



ADA Live! EPISODE 7: ACCESS TO POOLS

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Presenters: Barry Whaley, MLM Associates, Inc. and University of Kentucky Human Development Institute

Donna DeStefano, Tennessee Disability Coalition

Host: Sally WEISS, Southeast ADA Center

VOICE-OVER ANNOUNCER: Blog Talk Radio. (Music) Welcome to WADA ADA Live! Talk radio. Brought to you by the Southeast ADA Center, your leader for information, training and guidance on the Americans with Disabilities Act. And here's your host.

SALLY WEISS: Good afternoon, and welcome to WADA ADA Live! On behalf of the Southeast ADA Center, the Burton Blatt Institute at Syracuse University, and the ADA National Network, we're pleased to welcome you to the seventh installment of ADA Live! The topic of today's show is access to pools.

ADA Live! listening audience, you can submit your questions about access to pools at any time on ADAlive.org. My name is Sally Weiss, and I am Director of Knowledge Translation for the Southeast ADA Center. Now I would like to introduce today's speakers. Barry Whaley from MLM Associates and the University of Kentucky Human Development Institute. And Donna DeStefano, from the Tennessee Disability Coalition. Hi, Barry and Donna. Thank you for joining us to talk about access to pools.

BARRY WHALEY: Hi, Sally.

DONNA DeSTEFANO: Hi, Sally.

SALLY WEISS: Here is my first question for you. Why is pool access so very important?

DONNA DeSTEFANO: Well, Sally, swimming is a really important activity for many people. People swim for all sorts of reasons. Because it's fun. It's great exercise, and it helps relieve stress and it helps people recover from accidents. Today swimming pools are not the luxury that they used to be years ago. They're really a part of American life. People with disabilities shouldn't have to watch from the sidelines while their friends and families have fun in pools.

The bottom line for people with disabilities, they have the same rights as everyone else to use swimming pools and it's really all about equal access and equal opportunities to enjoy the pools.

SALLY WEISS: Thank you. What are the key issues you've heard about pool access?

BARRY WHALEY: First, Sally, let me say that I spend a lot of time around swimming pools. I'm a lifelong competitive swimmer, and I'm a high school and college swimming referee, so I have a natural love for aquatic sports. Both Donna and I received calls from people with disabilities, as well as businesses, about pool access.

And the upshot is people with disabilities want to be able to independently use pools in their community and when they travel. They've expressed frustration about not being able to have equal access.

And this issue has really become a hot button for pool operators, especially in the hospitality industry. They have expressed some concern about the cost of pool accessibility and especially retrofitting older pools. They have also expressed some safety issue concerns, particularly with lifts becoming an attractive nuisance with youngsters.

SALLY WEISS: Thank you, Barry. What are the rules about pool access?

DONNA DeSTEFANO: Well, Sally, in 2010 the Department of Justice published updated regulations under the Americans with Disabilities Act – also known as the ADA - not to be confused with the American Dental Association. Ha, ha!

These regulations adopted the 2010 Standards for Accessible Design, which for the first time contained specific accessibility requirements for a number of types of recreational facilities, including swimming pools, wading pools and spas. Yay! This is fabulous. At the risk of sounding a bit wonky, for newly constructed or altered pools, wading pools and spas, the standards require an accessible way for people with disabilities to enter and exit the pool. And they provide technical specifications for this access.

So take pool lifts for example. The standards provide information on the location, the size of the seat, the lifting capacity of the lift and the clear floor space requirements.

For existing swimming pools, ones that were built before the effective date of the new rule - which was on or after March 15th, 2012, the standards provide a guide for achieving accessibility.

Basically, businesses are required to remove accessibility barriers when doing so is readily achievable. So what's readily achievable you ask?

Readily achievable means easily accomplished or being able to carry out the modification without much difficulty or expense.

The first priority that folks have in removing barriers is to remove the barriers that prevent somebody from getting into a facility.

A second priority is to provide access to where the – quote – “goods and services” - end quote - are provided.

So, when we're talking about a swimming facility, this means providing access to the pool area.

The Department of Justice recommends developing an implementation plan designed to achieve compliance with the ADA's barrier removal requirements over time. It recognizes that that can't always be done immediately.

The obligation to remove barriers is an ongoing obligation. A situation that is not readily achievable today may well change in the future.

SALLY WEISS: Barry, how do you determine if something is readily achievable?

BARRY WHALEY: There are a number of factors that you need to take into account to determine what is readily achievable. For instance, when I consult with business we talk about how much it will cost to make the modifications or how much money the facility has available to them. I also ask about how many employees might work at the business and especially how those modifications might affect the financial resources of the business.

Of course, safety is always paramount when making any modifications to a swimming facility.

And we also talk about if changes are made, what's the overall impact on the facility? With hotels and motels in particular, we talk about what the relationship of an entity would be to the parent corporation. We look at geographic separateness of those entities.

Speaking of the parent corporation, we talk about the financial resources the parent corporation may have and what the influence on those operations - what the influence of those finances might be on the operation of the local entity.

SALLY WEISS: Thank you. ADA Live! listening audience, if you have a question about access to pools, you may submit it at any time at ADALive.org. And now, a word from our sponsors.

VOICE-OVER ANNOUNCER: MLM Associates Inc. provides information, training and guidance on the Americans with Disabilities Act and disability access tailored to the needs of business, government and individuals at local, state and regional levels. MLM Associates is located in Louisville, Kentucky, and serves as the Kentucky State Affiliate of the Southeast ADA Center, a member of the ADA National Network. For answers to your ADA questions, contact the ADA National Network at 1-800-949-4232.

VOICE-OVER ANNOUNCER: Tennessee Disability Coalition provides information, training and guidance on the Americans with Disabilities Act and disability access tailored to the needs of business, government and individuals at local, state and regional levels. Tennessee Disability Coalition is located in Nashville, Tennessee, and serves as the Tennessee State Affiliate of the Southeast ADA Center, a member of the ADA National Network. For answers to your ADA questions, contact the ADA National Network at 1-800-949-4232.

SALLY WEISS: Welcome back to ADA Live. We are talking with Barry Whaley and Donna DeStefano about access to swimming pools.

One listener asked, can we use a portable pool lift?

BARRY WHALEY: That's a real interesting question, because the regulations, Sally, don't address portable versus permanent lifts. The language of the regulations specifically discuss fixed and non-fixed lifts. According to the 2010 standards, pool lifts are required to be fixed. What that means is they have to be attached to the pool deck in some way.

An entity could very well use a portable lift if the modern specifications for the lift are met and most importantly, if it's secured to the pool deck.

Often I'll see modifications where a sleeve is sunk into a pool deck with mounting hardware that secures a portable lift so that it becomes a fixed lift.

I think as a rule of thumb, if a tool is required to secure or remove the lift from the pool deck, then it would be considered a fixed lift.

DONNA DeSTEFANO: And, Sally, there are a few other key points that we always like to make about pool lifts. Once a lift is provided, it has to remain in place and be operational during all times the pool is open to guests.

The lifts need to be maintained. That means they need to be free of rust. The batteries need to be fully charged so that they're usable.

And a pool lift can be stored when the pool is closed. However, it must be at the pool side, fixed to the pool deck and fully operational during all open pool hours. Again, it's all about equal access.

SALLY WEISS: Thank you. A second listener asked, "We have a pool, a hot tub and a Jacuzzi. Can we buy one lift and share it?"

BARRY WHALEY: In new construction, each pool or spa has to have an accessible entry and exit. But when we're talking about existing pools, whether each pool or spa needs a lift is dependent on – as we've talked about before - whether it's readily achievable to do so. You know, I've had some pool owners, who after consulting with them have said, well I just can't make this pool accessible so I'm just going to close it. And really that isn't necessary, Sally.

We advise entities to make a plan to purchase a lift or other entry when it's readily achievable and financially viable to do so.

DONNA DeSTEFANO: Sally, there are a couple of other things about the sharing of lifts. First of all, sharing pool lifts between pools can pose a real safety risk to swimmers with disabilities.

If a lift has been moved to another pool and a person is in the first pool, they are going to have to wait. They may need to get out and it could create some dangers for that person.

Additionally, in terms of sharing lifts, it really would unreasonably require people with disabilities to rely on staff assistance to find the lift, to move the lift, to set it up each time that somebody wants to go into a pool. And that's not equal access.

SALLY WEISS: Thank you. Here's another question. I'm afraid of kids horsing around on the lift. Can I keep a cover on it and post a sign at the pool that states to come to the front desk to ask for assistance?

BARRY WHALEY: This is a very typical question we get. Pool lifts are supposed to be in place and they're supposed to be operational whenever that pool is open. The intent of the regulations, as we mentioned before, is to ensure that there is equal access and independent access to the pool.

So, you know, allowing an entity to store a lift and take it out only when necessary defeats the intent of the regulations. Additionally, staff may be busy and they may be unavailable to set up the lift. And also, with stored lifts, we run into more maintenance issues.

The biggest problems I have seen lately are lifts that are in place, but are covered and are not ready for use. And if you're a wheelchair user and you have to independently lift that cover vertically off the lift, that's a very difficult thing to do.

DONNA DeSTEFANO: Sally, the Department of Justice has always allowed for legitimate safety requirements to be taken into account in determining whether an action is readily achievable. The Department has made it very clear, however, that speculation or unsubstantiated generalizations people make about safety concerns or risks, they cannot form the basis of a legitimate safety requirement.

Back in 2002, when the Access Board first published their regulations, they noted that pool lifts had been commercially available for over 20 years. We're now talking over 30 years. So they've been around a while. The Access Board noted that they were not aware of any incidence of injury or accidents involving pool lifts.

And they also did not see any evidence that showed pool lifts are any less safe than any other component of a pool facility when they're used inappropriately.

SALLY WEISS: Thank you. ADA Live! listening audience, if you have a question about pool access, you may submit at ADAlive.org. And now, a word from our sponsors.

VOICE-OVER ANNOUNCER: The ADA National Network provides information, guidance and training on the Americans with Disabilities Act tailored to meet the needs of business, government and individuals at local, regional and national levels. The ADA National Network consists of ten regional ADA centers in the United States providing local assistance to ensure that the ADA is implemented wherever possible. The ADA National Network is not an enforcement agency, but a helpful resource supporting the ADA's mission to make it possible for everyone with a disability to live a life of freedom and equality.

SALLY WEISS: Welcome back to ADA Live! We're talking with BarryWhaley and Donna DeStefano about access to swimming pools.

We have a number of questions in the queue. Here's the first one. My pool has 450 linear feet. What are the different ways I can provide access?

BARRY WHALEY: If we're talking about 450 linear feet, we're talking about a large pool. The regulations make a distinction between small pools, and small pools are 300 linear feet or less, and larger pools that are 300 linear feet or more.

When we are discussing smaller pools, entities have to have either a pool lift or a sloped entry. For larger pools, larger pools have to have a primary entry, which again can be either a lift or a sloped entry.

But then, a larger pool also has to have a secondary entry, and that can be another lift, for instance, or it could be a sloped entry. It also can be a transfer wall, a transfer system or pool stairs. And I want to point out that a pool stairs isn't the same as a pool ladder.

Additionally, there are specific regulations for water features. For lazy rivers, wave pools, other limited entry pools. And, also, many facilities have wading pools or kid's pools. And wading pools have to have a sloped or zero depth entry.

And also with hot tubs, it should be pointed out, hot tubs and spas have to have a lift, a transfer wall or a transfer system.

SALLY WEISS: Can you explain what a transfer wall is and how it's used?

DONNA DeSTEFANO: Well, as Barry said, transfer walls are secondary access points for the larger pools. And a transfer wall is a smooth wall that the user can access from a chair.

It's 16 to 19 inches above a pool deck. A couple of the specifications from the standards themselves, the wall must have one or two grab bars to allow the user to slide into the pool and walls are a minimum of five feet long.

SALLY WEISS: Thank you. Barry, you said that pool stairs are different than the pool ladder. Can you explain that?

BARRY WHALEY: Right. Well, pool stairs are different than a ladder due to several features. Pool stairs, and again, as we pointed out, it's a secondary means of access. Unlike a ladder, which is vertical and requires climbing, a pool stairs essentially looks like a stairs. It has a uniform riser height and tread options, and those treads should be at least 11 inches deep. And the stair risers, the vertical part of the riser has to be a closed entity.

And treads have to be permitted to have a slope of no more than 1 to 48. We're talking about 1 inch of rise, Sally, for 48 inches of slope. Also they have to have handrails, and those handrails are between 20 inches and two feet apart.

The regulations also recommend providing for visual contrast at the leading edges of the treads so people with low vision can safely use them as well.

SALLY WEISS: Donna, can you explain what a sloped entry is?

DONNA DeSTEFANO: Certainly. As Barry said, a sloped entry is one of the two primary pool accessibility options. A sloped entry is basically a ramp used to enter into a pool.

In new construction, they're often readily built right into the design of the pool. Some of the specific requirements for sloped entries, they have to be three feet wide and enter into a depth of 2 feet to 2 and a half feet. The sloped entries also require handrails on both sides.

SALLY WEISS: The next question we received. Do I have to have my staff help someone with a disability get into the pool?

BARRY WHALEY: No. Not in terms of physical assistance. We mentioned earlier that the intent of these regulations is to ensure equal access to facilities. Regardless of the water attraction or the type of entity, what we're looking for is independent operation. That's necessary for both the individual using the equipment and most importantly for the safety of that user as well.

DONNA DeSTEFANO: And Sally, there are a few other things that we always make sure that pool staff realize, that they need to know. They really need to be able to explain to people what the accessible features, whether accessible features are available in the pool area. And they need to know how to operate the pool lifts when they're requested by somebody.

They also need to know what to do if a pool lift malfunctions, because that does happen. They should also be aware of necessary safety considerations and ensure that the equipment is available whenever the pool is open.

And finally, like other pieces of equipment, they really need to focus on properly maintaining the equipment.

SALLY WEISS: We have two questions about pool lifts. The first one is, what elements must a pool lift have?

BARRY WHALEY: Well, Sally, pool lifts have improved dramatically from the old crank and swing lifts that we saw 20-25 years ago. Today many lifts are electronically controlled and they are battery operated. So they can be operated either with a hand held device or they can be operated from the lift's boom. Lifts are required now to have foot rests. That's new in the regulations, but they're not required to have armrests.

SALLY WEISS: The second question: What are the requirements for a pool lift entering the water?

BARRY WHALEY: Well, lifts have to be in an area of the pool where there is roughly 4 feet of water, and this should allow the user then to be lowered no more than 1.5 feet, and that helps someone establish buoyancy in the water. On the deck side, lifts have to be placed in an area that is 16 to 19 inches from the pool edge.

There are some other specifications. There has to be a foot of space behind the boom or the mast of the lift. There has to be three feet of available space to the side. And then also there has to be four feet in front of the lift. That's - what I'm talking about that it's in the ready position, Sally.

SALLY WEISS: Our next question is, "Must a sloped entry have handrails?"

DONNA DeSTEFANO: Well, that's a yes and a no. Yes, at least two handrails should be provided on a sloped entry, but we do have a couple of exceptions. Handrail extensions are not required at the bottom landing of a sloped entry. That could be - create a really bad underwater hazard if somebody swims into that.

Where there is a sloped entry for wave action pools, lazy rivers, sand bottom pools and other pools where the user access is limited to just one area, handrails are not required to comply with the clear width requirements.

And finally, sloped entries in wading pools are not required to provide handrails.

SALLY WEISS: And now, a word from our sponsors.

VOICE-OVER ANNOUNCER: The Southeast ADA Center is your leader in providing information, training and guidance on the Americans with Disabilities Act and disability access tailored to the needs of business, governments and individuals at local, state and regional levels. The Southeast ADA Center, located in Atlanta, Georgia, is a member of the ADA National Network and serves eight states in the Southeast region. For answers to your ADA questions, contact the ADA National Network at 1-800-949-4232.

SALLY WEISS: Welcome back to the last part of our ADA Live! program. We're talking with Barry Whaley and Donna DeStefano about access to swimming pools.

Here's a question. If I don't have an accessible locker, why do I need an accessible entry into my pool?

DONNA DeSTEFANO: Well, Sally, in the first place an entity should make every effort to ensure that all areas are fully accessible if it's readily achievable. And again, readily achievable [means] easily accomplished without much difficulty or expense.

However, if an entity cannot feasibly make an area accessible, it doesn't excuse that entity [from] denying access elsewhere. Again, it's all about equal access for people with disabilities.

SALLY WEISS: Thank you. The next question that we have - I have an outdoor water park. What are my requirements?

BARRY WHALEY: Water parks, Sally, represent the next generation in aquatic facilities. It's the aquatic industry's growth industry, if you will. Splash parks are required to have at least one sloped entry. In this instance, however, you don't need to have handrails.

Water playgrounds are required to have zero depth access and transfer access to the elevated sections of the park.

Interestingly, water slides don't have to be made accessible. However, the catch basin -- that area at the end of the slide -- must have an accessible deck.

Oftentimes we look at hot tubs. If there're multiple hot tubs in clusters, at least one hot tub in that cluster, or a total of 5% of the total hot tubs, has to be accessible.

SALLY WEISS: Thank you. Sounds like fun. Are there any tax credits or deductions to help me comply?

DONNA DeSTEFANO: Sally, I'm so glad you asked that question. Yes, there are. To assist businesses with complying with the ADA, Section 44 of the IRS Code allows a tax credit for small businesses. So the credits are available to businesses that have total revenues of \$1 million or less from the previous tax year or 30 or fewer full time employees.

The credit can cover 50% of eligible access expenditures in a year, up to \$10,250. So it would be a maximum credit of \$5,000, and the credits can be used for a variety of things. They can be used to offset the cost of undertaking barrier removal and alterations to improve accessibility to get into a place, to get around a place.

They can cover the cost of providing accessible formats such as Braille, large print and audio tapes.

And they can also be used to purchase certain kinds of adaptive equipment and that's just a few of the examples. The credits themselves are very, very helpful.

BARRY WHALEY: Also, Donna. Section 190 of the IRS code will allow for a tax deduction for all businesses, and that's regardless of the size of the business.

And this tax deduction has a maximum deduction of \$15,000 per year. So it can be claimed for expenses incurred in barrier removal and alterations.

SALLY WEISS: More information about tax credits and tax deductions will be posted on ADAlive.org.

As we end, what is one key thought you want to leave people with?

BARRY WHALEY: Sally, swimming, aquatic sports -- they are a fabulous form of exercise. And especially the buoyancy of the water makes swimming an excellent activity for people who may have some limited mobility. The changes to the ADA really make swimming accessible for everybody.

DONNA DeSTEFANO: And Sally, I would like to say that people with disabilities should no longer have to sit on the sidelines. They should be able to join their friends and family and splash-splash away.

SALLY WEISS: At this time, I would like to thank our guest speakers, Barry Whaley and Donna DeStefano. And thank you, also, to our ADA Live! listening audience. The Southeast ADA Center is grateful for your support and participation in this series of WADA ADA Live! broadcasts. Remember, you may submit questions about any of our ADA Live! topics by going to ADAlive.org. If you have questions about the ADA, please contact your regional ADA Center at 1-800-949-4232. That's 1-800-949-4232. All calls are free and confidential.

Join us next month on the first Wednesday, May 7th, when we will be talking to Mary Morder from the Southeast ADA Center and Marilyn M. Self, Director of Disaster Readiness for the American Red Cross, about Emergency Shelter Preparedness.

See you next month on WADA ADA Live!

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VOICE-OVER ANNOUNCER: Thank you for listening to ADA Live! Talk radio. Brought to you by the Southeast ADA Center. Remember to join us the first Wednesday of each month for another ADA topic, and you can call 1-800-949-4232 for answers to your ADA questions.

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