

Small Business Guidance on the ADA and NYC Disability Laws

Contents

Introduction	1
The Business Case for Accessibility	1
Disability Laws in New York City	2
Legal Rights and Obligations	3
If I Am Sued, What Can I Do?	3
Who Is Covered?	3
Who Can Bring a Complaint?	3
What Are the Obligations of a Business?.....	4
What Are Potential Costs (Damages)?	5
“Readily Achievable” Requirement and Small Business	5
Determining Readily Achievable Is a Fact-Specific Analysis	5
Readily Achievable and Technical Difficulty.....	6
20% Rules for Renovations	6
How to Identify Barriers to Remove and Developing a Plan	6
Developing a Plan Based on Priorities	6
New Construction and Renovations	7
Consider the Unique Features of Your Business.....	7
Don’t Forget about Maintaining Accessible Features.....	8
Parking Requirements.....	8
Tax Incentives	9
Communication Accessibility—Customer Service	9
Communicating Best Practices.....	9
Effective Communication.....	9
Digital Accessibility.....	10
Service Animals	11
Training Staff and Hiring People with Disabilities	11
Citations	12

Introduction

The success of small businesses is vital to New York City, our communities, and our neighborhoods. Many small business owners often feel overwhelmed with the array of disability issues and laws that may impact their business operations. This guidance document is meant to empower New Yorkers with information, resources, and know-how in order to comply with disability laws. This document, however, is not a substitute for legal advice or direction on how to apply specific accessibility standards and building codes to your small business. Please consult an attorney or licensed architect with specific questions or concerns.

Over the past few years, New York City's small businesses have seen a rash of both legitimate and illegitimate disability lawsuits.¹ The best defense against a lawsuit is a basic understanding of disability rights and obligations, as well as some knowledge of approaches to make your small business more accessible. Business owners will find that by updating their customer service practices or facilities with compliance in mind, they will not only reduce their potential legal exposure, but also make their businesses more accessible, inclusive, and profitable by reaching an expanded consumer base.

To find out more about the City's commitment to ensuring that New Yorkers with disabilities have access to the wide variety of programs and services it offers, read [AccessibleNYC](#), an annual report that highlights the many initiatives and policies the City has implemented to further inclusivity and accessibility in the areas of transportation, housing, employment, health, financial empowerment, access to city services, and education.²

The Business Case for Accessibility

According to the U.S. Census Bureau, nearly one in five Americans have a disability,⁴ and that number is expected to increase as baby boomers grow older and will need services and surroundings that meet their age-related needs.⁵

Similar trends are also occurring across the globe as the world population ages, and the 56 million tourists who visit New York City each year will similarly need surroundings that meet their needs.⁶ Studies show that once people with disabilities find a business where they can shop or get services in an accessible manner, they become repeat customers.⁷ According to the American Institute for Research, the total after-tax disposable income for working-age people with disabilities is about \$490 billion.⁸

People with Disabilities in New York City by Disability Type:

Hearing difficulty:	185,050
Vision difficulty:	191,437
Cognitive difficulty:	324,638
Ambulatory difficulty:	534,420
Total:	1,235,545

Data overlaps due to individuals self-reporting more than one disability status

Source: U.S. Census³

To find out more about the accessibility of local venues, visit the City's official accessible visitors' guide, at [NYCGO's Accessibility Guide Website](#), which contains original editorial content and an interactive filter to help New Yorkers and visitors find hotels, attractions, and restaurants that provide accessibility amenities.⁹

Disability Laws in New York City

The Americans with Disabilities Act (ADA), 42 U.S.C. § 12102, signed into law in 1990 by President George H. W. Bush, is a set of civil rights legislation that prohibits discrimination against people with disabilities. The purpose of the ADA is to “ensure that people with disabilities are given the basic guarantee for which they have worked so long and so hard. Independence, freedom of choice, control of their lives, the opportunity to blend fully and equally into the rich mosaic of the American mainstream.”¹⁰ To find out more about the ADA and its implementing regulations, visit the U.S. Department of Justice Civil Rights Section on Information & Technical Assistance on the Americans with Disabilities Act at ADA.gov.

The ADA, as amended, is divided into five sections (or titles). Title I affords people equal opportunity to employment; Title II affords people equal opportunity to participate in state and local government programs and services; Title III affords people equal opportunity to purchase goods and services; Title IV requires telephone and internet companies to provide relay services and closed captioning; and Title V contains a variety of provisions, including a prohibition against retaliation and coercion, and provisions related to illegal use of drugs and attorney fees.

Businesses generally fall under Title III of the ADA, which requires public accommodations to provide equal access to goods and services to customers with disabilities in an integrated setting.¹¹ The ADA lists 12 categories such as restaurants, movie theaters, schools, day care facilities, recreation facilities, and doctors' offices that must comply with the ADA.¹²

The New York State Human Rights Law (NYSHRL), N.Y. Exec. Law § 296, and New York City Human Rights Law (NYCHRL), New York City Administrative Code § 8-101, provide additional protections to individuals with disabilities. Both New York State and City laws are more expansive than the ADA. For example, some temporary disabilities may not be covered under the ADA; however, courts have indicated their willingness to interpret the NYSHRL and NYCHRL much more broadly.¹³

Although not a civil rights law, also applicable is the [New York City Building Code](#) and more specifically [Chapter 11](#)¹⁴ of the building code, which provides local code requirements for accessibility when construction work is undertaken.

In order to find the ADA Standards for Design, visit [ADA.gov's Law and Regulation section](#).¹⁵ Also, visit the New York City Mayor's Office for People with Disabilities (MOPD)'s [Know Your Rights](#) section to find other federal, state, and local disability laws.¹⁶

Legal Rights and Obligations

If I Am Sued, What Can I Do?

If you are sued, you should take the complaint seriously and hire an attorney for consultation. Contacting the New York City Bar Association's Legal Referral Service is one way to locate an attorney at citybarlegalreferral.org or call 212-626-7373 (English); 212-626-7374 (Español).¹⁷ Additionally, you can contact the ADA National Network (1-800-949-4232) and the U.S. Department of Justice (800-514-0301 (voice); 800-514-0383 (TTY)) hotlines for additional information, resources, and mediation opportunities that may be available to you. You may also want to visit the [Small Business section](#) of MOPD's website for additional information¹⁸ and utilize the [New York City Small Business Services \(SBS\) free legal assistance](#)¹⁹ by calling 311 or 212-639-9675. Additionally, many trade organizations give information and advice on where to find legal assistance or help with solving ADA complaints.

Who Is Covered?

Title III of the ADA covers businesses (places of public accommodation) that provide goods and services.²⁰ All businesses that provide goods or services are covered by Title III regulations, regardless of size. Also covered are landlords to business or franchise holders.²¹

In a lease a business/tenant can assign responsibility for ADA compliance. For example, a landlord may contract to assign their ADA compliance responsibilities to a tenant.²² A third-party plaintiff may still bring an ADA complaint against both, but a landlord could then bring an indemnification claim against the tenant.²³ Also, landlords are still responsible for compliance involving common areas (if there are any). New York courts have held that where a tenant is bound by a provision in a lease agreement to make modifications, the tenant must make such modifications which are "readily achievable."²⁴ Small business owners should review their lease agreements to determine responsibilities. A small business owner or tenant may want to consider negotiating favorable provisions.

Who Can Bring a Complaint?

Generally, ADA complaints can be brought (1) by the public/customers against a small business (public accommodation) via private lawsuit or (2) through enforcement by the U.S. Department of Justice. A third possibility is for complaints to be filed with city and state human rights offices under local state and city human rights laws.

Under the third possibility, claims can be filed with the [NYC Commission on Human Rights](#)²⁵ or the [New York State Division of Human Rights](#).²⁶ Once a complainant files a complaint with the NYC Commission on Human Rights, the complainant cannot file a complaint based on the same facts with any other court or agency—including the New York State Division of Human Rights.²⁷

Review the Lease Agreement For:

- Provisions assigning which party will pay the cost of compliance (indemnity)
- Will one or both parties state that the building complies with the ADA based on a survey?
- If renovations are being made, will one party agree to pay for fully complying with the ADA?
- Who will maintain insurance that will cover and defend ADA claims?

What Are the Obligations of a Business?

Small businesses are required to provide customers with disabilities equal access to goods and services in an integrated setting.²⁸ Equal access is achieved when the outcome is using goods and services in a way that is equivalent (not identical) to other customers. Reaching an equivalent outcome may require businesses to take actions that remove common barriers to access.²⁹ These barriers are generally thought of as physical (i.e. steps to front entrances). However, there are actions necessary to meet the needs of people with a wide range of disabilities which go beyond physical accessibility.

Small businesses under the ADA are required to provide these four general requirements:

1. **Existing Facilities:** The removal of architectural barriers and communication barriers that are structural in nature in existing facilities when it is “readily achievable” to do so:
 - a. “Readily achievable” is defined as easily accomplishable and able to be carried out without much difficulty or expense.
2. **New Construction and Alterations in Existing Facilities:** All new construction and parts of the facility being renovated must comply with the 2010 ADA Standards for Accessible Design and the NYC Building Code.
3. **Provisions of Auxiliary Aids and Services:** Businesses must provide “effective communication” such as interpreters, Braille or large print, etc.
4. **Modification of Policies and Procedures:** Businesses should make reasonable modifications to allow people with disabilities access to their goods and services. A common example is the modification of a “no pets policy” to allow a person with a disability to utilize a service animal in a restaurant.

However, no business is required to take any action that would result in fundamental alteration of the nature of their goods or services or result in an “undue burden,” which is defined as significant difficulty or expense.³⁰ Businesses are also not required to take any actions that would result in a direct threat to the health and safety of their employees or customers.³¹ For example, if an individual, who is blind, visits a home improvement store and wants to know the specifications of a product that he is interested in purchasing, it would be suitable for a sales associate to read to him the specs listed on the information card for the product. However, if the store has a lot of customers and this sales associate is the only employee on the sales floor, it may be an undue burden for the sales associate to spend an extended period of time, reading the specs to the customer³². Another example would be if a patient, who is deaf, brings his own interpreter to his doctor’s appointment, without first consulting with the doctor, and then later bills the doctor for the interpreter’s services. Since the patient failed to give the doctor an opportunity to consult with him and determine if an auxiliary aid would be needed, the doctor may not be required to pay for the interpreter’s services. *Id.*

In determining whether an individual poses a direct threat to the health and safety of a business’s employees or customers, the business must make an individualized assessment to ascertain the nature, duration, and severity of the risk, as well as the probability that the potential injury will occur.³³

What Are Potential Costs (Damages)?

Under the ADA regulations, monetary relief generally is not available; the only potential liabilities are for injunctive relief and attorney fees.³⁴ However, under New York State and City Human Rights laws, additional fines and penalties are available.

“Readily Achievable” Requirement and Small Business

A business is required to remove physical barriers even if it was built prior to the passage of the ADA in 1990. However, existing buildings are not held to the same standard as newly constructed or renovated buildings. Business owners in existing facilities are only required to make changes that are “easily accomplishable without much difficulty or expense,” that is, “readily achievable.”

Determining what is “readily achievable” is the responsibility of each individual business and will vary greatly from business to business. What would be considered “too expensive” would be very different for a large chain of retail stores than for a small business.³⁵

It’s a common misunderstanding that older buildings are protected by a “grandfather clause.” This is not true. All facilities regardless of when built are required to meet the “readily achievable” standard, that is, make accessibility changes that are easy to do.³⁶ If businesses were built or altered in compliance with the 1991 standards, they do not have to upgrade to the 2010 standard until they undergo a renovation; this is called “safe harbor.” For example, the 2010 standards lower the mounting height for light switches. However, if a business was previously built in compliance with the 1991 standards, the business is not required (under Safe Harbor) to now lower them to the 2010 Standard requirements.

Determining Readily Achievable Is a Fact-Specific Analysis

Determining if barrier removal is readily achievable should be based on a case-by-case analysis. The U.S. Department of Justice provides the following factors to consider:³⁷

1. The nature and cost of the barrier removal.
2. The overall financial resources of the site or sites involved, including:
 - a. the number of employees at the site;
 - b. the effect on expenses and resources;
 - c. legitimate safety requirements necessary for safe operation, including crime prevention measures;
 - d. 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 to any parent corporation or entity.

Using these criteria, a business could decide a change would have a negative impact on operations and profits, and therefore, not be “readily achievable.”³⁸ Also, important to remember is that even when a business can show that barrier removal is *not* “readily achievable,” the business should consider other accessible options and make its goods and services available through alternative methods, if those methods are readily achievable. The U.S. Department of Justice provides several examples of

There Is NO “Grandfather Clause” under the ADA

All facilities regardless of when built are required to meet the “readily achievable” standard, or make accessibility changes that are inexpensive and easy to do. However, if an existing facility has features that comply with the 1991 ADA Standards it does not have to upgrade unless there is a renovation, remodel, or addition. This is referred to as “safe harbor.” (28 CFR §36.304)

alternatives to barrier removal, such as providing curb service or home delivery, retrieving merchandise from inaccessible shelves, or relocating business activities to accessible locations.³⁹

Readily Achievable and Technical Difficulty

Along with cost and business operation, the technical feasibility and structural practicability of barrier removal may be taken into consideration. However, when barrier removal is limited because of technical infeasibility or structural impracticability, the business should still consider if it is possible to make some types of change that will improve access, even if it falls short of meeting the 2010 ADA standards.⁴⁰ Recently, New York's highest court, the Court of Appeals, rejected a property owner's claim of structural impracticability in refusing to remediate and construct an accessible entrance. In *Marine Holdings LLC v. New York Commission on Human Rights*, 2018 NY Slip Op 03303 [31 NY3d 1045], despite the property owner's engineer providing evidence including risk of sinkage, need for complicated pin shoring, and potentially hazardous conditions caused by gas lines, the court nonetheless found for the plaintiffs and ordered the property owner to make its entrance accessible.⁴¹ According to the U.S. Department of Justice, technical infeasibility and structural impracticability are rare and cost is never a factor in determining its application.⁴² Compliance with the ADA is not all or nothing, and should be carried out to the "maximum extent feasible," which is described under ADA regulations as applying only in occasional cases "where the nature of an existing facility makes it virtually impossible to comply fully with applicable accessibility standards through a planned alteration. In these circumstances, the alteration shall provide the maximum physical accessibility feasible."⁴³

20% Rules for Renovations

Up to 20% of the cost of a renovation to a primary function area must be used toward bringing existing barriers into compliance. This generally includes changes such as making the doorway width accessible, installing a ramp to the front entrance, or restriping a parking lot to create accessible spaces. If there are no features that still need to be made ADA compliant, the business would not be required to spend any additional funds toward accessibility renovations.⁴⁴

How to Identify Barriers to Remove and Developing a Plan

A good resource to help small businesses identify barriers for removal is the [ADA Checklist for Existing Facilities](#) produced by the New England ADA Center.⁴⁵ Once barriers have been identified, a business should then plan ways to remove the easily achievable barriers based upon the aforementioned criteria. For many businesses, this ongoing process of reaching full compliance by making readily achievable changes will take several years. The ADA recognizes that a few small businesses will never have the resources to bring their building(s) into full compliance. However, these businesses should continue to do as much as they can to become more accessible, based upon changes in resources over time.

Developing a Plan Based on Priorities

ADA guidance suggests that a small business develop a long-term plan for bringing its facilities into compliance. But, for many small business owners, there is confusion on where to begin. Should the cheapest and easiest be first, or should the difficult and most expensive?

The [City Bar Justice Center](#) is grateful to the Mayor's Office for People with Disabilities for preparing this guide for distribution to the general public. The information and resources provided by this guide are solely for the convenience and assistance of readers, and does not constitute legal advice. Readers seeking legal advice should consult an appropriately qualified attorney. The City Bar Justice Center does not endorse, and makes no representations or warranties regarding the information, resources, or services listed in this guide.

The priority list below comes from the ADA Title III regulations.⁴⁶ The federal government encourages owners to adopt these priorities, but the law does not require businesses to strictly adhere to them. Instead, businesses should review these priorities and think about how to tailor them to their unique circumstances to best meet their and their customers' needs. For example, a small business with minimum resources can only create an accessible path of travel inside the store and has lowered its sales counter, making it accessible. Although these changes fall into Priorities 2 and 4, they are what is currently readily achievable, so they should be the first actions taken. Businesses should avoid putting off making any accessibility changes because they can't meet all of Priority 1, etc.

Customize the Readily Achievable Plan (Priority List)

Priority 1: Getting through the Door

The priority should be to make sure individuals with disabilities can physically enter the facility as independently as possible. "Getting through the door" also means providing physical access to a facility from public sidewalks and/or public transportation. If the business offers parking to its customers, providing an accessible parking spot is also part of "getting through the door."

Priority 2: Access to the Goods and Services

Once inside, people with disabilities should have access to the business services. That means access to the front desk or checkout, access through the aisles, and access to any retail displays.

Priority 3: Restrooms

The third priority should be providing accessible restrooms, if restrooms are provided to other customers or clients.

Priority 4: Remaining Barriers

Finally, features such as drinking fountains and telephones should be made accessible.

New Construction and Renovations

All new construction must follow the [2010 ADA Standards for Accessible Design and the NYC Building Code \(the most stringent provision prevails\)](#). The part of the facility being remodeled or renovated must be in compliance with the 2010 ADA Standards for Accessible Design⁴⁷ and applicable building codes.

If the Department of Buildings rejects a business's building plans due to an accessibility issue, a business or owner can request a waiver from the Building Department in consultation with MOPD. In order to request a waiver and learn more about the option visit the [Accessibility Waivers](#) section on the MOPD website.⁴⁸

Consider the Unique Features of Your Business

There are lots of resources and information available to improve the unique features of your business establishment. For example, if you're a restaurant or bar owner, you can visit the [ADA National Network Fact Sheet on Food Services](#).⁴⁹ For retail establishments, bodegas, and convenience stores, information on service counters can be found at ADA.gov under [Sales and Services Counters](#).⁵⁰ Other features can be

The [City Bar Justice Center](#) is grateful to the Mayor's Office for People with Disabilities for preparing this guide for distribution to the general public. The information and resources provided by this guide are solely for the convenience and assistance of readers, and does not constitute legal advice. Readers seeking legal advice should consult an appropriately qualified attorney. The City Bar Justice Center does not endorse, and makes no representations or warranties regarding the information, resources, or services listed in this guide.

found on ADA.gov under [A Primer For Small Business](#).⁵¹ The ADA National Network's accessibility initiative and website on [Hospitality](#) is also a valuable place to find additional information on specific ADA compliance strategies unique to your business.⁵²

Note: Portable or temporary ramps are permitted when the installation of a permanent ramp is not readily achievable. Portable and temporary ramps must also comply with the ADA Standards for Accessible Design. Ramps must have a running slope, the slope in the direction someone travels, of no more than 1:12. The cross slope, the slope perpendicular to the running slope, must be no more than 1:48. A steeper slope is permitted in existing facilities where there is less space for a more gradual slope. Ramps must also have a minimum width of 36 inches between handrails. In order to promote safety, a portable ramp should have railings and a firm, stable, nonslip surface. It should also be properly secured.⁵³ In order to find out more about ramps, please refer to the [ADA Standards for Accessible Design](#)⁵⁴ or the [ADA Checklist for Existing Facilities](#). To learn more about door requirements, visit the ADA National Network's fact sheet on [Opening Doors to Everyone](#).⁵⁵

Don't Forget about Maintaining Accessible Features

Often neglected but equally as important as barrier removal is the maintenance of accessibility features. Under the ADA, businesses are required to maintain their accessible features.⁵⁶ Without proper maintenance and oversight, accessibility features can become unusable and render investments in access moot. This includes key features such as entrances, elevators, routes to access business goods and services, restrooms, payment locations, and parking. For more information, including checklists and low- to no-cost ways to maintain accessible features, visit ADA.gov's [Maintaining Accessible Features in Retail Establishments](#).⁵⁷ Additionally, snow removal from areas controlled by businesses and in front of a business is required by both the ADA and local laws. See [MOPD's Snow Fact Sheet](#) to learn more.⁵⁸

Parking Requirements

If a small business provides parking, it also must meet the accessibility requirements under the ADA. Accessible parking spaces must be located on the shortest accessible route of travel from adjacent parking to an accessible entrance. For every six or fraction of six parking spaces, at least one must be a van-accessible parking space. For more information on parking, visit the ADA National Network [Fact Sheet](#)⁵⁹ or refer to the [ADA Standards for Accessible Design](#).

Modifications of Policies and Procedures

Businesses should make reasonable modifications in policies, practices, or procedures, when the modifications are necessary to provide access to its goods and services.⁶⁰ However, if a modification would fundamentally alter the nature of the goods and services, it is not required to make the accommodation. *Id.* Determining what is reasonable is very fact specific and each business should take time to consider how best to make reasonable modifications. For example, a court recently held in *Anderson v. Franklin Institute* that a museum had violated the ADA by refusing to waive an entry fee for a guest's personal assistant.⁶¹ Although providing this reasonable modification may not be universal to all museums or other businesses it nonetheless is an example of a reasonable modification.

Tax Incentives

Business of any size cannot charge customers with disabilities extra to recover costs of compliance with the ADA.⁶² These costs should be viewed as a business investment. However, there are ways to offset these costs through available credits. Tax incentives are available to encourage compliance with the ADA. Make sure your business takes advantage of these valuable incentives. A small business is one that has 30 or fewer employees or \$1,000,000 or less in gross receipts from the previous year. If a credit exceeds the amount of taxes owed, business may carry forward the unused portion of the credit to the next year. Small businesses cannot claim a tax credit and deduction for the same dollar spent; however, they can use the incentive in combination, provided that the expenditures incurred qualify under both. Physical modifications must comply with applicable accessibility standards.⁶³ For more information on tax incentives, the NYC Mayor's Office for People with Disabilities has a [Federal Tax Incentives for Business](#) document with basic information.⁶⁴ The ADA National Network has also compiled information on tax incentives under their [Quick Tips on Tax Incentives](#) section.⁶⁵

Communication Accessibility—Customer Service

Communicating Best Practices

Small business owners need to consider more than just architecture and design when it comes to accessibility. The ADA and local laws require that small businesses ensure their operations are accessible to customers with disabilities by providing provisions for auxiliary aids and services.⁶⁶ Focusing on three key areas—effective communication, digital accessibility, and service animals—your business can deliver an improved experience for customers with a variety of disabilities. However, as with physical requirements, a business is not obligated to do anything that would fundamentally alter the nature of their goods or service or result in an “undue burden,” which is defined as significant difficulty or expense.⁶⁷ If an aid or service would result in an undue burden, the entity must endeavor to provide an effective alternative that would not result in an undue burden.

Also, as with physical barrier removal, the determination of what constitutes an undue burden varies based on the nature and cost of the aid or service relative to the business's size, structure, overall financial resources, and overall expenses. Generally, the ADA does not require a small business to do as much as a national enterprise. Walk-in requests for aids and services must be honored to the extent possible, and in no case may a small business impose excessive advance notice requirements beyond the length of time needed to acquire the aid or service. Businesses are encouraged to consult with the person with a disability to discuss what aid or service is appropriate. The goal is to provide an aid or service that will be effective, given the nature of what is being communicated and the person's method of communicating.⁶⁸

Effective Communication

The ADA sets a baseline requirement that businesses serving the public provide effective communication for people with vision, hearing, or speech disabilities.⁶⁹ After the regulations were revised in 2010 the U.S. Department of Justice provided guidance and information on [Effective Communication](#).⁷⁰

The [City Bar Justice Center](#) is grateful to the Mayor's Office for People with Disabilities for preparing this guide for distribution to the general public. The information and resources provided by this guide are solely for the convenience and assistance of readers, and does not constitute legal advice. Readers seeking legal advice should consult an appropriately qualified attorney. The City Bar Justice Center does not endorse, and makes no representations or warranties regarding the information, resources, or services listed in this guide.

In assessing what accommodation is needed to communicate effectively, it is critical to consider the nature, length, complexity, and context of the communication and the individual's communication preferences. Some individuals have more than one communication disability; in addition, not every person who is Deaf or hard of hearing uses sign language, and not everyone who is blind reads Braille. No matter what auxiliary aids and services you incorporate into your operations, it is essential that your staff receive training to seamlessly serve patrons with disabilities.⁷¹ The following list of auxiliary aids and services is not exhaustive.⁷²

Auxiliary Aids and Services for Blind/Low Vision Customers:	Auxiliary Aids and Services for Deaf Customers:	Customers with Speech or Language Disabilities (Including Autism):
<ol style="list-style-type: none"> 1. Information available through audio, qualified reader, Braille, large print 2. Providing adequate lighting, screen reader software, magnification equipment or software 3. Provide low vision customers illustrations or videos to convey information 	<ol style="list-style-type: none"> 1. Sign language interpreter 2. Computer-Based Real-Time Captioning (CART) 3. Materials in writing, including smartphone or tablet 4. Assistive listening systems including audio amplifiers 5. Providing captioning/image descriptions 	<ol style="list-style-type: none"> 1. Providing a qualified speech-to-speech transliterator (a person trained to recognize unclear speech and repeat it clearly) 2. Providing an electronic communication device (i.e. smartphone or tablet) 3. Allowing more time to communicate with someone who uses a communication board or device 4. Staff should always listen attentively and not be afraid or embarrassed to ask the person to repeat a word/phrase they do not understand

Digital Accessibility

People with disabilities use assistive technology (including apps, software, and hardware) to interact with computers, tablets, and smartphones. For the assistive technology to operate properly, the digital content must be prepared in a manner that is compliant with digital accessibility guidelines. For instance, a person can use a screen reader to have the contents of the screen read out loud to them; however, if a business's social media profile does not have content that is digitally accessible, then the screen reader user is less likely to get anything meaningful from the social media account and posts.⁷³

While the ADA does not specifically address websites, the U.S. Department of Justice has indicated that they are covered.⁷⁴ It is advisable for small businesses to adhere to the voluntary Web Content Accessibility Guidelines (WCAG) 2.0 Level AA developed by the World Wide Web Consortium (W3C).⁷⁵ Visit [W3C's WCAG page](#) for more information on website accessibility standards and guidelines.⁷⁶ Recently in *Andrews v. Blick Art Materials*, 286 F.Supp.3d 365 (2017), the court (in denying the defendant's motion to dismiss) affirmed that the ADA, NYSHR, and NYCHRL applied to the defendant's website. The case brought by a blind plaintiff ultimately settled and required the business to comply with the WCAG 2.0 Level AA requirements.

The [City Bar Justice Center](#) is grateful to the Mayor's Office for People with Disabilities for preparing this guide for distribution to the general public. The information and resources provided by this guide are solely for the convenience and assistance of readers, and does not constitute legal advice. Readers seeking legal advice should consult an appropriately qualified attorney. The City Bar Justice Center does not endorse, and makes no representations or warranties regarding the information, resources, or services listed in this guide.

There are four disability-related domains to keep in mind when addressing digital accessibility: visual, auditory, motor, and cognitive.⁷⁷ Small business owners should make sure their websites are designed to be readable, and that any forms are accessible using only a keyboard.⁷⁸ In addition, small business owners should make sure that any multimedia featured on their websites and social media accounts is accessible, avoiding auto-play multimedia and including alt-text image descriptions for photos.⁷⁹ To learn more about digital accessibility and for free support, visit [DigitalBlueprintNYC](#).⁸⁰

Service Animals

Under the ADA, a service animal is any dog that is individually trained to do work or perform tasks directly related to and for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.⁸¹ Unless the service animal's presence interferes with legitimate safety requirements of the facility, federal, state, and local laws require that businesses allow service animals under the control of their handler into all areas where customers are allowed.⁸² Per the New York City Board of Health, service animals are allowed in restaurants and other locations that serve food. Furthermore, a store owner's or customer's claim of an allergy to dogs is not an acceptable reason to exclude a person and their service animal from the store.

A business may not ask about the nature or extent of an individual's disability or require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. To determine if an animal is a service animal, a business's employees may ask only (1) if the animal is required because of a disability and/or (2) what work or task the animal has been trained to perform.

A business may ask the handler to remove the service animal only if the service animal is not housebroken or is otherwise out of control and the handler does not or cannot take effective action to control it.⁸³ In which case, staff must offer the person with the disability the opportunity to obtain goods or services without the animal present. For additional information on service animals, see the New York City Mayor's Office for People with Disabilities' [Service Animals Fact Sheet](#).⁸⁴

Training Staff and Hiring People with Disabilities

Training and hiring people from the disability community is one of the best ways to support compliance and encourage good customer service. The Mid-Atlantic ADA Center has produced a two-minute preview and a 20-minute video that can be used to help support the training of staff. It addresses best practices and features national disability leaders offering experiences, tips, and recommendations on how to provide exemplary customer service to individuals with disabilities. The videos can be found on the ADA Center's hospitality page under [At Your Service](#).⁸⁵

There are also state and federal government Vocational Rehabilitation Incentives⁸⁶ designed to promote workplace diversity by offering multiple incentives to private-sector businesses for hiring individuals with disabilities. For more information, visit the [NYC Mayor's Office for People with Disabilities page on tax incentives](#),⁸⁷ visit [ACCES-VR](#),⁸⁸ or call ACCESS-VR at 1-800-222-5627 (JOBS). Additionally, there are tax incentives through workforce and economic development programs such as the Work Opportunity Tax Credit (WOTC), Workers Employment Tax Credit (WETC), Workers with Disabilities Tax Credit (WDTC), and Hire-a-Vet Credit. For more information, see New York State Department of Labor's [Tax Incentives for Businesses Fact Sheet](#).⁸⁹

The [City Bar Justice Center](#) is grateful to the Mayor's Office for People with Disabilities for preparing this guide for distribution to the general public. The information and resources provided by this guide are solely for the convenience and assistance of readers, and does not constitute legal advice. Readers seeking legal advice should consult an appropriately qualified attorney. The City Bar Justice Center does not endorse, and makes no representations or warranties regarding the information, resources, or services listed in this guide.

In New York City, the NYC Mayor's Office for People with Disabilities (MOPD) NYC: ATWORK program builds partnerships and expands coalitions by connecting people with disabilities who are unemployed or underemployed to meaningful, living-wage jobs across the five boroughs. NYC: ATWORK can connect businesses with pre-screened, qualified candidates and provide trainings and support for diversity hiring. To learn more, visit MOPD's [NYC: ATWORK](#) webpage.⁹⁰

Citations

¹ *Serial Plaintiffs: The Abuse of ADA Title III*, <https://irany.org/wp-content/uploads/2016/07/ADA-STUDY-FINAL-3-13-2018.pdf>

² *AccessibleNYC: An Annual Report on the State of People with Disabilities Living in New York City*, 2018 edition, <https://www1.nyc.gov/assets/mopd/downloads/pdf/accessiblenyc-2018.pdf>

³ <https://www.census.gov/topics/health/disability.html>

⁴ <https://www.census.gov/content/dam/Census/library/publications/2018/demo/p70-152.pdf>

⁵ <https://www.census.gov/newsroom/blogs/random-samplings/2012/07/the-age-and-disability-paradox.html>; https://disabilitycompendium.org/sites/default/files/user-uploads/2016_AnnualReport.pdf (p. 7)

⁶ <https://gsdrc.org/publications/disability-prevalence-and-trends/>

⁷ "ADA Update: A Primer for Small Business,"

<https://www.ada.gov/regs2010/smallbusiness/smallbusprimer2010.htm>

⁸ <https://www.air.org/resource/hidden-market-purchasing-power-working-age-adults-disabilities>

⁹ NYCGO's official accessibility website, <https://www.nycgo.com/plan-your-trip/basic-information/accessibility>

¹⁰ See "Remarks by the President During Ceremony for the Signing of the Americans with Disabilities Act of 1990," July 26, 1990, <https://www.archives.gov/research/americans-with-disabilities/transcriptions/naid-6037493-statement-by-the-president-americans-with-disabilities-act-of-1990.html>

¹¹ 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201

¹² 42 U.S.C. § 12181–89

¹³ See *Fagan v. United International Insurance Co.*, 128 F. Supp. 2d 182 (S.D.N.Y. 2001)

¹⁴ Building Code of City of New York, tit 27, ch 11,

https://www1.nyc.gov/assets/buildings/apps/pdf_viewer/viewer.html?file=2014CC_BC_Chapter_11_Accessibility.pdf§ion=concode_2014

¹⁵ https://www.ada.gov/2010_regs.htm

¹⁶ <https://www1.nyc.gov/site/mopd/laws/notification-of-your-rights.page>

¹⁷ New York City Bar Legal Referral Service, <https://www.nycbar.org/get-legal-help/>

¹⁸ New York City Mayor's Office for People with Disabilities, "Small Business Resources,"

<https://www1.nyc.gov/site/mopd/initiatives/small-business-resources.page>

¹⁹ New York City Small Business Services, "Legal Assistance,"

<https://www1.nyc.gov/site/sbs/neighborhoods/legal-assistance.page>

²⁰ 28 CFR §36.104, https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=2ab2aab2d3d2fd0f544a5ce7aad8f04c&rgn=div5&view=text&node=28:1.0.1.1.37&idno=28#se28.1.36_1104 (defining places of public accommodation)

²¹ 28 CFR § 36.201

²² 28 CFR § 36.201

²² *K.L.M.N.I., Inc. v. 483 Broadway Realty*, 117 A.D.3d 654, 655, 987 N.Y.S.2d 316 (1st Dep't 2014) (upholding a landlord's State law indemnity claim against a tenant post-federal ADA litigation noting that "the ADA expressly authorizes the allocation of responsibility between a landlord and a tenant of a place of public accommodation by lease or other contract") (internal quotation marks omitted)

²³ See *Brown v. Brooklyn Indus. LLC*, No. 13-CV-3695 RA, 2015 WL 1726489, at *2 (S.D.N.Y. Apr. 15, 2015) ("[I]ndemnities between landlords and tenants do not run afoul of the ADA"); see also *Botosan v. Paul McNally Realty*, 216 F.3d 827, 833–34 (9th Cir. 2000)

²⁴ See *Brooks Shopping Ctrs., LLC v. DCHWWC Rest., Inc.*, 32 Misc.3d 55, 929 N.Y.S.2d 354 (2nd Dep't 2011) (holding that "where full compliance proves economically unfeasible, the party responsible for compliance must undertake whatever modifications . . . are "readily achievable") (citation omitted)

²⁵ New York City Commission on Human Rights, "Enforcement," <https://www1.nyc.gov/site/cchr/enforcement/enforcement.page>

²⁶ New York State Division of Human Rights, "File a Complaint," <https://dhr.ny.gov/complaint>

²⁷ <https://www1.nyc.gov/site/cchr/enforcement/complaint-process.page>

²⁸ 42 U.S.C. § 12182(a); 28 CFR § 36.201

²⁹ *ADA Title III Technical Assistance Manual* III-4.4000, <https://www.ada.gov/taman3.html>

³⁰ 28 CFR § 36.104 (defining undue burden)

³¹ 28 CFR § 36.104

³² See U.S. Department of Justice Title III Technical Guidance, <https://www.ada.gov/taman3.html>

³³ 28 CFR § 36.208

³⁴ *Bowen v. Rubin*, 385 F. Supp. 2d 168, 181 (E.D.N.Y. 2005) ("[I]njunctive relief is the only remedy available to private litigants under Title III of the ADA"); see also *Disabled in Action of Metropolitan New York v. Trump Int'l Hotel and Tower*, 2003 WL 1751785, *6, 2003 U.S. Dist. LEXIS 5145, *17 (S.D.N.Y. 2003); see also *Fischer v. SJB P.D. Inc.*, 214 F.3d 1115, 10 A.D. Cas. (BNA) 1180 (9th Cir. 2000) (granting attorney's fees in a settled action against the restaurant that refused entrance to a service dog); *Stan v. Wal-Mart Stores, Inc.*, 111 F. Supp. 2d 119, 10 A.D. Cas. (BNA) 1632 (N.D. N.Y. 2000) (plaintiff alleging discrimination in use of public accommodation in violation of ADA not entitled to recover money damages)

³⁵ 28 CFR § 36.104

³⁶ See *De La Rosa v. Lewis Foods of 42nd St., LLC*, 124 F. Supp. 3d 290, 300 (S.D.N.Y. 2015) (holding that in the context of § 12182(b)(2)(A), failure to take readily achievable steps to eliminate barriers to access is "an act of discrimination—and such act is committed every day that the readily achievable change is not made")

³⁷ 28 CFR § 36.104

³⁸ *Id.*

³⁹ 28 CFR § 36.305

⁴⁰ 28 CFR § 36.402

⁴¹ *Matter of Marine Holdings LLC v. New York Commission on Human Rights*

⁴² See U.S. Department of Justice Title II Technical Guidance, <https://www.ada.gov/taman3.html>

⁴³ 28 CFR § 36.402

⁴⁴ *ADA Title III Technical Assistance Manual* III-6.2000, <https://www.ada.gov/taman3.html>; see *Roberts v. Royal Atl. Corp.*, 542 F.3d 363, 372–73 (2d Cir. 2008) (describing burden-shifting mechanism).

⁴⁵ New England ADA Center, "ADA Checklist for Existing Facilities," 2016,

<https://www.adachecklist.org/doc/fullchecklist/ada-checklist.pdf>

⁴⁶ 28 CFR § 36.304

⁴⁷ 28 CFR § 36.401; but see *De La Rosa v. Lewis Foods of 42nd St., LLC*, 124 F. Supp. 3d 290, 299 (S.D.N.Y. 2015) (finding current operator of premises not liable for predecessor's failure to make facility readily accessible under § 12183(a)(2) when predecessor made alterations and Franchise Agreement required Lewis Foods to comply with federal laws and regulations moving forward but did not provide that Lewis Foods assumed "liability for any prior failures to comply with the ADA")

⁴⁸ <https://www1.nyc.gov/site/mopd/initiatives/accessibility-waivers.page>

⁴⁹ <https://adata.org/factsheet/food-service>

⁵⁰ <https://www.ada.gov/reachingout/saleservice.html>

⁵¹ <https://www.ada.gov/regs2010/smallbusiness/smallbusprimer2010.htm>

⁵² <https://www.adahospitality.org/>

⁵³ 28 CFR § 36.304; *ADA Title III Technical Assistance Manual* III-4.4300, <https://www.ada.gov/taman3.html>

⁵⁴ "2010 ADA Standards for Accessible Design,"

<https://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.htm>

⁵⁵ <http://adata.org/factsheet/opening-doors-everyone>

The [City Bar Justice Center](#) is grateful to the Mayor's Office for People with Disabilities for preparing this guide for distribution to the general public. The information and resources provided by this guide are solely for the convenience and assistance of readers, and does not constitute legal advice. Readers seeking legal advice should consult an appropriately qualified attorney. The City Bar Justice Center does not endorse, and makes no representations or warranties regarding the information, resources, or services listed in this guide.

- ⁵⁶ 28 CFR § 36.211
- ⁵⁷ https://www.ada.gov/business/retail_access.htm
- ⁵⁸ <https://www1.nyc.gov/assets/mopd/downloads/pdf/snow-removal-2019.pdf>
- ⁵⁹ <https://adata.org/factsheet/parking>
- ⁶⁰ CFR § 36.302
- ⁶¹ *Anderson v. Franklin Inst.*, 185 F. Supp. 3d 628 (E.D. Pa. 2016)
- ⁶² CFR § 36.305
- ⁶³ ADA National Network, “ADA Quick Tips - Tax Incentives,” 2017, <https://adata.org/factsheet/quicktips-tax>
- ⁶⁴ New York City Mayor’s Office For People with Disabilities, “Federal Tax Incentives for Businesses,” 2018, <https://www1.nyc.gov/assets/mopd/downloads/pdf/Federal-Tax-Incentives-for-Businesses.pdf>
- ⁶⁵ <https://adata.org/factsheet/quicktips-tax>
- ⁶⁶ <https://www.ada.gov/effective-comm.htm>
- ⁶⁷ 42 U.S.C. § 12182(b)(2)(A)(iii)
- ⁶⁸ <https://www.ada.gov/effective-comm.htm>
- ⁶⁹ <https://www.ada.gov/effective-comm.htm>; see also *Camarillo v. Carrols Corp.*, No. 105CV1365GLSDRH, 2010 WL 2557209, at *3 (N.D.N.Y. June 24, 2010) (denying defendant’s motion to dismiss where blind restaurant patron alleged she was not able to select from the entirety of the menu, not informed about the prices of the items, and received impatient and reluctant service in a restaurant, raising factual questions about the effectiveness of the restaurant’s communication)
- ⁷⁰ <https://www.ada.gov/effective-comm.htm>
- ⁷¹ See *Camarillo v. Carrols Corp.*, 518 F.3d 153, 157 (2d Cir. 2008) (holding a failure to train employees on how to deal with people with disabilities can constitute a violation of the ADA)
- ⁷² <https://www.ada.gov/effective-comm.htm>
- ⁷³ https://www1.nyc.gov/assets/mopd/downloads/pdf/accessible_social_media_guide_mopd.pdf
- ⁷⁴ <https://www.newsday.com/business/website-access-disabled-herzlich-1.21298225>; see also *Andrews v. Blick Art Materials, LLC*, 268 F. Supp. 3d 381 (E.D.N.Y. 2017) (holding retailer’s website is a place of public accommodation under the ADA, NYSHRL, and NYCHRL)
- ⁷⁵ <https://www.newsday.com/business/website-access-disabled-herzlich-1.21298225>;
<https://www.w3.org/standards/webdesign/accessibility>
- ⁷⁶ <https://www.w3.org/WAI/standards-guidelines/wcag/>
- ⁷⁷ <https://automationalley.com/Blog/2019/January-2019/Accessible-websites-are-no-longer-an-option-theyr.aspx>
- ⁷⁸ See <https://www.w3.org/WAI/tutorials/forms/>; see also <https://www1.nyc.gov/assets/mopd/downloads/pdf/web-accessibility-checklist.pdf>
- ⁷⁹ For information on alt-text on Facebook, see https://www.facebook.com/help/216219865403298?helpref=faq_content; for information on alt-text on Instagram, see <https://help.instagram.com/503708446705527>; for information on alt-text on Twitter, see <https://help.twitter.com/en/using-twitter/picture-descriptions>
- ⁸⁰ <https://blueprint.cityofnewyork.us/>
- ⁸¹ <https://adata.org/factsheet/service-animals>; in some circumstances miniature horses that are individually trained to do work or perform tasks may qualify as a service animal for people with disabilities
- ⁸² <https://adata.org/factsheet/customer-service>
- ⁸³ See *Krist v. Kolombos Rest. Inc.*, 688 F.3d 89, 97 (2d Cir. 2012) (holding “Title III of the ADA does not impose a civility code” in affirming dismissal of complaint in which restaurant employee’s “shouted requests concerned [plaintiff’s] creation of a safety hazard, because someone passing by could trip on the dog”)
- ⁸⁴ <https://www1.nyc.gov/assets/mopd/downloads/pdf/service-animal-flyer.pdf>
- ⁸⁵ <https://www.adahospitality.org/at-your-service>
- ⁸⁶ <https://www1.nyc.gov/site/mopd/employment/hiring-incentives-business-services.page>
- ⁸⁷ <https://www1.nyc.gov/assets/mopd/downloads/pdf/Federal-Tax-Incentives-for-Businesses.pdf>
- ⁸⁸ <http://www.acces.nysed.gov/vr>
- ⁸⁹ <https://www.labor.ny.gov/formsdocs/factsheets/pdfs/p438.pdf>

The [City Bar Justice Center](#) is grateful to the Mayor’s Office for People with Disabilities for preparing this guide for distribution to the general public. The information and resources provided by this guide are solely for the convenience and assistance of readers, and does not constitute legal advice. Readers seeking legal advice should consult an appropriately qualified attorney. The City Bar Justice Center does not endorse, and makes no representations or warranties regarding the information, resources, or services listed in this guide.

⁹⁰ <https://www1.nyc.gov/site/mopd/employment/nyc-at-work.page>

The [City Bar Justice Center](#) is grateful to the Mayor's Office for People with Disabilities for preparing this guide for distribution to the general public. The information and resources provided by this guide are solely for the convenience and assistance of readers, and does not constitute legal advice. Readers seeking legal advice should consult an appropriately qualified attorney. The City Bar Justice Center does not endorse, and makes no representations or warranties regarding the information, resources, or services listed in this guide.