. Coverage does not include homosexuality, bisexuality, transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from current illegal use of drugs.
3. An employee shall not be denied health services, or services provided in connection with drug rehabilitation or treatment, on the basis of the current illegal use of drugs if the individual is otherwise entitled to such services.
4. Coverage does include the use of drugs taken under the supervision of a licensed health care professional, authorized by the Controlled Substances Act or other provisions of Federal law, including when the employee:
 - a. Has successfully completed a supervised substance abuse treatment program or has been completely rehabilitated and no longer engaging in the illegal use of drugs,
 - b. Is participating in a supervised rehabilitation or treatment program and is no longer engaging in the illegal use of drugs; or
 - c. Is erroneously regarded as engaging in the illegal use of drugs; the City may request drug testing only to ensure the individual is no longer engaging in such use.

II. TITLE I EMPLOYMENT - EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

Applies to employers with 15 or more employees and prohibits employment discrimination against qualified individuals with disabilities. The U.S. Equal Employment Opportunity Commission is responsible for enforcement of this section.

¹ The City of New Orleans is a municipality of the State of Louisiana and this policy applies to the City as an entity. No parts of this policy should be construed to apply to the acts of individual citizens and/or businesses operating in the City of New Orleans.

- A. The City shall not engage in disability-based discrimination against qualified persons in the following areas: job application procedures, hiring, compensation, benefits, training, advancement, termination, and other terms and conditions of employment.
- B. The City will not knowingly participate in a contractual or any other relationships that may subject qualified disabled applicants or employees to discrimination.
- C. The City shall provide reasonable accommodations to people with disabilities unless the accommodations pose an undue hardship for the City. For a list of reasonable accommodations please see **Appendix A**.
- D. The City shall not make disability-related inquiries or require medical examinations at pre-offer, post-offer, and during employment. Medical records must be stored separately from personnel records and available only to supervisors or managers, personnel rendering medical assistance in emergency situations, and governmental officials investigating ADA complaints.
- E. Human Resources is responsible for employment policies and practices that affect the hiring and retention of workers with and without disabilities. Therefore, the implementation of employment provisions of disability nondiscrimination legislation is a function of human resource professionals.
 - 1. Employee reasonable accommodations request – An employee may request reasonable accommodations through their department supervisor. Depending on the severity of the disability, the supervisor may request a physician review. Once reasonable accommodations have been approved or denied, the supervisor must complete the Resolution of Reasonable Accommodation Request along with the Reasonable Accommodation Information Reporting Form. **See Appendix B for Employee Reasonable Accommodation Request Form and Appendix C for Physician's Form. Appendix D includes the Supervisor's Resolution of Reasonable Accommodation Request and the Information Reporting Forms.**
 - 2. Employee ADA discrimination complaint - If an employee feels he/she has been subjected to discrimination on the basis of disability, he/she may file a formal complaint. Employee ADA discrimination complaints may only be filed after an employee has requested a reasonable accommodation and the request has been denied or modified to the employee's dissatisfaction. Please refer to City of New Orleans **Policy Memorandum 141 (R), Employee Discrimination Complaint Form**. The employee discrimination complaint must be filed within five working days of the reasonable accommodation request denial or modification.

III. TITLE II PUBLIC SERVICES.

Applies to State and local governmental entities, and, in subtitle A, protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by State and local governmental entities. The Department of Justice is responsible for enforcement of this section.

- A. The City shall designate at least one ADA Administrator to manage efforts to comply with this law.
 - 1. The ADA Administrator shall conduct complaint investigations, i.e., non-compliant or any actions prohibited by law.
 - 2. The ADA Administrator's name, office address, and telephone number must be available to the public.
 - 3. The ADA Administrator shall provide guidance to the public in reference to ADA guidelines and address the public's ADA grievance complaints. See **Appendix E** for the residents and public ADA Grievance Procedures.
- B. The City shall institute a Mayor's Advisory Council (MAC) for Citizens with Disabilities. The MAC represents people with disabilities in accordance with the Americans with Disabilities Act to the Mayor, the City Council, the United States Department of Justice, Civil Rights Section and persons in the City of New Orleans.
- C. The City shall not directly, indirectly, or through contractual, licensing, or other arrangements, on the basis of disability, exclude the public or residents from participation, deny benefits of the services, programs, or activities that may be misconstrued as discriminatory.
- D. The City shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and used by persons with disabilities.
- E. The City shall not discriminate against, coerce, intimidate, threaten, or interfere with any individual for opposing a practice deemed unlawful.
- F. The City is not required to provide individuals with disabilities personal devices; such as wheelchairs, hearing aids, eye glasses, readers, or auxiliary aids.
- G. **Service Animals.** The City shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability, except for when the animal is out of control and the animal's handler does not take effective action to control it and/or the animal is not house broken.

1. Service animals include a dog or miniature horse that is individually trained to do work or perform tasks for the benefit of an individual with disabilities.
 2. Service animals shall be under the control of its handler. The service animal shall have a harness, leash, or other tether unless the handler is unable to do so because of a disability or interference. Other handler effective means of control should also include voice and signals.
 3. The City shall not be responsible for the care or supervision of a service animal.
 4. The City may ask if the animal is required for disability and what work or task the animal has been trained to perform. The City shall not require documentation; such as proof that the animal has been certified, trained, or licensed as a service animal.
 5. Individuals with disabilities shall be permitted to enter all areas open to the public with their service animal.
 6. The City shall not require an individual with a disability to pay a surcharge or comply with other requirements not generally applicable to people without pets. An individual with a disability may be charged for damages caused by their service animal.
- H. **Mobility Devices.** The City shall permit individuals with mobility disabilities to use wheelchairs and manually-powered mobility aids.
1. The City shall not ask an individual using a mobility device questions about the nature and extent of the individual's disability.
 2. The City may ask a person using a mobility device to provide credible assurance that the mobility device is required for a disability. Acceptable forms of assurance include: valid State-issued disability parking placard or card, other State-issued proof of disability, or verbal representation, not contradicted by observable fact.
 3. The City shall determine whether a particular power-driven mobility device can be allowed as a reasonable modification.
- I. **Ticketing.** The City shall provide tickets for accessible seating to individuals with disabilities at City related events, where tickets are sold or distributed for assigned seating. The City shall provide guidance on the sale of tickets for accessible seating, the sale of season tickets, the hold and release of accessible seating to persons other than those who need accessible seating, ticket pricing, prevention of the fraudulent purchase of accessible seating, and the ability to purchase multiple tickets when buying accessible seating. The City shall also require a venue operator to accommodate an individual with a disability, who acquired inaccessible seating on the secondary ticket market, only when there is unsold accessible seating for that event.

- J. **Direct Threat.** The City is not required to permit an individual to participate in or benefit from the services, programs, or activities when that individual poses a direct threat to the health or safety of others. The City shall determine whether the individual poses a direct threat by conducting an individualized assessment, based on reasonable judgment.
- K. **Program Accessibility.** The 2010 Standards also contain requirements for recreational facilities that were not addressed in the 1991 Uniform Federal Accessibility Standards or UFAS. These include swimming pools, play areas, exercise machines, court sport facilities, and boating and fishing piers. Because there were no previous accessibility standards for these types of facilities, safe harbor does not apply. The program access rules do apply and the 2010 Standards must be followed when structural change is needed to achieve program access.
1. **Existing Facilities.** The City shall operate each service, program or activity so that these are readily accessible to and usable by individuals with disabilities.
 2. **New Construction and Alteration.** Facilities must be designed and constructed in a manner that is accessible to and usable by individuals with disabilities, if the construction commenced after January 26, 1992.
 3. **Communications.** The City shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.
 - a. The City shall not require an individual with a disability to bring another individual to interpret for him or her.
 - b. The City shall not rely on an adult accompanying an individual with a disability to interpret or facilitate communication except:
 - (1). Where an emergency involving an imminent threat to the safety or welfare of an individual or the public when there is no interpreter available; or
 - (2). Where the individual with a disability specifically requests that the accompanying adult interpret or facilitate communications, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances.
 - (3). A public entity shall not rely on a minor child to interpret or facilitate communications, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.

IV. TITLE III PUBLIC ACCOMMODATIONS AND SERVICES.

Title III prohibits discrimination of public accommodations and services by requiring that such entities that are owned and/or operated by the City be available for use by people with disabilities. The Department of Justice is responsible for enforcement of this section.

V. TITLE IV TELECOMMUNICATIONS.

Title IV ensures that interstate and intrastate telecommunication relay systems are available for use by speech and hearing impaired individuals by utilizing City related services. The Federal Communications Commission is responsible for enforcement of this section.

VI. TITLE V MISCELLANEOUS PROVISIONS.

1. The City of New Orleans will comply with the provisions outlined in Title V.
2. This does not apply to third-party non-city entities or individuals.

VII. NOTICE.

The City shall provide notice on an on-going basis to employees about their rights and the City's responsibility under the ADA. The notice shall be accessible to all employees, therefore it must be available in alternative formats upon request.

VIII. TRAINING.

Informational sessions will be held for departmental and agency directors, deputy directors, personnel officers and employees.

IX. INQUIRIES.

Questions concerning this policy may be addressed with the Chief Administrative Office at (504) 658-8600.

GM/PMRC/rth

Attachments