



EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

April 12, 2006

EXECUTIVE MEMORANDUM NO. 06-02

TO: All Department and Agency Heads

SUBJECT: Access to State Government by Persons with Disabilities

This memorandum acts as a reminder that the following Administrative Directives are still in effect:

- 97-01 Responsibility for Americans with Disabilities Act Coordination and Implementation,
- 97-02 Communication Access for Persons with Disabilities to Programs, Services, and Activities of the State of Hawaii,
- 97-03 Non-Discrimination to Programs, Services, and Activities of the State of Hawaii on the Basis of Disability,
- 98-01 Reasonable Accommodation for Persons with Disabilities, and
- 98-02 Facility Access.

This Administration affirms that the State of Hawaii, as an employer and operator of government services, will continue to meet the needs and civil rights of individuals with disabilities through compliance with the Americans with Disabilities Act (ADA), Public Law 101-336. As stated in the aforementioned Administrative Directives, we remain committed to our legal obligation to provide equal access in regard to employment, programs and services of State government, and ensuring effective communication for persons with disabilities in the State of Hawaii.

With the Disability and Communication Access Board (formerly the Commission on Persons with Disabilities) as the ADA Coordinator for the Executive Branch of State government, the State developed and implemented uniform policies concerning the:

- a. Development and maintenance of State Departments' and agencies' self-evaluation and transition plans.
- b. Coordination and implementation of ongoing training sessions for managers and other State employees on meeting the requirements of the ADA in the areas of employment, programs and services, and facilities. In 2005, the Disability and Communication Access Board coordinated a series of trainings in these topic areas, including communication access, through the Department of Human Resources Development. The demand is primarily in the area of employment, so only the employment trainings will be offered again in 2006.
- c. Provision of technical assistance on facility design by reviewing all plans and specifications for the construction, reconstruction, and alterations of all State facilities or facilities constructed on behalf of the State for access to persons with disabilities (consistent with the requirements of Hawaii Revised Statutes §103-50).
- d. Provision of information and referral in response to requests for technical guidance and assistance to resolve specific issues relating to access to facilities, programs, services and benefits, or employment issues. Assistance consists of general advice, guidance, and research, when necessary, but will not consist of legal opinions. In the area of employment, technical assistance on specific applicant inquiries or grievances will continue to be coordinated and forwarded to the departmental ADA Coordinator and/or the Department of Human Resources Development, as appropriate.
- e. Provision of voluntary review of current form, notices, etc., for nondiscriminatory language.
- f. Dissemination of newly issued ADA guidelines or rules to Departments and agencies.
- g. Assurance that existing State of Hawaii manuals pertaining to the ADA (e.g., State of Hawaii Manuals on Reasonable Accommodation and Programs and Services) are updated and current.
- h. Development and maintenance of web sites with current publications and other information relating to ADA compliance.
- i. Provision of names of assigned Departmental and agency personnel, as ADA Coordinators, to the Disability and Communication Access Board for maintenance of an updated list.

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- j. Hiring of qualified Communication Access Providers (interpreters and captioners) from the Disability and Communication Access Board's list to ensure effective communication for persons with disabilities to access government services.
- k. Provision of technical assistance related to ongoing compliance with the ADA is available from the Disability and Communication Access Board.

The State Disability and Communication Access Board shall continue to be responsible for the overall Americans with Disabilities Act compliance and coordination efforts for the Executive Branch of State government.

Each Department and agency head shall continue its responsibility and effort to provide equal opportunities to individuals with disabilities in the provision of programs and services, equal access to employment, and effective communication in all aspects of State government.

LINDA LINGLE

Attachments



EXECUTIVE CHAMBERS

HONOLULU

BENJAMIN J. CAYETANO
GOVERNOR

August 28, 1997

ADMINISTRATIVE DIRECTIVE NO. 97-01

TO: All Department and Agency Heads

SUBJECT: Responsibilities for Americans with Disabilities Act Coordination and Implementation

The State of Hawaii, as both an employer and operator of government programs, services, or benefits, is committed to meeting the needs and civil rights of individuals with disabilities through compliance with the Americans with Disabilities Act, P.L. 101-336. To achieve this reality, I am implementing a multi-pronged approach which calls upon the full participation and commitment of all Departments and agencies as follows:

1. The State of Hawaii shall develop uniform policies concerning the following, issued over the Governor's signature, including but not limited to:
 - a. Nondiscrimination on the basis of disability status,
 - b. Effective communication access and use of sign language interpreters,
 - c. Program access for government,
 - d. Reasonable modification of policies, practices, and procedures.
2. The Commission on Persons with Disabilities shall coordinate, monitor, and establish timeframes for all compliance and outreach activities which are not under litigation for the Executive Branch of State government. Activities shall include:
 - a. Assisting Departments and agencies in completing or updating their self-evaluation and transition plans.

- b. Conducting and/or coordinating ongoing training sessions for managers and other key staff on meeting the requirements of the Americans with Disabilities Act (ADA) in the areas of employment, programs and services, and facilities.
- c. Providing technical assistance on facilities design by reviewing all plans and specifications for the construction, reconstruction, and alteration of all State facilities for access to persons with disabilities (consistent with the requirements of Hawaii Revised Statutes §103-50).
- d. Providing information, research, and referral in response to requests for technical guidance and assistance to resolve specific problems relating to access to facilities, programs, services and benefits, or employment issues. Assistance will consist of general advice, guidance, and research, when necessary, but will not consist of legal opinions. In the area of employment, technical assistance on specific applicant inquiries or grievances will continue to be coordinated and forwarded to the departmental ADA Coordinator and/or the Department of Human Resources Development, as appropriate.
- e. Providing voluntary review of current forms, notices, etc., for nondiscriminatory language.
- f. Updating Departments and agencies on newly issued guidelines or rules.
- g. Updating existing State of Hawaii manuals pertaining to the ADA (e.g., State Reasonable Accommodation Manual).

A staff person of the Commission on Persons with Disabilities shall be designated as the primary contact within the Commission for State government (State "ADA Coordinator") particularly to undertake activity 2a.

3. Each Department or agency shall designate one or more individuals to be responsible for:
 - a. Completion of the self-evaluation and transition plan, including updating as needed,
 - b. Coordination of compliance with the employment provisions of the ADA,
 - c. Coordination of compliance with the programs and services requirements of the ADA.

Coordination of compliance with the facilities requirements of the ADA (consistent with the requirements of Hawaii Revised Statutes §103-50).

The name(s) of the designated individuals shall be provided to the Commission.

4. Each Department and agency shall complete a self-evaluation and transition plan as required by the ADA. A copy shall be maintained for public inspection in the Office of the Director of each Department. A copy shall also be provided to the Commission. Departments may choose to have multiple self-evaluations and transition plans, depending on the organization of their programs and services (ex: Highways, Airports, Harbors within the Department of Transportation).

Attached agencies are responsible for ensuring compliance independently unless negotiated with their respective Departments to be included in their self-evaluation and transition plans.

Each Department and agency will develop, implement, and enforce a grievance procedure to meet the requirements of the ADA. The grievance procedure may be integrated into other Department and agency grievance procedures. This procedure may be used by anyone who wishes to file a complaint alleging discrimination on the basis of disability in employment practices and policies or the provision of services, activities, or programs of the State.

5. All Departments and agencies are responsible for capital improvement projects and shall develop a schedule for project managers and building inspectors to receive training on the design and construction requirements of the ADA.
6. The Department of Accounting and General Services shall develop guidelines to ensure privately owned buildings and facilities meet the ADA requirements before being leased by a Department. The guidelines shall be disseminated for adoption by other agencies also responsible for initiating leases.
7. The Department of the Attorney General shall coordinate and handle all legal responses to formal ADA lawsuits to ensure a consistent Statewide response to plaintiffs. A representative of the Attorney General shall inform the Commission of any ongoing ADA-related litigation to ensure consistency with the technical assistance being provided by the Commission. This clarifies that Departments are only required to notify the Department of the Attorney General about formal lawsuits, not other types of ADA disputes, like administrative complaints and grievances.
8. The Department of Human Resources Development will incorporate ADA disability-related guidelines into their generic Selection Handbook for Department supervisors and hiring authorities.
9. The Department of Human Resources Development will provide policy and technical guidance in the employer obligations of Title I regarding all human resource matters including, but not limited to, medical suitability determinations, placement of disabled employees, personnel laws and rule interpretations, bargaining unit contract interpretations, and pre- and post-offer hiring and placement activities.
10. The Department of Human Resources Development shall incorporate a series of training classes on the ADA (instructors from the Commission on Persons with Disabilities) within their semi-annual schedule to state employees and managers.


BENJAMIN J. CAYETANO



EXECUTIVE CHAMBERS
HONOLULU

BENJAMIN J. CAYETANO
GOVERNOR

November 5, 1997

ADMINISTRATIVE DIRECTIVE NO. 97-02

TO: All Department and Agency Heads

SUBJECT: Communication Access for Persons with Disabilities to Programs, Services, and Activities of the State of Hawaii

The State of Hawaii shall ensure that all individuals with disabilities have communication access to programs, services, and activities of the State of Hawaii which are equally effective as that provided to individuals without disabilities. To meet the requirements of this directive, departments and agencies of the State of Hawaii shall provide specific communication access in the form of auxiliary aids or services upon the request of a qualified individual with a disability.

Auxiliary aids include services, equipment, or devices that provide effective communication access to people with disabilities. They may include, as examples, qualified Sign Language interpreters; real-time captioning services; open and closed captioning services; print scanners; readers; or materials in accessible formats such as large print, audio cassette, or Braille.

In choosing an auxiliary aid or service, departments and agencies shall give primary consideration to the aid or service requested by the individual, unless the department or agency can show that another means can be provided which is as effective as communication provided to others.

When securing the services of Sign Language interpreters or other communication assistants, departments and agencies shall follow the guidelines for the "Utilization of Sign Language/English and Oral Interpreter Services," and pursuant to Hawaii Administrative Rules Chapter 11-218, as adopted by the Hawaii State Coordinating Council on Deafness.

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When departments and agencies engage in telephone communications with the public, equally effective communication with individuals with disabilities, including hearing and speech disabilities, shall be provided through the use of a text telephone or the telephone relay service. Departments and agencies shall ensure that all employees are trained in the proper use of both a text telephone and the telephone relay service. Those departments and agencies that provide direct telephone access to emergency services, operate public hot lines, or provide information where timeliness and confidentiality are critical, must have a text telephone; reliance on the telephone relay service is not considered to be an acceptable alternative.

Departments and agencies may establish reasonable timeframes for individuals to request the provision of auxiliary aids or services in order to respond adequately and fill those requests.


BENJAMIN J. CAYETANO



EXECUTIVE CHAMBERS

HONOLULU

BENJAMIN J. CAYETANO
GOVERNOR

November 5, 1997

ADMINISTRATIVE DIRECTIVE NO. 97-03

TO: All Department and Agency Heads

SUBJECT: Non-Discrimination to Programs, Services, and Activities of the State of Hawaii on the Basis of Disability

The State of Hawaii shall ensure that no qualified individual with a disability is excluded from participation in, denied the benefits of, or is otherwise subjected to discrimination by any program, service, or activity of the State of Hawaii, on the basis of disability. Individuals with disabilities must be assured an equal opportunity to participate in the programs, services, and activities offered by State government departments and agencies. This right includes not only the opportunity to participate, but an opportunity that is equally effective as that provided to individuals without disabilities.

Services and programs of the State of Hawaii shall be delivered in the most integrated setting appropriate to the individual's level of need. The integration of individuals with disabilities is the goal of the law and our goal.

In the delivery of programs, services, and activities, the State of Hawaii departments and agencies shall not use eligibility criteria that screen out or tend to screen out individuals with disabilities unless such eligibility criteria are necessary for the provision of the program, service, or activity.

Furthermore, the State of Hawaii departments and agencies shall not have policies that are discriminatory or engage in actual practices that are discriminatory. When implementing actions which are required to provide equal access, departments and agencies shall not assess a surcharge on individuals with disabilities to offset the costs associated with providing the access.

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November 5, 1997
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Policies, practices, and procedures of departments and agencies must be modified when necessary to avoid discrimination against individuals with disabilities, unless to do so would fundamentally alter the nature of the program, service, or activity or create undue administrative or financial burdens.


BENJAMIN J. CAYETANO



EXECUTIVE CHAMBERS

HONOLULU

BENJAMIN J. CAYETANO
GOVERNOR

January 5, 1998

ADMINISTRATIVE DIRECTIVE 98-01

TO: All Department and Agency Heads

SUBJECT: Reasonable Accommodations for Persons With Disabilities

This directive supersedes Executive Memorandum 92-02.

The State of Hawaii is committed to provide equal opportunity in State employment to qualified individuals with disabilities. Our commitment to equal opportunity includes a legal duty to provide reasonable accommodation to facilitate the employment of qualified individuals with disabilities.

Reasonable accommodation represents a logical adjustment made to the application process, in the work environment to enable the person to perform the essential functions of the job, or in the benefits of employment.

Reasonable accommodation includes, but is not limited to, making existing facilities readily accessible to and usable by individuals with disabilities, job restructuring, part-time or modified work schedules, reassignment to vacant positions, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations.

As a major employer, State departments and agencies shall follow procedures established through the most current version of the "Reasonable Accommodation for Employees Manual" to provide equal employment opportunity to employees and job applicants with disabilities through providing reasonable accommodations.

The State Commission on Persons with Disabilities shall be responsible for the preparation of the Manual. The Commission and the Department of Human Resources Development shall provide technical advice on providing reasonable accommodations to qualified persons and employees with disabilities, as outlined in the Manual.

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January 5, 1998
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Each department or agency head, as an appointing authority, shall provide equal employment opportunities, make reasonable accommodations, use departmental resources, use alternative ways of meeting personnel needs, and develop or modify programs to meet these goals. When the person with a disability acting as an applicant or employee engages in a program, service, or activity of the State of Hawaii, the department or agency sponsoring the activity shall have primary responsibility for providing and paying for the accommodation.


BENJAMIN J. CAYETANO



EXECUTIVE CHAMBERS
HONOLULU

BENJAMIN J. DAYETANO
GOVERNOR

March 19, 1998

ADMINISTRATIVE DIRECTIVE NO. 98-02

TO: All Department and Agency Heads
SUBJECT: Facility Access

This directive supersedes Administrative Directive 92-02.

New Construction and Alteration of State Buildings and Facilities

All new construction and alterations of buildings and facilities by the State, or on behalf of the State, shall be fully accessible to and usable by people with disabilities. Full access to and usable by people with disabilities shall mean conformance with the design requirements set forth in the Americans with Disabilities Act Accessibility Guidelines (ADAAG), as adopted and amended by the State of Hawaii Architectural Access Committee.

To implement the requirements for new construction and alteration, the State of Hawaii shall adhere to the legal requirements of §103-50 and §103-50.5, Hawaii Revised Statutes (HRS) and corresponding administrative rules, which provides for the review of state and county construction projects by the Commission on Persons with Disabilities and the issuance of variances by the Architectural Access Committee.

Each department or agency overseeing construction projects shall appoint a representative to serve as its liaison with the Commission on Persons with Disabilities for all construction by or on behalf of the department or agency. The representative shall ensure that all current facility construction documents and all master plans for development are submitted to the Commission for review and recommendations to ensure that accessibility provisions are incorporated at conceptual, schematic, and final stages of the project development.

Existing State Buildings and Facilities

Programs and activities of State agencies occupying State office space/buildings not under construction or alteration but existing prior to the enactment of the Americans with Disabilities Act (ADA), shall, when viewed in their entirety, be accessible to all persons. This will be achieved through the upgrading of all buildings serving the public to meet minimum facility requirements for program access, or shall be achieved programmatically by the user agency.

The Commission on Persons with Disabilities and the Department of Accounting and General Services shall establish policies and procedures for existing office space which shall identify minimum requirements for all existing facilities. Each Department shall develop a transition plan, consistent with the requirements of the ADA, to upgrade existing facilities to the minimum requirements for program access.

Private Facilities Leased by the State of Hawaii

Programs and activities of State agencies occupying leased office space/buildings shall, when viewed in their entirety, be accessible to all persons. This will be achieved through the leasing of a building which meets minimum facility requirements for program access, or achieved programmatically by the user agency.

The leases of privately-owned facilities which are leased by the State of Hawaii for the operation of programs and services shall be executed so as to ensure program access. The Department of Accounting and General Services shall establish policies and procedures for leasing office space which shall set forth minimum requirements prior to entering into a lease. Other departments or agencies which lease space independent of the Department of Accounting and General Services shall follow criteria which equals or exceeds the requirements set forth by the Department of Accounting and General Services.

State-Owned Facilities Leased to Private Entities

When the State is the lessor of a facility or site, the department or agency responsible for the facility or site shall negotiate with the lessee the responsibilities for compliance with the Americans with Disabilities Act, as it applies to the facility or site. Those responsibilities shall be specified in the lease document.


BENJAMIN J. CAYETANO