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Implementation of Public Law 101-336: The Americans With Disabilities Act At Aquatic Facilities

by Alison Osinski, Ph.D.

Are the aquatic facilities you're teaching in accessible to individuals with disabilities?

Have architectural barriers been removed and facilities modified so that everyone has equal access to your swimming pool and locker room facilities?

Have overprotective rules that unintentionally exclude individuals from fully participating in your water fitness classes been eliminated?

Are qualified individuals with disabilities accepted and encouraged to apply for employment as lifeguards, instructors and aquatic facility staff?

If the answer to any of these questions is "no," chances are that you and your facility are not in compliance with the recently enacted Americans With Disabilities Act (ADA).

Public Law 101-336, the Americans With Disabilities Act, was signed into law by President Bush in July of 1990. The five titles covered under the ADA, which include: Employment, public services and transportation, public accommodations and services operated by private entities, and miscellaneous provisions such as prohibition of intimidation or retaliation against those filing complaints, special considerations for alterations to historical sites, and availability of technical assistance, are in effect. Regulations are being enforced.

The ADA protects individuals who are regarded as disabled, or have a record of a physical or mental impairment that substantially limits one or more major life activities.

Pools and spas are not specifically mentioned in the text of the ADA. However, hotels, motels, professional offices of health care providers, parks, schools, social service centers, gymnasiums, health spas, and places of exercise or recreation - facilities in which pools and spas are likely to be located, are specifically listed.

What does the ADA do?

The ADA:

- prohibits discrimination in public facilities against those with disabilities
- mainstreams non able bodied individuals into American society
- requires that the needs of all disabled individuals be anticipated in providing auxiliary aids and services
- requires that architectural changes be made to remove physical barriers from existing facilities where readily achievable or "easily accomplished without much difficulty or expense"
- mandates accessibility in new construction or when substantial alterations to a facility are made
- requires modification of policies, practices and procedures to reasonably

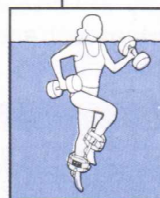
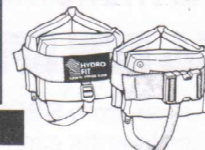
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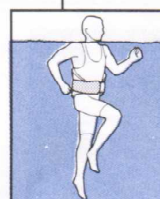
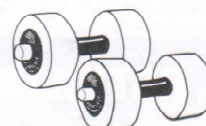
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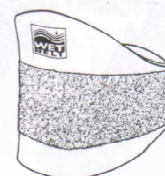


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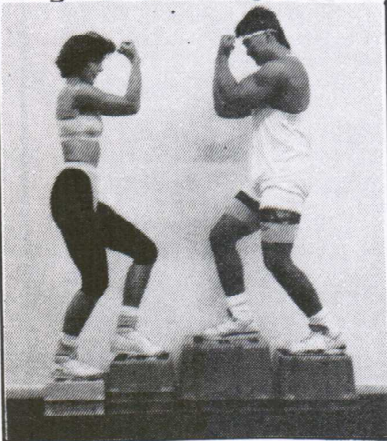


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accommodate disabled individuals

- prevents discrimination in hiring or promotion
- prohibits preemployment medical screening, but permits medical examination of all employees (not just those with known or suspected disabilities) after employment has been offered, if physical requirements are a necessary part of the job description
- prohibits the imposing of eligibility criteria, or administering of tests that do not have to do with job requirements or safety, which screen out individuals with disabilities
- requires that rules and practices that prevent participation be changed unless they are necessary for the health or safety of participants
- prohibits the creation of rules based on stereotypes which prevent participation, exclude, deny services, prevent equal employment, or cause disabled individuals to be treated differently
- provides a tax incentive of \$15,000 to remove qualified barriers
- permits small businesses (businesses whose gross receipts do not exceed \$1 million and whose work force does not exceed 30 full-time employees) to claim a tax credit up to 50% of the expense for compliance, including: purchase of access equipment, hiring persons, providing services, or removing barriers
- allows an individual to bring a lawsuit to obtain a court order to stop discrimination
- authorizes filing of complaints with the Attorney General to bring suit in federal court if a pattern or practice of discrimination is alleged
- permits the courts to levy civil fines up to \$50 for the first offense, and \$100,000 per subsequent violation
- allows the prevailing party in a suit or administrative proceeding to collect attorney fees, litigation expenses, and costs

What doesn't the ADA do?

The ADA does not require changes that would significantly alter the goods and services provided by an organization. It does not require strict compliance with the law where undue hardship (significant difficulty or expense in relation to the size and financial resources of the organization) can be shown.

The ADA does not require compliance by private clubs or religious organizations which are exempt from coverage under Title II of the Civil Rights Act of 1964, unless they charge for goods or services or for the use of their facilities, or open their facilities for use by the public.

It does not require affirmative action or that preferential treatment be given in the area of employment. Individuals may be asked if they have the ability to perform a job function, but not whether, or to what extent, they are disabled.

What is the impact on aquatic facilities?

Complying with the ADA will add about 5% to the cost of new construction. Wet or dry ramps, raised deck edges, rim flow gutters, or zero depth entry may be incorporated into the design of the facility.

Costs associated with modifying already existing facilities will vary. Compliance might require altering the height or styles of fixtures, replacing hardware and signs, increasing deck friction coefficients, providing a ramp into the pool area, installing railing systems, visual and sound targets; and purchasing and installing one or

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Louisville, KY 40223
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Recreonics
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more specialized pieces of access equipment such as removable stairs, portable ramps, transfer tiers, moveable floors, or chair lifts. Additional staff members may need to be assigned to assist disabled participants. An organization is required to provide interpreters, readers, taped text, Braille or large print materials, notetakers or other services if requested.

Alison Osinski, Ph.D., M.S., B.S., is in private practice as an aquatic consultant in San Diego, CA. Her firm, Aquatic Consulting Services, has as clients, health and fitness organizations, service agencies, aquatic sporting equipment manufacturers, attorneys, therapeutic facilities, architectural firms, and municipal park and recreation and safety management departments. Dr. Osinski's specializations include: aquatic risk management, aquatic facility design and renovation, swimming pool chemistry, maintenance and operation, and lifeguard, boating and water safety training program development.

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