

# Can an ADA Covered Entity Request Documentation from a Person with a Disability?

Requests for reasonable modifications, a resource for the ADA Title II or III Entity

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## Introduction

Under the ADA, people with disabilities have a right to request a reasonable modification to policies, practices, and procedures to avoid being discriminated against because of their disabilities. From this, the question has come up regarding whether a covered entity has the right to ask for documentation to support those requests.

### Quick Guidance:

An ADA covered entity should not request documentation to support a request for reasonable modification of policies, practices, and procedures when the requester uses a service animal, a mobility device, or if their disability is otherwise immediately obvious.

If the presence of disability is not immediately obvious, then limited, necessary, and reasonable documentation may be requested to evaluate the appropriateness of a request for reasonable modification so long as that does not seek unnecessary information and does not infringe on an individual's privacy.

## Background

Under the ADA, state and local governments are covered under Title II and public accommodations are covered under Title III. Public Accommodations are typically businesses or non-profits that are open to the public, such as restaurants, private hospitals, or commercial gyms.<sup>1</sup> Both Title II and III covered entities are prohibited from discriminating against people with disabilities on the basis of disability.

ADA covered entities are required to reasonably modify their policies, practices, and procedures, i.e. the way they do things, at the request of a person with a disability when the normal way of doing things may disproportionately and negatively impact them due to their disability.<sup>ii</sup> However, if the request would change the essential nature of the program or service, the request could be considered unreasonable and the specific request would not have to be honored.<sup>iii</sup> This is known as a fundamental alteration.

Examples:

- 1) Reasonable Modification: allowing a motorized wheelchair on a hiking trail where motorized devices are typically prohibited.<sup>iv</sup>
- 2) Unreasonable modification/Fundamental Alteration: moving a beach volleyball tournament to an indoor setting so a person with a disability could participate.<sup>v</sup>

## Documentation

Title II and III entities generally cannot request extensive personal or medical documentation from an individual with a disability when reasonable modification requests are submitted. There are circumstances, however, which may allow a covered entity to request limited documentation from a person in order to understand their disability-related need for a modification. This report intends to highlight where court cases have outlined what is and is not allowed on this topic.

Federal regulations state, “any request for required documentation [must be] reasonable and limited to the need for the requested modification.”<sup>vi</sup> The regulations do not provide a specific definition of “reasonable,” leaving it up to interpretation from DOJ and court cases.

## Unnecessary Inquiries

The United States Department of Justice (DOJ) has the authority to enforce Titles II and III of the ADA. The DOJ has stated that ADA entities are not allowed to make “unnecessary inquiries” into the existence or extent of disability.<sup>i</sup> An entity may only request documentation if the disability-related need for a particular modification is not obvious. An entity’s request for documentation must be reasonable and tailored to the need for the reasonable modification.<sup>vii</sup> The type and extent of a permissible request for documentation depends on two things: 1) the nature of an individual’s disability and; 2) the modification the individual requests from the entity.

The Title II Technical Assistance Manual from the DOJ states that—“a public entity may not make unnecessary inquiries into the existence of a disability.”<sup>viii</sup> A Title II or III entity may only request documentation of an individual’s disability if that person’s disability-related need is not apparent or obvious.<sup>ix</sup> DOJ guidance encourages Title II

and Title III entities to review past modifications when considering a request for a reasonable modification under the ADA.<sup>x</sup>

Courts have generally concluded that in a legal case under the ADA (Titles II and III), the person with the disability bears the burden of proving that a modification request is reasonable, instead of the covered entity.<sup>xi</sup> Because Title III does not specifically outline which party bears the burden of proving the reasonableness of a modification request, courts defer to guidance from DOJ.<sup>xii</sup> Once an individual with disabilities proves that the modification is reasonable, the burden rests on the public entity to prove that the modification would either alter the essential nature of the accommodation or threaten the health or safety of the others.<sup>xiii</sup>

## Example (Title III)

In the case of *Johnson v. Gambrinus Company/Spoetzi Brewery*, the patron of a brewery wanted a reasonable modification to bring his service animal into the facility, which had a no animals policy.<sup>xiv</sup> The Fifth Circuit Court of Appeals concluded that the plaintiff had proven this modification was reasonable because DOJ had stated that allowing a service dog in a place of public accommodation is generally reasonable.<sup>xv</sup> The brewery was unable to demonstrate how the presence of a service dog would reach the fundamental alteration or direct threat standard.<sup>xvi</sup>

## Specific Limitations on Inquiries Under Title II

In 2024, DOJ stated that a public entity should not ask about the nature or extent of someone's disability in two circumstances: (1) service dogs; and (2) mobility devices.<sup>xvii</sup>

### Service dogs

A public entity is not allowed to ask a person about the nature or extent of their disabilities if that person uses a service dog and may not ask for a license or certification.<sup>xviii</sup> The entity may only ask the two questions about the service dog: 1) If the animal is required due to disability and; 2) What service or task the animal is trained to perform.

### Mobility devices

DOJ has stated that a public entity may not ask about the nature or extent of an individual's disability if the person uses a wheelchair or other mobility device.<sup>xix</sup> They may ask the person to provide "a credible assurance" that they require the mobility device because of a disability.<sup>xx</sup> Such credible assurance may include:

- State-issued disability parking placard,
- State-issued proof of disability, or
- Verbal representation that is "not contradicted by observable fact."<sup>xxi</sup>

The DOJ has a long-standing, well-established policy that public entities should not require proof of a mobility disability to respect the privacy of those individuals.<sup>xxii</sup>

Beyond these two specific limitations, the DOJ has not provided much guidance regarding a Title II entity asking for documentation. Generally, a public entity should not engage in a lengthy process to determine if a person has an ADA-eligible disability.<sup>xxiii</sup>

## Conclusion– what documentation may a covered entity request from a person with disabilities?

Title II and Title III entities should generally keep in mind the principles of “reasonableness” and “necessity” when considering whether to ask for documentation and the scope of that request. If an individual requesting a reasonable modification has an obvious disability and the modification is relevant to that disability, the covered entity should not request additional documentation. Obvious disabilities usually require the use of a service dog, wheelchair, cane, or other mobility device. However, keep in mind that obvious disabilities exist in which a mobility device is not necessary. Based on the DOJ guidance discussed above, if a person uses a service dog or a mobility device, an entity should not ask for verification of a disability. If an individual’s disability is not obvious, an entity can request limited, necessary, and reasonable documentation. Non-obvious disabilities can include intellectual disabilities; chronic illnesses such as diabetes; seizure disorders; and traumatic brain injuries, among other things. Limited, necessary, and reasonable documentation typically would not infringe on an individual’s privacy, nor should it include information that is not necessary to evaluate the appropriateness of a request for reasonable modification.

## Further reading:

For more details, including specific examples of case law and examples, please review the original rapid research report: <https://rmad.ac/rmd>



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<sup>i</sup> U.S. Department of Justice: Civil Rights Division, “Businesses That Are Open to the Public”, <https://www.ada.gov/topics/title-iii/> (accessed March 5, 2025).

<sup>ii</sup> 28 C.F.R. § 35.130 “General prohibitions against discrimination,” <https://www.ecfr.gov/current/title28/chapter-I/part-35/subpart-B/section-35.130> (amended April 8, 2025; accessed April 15, 2025).

<sup>iii</sup> U.S. Department of Justice: Civil Rights Division, “State and Local Governments.”

<sup>iv</sup> U.S. Department of Justice: Civil Rights Division, “State and Local Governments.”

<sup>v</sup> 28 C.F.R. § 35.130.

<sup>vi</sup> 28 C.F.R. Appendix C to Part 35.

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- vii 28 C.F.R. Appendix C to Part 35: Guidance to Revisions to ADA Title II and Title III Regulations Revising the Meaning and Interpretation of the Definition of ‘Disability’ and Other Provisions in Order To Incorporate the Requirements of the ADA Amendments Act, <https://www.ecfr.gov/current/title28/chapter-I/part-35/appendix-Appendix%20C%20to%20Part%2035> (last amended April 8, 2025; accessed April 15, 2025).
- viii U.S. Department of Justice: Civil Rights Division, “The Americans with Disabilities Act, Title II Technical Assistance Manual, Part II.3.5300 Unnecessary Inquiries”; New England ADA Center, “ADA Title II Requirements.”
- ix Id.; see also Equal Employment Opportunity Commission, “EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disability Act, EEOC Notice 915.002,” (October 17, 2002), <http://www.eeoc.gov/policy/docs/accommodation.html> (accessed March 5, 2025).
- x 28 C.F.R. Appendix C to Part 35.
- xi See, e.g. Johnson v. Gambrinus Company/Spoetzl Brewery, 116 F.3d 1052, 1059 (5th Cir. 1997).
- xii Id. at 1060-61.
- xiii Id.
- xiv Id. at 1064.
- xv Id.
- xvi Id.
- xvii U.S. Department of Justice: Civil Rights Division, “Americans with Disabilities Act Title II Regulations.”
- xviii Id.
- xix Id.
- xx Id.
- xxi Id.
- xxii Id.
- xxiii U.S. Department of Justice: Civil Rights Division, “Final Rule, Amendment of ADA Title II and Title III Regulations To Implement ADA Amendments Act of 2008,” (August 11, 2016) <https://www.federalregister.gov/documents/2016/08/11/2016-17417/amendment-of-americans-with-disabilities-act-title-ii-and-title-iii-regulations-to-implement-ada> (accessed April 15, 2025).