

PUBLIC ACCOMMODATIONS GUIDE

Note: This guide is intended to provide general legal advice regarding the protections and rights available to persons with a disability under federal and Idaho public accommodation laws.

If you need specific legal advice regarding your situation, please contact an attorney.

AMERICANS WITH DISABILITIES ACT (ADA) TITLE III - PUBLIC ACCOMMODATIONS: THE BASICS

Title III of the ADA is a federal law that prohibits discrimination based on disability in public accommodations. To be protected one must have a disability or a relation or association with an individual with a disability. See generally [28 Code of Federal Regulations Section 36](#).

WHO IS CONSIDERED A PERSON WITH A DISABILITY?

The ADA defines a person with a disability as individuals with mental or physical impairments that may substantially limit one or more major life activities.

[42 United States Code Section 3602\(h\)\(1\)](#).

Individuals with a record of such impairment *and* those regarded by others as having such an impairment fall within this definition.

[42 United States Code Section 3602\(h\)\(2\)-\(3\)](#).

Persons with a history or record of such mental or physical impairment or a person who is perceived by others as having such an impairment are also covered by the ADA. [28 Code of Federal Regulations Section 36.104](#)

Note: There is no list specifying all the impairments covered by the ADA.

WHAT IS A “MENTAL OR PHYSICAL IMPAIRMENT”?

A mental or physical impairment includes, but is not limited to:

- Blindness
- Hearing impairment
- Mobility impairment
- HIV infection
- Mental retardation
- Alcoholism
- Drug addiction
- Chronic fatigue
- Learning disability
- Head injury
- Mental illness

[24 Code of Federal Regulations Section 100.201\(b\)](#).

WHAT IS A “PLACE OF PUBLIC ACCOMMODATION”?

Under the ADA, a public accommodation is a private entity that owns, leases, leases to, or operates facilities including:

- Restaurants;
- Convention centers;
- Doctors' offices;
- Homeless shelters;
- Transportation depots;
- Zoos;
- Funeral homes;
- Day care centers;
- Recreational facilities (includes fitness clubs and sports stadiums).

[28 Code of Federal Regulations Section 36.104](#)

WHAT IS A “MAJOR LIFE ACTIVITY”?

A major life activity includes, but is not limited to, seeing, hearing, walking, breathing, caring for oneself, performing manual tasks, learning, or speaking.

[24 Code of Federal Regulations Section 100.201\(b\)](#).

ARE THERE EXCEPTIONS TO THIS DEFINITION?

Current users of controlled substances, persons convicted for illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders do **not** fall within this definition.

[42 United States Code Section 3602\(h\)\(3\)](#).

WHAT ARE THE ADA'S KEY PROTECTIONS FOR PLACES OF PUBLIC ACCOMMODATION?

Businesses and non-profit service providers that are places of public accommodation, privately owned entities offering certain types of courses and examinations, privately owned transportation, and commercial facilities must comply with basic non-discrimination requirements including:

- Making reasonable modifications to policies, practices, and procedures, [28 Code of Federal Regulations Section 36.302\(a\)](#);

What are reasonable modifications?: Reasonable modifications are any physical changes to an apartment or house that make it accessible to someone with a disability, such as ramps or grab bars.

- Ensuring effective communication with people with hearing, vision, or speech disabilities (and other access requirements). [28 Code of Federal Regulations Section 36.303\(c\)](#);
- Complying with specific architectural accessibility standards for new and altered buildings, [28 Code of Federal Regulations Section 36.101](#);

Note: These architectural standards also apply to commercial facilities, such as factories and warehouses. [28 Code of Federal Regulations Section 36.102\(3\)\(ii\)](#)

- Removing barriers in existing buildings where it is easy to do so without much difficulty or expense, given the public accommodation's resources. [28 Code of Federal Regulations Section 36.304\(a\)](#);
- Providing courses and examinations related to professional, education, or trade-related applications, licensing, certification, or credentialing in a place and manner accessible to people with disabilities. If this is not possible, other accessible arrangements must be offered. [28 Code of Federal Regulations Section 36.309\(a\)](#).

How Do I File a Complaint For a Violation of Public Accommodation Laws Under the ADA?

You can file a complaint for a violation of public accommodation laws under the ADA with Department of Justice (DOJ). For more information, please visit the DOJ's website here:
https://www.ada.gov/fact_on_complaint.htm

THE ADA: PUBLIC ACCOMMODATIONS EXAMPLES

The following examples from the United States Court of Appeals for the Ninth Circuit* help to explain what types of facilities and programs the ADA considers public accommodations.

*The Ninth Circuit includes Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, and Washington.

Note: These examples are not exhaustive and are only intended to be explanatory.

EXAMPLES OF PUBLIC ACCOMMODATIONS:

- A restaurant must ensure that an employee is available to explain a menu to a blind customer.
- A museum offering audio tours must provide alternative formats of the tour that a deaf patron may use.
- A bookstore must communicate with customers in formats that accommodate the disabled.

See [*Nat'l Federation of the Blind v. Target Corp.*, 462 F. Supp. 2d 946, 955-60 \(2006\)](#).

- A theater must remove a patron from the seat adjoining a wheelchair so that a disabled person's companion can sit with him/ her.

[*Fortyune v. American Multi-Cinema, Inc.*, 364 F.3d 1075, 1087 \(2004\)](#).

- A pizzeria's website and mobile application is a place of public accommodation because it facilitates access to the goods and services of the pizzeria's physical restaurant.

[*Robles v. Domino's Pizza, LLC*, 913 F.3d 989, 906-06 \(2019\)](#).

- A clubhouse in a mobile park is a public accommodation because it is not a private club.

[*Kalani v. Castle Village LLC*, 14 F. Supp. 3d 1359, 1372 \(2014\)](#).

EXAMPLES OF NON-PUBLIC ACCOMMODATIONS:

- A theater is not required to provide open captioning – a technique that displays captions on a movie screen for the audience.

[*Arizona ex rel. Goddard v. Harkins Amusement Enters. Inc.*, 603 F.2d 666, 674 \(2010\)](#).

- A bookstore is not required to stock books in Braille.

[*See Nat'l Federation of the Blind v. Target Corp.*, 462 F. Supp. 2d 946, 955-60 \(2006\)](#).

- A social networking website operates only in cyberspace and, therefore, is not a place of public accommodation.

[*Young v. Facebook*, 790 F. Supp. 2d. 1110, 1115 \(2011\)](#).

- The website of a provider of an on-demand video streaming service operates only in cyberspace and, therefore, is not a place of public accommodation.

[*Cullen v. Netflix, Inc.*, 880 F Supp. 2d 1017, 1024 \(2012\)](#).

- Recreational property that is owned by an association of individual owners is private and, therefore, is not a public accommodation.

[*Pappion v. R-Ranch Property Owners Ass'n.*, 110 F. Supp. 3d 1017, 1026 \(2015\)](#).

THE IDAHO HUMAN RIGHTS ACT (IHRA): THE BASICS

The Idaho Human Rights Act (IHRA) provides certain protections to persons with a disability in places of public accommodation. [Idaho Code Sections 67-5909\(5\) through \(9\).](#)

WHAT ARE IHRA'S KEY PROTECTIONS?

- Under the IHRA, an individual cannot be denied the full and equal enjoyment of goods, services, facilities, privileges, advantages, and accommodations of a place of accommodation. [Idaho Code Section 67-5909\(5\).](#)

Note: For the definition of a place of public accommodation in Idaho, see below.

- It is also prohibited to:

Print, circulate, post, mail, or otherwise publish a statement, advertisement, or sign indicating that the full and equal enjoyment of the above goods, services, facilities, privileges, advantages, and accommodations will **be refused, withheld, or denied**, or that that individual's presence at a place of public accommodation is **objectionable, unwelcome, unacceptable, or desirable** based on that individual's disability.

[Idaho Code Section 67-5909\(5\).](#)

WHAT IS AN “PLACE OF PUBLIC ACCOMODATION”?

Under Idaho law, a “place of accommodation” includes a business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind whose goods, services, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public.

[Idaho Code Section 67-5902\(9\).](#)

Under the IHRA, a place of accommodation does not have to be licensed.

[Idaho Code Section 67-5902\(9\).](#)

ARE THERE ANY EXCEPTIONS TO THE IHRA?

Under the IHRA, a person who owns, leases, or operates a place of accommodation is **not** required to permit an individual with a disability to participate in, or benefit from the goods, services, privileges, advantages and accommodations of a place of public accommodation **where the individual poses a direct threat to the health or safety of others.**

[Idaho Code Section 67-5910\(3\).](#)

Note: The person who owns, lease, or operates the place of public accommodation has the burden of proving that an individual with a disability poses a direct threat to others.

How Do I Make a Complaint for a Violation of IHRA's Public Accommodation Laws?

You can file a complaint for a violation of the Idaho Human Rights Act's laws related to public accommodations on their website. For more information, please visit their webpage here:
<https://humanrights.idaho.gov/Idaho-Law/Contexts/File-a-Complaint>.