

Duff on Hospitality Law

## **Everyone Into the Water: The Final Post on Pool Lifts and the Americans with Disabilities Act**

By Michael Brunet on 1.22.13 | Posted in Employment Law

If you are a regular reader of Duff on Hospitality, you are well aware of the recent battle between the U.S. Department of Justice (DOJ), which enforces the Americans With Disabilities Act (ADA), and hospitality owners and trade associations over swimming pool accessibility regulations (see previous posts [here](#) and [here](#)). With DOJ's twice-extended deadline for compliance right around the corner on January 31, 2013, and industry-backed legislation dead in Congress committees, pool owners need to focus on compliance with DOJ's requirements immediately, if they have not already. [Mike Brunet](#), a partner in our Seattle office's labor and employment group and member of our [Hospitality Practice Team](#), has prepared this post to help readers understand the requirements and nuances of the new law. Please feel free to contact [Mike Brunet](#) directly if you have any questions.

### **What are the DOJ requirements?**

Under DOJ's interpretation of the applicable regulations on swimming pool accessibility, owners of pools or spas open to the public must, if "readily achievable" (more on this below), 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 (with more than 300 linear feet of wall) must have two accessible means of entry, one of which must be a sloped entry or a pool lift. Each pool or spa on the property (with a minor exception for clustered spas) must have a separate accessible means of entry. If the means of entry is a pool lift, which is the most popular choice given its cost relative to other means of entry, it must be affixed to the pool deck or apron in some manner, and must be in place and ready for use (including charged batteries, if using a battery-powered lift) during all hours that the pool or spa is open for use.

Although not strictly required by the regulations, owners installing pool lifts should train all customer-facing staff on the lift's features, operations, and maintenance, including safety instructions. This is important not only so that staff can assist disabled guests in using the lift to enjoy the pool facilities, but also to mitigate potential liability issues associated with misuse of the lift equipment.

### **What is “readily achievable”?**

The definition of readily achievable is “easily accomplishable without much difficulty or expense.” However, this simple definition belies the practical expectations of compliance with ADA accessibility requirements. Determining whether taking required action is “readily achievable” is a fact-intensive inquiry focusing on a number of factors, including the cost of the action, the resources available to the business *and any parent entity or entities*, and the action’s impact on operations. Generally speaking, if the required action is physically possible and not a significant strain on a property’s overall resources, it will likely be deemed “readily achievable” by DOJ.

### **What if installing a fixed pool lift is not readily achievable?**

In enforcement actions, DOJ focuses heavily on hospitality owners’ good faith attempts to comply with the law. Thus, if installing a fixed pool lift is not readily achievable, you should take whatever alternative action you can to provide access to your pool for disabled guests. The DOJ suggests providing a portable lift if a fixed lift is not readily achievable. If cost is the prohibitive factor, then you should prepare a budget to save as much as practicably feasible each year until you can comply. Doing so is not a shield against an enforcement action, but having proof of steps you took to attempt to comply with the law will go much further with the DOJ than pleading ignorance or, worse, burying your head in the sand despite knowledge of the requirements.

### **What if my pool is not open to the public until later in the year?**

In the Pacific Northwest, many outdoor pools are not available for guest use until the spring and summer months. Pool lifts are only required to be in place when the pool is open and available to the public, so you do not need to have a lift in place until the pool opens for the season.

### **Compliance is expensive – is there any relief available from the government?**

Yes. A [tax credit](#) (covering 50% of eligible access expenditures, up to \$5000) is available for small businesses with fewer than 30 employees and less than \$1,000,000 in revenues in the prior tax year. All businesses may also take a tax deduction (up to \$15,000) for expenses incurred in making alterations to meet accessibility requirements.

**Tags:** ADA, DOJ, Pool Lift