

## **READILY ACHIEVEABLE BARRIER REMOVAL: WHAT DOES IT MEAN 15 YEARS LATER?**

Robin A Jones, Director  
Great Lakes ADA and Accessible IT Center

- I. Introduction
- II. Definition of “Readily Achievable Barrier Removal”
  - a. "Easily accomplishable and able to be carried out without much difficulty or expense."
- III. What does it apply to?
  - a. Places of Public Accommodation
    - i. Does not apply to commercial facilities
    - ii. Does not apply to buildings owned by State and Local Governments (Title II)
    - iii. Does not apply to “employee only areas”
      1. Title I obligation for reasonable accommodation
  - b. Existing Facilities constructed prior to January 26, 1992 and those facilities that have not undergone alterations
- IV. Where is it referenced in the ADA Regulations?
  - a. 29 CFR Part 36 – Nondiscrimination on the basis of disability by Public Accommodations and in Commercial Facilities
    - i. 36.304 Removal of Barriers
    - ii. 36.305 Alternatives to Barrier Removal
- V. Relationship to other codes/Regulations
  - a. Building Codes do not contain provisions for buildings/facilities that are not undergoing renovation and/or additions
  - b. Some State Civil Rights Laws address existing facilities and barrier removal
- VI. Examples of barrier removal
  - a. Installing ramps;
  - b. Making curb cuts in sidewalks and entrances;
  - c. Repositioning shelves;
  - d. Rearranging tables, chairs, vending machines, display racks, and other furniture;
  - e. Repositioning telephones;
  - f. Adding raised markings on elevator control buttons;
  - g. Installing visual alarms;
  - h. Widening doorways or Installing offset hinges;
  - i. Eliminating a turnstile or providing an alternative path of travel;
  - j. Installing accessible door hardware;

- k. Installing grab bars in toilet stalls;
- l. Rearranging toilet partitions to increase maneuvering space;
- m. Installing lavatory pipes under sinks to prevent burns;
- n. Installing a raised toilet seat;
- o. Installing a full-length bathroom mirror;
- p. Repositioning dispensers in the bathroom (soap, towels, toilet paper, etc.)
- q. Creating designated accessible parking spaces (restriping the parking lot);
- r. Installing a paper cup dispenser in an accessible location near a water fountain that is inaccessible;
- s. Removing high pile, low density carpeting;
- t. Installing vehicle hand controls
- u. Etc.....this list is not exhaustive

VII. Determining what barriers need to be removed

- a. 4 Priority Areas
  - i. Access to the entrance including the path of travel from parking or other public access points (curb cuts, accessible parking spaces, signage, etc.)
  - ii. Access to the goods and services within the facility (widening doors, relocating materials to accessible locations, providing raised character and Braille signage, etc.)
  - iii. Access to the restroom facilities (widening of doors, toilet stalls, installation of grab bars, raised toilet seat, etc.)
  - iv. Other measures necessary to provide equal access to the facility (Cups at water fountain, installation of visual alarms, etc.)

VIII. Design Standards

- a. Alteration provisions of ADAAG vs New Construction Standards
- b. Deviations from the standards are allowed when it is not “readily achievable” to meet the standard unless they pose a significant risk to health and safety of others:
  - i. Steeper ramp
  - ii. Narrower doorway

IX. Determining “Readily Achievable”

- a. Nature and cost of the action;
- b. Overall financial resources of the site including number of employees, affect the cost has on operations and whether or not there are any health/safety concerns;
- c. Geographic separateness of facilities and administrative and/or financial relationship to any parent corporation;
- d. Overall financial resources and size of any parent corporation;

- e. Overall operations of the parent company including number of employees
  - f. Shared responsibility between landlord/owner and lessee and should be a negotiated issue as both parties has responsibilities.
- X. Alternatives to Barrier Removal
- a. Curb Service or home delivery
  - b. Assign staff to retrieve merchandise from inaccessible shelves/racks
  - c. Relocating activities to accessible locations (alternative meetings sites, home visit, etc.)
- XI. Planning for Barrier Removal
- a. Conduct a self-evaluation of barriers
    - i. Existing Facilities Checklist
    - ii. Barrier Removal Plan
  - b. Secure the services of an accessibility specialist/architect, etc.
    - i. Barrier Removal Plan
  - c. On-going obligation
    - i. Change of ownership
    - ii. Change of use
  - d. Use of Tax Credits
    - i. IRS code 44 –Disabled Access Credit
    - ii. IRS code 190 – Architectural and Transportation Barrier Removal Deduction
- XII. What is the consequence of not removing barriers?
- a. Loss of potential business
  - b. Complaints
  - c. Lawsuits
- XIII. What are the Courts Saying?
- a. “Drive-by” lawsuits
    - i. ADA Notification Act Proposal
      - 1. State legislation
- XIV. Conclusion
- XV. Questions and Answers