

What churches need to know about the ADA

By David Middlebrook and Robert W. Rucker

The purpose of the Americans with Disabilities Act ("ADA") is to prevent discrimination against disabled persons in two basic areas: employment and construction of and access to buildings and transportation. With respect to the latter, the provisions of the ADA do not apply to churches. The employment provisions, however, do apply. Therefore, although churches do not have to think about the needs of the general public when undergoing construction, they do need to take their current and possibly future employees' needs into consideration. Under the ADA, a church cannot discriminate against a qualified individual with a disability because of that individual's disability in application procedures, hiring, advancement, discharge, compensation, job training, or other conditions and privileges of employment.

The ADA delineates what constitutes discrimination and what churches must do to accommodate disabled individuals. Failing to make reasonable accommodations to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability is considered discrimination under the ADA.

In addition, the ADA states that discrimination includes denying employment to a job applicant because the entity must make reasonable accommodations for the physical or mental

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impairments of that applicant. It is important to note that the accommodations entities are required to make must be reasonable, and, as a result, can not impose undue hardship upon the operation of the entity's business. To understand these regulations, one must first understand the terms disability, qualified individual, reasonable accommodations, and undue hardship, as they are defined by the ADA:

Disability

The ADA definition of a disability includes three critical components. A disability is a physical or mental impairment, which substantially limits one or more of the major life activities of an individual.

According to the ADA, a physical or mental impairment includes any physiological disorder or condition, cosmetic disfigurement, or anatomical loss that affects one or more of the following body systems:

- neurological
- musculoskeletal
- special sense organs
- respiratory (including speech organs)
- cardiovascular
- reproductive
- digestive
- genito-urinary
- hemic and lymphatic
- skin
- endocrine

In addition, it includes any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Major life activities include functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. A person is substantially limited if they are unable to perform a major life activity that the average person can perform or they are significantly restricted in the condition, manner or duration under which they can perform the activity as compared to the average person.

Qualified individual and reasonable accommodations

A qualified individual is defined as an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that he or she holds or desires to hold.

Essential functions are the fundamental job duties of the

employment position. With respect to construction, a church may be required to make the existing facilities readily accessible and useable by individuals with disabilities, or acquire or modify equipment or devices to reasonably accommodate an individual with a disability.

Undue hardship

As previously noted, reasonable accommodations are not to impose undue hardship upon employers. Undue hardship includes an action requiring significant difficulty or expense, when considered in light of the following factors:

- nature and cost of the accommodation needed;
- overall financial resources of the facility or facilities involved;
- number of persons employed at such facility;
- effect on expenses and resources of the entity;
- impact of the accommodation upon the operation of the facility;
- overall financial resources of the entity;
- number of employees;
- number, type and location of facilities, and type of operation or operations of the entity.

When churches undergo construction or begin to contemplate the possibility of construction, they must take

the ADA into consideration. They must make reasonable accommodations for employees and applicants in the construction of new facilities. However, the church need only make these accommodations if they would enable the applicant or employee to perform the essential functions of the job.

Furthermore, the ADA does not require that churches forgo all other considerations such as the financial aspects of a project in order to create a facility that would accommodate any possible disability. Churches must exercise care in constructing facilities and make reasonable modifications to their facilities in order to accommodate employees or potential employees with disabilities.

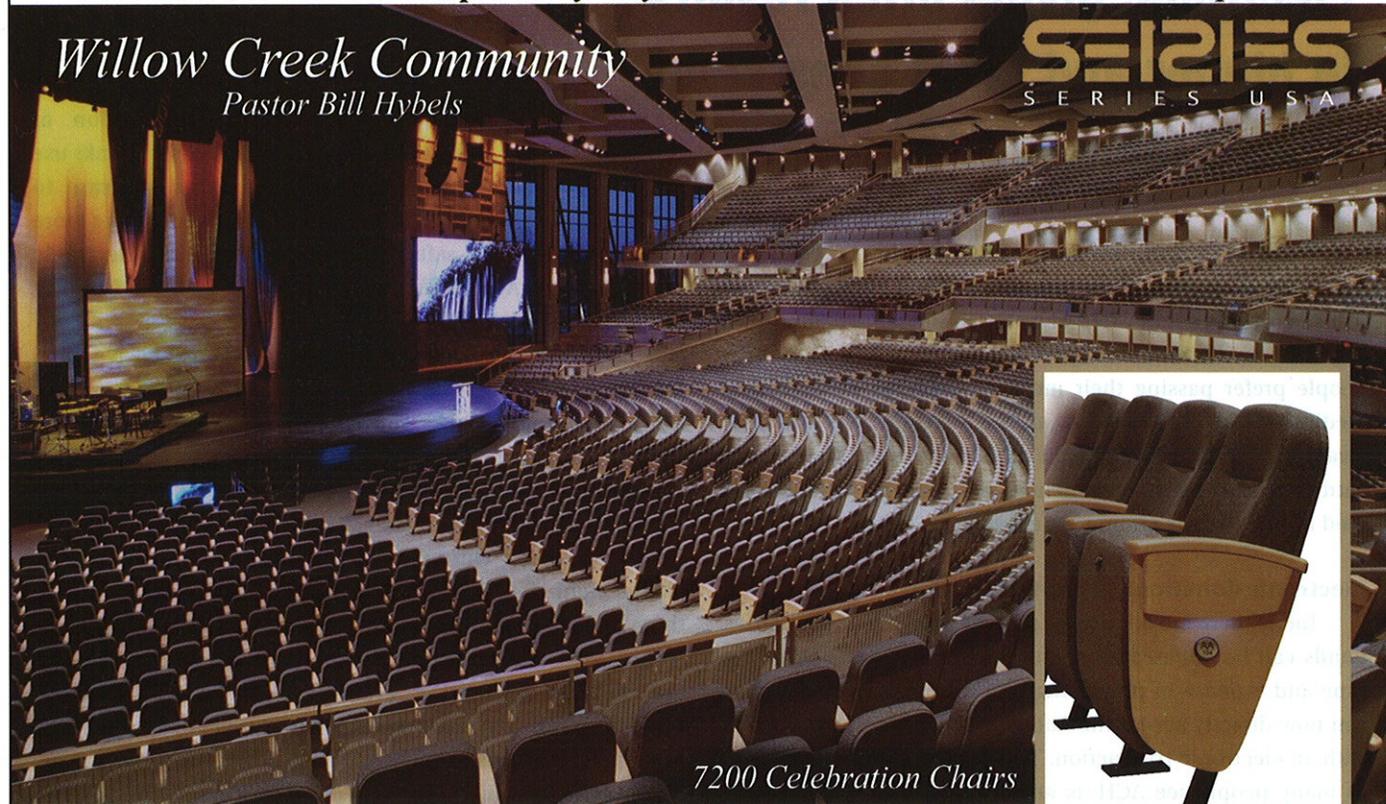


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