

Existing Facilities and Readily Achievable

The revision to the Americans with Disabilities Act that was signed into law on July 26, 2010, requires that existing facilities, not protected by a safe harbor, make necessary modifications to meet the new requirements by March 15, 2012, to the extent that meeting these requirements is readily achievable. Since existing swimming facilities are not protected by any safe harbor, they are required to comply with this regulation.

The purpose of this white paper is to discuss the concept of readily achievable as it pertains to existing swimming facilities.

Under Title III of the ADA, public accommodations are required to remove architectural barriers within their existing facilities when it is readily achievable to do so. An architectural barrier is any impediment that prevents a person with disabilities from participating in any service provided by the facility. In the case of a swimming pool, a barrier would be the inability to enter and exit a swimming pool and participate in that particular service or activity provided by this public accommodation, i.e., swimming.

As stated, a public accommodation is required to remove barriers to existing facilities only when it is readily achievable. Readily achievable means easily accomplished or being able to carry out the modification without much difficulty or expense.

The readily achievable stipulation gives existing facilities more leeway in providing accommodations for people with disabilities than new construction projects. The rationale is that initiating barrier removal in an existing facility could be quite costly, while incorporating barrier removal into a new design should not result in a significant difference in the initial cost of the project.

Determining whether or not barrier removal is readily achievable is subjective and is considered on a case-by-case basis. However, a list of examples of modifications considered to be readily achievable will shed some light on this issue with respect to swimming pools. This list, which was compiled as a reference to the 1991 regulations, includes installing ramps, creating curb cuts, providing accessible bathrooms and parking places, and rearranging toilet partitions. When calculating the cost of any or all of these examples and comparing that cost to the price of a swimming pool lift, it is reasonable to project that the cost of installing a pool lift on an existing pool would fall within the realm of being readily achievable.

There are instances, however, when the readily achievable provision may be used to delay implementation of barrier removal for swimming pools. Here is an example:

The 2010 regulations for wading pools state that a sloped entry must be provided into the deepest part of the pool. However, in order to install a safe sloped entry into an existing wading pool with a flat bottom, the entire pool would need to be razed and reconfigured with a sloped entry. This procedure would likely cost as much as installing a new pool, and would not be considered to be readily achievable. The existing wading pool would not have to comply to Existing Facilities and Readily Achievable the new standard until such time as it undergoes significant renovation, if that ever happens.

The obligation to remove barriers is ongoing. A situation that is not readily achievable today may change in the future. If we consider the example of the wading pool, if the public accommodation at some time in the future changes the overall design of their facility, which incorporates moving the wading pool, at that time, the wading pool should be modified to meet the sloping requirement.

Initiating barrier removal to provide access to a swimming pool should have a high priority if the facility has to address a number of different kinds of barrier removal modifications. As part of the release of the 1991 regulations, the Department provided guidance on priorities for barrier removal in existing facilities. The first priority was simply entering the facility. The second priority was to provide access to areas where goods and services are provided. In the case of a swimming facility, this means the pool.

As mentioned, readily achievable barrier removal can be subjective. Since determining whether or not a specific situation would or would not be considered readily achievable is considered on a case-by-case basis, any questions should be directed to the Department of Justice, Disability Rights Section at 800-514-0301. ADA specialists are available to provide guidance and to assist with any technical questions.