

QUESTIONS AND ANSWERS: ACCESSIBILITY REQUIREMENTS FOR EXISTING SWIMMING POOLS AT HOTELS AND OTHER PUBLIC ACCOMMODATIONS

INTRODUCTION

In 2010, the Department of Justice published updated regulations under the Americans with Disabilities Act (ADA). These regulations adopted the 2010 Standards for Accessible Design (2010 Standards), which, for the first time, contain specific accessibility requirements for a number of types of recreational facilities, including swimming pools, wading pools, and spas.

In January 2012, the Department issued guidance titled “ADA 2010 Revised Requirements: Accessible Pools—Accessible Means of Entry and Exit” to assist entities covered by Title III of the ADA, such as hotels and motels, health clubs, recreation centers, public country clubs, and other businesses that have swimming pools, wading pools, and spas, in understanding how the new requirements apply to them.

This Questions and Answers document provides answers to some common questions regarding requirements in the 2010 regulations and Standards as they apply to public accommodations with existing pools. While the document answers a large number of questions, one of our key goals is to emphasize the flexibility of the standards for existing swimming pools. Three points are especially important. The first is that in response to public comments, we have extended the compliance date until January 31, 2013. The second point is that under the ADA, there is no need to provide access to existing pools if doing so is not “readily achievable.” Providing access is not readily achievable if it would involve significant difficulty or expense. The third point is that the Department will not pursue enforcement of the fixed lift requirements against those who have purchased otherwise-compliant portable lifts before March 15, 2012 as long as they are kept in position for use at the pool and operational during all times that the pool is open to guests. In general, the Department plans to work collaboratively and constructively with all businesses that have questions about the meaning of the 2010 regulations and standards, with respect for their particular challenges, needs, and concerns, including the needs of small businesses that may be unfamiliar with the ADA.

1. What is the effective compliance date of the ADA standards for accessible pools?

The effective date of the 2010 Standards generally is March 15, 2012. However, and in response to public comments and concerns, the Department has extended the date for compliance for the requirements related to the provision of accessible entry and exit to existing swimming pools, wading pools, and spas to January 31, 2013.

2. What does the ADA require for accessibility of pools?

Title III of the ADA prohibits discrimination on the basis of disability by places of public accommodation, including many private businesses. Title III requires newly constructed and

altered business facilities to be fully accessible to people with disabilities, applying the ADA Standards for Accessible Design. In addition, Title III requires businesses to remove accessibility barriers in existing facilities when doing so is readily achievable.

The 2010 Standards require that *newly constructed or altered* swimming pools, wading pools, and spas have an accessible way for people with disabilities to enter and exit the pool. The Standards also provide technical specifications for when a means of entry is accessible, such as, for pool lifts, the location, size of the seat, lifting capacity, and clear floor space. You can see the 2010 ADA Standards at http://www.ada.gov/2010ADAstandards_index.htm.

For *existing* swimming pools built before the effective date of the new rule, the 2010 Standards provide the guide for achieving accessibility. However, full compliance may not be required in existing facilities (see question 4).

The 2010 Standards explain whether a newly constructed or altered pool needs to have one or two accessible means of entry and exit. Section 242 provides that large pools (pools with 300 linear feet of pool wall or more) must have two accessible means of entry and exit. One means of entry/exit must be a fixed pool lift or sloped entry; the other entry can be a transfer wall, transfer system, or pool stairs. Small pools (pools with less than 300 linear feet of pool wall) must provide at least one accessible means of entry/exit, which must be either a fixed pool lift or a sloped entry.

The 2010 Standards also provide details about what features an accessible means of entry or exit should have. Specifically, section 1009 addresses the location, size of the seat, lifting capacity, and clear floor space required for fixed pool lifts, as well as the requirements for sloped entries, transfer walls, transfer systems, and pool stairs. A copy of the 2010 ADA Standards is available at http://www.ada.gov/2010ADAstandards_index.htm.

The 2010 Standards require that new or altered wading pools have a sloped entry. New or altered spas must have at least one accessible means of entry, which may be a transfer wall, a transfer system, or a pool lift. *See* sections 242.3 and 242.4 of the 2010 Standards.

3. Does a community pool have to provide an accessible means of exit and entry?

Community pools that are associated with a private residential community and are limited to the exclusive use of residents and their guests are not covered by the ADA accessibility requirements. On the other hand, if a swimming pool/club located in a residential community is made available to the public for rental or use, it is covered under Title III of the ADA. If a community pool is owned or operated by a state or local government entity, it is covered by Title II of the ADA, which requires “program accessibility.” See http://www.ada.gov/pools_2010.htm.

REQUIREMENTS FOR EXISTING POOLS

4. My pool already existed before the effective date of the new rule. What am I required to do to provide pool access to customers with mobility disabilities?

The ADA requires businesses to make existing pools accessible only when it is "readily achievable" to do so. Readily achievable means that providing access is easily accomplishable without much difficulty or expense. The 2010 Standards provide the benchmark, or goal, for accessibility in existing pools. (See Question 2 for the 2010 Standards requirements for pools). However, owners of existing pools need to comply with the 2010 Standards only to the extent that doing so is readily achievable for them.

The 2010 Standards for pool lifts require lifts to be fixed and to meet additional requirements for location, size of the seat, lifting capacity, and clear floor space. Therefore, if a business can provide a fixed lift that meets all of the 2010 Standards' requirements without much difficulty or expense, the business must provide one. If no fully compliant lift is readily achievable for the business, the business is not obligated to provide a fully compliant lift until doing so becomes readily achievable. In addition, the business may provide a non-fixed lift that otherwise complies with the requirements in the 2010 Standards if doing so is readily achievable and if full compliance is not.

5. Are there any tax credits or deductions to help me comply?

Yes. To assist businesses with complying with the ADA, Section 44 of the IRS Code allows a tax credit for small businesses and Section 190 of the IRS Code allows a tax deduction for all businesses. The tax credit is available to businesses that have total revenues of \$1,000,000 or less in the previous tax year or 30 or fewer full-time employees. This credit can cover 50% of the eligible access expenditures in a year up to \$10,250 (maximum credit of \$5000). The tax credit can be used to offset the cost of undertaking barrier removal and alterations to improve accessibility; providing accessible formats such as Braille, large print and audio tape; making available a sign language interpreter or a reader for customers or employees; and for purchasing certain adaptive equipment. The tax deduction is available to all businesses with a maximum deduction of \$15,000 per year. The tax deduction can be claimed for expenses incurred in barrier removal and alterations. To learn more about the tax credit and tax deduction provisions, contact the DOJ ADA Information Line (at 800-514-0301 (voice); 800-514-0383 (TTY)).

6. What if I can't afford to install a fixed lift in my pool, or it would be difficult to do so?

In that case, installation is not required. If it is not readily achievable for a business to provide a fixed lift – that is, if it would be too difficult or expensive to make these changes – then a business may use other ways, such as a non-fixed lift, to provide access to the pool. If it is not readily achievable to provide access to the existing pool, even by way of a non-fixed lift, the business need not do so. Nonetheless, it should make a plan to achieve compliance with the pool access requirements when doing so becomes readily achievable.

7. What is the difference between a “portable” lift and a “fixed” lift?

The real issue is not whether a lift is “portable” versus “fixed,” but rather whether a lift is “fixed” versus “non-fixed.” A fixed lift means that the lift is attached to the pool deck or apron in some way. A non-fixed lift means that it is not attached in any way. Therefore, a portable lift that is attached to the pool deck would be considered a fixed lift. Thus, owners of portable lifts can fully comply with the access requirements by affixing their lifts to the pool deck or apron.

They are required to do so if that is readily achievable, except in certain circumstances discussed below.

8. How do I determine if it is readily achievable for me to install a lift in my existing pool?

Readily achievable means that providing access is easily accomplishable without much difficulty or expense. This is a flexible, case-by-case analysis, with the goal of ensuring that ADA requirements are not unduly burdensome, including to small businesses. The readily achievable analysis is based on factors such as the nature and cost of the needed action; all the financial, staff and other resources available to the business and any parent entity; and the impact on the operation of the site, including legitimate safety requirements that are necessary for safe operation.¹ Generally, a mere franchisor-franchisee relationship, where the franchisor does not own or operate the franchisee business, will not require consideration of the franchisor's resources in determining what is readily achievable.

This is the same standard that places of public accommodation have been using for all covered elements of existing facilities since 1992. Guidance on "Common Questions: Readily Achievable Barrier Removal" is available at <http://www.ada.gov//adata1.htm> (1996).

9. I already purchased a portable lift before March 15, 2012. Can I still use it?

Yes. If you have purchased a non-fixed lift before March 15th that otherwise complies with the requirements in the 2010 Standards for pool lifts (such as seat size, etc.), you may use it, as long as you keep it in position for use at the pool and operational during all times that the pool is open to guests. Because of a misunderstanding by some pool owners regarding whether the use of portable pool lifts would comply with barrier removal obligations, the Department, as a matter of prosecutorial discretion, will not enforce the fixed elements of the 2010 Standards against those owners or operators of existing pools who purchased portable lifts prior to March 15, 2012 and who keep the portable lifts in position for use at the pool and operational during all times that the pool is open to guests so long as those lifts otherwise comply with the requirements of the 2010 Standards. Generally, lifts purchased after March 15, 2012 must be fixed if it is readily achievable to do so.

¹ Specifically, in determining whether an action is "readily achievable," the following factors should be considered:

- 1) The nature and cost of the action;
- 2) The overall financial resources of the site or sites involved; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements necessary for safe operation, including crime prevention measures; or any other impact of the action on the operation of the site;
- 3) The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;
- 4) If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and
- 5) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

If a portable lift was purchased after March 15, 2012, the obligation to remove barriers is an ongoing one. If it becomes readily achievable to attach the lift to the pool at a later date you must do so. Manufacturers, for example, are providing kits to attach portable lifts.

10. I do not have a lift at my pool and it is not readily achievable to provide one now. Do I have to close the pool?

No. If accessibility is not readily achievable, the Department recommends that businesses develop a plan to provide access into the pool when it becomes readily achievable in the future. Because accessibility in existing facilities is an ongoing obligation, a covered entity must provide accessible features when it becomes readily achievable to do so.

11. I've decided that it is readily achievable to provide a lift, but the lift I ordered is on back order. Do I have to close my pool until the lift arrives?

No. A business in this situation should order and install a compliant lift and install it when it becomes available.

OTHER QUESTIONS

12. What if I have two pools or a pool and a spa? Can I share a lift between pools?

In new construction, each pool or spa must provide accessible entry and exit. For existing pools, whether each pool or spa must have its own lift (or other accessible means of entry) depends on whether it is readily achievable. If it is not readily achievable for a business to provide a lift at each pool or spa, it does not mean the inaccessible pool or spa must be closed. In these circumstances, the business should make a plan to purchase and install a compliant pool lift or other accessible entry when it becomes readily achievable to do so.

Sharing non-fixed pool lifts between pools can pose safety risks to swimmers with disabilities because if a lift has been moved to another pool, a person with a disability might be unable to get out of the pool. Sharing lifts between pools also requires people with disabilities to rely on staff assistance to find, move, and set up the lift each time.

13. If I can't provide a lift at every pool, do I have to close the one(s) that has no lift?

No. If it is not readily achievable to provide a lift at each pool, the inaccessible pool(s) may remain open.

14. Do I have to leave my pool lift out at poolside when my pool is closed?

No. Pool lifts are required to be available only when the pool is open and available to the public. If a pool is closed during the winter months or at night, the public accommodation is free to remove the lift from the pool and store it.

15. Can I store my lift and bring it out only when it is requested by a person with a disability?

No. A pool lift must remain in place and be operational during all times that the pool is open to guests. The ADA and its implementing regulations require equal and independent access for people with disabilities for all covered facilities (not just pools). Allowing covered entities to store lifts and only take them out on request places unnecessary additional burdens on people with disabilities. People with disabilities have long faced the challenges of dealing with portable accessibility features – e.g., staff are unavailable or too busy to help locate and set up the equipment, the equipment is missing, the equipment isn't maintained, or staff do not know how to safely set up the equipment. In addition, the ADA Standards specify that a lift must be located at the proper water depth and with the necessary space around it to maneuver a wheelchair. Moving a portable lift around raises the likelihood that the lift will be improperly located, making it difficult or dangerous to use.

16. I think a lift poses a safety risk at an unattended pool. I also have heard that my insurance rates will increase if I have a lift in my unattended pool. Can I consider safety risks?

The ADA allows businesses to consider “legitimate safety requirements” in determining whether an action is readily achievable, as long as the requirements are based on actual risks and are necessary for the safe operation of the business. However, a “legitimate safety requirement” cannot be based on speculation or unsubstantiated generalizations about safety concerns or risks. We note that businesses cannot rely on limitations on coverage or insurance rates as a reason not to comply with the ADA.

17. I've provided a pool lift. Do I have any further legal obligations?

Once an accessible means of entry to a pool, such as your lift, has been provided, it needs to remain available and in working condition while the pool is open to the public. Staff should also be trained so they will know how the lift works, where it is located, and how to operate and maintain it. For example, a pool lift that operates on batteries may need to be recharged periodically. To be sure that lift remains operable, staff should know how to charge the battery and be assigned to perform the task as necessary.

ADDITIONAL INFORMATION ABOUT THE 2010 STANDARDS

18. What is the Department's approach going to be to ensuring compliance with the new regulation pertaining to pool lifts?

As a general matter, the Department favors voluntary compliance with the ADA from covered entities. The Department seeks collaborative approaches. To achieve these objectives, the Department has a robust outreach and technical assistance program designed to assist businesses and State and local governments to understand their obligations under the ADA.

RESOURCES

19. If I have a question about the new requirements, where do I go?

The Department's wide-ranging outreach, education and technical assistance program is designed to assist businesses and State and local governments to understand their obligations under the ADA. Additional information about the ADA's requirements, including the 2010 ADA Standards, is available on the Department's ADA Website at www.ada.gov.

If you have questions and would like to speak to an ADA Specialist, please call the ADA Information Line at 800-514-0301 (voice); 800-514-0383 (TTY). Specialists are available Monday through Friday from 9:30 AM until 5:30 PM (Eastern Time), except on Thursday when the hours are 12:30 PM until 5:30 PM.

ADA experts are also available to present to conferences and training sessions through the ADA Speakers Bureau.