

Handicap Lifts and ADA – Do you need to comply?

For over 20 years we have been hearing about the Americans with Disabilities Act (ADA Law), and how it was going to impact your swimming pool operations. There has been some confusion, a little disinformation, and a lot of questions. For years it was a “guideline”; last August, it finally became law. This article will provide some clarity, and hopefully help you fully understand the requirements.

History of ADA: The ADA law was signed by President George H.W. Bush in 1990 in order to: “establish a clear and comprehensive prohibition of discrimination on the basis of disability.” The original versions were released in 1991, and were known as Americans with Disabilities Act Accessibility Guidelines (ADAAG 1991). Those did not include any requirements or guidelines for swimming pools.

In 2004 the Access Board released a revision designed to expand to areas not covered (pools, spa) and to eliminate known inconsistencies in ADAAG 1991. This revision, known as ADAAG 2004, was effective only as a GUIDELINE. It would not have any legal effect on your operations until it became law. On July 26th, 2010, exactly twenty years after the first ADA law was signed, the Department of Justice formally adopted ADAAG 2004.

What About Pools: In the original 1991 standards, the facilities housing pools were covered, but not the pools themselves. This is when your site had to upgrade locker rooms, toilet facilities, and parking lots, so that they would be accessible. But, there were no regulations for getting someone INTO the water. In 1994 this process started, and by early 2000, pool lifts were appearing on some of Florida’s leading municipal pools.

Which facilities need to comply? It depends. The law is divided into five subsections or Titles. The relevant sections are Title II and Title III.

Title II deals with public entities at the local and state level including school districts, municipalities, cities, and counties. So all municipal and school board pools located in these types of facilities must comply with ADA guidelines.

Title III deals with places of “public accommodations”. These include most places of lodging (inns, hotels, and resorts), and public recreation facilities. So all hotels, motels, private water parks, competition facilities, etc. also must comply with ADA guidelines.

Which facilities don’t need to comply? Apartments and private condos are considered residences and are exempt from complying with the ADA, as long as they restrict access to their pool to residents and their guests. The common areas of these types of facilities fall under Fair Housing regulations. Under these regulations, the facility has to provide barrier free pathways and also cannot

prevent a resident from making an accessible alteration (like adding a ramp) to their unit. They also cannot prevent a resident from providing their own pool lift to gain access to the pool. Technically, the resident would need to store the lift in either his unit or personal storage closet, but many condos are flexible on that issue. Condos that rent out their units are considered hotels and would be subject to ADA regulations. The same goes for private condos that have rented out their facilities (for swim classes, parties, etc). They would be subject to comply with ADA guidelines.

What about swim schools? Since swim schools normally charge a fee for lessons and for admission to swim classes or parties, they would be required to comply with ADA guidelines.

Exclusions from ADA regulations: There are several potential exclusions to complying with ADA, but these are not viewed as having much of a chance to be successfully passed by the Department of Justice. Exclusions could be granted to Title II facilities that would require significant alterations to the historic nature of the building, or if such modifications would create undue hardship for the facility. Title III facilities can be excused if they can demonstrate that reasonable accommodations are not readily achievable. These arguments were already heard and addressed preceding the release of the rule, and given the relatively low cost and flexibility of ADA solutions, it would be very tough to escape the ADA responsibility.

Enforcement 2004-2010: There are two methods for enforcement: Direct and Indirect.

Direct includes complaints filed directly with the Department of Justice (DOJ) or civil law suits. Normally the DOJ will focus their attention on larger entities where a systemic history of non-compliance is addressed. In these types of situations, the DOJ can assess fines ranging from \$55,000 for the first offense, up to \$110,000 for subsequent offenses.

In civil lawsuits, the entity is sued by a private party for non-compliance. If the plaintiff prevails, the entity will be made to comply with the accessibility guidelines.

Indirect includes facilities that must prove compliance prior to receiving licenses, grants, or certifications. On new construction of hotels and resorts, the building officials have required compliance before issuing a Certificate of Occupancy (CO).

Compliance Deadlines: Now that the ADAAG 2004 has been formally adopted by the Department of Justice, compliance will be REQUIRED by Federal Law. The new regulation went into effect on March 15, 2011 and full compliance will be required by March 15, 2012.

Best form of Compliance: By far the easiest and best form of ADA compliance is through a handicap lift. Modern lifts are portable, lightweight, and relatively inexpensive. (Larger pools -- greater than 300 linear feet -- require an additional form of access) In earlier days, lifts were water powered, required permanent modification to the pool deck, and had several issues such as: getting pressurized water to the pool edge (without posing a trip hazard), and the discarding of discharge water to a DOH-approved source (often not the pool itself).

The new lifts are lightweight, battery-powered, and easy to install. Some lifts are completely portable, while others utilize a deck-mounted stanchion. The pool lift, which could be stored in a closet, could be brought out and placed in the stanchion within a few minutes. In order to comply with ADA, the lifts must be self-powered, and be rated for 300 lb capacity.

The industry pioneer and undisputed leader in affordable, flexible lifts is RehaMed International, which is now a part of SR Smith. RehaMed has been producing a wide variety of lifts since its inception in 1996. Recently, several companies have tried to copy the proven RehaMed design, but have yet to match the quality or reliability that the Pal and Splash lifts have enjoyed since the early 2000's.

Compliance made easy: To achieve compliance in your facility, simply contact your swimming pool professional. They should provide a site-audit to determine which handicap lift solution best suit your needs and deck configuration. Ask them to provide a lease option for a fully compliant lift – should be as little as \$100 per month for 36 months. At the end you own the lift for \$1. It is recommended to seek a vendor that provides on-site warranty administration and service plans to assure that your lift will always be ready when you need it, as ADA requires a “functioning lift”.

Please feel free to contact industry subject matter expert John Caden johnjcaden@gmail.com, or Alvaro Mendoza amendoza@cesmail.org for more information on any aspect of ADA.