

Department of Justice's ADA Title III Requirements for Swimming Pools and Spas Finalized Effective January 31, 2013

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In 2010 the Department of Justice adopted revised Americans with Disabilities Act ("ADA") Title III regulations and design standards for places of public accommodation.¹ Compliance with these new technical design standards was required for all new construction, alterations, and barrier removal at places of public accommodation on or after March 15, 2012. ([Our previous client alert regarding these new standards is linked here for your convenience.](#))

Among the most controversial of the new technical requirements involved entry and egress from swimming pools, wading pools, and spas; these new requirements apply to all public accommodations, without any safe harbor for prior compliance. *See 2010 ADA Title III Standards at Section 242 and 1009.* Under the new 2010 Standards, such water features must provide at least one of the following means of accessible entry and egress: pool lift, sloped entry, transfer wall, transfer system, or pool stairs. For swimming pools, either a lift or a sloped entry is required, and larger swimming pools must provide two accessible methods. The new requirements include detailed technical specifications for each accessible entry/exit type, regarding height, location, size, clear floor space, handrails, grab bars, and capacity.

In response to growing concern from the hospitality industry, and some hostility in Congress, the DOJ extended the deadline for compliance with this aspect of the 2010 Standards to May 21, 2012, and then extended the deadline again to January 31, 2013. This deadline has not been further extended. Thus as of January 31, 2013 all places of public accommodation must comply with these new access requirements, subject to a few important limitations.

- **Existing Pools Apply the "Readily Achievable" Analysis.** The 2010 Standards require that *newly constructed or altered* swimming pools, wading pools, and spas provide an accessible means of entry and egress for people with disabilities. With respect to existing facilities, the 2010 Standards require businesses to make these elements accessible only when it is "readily achievable" to do so. Determining whether providing access is "readily achievable" is a case-by-case analysis based on such factors as cost and the resources available to the public accommodation. However, establishing that compliance is not "readily achievable" will be very difficult for many places of public accommodation. Moreover, because barrier removal is an ongoing obligation, providing a lift may become achievable over time, even if it is not presently "readily achievable."

- **Private Swimming Pools, Wading Pools, and Spas.** Private swimming facilities that are not open to the public and are limited to the exclusive use of residents or private members are not required to comply with these requirements.
- **Fixed Versus Portable Pool Lifts.** In most cases, the 2010 Standards require the installation of a fixed pool lift, although the DOJ will permit the use of portable pool lifts purchased before March 15, 2012, or if providing a fixed lift is not readily achievable. The DOJ has clarified that the key distinction is not between “fixed” and “portable,” but between “fixed” and “non-fixed” – the key is that during operation, a lift must be attached to the pool deck in some way in order to be deemed “fixed.” Even a fixed lift may be designed to be removable at the end of the pool’s business day for secure storage, and reinstalled in a fixed fashion before the pool re-opens.
- **Multiple Elements at One Place of Public Accommodation.** The DOJ discourages the sharing of accessible means of entry and egress between different swimming pools and/or spas at one place of public accommodation. However, if it is not readily achievable for a public accommodation to provide an accessible means of entry and egress at each swimming pool or spa, the inaccessible pool or spa may remain open, subject to the ongoing duty to remove barriers once it is readily achievable.
- **Tax Benefits.** Sections 44 and 190 of the IRS Code allow tax benefits for businesses to assist in complying with the ADA.



If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings Atlanta lawyers:

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¹ The 12 categories of public accommodations are: (1) places of lodging; (2) establishments serving food or drink; (3) places of exhibition/entertainment; (4) places of public gathering; (5) sales/rental establishments; (6) service establishments; (7) public transportation terminals, (8) places of public display/collection; (9) places of recreation; (10) places of education; (11) social service center establishments; and (12) places of exercise.