

Memorandum

To: All Staff
From: A. Montoya
Date: January 10, 2018
Re: DOJ Withdrawn Guidance

The United States Department of Justice recently withdrew nine guidance documents:

Document	Date of Withdrawal
Common ADA Problems at Newly Constructed Lodging Facilities (November 1999)	12/21/17
Title III Highlights (last updated 2008), including the Spanish version	12/21/17
Title II Highlights (last updated 2008), including the Spanish version	12/21/17
ADA TA: Technical Assistance Update - Common Questions: Readily Achievable Barrier Removal; Design Details: Van Accessible Parking Spaces (August 1996)	12/21/17
Commonly Asked Questions About Service Animals in Places of Business (July 1996)*	12/21/17
ADA Business Brief: Service Animals (April 2002)*	12/21/17
Common ADA Errors and Omissions in New Construction and Alterations (June 1997)	12/21/17
Americans with Disabilities Act Questions and Answers (co-authored by EEOC) (May 2002), including versions in Cambodian, Chinese, Hmong, Japanese, Korean, Laotian, Spanish, Tagalog, and Vietnamese	12/21/17
Statement of the Department of Justice on Application of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C. to State and Local Governments' Employment Service Systems for Individuals with Disabilities (October 31, 2016)	12/21/17
Myths and Facts About the Americans with Disabilities Act (1995)	08/17

The ones with asterisks were relied upon in Rulemaking, so the DOJ has kept it available, but it's not marked as withdrawn in bold text at the top of the page. I reviewed the two that remain available and both relate to service animals. The first, "Commonly Asked Questions About Service Animals in Places of Business (July 1996)," contained a now-incorrect statement of the law in that it said that any animal could

qualify as a service animal. In 2010, however, the DOJ amended the actual regulations (which the guidance purports to interpret into simpler language) to exclude anything but dogs and miniature horses. The second guidance document that remains available, "ADA Business Brief: Service Animals (April 2002)," did not contain that incorrect statement or otherwise provide outdated information. Of course, I was unable to review the others, as they are no longer available, but please be aware that all nine of these have been withdrawn, and must not be relied upon going forward.

Also keep in mind, that none of this changes any rights or obligations under the ADA. The statute has not been amended, and the regulations would need to go through a formal notice and comment period before they could change, so the law and its primary interpretation (the regulations) remain in full force. As the DOJ comments, with respect to its withdrawal of the Olmstead integration mandate guidance it withdrew: "[w]ithdrawal of this guidance document does not change the legal responsibilities of State and local governments under title II of the ADA, as reflected in the ADA, its implementing regulations, and other binding legal requirements and judicial precedent, including the U.S. Supreme Court's *Olmstead* decision."¹ The same is true for the rest of the ADA as well.

Please don't hesitate to let us know if you have any questions.

¹ https://www.ada.gov/withdrawn_olmstead.html