

Barrier Removal Undue Hardship and Alternate Methods

The following is from the USDOJ Title III Technical Assistance Manual. See page four for “alternate methods descriptions”.

III-3.0000 GENERAL REQUIREMENTS

Regulatory references: 28 CFR 36.201-36.213.

III-3.1000 General. A public accommodation may not discriminate against an individual with a disability in the operation of a place of public accommodation. Individuals with disabilities may not be denied full and equal enjoyment of the "goods, services, facilities, privileges, advantages, or accommodations" offered by a place of public accommodation. The phrase "goods, services, facilities, privileges, advantages, or accommodations" applies to whatever type of good or service a public accommodation provides to its customers or clients. In other words, a public accommodation must ensure equal opportunity for individuals with disabilities.

Several broad principles underlie the nondiscrimination requirements of title III. These include --

- 1) Equal opportunity to participate;
- 2) Equal opportunity to benefit; and
- 3) Receipt of benefits in the most integrated setting appropriate.

The specific requirements discussed below in III-4.0000 are all designed to effectuate the general requirements. The specific provisions furnish guidance on how a public accommodation can meet its obligations in particular situations and establish standards for determining when the general requirement has been violated. Where a specific requirement applies, it controls over the general requirement.

ILLUSTRATION: Public accommodations are only required to remove architectural barriers in existing facilities if removal is "readily achievable" (see III-4.4200). If making the main entrance to a place of public accommodation accessible is not readily achievable, the public accommodation can provide access to the facility through another entrance, even though use of the alternative entrance for individuals with disabilities would not be the most integrated setting appropriate.

III-4.1400 Surcharges. Although compliance may result in some additional cost, a public accommodation may not place a surcharge only on particular individuals with disabilities or groups of individuals with disabilities to cover these expenses.

ILLUSTRATION: The ABC pharmacy is located on the second floor of an older four-story building that does not have an elevator. Because the pharmacy's owner has determined that providing physical access to the pharmacy for those unable to climb stairs would not be readily achievable, she has chosen to provide home delivery as a readily achievable alternative to barrier removal. The pharmacy may not charge an individual who uses a wheelchair for the cost of providing home delivery.

Does a public accommodation have to do more or less under the "undue burden" standard than under other ADA limitations such as "undue hardship" and "readily achievable"?

The definition of undue burden is identical to the definition of undue hardship used in title I of the ADA as the limitation on an employer's obligation to reasonably accommodate an applicant or employee. Under both limitations, an action is not required if it results in "significant difficulty or expense." The undue burden standard, however, requires a greater level of effort by a public accommodation in providing auxiliary aids and services than does the "readily achievable" standard for removing barriers in existing facilities (see III-4.4200). Although "readily achievable" is therefore a "lesser" standard, the factors to be considered in determining what is readily achievable are identical to those listed above for determining undue burden.

III-4.4000 Removal of barriers

III-4.4100 General. Public accommodations must remove architectural barriers and communication barriers that are structural in nature in existing facilities, **when it is readily achievable to do so.**

III-4.4200 Readily achievable barrier removal. Public accommodations are required to remove barriers only when it is "readily achievable" to do so. "Readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense.

How does the "readily achievable" standard relate to other standards in the ADA?

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

This standard also requires a lesser degree of effort on the part of a public accommodation than the "undue burden" limitation on the auxiliary aids requirements of the ADA. In that sense, it can be characterized as a lower standard. The readily achievable standard is also less demanding than the "undue hardship" standard in title I, which limits the obligation to make reasonable accommodation in employment.

[ADA Title III Technical Assistance Manual](https://www.ada.gov/taman3.html): <https://www.ada.gov/taman3.html> Page 45 of 103

How does a public accommodation determine when barrier removal is readily achievable?

Determining if barrier removal is readily achievable is necessarily 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.

If the public accommodation is a facility that is owned or operated by a parent entity that conducts operations at many different sites, the public accommodation 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.

What barriers will it be "readily achievable" to remove? There is no definitive answer to this question because determinations as to which barriers can be removed without much difficulty or expense must be made on a case-by-case basis.

III-4.5000 Alternatives to barrier removal

III-4.5100 General. When a public accommodation can demonstrate that the removal of barriers is not readily achievable, the public accommodation must make its goods and services available through alternative methods, if such methods are readily achievable.

ILLUSTRATION 1: A retail store determines that it is not readily achievable to rearrange display racks to make every aisle accessible. However, the store is still required to make the goods and services that are located along inaccessible aisles available to individuals with disabilities through alternative methods. For example, the store could instruct a clerk to retrieve inaccessible merchandise, if it is readily achievable to do so.

ILLUSTRATION 2: A pharmacy that is located in a building that can be entered only by means of a long flight of stairs determines that it is not readily achievable to provide a ramp to that entrance; therefore, it is not required to provide access to its facility. However, the pharmacy is still required to provide access to its services, if any readily achievable alternative method of delivery is available. Therefore, the pharmacy must consider options, such as delivering goods to customers at curbside or at their homes.

ILLUSTRATION 3: A self-service gas station determines that it is not readily achievable to redesign gas pumps to enable people with disabilities to use them; therefore, the gas station is not required to make physical modifications to the gas pumps. However, the gas station is required to provide its services to individuals with disabilities through any readily achievable alternative method, such as providing refueling service upon request to an individual with a disability.

ILLUSTRATION 4: A restaurant determines that it is not readily achievable to remove physical barriers to access in a specific area of the restaurant. The restaurant must offer the same menu in an accessible area of the restaurant, unless it would not be readily achievable to do so.