



Liability & Property Pool Workers' Compensation Fund

RISK CONTROL SOLUTIONS

A Service of the Michigan Municipal League Liability and Property Pool and
the Michigan Municipal League Workers' Compensation Fund

THE AMERICANS WITH DISABILITIES ACT

TITLE II: NON-DISCRIMINATION IN GOVERNMENT SERVICES, PROGRAMS, AND ACTIVITIES

INTRODUCTION

Title II of the ADA (*effective originally on January 26, 1992 and as Revised on September 15, 2010 to be effective for Title III on March 15, 2012. The final rules of Title II have made some changes effective March 11, 2011*) states that public agencies may not discriminate against qualified individuals with disabilities. It extends the protections provided by Section 504 of the Rehabilitation Act of 1973. Section 504 prohibits discrimination against persons with disabilities in programs and activities of the federal government and by recipients of federal financial assistance.

Title II applies to all public agencies, regardless of size or whether they receive federal assistance. Some of the revisions have a significant impact on municipal operations, entertainment venues, auxiliary aides and services and the use of service animals. The final rules also require public agencies to provide accessible facilities, services, activities, and communications consistent with the requirements of section 504 of the Rehabilitation Act of 1973.

The intent of **Title II** is to further eliminate any barriers that prevent disabled people from participating fully in all aspects of community life. It mandates that new government buildings, including transportation facilities, be readily accessible to individuals with disabilities, including wheelchair users. New buses and rail vehicles and all existing facilities must also be accessible to disabled individuals. ***The 2010 revision has made significant changes to the requirements for compliance. A review of facilities and access points should be made to assure compliance with the law.***

The ADA allows some exceptions for buildings and transportation systems included on the National Register of Historic Places.

WHO IS PROTECTED

Title II protects “qualified individuals with disabilities.” An individual with a disability is a person who has a physical or mental impairment that substantially limits a major life activity, has a record of such impairment, or is regarded as having such impairment.

A “qualified individual” is a person with a disability who meets the essential eligibility requirements for the program or activity that the public agency is offering. The essential eligibility requirements will vary according to the type of service, program, or activity.

BASIC REQUIREMENTS

Public agencies must avoid discrimination by modifying, where necessary, policies, procedures, and practices and to administer services, programs and activities in the most integrated setting possible. Integrating individuals into the mainstream is an important objective of the ADA.

Title II specifically prohibits public agencies from discriminating against individuals with disabilities. When they provide an aid, service or benefit, public agencies must:

- Provide programs, services, and activities in an integrated setting whenever possible. Public agencies may offer programs, services, and activities that are different from those offered to the general population

only when doing so is necessary to assure that individuals with disabilities will receive equally effective services and equal opportunity.

- Assure that the program is accessible. Each service, program, or activity, when viewed in its entirety, must be accessible and usable by individuals with disabilities. For example, if a school offers two sessions of an adult art class, the school must hold one session in a wheelchair accessible location.
- Eliminate eligibility standards or rules that deny equal opportunity to individuals with disabilities unless the standards or rules are necessary for the provision of the service, activity or program.
- Make modifications, within reason, to policies, practices and procedures that deny access to individuals with disabilities unless the modifications would make a fundamental alteration in the service, program or activity.

Public agencies may achieve accessibility by redesigning equipment, moving services to accessible buildings or assigning aides to disabled individuals. They need not make structural changes to facilities if other means of assuring accessibility are available.

Public agencies MAY NOT:

- Deny individuals with a disability the right to participate, or in any way limit participation, in a service, program or activity simply because the person has a disability.
- Limit the opportunity to enjoy any right, privilege or advantage.
- Insist that individuals with disabilities participate in a special program, activity or service rather than the regular program or activity offered to others.
- Discriminate against individuals with disabilities through contracts or other arrangements. This means that public agencies must scrutinize the practices of their suppliers and others with whom they do business in order to provide services, programs or activities.
- Charge the individual with disability for providing auxiliary aids or services or program accessibility.
- Use criteria or methods of administration that create discrimination. For example, charging additional entry fee for the admittance of a service animal.
- Choose locations for programs or services that exclude individuals with disabilities and thus defeat the purpose of the aid, service or program. **There is a limited exclusion for leased facilities.**
- Create requirements or standards that effectively prevent an individual with disability from participation. For example, they may not require a qualified individual with a disability to have an attendant, but the individual must be able to attend to their personal needs including eating, toileting, or dressing if that is needed for participation.
- Conduct licensing or certification programs in a discriminatory manner.
- Deny or limit services or activities to an individual who has a relationship with an individual with a disability.

Providing personal items (wheelchairs, prescription eyeglasses, and electronic or magnification readers for personal use) is not required.

Carrying a disabled person to achieve accessibility is not permitted except in exceptional cases -- for example, carrying an individual to provide access to programs that take place on an oceanographic vessel. Individuals who participate in carrying an individual with a disability must receive formal instruction on the safest and least humiliating means of carrying.

Although public agencies do not have to fundamentally alter a program or activity or take an action that would impose undue financial or administrative burden, they must follow specific guidelines in presenting their case. The head of the public entity or his/her designee:

- Must explore and consider all resources for funding and operating the program, service or activity.
- Must prepare a written explanation of how and why the decision was reached.
- Must undertake alternative methods of providing the program or service.

ALTERATIONS AND NEW CONSTRUCTION

Title II does not require public agencies to retrofit existing buildings to eliminate barriers unless renovation or additional constructions are commenced. However, it does establish a high standard of accessibility for new buildings. Title II requires that public agencies assure that newly constructed buildings and facilities are free of architectural and communications barriers that restrict access or use by individuals with disabilities.

Public agencies may choose to conform to one of the following technical standards:

- *The Uniform Federal Accessibility Standards* (UFAS) Appendix A to 41 CFR Part 101-19.6,
- *The Americans with Disabilities Act Accessibility Guidelines* (ADAAG), 36 CFR Part 1191, or
- *American National Standards Institute* (ANSI) A117.

Alterations to historic properties must comply with these standards to the maximum extent feasible.

COMMUNICATIONS

Title II also requires public agencies to assure accessible and effective communications with applicants, participants, members of the public, and companions with disabilities. Public agencies must:

- Communicate effectively about programs, activities and services to applicants, participants and members of the public.
- Provide appropriate auxiliary aids and services so that disabled persons may fully participate in services, programs or activities. Auxiliary aids include: qualified interpreters or readers, assistive listening headsets, television captioning and decoders, text telephones, taped texts, Braille materials and large print materials. The public agency may not charge the individual for the use of such auxiliary aids.
- Provide a means by which the individual with disability can request an auxiliary aid so he or she can participate in an activity, taking the individual's choice of aid into consideration.
- Provide specialized hearing aids or devices for the deaf, such as Telecommunications Devices for the Deaf (TDD) units and similar devices, systems or services if they communicate by telephone with recipients of a service or program.
- When using an automated-attendant communication system, including voice mail and messaging, or an interactive voice response system, for receiving and directing incoming telephone calls, the system must provide effective real-time communication with individuals using auxiliary aids and services, including TTY's and all forms of FCC-approved telecommunications relay system, including Internet-based relay systems.
- Telephone emergency services, including 911 services, must provide direct access to individuals with speech and hearing impairments.

OTHER REQUIREMENTS

A public entity with fifty or more employees must assign an individual to coordinate its efforts to comply with and implement **Title II**, including the investigation of complaints.

This individual's name, office address and telephone number must be made available to the public. The entity must establish and publish a grievance procedure for prompt and fair resolution of complaints concerning **Title II**.

All public agencies must provide applicants, participants, beneficiaries, and interested members of the public with information about the rights and protections that **Title II** offers. They may do this by:

- Publishing pamphlets and manuals describing their programs and activities.
- Displaying posters in public places.
- Airing public service announcements.

All public agencies must maintain all equipment and features of facilities that provide accessibility or communication in good working order. This includes curb cuts for all public sidewalks.

The United States Department of Justice is responsible for enforcing the requirements of **Title II**.

For More Information: See Part 35, ***Nondiscrimination on the Basis of Disability in State and Local Government Services*** (as amended by the final rule published on September 15, 2010).

For more information, contact the League's Loss Control Services, MML Risk Management Services, or the appropriate state or federal agency. You may also wish to review the Risk Control Solutions entitled ***The Americans with Disabilities Act and Michigan Handicappers' Civil Rights Act: Employment Issues***.

As with all employment issues, we encourage you to discuss your employment related concerns with an attorney.



Important Contact Information

MML Risk Management Services	734/662-3246 or 800/653-2483
Loss Control Services	800/482-2726
Michigan Department of Labor	517/3731820
Michigan Department of Civil Rights	313/456-3700
Equal Employment Opportunity Commission	800/669-4000

Note: This document is not intended to be legal advice. It does not identify all the issues surrounding the particular topic. Public agencies are encouraged to review their procedures with an expert or an attorney who is knowledgeable about the topic.



Liability & Property Pool Workers' Compensation Fund

RISK CONTROL SOLUTIONS

A Service of the Michigan Municipal League Liability and Property Pool and
the Michigan Municipal League Workers' Compensation Fund

THE AMERICANS WITH DISABILITIES ACT- TITLE II NON-DISCRIMINATION IN GOVERNMENT SERVICES, PROGRAMS AND ACTIVITIES SELF ASSESSMENT

Title II of the ADA prohibits discrimination against qualified individuals with disabilities in government services, programs or services. Since most of the requirements of this provision of the ADA are already in effect, it is important to review the following self assessment checklist to determine your organizations compliance and future required actions.

<u>Does your organization provide non-discriminatory services?</u>	Yes	No
1. Do you provide services, programs and activities to qualified individuals with disabilities on an equal opportunity basis? This includes contracted services.	<input type="checkbox"/>	<input type="checkbox"/>
2. Are sites at which you provide services inclusive of individuals with disabilities?	<input type="checkbox"/>	<input type="checkbox"/>
3. Do eligibility requirements for participation not discriminate against individuals with disabilities?	<input type="checkbox"/>	<input type="checkbox"/>
4. Do your policies and procedures allow for reasonable accommodation when an individual with a disability requests one?	<input type="checkbox"/>	<input type="checkbox"/>
5. Do you provide services in a manner that allows an individual with disability to obtain them as readily as other members of your community can?	<input type="checkbox"/>	<input type="checkbox"/>
6. Are the services you provided to individuals with disabilities at least as effective as those for other patrons.	<input type="checkbox"/>	<input type="checkbox"/>
7. Are your existing facilities in compliance with the ADA?	<input type="checkbox"/>	<input type="checkbox"/>
8. Are buildings and equipment accessible to individuals with qualified disabilities through restructuring or other means of accessibility?	<input type="checkbox"/>	<input type="checkbox"/>
9. Do you provide barrier free accessibility for all new construction?	<input type="checkbox"/>	<input type="checkbox"/>
10. Does your communication of services comply with the ADA?	<input type="checkbox"/>	<input type="checkbox"/>
11. Is your communication of services accessible and effective to individuals with hearing, speech or visual impairments?	<input type="checkbox"/>	<input type="checkbox"/>
12. Are you prepared to provide auxiliary aids free of charge to persons who request readers, Braille formats, audio cassettes or other alternative communication techniques.	<input type="checkbox"/>	<input type="checkbox"/>
13. Do you have a clearly publicized means for qualified individuals to request such assistance?	<input type="checkbox"/>	<input type="checkbox"/>
14. Have you provided TDD access to qualified individuals for emergency services and for services that normally require communication by telephone.	<input type="checkbox"/>	<input type="checkbox"/>

<u>Does your organization comply with these other requirements if you have fifty or more employees?</u>	Yes	No
15. Have you designated an individual to coordinate Title II and to handle complaints?	<input type="checkbox"/>	<input type="checkbox"/>
16. Have you provided this individual's name and phone number to the public?	<input type="checkbox"/>	<input type="checkbox"/>
17. Have you established and communicated a written grievance procedure for the public?	<input type="checkbox"/>	<input type="checkbox"/>
18. Have you completed and retained for at least three years a self evaluation of your compliance with ADA title II?	<input type="checkbox"/>	<input type="checkbox"/>
19. Do you maintain all equipment in good working order?	<input type="checkbox"/>	<input type="checkbox"/>

Conclusions



If you were able to honestly answer “yes” to all nineteen of the above questions and your organization follows most or all of the suggested practices, then your organization has reduced its exposure to future claims. You should congratulate yourself.



If you were unable to answer “yes” to one or more of the nineteen critical questions, your organization may have a greater exposure to claims. Missing components of one or more of the recommended practices may also indicate a deficiency in your current program. You should take one or more of the following actions:

- **Correct any deficiency that may exist;**
- **Contact your attorney and a specialist in ADA for advice;**
- **Contact MML Risk Management Services at 800/653-2483; or**
- **Contact the League's Loss Control Services at 800/482-0626.**

NOTE: This document is not intended to be legal advice or implied to identify all ADA related exposures. Public agencies are encouraged to contact their attorney for assistance in implementing these or other changes.