



January 31, 2013 ADA Compliance Deadline for Existing Pools and Spas Rapidly Approaching

By: [Monica Cooper](#) and [Hanna Fister Norvell](#)

The Department of Justice (“DOJ”) recently revised the Americans with Disabilities Act’s Standards for Accessible Design (“2010 Standards”) in an effort to better meet the practical needs of persons with disabilities and to correspond better with other existing building and accessibility codes. The 2010 Standards set minimum requirements for making swimming pools and spas accessible, which may, depending on the size of the pool/spa, include installing an independently usable pool lift. Large pools (pools with more than 300 linear feet of pool wall) must have two accessible means of entry, with at least one being a fixed pool lift or sloped entry. Smaller pools (pools with less than 300 linear feet of wall) are only required to have one accessible means of entry, provided that it is either a fixed pool lift or a sloped entry.

Compliance with the 2010 Standards was required by March 15, 2012. However, in response to public comments, the Attorney General twice extended the compliance deadline for accessibility for *pre-existing* pools/spas. The current compliance date for existing pools and spas is *January 31, 2013*. Though this date may be subject to change, the DOJ noted that the date was chosen in part because it expires well before the start of summer 2013 swim season. The DOJ did not extend the compliance deadline for pools and spas constructed or altered on or after March 15, 2012. Therefore, pools/spas built after March 15, 2012, are not covered by these extensions and must currently be in compliance with all regulations governing accessibility.

These extensions were given so that pool owners and operators had additional time to clear up any misunderstandings and to take appropriate steps to fully comply with the accessibility requirements. The DOJ has hosted webinars and published additional information regarding required pool access in an effort to clear up this confusion. However, the extensions did not change the substance of the required compliance.

After extending the compliance deadline, the DOJ continued to educate covered entities about their obligations under the 2010 Standards with regard to providing access into their pools. In its publications, the DOJ clarified several points of confusion among pool owners and operators.

- A fixed lift means that the lift is attached to the pool deck or apron in some way. A non-fixed lift means that it is not attached in any way. A non-fixed lift is often called a portable lift. However, a fixed lift does not mean it is permanently attached to the pool deck or apron. The lift may be removable. For example, a “portable” lift that is attached to the pool deck would still be considered a fixed lift. Thus, owners of portable lifts can fully comply with the access requirements by affixing their lifts to the pool deck or apron.



- The DOJ stated that portable (non-fixed) lifts should be used only if a fixed lift is not readily achievable. However, if a pool owner or operator purchased an otherwise compliant non-fixed lift before March 15, 2012, and the lift is available for use during all hours the pool is open, the DOJ will not require a fixed lift due to confusion before that date regarding fixed lift requirements.
- The DOJ stated that portable lifts or no lifts may be acceptable in lieu of closing the pool, if a fixed lift is not readily achievable.
- The DOJ mentioned there is a backlog of pool lift orders from all manufacturers. One final reason they extended the compliance deadline was to avoid encouraging pool owners or operators to purchase non-compliant lifts. The additional time for compliance should allow pool owners and operators sufficient time to obtain a compliant lift, according to the DOJ. Moreover, the DOJ has stated that a pool need not be closed just because the ordered pool lift has not yet arrived.

For the recent DOJ publications regarding pool access, please see [Questions and Answers: Accessibility Requirements For Existing Swimming Pools at Hotels and Other Public Accommodations and Accessible Pools Means of Entry and Exit](#), updated May 24, 2012.

The determination of the type of access required in pre-existing pools and spas depends on what is readily achievable for each pool or spa. Readily achievable is defined in the ADA as “easily accomplishable and able to be carried out without much difficulty or expense.” This determination includes consideration of the following and is necessarily decided case by case:

- The nature and cost of the action;
- The overall financial resources of the site or sites involved; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements necessary for safe operation, including crime prevention measures; or any other impact of the action on the operation of the site;
- The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;
- If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and
- If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

Pool operators and owners should note that some state and local government codes also require pool access similar to or greater than the federal regulations and such compliance may not have the same deadline for compliance as the federal regulations.

There are significant risks of non-compliance with the 2010 Standards, including liability under the ADA from a DOJ investigation or private lawsuit. Now that pool and spa operators have had additional time to bring their property into compliance, it is even more important that pools/spas are made accessible by January 31, 2013.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact one of the authors:

Monica Cooper | 713-226-1680 | mcooper@lockelord.com

Hanna Fister Norvell | 713-226-1423 | hnorvell@lockelord.com