

Public Accommodations

October 2009

The federal Americans with Disabilities Act of 1990, the Americans with Disabilities Act Amendments Act of 2008, and the Montana Human Rights Act prohibit discrimination against people on the basis of their physical or mental disabilities by places of public accommodation. A public accommodation is a private entity or business that provides its services to the public. Public accommodations include hotels, restaurants, health care providers, legal offices, theaters, retail stores, and museums.

This discrimination can take various forms. It can occur through the failure to provide reasonable modifications in the way services are provided to accommodate persons with disabilities, such as failing to allow service animals to be present where animals are otherwise prohibited. It could also occur where services are denied based upon bias or prejudice against persons with mental or physical disabilities, such as the denial of medical services because a patient has tested HIV positive. It can also mean the failure to remove or alter physical barriers such as stairs or doors that are too narrow to allow a wheelchair to pass through. Only where it would require a fundamental alteration of the services provided by the public accommodation, create an unreasonable expense or undue burden, or where the removal of physical barriers is not readily achievable, can the public accommodation avoid making such changes.

The Uniform Federal Accessibility Standards are federal standards that were promulgated to provide the requirements to ensure that buildings are constructed to be physically accessible and comply with the ADA. The Standards require businesses to meet certain minimum standards such as scoping and technical requirements. For example, they require that a public accommodation have a certain minimum number of accessible parking spaces, that doors are sufficient width and height, and ramps and paths of travel are of a particular grade, width and length.

All construction in public accommodations since January 25, 1993 must comply with the Standards.

Those public accommodations that pre-date the ADA were required to remove architectural and communication barriers by January 26, 1992, if the removal was “readily achievable.” Even if removal is not “readily achievable” however, the public accommodation is still required to make its services available by an alternative accessible means, provided that is readily achievable.

What we do –

- Investigate complaints of discrimination in public accommodations
- Represent persons with disabilities to file complaints of discrimination by places of public accommodation
- Perform assessments to determine compliance with ADA Standards for Accessible Design

Commonly Asked Questions

1. **What is the definition of a disability in the ADA, ADAAA and the MHRA?** To state a claim under these provisions, a person must have a physical or mental impairment that substantially limits one or more major life activities; a have a record or history of that sort of impairment; or is regarded as or perceived as having such an impairment.
2. **Can a person without a disability state a claim for discrimination on the basis of disability by a public accommodation?** Yes, if that person is discriminated against because of the person's association with a person with a disability.
3. **Are buildings in existence prior to the passage of the ADA required to comply with the ADAAG?** While complying with the Standards is mandatory for all facilities built or altered after January 25, 1993, pre-existing facilities must "remove architectural barriers" to comply with the Standards, but only where such barrier removal is "readily achievable." However, even where such a change is not readily achievable, the public accommodation must make its services and facilities available through alternative means, provided those are "readily achievable." In addition, if the public accommodation remodels any part of the building, it must remodel to make it accessible.
4. **What is an architectural barrier?** An architectural barrier is a barrier that prevents an individual with a disability from readily accessing programs or services. Some architectural barriers include: doorways that are too narrow for wheelchair access; ramps that are too steep; and bathroom stalls that do not meet specific dimensions for wheelchair access.
5. **What is considered "readily achievable"?** The ADA defines readily achievable as "easily accomplishable" and "able to be carried out without much difficulty or expense." This involves a fact specific, case by case inquiry.
6. **Can a public accommodation such as an attorney deny services to a person with a hearing impairment by denying interpreter services?** A public accommodation is required to furnish auxiliary aids to ensure effective communication with persons with disabilities seeking their services. Although the person with the disability can request certain auxiliary aids, such as interpreter services, the public accommodation does not have to provide that particular aid, but must provide an aid that does ensure effective communication. The public accommodation can only deny this aid where doing so would require a fundamental alteration of the services provided or constitute an undue burden.

7. **Can health care providers deny treatment based upon a person's disability?** No, a health care provider cannot deny services on the basis of a person's disability. However, they can refer the patient to another provider if the health care provider does not provide the treatment for that patient's emergent need. For example, a provider cannot deny a patient treatment because the patient has paraplegia and is seeking treatment for the flu if that provider typically treats patients with the flu. However, a provider that does not treat cancer can refer a patient with cancer to another provider who does provide that treatment.

Legal complaints stating a violation of the ADA and ADAAG in public accommodations may be filed directly in state or federal court. Although it is not required that an individual be represented by legal counsel to file such a complaint, it is highly recommended.

Violations of the ADA and ADAAG in public accommodations may also be reported to the Department of Justice, <http://www.ada.gov/t3compfm.htm>. There is no requirement that a person be represented by legal counsel in these situations.

The Montana Human Rights Act also prohibits discrimination against persons with disabilities by public accommodations. If you believe that a public accommodation has discriminated against you on the basis of your disability in violation of the Montana Human Rights Act, this claim must be filed with the Montana Human Rights Bureau prior to filing the claim in state district court. You do not need an attorney to file a complaint. You must file your complaint within 180 days of when the alleged discrimination occurred. To do this, contact:

The Montana Human Rights Bureau (HRB)
P.O. Box 1728
Helena, MT 59624

406-444-2884 OR 800-542-0807
OR 406-444-0532 Voice/TDD

This is a brief summary of your rights to equal treatment by public accommodations. This is not a substitute for legal advice. If you have questions, please contact an attorney or call Disability Rights Montana at 1-800-245-4743 Voice/TDD.