

U.S. Department of Justice Postpones ADA Requirements for Swimming Pools and Spas

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Labor and Employment Law Department

On March 20, 2012, the **U.S. Department of Justice (the Department)** announced an immediate **60-day postponement of the effective date for the accessibility requirements for pools and spas** subject to either Title II (state and local government programs) or Title III (places of public accommodation). These requirements will now take effect on May 21, 2012.

The Department also is contemplating further extending the effective date, and simultaneously issued a Notice of Proposed Rulemaking (NPRM) soliciting public comment as to whether the effective date of the pool and spa requirements should be postponed until Sept. 17, 2012, 180 days from the original effective date. The Department indicated that it was taking this action in order to allow pool owners and operators additional time to address certain misunderstandings regarding these requirements and their application to existing pools and spas.

On Sept. 15, 2010, the Department adopted the 2010 ADA Standards for Accessible Design (2010 Standards), which took effect on March 15, 2012. The 2010 Standards contain requirements for accessible means of entry into and exit from swimming pools and spas as follows:

- Swimming pools with at least 300 linear feet of pool wall must provide two accessible means of entry and exit from the pool. At least one means of entry and exit must be either a sloped entry (*i.e.*, ramp) or pool lift that complies with the requirements set forth in Section 1009 of the 2010 Standards. The second means of entry and exit can be either a transfer wall, transfer system or pool stairs. (Wave action pools, leisure rivers, sand bottom pools and other pools with only one area for entry are required to provide only one accessible means of entry and exit.)
- Swimming pools with less than 300 linear feet of pool wall are required to provide only one accessible means of entry and exit, provide that means is either a sloped entry or pool lift.
- Only one accessible means of entry and exit is required into spas. This means of entry and exit must be either a pool lift, transfer wall or transfer system. Furthermore, where more than one spa is provided in a cluster, only five percent (5%) of the spas are required to have an accessible means of entry and exit.

On Jan. 31, 2012, the Department issued technical guidance with respect to these requirements, in particular the manner in which they pertain to existing pools and spas. See "ADA 2010 Revised

Requirements: Accessible Pools - Means of Entry and Exit," *available at* http://www.ada.gov/pools_2010.htm). Use of pool lifts generally is the most convenient method for providing access to existing pools and spas. In its technical guidance and in subsequent correspondence further explaining the pool requirements, the Department indicated that under Title II (state and local government programs), access could be provided through the use of portable pool lifts. Under Title III, however, the Department indicated the pool lift must be fixed, or at least capable of being affixed to the pool deck or apron when in use; use of portable lifts is permitted only if provision of a fixed lift is not readily achievable. This difference stems from the fact that unlike Title III, which requires the removal of physical barriers to access where readily achievable, Title II permits state and local programs to provide access to existing facilities via alternative methods, including the purchase of equipment, in lieu of making structural modifications. Whether covered under Title II or Title III, however, newly constructed pools must comply with the 2010 Standards, and altered pools must comply to the maximum extent feasible.

In its technical guidance, the Department also indicated that pool lifts must be in place during the hours the pool or spa is open. Where a facility has multiple pools or spas that are required to be accessible, a pool lift cannot be shared among the pools and spas, unless providing multiple lifts creates an undue burden.

Following issuance of the technical guidance, certain pool owners and operators expressed concern over its substance and urged the Department to permit the use of portable lifts under Title III and to permit pool lifts to be shared among pools. They also raised safety concerns regarding the Department's position that pool lifts must be in place during the hours the pool or spa is open.

In issuing its NPRM to further extend the effective date of the pool and spa requirements, the Department emphasized that it will not revisit the merits of the accessibility requirements for pools and spas. Public comments on the issue of whether the effective date of these requirements should be further extended to Sept. 17, 2012 must be submitted no later than April 4, 2012.

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