



ADA Live! EPISODE 19: BEFORE ATTORNEYS COME KNOCKING: READILY ACHIEVABLE BARRIER REMOVAL

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VOICE OVER ANNOUNCER: Blog Talk Radio. (Music) Welcome to WADA ADA Live! Talk Radio, brought to you by Southeast ADA Center, your leader for information, training and guidance on the Americans with Disabilities Act. And here's your host.

CHERI HOFMANN: Good afternoon and welcome to WADA ADA Live!. On behalf of the Southeast ADA Center, the Burton Blatt Institute at Syracuse University and the ADA National Network, welcome to the 19th episode of ADA Live.

In this episode, we will discuss “Before Attorneys Come Knocking - Readily Achievable Barrier Removal.” Under the ADA, facilities are required to be accessible so that people with disabilities have an equal opportunity to enjoy the goods, services and programs that businesses, non-profits and state and local government offer to the general public. Some people think that only new construction and alterations need to be accessible and that older facilities are grandfathered in, but that's not true.

ADA Live listening audience, you can submit your questions about “Before Attorneys Come Knocking - Readily Achievable Barrier Removal” at any time at adalive.org. My name is Cheri Hofmann, and I'm the Distance Learning Coordinator for the Southeast ADA Center, and your host for today's show. Now, I would like to introduce your speaker for today, Rebecca Williams, Technical Assistance Specialist for the Southeast ADA Center.

Hi, Rebecca, and thank you for being our speaker today.

REBECCA WILLIAMS: Thanks, Cheri. I'm glad to be here.

CHERI HOFMANN: Last month, our show was called: “When Attorneys Come Knocking, How Accessible Is Your Business?” That show discussed how business owners can begin to check their businesses to make sure they're accessible to help their customers with disabilities. The ability to access goods and services is critical for everyone. Some of the listeners to this month's program may not have tuned in to last month's show. How about if we begin by discussing basic accessibility requirements for business owners?

REBECCA WILLIAMS: Sure, Cheri. Title III of the Americans with Disabilities Act requires businesses and non-profit organizations give people with disabilities the same opportunity to access their goods and services that they provide to the general public. Now Title III refers to these private businesses and organizations as “public accommodations.”

So the first thing, really, that business owners need to figure out is, is my business a place of public accommodation? Title III regulations define a public accommodation as a facility whose operations affect commerce, and that falls into within at least one of the 12 general categories. I'm going to briefly tell you the general categories and they include -- places of lodging, establishments that serve food or drink, places of exhibition or entertainment, public gathering spots, sales establishments, service establishments, and that's just six, we have six more to go. Transportation, but think Greyhound here. Places of public display or collection, places of recreation, private educational facilities, social services centers and last but not least, places of exercise.

Now, I know this is a really long list and it could get confusing. And you may see some overlap between categories, so I would encourage folks if they have any questions as to whether their business falls into one of these general categories, to go ahead and give their national -- I'm sorry, regional -- ADA center a call at 1-800-949-4232. The information on the National ADA Network will also be listed on our resource page.

CHERI HOFMANN: Well, thank you, Becky. It sounds like public accommodations cover just about anywhere people spend money.

REBECCA WILLIAMS: You, know, that's a great way to look at it. Just about any place that a person can spend money and get something in return -- whether it's a tangible object like groceries, or a service like a haircut or getting your taxes completed, or entertainment like a concert or a movie theatre -- is considered a place of public accommodation. And it may be easier for folks to remember that a public accommodation is a private place of business where goods and services are sold or offered to the public.

CHERI HOFMANN: So you mentioned earlier that business owners must give persons with disabilities the opportunity to access the goods and services that they provide to the general public. What exactly does that mean?

REBECCA WILLIAMS: Well, what it means, Cheri, is that business owners must remove architectural barriers so that people with disabilities have equal access to obtain whatever it is the business provides. Now, the folks at the Department of Justice realize it may not always be possible to remove all architecture barriers and this is why the requirement calls for readily achievable barrier removal. What this means basically is that “readily achievable” is easily accomplishable and able to be carried out without much difficulty or expense.

And so what does -- the readily achievable decision is made on a case-by-case basis, Cheri. Business owners have to consider the size of the business, the overall finances of the business, and the nature and cost of the access improvements needed when looking at, is this going to be readily achievable.

Now, sometimes, Cheri, increasing access will not require an outlay of cash at all. Sometimes, simple things like rearranging tables could increase access in a restaurant for people using wheelchairs, or adjusting the layout of the racks and shelves in the store might also permit greater wheelchair access. So I'm referring to minor adjusting here. Business owners are not required to rearrange merchandise displays if this action would result in a significant loss of selling or serving space.

Another thing about readily barrier removal that I'd like to make business owners aware of is that barrier removal that is difficult now, may be readily achievable in the future as finances change or business grows. For example, let's say a small business owner opens an existing facility. They survey their facility for possible accessibility issues and determine that there are places that their facility is not accessible and doesn't meet the ADA 2010 Standards for Accessible Design.

So let's say at the time they open they don't have the capital to fund the needed renovations. Let's fast forward a couple of years. The business has done well and has had profits each year. Now they may be able to afford to make these changes, so that it's readily achievable. So the business owner has got to keep in mind, you don't look at the business once to decide what is readily achievable. It's an ongoing process until the business is fully accessible.

CHERI HOFMANN: Well, I think determining how to make a business accessible sounds like a really daunting task. I think here might be a good spot to talk about where a business owner should begin. I would like to throw that 800 number out there again for folks to call if they have questions, and their regional number across the entire United States is 800-949-4232. So, Becky, where should a business owner begin?

REBECCA WILLIAMS: Well, Cheri, I agree that determining where to begin may appear as quite a challenge for some folks. The Department of Justice Title III ADA regulation -- again, for places of commerce -- suggests the following priorities for providing access. The first thing we need to look at is the accessible approach and entrance. Priority two, we look at access to goods and services.

The third priority is access to public toilet rooms, and the fourth priority would be access to other items such as water fountains and public telephones.

CHERI HOFMANN: Well, can you walk us through what a business owner might do to see if their business complies with priority one? We get a lot of questions about accessible parking. Would this fall under priority one?

REBECCA WILLIAMS: Absolutely, Cheri, accessible parking does fall under priority one so it's a great place to start. Now, if parking is provided at a place of business, then that business owner needs to determine if their parking facility has the correct number of accessible parking spaces. The regulations use the term "parking facility" instead of the term "parking lot" to make it clear that both parking lots and parking structures are required to comply.

Also, the number of required accessible parking spaces is to be calculated separately for each parking facility. Once one knows how many accessible parking spaces are required, business owners need to determine that if any accessible parking spaces are there, do they currently meet the 2010 ADA Standards for Accessible Design. We will give you a link to these standards in the resources pages for this show.

The one thing about accessible parking I want to caution listeners about is that they should also consult with their State Accessibility Code before making alterations or renovations for access. Many states have adopted the 2010 ADA Standards for Accessible Design as their accessibility code, but some states have different requirements that provide more access than the 2010 Standards.

For example, Cheri, the state of Florida requires all vehicle parking spaces to be 12 feet wide whereas the 2010 ADA Standards for Accessible Design require vehicular spaces to be eight feet wide. So in this situation, Florida business owners must meet the more generous Florida requirements.

So let's continue with priority one, accessible approach and entrance. There are many factors to consider when determining if the approach to your business is accessible. We include here the walking surface. Is it firm, stable and slip resistant? We look at the slope, making sure it's not too steep, whether it's wide enough for people using wheelchairs -- and that's just the beginning. Now, not all of these features are on every path of travel but many will come into play. And on top of all of this, the accessible route must lead to the accessible entrance. Business owners also need to look at their accessible entrance, maneuvering clearances, door hardware, operating parts, thresholds and the door closing speeds are several items that must be considered.

CHERI HOFMANN: Wow, Becky, all of that and we're not even inside the business yet.

REBECCA WILLIAMS: Yep, it sure does seem like a lot, Cheri, but business owners don't need to figure this out all on their own. There's a great easy to use

ADA Checklist for Existing Facilities and we can talk about that later on in the show.

CHERI HOFMANN: I would like to thank you for all of this great information. And ADA Live listening audience, if you have a question about readily achievable barrier removal, you can submit it at any time at our online forum at adalive.org, and now I would like to have a word from our sponsors.

VOICE OVER ANNOUNCER: The Southeast ADA Center is your leader in providing information, training, and guidance on the Americans with Disabilities Act and disability access tailored to the needs of business, government, and individuals at local, state, and regional levels. The Southeast ADA Center, located in Atlanta, Georgia, is a member of the ADA National Network and serves eight states in the Southeast region. For answers to your ADA questions, contact the ADA National Network at 1-800-949-4232.

CHERI HOFMANN: Welcome back to the second part of our program. Our topic today is “Before Attorneys Come Knocking - Readily Achievable Barrier Removal.” At this time, we would like to welcome back Rebecca Williams to this show. Rebecca, you were going to tell us about the ADA Checklist for Existing Facilities.

REBECCA WILLIAMS: Sure, Cheri. The ADA Checklist for Existing Facilities is a great tool developed by the New England ADA Center. This wonderful document can be found at www.adachecklist.org. We'll also have a link to the checklist on our resource page.

This checklist is very easy to follow and has lots of great features. It has step-by-step instructions for going through a facility and checking the different elements of a site under the four priorities we mentioned earlier. It also has pictures and diagrams, helpful hints and suggested tools to assist with taking measurements. Folks can fill it out online but they are also encouraged to print copies and use it during their site surveys.

CHERI HOFMANN: Rebecca, it seems like there is so much to know. Can someone without prior ADA knowledge use the checklist?

REBECCA WILLIAMS: Absolutely, Cheri! The beauty of the checklist is in its simplicity. Now, the checklist is set up in columns. First, the required standard for an element is listed. The next column is the place for the actual measurements, followed by a column for notes and comments and then a column that gives the possible solutions if the element does not comply.

There are great diagrams throughout the checklist that indicate how something is to be measured or how it should look. It's a very thorough document but it is a simple tool to use. Keep in mind, Cheri, this is a basic tool to assist business owners survey to see if their business complies with the ADA 2010 Standards for Accessible Design. Before a business owner plans to make readily achievable

removal, they should make sure that their contractor has a copy of the 2010 Standards and they should talk to the contractor about each element they want changed.

I also want to point out that the checklist does not cover all of the scoping requirements in the 2010 standards. For example, there are no questions about patient rooms in hospitals or guest rooms in hotels.

CHERI HOFMANN: So if a business owner uses this checklist and there are areas in the business that are not covered in it, what you're saying is that the business owner is still responsible for making sure that every part of the business meets the 2010 ADA Standards, is that right?

REBECCA WILLIAMS: Yes, that is correct, Cheri. Now, the checklist is a good place to start but it's not intended to be a comprehensive check on every part of the business. There are some other things that our listeners need to understand when they're trying to figure out if their business complies with the ADA. You see, there are two different versions of the ADA Standards and which one applies depends on when the business was built or altered. The two standards are the 1991 ADA Standards and the 2010 ADA Standards for Accessible Design.

CHERI HOFMANN: Well, can you explain what this means?

REBECCA WILLIAMS: Sure, Cheri. If an element in a building was built or altered before March 15th, 2012, and if the part or element complied with the 1991 ADA standards, then it doesn't have to be modified so that it now meets the 2010 standards. This applies even if the specifications for that element has changed.

Let me give you an example. The 1991 standards allow paper towel dispensers to be hung at a maximum height of 54 inches, but the 2010 standards lowers that to 48 inches maximum. Now, if the paper towel dispenser installed prior to March 15, 2012, had its highest operating part at 54 inches, then the dispenser does not need to be lowered to 48 inches. Because the dispenser complied with the 1991 standards, then complying with the '91 standards provides a "safe harbor" for that element.

Another change was made in the 2010 standards to fix the problem with accessible parking spaces. In the 1991 standards, it required an eight-foot space for van and vehicle parking plus an eight-foot access isle. But people were parking in eight-foot access isle, which blocked anyone with a side wheelchair lift from getting in and out of the van. So now the 2010 standards now require a 11-foot van parking space with a five-foot access isle and this change for a specific larger van space and a smaller access isle. This change was put in place to discourage people from parking in the access isles.

Again, this can be kind of confusing to know, is there a safe harbor and do I need to follow the '91 standards or the 2010 and folks can always call the regional ADA center at 1-800-949-4232 and talk with their information specialist there.

CHERI HOFMANN: Wow, that's a lot of information, again, Rebecca. Can you explain again what a safe harbor means?

REBECCA WILLIAMS: Absolutely! Safe harbor applies to properties that were built or altered before March 15th, 2012. If the elements in that building complied with the 1991 standards, they do not have to be changed just to meet the 2010 standards but, and it's important to understand, that if part of a building is renovated or or altered, then the elements must be brought into compliance with the 2010 standards.

CHERI HOFMANN: Thanks, Rebecca. So here's another question. When the business owner is checking their property and there are two possible standards that might apply, how does the business owner know which one applies? Is it the 1991 or the 2010 ADA Standards for Accessible Design?

REBECCA WILLIAMS: That's a great question, Cheri, and the ADA Checklist takes care of that. If there are elements that could fall under safe harbor, this information is listed in the possible solutions column. As I said previously, it's a very user-friendly checklist.

Also, if the business owner has concerns as to whether they used the checklist correctly, they could contact their local Center for Independent Living and ask for a site survey or assistance with their assessment. That's a tongue twister. Locations for Centers for Independent Living can be found by visiting the National Council on Independent Living website at www.ncil.org, and also keep mind the 10 regional ADA Centers throughout the United States, and callers can connect again, with 1-800-949-4232.

But another great thing business owners can do is ask their customers who have disabilities for feedback on the accessibility of their facility. Happy customers means loyal customers, which means income for the business owners. Business owners should keep in mind the power of the referral. You know, Cheri, word will spread about the accessibility or inaccessibility of a business.

I have two more pieces of information about the ADA Checklist I would like to share with our audience in a minute.

CHERI HOFMANN: And that's a good segue for us to have a word from our sponsors.

VOICE OVER ANNOUNCER: The ADA National Network provides information, guidance and training, on the Americans with Disabilities Act tailored to meet the needs of business, government, and individuals at local, regional, and national levels. The ADA National Network consists of ten regional ADA Centers in the

United States, providing local assistance to ensure that the ADA is implemented wherever possible. The ADA National Network is not an enforcement agency, but a helpful resource supporting the ADA's mission to make it possible for everyone with a disability to live a life of freedom and equality.

CHERI HOFMANN: Welcome back, ADA live listening audience, to the third part of our program. We are with Rebecca Williams, Technical Assistance Specialist for the Southeast ADA Center, about what business owners should know when checking their business for accessibility. We have been talking about the ADA Checklist for Existing Facilities, and you said you had two more things you wanted to tell us about, Becky.

REBECCA WILLIAMS: Yes, the 2010 Standards contain elements that were not in the 1991 Standards. This includes things like amusement rides, recreational boating facilities, exercise machines and equipment, fishing piers and platforms, golfing facilities, miniature golf facilities, play areas, swimming pools, wading pools and spas, and shooting facilities with firing positions.

Now, because these elements were not in the 1991 Standards, they are not subject to the safe harbor exception. What this really means, Cheri, is that all of those type of recreational facilities -- Title III entities that are now in the 2010 Standards, they -- current facilities must undergo readily achievable barrier removal. For example, a hotel has to decide whether it would be readily achievable to make its swimming pool accessible by either installing a lift, a sloped entry or both as specified in the 2010 Standards.

A boat marina must decide if it can make its docks accessible. Amusement parks such as Six Flags, Disney, Universal Studios and Busch Gardens must perform readily available barrier removal to increase access. And Cheri, listeners can learn more about some of the requirements for recreational facilities by listening to two of the WADA Live! archive shows. We did Episode 7 on access to pools and Episode 9 on access to play areas. We will provide the link for those on our resource page.

Business owners also need to keep in mind that when a primary function area of an existing facility is altered, the path of travel to that area -- which includes restrooms, telephones, drinking fountains serving the area -- must also be made accessible, but only to the extent that the cost of doing so would not exceed 20 percent of the cost of the alterations to the primary function area.

The last thing I want to mention is that the ADA Title III regulations require more than physical access and barrier removal. The Title III regulations include requirements for non-discriminatory policies and practices and for the provision for auxiliary aids and services, such as sign language interpreters for people who are deaf and materials in Braille for people who are blind. The Checklist does not cover these types of requirements.

CHERI HOFMANN: I think you have provided good information for our listeners to get a basic understanding of readily achievable barrier removal. Do you think we could talk about some specific solutions for ready achievable barrier removal?

REBECCA WILLIAMS: Absolutely, Cheri. First, we need to remember that there is no single definitive answer as to what is readily achievable for a business. That is because what is readily achievable in terms of not much difficulty or expense for one business, may be very difficult for another business. So determining what is readily achievable must be made on a case-by-case or business-by-business basis.

But the Department of Justice regulation does give us a list of 12 examples of modifications that may be readily achievable. I'll list just a few and listeners can find a full list and other parts of the regulations on our resource page after the program.

So some of these readily achievable barrier removals are: installing a ramp or a curb cut in the sidewalk and entrances; rearranging tables, chairs, vending machines, display racks and other furniture; adding raised markings on elevator control buttons; installing offset hinges to widen doorways; installing grab bars in toilet stalls and rearranging toilet partitions to increase maneuvering space; insulating lavatory pipes under the sink to prevent burns for someone who is sitting in a wheelchair; and creating accessible parking spaces -- and those are a few [examples] of the readily achievable barrier removal that the Department of Justice has come up with.

So let's talk about some of the renovations that might be readily achievable. One complaint I get while answering calls, Cheri, is about inaccessible customer restrooms. I understand that restroom renovations can be costly. But sometimes it can actually be readily achievable to convert a single-users men and a single-users women's restroom that are side-by-side into an accessible unisex restroom, rather than converting both single-user restrooms into accessible facilities.

Now, of course, the business owner should consult with a contractor or architect to determine if such a project is technically feasible but this is one possible solution is just to convert into one unisex usable bathroom.

Cheri, I also get a lot of calls about facilities that don't have power assisted doors or [doors] are too hard to open. Now, most folks don't realize that the ADA Standards do not require power assisted doors. Exterior doors are usually fire doors and must meet the fire code requirements set by the appropriate administration authority. However, if an exterior door requires a great deal of force to pull open, a business owner could simply replace those doors with less heavy ones and he could also reduce the opening force to the minimum required

by the local fire code. That's another example of readily achievable barrier removal.

Speaking of doors, when doors don't have the required maneuvering clearances so that someone in a wheelchair can get through, sometimes an easy fix is as simple as changing where the hinges are placed. Removing them from the inside or the outside of the door itself, or vice versa. So, Cheri, those are just a few examples of low cost barrier removal.

I also would like to remind business owners that there are tax incentives available to encourage compliance with the ADA Standards for accessible design. Unfortunately, Cheri, many business owners are not aware these incentives exist, and we would like to encourage business owners to make sure you take advantage of these valuable incentives. A link to a document on tax incentives will be included with our resource page for this show.

CHERI HOFMANN: Thank you for those examples, Rebecca. I hope our listening audience has a better understanding of what type of businesses fall under Title III of the ADA, as well as an increased knowledge of readily achievable barrier removal. At this time, I would like to thank our guest speaker, Rebecca Williams.

We invite folks to celebrate the 25th Anniversary of the ADA. This is a big year for us! July 26th, 2015, is the 25th anniversary of the Americans with Disabilities Act, and we invite everyone to be a part of the nationwide ADA 25 celebration.

Please go online to www.ADAanniversary.org and sign the ADA Pledge. Now, this pledge is not a money pledge. It's just a pledge saying I support the ADA, and we are glad it's here and we believe in access for everybody.

We also invite you to explore the ADA Anniversary Toolkit. It's packed full of ideas and information. Please learn, connect, and share the ADA anniversary at www.ADAanniversary.org. The Southeast ADA Center is grateful for your support and participation in the series of ADA Live broadcasts. Join us next month on the first Wednesday, which will be May 6th. See you next month on www.ADALive.

VOICE-OVER ANNOUNCER: Thank you for listening to ADA Live! Talk radio, brought to you by the Southeast ADA Center. Remember to join us the first Wednesday of each month for another ADA topic, and you can call 1-800-949-4232 for answers to your ADA questions.

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