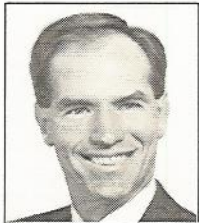


## ADA compliance still source of confusion

Businesses and the government are continuing to work out kinks surrounding the Americans with Disabilities Act.

Parts of the Americans with Disabilities Act which affect the private



### The ADA

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sector have been in effect for more than a year. Title III of the act, which affects any business open to the public, became effective Jan. 26, 1992. The first phase of Title I, which affects businesses that employ 25 or more employees, became effective July 26, 1992. Businesses with between 15 and 25 employees have until July 26, 1994, to be in compliance.

There still persists misinformation about the requirements of the ADA and a lack of knowledge concerning the new accessibility technical requirements, known as the ADA Accessibility Guidelines (ADAAG). The ADAAG was developed by the Architectural and Transportation Barriers Compliance Board and is a part of the Justice Department's Final Rule on the ADA. The ADAAG is the guide for all new construction and serves as the criteria in all ADA site/building surveys. (Interestingly, the state of Texas is proposing to adopt the ADAAG as the foundation for its technical accessibility requirements.)

As of June 30, the Equal Employment Opportunity Commission had

received 11,550 ADA Title I complaints since the law took effect.

Businesses need to remember that the ADA establishes rights for both employees and applicants. Applicants are frequently the source of the ADA complaint and charge.

Effective July 26, 1994, any business with 15 or more employees will need to ensure that applicants have access to the place where applications are made for employment, unless the business can demonstrate that to do so would result in an "undue hardship" on the operation of the business.

In addition to having accessible parking and access to the business to obtain an application, the business will probably need to have accessible toilet facilities. This would be necessary if toilet facilities are made available to applicants as a matter of courtesy or convenience. Disabled applicants cannot be denied the use of toilet facilities if those same facilities are made available to other applicants. This situation of addressing the needs of applicants is usually more difficult than dealing with the potential needs of an employee. In the case of an employee, it is the employee's responsibility to inform the employer of accommodations needed to perform his job. Frequently, these accommodations are not as costly as making modifications which are in accordance with the ADA Accessibility Guidelines. With applicants, on the other hand, the employer must be prepared for the widest possible range of disabilities.

Unfortunately for employers, it is Title I of the ADA which also has compensatory and punitive damages.

The Justice Department which is the enforcement arm of the government for Title III of the ADA, is investigating more than 1,000 Title III complaints. Under Title III, "public accommodations" are required to remove physical barriers to entering and using existing facilities when "readily achievable" to do so.

In a recent General Accounting Office (GAO) study the most frequently noted barriers included:

- heavy doors that barred entry to establishments;
- hotel rooms that lacked the required assistive listening devices, accessible showers, toilets and lavatories;
- high service counters in business establishments; and
- lack of raised numbers on elevators.

The GAO study also reported a notable lack of awareness of the ADA by business owners and managers. The GAO found that 31 percent were not familiar with the ADA, 47 percent did not know they were required to remove barriers before the effective date and 63 percent of the barriers removed were not consistent with the ADA Accessibility Guidelines.

Disability groups are becoming more aggressive in their campaign to enforce compliance with the ADA by local businesses. Numerous businesses in the San Antonio area have been sued alleging various violations of the ADA. From the indications, this trend will continue.

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