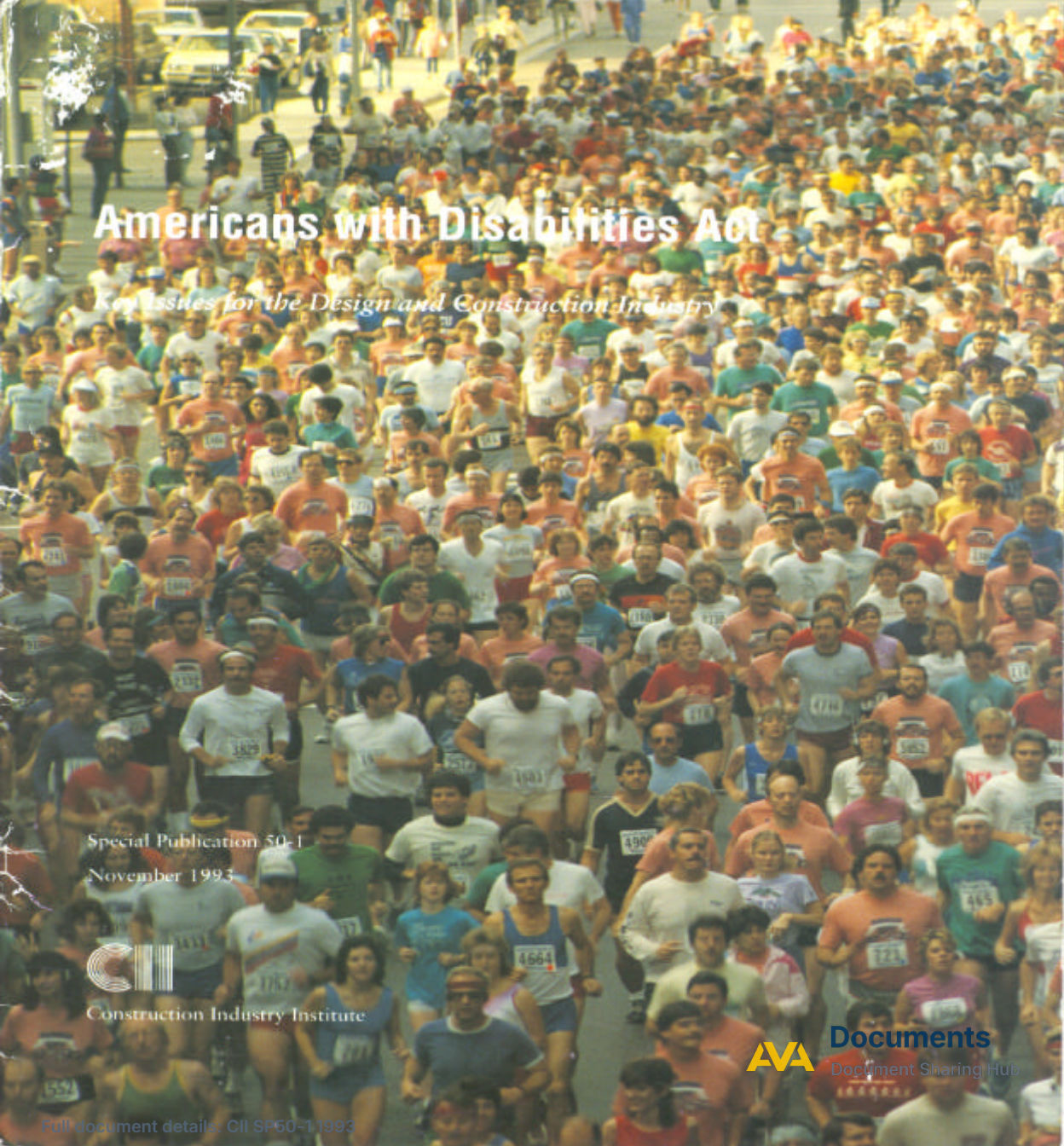


A high-angle, wide shot of a massive crowd of runners participating in a marathon. The runners are densely packed, filling the frame from the foreground to the background. They are wearing various colored athletic gear, including t-shirts, tank tops, and shorts. Many runners have race bibs pinned to their chests. The scene is set on a city street, with some vehicles and spectators visible in the far background. The overall atmosphere is one of a large-scale public event.

Americans with Disabilities Act

Key Issues for the Design and Construction Industry

Special Publication 50-1

November 1993



Construction Industry Institute



Documents

Document Sharing Hub

The purpose of this publication is to make available to industry the results of research conducted by the Construction Industry Institute (CII). The publication does not necessarily represent the views of CII member companies, but is offered as a contribution to the industry.

CII was founded in 1983 to improve the cost effectiveness of the nation's largest industry. The members, who represent a broad cross-section of owners and contractors, believe that many of the problems that limit cost effectiveness are common ones, and that real improvements can be best accomplished in a cooperative environment with the benefits being shared by the construction industry at large.

CII uses the acronym TOPICS to describe the research effort. TOPICS signifies the six research thrust areas: Technology, Organization, People, Information, Controls, and Sigma (meaning others). The task forces for each area are listed below.

Technology

- Advanced Technological Systems
- Computer Integrated Design & Construction
- Design for Safety
- Environmental Remediation Technology
- Technology Strategy

Organization

- Partnering II
- Project Change Management
- Project Organization II
- Pre-Project Planning
- Project Team Building
- Project Team Communications

People

- ADA Impacts
- Continuing Supervisory Education
- Zero Accidents

Information

- 3D CAD Link
- International Construction
- Owner Engineering Organization

Controls

- Contracting, Phase II
- Dispute Prevention and Resolution
- International Standards
- Predictive Tools
- Quality Performance Measurement
- Schedule Reduction
- Total Quality Management

Sigma

- Barriers to Implementation
- Insurance
- Piping Function
- Retrofit Projects
- U.S. Navy Demonstration Project
- Utility Pilot Projects
- Workers Compensation

The Construction Industry Institute
The University of Texas at Austin
3208 Red River, Suite 300
Austin, Texas 78705-2650
(512) 471-4319
FAX (512) 499-8101

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Prepared by
The Construction Industry Institute
ADA Impacts Task Force

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The University of Texas at Austin.

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Cover photo: Individuals with disabilities are common and are often difficult to identify.
Photo of a 10K run in downtown Houston courtesy of Texas Department of Commerce;
photographer-Richard Reynolds.

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Executive Summary

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The Americans with Disabilities Act (ADA) represents landmark anti-discriminatory legislation on behalf of the disabled community. Previous civil rights legislation protects individuals from discrimination based on race, color, national origin, age, sex, and religion. In a similar manner, ADA gives civil rights protection to individuals with disabilities.

Titles of ADA

The five Titles of ADA are:

- Title I Employment
- Title II Public Services and
 Transportation
- Title III Public Accommodations/
 Commercial Facilities
- Title IV Telecommunications
- Title V Miscellaneous Provisions

Title I requires employers to give qualified individuals with disabilities the same consideration for employment that individuals without disabilities are given. A qualified individual with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the position. However, employers are not required to endure an undue hardship due to an accommodation or to pose a direct threat to the health and safety of the individual, co-workers, or the public.

Title II requires public entities (state and local governments) to operate each service, program or activity such that, when viewed in its entirety, it is readily accessible and usable by individuals with disabilities.

Title III requires that persons with disabilities be provided access to goods and services within places of public accommodation and new or altered commercial facilities equal to or similar to that available to the general public.

Title IV contains specific requirements for any transmittal by wire or radio.

Title V contains various requirements and includes provisions for mediation of claims, non-retaliation towards those asserting their rights under ADA, specifically allows drug testing, and provides for attorney fees.

Titles IV and V are not addressed in this publication.

Title I of the ADA, which addresses employment issues for new and current employees, went into effect on July 26, 1992. Titles II and III went into effect on January 26, 1992. These portions of the law concern accessibility for both new and altered places of business and public services. Title III is unprecedented in that it is the first civil rights law to affect both building and site design.

Subsequently, facility owners and members of the design and construction industry have become concerned about the potentially far-reaching implications of the law. Further clarification regarding its intent and enforcement is needed. Until awareness of the law increases and legal precedent is established, facility owners and employers are at increased risk of litigation or may compromise design (and incur increased costs) to respond to ADA issues.

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CII's ADA Impacts Task Force

In 1992, CII established the ADA Impacts Task Force. The mission of the task force was to develop a better understanding of the legislation, evaluate its impact on the design and construction industry and provide useful, timely information.

CII's ADA Publication

This publication is intended to provide a general overview of ADA to increase awareness and understanding. It identifies key compliance concerns, referred to in this book as "Watch Outs," and provides compliance flow charts for Titles I, II, and III. The flow charts identify key steps and decision points in the compliance process. In addition, a resource list is included for more information on all aspects of Titles I, II, and III of ADA.

The publication is designed to enable the user to access information readily as a tool for training in the workplace. As such, information is presented in bullet form and can be used to easily develop overhead transparencies.

Compliance Is Good Business Practice

The population of individuals with disabilities consists of 43 million Americans, many of whom want to work. These individuals have disabilities ranging from hearing impairments to physical impairments, and even to alcoholism.

Most disabilities are not physical as stereotyped by the population in general.

Compliance makes good business sense. The cost of compliance is significantly lower than many anticipated. The policies and practices that ADA generates will improve hiring practices. Accessibility improvements for example, will have a positive impact on safety as ramps are installed, lighting levels are increased, and corridors are widened.

ADA is the law-a law which requires that a good faith effort to comply with its intent be made. It is a law that encourages employers and employees to communicate with one another to allow accommodation to be mutually developed.

Clearly, greater public awareness and more training are required to bring about ADA compliance. Hiring practices must be modified: employers, supervisors, and co-workers must be sensitized to the needs of the disabled. Stereotypes, which are particularly strong in the construction industry, must be removed.

The vagaries of the legislation will be clarified only through litigation. Until then, many nuances of the legislation will have to be interpreted by employers and property owners. The results, however, will open the workplace to an expanded work force, bring in fresh talent and skills, and make facilities more universally accessible to the entire population.

Introduction

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The Construction Industry and ADA

The construction industry as referenced throughout this report encompasses the entire process including conceptual planning, design, procurement, construction, and start-up. Projects include both new and renovated facilities.

What are the special characteristics of the construction industry?

- Both office and field employees are involved.
- Projects are stand alone and have unique life cycles and definite beginnings and endings.
- The jobsite is a workplace that requires a variety of physical skills, activities, and efforts.
- There are multiple crafts and subcrafts, representing both union and open shop labor.
- The construction work force is transient and most companies have a small number of permanent employees.
- Construction site field conditions are difficult (weather, dirt, etc.) and hazardous.

What are the special concerns of the construction industry regarding ADA?

- Potential liability related to design and employment.
- The cost of incorporating Title II and Title III elements into facilities.

- Access to the jobsite workplace and work position is difficult (or impossible) for many persons who are mobility impaired.
- On jobsites, people rely on each other for safety. There are concerns about direct threat and evacuation in an emergency.
- A “locked in” mindset exists that the disabled cannot work on a jobsite.
- The work force is decentralized and is highly mobile, making comprehensive industry-wide training difficult.
- The hiring process is not centralized.
- ADA issues incorporated in the design carry forward through the life of the facility.

Purpose of this publication

- Increase awareness and understanding of ADA Titles I, II, and III.
- Provide compliance flow charts to identify key steps and decision points in the compliance process.
- Identify key compliance concerns using selected examples and illustrations.
- Provide a list of key resources to assist the reader in finding more information.
- Provide a user-friendly document that can be easily understood and applied by a broad range of people in the construction industry.
- Provide a training tool.

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Basis for this publication

- Literature review was conducted.
- Experiences of experts in the field were utilized.
- One hundred seventy five individuals, including many individuals with disabilities, contributed their ideas on key compliance issues.
- The material presented reflects information available through July 1993. Interpretations of ADA are constantly being made by the Equal Employment Opportunity Commission (EEOC) and Department of Justice (DOJ) as well as through the courts.
- This document is intended solely as a guideline, not as a definitive response to any issues raised under ADA. Material presented in this document is not intended as legal advice. Consult with your legal representative for clarifications.

The ADA Guide

As participants in the construction industry, compliance with the ADA must be addressed. ADA compliance:

- Requires a good faith effort.
- Makes good business sense.
- Requires awareness, knowledge and understanding of the law and its intent.

Figure 1 illustrates the “ADA Guide” and begins with the question, “Should I be concerned?” The answer leads either to an applicable title or a process of continuous review if ADA does not yet apply. The use of the ADA Guide will lead users to the Title of interest.

Key compliance issues

The term “Watch Outs” is used to identify issues relevant to compliance that may require careful consideration and even legal advice. “Watch Outs” should be reviewed in conjunction with the steps in the compliance flow charts provided for Titles I, II, and III.

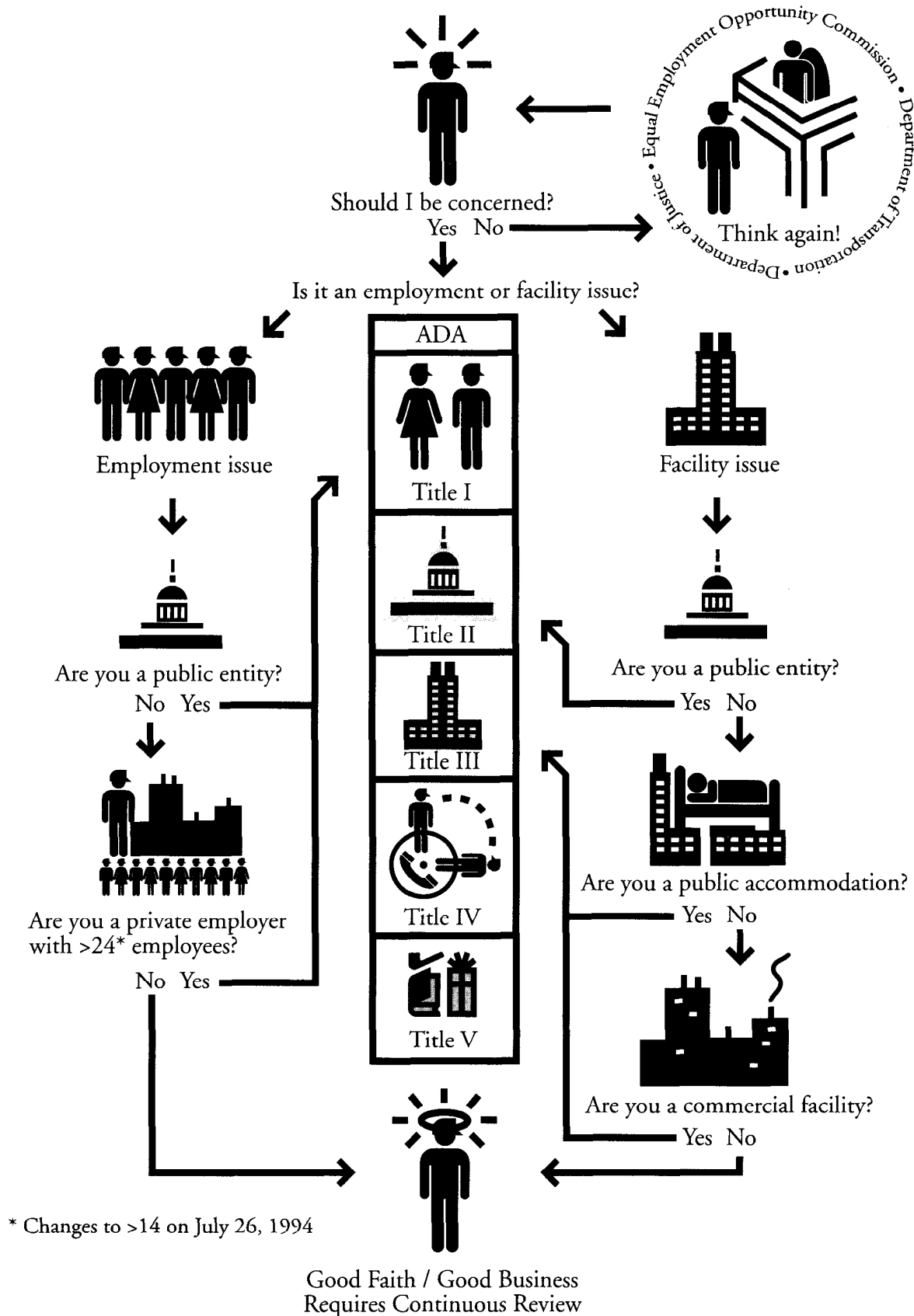


Figure 1. ADA Guide

Americans with Disabilities Act

Background

- ADA was signed into law on July 26, 1990.
- ADA gives to individuals with disabilities civil rights protection with respect to discrimination that is parallel to that provided to individuals on the basis of race, color, national origin, sex, age, and religion.
- ADA combines elements drawn principally from two pieces of civil rights legislation: the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973. Additionally, ADA places requirements beyond non-discrimination to assist individuals with disabilities in getting employment and life opportunities.

- Enactment of ADA reflects deeply held ideals that encourage independence as well as treasuring the contribution individuals can make when free from arbitrary, unjust, or outmoded societal attitudes and practices that prevent the realization of their potential.

ADA and This Publication

The emphasis in this publication is limited to Titles I, II, and III. These titles influence the construction industry to the greatest extent. In this publication, key phrases of ADA are highlighted in bold. Thorough understanding of these phrases is essential as your company strives to comply with the legislation. For further information refer to the Federal Register directly (see Resource List).

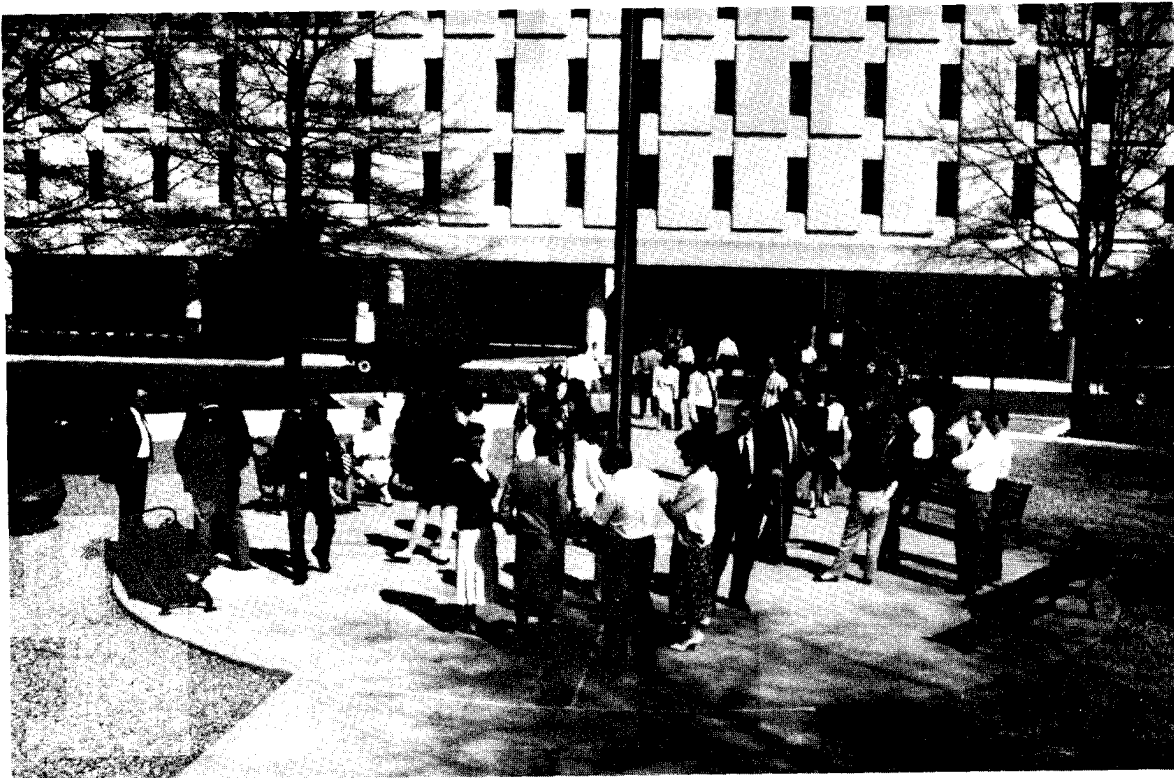
Table 1. ADA Titles and Effective Dates

Title	Effective date	Enforcing agency
Title I: Employment	July 26, 1992	Equal Employment Opportunity Commission (EEOC)
Title II: Public Services and Transportation	January 26,1992	Department of Justice (DOJ), Department of Transportation (DOT)
Title III: Public Accommodations and Commercial Facilities	January 26, 1992	Department of Justice
Title IV: Telecommunications	July 26, 1993	Federal Communications Commission (FCC)
Title V: Miscellaneous provisions	January 26,1992	Not Applicable

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As defined by ADA, an individual is protected under ADA if that individual:

- has a physical or mental impairment which substantially limits one or more major life activities.
- has a record of such an impairment.
- is regarded as having such an impairment.
- has a relationship or an association with an individual with a disability.



Individuals with all types of disabilities are common in the workplace and often are difficult to identify.

Disabled Population

Figure 2 shows the makeup of individuals with disabilities. Some examples are:

- Physical impairments
- Mental retardation
- Hearing impairments
- Visual and speech impairments
- Epilepsy
- Cancer
- Heart disease
- HIV and AIDS infections
- History of drug addiction
- Alcoholism

Who Are the Disabled?

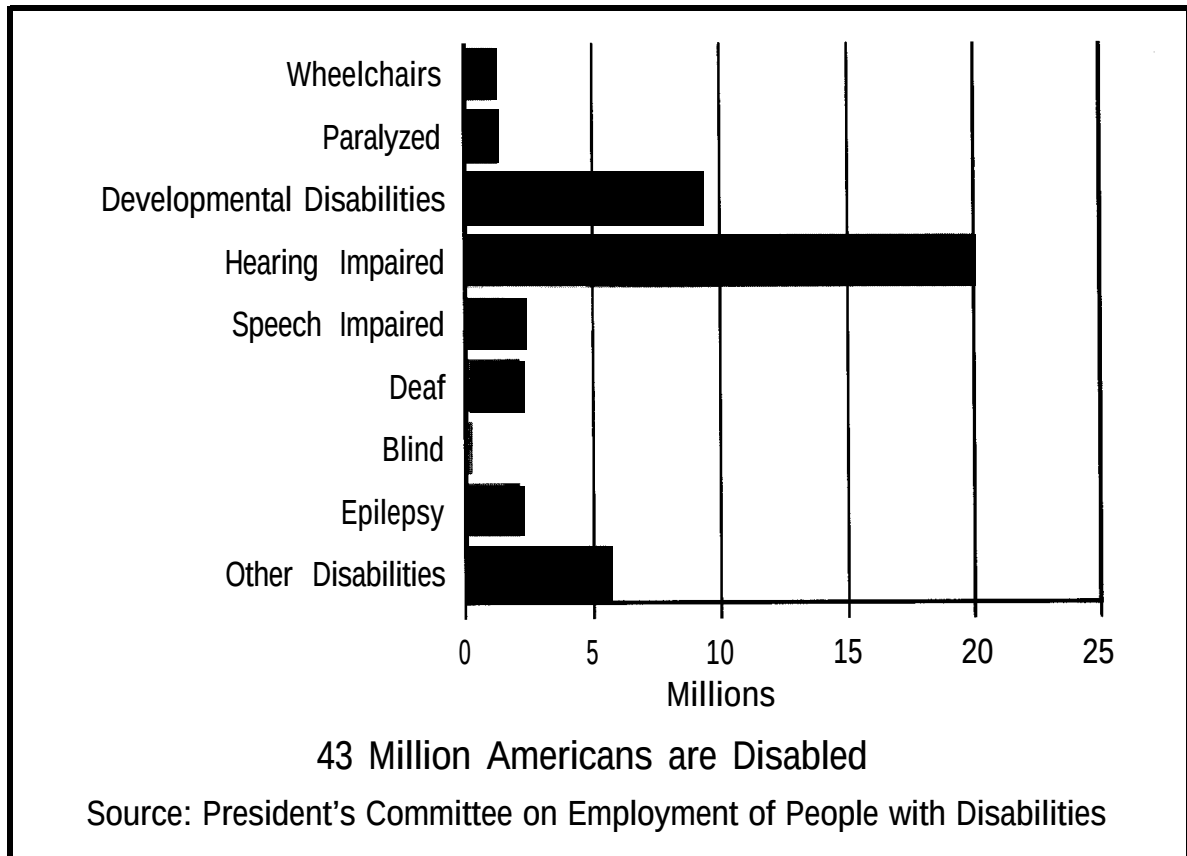


Figure 2. Makeup of Individuals with Disabilities

Cost of Noncompliance

ADA is a law with legal liabilities. The potential cost of noncompliance must be recognized.

Direct costs when legal action is taken might include:

- Attorney fees, expert witness, and other court costs if litigated.
- Settlement/jury verdict.
- Management and staff time and expenses preparing for and involvement in litigation.
- Cost to remove barriers or provide accommodations.

Indirect costs may result from:

- Morale problems caused by a law suit.
- Bad publicity.
- Potential disruption of the current work force.
- Nonproductive time associated with a law suit.

Legal update and statistics

Since the effective dates of the titles, the following actions have been recorded:

Title I

Under Title I, the EEOC anticipated 12,000 ADA related charges in fiscal year 1993. Based on the current rate of charges filed, the EEOC

has revised its annual projection to 15,000 as shown in Figure 3 (page 11). Total charges filed with the EEOC through April 30, 1993, were 8,505. By mid-July 1993, over 12,000 charges were filed. Some statistics regarding the nature of the charges are:

- 49 percent of claims are related to discharge of current employees.
- 22 percent of claims are related to reasonable accommodation.
- 19 percent of impairments cited dealt with back problems.
- 10 percent of impairments cited dealt with mental illness and learning disabilities.

Title II

Total charges filed with the DOJ through July 9, 1993, were 1,355.

Title III

Total charges filed with the DOJ through July 9, 1993, were 1,588.

Although a distribution of charges is not available for Title II and Title III, most complaints appear to be related to access to places of public accommodation. In time, this focus is expected to shift to compliance actions required for alterations and new construction.

Complying with ADA

Compliance Is Good Business Practice

A perception appears to exist that the design and construction industry lacks understanding of the Act and its intent. Many in the business community have overreacted to the impact of ADA in terms of cost to employers and potential liability. There are both philosophical and practical reasons why compliance makes good business sense. For example:

- There is a work force of 43 million people with disabilities. Two thirds of this work force is not working. Many are willing and able to work given the opportunity. Hiring them will bring new talent into the workplace.
- Design accommodations for people with disabilities will make facilities “universally” more accessible and safer for all, especially the young, the elderly, and the temporarily disabled.
- Evidence indicates that people with disabilities are equally safe, have similar attendance records, and can perform many jobs as effectively as the non-disabled (according to a DuPont study referenced in a publication by the American Management Association, see Resource List).
- Creative and positive approaches to new ways of performing work and to designing facilities will help integrate individuals with disabilities into the design and construction industry.

- Employing individuals with disabilities will lower the cost burden on taxpayers and employers by reducing payments for unemployment, welfare, and health care.
- The hiring process will be standardized because ADA requires a step-by-step approach.
- The cost of compliance is significantly lower than anticipated (especially the cost to accommodate a person with a disability, as shown in Figure 4). DOJ estimates the cost impact of ADA to be less than a one-percent increase in construction costs.
- It is the law.
- Complying with the law requires a good faith effort. Demonstrating good faith will be helpful in case of legal action.

Good faith approach examples include:

- Good faith recognizes that dialogue with the individual is important.
- Good faith requires end user input from individuals and organizations such as the Job Accommodation Network (see Resource List).
- Good faith requires educating the work force.
- Good faith is making an effort to implement ADA.
- Good faith is ensuring that ADA is being applied in the work place, at field sites, and in facility design.

Complying with ADA

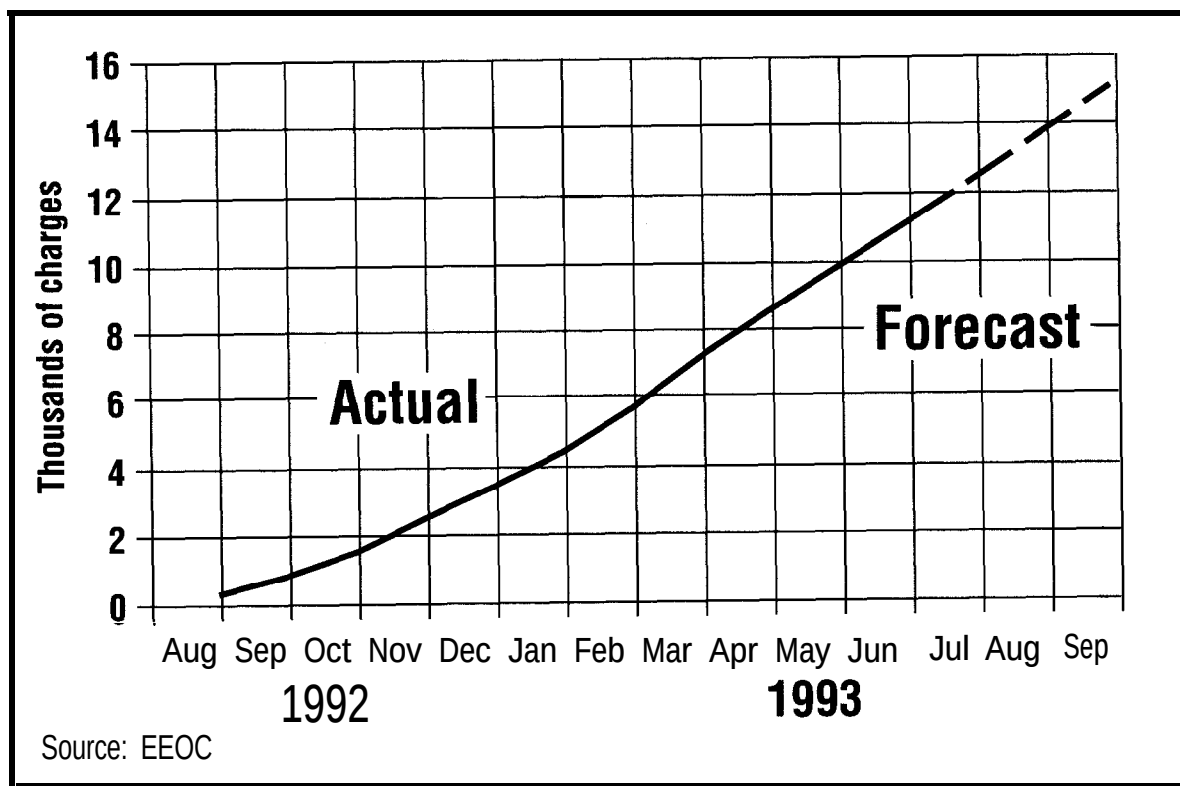


Figure 3. ADA Title I Charges Filed with EEOC

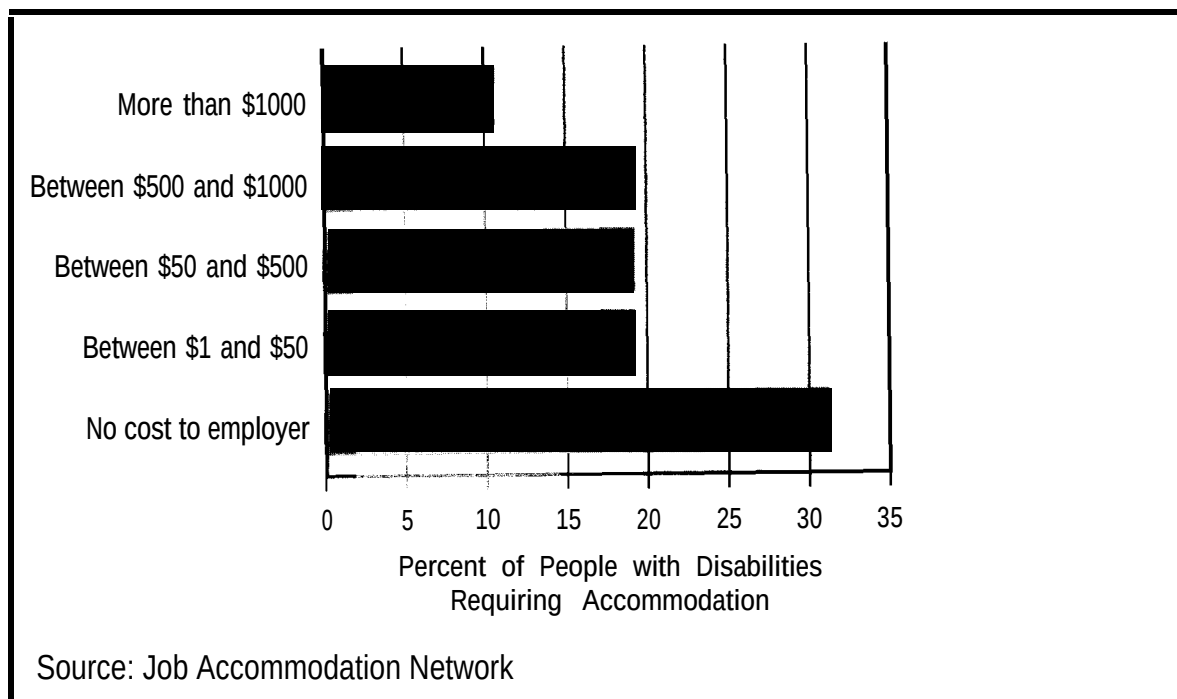


Figure 4. Distribution of Costs of Accommodation

Objective: Equal Opportunity in Employment

ADA requires employers to give qualified individuals with disabilities the same consideration for employment that individuals without disabilities are given.

A **qualified individual** with a disability is an individual who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position he or she holds or desires and who, with or without reasonable accommodation, can perform the essential functions of the position.

Essential functions are fundamental job duties and do not include marginal tasks that are found in most job descriptions. A **reasonable accommodation** is a change in the work environment or in the way work is accomplished that enables an individual with a disability to enjoy equal employment opportunities.

Employers are not required to experience an **undue hardship** due to an accommodation or pose a **direct threat** to the health and safety of the individual, co-workers or the public, or lower productivity standards so that an individual with a disability may work.

Reasonable Accommodation could be as simple as:

- Accessible facilities and/or equipment modification
- Job restructuring
- Modifying work schedules

Essential Functions

Essential functions are requirements of the job that the individual holds or desires. Determination of essential functions should be completed before the interviewing process begins. Specific criteria should be used to define an essential function and distinguish it from marginal functions.

Methods of determining essential functions may include:

- Written job descriptions (optional)
- Frequency of performing a task
- Number of employees performing a task
- Functions actually performed by current or former employees in similar positions
- Degree of importance in performing a task
- Employer's judgment
- Collective bargaining agreement

Undue Hardship

The ADA does not require an employer to provide a reasonable accommodation when the accommodation imposes a significant difficulty or expense on the operation of the business or causes a change in the nature of the business (e.g., an accommodation might "fundamentally alter" the nature of a temporary construction site or it might be unduly costly to make the site physically accessible to an employee using a wheelchair).

Title I - Employment

Direct Threat

ADA does not require an employer to hire individuals who pose a significant risk of substantial harm to the health and safety of themselves or others. This exception likely will be narrowly interpreted by the courts.

Compliance Process

The ADA compliance flow chart for employment is shown in Figure 5. This process covers hiring new employees or dealing with current employees who are being considered for promotion, transfer, or reassignment.

Employment Process

ADA challenges our existing employment procedures. The emphasis is on what a person can do rather than what a person cannot do. This includes the hiring process as well as dealing with current employees in promotion, transfer, or reassignment.

Below are examples of questions that can and cannot be asked of applicants and current employees.

Examples of questions you *can* ask (these questions must be directly job-related):

- Can you climb in pipe racks?
 - Can you work in places that have limited physical access?
 - Can you work in dark places?
 - Can you put a safety belt on and attach both lanyards to a tie-off line? Can you remove the lanyard from the tie-off line?
 - Can you hear audio alarms such as whistles or sirens?
 - Can you lift objects over your head?
 - Can you put on a respirator and wear it for periods of 10 minutes or more?
 - Can you climb a ladder?
 - Can you work at heights of 20 feet?
 - Can you work in situations that frequently require bending and reaching?
 - Can you crawl to work areas that have limited access?
- Examples of questions you *cannot* ask:
- Have you ever been hospitalized? If so, for what condition?
 - Have you ever been treated by a psychiatrist or psychologist? If so, for what condition?
 - Have you ever been treated for any mental condition?
 - Is there any health-related reason you may not be able to perform the job for which you are applying?
 - Have you had a major illness in the last five years?
 - How many days were you absent from work because of illness last year?
 - Do you have any kind of physical defects which preclude you from performing certain kinds of work? If yes, describe such defects and specific work limitations.
 - Do you have any disabilities or impairments that may affect your performance in the position for which you are applying?