


# The Americans with Disabilities Act (ADA)

A graphic of a pair of scales of justice, with a vertical post and a horizontal beam. Two pans are suspended from the beam by thin wires. The scales are positioned on the right side of the slide.

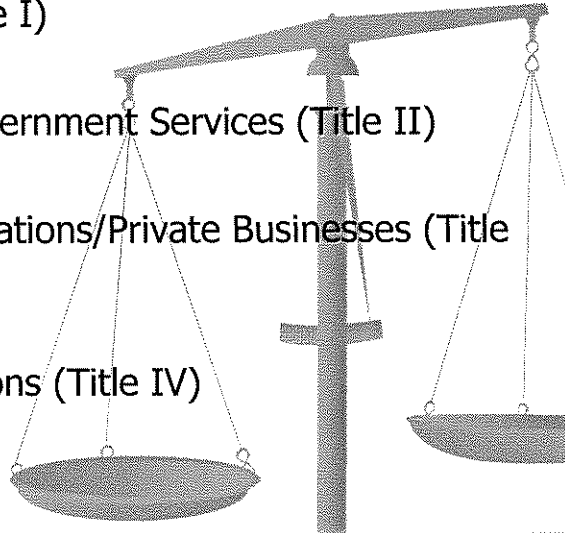
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## What is the ADA?

- A federal civil rights law for people with disabilities
  - Intended to end discrimination against people with disabilities
  - Intended to facilitate full participation in society as a whole by people with disabilities
- 
- A graphic of a pair of scales of justice, with a vertical post and a horizontal beam. Two pans are suspended from the beam by thin wires. The scales are positioned on the right side of the slide.

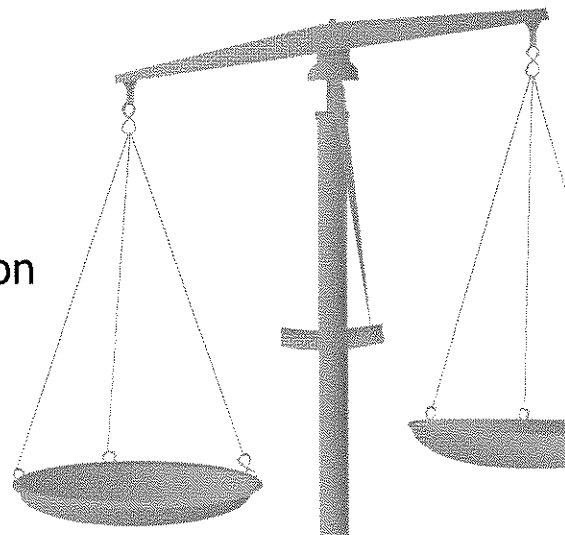
## What Does the ADA Cover?

- Employment (Title I)
- State & Local Government Services (Title II)
- Public Accommodations/Private Businesses (Title III)
- Telecommunications (Title IV)



## What Does the ADA Not Cover?

- Airlines
- Housing
- Special Education

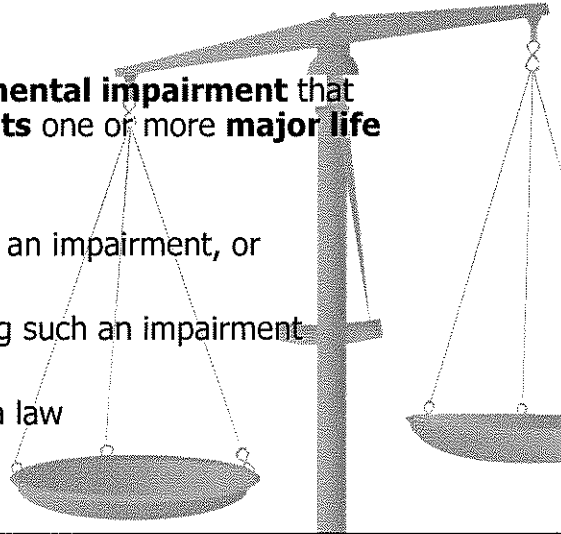


## Who is a person with a disability under the ADA?

Someone who:

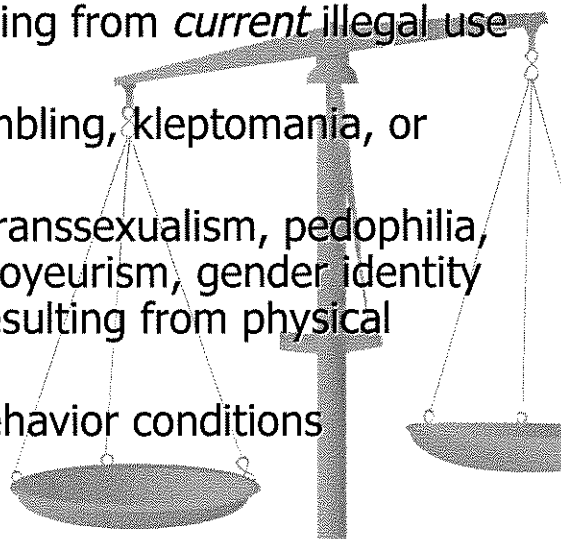
- Has a **physical or mental impairment** that **substantially\* limits** one or more **major life activities**, or
- Has a record of such an impairment, or
- Is regarded as having such an impairment.

\*Not under California law



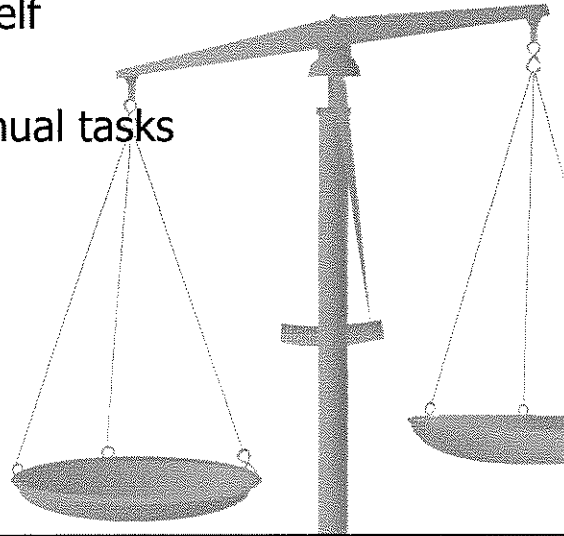
## What Conditions are Excluded from the ADA?

- Disorders resulting from *current* illegal use of drugs
- Compulsive gambling, kleptomania, or pyromania
- Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments
- Other sexual behavior conditions



## What are Examples of “Major Life Activities”?

- Caring for oneself
- Walking
- Performing manual tasks
- Seeing
- Hearing
- Breathing
- Learning
- Working

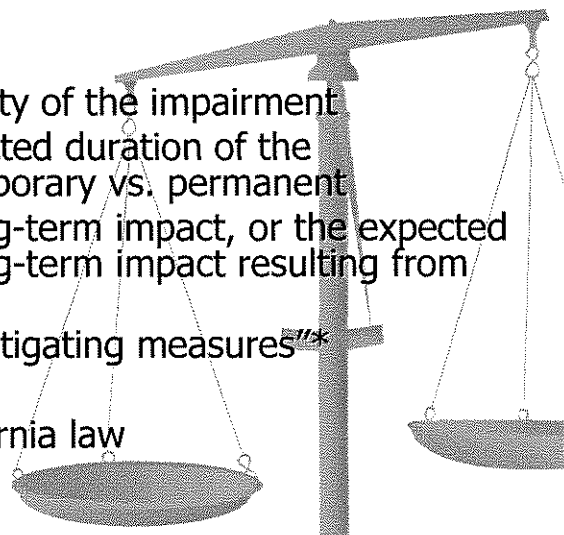


## What Does “Substantially Limits” Mean?

Factors considered:

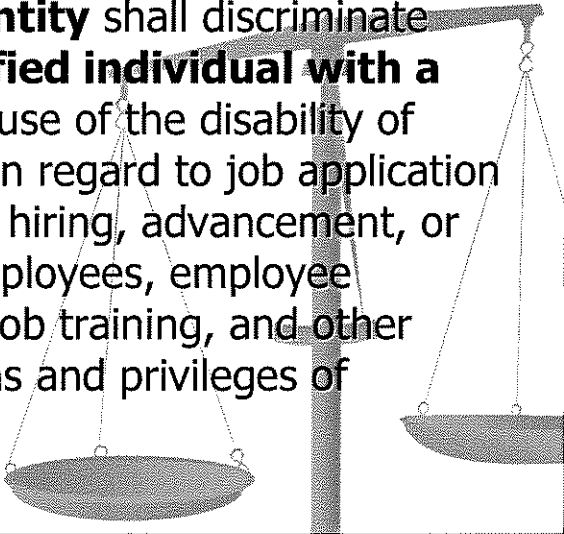
- Nature and severity of the impairment
- Duration or expected duration of the impairment—temporary vs. permanent
- Permanent or long-term impact, or the expected permanent or long-term impact resulting from the impairment
- Must consider “mitigating measures”<sup>11\*</sup>

\*Not under California law



## Title I: Discrimination in Employment

"No **covered entity** shall discriminate against a **qualified individual with a disability** because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions and privileges of employment."



## What is a "Covered Entity" Under Title I?

- Employers with 15 or more employees\*
- Employment agencies
- Labor organizations
- All state or local government employers regardless of number of employees (under Title II)
- But: Federal government, Indian tribes and private membership clubs are exempt

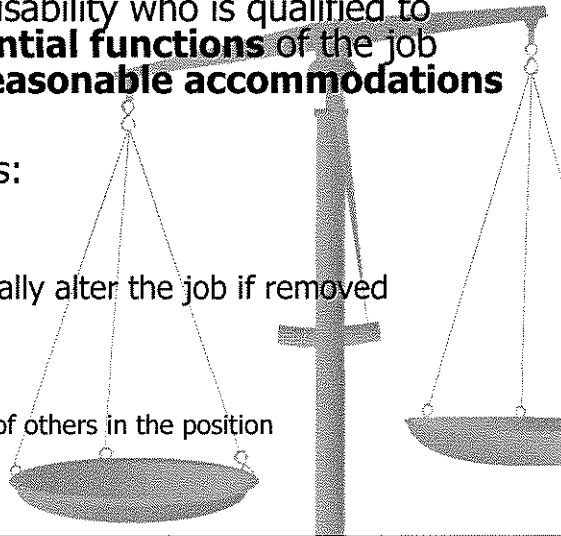
\*Only 5 employees under California law



## Who is a “Qualified Individual with a Disability”?

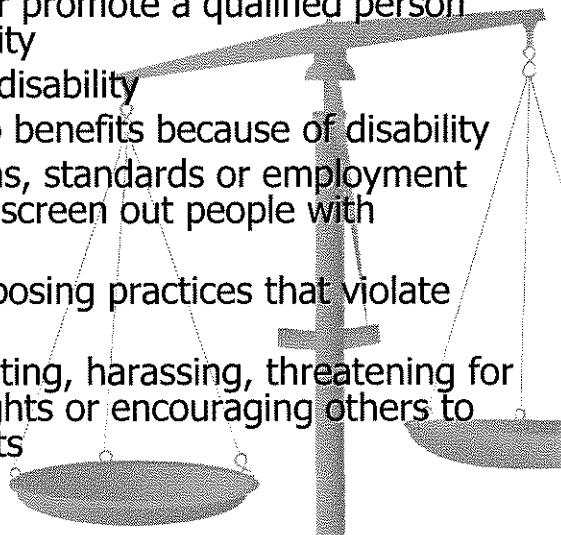
A person with a disability who is qualified to perform the **essential functions** of the job with or without **reasonable accommodations**

- Essential functions:
  - Not marginal
  - Actually required
  - Would fundamentally alter the job if removed
  - Look at
    - Job description
    - Time spent
    - Work experience of others in the position



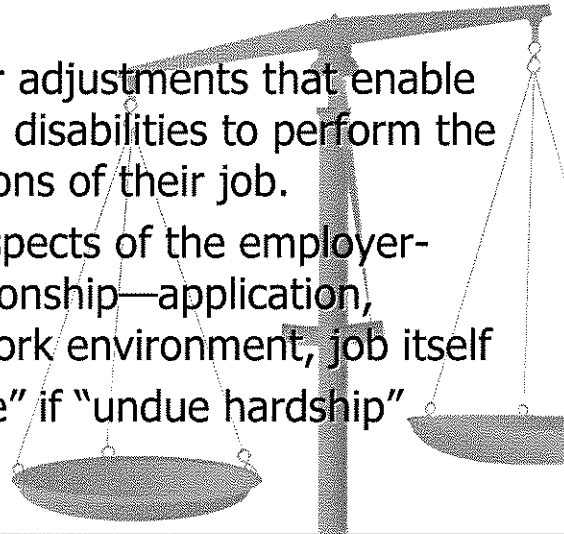
## What Kinds of Discrimination are Prohibited?

- Refusing to hire or promote a qualified person because of disability
- Firing because of disability
- Denying equal job benefits because of disability
- Using qualifications, standards or employment tests that tend to screen out people with disabilities
- Retaliation for opposing practices that violate the ADA
- Coercing, intimidating, harassing, threatening for exercising ADA rights or encouraging others to exercise ADA rights
- Plus . . .



## . . . Failure to provide “reasonable accommodations”

- Modifications or adjustments that enable employees with disabilities to perform the essential functions of their job.
- Applies to all aspects of the employer-employee relationship—application, interviewing, work environment, job itself
- Not “reasonable” if “undue hardship”



## Examples of Reasonable Accommodations

- Flexible schedule
- Job restructuring
- Job reassignment
- Wheelchair accessible work site
- Sign language interpreter
- Brailled materials
- Readers
- Special equipment
- Modifications of training materials or policies
- Reserved parking
- Changes in supervision
- Scent-free workplace
- Etc., etc., etc.



## Disability-Related Inquiries

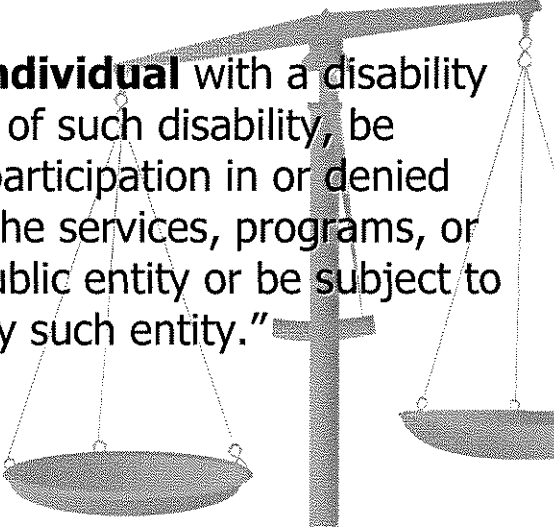
- Employer may not ask about, e.g.,
  - Whether applicant has a disability
  - Nature or severity of a disability
- Employer may ask, e.g.,
  - How an employee with a disability would be able to perform essential functions of the job—*with or without* reasonable accommodations
- Post-offer medical exams
  - If required of everyone and job-related

## Enforcement of Title I

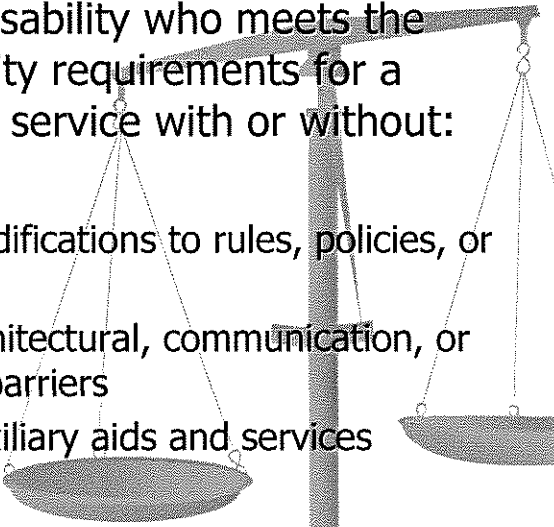
- Must file an administrative complaint before suing private employer
  - EEOC within 300 days, or
  - Department of Fair Employment & Housing within 300 days (or 1 year if only under state law)
  - Can file lawsuit within 90 days of receiving a right to sue letter
- If government entity is employer—administrative complaint with DOJ within 180 days (under Title II) or lawsuit within 1 year
- Can recover attorneys fees

## Title II: Discrimination by State and Local Government

"No **qualified individual** with a disability shall, by reason of such disability, be excluded from participation in or denied the benefits of the services, programs, or activities of a public entity or be subject to discrimination by such entity."

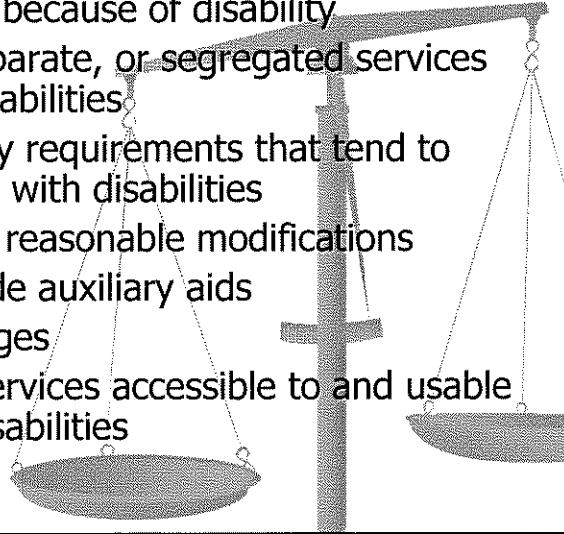


### Who's a Qualified Individual?

- Person with a disability who meets the essential eligibility requirements for a particular public service with or without:
    - Reasonable modifications to rules, policies, or practices
    - Removal of architectural, communication, or transportation barriers
    - Provision of auxiliary aids and services
- 

## What are Examples of Discrimination Under Title II?

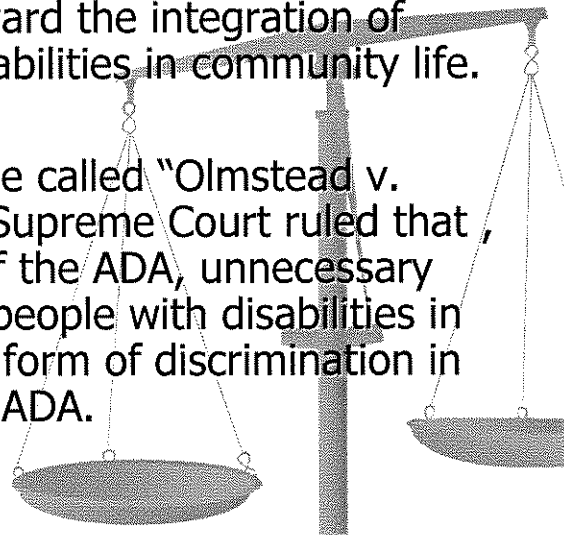
- Refusing services because of disability
- Providing only separate, or segregated services to people with disabilities
- Imposing eligibility requirements that tend to screen out people with disabilities
- Refusing to make reasonable modifications
- Refusing to provide auxiliary aids
- Imposing surcharges
- Failing to make services accessible to and usable by people with disabilities



## What is the *Olmstead* Case?

A landmark toward the integration of people with disabilities in community life.

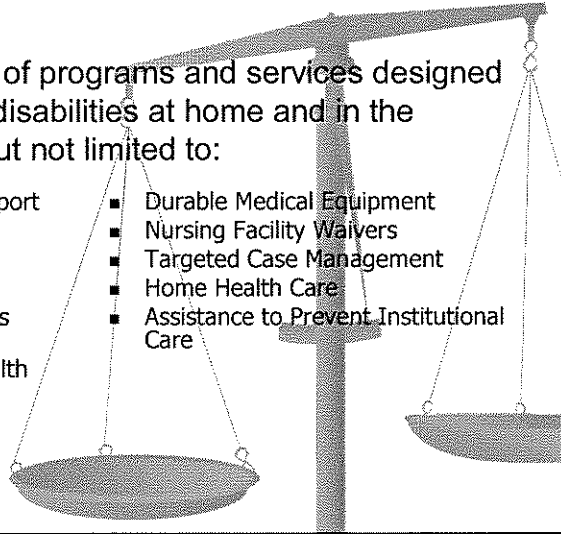
In the 1999 case called "*Olmstead v. L.C.*," the U.S. Supreme Court ruled that, under Title II of the ADA, unnecessary segregation of people with disabilities in institutions is a form of discrimination in violation of the ADA.



## What Are Some Alternatives to Institutions and Nursing Homes?

California has a variety of programs and services designed to support people with disabilities at home and in the community, including but not limited to:

- Peer Counseling and Support
- Low-income housing
- Supported Housing
- Residential Care Homes
- In-Home Support Services (IHSS)
- Rehabilitative Mental Health Services
- Durable Medical Equipment
- Nursing Facility Waivers
- Targeted Case Management
- Home Health Care
- Assistance to Prevent Institutional Care



## What Architectural Access Requirements Apply to Public Entities?

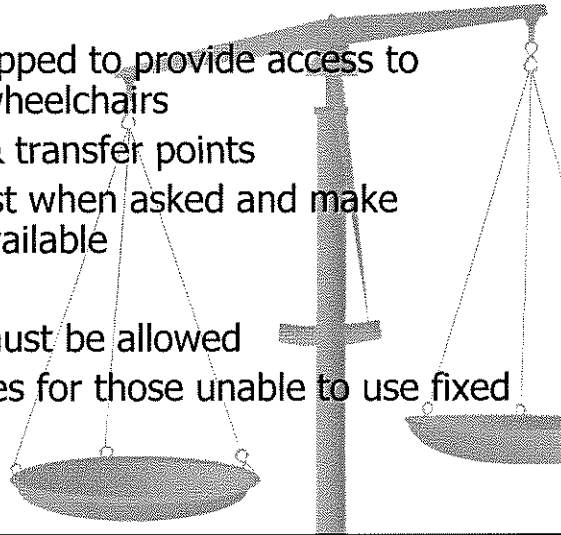
- Program access vs. specific facilities
- Newly constructed facilities must be "readily accessible and usable"
- Existing facilities—only if no other feasible means for achieving program access
- Alterations—must be made accessible to the maximum extent feasible
- Maintenance of accessible features
- Self-evaluation and transition plans



## What Does the ADA Require for Public Transportation?

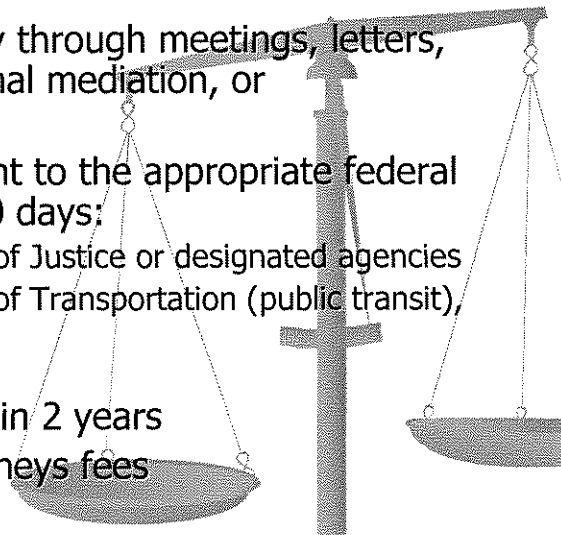
For example:

- New busses: equipped to provide access to people who use wheelchairs
- Announce stops & transfer points
- Drivers must assist when asked and make priority seating available
- Lifts must work
- Service animals must be allowed
- Paratransit services for those unable to use fixed route



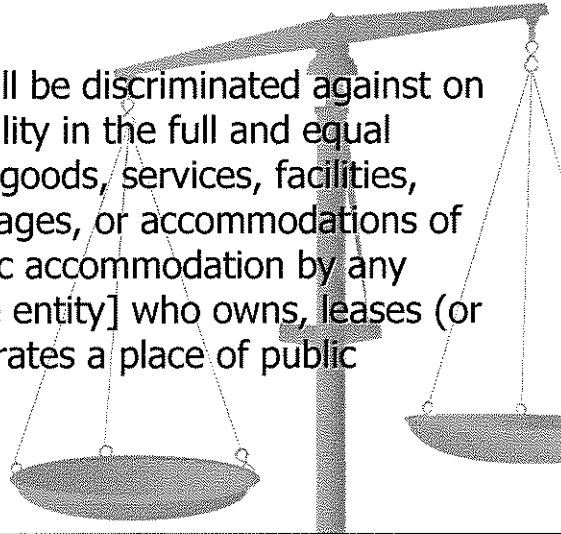
## Enforcement of Title II

- Resolve informally through meetings, letters, negotiations, formal mediation, or
- Submit a complaint to the appropriate federal agency within 180 days:
  - U.S. Department of Justice or designated agencies
  - U.S. Department of Transportation (public transit),  
or
- File a lawsuit within 2 years
- Can recover attorneys fees



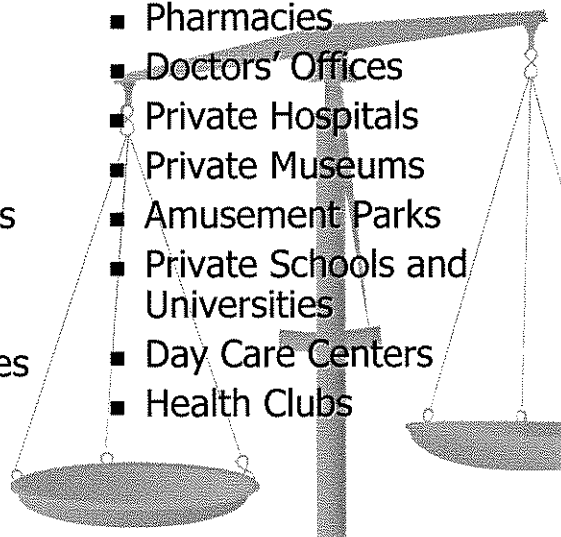
## Title III: Discrimination by Public Accommodations

"No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person [or private entity] who owns, leases (or leases to), or operates a place of public accommodation."



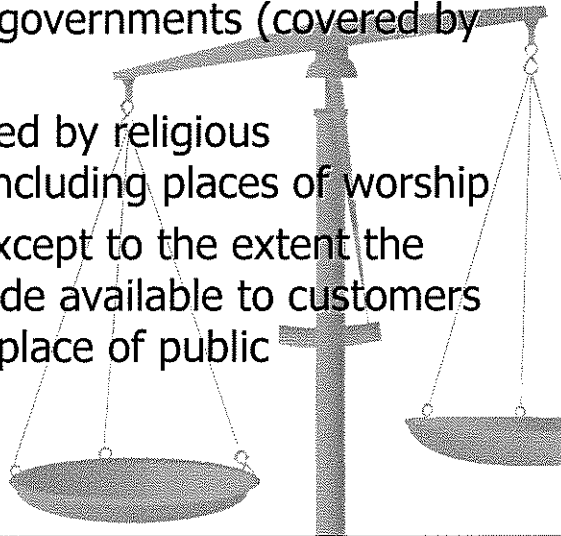
## What are Examples of Places of Public Accommodation?

- Restaurants
- Hotels
- Theaters
- Stadiums
- Department Stores
- Shopping Centers
- Grocery Stores
- Convenience Stores
- Gas Stations
- Pharmacies
- Doctors' Offices
- Private Hospitals
- Private Museums
- Amusement Parks
- Private Schools and Universities
- Day Care Centers
- Health Clubs



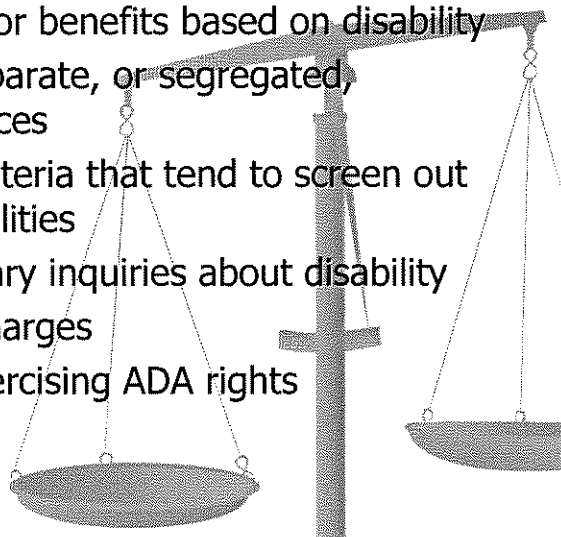
## What Entities are Not Covered Under Title III?

- State and local governments (covered by Title II)
- Entities controlled by religious organizations, including places of worship
- Private clubs, except to the extent the facilities are made available to customers or patrons of a place of public accommodation



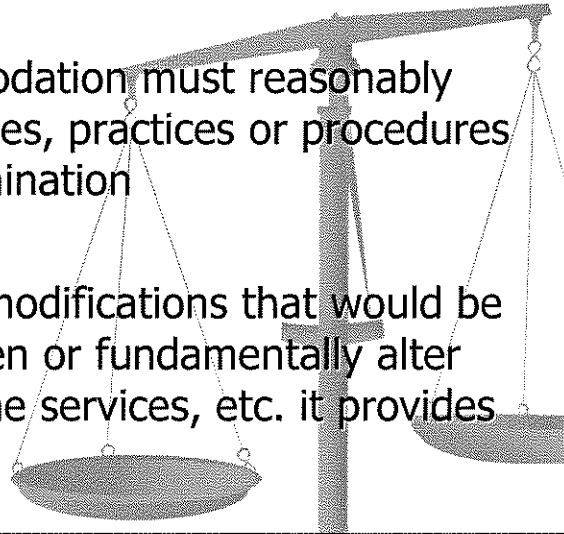
## Examples: Prohibited Practices

- Denying services or benefits based on disability
- Providing only separate, or segregated, programs or services
- Using eligibility criteria that tend to screen out people with disabilities
- Making unnecessary inquiries about disability
- Imposing extra charges
- Retaliating for exercising ADA rights



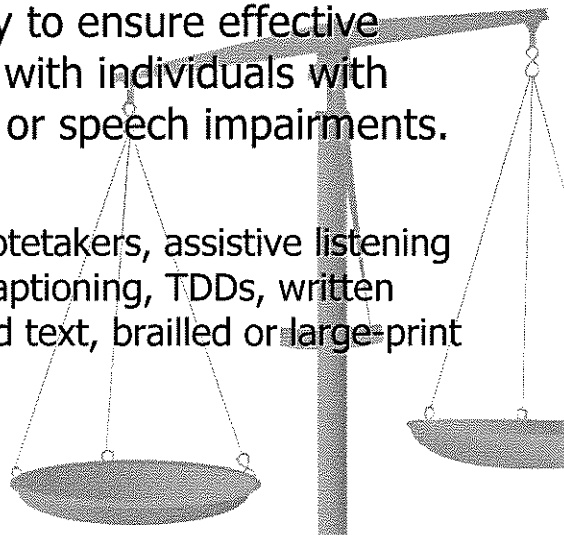
## What are the Title III Reasonable Modifications Requirements?

- Public accommodation must reasonably modify its policies, practices or procedures to avoid discrimination
- Needn't make modifications that would be an undue burden or fundamentally alter the nature of the services, etc. it provides



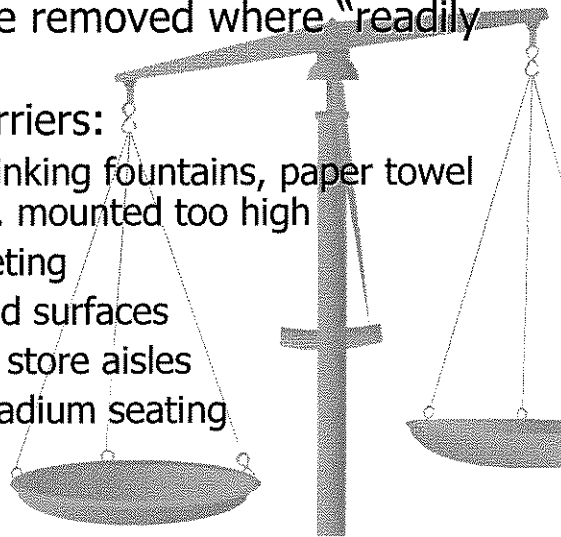
## When Must Auxiliary Aids Be Provided?

- When necessary to ensure effective communication with individuals with hearing, vision, or speech impairments.
- For example:
  - Interpreters, notetakers, assistive listening headsets, TV captioning, TDDs, written materials, taped text, brailled or large-print materials



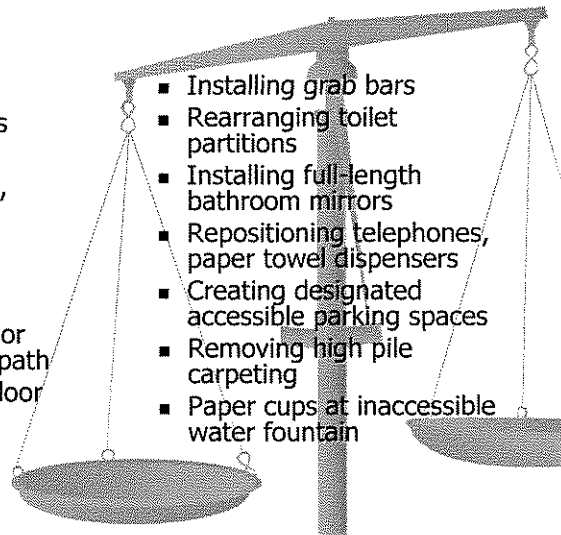
## Access Requirements: Existing Facilities

- Barriers must be removed where “readily achievable”
- Examples of barriers:
  - Telephones, drinking fountains, paper towel dispensers, etc. mounted too high
  - Deep pile carpeting
  - Unpaved ground surfaces
  - Obstructions in store aisles
  - Poor theater/stadium seating



## Existing Facilities: Examples of Readily Achievable Modifications

- Installing ramps
- Curb cuts in sidewalks
- Repositioning shelves
- Rearranging furniture, display racks
- Raised markings on elevator buttons
- Widening doors
- Eliminating turnstiles or providing alternative path
- Installing accessible door hardware
- Installing grab bars
- Rearranging toilet partitions
- Installing full-length bathroom mirrors
- Repositioning telephones, paper towel dispensers
- Creating designated accessible parking spaces
- Removing high pile carpeting
- Paper cups at inaccessible water fountain



## Existing Facilities: What if Barrier Removal Isn't Readily Achievable?

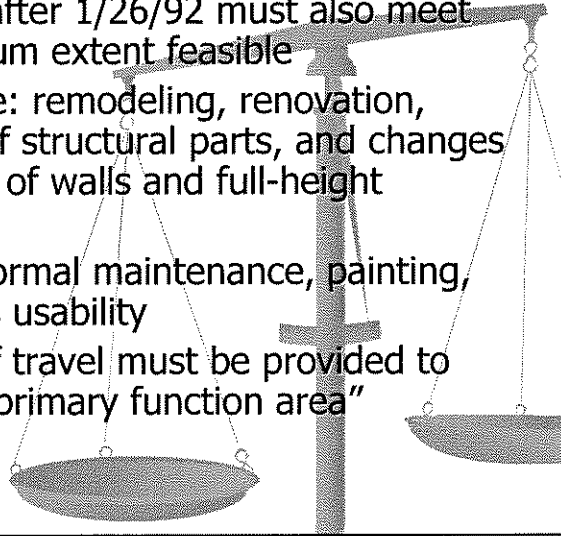
- Must make goods and services available through alternative methods, if readily achievable.
- For example,
  - Retrieve items for customer from inaccessible aisles
  - Delivering items to curbside or home delivery from inaccessible business

## Access Requirements: New Construction

- All newly constructed places of public accommodation and commercial facilities must be readily accessible to and usable by people with disabilities to the extent that is not structurally impracticable
- Must be built in strict compliance with ADAAG
- No cost defense
- Elevator exception for some 2-story buildings
  - But not shopping center or mall; professional office of health care provider; public transit station; airport passenger terminal

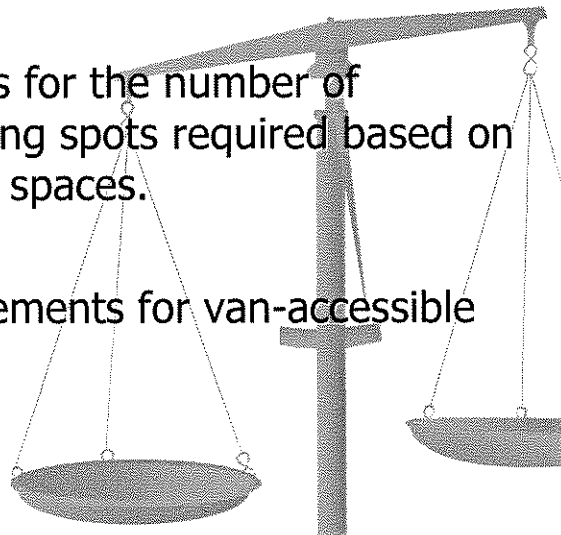
## Access Requirements: Alterations

- Alterations done after 1/26/92 must also meet ADAAG to maximum extent feasible
- Alterations include: remodeling, renovation, rearrangements of structural parts, and changes or rearrangement of walls and full-height partitions
- Doesn't include normal maintenance, painting, etc. unless affects usability
- Accessible path of travel must be provided to altered area if a "primary function area"



## Access Requirements: Parking

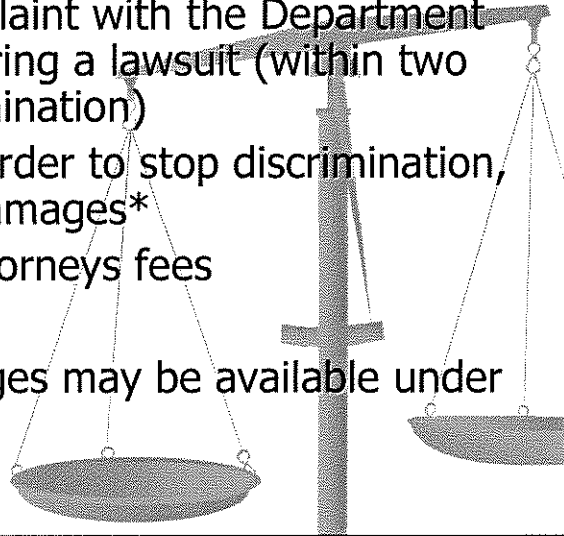
- ADAAG provides for the number of accessible parking spots required based on total number of spaces.
- Includes requirements for van-accessible spaces



## Enforcement of Title III

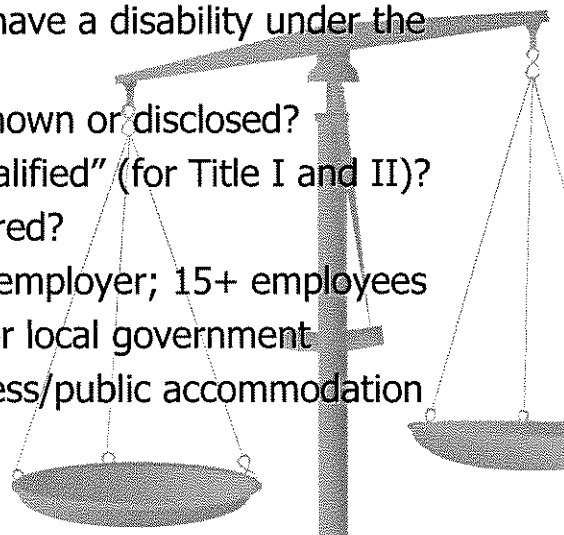
- Can file a complaint with the Department of Justice; or bring a lawsuit (within two years of discrimination)
- Can get court order to stop discrimination, but can't get damages\*
- Can recover attorneys fees

\*Statutory damages may be available under California law



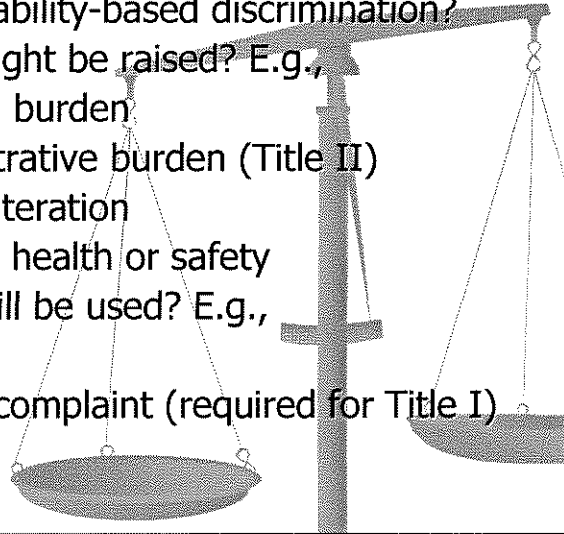
## Analyzing ADA Violations

- Does the person have a disability under the ADA?
- Is the disability known or disclosed?
- Is the person "qualified" (for Title I and II)?
- Is the entity covered?
  - Title I: Private employer; 15+ employees
  - Title II: State or local government
  - Title III: Business/public accommodation



## Analyzing ADA Violations

- What was the disability-based discrimination?
- What defenses might be raised? E.g.,
  - Undue financial burden
  - Undue administrative burden (Title II)
  - Fundamental alteration
  - Direct threat to health or safety
- What approach will be used? E.g.,
  - Mediation
  - Administrative complaint (required for Title I)
  - Lawsuit



## Analyzing ADA Violations

- What remedies will be sought? E.g.,
- Job or promotion
  - Reasonable accommodation
  - Change in or exception to policy
  - Removal of barriers
  - Staff training
  - Other injunctive relief
  - Money
  - Etc., etc.

