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Public Accommodations

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Places of public accommodation must give persons with disabilities an equal opportunity to participate in and to benefit from their services. They cannot provide unequal or separate benefits to persons with disabilities. They must modify their policies and practices when necessary to provide equal access to services and facilities.

In order to provide equal access, all public accommodations are required to provide auxiliary aids and services to ensure effective communication. 28 C.F.R. § 36.303(c). The ADA also requires removal of structural communication barriers that are in existing facilities, and installation of flashing alarm systems, permanent signage, and adequate sound buffers. Businesses may not impose a surcharge on a particular individual with a disability to cover the cost of ensuring equal access for that person. 28 C.F.R. § 36.301(c).

Businesses are expected to “consult with the individual with a disability before providing a particular auxiliary aid or service.” 56 Fed. Reg. at 35567. A comprehensive list of auxiliary aids and services required by the ADA for deaf and hard of hearing people includes, but is not limited to: “[q]ualified interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunication devices for deaf persons, videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments.” 28 C.F.R. § 36.303(b)(1).

In choosing which auxiliary aid or service to provide, the most important consideration is the type of service that will be necessary to ensure "effective communication" with an individual who is deaf or hard of hearing. For example, in addition to providing a qualified interpreter, it may be necessary to change seating arrangements or lighting so that there is a clear line of sight to the interpreter, and so that the interpreter is clearly visible. Businesses may need to instruct employees to accept calls made through a relay service, even though such calls may take longer to complete than other telephone calls. Policies and practices may have to be altered in order to provide access. For example, a business that normally would not permit a customer to bring a pet on the premises must give access to a person with a service animal.

A public accommodation may deny an auxiliary aid or service only if it can demonstrate that it would fundamentally alter the nature of the service, or would constitute an undue burden (a significant difficulty or expense). If the public accommodation is able to demonstrate that

there is a fundamental alteration or an undue burden in the provision of a particular auxiliary aid or service it must, however, be prepared to provide an alternative auxiliary aid or service, where one exists. 28 C.F.R. § 36.303(f).

Whether or not a particular auxiliary aid or service constitutes an “undue burden” depends on a variety of factors, including the nature and cost of the auxiliary aid or service and the overall financial and other resources of the business. The undue burden standard is intended to be applied on a case-by-case basis. Undue burden is not measured by the amount of income the business is receiving from a client, patient or customer. Instead, undue burden is measured by the overall financial impact on the whole entity. Therefore, it is possible for a business to be responsible for providing auxiliary aids or services even if it does not make a sale or receive income from a deaf or hard of hearing customer, if the cost would not be an undue burden on its overall operation. We are not aware of any court decision that has held that providing interpreter services resulted in an undue burden.

The cost of interpreters and other auxiliary aids and services may entitle a business to an income tax credit, as well as the usual business-related expense deduction. Congress has amended the Internal Revenue Code to provide business tax incentives for removing barriers or increasing accessibility. The "Tax Deduction to Remove Architectural and Transportation Barriers to People with Disabilities and Elderly Individuals" (Title 26, I.R.C. Section 190) allows a deduction for qualified barrier removal expenses not to exceed \$1500 for any taxable year. The "Disabled Access Tax Credit" (Title 26, I.R.C. Section 44) is available to eligible small businesses. It provides a tax credit of 50 per cent of eligible access expenditures that exceed \$250 but do not exceed \$10,250, made for the purpose of complying with the ADA. Businesses should consult their tax or financial advisors on this issue.

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