

Duff on Hospitality Law

Status of Pool Lifts Up in the Air: An Update on Pool Lifts and the New ADA Regulations

By Michael Brunet on 4.16.12 | Posted in Employment Law

In [Mike Brunet's January 2012 post](#), he shared a PowerPoint presentation concerning the [2010 Standards for Accessible Design](#), adherence to which became mandatory for places of public accommodation, such as hotels, on March 15, 2012. In this month's post, Mike focuses on one of the most controversial elements of those 2010 Standards, pool accessibility, and brings you up to date on the current requirements.

Thank you Mike . . .

The 2010 Standards require that public accommodations provide at least one accessible means of entry to small swimming pools, which must either be a sloped entry or a pool lift. Larger swimming pools must have two accessible means of entry, one of which must be a sloped entry or a pool lift. After analyzing the cost and safety issues associated with methods of accessible entry, most hoteliers decided that a portable pool lift would be the safest and most cost-effective option. However, the 2010 Standards did not specifically address portable pool lifts or when or how those lifts would be put in place.

As a result, on October 27, 2011 the [American Hotel & Lodging Association](#) sent a letter to the Department of Justice (DOJ), the administration that enforces the [Americans With Disabilities Act](#), asking for clarification on various pool lift issues, including whether portable pool lifts would satisfy the 2010 Standards, and how quickly the lifts would have to be put in place. AH&LA pointed out significant safety concerns related to permanent lifts, including the risk that guests (including children) could injure themselves on or around the lift unless a lifeguard were present during all operating hours.

On January 31, 2012, DOJ issued a guidance taking a very hard line on the requirements of the 2010 Standards. Specifically, DOJ stated that only "fixed" (i.e., permanent, rather than portable) pool lifts are acceptable unless a hotel can show that installing a fixed lift is not "readily achievable," and even then the portable lift must be installed during all hours that the pool is operating. DOJ also took the position that sharing a lift between two pools is not acceptable unless the operator can show an "undue burden" from having one fixed lift per pool.

DOJ's unexpected response three months after AH&LA's letter left hoteliers scrambling to prepare their pools by the compliance deadline, March 15, after which they could potentially face fines and lawsuits as a result. After determining that they could not meet this deadline, partially due to limitations at the few manufacturers of fixed lifts, hospitality industry members met with DOJ on February 8 to express their concerns and to request additional time to comply with the new guidance. DOJ told the hoteliers that no extension would be forthcoming.

However, on March 15, the day that the new requirements were to go into effect, DOJ announced that the deadline for compliance with pool accessibility requirements would be extended by 60 days. One week later, on March 22, DOJ published an extension of the deadline to May 21, 2012, and asked for comment on an additional six-month compliance extension.

Most recently, on March 26, 2012, Congressman Mick Mulvaney (R-SC), along with 26 other co-sponsors, proposed the [Pool Safety and Accessibility for Everyone \(Pool-SAFE\) Act](#). The effect of the proposed legislation would be to delay the pool lift requirement by a year after enactment of the Act, to permit the use of portable lifts on request to satisfy the 2010 Standards, and to allow sharing of lifts between multiple pools (or a pool and a spa) on a property. The bill has been referred to the House Committee on the Judiciary to determine whether it should be reported to the full House for consideration. Since this time, an additional 20 House members signed on as co-sponsors of the bill.

It is too early in the life of the Pool-SAFE Act to opine on whether it will be enacted (or even move beyond the House committee). It is also too early to opine on whether DOJ will grant another six month extension, as contemplated in the March 22 Federal Register publication. We will provide additional updates as soon as any new developments occur. However, for the moment only fixed pool lifts are acceptable (unless not readily achievable), and the compliance deadline is May 21. As a result, we recommend that hoteliers with pools check with local dealers on the availability and manufacturing lead time for fixed pool lifts.

Tags: 2010 Standards for Accessible Design, American Hotel & Lodging Association, Department of Justice, Mick Mulvaney, Pool-SAFE Act