

THE AMERICANS WITH DISABILITY ACT AND ILLINOIS LAW

An area that we received quite a few questions about recently is complying with the Americans with Disability Act (ADA), how it pertains to deaf and hard of hearing individuals and what the funeral home is responsible for. We have compiled some information that we think you will find helpful.

Please note: The information contained in this article is offered only as a service to the membership and does not constitute the provision of legal advice. This should not be used as a substitute for obtaining legal advice from an attorney. You should always consult a suitably qualified attorney regarding any specific legal situation, problem or matter.

What is the ADA?

In 1990 Congress passed the Americans with Disabilities Act (ADA) with the intention to recognize individuals with disabilities who “encounter various forms of discrimination” including “communication barriers.” For individuals with communication-related disabilities, including people who are deaf or hard of hearing, blind or have low vision, and/or have speech-related disabilities, the ADA’s requirement to provide effective communication has proven to be a crucial way to achieve equal access.

The ADA is divided into five major parts called Titles.

Title I: Employment

Title II: State and Local Governments

Title III: **Public Accommodations** and Commercial Facilities

Title IV: Telecommunications

Title V: Miscellaneous

Funeral home owners fall under Title III.

https://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_regulations.htm

NFDA Perspective

Scott Gilligan, General Counsel for NFDA, provided the following synopsis of questions NFDA routinely receives about this issue. Please remember these answers are from a national viewpoint and not state-specific.

Providing Interpreters Under the Americans With Disabilities Act

One of the more troublesome compliance areas for funeral homes under the Americans With Disabilities Act (the “ADA”), pertains to providing interpreters for deaf individuals who attend funeral services. Below NFDA General Counsel answers some of the questions NFDA routinely receives from members about this issue:

- (1) *We were told that our funeral home, which has less than 15 employees, is not covered by the ADA. If that is the case, does our funeral home have to provide interpreters for deaf attendees?*

Yes. The ADA has several primary parts, called titles. Title I covers your obligations as an employer. If you have less than 15 employees, you are not subject to the employer requirements of the ADA. However, Title III of the ADA has requirements that apply to businesses that are “public accommodations.” All funeral homes, regardless of size, are considered to be public accommodations because they are service establishments i.e. they sell services to the public.

As a public accommodation subject to Title III of the ADA, a funeral home must provide auxiliary aids or services that are necessary to insure that disabled individuals using the business have equal access to its services and facilities. So, if a deaf person needs an interpreter to understand and communicate during a visitation or a funeral ceremony, the funeral home is generally obligated to provide an interpreter so the deaf attendee has equal access to the service. The one exemption to this requirement is if the business can show that providing the auxiliary aid or service would create an undue burden.

- (2) *While the funeral home understands that it must provide an interpreter for a deaf person attending a funeral ceremony, may it pass the cost of the interpreter on to the family?*

No. The requirement to provide auxiliary aids or services so that disabled individuals have equal access to the benefits of the funeral home means that you cannot charge a fee for providing those aids or services. The cost of providing an interpreter must be absorbed by the funeral home as a cost of doing business and may not be passed on to the disabled individual or the family as a fee or surcharge.

- (3) *If our funeral home has a funeral service at a church, is not the church responsible for providing the interpreter?*

No. Religious entities are exempt from Title III of the ADA. So, under no circumstances will the church be required to pay for the interpreter.

The rule of thumb is that if the funeral home is being paid for arranging or supervising the service or ceremony, it has the obligation to provide the interpreter. Even if the service or ceremony is outside of the funeral home’s facility, it is responsible since it is being paid to provide the service. On the other hand, if a funeral home has provided only limited services to the family and is not involved in arranging or conducting funeral services, it would not be responsible for providing the interpreter.

(4) A family has scheduled a visitation over a two-day period which will be a total of eight hours in duration. One member of the family is deaf. The family is demanding that we provide an interpreter for eight hours. Are we responsible for doing so?

There is no bright line under the ADA where it can be determined that providing a service is an undue burden. Each case must turn on its own facts. What might be an undue burden for a small funeral home with limited resources may not be for a large funeral home owned by a publicly-traded company.

According to the ADA definition, an undue burden is regarded as a “significant difficulty or expense.” The ADA specifies that the following factors should be examined in determining if an undue burden would excuse a business from providing an auxiliary aid or service:

- (a) the nature and cost of the auxiliary aid or service;
- (b) the overall financial resources of the facility where the auxiliary aid or service will be provided; and
- (c) the overall resources of the company or person that owns the facility.

While providing for one or more interpreters to cover eight hours of visitation could be an undue burden for a small funeral home owned by a sole proprietor, it is probably not going to be worth it to fight a family over the issue. The Department of Justice’s compliance manual to the ADA advises businesses to sit down with the disabled individual requesting an auxiliary aid or service to determine what type of auxiliary aid or service is needed to ensure effective communication. In some cases, different types of auxiliary aids or services may make effective communication possible. For example, when required to provide an interpreter for eight hours, the funeral home may, after consultation with the family, find out that another family member could provide some of the interpretation required. The funeral home and the family may work out a compromise where the funeral home provides four hours of an interpreter service and allows other family members to interpret for the other four hours.

(5) A family member insists upon using their own interpreter. Is the funeral home responsible for paying for the interpreter?

No. Under the ADA, a disabled individual is not entitled to demand that their own personal interpreter be used. Again, the funeral home should sit down with the family and work out an arrangement that would allow the disabled individual to have effective communication. If the funeral home can provide an interpreter that can effectively communicate with the disabled individual, the funeral home may choose to provide that interpreter as opposed to the disabled individual’s personal interpreter.

(6) May a disabled individual insist that the interpreter be certified?

No. As the compliance manual to the ADA indicates, the key question in determining whether effective communication will result is whether the interpreter is qualified, not whether he or she is actually certified by an official licensing body. According to the manual, a qualified interpreter is one who is able to interpret effectively, accurately, and impartially, both receptively and expressively. An individual does not need to be certified in order to meet this standard.

NFDA members with questions regarding the ADA may contact General Counsel Scott Gilligan at (513) 871-6332.

Illinois Regulations

As one would expect, Illinois has additional regulations to keep in mind. We contacted the Illinois Deaf & Hard of Hearing Commission (IDHHC) to get some background information.

Ways to Communicate with a Deaf or Hard of Hearing Individual

There are several methods to communicate with a deaf or hard of hearing individual. The most effective method can vary from person to person. [This brochure](#) highlights some of the frequently used methods to communicate.

Interpreters

There are two different laws which apply. The Americans with Disabilities Act (ADA), enforced by the US Department of Justice, and the Illinois Interpreters for the Deaf Licensure Act of 2007 (Licensure Act). IDHHC administers the Illinois Licensure Act. The Licensure Act requires Interpreters to be licensed and is regulated by the State of Illinois.

Engaging the Services of an Interpreter

Interpreters in Illinois are licensed and regulated through the [Illinois Deaf and Hard of Hearing Commission](#). The Interpreter for the Deaf Licensure Act of 2007 Rules provides specific details such as the requirements, accepted certifications, proficiency levels, continuing education and standards of conduct. This brochure describes the [Interpreter Proficiency Levels](#).

To find Interpreters, ask a question or browse the website – <https://www.illinois.gov/idhhc/Pages/default.aspx>

Even though the ADA does not require a “licensed” interpreter, the ***Illinois Interpreters for the Deaf Licensure Act requires that anyone providing interpreting services for the Deaf must be appropriately licensed under the Licensure Act. The law also indicates the minimal proficiency level of a sign language interpreter.***

In the case where the Deaf consumer is involved in making arrangements that have financial implications, the sign language interpreter must have an Advanced or Master proficiency level. IDHHC strongly encourages a service provider to work with the Deaf consumer to select licensed sign language interpreters which are an appropriate communication match. Unfortunately, not all licensed interpreters (even with the appropriate proficiency level) will be able to provide effective communication for all consumers due to communication styles or potential conflict of interests.

Consumer Choice

The consumer choice exemption under Section 25(5) of the Licensure Act **only applies if the Deaf consumer requests a non-licensed individual**, typically a close friend or family member, to provide interpreting services. This individual is not being hired as a sign language interpreter but is there voluntarily at the request of the Deaf Consumer. [This brochure](#) explains “Consumer Choice.” This should never be an option when legal or financial decisions are being made.

Under the Licensure Act, an individual providing interpreting services without an appropriate license or exemption may be found to be practicing without a license and guilty of a Class A misdemeanor and subject to civil penalties up to \$2500 for each offense.

Illinois Human Rights Act

If a person with a covered disability feels as if their rights have been violated they can file a complaint outlining the violation with the Illinois Department of Human Rights. Violations are covered under the Illinois Human Rights Act as well as the Americans with Disabilities Act.

The Illinois Human Rights Act prohibits discrimination in Illinois with respect to employment, financial credit, **public accommodations** and housing. A charge of discrimination must be filed within 180 days after the alleged discriminatory action. The process of a charge filed with the Department involves several steps and could lead to civil action. An overview of the process can be viewed [here](#).

<http://www.equipforequality.org/ada-il/>

Civil Monetary Penalties \$75,000 for the first violation - https://www.ada.gov/civil_penalties_2014.htm

Disabled Access Credit

As a small business you may be eligible for the Disable Access Credit. The Disabled Access Credit

provides a non-refundable credit for small businesses that incur expenses for providing access to persons with disabilities. An eligible small business is one that earned \$1 million or less or had no more than 30 full time employees in the previous year. You may take the credit each year you incur access expenditures. Refer to [Form 8826, Disabled Access Credit \(PDF\)](#), for information about eligible expenditures. [Tax Benefits for Businesses Who Have Employees with Disabilities](#)

Information for this article was provided by the following:

Illinois Deaf & Hard of Hearing Commission, State of Illinois

Illinois Department of Human Rights, State of Illinois

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