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Americans with Disabilities Act

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The Americans with Disabilities Act (ADA) was signed into law on July 26, 1990. Although passenger vessels are not specifically mentioned in the legislation, it soon became apparent that they were within the ambit of public accommodation and services operated by private entities that are clearly covered by the ADA. It was also apparent that the details on how to apply the ADA to passenger vessels were going to be complex. Unlike the road and rail transport sectors, vessels must maintain seaworthiness and meet conditions totally unknown ashore.

Primary responsibility for implementation of the ADA as it relates to the transport sector fell to the Department of Transportation (DOT). For many of the details, DOT has deferred to the Architectural and Transportation Barriers Compliance Board (popularly known as the Access Board). This independent agency was established in 1973 to ensure reasonable access to federally-funded facilities. With the enactment of the ADA, the Access Board was charged with developing and issuing guidelines to supplement the statute and make the accessibility standards more specific and enforceable.

The Board quickly developed accessibility guidelines for transportation vehicles, but specifically omitted from inclusion therein any accessibility guidelines for passenger vessels. In 1998, it convened the Passenger Vessel Access Advisory Committee to assist in development of proposed accessibility guidelines for covered passenger vessels. The Advisory Committee submitted its report in December 2000, addressing such topics as onboard accessible routes, egress, emergency alarms, toilet and bathing, drinking fountains, lodging, and vehicle parking. The Board utilized that report to develop separate draft guidelines for large and small passenger vessels. For this purpose, a large passenger vessel was defined as a vessel permitted to carry more than 150 passengers or more than 49 overnight passengers. In addition, the definition includes all ferries regardless of size and passenger capacity and certain tenders which carry 60 or more passengers. These Access Board guidelines have yet to be finalized.

Meanwhile, the DOT has been working to actually implement the ADA for passenger vessels. It sought public comment on a number of basic conceptual issues in 2004. The Department proposed regulations on service and policy issues in 2007. On July 6, 2010, DOT promulgated its final rule concerning application of nondiscrimination service and policy issues

to United States passenger vessels and to foreign passenger vessels that embark or disembark passengers in the United States. The regulation comes into effect on November 3, 2010. The Department has reserved for the future any vessel accessibility standards, awaiting finalization of the Access Board guidelines. It intends to follow those guidelines when issued. The regulation does not apply to private entities not primarily engaged in the business of transporting people, thus exempting numerous small entities that transport people as an ancillary activity to their primary business.

The Department is seeking comment on three related issues: (1) emotional support animals; (2) mobility aids; and (3) the relationship between these rules and general ADA rules promulgated by the Department of Justice. Comments on these issues should be submitted by October 4, 2010.

The owners and operators of covered vessels will be required to make reasonable modifications of otherwise acceptable general policies where doing so is necessary to accommodate the needs of a particular individual or category of individuals with a disability. Such modification is required unless that modification would require a fundamental alteration in the nature of the vessel's services, facilities, etc. Any policy or action prohibiting a person with a disability from being transported on or otherwise utilizing a covered passenger vessel will be viewed by the Department as discriminatory on its face.

Only if there is a genuine safety issue, meeting the stringent criteria outlined in the regulation, will an owner/operator be justified in excluding a person because that person has a disability. Even in that case, the owner/operator must provide a written or email explanation within ten days of the denial of service. The rule does not, though, require the owner/operator to do the physically impossible. For example, if the vessel has entries or corridors that are 30 inches wide, the owner/operator may deny service to a disabled person using a mobility device that is 36 inches wide.

The owner/operator may not require a person to provide advance notice simply that he or she is planning to travel, just because he or she has a disability. The vessel's nondiscriminatory policies are to be in place beforehand. An owner/operator, though, may suggest that passengers with disabilities self-disclose the need for special privileges or services.

The Department regards requiring a passenger with a disability to travel with another person, just because that person has a disability, as discriminatory on its face. Crew members, though, are not required to assist passengers with personal functions such as eating, dressing, or toileting. Passengers who need such assistance will be expected to travel with a companion who can provide such functions.

Price discrimination is strictly forbidden. The owner/operator may not charge higher fares to passengers with disabilities than to other passengers and may not impose surcharges on such passengers for facilities, equipment, accommodations, or services that must be provided to a person because he or she has a disability.

The owner/operator must be able to effectively communicate with passengers with disabilities, through the use of auxiliary aides or services where needed. Fundamental alterations to the vessel, though, are not required. The owner/operator is also required to inform persons with disabilities, accurately and in detail, if the vessel is not able to be made accessible to people with mobility impairments or if some ports may not be usable by persons with some disabilities. Finally, landside facilities owned, leased, or controlled by the vessel owner/operator must comply with the same ADA obligations as apply to other types of transportation facilities.

Because passenger vessels are in a service industry, many owners/operators have already adopted service and policy standards that are consistent with the new DOT regulations. All owners and operators of covered passenger vessels should, though, take this opportunity to examine their practices to ensure conformity to these requirements. While there is no requirement that these service and policy standards be in writing, the use of written standards is highly recommended as a means of establishing consistency among employees and crew members and as evidence that a compliance policy was in effect in the event of a challenge.