for accessible routes include the routes leading up to and including the loading and unloading areas of amusement rides.

A commenter requested that the final rule specifically allow for wheelchair access through the exit or other routes, or alternate means of wheelchair access routes to amusement rides. The commenter stated that the concept of wheelchair access through the exit or alternate routes was a base assumption for the 2010 Standards. The commenter noted that the concept is apparent in the signage and load/unload area provisions in Section 216.12 (" * * * where accessible unload areas also serve as accessible load areas, signs indicating the location of the accessible load and unload areas shall be provided at entries to queues and waiting lines"). The Department agrees with the commenter that accessible load and unload areas may be the same where signs that comply with section 216.12 are provided.

Wheelchair Space or Transfer Seat or Transfer Device. Sections 234.3 and 1002.4 - 1002.6 of the 2010 Standards provide that each new and altered amusement ride, except for mobile/portable rides and a few additional excepted rides, will be required to provide at least one type of access by means of one wheelchair space or one transfer seat or one transfer device (the design of the transfer device is not specified).

Commenters urged the Department to revise the requirements for wheelchair spaces and transfer seats and devices because most amusement rides are too complex to be reasonably modified or re-engineered to accommodate the majority of individuals with disabilities. They argued that the experience of amusement rides will be significantly reduced if the proposed requirements are implemented.

The 2004 ADAAG, which the Department adopted as part of the 2010 Standards, was developed with the assistance of an advisory committee that included representation from the design staffs of major amusement venues and from persons with disabilities. The Department believes that the

resulting 2004 ADAAG reflected sensitivity to the complex problems posed in adapting existing rides by focusing on new rides that can be designed from the outset to be accessible.

To permit maximum design flexibility, the 2010 Standards permit designers to determine whether it is more appropriate to permit individuals who use wheelchairs to remain in their chairs on the ride, or to provide for transfer access.

Maneuvering Space in Load and Unload Areas. Sections 234.2 and 1002.3 of the 2010 Standards require that a level wheelchair turning space be provided at the load and unload areas of each amusement ride. The turning space must comply with sections 304.2 and 304.3.

Signs Required at Waiting Lines to Amusement Rides. Section 216.12 of the 2010 Standards requires signs at entries to queues and waiting lines identifying type and location of access for the amusement ride.

235 and 1003 Recreational Boating Facilities

These sections require that accessible boat slips and boarding piers be provided. Most commenters approved of the requirements for recreational boating facility accessibility and urged the Department to keep regulatory language consistent with those provisions. They commented that the requirements appropriately reflect industry conditions. Individual commenters and disability organizations agreed that the 2010 Standards achieve acceptable goals for recreational boating facility access.

Accessible Route. Sections 206.2.10 and 1003.2 of the 2010 Standards require an accessible route to all accessible boating facilities, including boat slips and boarding piers at boat launch ramps. Section 1003.2.1 provides a list of exceptions applicable to structures such as gangways, transition plates, floating piers, and structures containing combinations of these elements that are affected by

water level changes. The list of exceptions specifies alternate design requirements applicable to these structures which, because of water level variables, cannot comply with the slope, cross slope, and handrail requirements for fixed ramps contained in sections 403.3, 405.2, 405.3, 405.6, and 405.7 of the 2010 Standards. Exceptions 3 and 4 in Section 1003.2.1, which permit a slope greater than that specified in Section 405.2, are available for structures that meet specified length requirements. Section 206.7.10 permits the use of platform lifts as an alternative to gangways that are part of accessible routes.

Commenters raised concerns that because of water level fluctuations it may be difficult to provide accessible routes to all accessible boating facilities, including boat slips and boarding piers at boat launch ramps. One of the specific concerns expressed by several commenters relates to the limits for running slope permitted on gangways that are part of an accessible route as gangways may periodically have a steeper slope than is permitted for a fixed ramp. The exceptions contained in section 1003.2 of the 2010 Standards modify the requirements of Chapter 4. For example, where the total length of a gangway or series of gangways serving as an accessible route is 80 feet or more an exception permits the slope on gangways to exceed the maximum slope in section 405.2.

Some commenters suggested that permissible slope variations could be reduced further by introducing a formula that ties required gangway length to anticipated water level fluctuations. Such a formula would incorporate predictions of tidal level changes such as those issued by the National Oceanographic and Atmospheric Administration (NOAA) and the United States Geologic Survey (USGS). This suggested approach would be an alternative to the gangway length exceptions and limits in section 1003.2.1 of the 2010 Standards. These commenters noted that contemporary building materials and techniques make gangways of longer length and alternative configurations achievable. These commenters provided at least one example of a regional regulatory authority using this type of formula. While this approach may be successfully implemented and consistent with the goals of the ADA, the example provided was applied in a highly developed area containing

larger facilities. The Department has considered that many facilities do not have sufficient resources available to take advantage of the latest construction materials and design innovations. Other commenters supported compliance exceptions for facilities that are subject to extreme tidal conditions. One commenter noted that if a facility is located in an area with limited space and extreme tidal variations, a disproportionately long gangway might intrude into water travel routes. The Department has considered a wide range of boating facility characteristics including size, water surface areas, tidal fluctuations, water conditions, variable resources, whether the facility is in a highly developed or remote location, and other factors. The Department has determined that the 2010 Standards provide sufficient flexibility for such broad application. Additionally, the length requirement for accessible routes in section 1003.2.1 provides an easily determinable compliance standard.

Accessible Boarding Piers. Where boarding piers are provided at boat launch ramps, sections 235.3 and 1003.3.2 of the 2010 Standards require that at least five percent (5%) of boarding piers, but at least one, must be accessible.

Accessible Boat Slips. Sections 235.2 and 1003.3.1 of the 2010 Standards require that a specified number of boat slips in each recreational boating facility meet specified accessibility standards. The number of accessible boat slips required by the 2010 Standards is set out in a chart in section 235.2. One accessible boat slip is required for facilities containing 25 or fewer total slips. The number of required accessible boat slips increases with the total number of slips at the facility. Facilities containing more than one thousand (1000) boat slips are required to provide twelve (12) accessible boat slips plus one for each additional one hundred slips at the facility.

One commenter asserted the need for specificity in the requirement for dispersion of accessible slips. Section 235.2.1 of the 2010 Standards addresses dispersion and requires that boat slips "shall be dispersed throughout the various types of boat slips provided." The commenter was concerned

that if a marina could not put accessible slips all on one pier, it would have to reconstruct the entire facility to accommodate accessible piers, gangways, docks and walkways. The provision permits required accessible boat slips to be grouped together. The Department recognizes that economical and structural feasibility may produce this result. The 2010 Standards do not require the dispersion of the physical location of accessible boat slips. Rather, the dispersion must be among the various types of boat slips offered by the facility. Section 235.2.1 of the 2010 Standards specifies that if the required number has been met, no further dispersion is required. For example, if a facility offers five different ´types´ of boat slips but is only required to provide three according to the table in Section 235.2, that facility is not required to provide more than three accessible boat slips, but the three must be varied among the five ´types´ of boat slips available at the facility.

236 and 1004 Exercise Machines and Equipment

Accessible Route to Exercise Machines and Equipment. Section 206.2.13 of the 2010 Standards requires an accessible route to serve accessible exercise machines and equipment.

Commenters raised concerns that the requirement to provide accessible routes to serve accessible exercise machines and equipment will be difficult for some facilities to provide, especially some transient lodging facilities that typically locate exercise machines and equipment in a single room. The Department believes that this requirement is a reasonable one in new construction and alterations because accessible exercise machines and equipment can be located so that an accessible route can serve more than one piece of equipment.

Exercise Machines and Equipment. Section 236 of the 2010 Standards requires at least one of each type of exercise machine to meet clear floor space requirements of section 1004.1. Types of machines are generally defined according to the muscular groups exercised or the kind of cardiovascular exercise provided.

Several commenters were concerned that existing facilities would have to reduce the number of available exercise equipment and machines in order to comply with the 2010 Standards. One commenter submitted prototype drawings showing equipment and machine layouts with and without the required clearance specified in the 2010 Standards. The accessible alternatives all resulted in a loss of equipment and machines. However, because these prototype layouts included certain possibly erroneous assumptions about the 2010 Standards, the Department wishes to clarify the requirements.

Section 1004.1 of the 2010 Standards requires a clear floor space "positioned for transfer or for use by an individual seated in a wheelchair" to serve at least one of each type of exercise machine and equipment. This requirement provides the designer greater flexibility regarding the location of the clear floor space than was employed by the commenter who submitted prototype layouts. The 2010 Standards do not require changes to exercise machines or equipment in order to make them more accessible to persons with disabilities. Even where machines or equipment do not have seats and typically are used by individuals in a standing position, at least one of each type of machine or equipment must have a clear floor space. Therefore, it is reasonable to assume that persons with disabilities wishing to use this type of machine or equipment can stand or walk, even if they use wheelchairs much of the time. As indicated in Advisory 1004.1, "the position of the clear floor space may vary greatly depending on the use of the equipment or machine." Where exercise equipment or machines require users to stand on them, the clear floor space need not be located parallel to the length of the machine or equipment in order to provide a lateral seat-to-platform transfer. It is permissible to locate the clear floor space for such machines or equipment in the aisle behind the device and to overlap the clear floor space and the accessible route.

Commenters were divided in response to the requirement for accessible exercise machines and equipment. Some supported requirements for accessible machines and equipment; others urged the Department not to require accessible machines and equipment because of the costs involved. The

Department believes that the requirement strikes an appropriate balance in ensuring that persons with disabilities, particularly those who use wheelchairs, will have the opportunity to use the exercise equipment. Providing access to exercise machines and equipment recognizes the need and desires of individuals with disabilities to have the same opportunity as other patrons to enjoy the advantages of exercise and maintaining health.

237 and 1005 Fishing Piers and Platforms

Accessible Route. Sections 206.2.14 and 1005.1 of the 2010 Standards require an accessible route to each accessible fishing pier and platform. The exceptions described under Recreational Boating above also apply to gangways and floating piers. All commenters supported the requirements for accessible routes to fishing piers and platforms.

Accessible Fishing Piers and Platforms. Sections 237 and 1005 of the 2010 Standards require at least twenty-five percent (25%) of railings, guards, or handrails (if provided) to be at a 34-inch maximum height (so that a person seated in a wheelchair can cast a fishing line over the railing) and to be located in a variety of locations on the fishing pier or platform to give people a variety of locations to fish. An exception allows a guard required to comply with the IBC to have a height greater than 34 inches. If railings, guards, or handrails are provided, accessible edge protection and clear floor or ground space at accessible railings are required. Additionally, at least one turning space complying with section 304.3 of the 2010 Standards is required to be provided on fishing piers and platforms.

Commenters expressed concerns about the provision for fishing piers and platforms at the exception in section 1005.2.1 of the 2010 Standards that allows a maximum height of 42 inches for a guard when the pier or platform is covered by the IBC. Two commenters stated that allowing a 42-inch guard or railing height for facilities covered by another building code would be difficult to enforce. They also thought that this would hinder access for persons with disabilities because the railing

height would be too high for a person seated in a wheelchair to reach over with their fishing pole in order to fish. The Department understands these concerns but believes that the railing height exception is necessary in order to avoid confusion resulting from conflicting accessibility requirements, and therefore has retained this exception.

238 and 1006 Golf Facilities

Accessible Route. Sections 206.2.15, 1006.2, and 1006.3 of the 2010 Standards require an accessible route to connect all accessible elements within the boundary of the golf course and, in addition, to connect golf car rental areas, bag drop areas, teeing grounds, putting greens, and weather shelters. An accessible route also is required to connect any practice putting greens, practice teeing grounds, and teeing stations at driving ranges that are required to be accessible. An exception permits the accessible route requirements to be met, within the boundaries of the golf course, by providing a "golf car passage" (the path typically used by golf cars) if specifications for width and curb cuts are met.

Most commenters expressed the general viewpoint that nearly all golf courses provide golf cars and have either well-defined paths or permit the cars to drive on the course where paths are not present, and thus meet the accessible route requirement.

The Department received many comments requesting clarification of the term "golf car passage." Some commenters recommended additional regulatory language specifying that an exception from a pedestrian route requirement should be allowed only when a golf car passage provides unobstructed access onto the teeing ground, putting green, or other accessible element of the course so that an accessible golf car can have full access to those elements. These commenters cautioned that full and equal access would not be provided if a golfer were required to navigate a steep slope up or down a hill or a flight of stairs in order to get to the teeing ground, putting green, or other accessible element of the course.

Conversely, another commenter requesting clarification of the term "golf car passage" argued that golf courses typically do not provide golf car paths or pedestrian paths up to actual tee grounds or greens, many of which are higher or lower than the car path. This commenter argued that if golf car passages were required to extend onto teeing grounds and greens in order to qualify for an exception, then some golf courses would have to substantially regrade teeing grounds and greens at a high cost.

Some commenters argued that older golf courses, small nine-hole courses, and executive courses that do not have golf car paths would be unable to comply with the accessible route requirements because of the excessive cost involved. A commenter noted that, for those older courses that have not yet created an accessible pedestrian route or golf car passage, the costs and impacts to do so should be considered.

A commenter argued that an accessible route should not be required where natural terrain makes it infeasible to create an accessible route. Some commenters cautioned that the 2010 Standards would jeopardize the integrity of golf course designs that utilize natural terrain elements and elevation changes to set up shots and create challenging golf holes.

The Department has given careful consideration to the comments and has decided to adopt the 2010 Standards requiring that at least one accessible route connect accessible elements and spaces within the boundary of the golf course including teeing grounds, putting greens, and weather shelters, with an exception provided that golf car passages shall be permitted to be used for all or part of required accessible routes. In response to requests for clarification of the term "golf car passage," the Department points out that golf car passage is merely a pathway on which a motorized golf car can operate and includes identified or paved paths, teeing grounds, fairways, putting greens, and other areas of the course. Golf cars cannot traverse steps and exceedingly steep slopes. A nine-hole golf course or an executive golf course that lacks an identified golf car path but

provides golf car passage to teeing grounds, putting greens, and other elements throughout the course may utilize the exception for all or part of the accessible pedestrian route. The exception in section 206.2.15 of the 2010 Standards does not exempt golf courses from their obligation to provide access to necessary elements of the golf course; rather, the exception allows a golf course to use a golf car passage for part or all of the accessible pedestrian route to ensure that persons with mobility disabilities can fully and equally participate in the recreational activity of playing golf.

Accessible Teeing Grounds, Putting Greens, and Weather Shelters. Sections 238.2 and 1006.4 of the 2010 Standards require that golf cars be able to enter and exit each putting green and weather shelter. Where two teeing grounds are provided, the forward teeing ground is required to be accessible (golf car can enter and exit). Where three or more teeing grounds are provided, at least two, including the forward teeing ground, must be accessible.

A commenter supported requirements for teeing grounds, particularly requirements for accessible teeing grounds, noting that accessible teeing grounds are essential to the full and equal enjoyment of the golfing experience.

A commenter recommended that existing golf courses be required to provide access to only one teeing ground per hole. The majority of commenters reported that most public and private golf courses already provide golf car passage to teeing grounds and greens. The Department has decided that it is reasonable to maintain the requirement. The 2010 Standards provide an exception for existing golf courses with three or more teeing grounds not to provide golf car passage to the forward teeing ground where terrain makes such passage infeasible.

Section 1006.3.2 of the 2010 Standards requires that where curbs or other constructed barriers prevent golf cars from entering a fairway, openings 60 inches wide minimum shall be provided at intervals not to exceed 75 yards.

A commenter disagreed with the requirement that openings 60 inches wide minimum be installed at least every 75 yards, arguing that a maximum spacing of 75 yards may not allow enough flexibility for terrain and hazard placements. To resolve this problem, the commenter recommended that the standards be modified to require that each golf car passage include one 60-inch wide opening for an accessible golf car to reach the tee, and that one opening be provided where necessary for an accessible golf car to reach a green. The requirement for openings where curbs or other constructed barriers may otherwise prevent golf cars from entering a fairway allows the distance between openings to be less than every 75 yards. Therefore, the Department believes that the language in section 1006.3.2 of the 2010 Standards allows appropriate flexibility. Where a paved path with curbs or other constructed barrier exists, the Department believes that it is essential that openings be provided to enable golf car passages to access teeing grounds, fairways and putting greens, and other required elements. Golf car passage is not restricted to a paved path with curbs. Golf car passage also includes fairways, teeing grounds, putting greens, and other areas on which golf cars operate.

Accessible Practice Putting Greens, Practice Teeing Grounds, and Teeing Stations at Driving Ranges. Section 238.3 of the 2010 Standards requires that five percent (5%) but at least one of each of practice putting greens, practice teeing grounds, and teeing stations at driving ranges must permit golf cars to enter and exit.

239 and 1007 Miniature Golf Facilities

Accessible Route to Miniature Golf Course Holes. Sections 206.2.16, 239.3, and 1007.2 of the 2010 Standards require an accessible route to connect accessible miniature golf course holes and the last accessible hole on the course directly to the course entrance or exit. Accessible holes are required to be consecutive with an exception permitting one break in the sequence of consecutive holes provided that the last hole on the miniature golf course is the last hole in the sequence.

Many commenters supported expanding the exception from one to multiple breaks in the sequence of accessible holes. One commenter noted that permitting accessible holes with breaks in the sequence would enable customers with disabilities to enjoy the landscaping, water and theme elements of the miniature golf course. Another commenter wrote in favor of allowing multiple breaks in accessible holes with a connecting accessible route.

Other commenters objected to allowing multiple breaks in the sequence of miniature golf holes. Commenters opposed to this change argued that allowing any breaks in the sequence of accessible holes at a miniature golf course would disrupt the flow of play for persons with disabilities and create a less socially integrated experience. A commenter noted that multiple breaks in sequence would not necessarily guarantee the provision of access to holes that are most representative of those with landscaping, water elements, or a fantasy-like experience.

The Department has decided to retain the exception without change. Comments did not provide a sufficient basis on which to conclude that allowing multiple breaks in the sequence of accessible holes would necessarily increase integration of accessible holes with unique features of miniature golf courses. Some designs of accessible holes with multiple breaks in the sequence might provide equivalent facilitation where persons with disabilities gain access to landscaping, water or theme elements not otherwise represented in a consecutive configuration of accessible holes. A factor that might contribute to equivalent facilitation would be an accessible route designed to bring persons with disabilities to a unique feature, such as a waterfall, that would otherwise not be served by an accessible route connecting consecutive accessible holes.

Specified exceptions are permitted for accessible route requirements when located on the playing surfaces near holes.

Accessible Miniature Golf Course Holes. Sections 239.2 and 1007.3 of the 2010 Standards require at least fifty percent (50%) of golf holes on miniature golf courses to be accessible, including

providing a clear floor or ground space that is 48 inches minimum by 60 inches minimum with slopes not steeper than 1:48 at the start of play.

240 and 1008 Play Areas

Section 240 of the 2010 Standards provides scoping for play areas and section 1008 provides technical requirements for play areas. Section 240.1 of the 2010 Standards sets requirements for play areas for children ages 2 and over and covers separate play areas within a site for specific age groups. Section 240.1 also provides four exceptions to the requirements that apply to family child care facilities, relocation of existing play components in existing play areas, amusement attractions, and alterations to play components where the ground surface is not altered.

Ground Surfaces. Section 1008.2.6 of the 2010 Standards provides technical requirements for accessible ground surfaces for play areas on accessible routes, clear floor or ground spaces, and turning spaces. These ground surfaces must follow special rules, incorporated by reference from nationally recognized standards for accessibility and safety in play areas, including those issued by the American Society for Testing and Materials (ASTM).

A commenter recommended that the Department closely examine the requirements for ground surfaces at play areas. The Department is aware that there is an ongoing controversy about play area ground surfaces arising from a concern that some surfaces that meet the ASTM requirements at the time of installation will become inaccessible if they do not receive constant maintenance. The Access Board is also aware of this issue and is working to develop a portable field test that will provide more relevant information on installed play surfaces. The Department would caution covered entities selecting among the ground surfacing materials that comply with the ASTM requirements that they must anticipate the maintenance costs that will be associated with some of the products. Permitting a surface to deteriorate so that it does not meet the 2010 Standards would be an independent violation of the Department´s ADA regulations.

Accessible Route to Play Components. Section 206.2.17 of the 2010 Standards provides scoping requirements for accessible routes to ground level and elevated play components and to soft contained play structures. Sections 240.2 and 1008 of the 2010 Standards require that accessible routes be provided for play components. The accessible route must connect to at least one ground level play component of each different type provided (e.g., for different experiences such as rocking, swinging, climbing, spinning, and sliding). Table 240.2.1.2 sets requirements for the number and types of ground level play components required to be on accessible routes. When elevated play components are provided, an accessible route must connect at least fifty percent (50%) of the elevated play components. Section 240.2.1.2, provides an exception to the requirements for ground level play components if at least fifty percent (50%) of the elevated play components are connected by a ramp and at least three of the elevated play components connected by the ramp are different types of play components.

The technical requirements at section 1008 include provisions where if three or fewer entry points are provided to a soft contained play structure, then at least one entry point must be on an accessible route. In addition, where four or more entry points are provided to a soft contained play structure, then at least two entry points must be served by an accessible route.

If elevated play components are provided, fifty percent (50%) of the elevated components are required to be accessible. Where 20 or more elevated play components are provided, at least twenty five percent (25%) will have to be connected by a ramp. The remaining play components are permitted to be connected by a transfer system. Where less than 20 elevated play components are provided, a transfer system is permitted in lieu of a ramp.

A commenter noted that the 2010 Standards allow for the provision of transfer steps to elevated play structures based on the number of elevated play activities, but asserted that transfer steps have not been documented as an effective means of access.

The 2010 Standards recognize that play structures are designed to provide unique experiences and opportunities for children. The 2010 Standards provide for play components that are accessible to children who cannot transfer from their wheelchair, but they also provide opportunities for children who are able to transfer. Children often interact with their environment in ways that would be considered inappropriate for adults. Crawling and climbing, for example, are integral parts of the play experience for young children. Permitting the use of transfer platforms in play structures provides some flexibility for creative playground design.

Accessible Play Components. Accessible play components are required to be on accessible routes, including elevated play components that are required to be connected by ramps. These play components must also comply with other accessibility requirements, including specifications for clear floor space and seat heights (where provided).

A commenter expressed concerns that the general requirements of section 240.2.1 of the 2010 Standards and the advisory accompanying section 240.2.1 conflict. The comment asserts that section 240.2.1 of the 2010 Standards provides that the only requirement for integration of equipment is where there are two or more required ground level play components, while the advisory appears to suggest that all accessible components must be integrated.

The commenter misinterprets the requirement. The ADA mandates that persons with disabilities be able to participate in programs or activities in the most integrated setting appropriate to their needs. Therefore, all accessible play components must be integrated into the general playground setting. Section 240.2.1 of the 2010 Standards specifies that where there is more than one accessible ground level play component, the components must be both dispersed and integrated.

241 and 612 Saunas and Steam Rooms

Section 241 of the 2010 Standards sets scoping for saunas and steam rooms and section 612 sets technical requirements including providing accessible turning space and an accessible bench. Doors are not permitted to swing into the clear floor or ground space for the accessible bench. The exception in section 612.2 of the 2010 Standards permits a readily removable bench to obstruct the required wheelchair turning space and the required clear floor or ground space. Where they are provided in clusters, five percent (5%) but at least one sauna or steam room in each cluster must be accessible.

Commenters raised concerns that the safety of individuals with disabilities outweighs the usefulness in providing accessible saunas and steam rooms. The Department believes that there is an element of risk in many activities available to the general public. One of the major tenets of the ADA is that individuals with disabilities should have the same opportunities as other persons to decide what risks to take. It is not appropriate for covered entities to prejudge the abilities of persons with disabilities.

242 and 1009 Swimming Pools, Wading Pools, and Spas

Accessible Means of Entry to Pools. Section 242 of the 2010 Standards requires at least two accessible means of entry for larger pools (300 or more linear feet) and at least one accessible entry for smaller pools. This section requires that at least one entry will have to be a sloped entry or a pool lift; the other could be a sloped entry, pool lift, a transfer wall, or a transfer system (technical specifications for each entry type are included at section 1009).

Many commenters supported the scoping and technical requirements for swimming pools. Other commenters stated that the cost of requiring facilities to immediately purchase a pool lift for each indoor and outdoor swimming pool would be very significant especially considering the large number of swimming pools at lodging facilities. One commenter requested that the Department clarify what would be an "alteration" to a swimming pool that would trigger the obligation to comply with the accessible means of entry in the 2010 Standards.

Alterations are covered by section 202.3 of the 2010 Standards and the definition of "alteration" is provided at section 106.5. A physical change to a swimming pool which affects or could affect the usability of the pool is considered to be an alteration. Changes to the mechanical and electrical systems, such as filtration and chlorination systems, are not alterations. Exception 2 to section 202.3 permits an altered swimming pool to comply with applicable requirements to the maximum extent feasible if full compliance is technically infeasible. "Technically infeasible" is also defined in section 106.5 of the 2010 Standards.

The Department also received comments suggesting that it is not appropriate to require two accessible means of entry to wave pools, lazy rivers, sand bottom pools, and other water amusements where there is only one point of entry. Exception 2 of Section 242.2 of the 2010 Standards exempts pools of this type from having to provide more than one accessible means of entry provided that the one accessible means of entry is a swimming pool lift compliant with section 1009.2, a sloped entry compliant with section 1009.3, or a transfer system compliant with section 1009.5 of the 2010 Standards.

Accessible Means of Entry to Wading Pools. Sections 242.3 and 1009.3 of the 2010 Standards require that at least one sloped means of entry is required into the deepest part of each wading pool.

Accessible Means of Entry to Spas. Sections 242.4 and 1009.2, 1009.4, and 1009.5 of the 2010 Standards require spas to meet accessibility requirements, including an accessible means of entry. Where spas are provided in clusters, five percent (5%) but at least one spa in each cluster must be accessible. A pool lift, a transfer wall, or a transfer system will be permitted to provide the required accessible means of entry.

243 Shooting Facilities with Firing Positions

Sections 243 and 1010 of the 2010 Standards require an accessible turning space for each different type of firing position at a shooting facility if designed and constructed on a site. Where firing positions are provided in clusters, five percent (5%), but at least one position of each type in each cluster must be accessible.

Additional Technical Requirements

302.1 Floor or Ground Surfaces

Both section 4.5.1 of the 1991 Standards and section 302.2 of the 2010 Standards require that floor or ground surfaces along accessible routes and in accessible rooms and spaces be stable, firm, slip-resistant, and comply with either section 4.5 in the case of the 1991 Standards or section 302 in the case of the 2010 Standards.

Commenters recommended that the Department apply an ASTM Standard (with modifications) to assess whether a floor surface is "slip resistant" as required by section 302.1 of the 2010 Standards. The Department declines to accept this recommendation since, currently, there is no generally accepted test method for the slip-resistance of all walking surfaces under all conditions.

304 Turning Space

Section 4.2.3 of the 1991 Standards and Section 304.3 of the 2010 Standards allow turning space to be either a circular space or a T-shaped space. Section 304.3 permits turning space to include knee and toe clearance complying with section 306. Section 4.2.3 of the 1991 Standards did not specifically permit turning space to include knee and toe clearance. Commenters urged the Department to retain the turning space requirement, but exclude knee and toe clearance from being permitted as part of this space. They argued that wheelchairs and other mobility devices are

becoming larger and that more individuals with disabilities are using electric three and four-wheeled scooters which cannot utilize knee clearance.

The Department recognizes that the technical specifications for T-shaped and circular turning spaces in the 1991 and 2010 Standards, which are based on manual wheelchair dimensions, may not adequately meet the needs of individuals using larger electric scooters. However, there is no consensus about the appropriate dimension on which to base revised requirements. The Access Board is conducting research to study this issue in order to determine if new requirements are warranted. For more information, see the Access Board´s website at http://www.access-board.gov/research/current-projects.htm#suny. The Department plans to wait for the results of this study and action by the Access Board before considering any changes to the Department´s rules. Covered entities may wish to consider providing more than the minimum amount of turning space in confined spaces where a turn will be required. Appendix section A4.2.3 and Fig. A2 of the 1991 Standards provide guidance on additional space for making a smooth turn without bumping into surrounding objects.

404 Doors, Doorways, and Gates

A**utomatic Door Break Out Openings.** The 1991 Standards do not contain any technical requirement for automatic door break out openings. The 2010 Standards at sections 404.1, 404.3, 404.3.1, and 404.3.6 require automatic doors that are part of a means of egress and that do not have standby power to have a 32-inch minimum clear break out opening when operated in emergency mode. The minimum clear opening width for automatic doors is measured with all leaves in the open position. Automatic bi-parting doors or pairs of swinging doors that provide a 32-inch minimum clear break out opening in emergency mode when both leaves are opened manually meet the technical requirement. Section 404.3.6 of the 2010 Standards includes an exception that

exempts automatic doors from the technical requirement for break out openings when accessible manual swinging doors serve the same means of egress.

Maneuvering Clearance or Standby Power for Automatic Doors. Section 4.13.6 of the 1991 Standards does not require maneuvering clearance at automatic doors. Section 404.3.2 of the 2010 Standards requires automatic doors that serve as an accessible means of egress to either provide maneuvering clearance or to have standby power to operate the door in emergencies. This provision has limited application and will affect, among others, in-swinging automatic doors that serve small spaces.

Commenters urged the Department to reconsider provisions that would require maneuvering clearance or standby power for automatic doors. They assert that these requirements would impose unreasonable financial and administrative burdens on all covered entities, particularly smaller entities. The Department declines to change these provisions because they are fundamental life-safety issues. The requirement applies only to doors that are part of a means of egress that must be accessible in an emergency. If an emergency-related power failure prevents the operation of the automatic door, a person with a disability could be trapped unless there is either adequate maneuvering room to open the door manually or a back-up power source.

Thresholds at Doorways. The 1991 Standards, at section 4.13.8, require the height of thresholds at doorways not to exceed 1/2 inch and thresholds at exterior sliding doors not to exceed 3/4 inch. Sections 404.1 and 404.2.5 of the 2010 Standards require the height of thresholds at all doorways that are part of an accessible route not to exceed 1/2 inch. The 1991 Standards and the 2010 Standards require raised thresholds that exceed ¼ inch in height to be beveled on each side with a slope not steeper than 1:2. The 2010 Standards include an exception that exempts existing and altered thresholds that do not exceed 3/4 inch in height and are beveled on each side from the requirement.

505 Handrails

The 2010 Standards add a new technical requirement at section 406.3 for handrails along walking surfaces.

The 1991 Standards, at sections 4.8.5, 4.9.4, and 4.26, and the 2010 Standards, at section 505, contain technical requirements for handrails. The 2010 Standards provide more flexibility than the 1991 Standards as follows:

- Section 4.26.4 of the 1991 Standards requires handrail gripping surfaces to have edges with a minimum radius of 1/8 inch. Section 505.8 of the 2010 Standards requires handrail gripping surfaces to have rounded edges.
- Section 4.26.2 of the 1991 Standards requires handrail gripping surfaces to have a diameter of 1 ¼ inches to 1 1/2 inches, or to provide an equivalent gripping surface. Section 505.7 of the 2010 Standards requires handrail gripping surfaces with a circular cross section to have an outside diameter of 1 ¼ inches to 2 inches. Handrail gripping surfaces with a non-circular cross section must have a perimeter dimension of 4 inches to 6 ¼ inches, and a cross section dimension of 2 ¼ inches maximum.
- Sections 4.8.5 and 4.9.4 of the 1991 Standards require handrail gripping surfaces to be continuous, and to be uninterrupted by newel posts, other construction elements, or obstructions. Section 505.3 of the 2010 Standards sets technical requirements for continuity of gripping surfaces. Section 505.6 requires handrail gripping surfaces to be continuous along their length and not to be obstructed along their tops or sides. The bottoms of handrail gripping surfaces must not be obstructed for more than twenty percent (20%) of their length. Where provided, horizontal projections must occur at least 1 1/2 inches below the bottom of the handrail gripping surface. An exception permits the distance between the horizontal projections and the bottom of the gripping surface to be reduced by 1/8 inch for each 1/2 inch of additional handrail perimeter dimension that exceeds 4 inches.

- Section 4.9.4 of the 1991 Standards requires handrails at the bottom of stairs to continue to slope for a distance of the width of one tread beyond the bottom riser nosing and to further extend horizontally at least 12 inches. Section 505.10 of the 2010 Standards requires handrails at the bottom of stairs to extend at the slope of the stair flight for a horizontal distance at least equal to one tread depth beyond the last riser nosing. Section 4.1.6(3) of the 1991 Standards has a special technical provision for alterations to existing facilities that exempts handrails at the top and bottom of ramps and stairs from providing full extensions where it will be hazardous due to plan configuration. Section 505.10 of the 2010 Standards has a similar exception that applies in alterations.

A commenter noted that handrail extensions are currently required at the top and bottom of stairs, but the proposed regulations do not include this requirement, and urged the Department to retain the current requirement. Other commenters questioned the need for the extension at the bottom of stairs.

Sections 505.10.2 and 505.10.3 of the 2010 Standards require handrail extensions at both the top and bottom of a flight of stairs. The requirement in the 1991 Standards that handrails extend horizontally at least 12 inches beyond the width of one tread at the bottom of a stair was changed in the 2004 ADAAG by the Access Board in response to public comments. Existing horizontal handrail extensions that comply with 4.9.4(2) of the 1991 Standards should meet or exceed the requirements of the 2010 Standards.

Commenters noted that the 2010 Standards will require handrail gripping surfaces with a circular cross section to have an outside diameter of 2 inches, and that this requirement would impose a physical barrier to individuals with disabilities who need the handrail for stability and support while accessing stairs.

The requirement permits an outside diameter of 1 ¼ inches to 2 inches. This range allows flexibility in meeting the needs of individuals with disabilities and designers and architects. The Department is

not aware of any data indicating that an outside diameter of 2 inches would pose any adverse impairment to use by individuals with disabilities.

Handrails Along Walkways. The 1991 Standards do not contain any technical requirement for handrails provided along walkways that are not ramps. Section 403.6 of the 2010 Standards specifies that where handrails are provided along walkways that are not ramps, they shall comply with certain technical requirements. The change is expected to have minimal impact.

Now the checklist

Top 5 Misconceptions About Title III Of The Americans With Disabilities Act That Subject Your Business to ADA Litigation Abuse

April 2011
Cory A. Iannacone, Esquire

I. Introduction

Since the enactment of the Americans With Disabilities Act ("ADA") more than 20 years ago, businesses have seen an increase in lawsuits as a result of their failure to comply with the accessibility requirements set forth under Title III of the ADA. These lawsuits rarely go to trial and often end with businesses spending substantial money in the form of renovations to their establishments and also attorneys' fees—both their own attorneys' fees and the plaintiffs' attorneys' fees. The increase in these lawsuits is the result of plaintiffs' attorneys who have taken advantage of the many misconceptions businesses have when it comes to the ADA, along with the fact that the ADA permits plaintiffs to recover their attorneys' fees.

Many plaintiffs' attorneys have made their practice out of this litigation, filing hundreds of lawsuits nationwide—what many have referred to as "drive-by litigation" and "a lawyer mill," whereby a plaintiff will identify a number of businesses in a local area (often on the same street) who are not compliant with Title III of the ADA and then file a lawsuit against each business, seeking compliance with the ADA and demanding that the business pay the plaintiff's attorney's fees, costs and expenses associated with bringing the claim. Rather than notifying the businesses of the ADA noncompliance, many plaintiffs' attorneys apply the "shoot first, ask questions later" approach to litigation; instead of allowing a business owner to remedy any ADA issues, the plaintiff's attorney files a lawsuit and demands money before providing a specific list of repairs. The complaints filed are often filled with vague, boilerplate language that provides no specific guidance to a business owner regarding the alleged ADA violations.

While the ADA has been around since 1990, there is no government agency designated to enforce the law or to educate the public

regarding ADA accessibility requirements. This creates a vacuum that allows inventive lawyers to sue businesses that are not in full compliance. Plaintiffs' attorneys take advantage of businesses' misconceptions about the ADA—those top 5 misconceptions are discussed in greater detail below—in order to sue businesses and recover their attorneys' fees under the guise that their conduct is for the good of the public—what this author refers to as "ADA litigation abuse."

II. Title III of the Americans With Disabilities Act

By way of background, in July 1990, Congress enacted the Americans With Disabilities Act ("ADA") which was later signed into law on July 26, 1990 by President George H. W. Bush. Title III of the ADA applies to places of public accommodation, commercial facilities, and private entities offering certain types of examinations and courses. Places of public accommodation are classified in 12 categories, which include restaurants, hotels, movie theaters, stadiums, lecture halls and other places of public gathering, grocery stores, gas stations, parks, zoos, schools, doctor's offices, and private schools. Title III of the ADA also applies to commercial facilities such as factories and office buildings.

The Department of Justice published regulations for Title III entitled the Americans With Disabilities Act Accessibility Guidelines ("ADAAG"), which are found in the Code of Federal Regulations at 28 C.F.R., Part 36, Appendix "A." The ADAAG contain the specific requirements businesses must follow to be compliant with Title III. Businesses

subject to Title III were provided 1½ years from the enactment of the statute to implement its requirements. Businesses who fail to comply with Title III of the ADA and its regulations are subject to liability. Any disabled person who is denied access to a place of public accommodation because of their disability may bring a claim against the business for injunctive relief, demanding that the business become compliant. Importantly, the ADA provides that a plaintiff may recover his or her reasonable attorney's fees, costs and expenses in bringing the claim.

Plaintiffs' attorneys have taken advantage of the attorney's fee provision and teamed up with disabled persons to bring claims against businesses that are not compliant with Title III of the ADA. This litigation is most prevalent in California, with tens of thousands of lawsuits being filed in a given year. One attorney nearly bankrupted the small historic town of Julian located in San Diego, California. After he visited the town one weekend and encountered difficulty getting into some of the shops, the attorney, who was disabled, filed a flood of lawsuits against 67 small businesses demanding $200,000.

Many plaintiffs' attorneys have been accused of providing their disabled clients kickbacks in the form of the attorneys' fees recovered in litigation. After filing the lawsuit, the plaintiff's attorney usually looks to settle the case by having the business provide an expert report demonstrating that the business is compliant with the ADA and by having the plaintiff's attorney's fees and other costs paid by the business. Businesses can protect themselves from this headache by better understanding the law, and more specifically, by educating themselves about the top 5 misconceptions under Title III which often subject businesses to ADA litigation abuse.

III. Top 5 Misconceptions About Title III of the ADA

Plaintiffs' attorneys have capitalized on private businesses' misconceptions about Title III of the ADA in order to recover their attorneys' fees. In this author's experience, those top 5 misconceptions are as follows:

1. Because my place of business is old, it is "grandfathered" and exempt from the ADA Title III requirements.

The largest misconception by business owners under Title III is the standard for existing facilities.**There is no "grandfather clause" exempting older facilities.** Instead, older facilities are obligated to make changes that are "readily achievable"—or which can be made without great expense or effort.

Under Title III of the ADA, all "new construction" (construction, modification or alterations) after the effective date of the ADA (approximately July 1992) must be fully compliant with the ADAAG.

Title III is also applicable to existing facilities. One of the definitions of "discrimination" under Title III of the ADA is a "failure to remove" architectural barriers in existing facilities. This means that even facilities that have not been modified or altered in any way after the

ADA was passed still have obligations to bring their facilities into compliance with the ADAAG. The standard is whether "removing barriers" (typically defined as bringing a condition into compliance with the ADAAG) is "readily achievable," defined as "easily accomplished without much difficulty or expense."

The statutory definition of "readily achievable" calls for a balancing test between the cost of the proposed "fix" and the wherewithal of the business and/or owners of the business. Thus, what might be "readily achievable" for a sophisticated and financially capable corporation might not be readily achievable for a small or local business.

There are exceptions to Title III; many private clubs and religious organizations may not be bound by Title III. With regard to historic properties (those properties that are listed or that are eligible for listing in the National Register of Historic Places, or properties designated as historic under State or local law), those facilities must still comply with the provisions of Title III of the ADA to the "maximum extent feasible" but if following the usual standards would "threaten to

destroy the historic significance of a feature of the building" then alternative standards may be used.

2. I will be provided notice before a lawsuit is filed against me, which will give me time to become compliant.

The second largest misconception by business owners is that a plaintiff is required to provide a business with notice of ADA deficiencies prior to initiating a lawsuit. In actuality, there is no notice requirement provided for under Title III of the ADA. In fact, many plaintiffs' attorneys use this to their advantage by applying a "shoot first, ask questions later" approach to litigation. In ADA litigation abuse cases, the plaintiff's attorney's main concern is getting compensated for legal fees from the business. The lack of notice requirement under the ADA facilitates these ADA litigation abuse cases and often results in businesses being "blind sided" with a lawsuit they never saw coming.

3. If a lawsuit is filed against me and I make renovations, the plaintiff's attorney cannot make me pay the plaintiff's attorney's fees, costs and expenses.

The ADA specifically provides that the "prevailing party," is entitled to recover his or her attorney's fees, costs and expenses. Although the majority of the Title III ADA cases settle out of court, plaintiffs' attorneys will most likely still require payment of their attorneys' fees as part of the settlement. With ADA litigation abuse, recovery of attorney's fees is the main reason the suits are filed. Therefore, it is unlikely that a plaintiff's attorney will forgo attorney's fees as part of any settlement.

4. Because I have obtained building permits from my Township and am compliant with local codes and ordinances, I am therefore compliant with the ADA.

Building permits issued by your Township are mutually exclusive from Title III of the ADA. Just because you were issued a building permit, and your building is in compliance with your local codes and ordinances, does not necessarily mean your business is compliant with Title III of the ADA.

5. I do not need legal counsel to assist me with defending a Title III ADA claim.

In cases of ADA litigation abuse, plaintiffs' attorneys use Title III of the ADA as leverage for the payment of their attorneys' fees, costs and expenses. In the majority of these cases, the buildings are targeted by plaintiffs and their attorneys because they know there are in fact ADA compliance issues making for a meritorious complaint. The plaintiffs and their attorneys use the clear liability as a basis for payment of their attorneys' fees. This places businesses in a difficult position to defend the case.

Legal counsel can provide you with various strategies which are available in defending ADA litigation abuse cases. There are numerous legal arguments which can be raised in order to have the case dismissed in its entirety immediately, or even during litigation up to the point of trial, which saves the business the cost of litigating the matter and potentially paying the plaintiff's attorney's fees. There are

other strategies available which assist businesses in limiting the amount of money they would have to pay in litigation.

IV. Conclusion

The best way for businesses to avoid ADA litigation abuse is to have a good understanding of the ADA, along with the many misconceptions about the ADA which result in ADA litigation abuse. Businesses are encouraged to address any ADA issues head on now, before a lawsuit is filed. Once a lawsuit is filed, the plaintiff has already begun to incur legal fees, which he or she will ultimately attempt to recover from the business.

Top ADA Cases for 2013

Title I Cases

- *Gogos v. AMS Mechanical Systems*
- *McMillan v. City of New York*
- *EEOC v. AT&T Corporation*
- *Feist v. Louisiana Department of Justice*
- *Basden v. Professional Transportation*
- *Huiner v. Arlington School District*
- *EEOC v. Beverage Distributors Company, LLC*

Title II Cases

- *U.S. v. Rhode Island and City of Providence*
- *Brooklyn Center for Independence v. Bloomberg*
- *California Council of the Blind v. County of Alameda*

Title III Cases

- *Argenyi v. Creighton University*
- *Scherr v. Marriott International, Inc.*
- *Houston v. Marod Supermarkets*

Updates from ADA Cases Highlighted in 2012 Webinar

- *EEOC v. United Airlines*
- *EEOC v. Henry's Turkey Service*
- *Taxis for All Campaign v. Taxi and Limousine*

Commission (formerly Noel v. TLC)

Title I Cases
Employment

Gogos v. AMS Mechanical Systems

--- F.3d ---, 2013 WL 6571712 (7th Cir. Dec. 16, 2013)

- Plaintiff worked as a pipe welder for 45 years
- Had high blood pressure for over 8 years, controlled by meds
- For a short period of time, his blood pressure spiked to "very high" and he experienced intermittent vision loss
- 1/30/13: Supervisor granted request to leave work to seek immediate medical treatment because his eye was red
- Plaintiff told the general foreman that he was going to the hospital because his "health [ha]s not been very good lately"
- Foreman fired Plaintiff on the spot

- District court = Dismissed case
  - Found disabilities to be "transitory" and "suspect"

- Not covered under ADA
- Appellate court = Found for Plaintiff
- One of the first appellate court decisions substantively applying the ADAAA
- Analysis (Applied numerous provisions of the ADAAA):
- **Episodic conditions:** Even if Plaintiff's blood pressure spike and vision loss are episodic, can be disabilities
- Noted that EEOC lists hypertension as an example of an impairment that may be episodic
- **Short Term Impairments:** Even if Plaintiff's blood pressure spike and vision loss are short-term, can be disabilities
- Appendix to EEOC regs: "The fact that the periods during which an episodic impairment is active and substantially limits a major life activity may be brief or occur infrequently is no longer relevant to determining whether the impairment substantially limits a major life activity."
- **Major Bodily Function:** Blood pressure spike and intermittent blindness substantially limit two major life activities, eyesight and circulatory function
- Court easily accepts concept of major bodily function

Mitigating Measure: Plaintiff's chronic blood-pressure condition could also qualify as a disability

- Must disregard ameliorative effects of mitigating measures, such as medication
- Cited Appendix to EEOC regs, which includes language directly "on point" regarding an individual who takes medication for hypertension and who would have substantial limitations to cardiovascular and circulatory system without medication

• Plaintiff alleged other elements of prima facie case:
- Qualified: Plaintiff has 45 years of experience
- Adverse action: He was fired immediately after disclosure

Courts generally applied the ADA Amendments Act in accordance with Congressional intent, and broadly interpreted the definition of disability

Additional Resources:

• Legal Brief and PowerPoint Presentation for The Legal Landscape Five Years After the Passage of the ADA Amendments Act
- www.ada-audio.org/Archives/ADALegal/index.php?type=fiscalYear&id=15&app=2

• National Council on Disability, A Promising Start: Preliminary Analysis of Court Decisions Under the ADA Amendments Act

•

www.ncd.gov/rawmedia_repository/7518fc55_8393_4e76_97e4_0a72fe9e95fb

• An Empirical Analysis of Case Outcomes Under the ADA Amendments Act, Stephen F. Befort, University of Minnesota Law School

•

http://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID2314628_code702020.pdf?abstractid=2314628&mirid=1

McMillan v. City of New York 711 F.3d 120 (2d Cir. 2013)

• Plaintiff works as a case manager for a city program • Job duties include conducting home visits, processing social assessments, recertifying clients' Medicaid eligibility
• City has flex-time policy; employees are late if arrive after 10:15
• Plaintiff has schizophrenia, and takes medication that makes him extremely "drowsy" and "sluggish" in the morning
• Arrives late, often after 11:00 am, which City allowed for 10 yrs
• In 2008, City stopped approving late arrivals and suspended Plaintiff (City recommended termination, but union grieved)
• Plaintiff formally requested reasonable accommodations

• **District court:** Arriving at work within one-hour time frame is an essential function of the job – found for City
  - Deferred to employer judgment
  - Noted that timeliness is a requirement of virtually all jobs

• **2nd Circuit:** Question of fact – found for employee

- Timely arrival at work may generally be an essential function, but courts must still conduct a fact-specific inquiry
- Here, Plaintiff worked for many years with late arrivals, which the City approved either explicitly or implicitly
- City had a flex-time policy permitting all employees to arrive and leave within one-hour window, suggesting that punctuality was not an essential function

• Distinguished cases where timeliness was essential, such as:
- Job duties required presence during specific hours
- Employee was a supervisor
- Company had to meet certain deadlines

• Plaintiff's accommodation requests could be reasonable:
- Plaintiff's request to work unsupervised after 6:00 p.m. is not unlike a request to work from home (or home visits)
- City already has a policy of allowing employees to "bank" any hours and apply to late arrivals

• **Query:** What is the future of timeliness as an essential job function in the world of telework and flextime?

EEOC v. AT&T Corporation 2013 WL 6154563 (S.D. Ind. Nov. 20, 2013)

• Plaintiff worked as a customer service specialist, and needed treatment for Hepatitis C
• Plaintiff received a written warning that said: "Attendance is an essential function of your job. Satisfactory attendance is a condition of your employment!"
• After over four months of leave (STD and FMLA), Plaintiff sought to return to work in October 2010
• She was terminated for excessive absences
• During Plaintiff's leave, AT&T did not hire anyone to fill-in for Plaintiff or require other employees to work overtime
• **Issue:** Was Plaintiff a qualified employee? Is attendance an essential function of Plaintiff's employment?

• **Parties' arguments:**
  • EEOC - AT&T has 22 formal leaves of absence plans & Plaintiff's job description was silent about whether attendance was an essential job function
  • AT&T - Written warning and manager's testimony demonstrated that attendance is an essential job function

• **Court:** A jury could find that attendance is an essential job function OR that attendance is not an essential job function
  • Issue of fact whether leave was requested and whether it created an undue hardship

***Feist v. Louisiana, Department of Justice* 730 F.3d 450 (5th Cir. 2013)**

- Attorney with osteoarthritis of the knee requested a free onsite parking space to accommodate her disability
- **District court:** Found for employer
  - Plaintiff did not demonstrate a need for an accommodation to perform the essential functions of her job
- **Question on appeal:** Whether ADA requires a link between an accommodation and an essential job function
- **5th Cir:** ADA statute and interpretive authority indicate that Plaintiff is correct – no need to link to essential job function
- **ADA:** Reasonable accommodations may include "making existing facilities … readily accessible to and usable by individuals with disabilities." 42 U.S.C. § 12111(9)
- **EEOC Regs:** 3 categories of reasonable accommodations:
  - 1-job applications; 2-essential job functions; 3-enjoy equal benefits and privileges 29 C.F.R. § 1630.2(o)(1)
- **Appendix to EEOC Regulations:** "Providing reserved parking spaces" may constitute reasonable accommodation under some circumstances. 29 C.F.R. pt. 1630 App., § 1630.2(o)

• Court remanded to determine whether accommodation was reasonable

QUERY: What are the potential implications of this case?