



# State of Idaho Council for the Deaf and Hard of Hearing

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## **ACCESS TO BUSINESSES**

### **ACCESS TO BUSINESSES FOR PERSONS WHO ARE DEAF OR HARD OF HEARING**

Title III of the Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability by public accommodations. A public accommodation includes hotels, restaurants, movie theaters, auditoriums, grocery stores, banks, beauty shops, doctors or lawyers' offices, museums, libraries, parks, zoos and a variety of other places of business. To simplify this for this article we will refer to a public accommodation as a business. The Code of Federal Regulations (CFR) with rules on title III of the ADA are in 28 CFR Part 36.

### **WHO IS INCLUDED AS DISABLED UNDER THE LAW?**

Persons with a physical or mental impairment that substantially limits any major life activity. Persons with hearing impairments are covered by the ADA definition of disability if their impairment substantially limits their hearing. 28 CFR 36.104

### **WHEN MUST AN AUXILIARY AID OR SERVICE BE PROVIDED?**

This law requires that it is the duty of the business to provide auxiliary aids and services to ensure that no one with a disability is excluded, denied services, or treated differently than other individuals. The business shall furnish auxiliary aids and services to ensure that they can communicate effectively with customers, clients, patients, who have a hearing impairment. They must be provided unless the provision would result in an undue burden to the business. Whether or not there is an undue burden is determined by the cost of the action and the resources of the business. 28 CFR 36.303 (a)

### **WHAT ARE AUXILIARY AIDS AND SERVICES?**

Auxiliary aids include qualified interpreters, note takers, written materials, amplified telephone handsets, assistive listening systems or other equally effective methods of making voice delivered messages available to individuals with hearing impairments. To simplify we will refer to auxiliary aids by referring to interpreters, or other alternative forms of communication. The regulations do not require that every business have every alternative communication method available. Congress intended that the business would consult with the person with a disability before providing a particular type of communication service. In some situations a note pad and a pencil might serve as an effective communication tool. In more complex health or legal situations an interpreter will be the best communication aid.

## **WHO PAYS?**

The person with a disability cannot be charged for this assistance and the costs cannot be passed on to individuals with disabilities by a surcharge only on their care. The costs should be part of the businesses operating costs and be shared by everyone using the business.

## **EXAMPLES**

This is a complex law and there are stacks of books that try to explain just what it means. Here are a few examples:

Jane Doe is deaf and needs to see a lawyer about a complex legal matter. When setting up the appointment, Jane should indicate that she needs some assistance in communication. She can state that her preference is an interpreter and ask what steps can be taken provide her with that assistance. Unless an alternative is determined to be equivalent, the lawyer's office must pay for that interpreter. There is nothing wrong with asking Jane if she knows of someone, but the lawyer's office should make the arrangements for payment for the services. The lawyer can't charge Jane for the interpreter nor ask her to provide her own interpreter for free. They may however, be qualified to get a tax credit for part of the cost. If using a notepad and pencil is an effective communication tool then that can also be done. (An interpreter is much faster and more efficient however than a notepad.)

Another example is John Doe, who is hard of hearing and wants to participate in a public meeting conducted by some local business. He should indicate that he will need an assistive listening system or some other communication aid and it must be provided by the business. The local car dealership furnishes a phone in their waiting room for customers to regularly use for local calls while they are waiting for their cars to be worked on. They must, upon request, provide a TDD for the use of a person who is deaf. Any business that allows a customer, client, patient or other person to make outgoing phone calls on more than an incidental basis must provide a TDD upon the request of a person who is deaf.

## **WHAT CAN BE DONE TO MAKE SURE BUSINESSES PROVIDE THESE AUXILIARY AIDS AND SERVICES?**

Although auxiliary aids and services can provide communication access, they must first be available. It is very important for persons who are deaf or hard of hearing to request them from businesses. Our job is to educate businesses as to their responsibility to provide these communication alternatives under the ADA and the tax credits available for small businesses.

### **Disabled Access Tax Credit**

Small businesses with either \$1 million or less in gross receipts or 30 or fewer full time employees can get a tax credit for the cost of eligible access expenditures such as interpreters or assistive listening systems. The credit is 50% of the cost over \$250 up to \$10,250 or a maximum of \$5,000. Title 26, Internal Revenue Code, section 44. When businesses are informed about their responsibility under the law more of them will have auxiliary aids and services available. If they refuse to comply with the requirements, a complaint can be filed.

## HOW TO FILE A TITLE III COMPLAINT

If you feel you or another person has been discriminated against by a business covered under Title III, send a letter to the Department of Justice at the address below with the following information:

Your full name, address, and telephone number, and the name of the party discriminated against;  
The name of the business, organization, or institution that you believe has discriminated;  
a description of the act or acts of discrimination, the date or dates of the discriminatory acts, and the name or names of the individuals you believe discriminated; and other information that you believe necessary to support your complaint.

Please send copies of relevant documents. Do not send original documents (keep them). Sign and send the letter to:

Office of the Americans with Disabilities Act  
Civil Rights Division  
U.S. Department of Justice  
P.O. Box 66738  
Washington, D.C. 20035-9998  
Dept. of Justice ADA Information Line:  
1-800-514-0301 V  
1-800-514-0383 TTY

They will investigate and decide whether to begin legal action. Any legal action will be taken on the behalf of the United States and not an individual. You will be informed of the Departments action. A person can also file their own case in U.S. District Court.