

## Common Questions: Readily Achievable Barrier Removal



Provided By:  
Pacific ADA Center  
1-800-949-4232 (Voice/TTY)  
(510) 285-5600 (Voice/TTY)  
adatech@adapacific.org  
www.adapacific.org

The ADA requires companies providing goods and services to the public to take certain limited steps to improve access to existing places of business. This mandate includes the obligation to remove barriers from existing buildings when it is readily achievable to do so. Readily achievable means *easily accomplishable and able to be carried out without much difficulty or expense*.

Many building features that are common in older facilities such as narrow doors, a step or a round door knob at an entrance door, or a crowded check-out or store aisle are barriers to access by people with disabilities. Removing barriers by ramping a curb, widening an entrance door, installing visual alarms, or designating an accessible parking space is often essential to ensure equal opportunity for people with disabilities. Because removing these and other common barriers can be simple and inexpensive in some cases and difficult and costly in others, the regulations for the ADA provide a flexible approach to compliance. This practical approach requires that barriers be removed in existing facilities only when it is readily achievable to do so. The ADA does not require existing buildings to meet the ADA's standards for newly constructed facilities.

The ADA states that individuals with disabilities may not be denied the full and equal enjoyment of the “goods, services, facilities, privileges, advantages, or accommodations” that the business provides -- in other words, whatever type of good or service a business provides to its customers or clients. A business or other private entity that serves the public must ensure equal opportunity for people with disabilities.

In the following section, we answer some of the most commonly asked questions we receive from our toll-free ADA Information Line about the barrier removal requirement and how it differs from those requirements that apply to new construction and alteration of buildings.

*Individuals with disabilities may not be denied the full and equal enjoyment of the “goods, services, facilities, privileges, advantages, or accommodations”*

*The ADA establishes different requirements for existing facilities and new construction.*

*The types of facilities listed in each category are examples — they are not intended to be an exhaustive list of all covered facilities.*

■ ***I own three buildings, two of which were designed and constructed prior to the enactment of the ADA. I have been told I have to make them all accessible. Is this true? Does the ADA require me to make them all accessible?***

The ADA establishes different requirements for existing facilities and new construction. In existing facilities where retrofitting may be expensive, the requirement to provide access through barrier removal is less than it is in new construction where accessibility can be incorporated in the initial stages of design and construction without a significant increase in cost.

The requirement to remove barriers in existing buildings applies only to a private entity that owns, leases, leases to or operates a “place of public accommodation.” Further, barriers must be removed only where it is “readily achievable” to do so. Readily achievable means *easily accomplishable and able to be carried out without much difficulty or expense.*

■ ***Is my business required to remove barriers?***

If your business provides goods and services to the public, you are required to remove barriers if doing so is readily achievable. Such a business is called a public accommodation because it serves the public. If your business is not open to the public but is only a place of employment like a warehouse, manufacturing facility or office building, then there is no requirement to remove barriers. Such a facility is called a commercial facility. While the operator of a commercial facility is not required to remove barriers, you must comply with the ADA Standards for Accessible Design when you alter, renovate or expand your facility.

■ ***What is a “place of public accommodation”?***

A place of public accommodation is a facility whose operations affect commerce and fall within at least one of the following 12 categories set out in the ADA:

- 1) Places of lodging (e.g., inns, hotels, motels) (except for owner-occupied establishments renting fewer than six rooms);
- 2) Establishments serving food or drink (e.g., restaurants and bars);
- 3) Places of exhibition or entertainment (e.g., motion picture houses, theaters, concert halls, stadiums);
- 4) Places of public gathering (e.g., auditoriums, convention centers, lecture halls);
- 5) Sales or rental establishments (e.g., bakeries, grocery stores, hardware stores, shopping centers);
- 6) Service establishments (e.g., laundromats, dry-cleaners, banks, barber shops, beauty shops, travel services, shoe repair services,

- funeral parlors, gas stations, offices of accountants or lawyers, pharmacies, insurance offices, professional offices of health care providers, hospitals);
- 7) Public transportation terminals, depots, or stations (not including facilities relating to air transportation);
  - 8) Places of public display or collection (e.g., museums, libraries, galleries);
  - 9) Places of recreation (e.g., parks, zoos, amusement parks);
  - 10) Places of education (e.g., nursery schools, elementary, secondary, undergraduate, or postgraduate private schools);
  - 11) Social service center establishments (e.g., day care centers, senior citizen centers, homeless shelters, food banks, adoption agencies); and
  - 12) Places of exercise or recreation (e.g., gymnasiums, health spas, bowling alleys, golf courses).

■ ***I operate a restaurant that opened in 1991. The city required that the restaurant comply with the local accessibility code. Is the restaurant "grandfathered" and not required to remove barriers as required by the ADA?***

No. A restaurant is a public accommodation and a place of public accommodation must remove barriers when it is readily achievable to do so. Although the facility may be "grandfathered" according to the local building code, the ADA does not have a provision to "grandfather" a facility. While a local building authority may not require any modifications to bring a building "up to code" until a renovation or major alteration is done, the ADA requires that a place of public accommodation remove barriers that are readily achievable even when no alterations or renovations are planned.

*...the ADA does not have a provision to "grandfather" a facility...*

■ ***Do I, as the owner, have to pay for removing barriers?***

Yes, but tenants and management companies also have an obligation. Any private entity who owns, leases, leases to, or operates a place of public accommodation shares in the obligation to remove barriers.

■ ***If I do remove barriers, is my business entitled to any tax benefit to help pay for the cost of compliance?***

As amended in 1990, the Internal Revenue Code allows a deduction of up to \$15,000 per year for expenses associated with the removal of qualified architectural and transportation barriers (Section 190).

*To learn more about tax credits and deductions for barrier removal and providing accessibility contact the IRS at (800) 829-1040 (voice) or (800) 829-4059 (TDD) or call the Department of Justice ADA Information Line (800) 514-0301 voice, (800) 514-0383 TDD.*

*Copies of the regulations, which include the Standards can be ordered 24 hours a day from the Department's ADA Information line.*

The 1990 amendment also permits eligible small businesses to receive a tax credit (Section 44) for certain costs of compliance with the ADA. An eligible small business is one whose gross receipts do not exceed \$1,000,000 or whose workforce does not consist of more than 30 full-time workers. Qualifying businesses may claim a credit of up to 50 percent of eligible access expenditures that exceed \$250 but do not exceed \$10,250. Examples of eligible access expenditures include the necessary and reasonable costs of removing architectural, physical, communications, and transportation barriers; providing readers, interpreters, and other auxiliary aids; and acquiring or modifying equipment or devices.

■ **What design standards apply when I'm removing barriers?**

When you undertake to remove a barrier, you should use the alterations provisions of the ADA Standards for Accessible Design (Standards). These Standards were published in Appendix A to the Department of Justice's Title III regulations, 28 CFR Part 36, *Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities*. Deviations from the Standards are acceptable when full compliance with those requirements is not "readily achievable". In such cases, barrier removal measures may be taken that do not fully comply with the Standards, so long as the measures do not pose a significant risk to the health or safety of individuals with disabilities or others.

*ILLUSTRATION: As a first step toward removing architectural barriers, the owner of a small shop decides to widen the shop's 26-inch wide front door. Because of space constraints the shop owner can only widen the door to provide a 30-inch clear width, not the full 32-inch clearance required for alterations under the Standards. Full compliance with the Standards is not in this case readily achievable. The 30-inch clear width will allow most people who use crutches or wheelchairs to get through the door and will not pose a significant risk to their health or safety.*

■ **How can I get a copy of the ADA Standards for Accessible Design?**

Copies of the regulations, which include the Standards, are available from the Department of Justice's ADA Information Line and may also be available in your local library. The Department of Justice distributed an ADA Information File containing regulations and technical assistance materials to over 15,000 libraries nationwide. Copies of the regulations can be ordered 24 hours a day from the Department's ADA Information line (1-800-514-0301 Voice or 1-800-514-0383 TDD).

■ ***How do I determine what is readily achievable?***

“Readily achievable” means easily accomplishable and able to be carried out without much difficulty or expense. Determining if barrier removal is readily achievable is, by necessity, a case-by-case judgment. Factors to consider include:

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

*...readily achievable will have to be determined on a case-by-case basis in light of the nature and cost of the barrier removal and the resources available.*

If the public accommodation is a facility that is owned or operated by a parent entity that conducts operations at many different sites, you must consider the resources of both the local facility and the parent entity to determine if removal of a particular barrier is “readily achievable.” The administrative and fiscal relationship between the local facility and the parent entity must also be considered in evaluating what resources are available for any particular act of barrier removal.

■ ***Can you tell me what barriers it will be “readily achievable” to remove?***

The Department’s regulation contains a list of 21 examples of modifications that may be readily achievable. These include installing ramps, making curb cuts in sidewalks and at entrances, repositioning telephones, adding raised markings on elevator control buttons, installing visual alarms, widening doors, installing offset hinges to widen doorways, insulating lavatory pipes under sinks, repositioning a paper towel dispenser, installing a full-length mirror, rearranging toilet partitions to increase maneuvering space or installing an accessible toilet stall. The list is not exhaustive and is only intended to be illustrative. Each of these

modifications will be readily achievable in many instances, but not in all. Whether or not any of these measures is readily achievable will have to be determined on a case-by-case basis in light of the nature and cost of the barrier removal and the resources available.

■ ***Does the ADA permit me to consider the effect of a modification on the operation on my business?***

Yes. The ADA permits consideration of factors other than the initial cost of the physical removal of a barrier.

*ILLUSTRATION: CDE convenience store determines that it would be inexpensive to remove shelves to provide access to wheelchair users throughout the store. However, this change would result in a significant loss of selling space that would have an adverse effect on its business. In this case, the removal of all the shelves is not readily achievable and, thus, is not required by the ADA. However, it may be readily achievable to remove some shelves.*

■ ***If an area of my store is reachable only by a flight of steps, would I be required to add an elevator?***

Usually no. A public accommodation generally would not be required to remove a barrier to physical access posed by a flight of steps, if removal would require extensive ramping or an elevator. The readily achievable standard does not require barrier removal that requires burdensome expense. Thus, where it is not readily achievable to do so, the ADA would not require a public accommodation to provide access to an area reachable only by a flight of stairs.

■ ***I have a portable ramp that we use for deliveries - can't I just use that?***

Yes, you could, but only if the installation of a permanent ramp is not readily achievable. In order to promote safety, a portable ramp should have railings, a firm, stable, nonslip surface and the slope should not exceed one to twelve (one unit of rise for every twelve units horizontal distance). It should also be properly secured and staff should be trained in its safe use.

■ ***Because one of my buildings is very inaccessible, I don't know what to fix first. Is guidance available?***

Yes. The Department recommends priorities for removing barriers in existing facilities because you may not have sufficient resources to remove all existing barriers at one time. These priorities are not mandatory. You are free to exercise discretion in determining the most effective "mix" of barrier removal measures for your facilities.

The **first priority** is enabling individuals with disabilities to enter the facility. This priority on “getting through the door” recognizes that providing physical access to a facility from public sidewalks, public transportation, or parking is generally preferable to any alternative arrangements in terms of both business efficiency and the dignity of individuals with disabilities.

The **second priority** is providing access to those areas where goods and services are made available to the public. For example, in a hardware store these areas would include the front desk and the retail display areas of the store.

The **third priority** is providing access to restrooms (if restrooms are provided for use by customers or clients).

The **fourth priority** is removing any remaining barriers, for example, lowering telephones.

■ ***What about my employee areas? Must I remove barriers in areas used only by employees?***

No. The “readily achievable” obligation to remove barriers in existing facilities does not extend to areas of a facility that are used exclusively by employees. Of course, it may be necessary to remove barriers in response to a request for “reasonable accommodation” by a qualified employee or applicant as required by Title I of the ADA. For more information, contact the Equal Employment Opportunity Commission (EEOC) which enforces Title I of the ADA.

■ ***How can a public accommodation decide what needs to be done?***

One effective approach is to conduct a “self-evaluation” of the facility to identify existing barriers. While not required by the ADA, a serious effort at self-assessment and consultation can save resources by identifying the most efficient means of providing required access and can diminish the threat of litigation. It serves as evidence of a good faith effort to comply with the barrier removal requirements of the ADA. This process should include consultation with individuals with disabilities or with organizations representing them and procedures for annual reevaluations.

*Our priorities for barrier removal are not mandatory. Public accommodations are free to exercise discretion in determining the most effective “mix” of barrier removal measures to undertake in their facilities.*

*...public accommodations are urged to establish procedures for an ongoing assessment of their compliance with the ADA’s barrier removal requirements.*

*...when barrier removal is not readily achievable, then goods and services must be made available through alternative methods, if such methods are readily achievable.*

- ***If a public accommodation determines that its facilities have barriers that should be removed, but it is not readily achievable to undertake all of the modifications now, what should it do?***

The Department recommends that a public accommodation develop an implementation plan designed to achieve compliance with the ADA's barrier removal requirements. Such a plan, if appropriately designed and executed, could serve as evidence of a good faith effort to comply with the ADA's barrier removal requirements.

- ***What if I'm not able to remove barriers at this time due to my financial situation? Does that mean I'm relieved of current responsibilities?***

No, when you can demonstrate that the removal of barriers is not readily achievable, you must make your goods and services available through alternative methods, if undertaking such methods is readily achievable. Examples of alternative methods include having clerks retrieve merchandise located on inaccessible shelves or delivering goods or services to the customers at curbside or in their homes. Of course, the obligation to remove barriers when readily achievable is a continuing one. Over time, barrier removal that initially was not readily achievable may later become so because of your changed circumstances.

- ***If the obligation is continuing, do you mean there are no limits on what I must do to remove barriers?***

No. There are limits. In removing barriers, a public accommodation does not have to exceed the level of access required under the alterations provisions contained in the Standards (or the new construction provision where the Standards do not provide specific provisions for alterations).

**ILLUSTRATION 1:** An office building that houses places of public accommodation is removing barriers in public areas. The alterations provisions of the Standards explicitly state that areas of rescue assistance are not required in buildings that are being altered. Because barrier removal is not required to exceed the alterations standard, the building owner need not establish areas of rescue assistance.

ILLUSTRATION 2: A grocery store has more than 5000 square feet of selling space and prior to the ADA had six inaccessible check-out aisles. Because the Standards do not contain specific provisions applicable to the alteration of check-out aisles one must look to the new construction provisions of the Standards for the upper limit of the barrier removal obligation. These provisions require only two of the six check-out aisles to be accessible. Because the store found it readily achievable in 1993 and 1994 to remove barriers and make two of check-out aisles accessible, the store has fulfilled its obligation and is not required to make more check-out aisles accessible.

■ ***What is the difference between barrier removal and alterations?***

*Aren't they both very similar?*

Not really. Under the ADA, barrier removal is done by a place of public accommodation to remove specific barriers that limit or prevent people with disabilities from obtaining access to the goods and services offered to the public. This is an ongoing obligation for the business that has limits determined by resources, size of the company and other factors (see pages 7 & 8). An alteration is replacement, renovation or addition to an element or space of a facility. Generally alterations are done to improve the function of the business, to accommodate a change or growth in services, or as part of a general renovation. The requirements for alterations are greater than those for barrier removal because the alteration is part of a larger construction or replacement effort.

■ ***One of the buildings that I own is a small factory with offices.***

*Do I have to make that accessible?*

No, commercial facilities such as factories, warehouses, and office buildings that do not contain places of public accommodation are considered “commercial facilities” and are not required to remove barriers in existing facilities. They are, however, covered by the ADA’s requirements for accessible design in new construction or alterations.

*Commercial facilities that do not contain places of public accommodation are not required to remove barriers in existing facilities except to provide access to employment.*