

disABILITY LAW CENTER

OF VIRGINIA



Protection & Advocacy for Virginians with Disabilities

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Attorney Guide to the Americans with Disabilities Act

Law offices are places of public accommodation under the Americans with Disabilities Act (ADA). 42 U.S.C. § 12181(7)(F). Law offices are also covered by the Virginians with Disabilities Act (VDA), which largely mirrors the ADA's requirements. VA Code § 51.5-44. Failure to follow the ADA and VDA can result in civil litigation, enforcement actions by government agencies, malpractice actions, and even violations of the Rules of Professional Conduct for Attorneys. ADA requirements apply to clients, companions of clients, and other people with disabilities with whom attorneys are likely to interact (e.g. witnesses, employees, and employees of organizational clients).

Effective Communication

The provision of auxiliary aids and services to ensure effective communication, both expressive and receptive, is a critically important ADA requirement. 42 U.S.C. § 12128(b)(2)(A)(iii), 28 C.F.R. 36.303. Effective communication requirements apply to spoken, written, and remote (e.g. video or telephonic) communication.¹ Ensuring effective communication is not only a legal requirement, it is a professional obligation for attorneys. Rule 1.4 of the Rules of Professional Conduct states that “[a] lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”

Most conversations between attorneys and clients are considered complex and therefore require extensive auxiliary aids and services. While a law office has the final authority to determine the auxiliary aids and services to be used, the Department of Justice encourages places of public accommodation to consider a client's preferred means of communication in making this decision; using the client's preferred means of communication is the most likely route to ensuring an attorney fulfills their obligations under Rule 1.4.

Auxiliary aids and services can include anything that helps a person with a disability effectively engage in expressive or receptive communication. The type of auxiliary aid and service needed in any given scenario depends upon the communication's length, nature, and complexity. A common auxiliary aid and service attorneys are likely to encounter is sign language interpretation for people who are deaf or hard of hearing.

To comply with the ADA, interpreters must be qualified to provide real-time accurate interpretation in an unbiased manner. Interpreters can perform their duties in person or remotely via video remote interpretation. Because a qualified interpreter facilitates communication between an attorney and their client neutrally and confidentially, the use of such an interpreter does not constitute a waiver of attorney-client privilege.

¹ Effective communication information is available online at <https://www.ada.gov/effective-comm.pdf>

However, such protection may not attach if an unqualified interpreter, such as a companion or family member, is used.

In fact, the ADA prohibits places of public accommodation from requiring family members or other companions to act as interpreters. This prohibition exists because family members are typically neither qualified to interpret nor a neutral party. The presence of a family member during sensitive discussions can lead clients to withhold important information.

Law offices must provide the auxiliary aids and services necessary to achieve effective communication unless doing so would constitute an undue burden or create a fundamental alteration. In determining whether an auxiliary aid or service constitutes an undue burden, courts look at the entire revenue of a law office. Moreover, the costs of providing auxiliary aids and services cannot be passed on to the client and must instead be included in the operating costs of the law office. However, such expenses are generally tax deductible as ordinary and necessary business expenses. Tax credits may also be available for the costs associated with auxiliary aids and services.

Service Animals

Another provision of the ADA and VDA that law offices should be familiar with relates to service animals. 28 C.F.R. § 36.302(c). A service animal is a dog or a miniature horse that has been trained to perform a specific task for a person with a disability. Under the ADA and the VDA, places of public accommodation must welcome service animals into any area within the law office where individuals can go.

The ADA limits the inquiries places of public accommodation can ask about service animals. Law offices can ask if the animal is needed for a disability and whether the animal is trained to perform a task for a disability. Law offices can only exclude a service animal from their premises if it is unruly or not housebroken. Having allergies or a fear of dogs are not allowable reasons for excluding service animals.²

Physical Accessibility and Parking

The ADA and VDA require law offices to comply with physical accessibility requirements. 28 C.F.R. § 36.304. These requirements include accessible paths of travel from sidewalks, parking lots, and public transportation to the law office along with accessibility inside the law office itself. Examples of accommodations for physical accessibility include having a ramp installed or widening an entrance door.³ Law offices that have their own parking lots must comply with ADA requirements for accessible parking, including accessible parking places.⁴

Requesting Accommodations from the Virginia Court System

While the court itself is legally responsible for providing reasonable accommodations and modifications, an attorney should assist their client in requesting such accommodations or modifications when needed. This ensures attorneys are providing the best possible services to their clients, complying with the Rules of Professional Conduct, and avoiding legal malpractice. Attorneys should also ensure that the court is aware of any witnesses they plan to call who need reasonable accommodations. The Virginia Court System has special

² Service animal information is available online at https://www.ada.gov/regs2010/service_animal_qa.html and https://www.ada.gov/service_animals_2010.htm

³ Physical accessibility information is available online at <https://www.ada.gov/regs2010/smallbusiness/smallbusprimer2010.htm>

⁴ Parking lot accessibility information is available online at https://www.ada.gov/restriping_parking/restriping2015.html

procedures for requesting accommodations and attorneys should ensure they are familiar with them.⁵ This includes special procedures for obtaining a sign language interpreter or Communication Access Realtime Translation (CART) captioning through the Virginia Department for the Deaf and Hard of Hearing.

Attorneys should also be aware of non-obvious disabilities that might require court accommodations. Developmental disabilities (such as autism), traumatic brain injuries, mental health conditions, and other disabilities can impact the way people interact and process information in court. Accommodations might be needed to allow such individuals to fully participate in the judicial process. While it is the court's responsibility to provide accommodations under the ADA, it is ultimately the responsibility of the attorney to ensure requests for accommodations are made. An attorney who does not request reasonable accommodations for a client runs the risk of being found to have independently violated the ADA.

ADA Information Line

Need more information? The United States Department of Justice operates a free ADA Information Line to provide information and materials to the public about the requirements of the ADA. To get answers to technical questions, obtain general ADA information, or order free ADA materials, call 1-800-514-0301.

⁵ Virginia Court System accommodation request information is available online at <https://www.vacourts.gov/courts/ada/home.html>