

ACCESSIBLE PARKING FOR PEOPLE WITH DISABILITIES



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I. PARKING ISSUES FOR PEOPLE WITH DISABILITIES: AN OVERVIEW

Parking is an issue that is of special concern to many people with disabilities. For people with disabilities, parking in close proximity to one's home and workplace and near government offices and places of public accommodation (such as restaurants and museums) is often essential to maximize independence.

Various federal, state, and local laws address issues related to parking for people with disabilities. State law determines who is eligible for special license plates and parking placards issued to or for people with disabilities. People with disabilities can use these license plates and parking placards to obtain some special parking privileges, such as reserved residential parking on public streets and the right to park in spaces reserved for people with disabilities at public accommodations. Federal law may also govern parking issues at public accommodations, state and local government facilities, workplaces, and residential areas.

This booklet will address several issues relating to parking for people with disabilities to give you some general guidance on what the law does and does not provide. Specifically, this booklet will address:

- Person With Disability License Plates and Placards;
- Residential Parking Spaces;
- Designated and Accessible Parking Spaces in the Workplace, and at Public Accommodations, and at State and Local Government Facilities; and
- Complaint Procedures.

PLEASE NOTE: THE INFORMATION IN THIS BOOKLET IS NOT INTENDED TO CONSTITUTE LEGAL ADVICE APPLICABLE TO SPECIFIC FACTUAL SITUATIONS.

II. LICENSE PLATES AND PLACARDS FOR PEOPLE WITH DISABILITIES

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For people with disabilities to secure special parking privileges -- such as reserved residential parking or reserved parking at public accommodations -- it is necessary that the vehicle have some marking to prove that a person using it has a disability and is eligible for the available privileges. This proof is in the form of special license plates and placards for people with disabilities.

Pennsylvania's Bureau of Motor Vehicles of the Department of Transportation offers several forms of special license plates and parking placards that people with disabilities can use to secure special parking privileges:

- "Person With Disability Plates;"
- "Severely Disabled Veteran Plates;"
- "Person With Disability Parking Placards;" and
- "Severely Disabled Veteran Placard."

75 Pa. Cons. Stat. Ann. §§ 1338(a)-(b), 1342(a)-(b).

Pennsylvania will issue a "Person With Disability Plate" for use on a passenger car or vehicle weighing not more than 9,000 pounds to designate the vehicle as one used by or operated exclusively for the use and benefit of an individual with a disability. To obtain a "Person With Disability Plate," the applicant must show that s/he:

- is blind; or
- does not have full use of an arm or both arms; or
- cannot walk 200 feet without stopping to rest; or
- cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device; or
- is restricted by lung disease to such an extent that the person's forced (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter or the arterial oxygen tension is less than 60 mm/hg on room air at rest; or
- uses portable oxygen; or

- has a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to the standards set by the American Heart Association; or
- is severely limited in his or her ability to walk due to an arthritic, neurological, or orthopedic condition; or
- is "in loco parentis" of a person who meets any of the above conditions (which means an adult charged by law with the natural parent's rights, duties and responsibilities acting on behalf of a child under 18 in place of the child's natural parents)..

75 Pa. Cons. Stat. Ann. § 1338(a). A physician must certify that the applicant meets one of these criteria. 75 Pa. Cons. Stat. Ann. § 1338(c). Individuals who are blind or who do not have full use of one or both legs may submit a statement by a police officer instead of a physician's certification. Id. Once an applicant's disability has been certified by a physician, s/he need not submit additional certifications to renew the registration. Id.

Pennsylvania will issue a "Severely Disabled Veteran Plate" for use on a passenger car or vehicle weighing not more than 9,000 pounds to designate the vehicle as belonging to a severely disabled veteran. To obtain a "Severely Disabled Plate," the applicant must show that s/he: (1) has a service-connected disability that is certified as 100 percent by the service unit of the armed forces in which s/he served or by the United States Veterans' Administration, or (2) has a service-connected disability that would meet the criteria for a "Person With Disability Plate." 75 Pa. Cons. Stat. Ann. § 1342(a).

NOTE: Pennsylvania also issues a "Disabled Veteran Plate" to individuals with service-connected disabilities. However, this type of plate does not allow the person who uses it to obtain the special parking accommodations granted to individuals who have "Person With Disability Plates" or "Severely Disabled Veteran Plates".

Person with Disability Plates and Severely Disabled Veteran Plates can only be issued if the person with the disability is also the vehicle owner or co-owner or is in loco parentis to a qualified person with a disability. In contrast, a "Person with Disability Parking Placard" or a "Severely Disabled Veteran Parking Placard" can be secured by persons who are not owners or co-owners of vehicles or minor children, but who are adults with

disabilities who periodically travel in vehicles. Pennsylvania will issue a "Person With Disability Parking Placard" or a "Severely Disabled Veteran Parking Placard" to applicants who meet the eligibility criteria for, respectively, "Person with Disability" or "Severely Disabled Veteran" plates described above. The placard must be displayed from the rearview mirror on the front windshield when the vehicle is parked in a space reserved for persons with disabilities. If the car has no rearview mirror or the placard cannot be displayed on it, then it must be placed on the dashboard. 75 Pa. Cons. Stat. Ann. §§ 1338(b), 1342(b).

Pennsylvania also may issue a "Temporary Placard" for a period of up to six months upon certification by a physician stating that the applicant has a temporary disability and stating the expected duration of the disability.

Pennsylvania law permits motor vehicles with "Person with Disability" or "Severely Disabled Veteran" plates or placards to park in parking spaces reserved for persons with disabilities when they are operated by or for the transportation of a person with a disability or severely disabled veteran. 75 Pa. Cons. Stat. Ann. § 3354(d)(3)(i). In addition, motor vehicles with "Person with a Disability" or "Severely Disabled Veteran" plates or placards may park for a period of 60 minutes in excess of the legal parking period permitted by local authorities as long as they are operated by or for the transportation of a person with a disability or severely disabled veteran. 75 Pa. Cons. Stat. Ann. § 3354(d)(1). In other words, a person who has one of these plates is entitled to a one-hour grace period before being issued a citation for a parking violation. However, these plates and placards do not permit individuals to park in places where parking is prohibited to accommodate heavy traffic during morning, afternoon, or evening hours. Id.

Example: If the sign next to a parking space indicates that two-hour parking is permitted, a person with a disability who has one of these plates or placards will be able to park for up to three hours in that space.

Example: A person who has a "Person with Disability" or "Severely Disabled Veteran" plate or placard may be ticketed

and/or have his/her vehicle towed if s/he parks for more than three hours in a two-hour parking zone. See Commonwealth v. Geigley, 650 A.2d 1224 (Pa. Commw. Ct. 1994) (concluding that person with disability was properly issued the parking citations because the law only permitted him a one-hour grace period beyond the two hour established parking limit, and he parked for more than three hours in the space).

Example: A person who has a "Person with Disability" or "Severely Disabled Veteran" plate or placard may be ticketed and/or have his/her vehicle towed if s/he parks next to a meter and does not pay the fare.

Example: A person who has a "Person with Disability" or "Severely Disabled Veteran" plate or placard may be ticketed and/or have his/her vehicle towed if s/he parks or remains parked at 7:00 a.m. in a space in which parking is prohibited between 7:00 a.m. and 9:00 a.m.

Local ordinances and regulations may provide for more expansive parking privileges than those afforded by Pennsylvania law. In Philadelphia, for example, a vehicle that is identifiable as a wheelchair lift-equipped van that is operated for a person with a disability can park without limitation as to time and without payment of any parking meter fees on streets where parking is otherwise time-limited but not prohibited. 12 Phila. Code § 12-1117(2)(b).

The special registration plates and placards for people with disabilities should be recognized in states other than Pennsylvania. All states report reciprocal agreements for enforcement with other states. However, the precise extent of parking benefits allowed by other states for persons with these plates and placards may not be identical to those available in Pennsylvania.

A violation of Pennsylvania's provisions governing applications for "Person With Disability Plates" and "Person With Disability Parking Placards" is a summary offense and, upon conviction, the individual will be sentenced to pay a fine. 75 Pa. Cons. Stat. Ann. §§ 1338(d), 3354(f).

Applications for "Person with Disability" and "Severely Disabled Veteran" plates and parking placards may be obtained from the Bureau of Motor Vehicles of the Pennsylvania Department of Transportation. These applications also can be found online at www.dmv.state.pa.us.

There is a \$7.50 fee to obtain a "Person with a Disability" or "Severely Disabled Veteran" plate, but there is no fee to obtain a "Person with a Disability" or "Severely Disabled Veteran" parking placard.

II. PARKING FOR PEOPLE WITH DISABILITIES NEAR THEIR HOMES

Pennsylvania law allows -- but does not require -- local authorities to provide reserved parking for individuals who have "Person with Disability" or "Severely Disabled Veteran" plates or placards. 75 Pa. Cons. Stat. Ann. § 3354(d)(2). This means that a local government, at its option, may post on the street, as close as possible to the individual's place of residence, a sign that indicates that the space is reserved for people with disabilities and that people who do not have disabilities who park there will have their vehicles towed and will be subject to a fine of not less than \$50 nor more than \$200. 75 Pa. Cons. Stat. Ann. § 3354(d)(2)-(3), 3354(f). Vehicles may not be towed unless the signage expressly states that the vehicles may be towed and a person parked illegally may not be convicted and fined if the signage does not indicate the maximum and minimum fines for violation. See 75 Pa. Cons. Stat. Ann. §§ 3354(d)(2)-(3); Commonwealth v. Lundberg, 772 A.2d 1037 (Pa. Super. Ct. 2001).

While a reserved residential parking sign improves the chances that a person with a disability will be able to park near his/her home, it does not guarantee that the space will be available for his/her use. The reserved residential parking sign does not designate the space for the exclusive use of the person who lives there; rather, any person with a "Person with a Disability" or "Severely Disabled Veteran" plate or placard may park in the space.

A person with a disability should check with the city, municipality, borough, or township in which s/he lives to determine whether it allows for reserved residential parking spaces. If the local government does allocate such spaces, the person with a disability should ascertain how to apply for the space. Usually, the process requires the individual to submit an application form, and then the local government will conduct an investigation to determine the propriety of granting the request. The investigation includes a review of the availability of off-street parking (such as a garage or driveway) and interviews with adjacent property owners. In determining whether to grant a request for a reserved residential parking space, the local government will consider: (1) the impact on general safety; (2) the impact on traffic flow; (3) the impact on neighboring properties; and (4) the nature of the applicant's disability. Given these factors, the local government usually will not issue a reserved parking space if alternative, off-street parking is available or if it would result in an undue hardship for other residents. If the local government grants the request for a reserved residential parking space, it will periodically review its decision to ascertain continued need for the space and its impact on safety issues.

What if your local government does not authorize reserved parking spaces for individuals with disabilities? There are two possible, but by no means certain, solutions: (1) a complaint under the Americans with Disabilities Act, or (2) an appeal of the municipality's decision in Pennsylvania courts.

First, local governments are required by the Americans with Disabilities Act to make reasonable accommodations to its policies, practices, and procedures to avoid discrimination on the basis of disability unless doing so would fundamentally alter the nature of the service program or activity. 28 C.F.R. § 35.130(b)(7). A person with a disability, therefore, can request his or her local government to modify its policy of not reserving parking for individuals with disabilities. See Trovato v. City of Manchester, 992 F. Supp. 493, 497-98 (D.N.H. 1997) (city violated ADA when zoning board refused to make exception to zoning

ordinance to permit two individuals with muscular dystrophy to park in front of their house). If the local government refuses the request for accommodation, it would have to be determined whether the accommodation is "reasonable." If the local government never reserved spaces for individuals with disabilities, it is arguable that the refusal is unreasonable assuming that there are no particular obstacles that would render unreasonable the particular request for reserved parking (e.g., insufficient space on the street). On the other hand, if the local government simply stopped granting requests after it granted so many that there were too many reserved spots in the town, then its refusal may be reasonable. Similarly, if the local government could show that the placement of a reserved parking space would be unsafe, it could prevail. See Biggs v. City of Jackson, No. 211254, 1999 WL 33441284 (Mich. App. Ct. June 11, 1999) (per curiam) (unpublished opinion), app. denied, 611 N.W.2d 796 (Mich. 2000) (Table). Unless the local government is willing to accede to the request readily, the individual with a disability would have to file a lawsuit to challenge the government's refusal to grant the requested accommodation.

Second, an individual who is able to obtain a formal denial of a request for a reserved parking space can appeal that denial to the Court of Common Pleas under the Local Agency Law. 2 Pa. Cons. Stat. Ann. §§ 751-754. Again, though, this would entail a lawsuit and the court's review of the agency's action would be limited.

Pennsylvania's law governing the issuance of reserved residential parking spaces by local governments does not apply to private parking lots of apartments and condominiums. The local government cannot require these private entities to grant reserved parking to people with disabilities. However, the federal Fair Housing Act does apply to these private housing entities and requires them to make "reasonable accommodations" in their policies and practices. 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204. This may require modifications to parking policies, such as increasing the number of accessible parking spaces or reserving a parking space for a person with a disability. See Jankowski Lee &

Assoc. v. Cisneros, 91 F.3d 891, 895-96 (7th Cir. 1996); Shapiro v. Cadman Towers, Inc., 51 F.3d 328, 336 (2d Cir. 1995); Hubbard v. Samson Mgmt. Corp., 994 F. Supp. 187, 190-93 (S.D.N.Y. 1998). Gittleman v. Woodhaven Condominium Ass'n, Inc., 972 F. Supp. 894, 899-900 (D.N.J. 1997). But see Sporn v. Ocean Colony Condominium Ass'n, 173 F. Supp.2d 244, 249-51 (D.N.J. 2001) (holding that condominium complied with the Fair Housing Act by policy that granted handicapped parking spaces close to the entrance to people with disabilities even though it required them to give up their deeded parking spaces).

III. PARKING FOR PEOPLE WITH DISABILITIES IN THE WORKPLACE

People with disabilities who have difficulty walking or who have visual impairments may not be able to work if they have a distance to walk from a parking space to the workplace. Under Title I of the Americans with Disabilities Act, an employer with more than 15 employees has a duty to make "reasonable accommodations" to known physical limitations of an employee with a disability unless doing so will result in an undue hardship on the business. 42 U.S.C. § 12112(b)(5).¹ If it is reasonable to do so, an employer may be required under the ADA to provide a reserved parking space or to pay for a parking space near the office. See 29 C.F.R. Pt. 1630, App., § 1630.2(o); Lyons v. Legal Aid Society, 68 F.3d 1512, 1517 (2d Cir. 1995). Whether it is reasonable to require an employer to provide reserved parking spaces for employees with disabilities will depend upon such factors as the employer's geographical location and financial resources. Lyons, 68 F.3d at 1516.

Similarly, the Pennsylvania Human Relations Act requires employers with at least four employees to make reasonable accommodations in the workplace for individuals with

¹ You may not be protected by the ADA or the Fair Housing Act simply because you are eligible for and received a "Person with a Disability" or "Severely Disabled Veteran" parking plate or placard. The ADA and Fair Housing Act require that you have a disability that substantially limits one or more major life activities (such as seeing, walking, breathing) taking into account any available mitigating measures (such as medication or auxiliary aids). See 42 U.S.C. §§ 3602(h) (Fair Housing Act), 12102(2) (ADA); Sutton v. United Air Lines, Inc., 527 U.S. 471, 491 (1999).

disabilities. 43 Pa. Cons. Stat. Ann. § 955; Buckno v. Penn Linen & Uniform Service, Inc., 631 A.2d 674, 676 (Pa. Super. Ct. 1993), alloc. den., 647 A.2d 894 (Pa. 1994); cf. Schwab v. Commonwealth, Unemployment Compensation Board, 427 A.2d 789 (Pa. Commw. Ct. 1981) (holding that employer that fired employee for accumulating four parking tickets in a two-year period could not deny employee unemployment compensation because parking tickets did not evidence willful misconduct where the employee had a disability that prevented him from walking long distances and employer made no effort to accommodate his disability by reserving a parking space near the worksite).

IV. PARKING FOR PEOPLE WITH DISABILITIES IN COMMERCIAL AREAS.

Title III of the Americans with Disabilities Act governs "public accommodations," which include shops, restaurants, museums, movies, recreational facilities, banks, hospitals, and professional offices that are open to the public. Title III requires that public accommodations remove architectural barriers if such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The regulations that implement this requirement state that the first priority for barrier removal is to ensure "access to a place of public accommodation from public sidewalks, parking, or public transportation. These measures include, for example, installing an entrance ramp, widening entrances, and providing accessible parking spaces." 28 C.F.R. § 36.304(c)(1) (emphasis added). Measures taken to remove barriers must comply with the Americans with Disabilities Act Accessibility Guidelines ("ADAAG") unless full compliance with the ADAAG standards is not readily achievable. 28 C.F.R. § 36.304(d) (incorporating 28 C.F.R. § 36.406). In addition, public accommodations that are "newly constructed" (i.e., designed and constructed for first occupancy after January 26, 1993) must comply with the accessibility standards contained in the ADAAG. 42 U.S.C. § 12183(a)(1); 28 C.F.R. §§ 36.401, 36.406.

ADAAG identifies the number of parking spaces that public accommodations must reserve for people with disabilities and the dimensions of those spaces to ensure adequate

access by people with disabilities to the goods and services that those accommodations provide to the public at large. ADAAG states that a public accommodation that provides self-parking for employees or visitors must have the following minimum number of accessible parking spaces:

<u>Total Parking In Lot</u>	<u>Required Minimum Number of Accessible Spaces</u>
1 to 25	1
26 to 50	2
51 to 76	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2 percent of total
1001 and over	20 plus 1 for each 100 over 1000

28 C.F.R. Pt. 36, App. A (ADAAG § 4.1.2(5)(a)). To qualify as an "accessible" parking space under ADAAG, the space must be at least 96 inches wide, have signs with the accessibility symbol designating the spaces, and must be located on surfaces with a maximum slope of 2 percent in all directions. Id. (ADAAG § 4.6).

Additionally, a public accommodation must ensure that one in every eight accessible spaces (and in least one if there are fewer than eight accessible spaces) is designated as "van accessible." 28 C.F.R. Pt. 36, App. A (ADAAG § 4.1.2(5)(b)). The "van accessible" spaces must be 96 inches wide, have a 98-inch minimum height clearance, and must be served by an "access aisle" that is 96 inches wide and that is designated as "van accessible." Id. (ADAAG § 4.6).

The accessible spaces required by ADAAG may be dispersed among multiple lots with accessible entrances, but should be located closest to the accessible entrance(s) to the building or to the lot entrance if no particular building is served. 28 C.F.R. Pt. 36, App. A

(ADAAG § 4.6.2). Also, the spaces should be on an accessible route that has, if necessary, a curb cut.

If the public accommodation is a facility that provides medical care and other services for individuals with mobility impairments, the parking requirements are different under ADAAG. Outpatient units and facilities must have 10 percent of their total number of parking spaces accessible. Units and facilities that specialize in treatment or services for individuals with mobility impairments must have 20 percent of their total number of parking spaces accessible. 28 C.F.R. Pt. 36, App. A (ADAAG § 4.1.2(5)(d)).

Similar to public accommodations, state and local governments have obligations under Title II of the ADA to assure that their facilities are accessible to people with disabilities. With respect to facilities constructed prior to January 26, 1992 state and local governments must make sure that their programs are accessible when viewed in their entirety. 42 U.S.C. § 12132; 28 C.F.R. § 35.150. This does not require that all state and local government offices and facilities must be accessible (including having accessible parking) as long as people who people have access to the program and services provided. However, facilities constructed by state and local governments after January 26, 1992 must be accessible, which includes providing with the parking provisions required by ADAAG described above. 42 U.S.C. § 12132; 28 C.F.R. § 35.151.

Local governments which provide public parking areas, such as parking lots or metered parking in commercial districts, should also assure that those facilities include accessible parking spaces. The ADA does not, however, necessarily require a local government to waive meter fees for persons with disabilities, see Jones v. City of Monroe, 341 F.3d 474, 477-81 (6th Cir. 2003), though Pennsylvania law allows a one-hour grace period as described above in Section II.

V. COMPLAINT PROCEDURES

Any complaints regarding issuance or use of "Person with Disability" or "Severely Disabled Veteran" plates or placards should be directed to the Bureau of Motor Vehicles of Pennsylvania's Department of Transportation. If the Department denies your application for a "Person with Disability" or "Severely Disabled Veteran" plate or parking placard, you may request an administrative hearing to challenge that decision pursuant to the rules set out in 67 Pa. Code Ch. 491.

If you see vehicles that are parked illegally in spaces reserved for people with disabilities, you should call your local police department's non-emergency telephone number. You should have the license plate number of the illegally parked vehicle, and the date, time and location of the violation.

If you have asked for a reserved parking space at your place of employment as an accommodation for your disability, your employer rejected your request, and you believe that his rejection violated the ADA because the requested accommodation was "reasonable," you must file a complaint within 300 days with the United States Equal Employment Opportunity Commission ("EEOC") or within 180 days with the Pennsylvania Human Relations Commission ("PHRC"). For more information on filing a complaint with the EEOC contact 800-669-4000 (voice) or 800-669-6820 (TDD) or visit its web site at www.eeoc.gov. If the EEOC does not resolve the matter after investigation, you may file a lawsuit seeking appropriate relief (such as backpay, reinstatement, and damages).

If you believe that a public accommodation or a state or local government is not complying with the ADA's requirements with respect to parking for people with disabilities, you may file a complaint under the ADA with the United States Department of Justice (DOJ), Civil Rights Division, 950 Pennsylvania Avenue, N.W., Disability Rights Section - NYAV, Washington, D.C. 20530. Information about filing a complaint with DOJ is available on its website at www.usdoj.gov/crt/ada/t3compfm.htm or you can call DOJ's

ADA Information Hotline at 800-514-0301 (voice) or 800-514-0383 (TDD). Alternatively, you may file a private lawsuit under the ADA.

If you are unable to secure parking accommodations at your residence, you may file a complaint under the Fair Housing Act with the United States Department of Housing and Urban Development (HUD) by contacting HUD at (215) 656-0663 ext. 3260 or (888) 799-2085 (voice) or (215) 656-3450 (TDD) or you get information online at HUD's website, www.hud.gov. You also can file a lawsuit in federal court to challenge violations of the Fair Housing Act.

To obtain further information concerning parking issues, you can contact the intake system of the Disability Rights Network of Pennsylvania at 800-692-7443 (voice) or 877-375-7139 (TDD).

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