



# Got Your Car Keys? Ready? Here we go Again, Talking about Parking and the ADA

By  
Diego Demaya, J.D.  
And  
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### ADA Title III

- Covers all places of public accommodation, including:
- Restaurants
- Bars
- Grocery Stores
- Hotels
- Movie theaters



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### Title III Parking

- The 2010 ADA Standards for Accessible Design requires that individual parking facilities comply with minimum accessible parking requirements
- Applies to public, employee and restricted parking facilities equally



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## Minimum Accessible Parking Chart

[Table 208.2 Parking Spaces- from the 2010 Standards for Accessible Design](#)

| Total Number of Parking Spaces Provided in Parking Facility | Minimum Number of Required accessible Parking Spaces    |
|---|---|
| 1 to 25   | 1   |
| 26 to 50  | 2   |
| 51 to 75  | 3   |
| 76 to 100   | 4   |
| 101 to 150  | 5   |
| 151 to 200  | 6   |
| 201 to 300  | 7   |
| 301 to 400  | 8   |
| 401 to 500  | 9   |
| 501 to 1000   | 2 percent of total                                      |
| 1001 and over   | 20, plus 1 for each 100, or fraction thereof, over 1000 |

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## Rules of Thumb

- At least one out of every six accessible spaces must be van accessible
- Alteration of parking facilities require the addition of accessible parking spaces, while mere maintenance does not
- Accessible parking should be located closest to a building's accessible entrances

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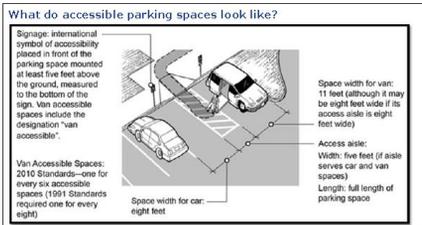
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## Accessible Parking Spaces

[Title II and Title III Revised Regulations: Accessible Parking](#)



[ADA National Network Accessible Parking Factsheet](#)

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### Valet Parking

- Accessible passenger loading zones must be available at accessible entrances in valet parking facilities



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### Separate Parking Facilities



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### Hospital Outpatient Facilities

- Minimum parking requirements are higher than the standard scoping table
- Minimum 10% of visitor and patient parking is required to be accessible parking
- Does not apply to independent doctor's office or stand-alone clinics



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### Outpatient Rehabilitation Facilities

- Higher than the outpatient hospital scoping requirements
- Minimum 20% of all patient and visitor parking is required to be accessible
- Applies to physical therapy facilities and rehabilitation facilities

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### Fair Housing and Parking

- A minimum 2% of all parking spaces serving covered dwelling units are required to be accessible
- If all 2% are reserved when someone first buys or rents, then additional accessible parking space is required under the same terms and on an accessible route to the dwelling



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### Accessible Parking as a Reasonable Accommodation

- Buyers and renters with disabilities may with disabilities request accessible parking spaces after they have moved in



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## Requesting an Accessible Space

- People with obvious disabilities are not required to provide documentation of disability
- People with hidden disabilities may be required to provide further proof of disability
- Person with the disability has the option to choose the location of the accessible space

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## Questions?



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## Integration is Another Main Theme of the ADA

- Integration of individuals with disabilities into the mainstream of society is fundamental to the purposes of the Americans with Disabilities Act;
- Accessible parking accomplishes minimal integration.



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### ADA Title II – Accessible Parking - I

- All activities, services, and programs of public entities are covered; e.g., activities of State legislatures and courts, town meetings, police and fire departments, motor vehicle licensing, and employment;
- Public entities may not refuse to allow a person with a disability to participate in a service, program, or activity merely because the person has a disability;
- They must provide programs and services in an integrated setting -- unless separate or different measures are necessary to ensure equal opportunity;
- They are required to make reasonable modifications in policies, practices, and procedures that deny equal access to individuals with disabilities -- unless a fundamental alteration in the program would result.

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### ADA Title II – Accessible Parking - II

Public entities must operate programs so that, when viewed in their entirety, are readily accessible to and usable by individuals with disabilities;

They may not place special charges or “surcharges” on individuals with disabilities to cover costs of necessary measures to ensure nondiscriminatory treatment; e.g., making modifications required to provide program accessibility or providing accessible parking in customer facilities;

They need not accommodate or modify to make a program or service more accessible if doing so causes undue burden or a fundamental alteration.

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### Illustration - I

- A local public school ropes off accessible and several regular parking areas adjacent to a football stadium for VIP parking. A mobility impaired war veteran using a wheelchair, who is parent to a child playing for one of the football teams, arrives and is unable to park. He is told to go and park at a facility over a block away that has available accessible parking. When the veteran gets there, there are no available accessible parking spaces as they have all been occupied. The parent files an OCR complaint alleging discrimination on the basis of disability.



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### Workplace Accessible Parking

- Q: We have an employee who is requesting a van accessible parking space because she uses a wheelchair. We do not have wheelchair accessible spaces in our parking facility. What obligations do we have regarding parking and employees with disabilities?



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### Parking as a Workplace Reasonable Accommodation - I



- The ADA prohibits discrimination on the basis of disability in all aspects of employment – including parking amenities;
- This applies to private and public employers covered by Titles I and II;
- Workplace Parking is a highly coveted benefit;
- Covered employers are obligated to duly consider a request for accessible parking by an employee with a disability;
- An accessible parking space may not be required if it causes undue hardship on business operation;

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### Examples of Possible Parking Accommodations - I

- Restriping additional accessible parking space as reasonable accommodation where available accessible spaces are continually occupied by other employees;
- Restriping accessible parking spaces where none were previously available;
- Assigning an accessible parking space reserved for a specific employee with a disability to prevent others from occupying the space;

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### Examples of Possible Parking Accommodations - II

- Allowing employee to use customer accessible parking if employee accessible parking is unavailable;
- Make other work-related adjustments if providing accessible parking is not possible, is inconsistent with a seniority system or a collective bargaining agreement, or parking privileges are not provided..

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### Title I Basics - I

- A person must have a "disability" to be protected by the ADA;
- A disability is defined as: a physical or mental impairment that substantially limits one or more major life activities; having a record of such an impairment; or being regarded as having such an impairment. See, 42 U.S.C. § 12102 (as amended by the ADA Amendments Act of 2008);
- Example: an employee who arrives late to work every day because of employer refusal to provide accessible parking, and who is penalized as a result, will suffer disability-based discrimination.

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### Affected Major Life Activities that might Justify need of an Accessible Parking Space

- Major life activities can include activities that the average person can perform without difficulty; e.g., walking, sitting, standing, lifting, reaching, seeing, hearing, speaking, breathing, eating, sleeping, performing manual tasks, caring for oneself, learning, thinking, concentrating, interacting with others, and working.
- Other affected life activities may include the operation of major bodily functions; e.g., functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions;
- **Example:** an impairment that substantially limits involuntary bodily functions can qualify as a disability depending on the effect that the impaired functions might have on work performance or use of parking amenities.

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### Legal Foundation of an Accessible Parking Accommodation

An accessible parking accommodation is based on an ADA-required number of non-exhaustive reasonable accommodations in connection with modifications to the work environment or adjustments in how and when a job is performed – including:

- making existing facilities accessible;
- job restructuring;
- part-time or modified work schedules;
- acquiring or modifying equipment;
- Modifying tests or how tests are taken, training materials, or policies;
- providing qualified readers or interpreters; and
- reassignment to a vacant position. (See, 42 U.S.C. § 12112(b); 42 U.S.C. § 12111(9); 29 C.F.R. § 1630.9; 29 C.F.R. § 1630.2(o))



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### Undue Hardship on Business Operation

- Employers are not obligated to provide reasonable accommodations if doing so imposes undue hardship on business operation.
- "Undue hardship" means significant difficulty or expense in light of the overall resources and circumstances of the particular employer.
- Undue hardship refers not only to financial difficulty, but to accommodations that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature or operation of the business. See, 42 U.S.C. § 12112(b); 42 U.S.C. 12111(10); 29 C.F.R. § 1630.2(p)

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### The Required Interactive Process - I

- Employers are required to engage in an "interactive process" with the individual making a request to determine appropriate reasonable accommodations.;
- This is where both work together to identify functional limitations resulting from the disability and potential accommodations that may help overcome impediments to performing essential job functions. See, 29 C.F.R. § 1630.2(o)(3).

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### The Required Interactive Process - II



- The ADA regulations make the “interactive process” the primary object of attention” in whether covered entities have complied with their obligations, and reject unreasonably scrutinizing the nature or duration of a disability. See, 29 C.F.R. 1630.1(c)(4); 29 C.F.R. 1630.2(j)(1)(iii);
- see also Brady v. Wal-Mart Stores Inc., 2nd Cir. No. 06-5486-cv (July 2, 2008) - Holding that Wal-Mart failed to engage in the interactive process for identifying a reasonable accommodation when it failed to engage with an employee it perceived to have a disability that compromised ability to work.

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### Illustration - I

Tom has a heart condition and wears a cardiac monitor. His doctor approved him to have an accessible parking permit because he can only walk a limited distance. He asks HR that he be allowed to park his car in accessible customer parking as a reasonable accommodation. He explained that customer wheelchair accessible parking is adjacent to the office facility, while employee parking is over a block away forcing Tom to experience physical hardship in the long walk.



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### Reasonable Accommodations are not Restricted to Performance of Essential Job Functions - I

- Court decisions and the EEOC recognize that employer obligations to furnish reasonable accommodations is not limited to accommodating essential job functions, but also ancillary functions important to achieving equal opportunity and access - such as commuting to and from the office;
- The Fifth Circuit Court of Appeals held that ADA language and implementing regulations demonstrate that a reasonable accommodation does not need to relate to the performance of essential job functions;
- The Court emphasized the ADA two-pronged definition of “reasonable accommodation.” First, “reasonable accommodation” includes “making existing facilities used by employees readily accessible to and usable by individuals with disabilities.” This prong is typically applied to require physical modifications to the workplace. The court noted that reserved on-site parking “would presumably have made the plaintiff’s workplace ‘readily accessible to and usable by’ the employee.

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**Reasonable Accommodations are not Restricted to Performance of Essential Job Functions - II**

- Second, the ADA provides a list of modifications, including but not limited to, job restructuring, modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, and states that "reasonable accommodation" includes "other similar accommodations" (citing 29 C.F.R. § 1630.2(o)(1));
- The court further noted that the EEOC implementing regulations state that providing a parking space may constitute a reasonable accommodation under certain circumstances (citing 29 C.F.R. pt. 1630 App., § 1630.2(o)).

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**Questions?**

Thank You!

For additional information or ADA Technical Assistance please contact us toll-free at: 800-949-4232



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