

## ATTENTION BUSINESS OWNER/EMPLOYEE:

Delineated below are the substantive provisions of the **FEDERAL REGULATIONS** outlining and proscribing your present conduct. Denial of services on the basis of a physiological condition that precludes compliance with your “mask mandate” is unlawful and subject to a civil penalty of up to **\$75,000 for the first violation**, and **\$100,000 for any subsequent violation**.

### **28 C.F.R. 36 - NONDISCRIMINATION ON THE BASIS OF DISABILITY BY PUBLIC ACCOMMODATIONS AND IN COMMERCIAL FACILITIES**

#### **§ 36.101 Purpose and broad coverage.**

(a) **Purpose.** The purpose of this part is to implement subtitle A of title III of the [Americans with Disabilities Act of 1990](#) (42 U.S.C. 12181-12189), as amended by the [ADA Amendments Act of 2008](#) (ADA Amendments Act) ([Pub. L. 110-325](#), [122 Stat. 3553](#) (2008)), which prohibits discrimination on the basis of [disability](#) by covered [public accommodations](#) and requires places of [public accommodation](#) and [commercial facilities](#) to be designed, constructed, and altered in compliance with the accessibility standards established by this part.

(b) **Broad coverage.** The primary purpose of the ADA Amendments [Act](#) is to make it easier for people with disabilities to obtain protection under the ADA. Consistent with the ADA Amendments [Act's](#) purpose of reinstating a broad scope of protection under the ADA, the definition of “disability” in this part shall be construed broadly in favor of expansive coverage to the maximum extent permitted by the terms of the ADA. The primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations and whether discrimination has occurred, not whether the individual meets the definition of “disability.” The question of whether an individual meets the definition of “disability” under this part should not demand extensive analysis.

#### **§ 36.102 Application.**

(a) **General.** This part applies to any -

- (1) [Public accommodation](#);
- (2) Commercial [facility](#); or
- (3) [Private entity](#) that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes.

#### **(b) Public accommodations.**

- (1) The requirements of this part applicable to [public accommodations](#) are set forth in subparts B, C, and D of this part.
- (2) The requirements of subparts B and C of this part obligate a [public accommodation](#) only with respect to the operations of a [place of public accommodation](#).

(3) The requirements of [subpart D](#) of this part obligate a [public accommodation](#) only with respect to -

(i) A [facility](#) used as, or designed or constructed for use as, a [place of public accommodation](#); or

(ii) A [facility](#) used as, or designed and constructed for use as, a commercial [facility](#).

(c) **Commercial facilities.** The requirements of this part applicable to [commercial facilities](#) are set forth in [subpart D](#) of this part.

(d) **Examinations and courses.** The requirements of this part applicable to private entities that offer examinations or courses as specified in [paragraph \(a\)](#) of this section are set forth in § 36.309.

(e) **Exemptions and exclusions.** This part does not apply to any [private club](#) (except to the extent that the facilities of the [private club](#) are made available to customers or patrons of a place of public accommodation), or to any [religious entity](#) or [public entity](#).

### § 36.105 Definition of “disability.”

(a)

(1) **Disability** means, with respect to an individual:

(i) A [physical or mental impairment](#) that [substantially limits](#) one or more of the [major life activities](#) of such individual;

(ii) A record of such an impairment; or

(iii) Being regarded as having such an impairment as described in [paragraph \(f\)](#) of this section.

(2) **Rules of construction.**

(i) The definition of “disability” shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA.

(ii) An individual may establish coverage under any one or more of the three prongs of the definition of “disability” in [paragraph \(a\)\(1\)](#) of this section, the “actual disability” prong in [paragraph \(a\)\(1\)\(i\)](#) of this section, the “record of” prong in [paragraph \(a\)\(1\)\(ii\)](#) of this section, or the “regarded as” prong in [paragraph \(a\)\(1\)\(iii\)](#) of this section.

(iii) Where an individual is not challenging a [public accommodation](#)'s failure to provide [reasonable modifications](#) under § 36.302, it is generally unnecessary to proceed under the “actual disability” or “record of” prongs, which require a showing of an impairment that [substantially limits](#) a [major life activity](#) or a record of such an impairment. In these cases, the evaluation of coverage can be made solely under the “regarded as” prong of the definition of “disability,” which does not require a showing of an impairment that [substantially limits](#) a [major life activity](#) or a record of such an impairment. An individual may choose, however, to proceed under the “actual disability” or “record of” prong regardless of whether the individual is challenging a [public accommodation](#)'s failure to provide reasonable modifications.

(b)

**(1) *Physical or mental impairment* means:**

(i) Any **physiological disorder or condition**, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as: Neurological, musculoskeletal, special sense organs, **respiratory (including speech organs)**, cardiovascular, reproductive, digestive, genitourinary, **immune**, circulatory, hemic, lymphatic, skin, and endocrine; or

(ii) Any **mental or psychological disorder** such as intellectual **disability**, organic brain syndrome, emotional or mental illness, and specific learning **disability**.

(2) **Physical or mental impairment** includes, but is not limited to, **contagious and noncontagious diseases** and conditions such as the following: Orthopedic, visual, speech and hearing impairments, and cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual **disability**, emotional illness, dyslexia and other specific learning disabilities, Attention Deficit Hyperactivity Disorder, Human Immunodeficiency Virus infection (**whether symptomatic or asymptomatic**), tuberculosis, **drug** addiction, and alcoholism.

(3) **Physical or mental impairment** does not include homosexuality or bisexuality.

(c)

(1) **Major life activities** include, but are not limited to:

(i) Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, writing, communicating, interacting with others, and working; and

(ii) The operation of a **major bodily function**, such as the functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive systems. The operation of a **major bodily function** includes the operation of an individual organ within a body system.

(2) **Rules of construction.**

(i) In determining whether an impairment **substantially limits** a **major life activity**, the term *major* shall not be interpreted strictly to create a demanding standard.

(ii) Whether an activity is a **major life activity** is not determined by reference to whether it is of *central* importance to daily life.

(d) **Substantially limits** -

(1) **Rules of construction.** The following **rules of construction** apply when determining whether an impairment **substantially limits** an individual in a **major life activity**.

(i) The term “substantially limits” shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA. “Substantially limits” is not meant to be a demanding standard.

(ii) The primary object of attention in cases brought under title III of the ADA should be whether **public accommodations** have complied with their obligations and whether discrimination has occurred, not the extent to which an individual's impairment **substantially limits** a **major life activity**.

Accordingly, the threshold issue of whether an impairment **substantially limits** a **major life activity** should not demand extensive analysis.

(iii) An impairment that **substantially limits** one **major life activity** does not need to limit other **major life activities** in order to be considered a substantially limiting impairment.

(iv) An impairment that is episodic or in remission is a **disability** if it would substantially limit a **major life activity** when active.

(v) An impairment is a **disability** within the meaning of this part if it **substantially limits** the ability of an individual to perform a **major life activity** as compared to most people in the general population. An impairment does not need to prevent, or significantly or severely restrict, the individual from performing a **major life activity** in order to be considered substantially limiting. Nonetheless, not every impairment will constitute a **disability** within the meaning of this section.

(vi) The determination of whether an impairment **substantially limits** a **major life activity** requires an individualized assessment. However, in making this assessment, the term “**substantially limits**” shall be interpreted and applied to require a degree of functional limitation that is lower than the standard for **substantially limits** applied prior to the ADA Amendments Act.

(vii) The comparison of an individual's performance of a **major life activity** to the performance of the same **major life activity** by most people in the general population usually will not require scientific, medical, or statistical evidence. Nothing in this paragraph (d)(1) is intended, however, to prohibit or limit the presentation of scientific, medical, or statistical evidence in making such a comparison where appropriate.

(viii) The determination of whether an impairment **substantially limits** a **major life activity** shall be made without regard to the ameliorative effects of **mitigating measures**. However, the ameliorative effects of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment **substantially limits** a **major life activity**. Ordinary eyeglasses or contact lenses are lenses that are intended to fully correct visual acuity or to eliminate refractive error.

(ix) The six-month “transitory” part of the “transitory and minor” exception in **paragraph (f)(2)** of this section does not apply to the “actual disability” or “record of” prongs of the definition of “disability.” The effects of an impairment lasting or expected to last less than six months can be substantially limiting within the meaning of this section for establishing an actual **disability** or a record of a **disability**.

## **(2) Predictable assessments.**

(i) The principles set forth in the **rules of construction** in this section are intended to provide for more generous coverage and application of the ADA's prohibition on discrimination through a framework that is predictable, consistent, and workable for all individuals and entities with rights and responsibilities under the ADA.

(ii) Applying these principles, **the individualized assessment of some types of impairments will, in virtually all cases, result in a determination of coverage under paragraph (a)(1)(i) of this section (the “actual disability” prong) or paragraph (a)(1)(ii) of this section (the “record of” prong).** Given their inherent nature, these types of impairments will, as a factual matter, virtually always be found to impose a substantial limitation on a **major life activity**. Therefore, with respect to these types of impairments, the necessary individualized assessment should be particularly simple and straightforward.

(iii) For example, applying these principles it should easily be concluded that the types of impairments set forth in paragraphs (d)(2)(iii)(A) through (K) of this section will, at a minimum, substantially limit the [major life activities](#) indicated. The types of impairments described in this paragraph may substantially limit additional [major life activities](#) (including [major](#) bodily functions) not explicitly listed in paragraphs (d)(2)(iii)(A) through (K).

(A) Deafness [substantially limits](#) hearing;

(B) Blindness [substantially limits](#) seeing;

(C) Intellectual [disability](#) [substantially limits](#) brain function;

(D) Partially or completely missing limbs or mobility impairments requiring the use of a [wheelchair](#) substantially limit musculoskeletal function;

(E) Autism [substantially limits](#) brain function;

(F) Cancer [substantially limits](#) normal cell growth;

(G) Cerebral palsy [substantially limits](#) brain function;

(H) Diabetes [substantially limits](#) endocrine function;

(I) Epilepsy, muscular dystrophy, and multiple sclerosis each [substantially limits](#) neurological function;

(J) Human Immunodeficiency Virus (HIV) infection [substantially limits](#) immune function; and

(K) [Major](#) depressive disorder, bipolar disorder, post-traumatic stress disorder, traumatic brain injury, obsessive compulsive disorder, and schizophrenia each [substantially limits](#) brain function.

**(3) Condition, manner, or duration.**(i) At all times taking into account the principles set forth in the [rules of construction](#), in determining whether an individual is substantially limited in a [major life activity](#), it may be useful in appropriate cases to consider, as compared to most people in the general population, the conditions under which the individual performs the [major life activity](#); the manner in which the individual performs the [major life activity](#); or the duration of time it takes the individual to perform the [major life activity](#), or for which the individual can perform the [major life activity](#).

(ii) Consideration of facts such as [condition, manner, or duration](#) may include, among other things, consideration of the difficulty, effort or time required to perform a [major life activity](#); pain experienced when performing a [major life activity](#); the length of time a [major life activity](#) can be performed; or the way an impairment affects the operation of a [major bodily function](#). In addition, the non-ameliorative effects of [mitigating measures](#), such as negative side effects of medication or burdens associated with following a particular treatment regimen, may be considered when determining whether an individual's impairment [substantially limits](#) a [major life activity](#).

(iii) In determining whether an individual has a [disability](#) under the “actual disability” or “record of” prongs of the definition of “disability,” the focus is on how a [major life activity](#) is substantially limited, and not on what outcomes an individual can achieve. For example, someone with a learning [disability](#) may achieve a high level of academic success, but may nevertheless be substantially limited in one or more [major life activities](#), including, but not limited to, reading, writing, speaking, or learning because

of the additional time or effort he or she must spend to read, write, speak, or learn compared to most people in the general population.

(iv) Given the [rules of construction](#) set forth in this section, it may often be unnecessary to conduct an analysis involving most or all of the facts related to [condition, manner, or duration](#). This is particularly true with respect to impairments such as those described in [paragraph \(d\)\(2\)\(iii\)](#) of this section, which by their inherent nature should be easily found to impose a substantial limitation on a [major life activity](#), and for which the individualized assessment should be particularly simple and straightforward.

(4) ***Mitigating measures*** include, but are not limited to:

(i) Medication, medical supplies, equipment, appliances, low-vision devices (defined as devices that magnify, enhance, or otherwise augment a visual image, but not including ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aid(s) and cochlear implant(s) or other implantable hearing devices, mobility devices, and oxygen therapy equipment and supplies;

(ii) Use of assistive technology;

(iii) [Reasonable modifications](#) or auxiliary aids or services as defined in this regulation;

(iv) Learned behavioral or adaptive neurological modifications; or

(v) Psychotherapy, behavioral therapy, or physical therapy.

(e) ***Has a record of such an impairment.***

(1) An individual has a record of such an impairment if the individual has a history of, or has been misclassified as having, a mental or physical impairment that [substantially limits](#) one or more [major life activities](#).

(2) ***Broad construction.*** Whether an individual has a record of an impairment that substantially limited a [major life activity](#) shall be construed broadly to the maximum extent permitted by the ADA and should not demand extensive analysis. An individual will be considered to fall within this prong of the definition of “disability” if the individual has a history of an impairment that substantially limited one or more [major life activities](#) when compared to most people in the general population, or was misclassified as having had such an impairment. In determining whether an impairment substantially limited a [major life activity](#), the principles articulated in [paragraph \(d\)\(1\)](#) of this section apply.

(3) ***Reasonable modification.*** An individual with a record of a substantially limiting impairment may be entitled to a [reasonable modification](#) if needed and related to the past [disability](#).

(f) ***Is regarded as having such an impairment.*** The following principles apply under the “regarded as” prong of the definition of “disability” ([paragraph \(a\)\(1\)\(iii\)](#) of this section):

(1) Except as set forth in [paragraph \(f\)\(2\)](#) of this section, an individual is “regarded as having such an impairment” if the individual is subjected to a prohibited action because of an actual or perceived [physical or mental impairment](#), whether or not that impairment [substantially limits](#), or is perceived to substantially limit, a [major life activity](#), even if the [public accommodation](#) asserts, or may or does ultimately establish, a defense to the action prohibited by the ADA.

(2) An individual is not “regarded as having such an impairment” if the [public accommodation](#) demonstrates that the impairment is, objectively, both “transitory” and “minor.” A [public accommodation](#) may not defeat “regarded as” coverage of an individual simply by demonstrating that it subjectively believed the impairment was transitory and minor; rather, the [public accommodation](#) must demonstrate that the impairment is (in the case of an actual impairment) or would be (in the case of a perceived impairment), objectively, both “transitory” and “minor.” For purposes of this section, “transitory” is defined as lasting or expected to last six months or less.

(3) Establishing that an individual is “regarded as having such an impairment” does not, by itself, establish liability. Liability is established under title III of the ADA only when an individual proves that a [public accommodation](#) discriminated on the basis of [disability](#) within the meaning of title III of the ADA, 42 U.S.C. 12181-12189.

(g) **Exclusions.** The term “disability” does not include -

- (1) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;
- (2) Compulsive gambling, kleptomania, or pyromania; or
- (3) Psychoactive substance use disorders resulting from [current illegal use of drugs](#).

## § 36.201 General.

**(a) Prohibition of discrimination.** 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 private entity** who owns, leases (or leases to), or operates a [place of public accommodation](#).

## § 36.202 Activities.

**(a) Denial of participation.** A [public accommodation](#) shall not subject an individual or class of individuals on the basis of a [disability](#) or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a **denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation**.

**(b) Participation in unequal benefit.** A [public accommodation](#) shall not afford an individual or class of individuals, on the basis of a [disability](#) or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, with the opportunity to participate in or benefit from a good, service, [facility](#), privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

**(c) Separate benefit.** A [public accommodation](#) shall not provide an individual or class of individuals, on the basis of a [disability](#) or disabilities of such individual or class, directly, or through contractual, licensing, or

other arrangements with a good, service, [facility](#), privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, [facility](#), privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

**(d) *Individual or class of individuals.*** For purposes of paragraphs (a) through (c) of this section, the term “individual or class of individuals” refers to the clients or customers of the [public accommodation](#) that enters into the contractual, licensing, or other arrangement.

### **§ 36.203 Integrated settings.**

**(a) *General.*** A [public accommodation](#) shall afford goods, services, facilities, privileges, advantages, and accommodations to an [individual with a disability](#) in the most integrated setting appropriate to the needs of the individual.

**(b) *Opportunity to participate.*** Notwithstanding the existence of separate or different programs or activities provided in accordance with this subpart, a [public accommodation](#) shall not deny an [individual with a disability](#) an opportunity to participate in such programs or activities that are not separate or different.

**(c) *Accommodations and services.***

(1) Nothing in this part shall be construed to require an [individual with a disability](#) to accept an accommodation, aid, service, opportunity, or benefit available under this part that such individual chooses not to accept.

(2) Nothing in the [Act](#) or this part authorizes the representative or guardian of an [individual with a disability](#) to decline food, water, medical treatment, or medical services for that individual.

### **§ 36.204 Administrative methods.**

A [public accommodation](#) shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration that have the effect of discriminating on the basis of [disability](#), or that perpetuate the discrimination of others who are subject to common administrative control.

### **§ 36.205 Association.**

A [public accommodation](#) shall not exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known [disability](#) of an individual with whom the individual or entity is known to have a relationship or association.

### **§ 36.206 Retaliation or coercion.**

**(a)** No private or [public entity](#) shall discriminate against any individual because that individual has opposed any [act](#) or practice made unlawful by this part, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the [Act](#) or this part.

(b) No private or [public entity](#) shall coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the [Act](#) or this part.

(c) Illustrations of conduct prohibited by this section include, but are not limited to:

(1) Coercing an individual to deny or limit the benefits, services, or advantages to which he or she is entitled under the [Act](#) or this part;

(2) Threatening, intimidating, or interfering with an [individual with a disability](#) who is seeking to obtain or use the goods, services, facilities, privileges, advantages, or accommodations of a [public accommodation](#);

(3) Intimidating or threatening any person because that person is assisting or encouraging an individual or group entitled to claim the rights granted or protected by the [Act](#) or this part to exercise those rights; or

(4) Retaliating against any person because that person has participated in any investigation or action to enforce the [Act](#) or this part.

#### **§ 36.208 Direct threat.**

(a) This part does not require a [public accommodation](#) to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of that [public accommodation](#) when that individual poses a [direct threat](#) to the health or safety of others.

(b) In determining whether an individual poses a [direct threat](#) to the health or safety of others, a [public accommodation](#) must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: The nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether [reasonable modifications](#) of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.

#### **§ 36.501 Private suits.**

(a) **General.** Any person who is being subjected to discrimination on the basis of [disability](#) in violation of the [Act](#) or this part or who has reasonable grounds for believing that such person is about to be subjected to discrimination in violation of section 303 of the [Act](#) or [subpart D](#) of this part may institute a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in the civil action if the Attorney General or his or her designee certifies that the case is of general public importance. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the civil action without the payment of fees, costs, or security. Nothing in this section shall require a person with a [disability](#) to engage in a futile gesture if the person has actual notice that a person or organization covered by title III of the [Act](#) or this part does not intend to comply with its provisions.

**(b) Injunctive relief.** In the case of violations of § 36.304, §§ 36.308, 36.310(b), 36.401, 36.402, 36.403, and 36.405 of this part, injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by the Act or this part. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by the Act or this part.

#### § 36.504 Relief.

**(a) Authority of court.** In a civil action under § 36.503, the court -

(1) May grant any equitable relief that such court considers to be appropriate, including, to the extent required by the Act or this part -

(i) Granting temporary, preliminary, or permanent relief;

(ii) Providing an auxiliary aid or service, modification of policy, practice, or procedure, or alternative method; and

(iii) Making facilities readily accessible to and usable by individuals with disabilities;

(2) May award other relief as the court considers to be appropriate, including monetary damages to persons aggrieved when requested by the Attorney General; and

(3) May, to vindicate the public interest, assess a civil penalty against the entity in an amount

(i) Not exceeding \$50,000 for a first violation occurring before September 29, 1999, and not exceeding \$55,000 for a first violation occurring on or after September 29, 1999, and before April 28, 2014, and not exceeding **\$75,000 for a first violation occurring on or after April 28, 2014, except that, for civil penalties assessed after August 1, 2016,** for a first violation occurring after November 2, 2015, the civil penalty shall not exceed the applicable amount set forth in 28 CFR 85.5.

(ii) Not exceeding \$100,000 for any subsequent violation occurring before September 29, 1999, and not exceeding \$110,000 for any subsequent violation occurring on or after September 29, 1999, and before April 28, 2014, and not exceeding \$150,000 for any subsequent violation occurring on or after April 28, 2014, except that, for civil penalties assessed after August 1, 2016, for any subsequent violation occurring after November 2, 2015, the civil penalty shall not exceed the applicable amount set forth in 28 CFR 85.5.

**(b) Single violation.** For purposes of paragraph (a) (3) of this section, in determining whether a first or subsequent violation has occurred, a determination in a single action, by judgment or settlement, that the covered entity has engaged in more than one discriminatory act shall be counted as a single violation.

**(c) Punitive damages.** For purposes of paragraph (a)(2) of this section, the terms “monetary damages” and “such other relief” do not include punitive damages.

**(d) Judicial consideration.** In a civil action under § 36.503, the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this part by the entity. In evaluating good faith, the court shall consider, among other factors it deems relevant, whether the entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability.

