

# ADA Best Practices Tool Kit for State and Local Governments

## Chapter 2

### ADA Coordinator, Notice & Grievance Procedure:

#### Administrative Requirements Under Title II of the ADA

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In this section, you will learn about the administrative requirements of Title II of the ADA, including the mandates to designate an ADA coordinator, give notice about the ADA's requirements, and establish a grievance procedure. Questions answered include:

- If the local government has fewer than 50 employees, do different requirements apply?
- What are the responsibilities of an ADA Coordinator?
- What are the benefits of having an ADA Coordinator?
- What are the requirements for providing notice of the ADA's provisions?
- How and where must you provide ADA notices?
- What is a grievance procedure?
- What must an ADA grievance procedure include?

#### A. Designating an ADA Coordinator

If a public entity has 50 or more employees, it is required to designate at least one responsible employee to coordinate ADA compliance.<sup>1</sup> A government entity may elect to have more than one ADA Coordinator. Although the law does not refer to this person as an "ADA Coordinator," this term is commonly used in state and local governments across the country and will be used in this chapter.

**The ADA Coordinator is responsible for coordinating the efforts of the government entity to comply with Title II and investigating any complaints that the entity has violated Title II. The name, office address, and telephone number of the ADA Coordinator must be provided to interested persons.**

#### **Common Question: Which employees count?**

If a local government or other public entity has fewer than 50 employees, it is not required to appoint an ADA Coordinator or establish grievance procedures.

The number of employees is based on a government-wide total, including employees of each department, division, or other sub-unit. Both part-time and full-time employees count. Contractors are not counted as employees for determining the number of employees.

**For example:** Jones City has 30 full-time employees and 20 part-time employees. The employees include ten police department employees and eight fire department employees.

Jones City must have an ADA Coordinator and an ADA grievance procedure. The total number of employees is 50 because both full-time and part-time employees are counted. In addition, the police and fire departments are part of the city-wide employment pool, and the requirements for an ADA Coordinator and an ADA grievance procedure cover both of those departments.

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<sup>1</sup> Department of Justice Nondiscrimination on the Basis of State and Local Government Services Regulations, 28 C.F.R. pt. 35, § 35.107(a) (2005). See [www.ada.gov/reg2.htm](http://www.ada.gov/reg2.htm) for the complete text of the Department of Justice's Title II regulation.

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### **Benefits of an ADA Coordinator**

There are many benefits to having a knowledgeable ADA coordinator, even for smaller public entities that are not required to have one.

For members of the public, having an ADA Coordinator makes it easy to identify someone to help them with questions and concerns about disability discrimination. For example, the ADA Coordinator is often the main contact when someone wishes to request an auxiliary aid or service for effective communication, such as a sign language interpreter or documents in Braille. A knowledgeable ADA Coordinator will be able to efficiently assist people with disabilities with their questions. She or he will also be responsible for investigating complaints.

Having an ADA Coordinator also benefits state and local government entities. It provides a specific contact person with knowledge and information about the ADA so that questions by staff can be answered efficiently and consistently. In addition, she or he coordinates compliance measures and can be instrumental in ensuring that compliance plans move forward. With the help of this Tool Kit, ADA Coordinators can take the lead in auditing their state or local government's programs, policies, activities, services, and facilities for ADA compliance.

### **An Effective ADA Coordinator**

The regulations require state and local governments with 50 or more employees to designate an employee responsible for coordinating compliance with ADA requirements. Here are some of the qualifications that help an ADA Coordinator to be effective:

- familiarity with the state or local government's structure, activities, and employees
- knowledge of the ADA and other laws addressing the rights of people with disabilities, such as Section 504 of the Rehabilitation Act, 29 U.S.C. § 794
- experience with people with a broad range of disabilities
- knowledge of various alternative formats and alternative technologies that enable people with disabilities to communicate, participate, and perform tasks
- ability to work cooperatively with the local government and people with disabilities
- familiarity with any local disability advocacy groups or other disability groups

- skills and training in negotiation and mediation
- organizational and analytical skills

## B. Notice of the ADA's Provisions

The second administrative requirement is providing public notice about the ADA.<sup>2</sup> There are three main considerations for providing notice:

1. Who is the target audience for the ADA notice?
2. What information shall the notice include?
3. Where and how should the notice be provided?

### Regardless of Size, the ADA Notice Requirement Applies

The ADA notice requirement applies to ALL state and local governments covered by title II, even localities with fewer than 50 employees.

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<sup>2</sup> 28 C.F.R. § 35.106.

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#### 1. Who is the target audience for the ADA notice?

The target audience for public notice includes applicants, beneficiaries, and other people interested in the state or local government's programs, activities, or services. **The audience is expansive, and includes everyone who interacts – or would potentially interact – with the state or local government.**

#### Examples of the Target Audience for the ADA Notice

- a recipient of social services, food stamps, or financial assistance provided by the state or local government
- an applicant for a public library card
- a public transit user
- a person who uses the county recreation center
- a grandmother attending her grandchild's high school graduation in a city park
- a member of a citizen's advisory committee
- a recipient of a grant from the state or local government

- a citizen who wants to participate in a town council meeting
- a person adopting a dog from the local public animal shelter

## 2. What information shall the notice include?

The notice is required to include relevant information regarding Title II of the ADA, and how it applies to the programs, services, and activities of the public entity.

The notice should not be overwhelming. **An effective notice states the basics of what the ADA requires of the state or local government without being too lengthy, legalistic, or complicated. It should include the name and contact information of the ADA Coordinator.**

This chapter contains a model “Notice Under the Americans with Disabilities Act” created by the Department of Justice. It is a one page document in a standard font, and includes brief statements about:

- employment,
- effective communication,
- making reasonable modifications to policies and programs,
- not placing surcharges on modifications or auxiliary aids and services, and
- filing complaints.

The model notice is included at the end of this chapter.

## 3. How and where should the notice be provided?

It is the obligation of the head of the public entity to determine the most effective way of providing notice to the public about their rights and the public entity’s responsibilities under the ADA.

Publishing and publicizing the ADA notice is not a one-time requirement. State and local governments should provide the information on an ongoing basis, whenever necessary. If you use the radio, newspaper, television, or mailings, re-publish and re-broadcast the notice periodically.

### Some Ways to Provide Notice to Interested Persons

- Include the notice with **job applications**
- Publish the notice periodically in **local newspapers**
- Broadcast the notice in public service announcements on **local radio and television stations**
- Publish the notice on the government entity’s **website** (ensure that the website is accessible)
- Post the notice **at all facilities**
- Include the notice in **program handbooks**

- Include the notice in **activity schedules**
- Announce the notice at **meetings** of programs, services, and activities
- Publish the notice as a **legal notice** in local newspapers
- Post the notice in bus shelters or other **public transit stops**

**The information must be presented so that it is accessible to all.** Therefore, it must be available in alternative formats.

### Examples of Alternative Formats

- Audio tape or other recordings
- Radio announcements
- Large print notice
- Braille notice
- Use of a **qualified sign language interpreter** at meetings
- Open or closed-captioned public service announcements on television
- ASCII, HTML, or word processing format on a computer diskette or CD
- HTML format on an accessible website
- Advertisements in publications with **large print versions**

## C. Establishing and Publishing Grievance Procedures

Local governments with 50 or more employees are required to adopt and publish procedures for resolving grievances arising under Title II of the ADA.<sup>3</sup> Grievance procedures set out a system for resolving complaints of disability discrimination in a prompt and fair manner.

Neither Title II nor its implementing regulations describe what ADA grievance procedures must include. However, the Department of Justice has developed a model grievance procedure that is included at the end of this chapter.

The grievance procedure should include:

- a description of how and where a complaint under Title II may be filed with the government entity;
- if a written complaint is required, a statement notifying potential complainants that alternative means of filing will be available to people with disabilities who require such an alternative;

- a description of the time frames and processes to be followed by the complainant and the government entity;
- information on how to appeal an adverse decision; and
- a statement of how long complaint files will be retained.

Once a state or local government establishes a grievance procedure under the ADA, it should be distributed to all agency heads. Post copies in public spaces of public building and on the government's website. Update the procedure and the contact information as necessary.

In addition, the procedure must be available in alternative formats so that it is accessible to all people with disabilities.

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<sup>3</sup> 28 C.F.R. § 35.107(b).

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### **Common Question: Complaint Filing**

**If a person with a disability has a complaint about a public entity, is she or he required to file a complaint with the public entity before filing a complaint with the federal government?**

No, the law does not require people who want to file an ADA complaint against a public entity with the federal government to file a complaint with the public entity first. However, it is often more efficient to resolve local problems at a local level.

## **D. Summing up: ADA Coordinator, Notice, and Grievance Procedures**

**If a state or local government has fewer than 50 employees**, it is required to:

- adopt and distribute a public notice about the relevant provisions of the ADA to all people who may be interested in its programs, activities, and services.

**If a state or local government has 50 employees or more**, it is required to:

- adopt and distribute a public notice about the relevant provisions of the ADA to all persons who may be interested in its programs, activities, and services;
- designate at least one employee responsible for coordinating compliance with the ADA and investigating ADA complaints; and
- develop and publish grievance procedures to provide fair and prompt resolution of complaints under Title II of the ADA at the local level.

These administrative requirements help ensure that the needs of people with disabilities are addressed in the programs, activities, and services operated by a public entity. Having these requirements in place will not prevent all problems, but it will help you to address many questions and problems efficiently.



## NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT

In accordance with the requirements of title II of the Americans with Disabilities Act of 1990 ("ADA"), the **[name of public entity]** will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities.

**Employment:** **[name of public entity]** does not discriminate on the basis of disability in its hiring or employment practices and complies with all regulations promulgated by the U.S. Equal Employment Opportunity Commission under title I of the ADA.

**Effective Communication:** **[Name of public entity]** will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in **[name of public entity's]** programs, services, and activities, including qualified sign language interpreters, documents in Braille, and other ways of making information and communications accessible to people who have speech, hearing, or vision impairments.

**Modifications to Policies and Procedures:** **[Name of public entity]** will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all of its programs, services, and activities. For example, individuals with service animals are welcomed in **[name of public entity]** offices, even where pets are generally prohibited.

Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a program, service, or activity of **[name of public entity]**, should contact the office of **[name and contact information for ADA Coordinator]** as soon as possible but no later than 48 hours before the scheduled event.

The ADA does not require the **[name of public entity]** to take any action that would fundamentally alter the nature of its programs or services, or impose an undue financial or administrative burden.

Complaints that a program, service, or activity of **[name of public entity]** is not accessible to persons with disabilities should be directed to **[name and contact information for ADA Coordinator]**.

**[Name of public entity]** will not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the cost of providing auxiliary aids/services or reasonable modifications of policy, such as retrieving items from locations that are open to the public but are not accessible to persons who use wheelchairs.

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**[Name of public entity]**  
**Grievance Procedure under**  
**The Americans with Disabilities Act**

This Grievance Procedure is established to meet the requirements of the Americans with Disabilities Act of 1990 ("ADA"). It may be used by anyone who wishes to file a complaint alleging discrimination on the basis of disability in the provision of services, activities, programs, or benefits by the **[name of public entity]**. The **[e.g. State, City, County, Town]**'s Personnel Policy governs employment-related complaints of disability discrimination.

The complaint should be in writing and contain information about the alleged discrimination such as name, address, phone number of complainant and location, date, and description of the problem. Alternative means of filing complaints, such as personal interviews or a tape recording of the complaint, will be made available for persons with disabilities upon request.

The complaint should be submitted by the grievant and/or his/her designee as soon as possible but no later than 60 calendar days after the alleged violation to:

**[Insert ADA Coordinator's name]  
ADA Coordinator [and other title if appropriate]  
[Insert ADA Coordinator's mailing address]**

Within 15 calendar days after receipt of the complaint, **[ADA Coordinator's name]** or **[his/her]** designee will meet with the complainant to discuss the complaint and the possible resolutions. Within 15 calendar days of the meeting, **[ADA Coordinator's name]** or **[his/her]** designee will respond in writing, and where appropriate, in a format accessible to the complainant, such as large print, Braille, or audio tape. The response will explain the position of the **[name of public entity]** and offer options for substantive resolution of the complaint.

If the response by **[ADA Coordinator's name]** or **[his/her]** designee does not satisfactorily resolve the issue, the complainant and/or his/her designee may appeal the decision within 15 calendar days after receipt of the response to the **[City Manager/County Commissioner/ other appropriate high-level official]** or **[his/her]** designee.

Within 15 calendar days after receipt of the appeal, the **[City Manager/County Commissioner/ other appropriate high-level official]** or **[his/her]** designee will meet with the complainant to discuss the complaint and possible resolutions. Within 15 calendar days after the meeting, the **[City Manager/County Commissioner/ other appropriate high-level official]** or **[his/her]** designee will respond in writing, and, where appropriate, in a format accessible to the complainant, with a final resolution of the complaint.

All written complaints received by **[name of ADA Coordinator]** or **[his/her]** designee, appeals to the **[City Manager/County Commissioner/ other appropriate high-level official]** or **[his/her]** designee, and responses from these two offices will be retained by the **[public entity]** for at least three years.

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