



# Zimbabwe: Rights of People with Disabilities

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**ZIMBABWE**  
**RIGHTS OF PEOPLE WITH DISABILITIES**

**I. Summary: Comparison Between ADA 1990 and Zimbabwean Disabled Persons Act 1992**

The Americans with Disabilities Act 1990<sup>1</sup> is set forth in five titles. It has four main components that prohibit discrimination against disabled persons in these specified areas. It also includes an ancillary portion that covers miscellaneous matters. The four areas are:

- employment
- public services/transportation
- public accommodation and services operated by private entities
- telecommunications

The Zimbabwean Disabled Persons Act 1992<sup>2</sup> covers two main areas prohibiting discrimination against the disabled as follows:

- access to public premises, services, and amenities
- employment

**A. Enforcement, Penalties, and Sanctions Under the Two Statutes**

Under the Zimbabwean statute, section 10 imposes a fine not exceeding \$4,000 (Zimbabwean dollars) or imprisonment for a term not exceeding one year for failure to comply with adjustment orders or for wilful denial to admit any disabled person to any premises covered by the Act or denying to provide any services or amenities as required by this Act.

The ADA contains various enforcement sections including prohibition against retaliation and coercion. Enforcement under ADA in the context of various federal agencies with ADA responsibilities is covered below under.

**B. Administering Authority**

Under the Zimbabwean Disabled Persons Act, the National Disability Board, a single national entity through the Director for Disabled Persons Affairs, is the administering authority. The Minister of Public Services, Labor and Social Welfare, or any other minister appointed by the President is vested with rule-making powers.

Under the ADA, there are numerous federal agencies vested with ADA responsibilities, including:

- U.S. Department of Justice

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<sup>1</sup> §933, P.L. 101-336.

<sup>2</sup> 3 STATUTE LAWS OF ZIMBABWE, Ch. 17:01, 51-54 (1996).

- U.S. Equal Employment Opportunity Commission (EEOC)
- U.S. Department of Transportation, with respect to public transportation
- U.S. Federal Communication Commission (FCC), concerning telephone relay services
- U.S. Access Board, in regard to proposed design guidelines
- U.S. Department of Education, in relation to education issues
- U.S. Department of Health and Human Services, for health-related matters
- U.S. Department of Labor, as regards labor matters
- U.S. Department of Housing, for housing -related issues
- U.S. Department of Agriculture, concerning agricultural matters
- U.S. Department of the Interior, with respect to parks and recreation.

### **C. Rule-Making Powers**

The Attorney General of the United States under the ADA is the primary rule-making power. In Zimbabwe, the Minister of Public Service, Labor and Social Welfare or any other designated minister is the rule-making authority.

### **D. Scope of Legislation**

ADA covers some 43 million Americans in terms of those defined as having some form of disability or another. The Zimbabwean legislation extends to the entire population and does not quantify how many people in Zimbabwe suffer from any type of disability.

## **II. Comparative Analysis**

### **A. The Americans with Disabilities Act 1990**

The four main areas of ADA as seen above are:

- employment
- public services/transportation
- public accommodation and services operated by private entities
- telecommunications

Title V, the miscellaneous title, includes prohibition on retaliation and coercion.

Some 43 million Americans are defined as having some form of disability. Various federal agencies noted above including the Department of Justice have ADA responsibilities. The primary administering authority is the Attorney General.

#### **1. Title I: Employment (sections 101-108)**

##### **a) Prohibiting Discrimination**

Title I of the ADA prohibits discrimination by any employer, employment agency, labor organization,

or joint labor management committee (referred to in the Act as “covered entities”) against any qualified person with a disability in job application procedures, hiring or discharging, compensation, advancement, training, and other terms, conditions, and privileges of employment.

#### **b) Actions Considered Discriminatory**

A litany of actions deemed discriminatory include: limiting, segregating, or adverse classification of jobs; participating in contractual or other arrangements that may discriminate; using standards, criteria, or other methods of administration that may discriminate; excluding or denying equal jobs or benefits to a qualified individual; denying employment opportunities; utilizing qualification standards, employment tests, or other selection criteria that screen or tend to screen out individuals; failing to select and administer tests in employment in an effective manner; imposing pre-employment medical examination that tend to discriminate; requiring examinations that tend to discriminate; etc.

#### **c) Exemptions**

The ADA permits the following; therefore they are deemed as non-discriminatory:

- actions that are job-related and are consistent with business necessity as long as performance cannot be reached by a reasonable accommodation
- including a requirement that an individual not pose a direct threat to the health or safety of other individuals in the workplace
- containing requirements that an individual be not compelled to become a member of or conform to the tenets of a religious entity or employer

The ADA excludes from the definition qualified individual with disability any person who is currently engaged in the illegal use of drugs. Therefore, it permits a covered entity, as noted above, to take specified actions concerning the illegal use of drugs and the use of alcohol *vis-a-vis* the workplace. It also declares that for the purposes of this part of the law, a test to determine illegal use of drugs is not a medical condition.

#### **d) Directions**

The Secretary of Health and Human Services must publish annual updates and disseminate a list of diseases that are transmitted through food handling. Covered entities are permitted to refuse to assign a food handling job to an individual who has a disease as set forth on the list, if reasonable accommodation cannot be made.

#### **e) Enforcement**

Under Title I, the ADA makes the remedies outlined in the specified provisions of the Civil Rights Act of 1964<sup>3</sup> available to the Equal Employment Opportunity Commission (EEOC), the Attorney General, or any person alleging discrimination in contravention of the provisions of the Act.

#### **f) Coordination**

Section 107(b) requires agencies (such as those noted above with ADA responsibilities and also

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<sup>3</sup> P.L. 88-352, 78 Stat. 241

those agencies with enforcement authority for actions that allege employment discrimination under this Act and also under the Rehabilitation Act 1973)<sup>4</sup> to develop procedures that ensure non-duplication and prevent conflicting and inconsistent standards. The EEOC, the Attorney General, and the Office of Federal Contract Compliance Programs establish these coordinating mechanisms.

## **2. Title II: Public Services/Transportation (sections 201-205 and 221-246)**

This title can be divided into two parts. Sub-Title IIA covers prohibition against discrimination and other generally applicable provisions. Sub-Title IIB pertains to actions that are applicable to public transportation by public entities that are considered discriminatory. Sub-Title IIB could further be sub-divided into two parts one dealing with public transportation other than by aircraft or certain rail operations and the second portion that deals with public transportation by intercity and commuter rail.

### **a) Sub-Title A**

No qualified person with a disability can be excluded from participating in, denied the benefits of, or subjected to discrimination by a public entity which is defined as a State, an agency, political subdivision, or other instrumentality of a State or States, the National Railroad Passenger Corporation, and any commuter authority as defined in the Rail Passenger Service Act, 1970.<sup>5</sup>

The remedies and rights outlined in the specific provisions of the Rehabilitation Act 1973 are made available to any person alleging discrimination in violation of the provisions of the ADA.

Regulations issued under this sub-title as applicable are required to be consistent with certain coordinating regulations applicable to recipients of federal financial assistance under the Rehabilitation Act 1973. Furthermore, standards for facilities and vehicles covered by this sub-title are to be consistent with the minimum guidelines and requirements promulgated by the Architectural and Transportation Barriers Compliance Board (ATBCB).

### **b) Sub-Title B– Part I: Public Transportation Other Than by Aircraft or Certain Operations**

This section lists actions that are considered to be discriminatory concerning three areas:

- public entities operating fixed route systems, with an exception for historic vehicles
- paratransit as a complement to fixed route service systems, with consideration given to undue financial burdens
- public entities that operate demand responsive systems

### **c) Sub-Title B– Part II: Public Transportation by Intercity and Commuter Rail**

This section lists actions that are considered to be discriminatory with respect to intercity and commuter rail. One accessible car per train is required. Accessibility standards are also required to be included in regulations under this part and to be consistent with the ATBCB minimum guidelines.

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<sup>4</sup> P.L. 93-112, 78 Stat. 355

<sup>5</sup> P.L. 91-518, 84 Stat. 1327.

### **3. Title III: Public Accommodation and Services Operated by Private Entities (sections 301-310)**

Discrimination on the basis of disability in the enjoyment of any place of public accommodation is prohibited, including a list of actions that would be considered discriminatory. Discrimination on the ground of disability in public transportation services as provided by a private entity that is primarily involved in the transportation of people is also prohibited. Other actions construed to be discrimination, while providing an exception for historic or antiquated rail passenger cars are further listed.

Title III establishes an advisory committee to provide assistance to the Office of Technology Assessment in the study of access needs of over-the-road bus service of individuals with disabilities.

#### **a) Exemptions**

Title III is not applicable to private clubs or establishments that are excluded from coverage under Title II of the Civil Rights Act 1964. Title III also does not apply to religious organizations or entities that are controlled by these religious organizations which includes places of worship.

#### **b) Remedies**

The remedies and procedures set forth in the applicable provisions of the Civil Rights Act 1964 are to be placed at the disposal of any person who is being subjected to discrimination on the basis of disability in contravention of this portion of the ADA or anyone who has reasonable grounds to believe that such a person is about to be subjected to such discrimination. Nothing in these provisions requires any individual with a disability to engage in a futile exercise if the person has actual notice that an organization subject to the provisions of this Title does not comply with its provisions.

#### **c) Enforcement**

Title III requires that for certain violations, injunctive orders known as adjustment orders under the Zimbabwean Disabled Persons Act, to alter facilities and premises and in other circumstances as appropriate, injunctive orders to provide air or service, modify a policy or provide alternative methods will suffice to redress issues of discrimination or compliance with the provisions of this Title. The Attorney General is authorized to commence a civil action in any U.S. district court if there is reasonable cause to believe that any person:

- is engaged in a pattern or practice of discrimination
- has been discriminated against and the discrimination raises an issue of general public importance

Furthermore, the court, in such an action, is permitted to carry out the following actions:

- Grant equitable relief as appropriate.
- Award other relief including monetary compensation to persons aggrieved if and when requested by the Attorney General.
- Assess a civil penalty.

This is important in terms of the civil nature of the infringement of the ADA. Under the Zimbabwean Disabled Persons Act, the penalties appear criminal sanctions of payment of a fine or imprisonment, not exceeding one year.

**d) Directives**

Title III directs the U.S. Attorney General to investigate alleged violations of this part of the law. The Attorney General is also required to undertake periodic reviews to ensure compliance with the ADA under this part. The law also requires any person that offers examinations or courses pertaining to applications, licensing, certification or credentials for secondary or post secondary education, professional and trade purposes to offer the examinations or courses in an accessible place and manner. It can also offer alternative, but accessible arrangements that will be deemed compliant with this portion of the ADA.

**e) Certification**

The Attorney General must certify that state laws, local building codes, or similar local legislation meet or exceed the minimum ADA requirements. Once made, this certification is refutable by evidence that the local law or ordinance does indeed meet or exceed the ADA requirements.

**4. Title IV: Telecommunications**

Title IV amends the requisite provisions of the Communications Act 1934<sup>6</sup> to alter the definition of “telecommunications.” Under Title IV, telecommunications mean telephone transmission services that provide the ability for any individual with a hearing or speech impairment to engage in communications by wire or radio with a hearing individual who does not have such an impairment.

**a) The Federal Communications Commission (FCC)**

The Federal Communications Commission (FCC) is required to ensure that interstate and intrastate telecommunications relay services are available to the extent possible and in the most efficient manner, to hearing impaired individuals. The FCC, in order to carry out these provisions, is granted the same authority concerning intrastate common carriers.

Each common carrier providing telephone services is required to provide telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. Title IV also inserts a requirement that all relay services operate 24 hours every day and that rates be no greater than those available for voice communications services.

**b) Certification**

The FCC is to certify State programs that implement intrastate telecommunications relay services. Any television public service announcement produced or funded in whole or in part by any agency or instrumentality of the Federal Government is required to include close captioning.

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<sup>6</sup> Ch. 652, 48 STAT. 1064.



## **5. Title V: The Miscellaneous Provision/ Prohibits Retaliation and/or Coercion**

A State shall not be immune under the 11<sup>th</sup> Amendment of the Constitution<sup>7</sup> from an action in Federal or State court for a violation of this Act.

### **a) Retaliation and/or Coercion**

Retaliatory discrimination against any individual because of any action pertaining to this Act is prohibited. Coercion, intimidation, or interference with any individual in the exercise or enjoyment of, or on account of having exercised or aided or encouraged others concerning any right granted or protected by the ADA is also prohibited.

### **b) Directives**

The Architectural and Transportation Barriers Compliance Board is required to issue minimum guidelines to supplement the existing Minimum Guidelines and Requirements for Accessible Design including guidelines regarding historic properties. This part of the ADA also permits awarding reasonable attorney's fees, in certain circumstances in any action or proceedings instituted under the provisions of this Act.

Furthermore, the Attorney General is to develop a plan that assists entities covered under the Act and other Federal agencies to help these parties understand their responsibilities as required by the ADA. Specific Federal agencies, such as the ones noted above, are authorized to carry out certain functions such as rendering technical assistance concerning rights and duties under this Act and making grants or award contracts with respect to the provision of technical assistance.

The National Council on Disability is to study and report on the effect that wilderness designations and wilderness land management practices have on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System.

### **c) Declarations**

For purposes of this Act, the term "disability" is not applicable to transvestites. In addition, this Title also declares:

- The rights and protections of the ADA, the Civil Rights Act, 1990<sup>8</sup>, the Civil Rights Act, 1964, the Age Discrimination in Employment Act, 1967<sup>9</sup> and the Rehabilitation Act, 1973 all apply to the Senate.
- Notwithstanding any other provisions of law, the enforcement and adjudication of certain rights and protections under these provisions are within the exclusive jurisdiction of the Senate.
- Some of these provisions have been enacted by the ADA as an exercise of the rule-making powers of the Senate. Therefore, they could be changed as any other rule of the Senate.

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<sup>7</sup> The 11<sup>th</sup> Amendment declares that the judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one or the United States by a Citizen of another State or by a Citizen or subjects of any Foreign State.

<sup>8</sup> P.L. 102-166, Title I, 105 STAT. 1074.

<sup>9</sup> P.L. 90-202, 81 STAT. 602.

Title V further declares that:

- The rights and protections of this Act apply to the House of Representatives.
- Certain of these provisions are enacted as an exercise of the rule-making powers of the House of Representatives. As such they could be altered as any other rule of the House of Representatives.

In addition, the rights and protections under the provisions of the ADA are also deemed applicable to the Architect of the Capitol, the Congressional Budget Office, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technological Assessment, and the U.S. Botanical Garden. This part of the law also declares that, for purposes of this legislation and subject to exception, the term “individual with a disability” does not cover an individual who is currently engaged in the illegal use of drugs.

The Act further excludes from coverage homosexuals, bisexuals, and certain conditions from the definition of “disability.” In addition, the ADA also mends the Rehabilitation Act 1973 to declare that for purposes of Title V of the Rehabilitation Act and subject to exceptions, the term “individual with handicaps” does not incorporate any individual who is currently engaged in the illegal use of drugs.

## **B. The Zimbabwean Disabled Persons Act 1992**

The Zimbabwean Disabled Persons Act prohibits discrimination against disabled persons in the following two main areas:

- access to public premises, services, and amenities
- employment

### **1. Section 8: Prohibition of Denial to Disabled Persons of Access to Public Premises, Services, and Amenities**

No disabled person, based on his/her disability alone, can be denied the following:

- admission into any premises to which members of the public are ordinarily admitted. The proprietor has no right under this provision to reserve a right of admission to his/her premises on the ground of a person’s disability alone.
- the provision of any service or amenity ordinarily provided to members of the public.

#### **a) Exemptions**

The safety of the disabled person concerned can be used to deny access and/or provide service. A disabled person who is denied admission into any premises or the provision of any service or amenity is considered to have suffered an *injuria* (an actionable injury on its own merit, just the fact that, it has happened). Such a person has the right to recover damages in any court of competent jurisdiction. To this extent, the Zimbabwean legislation provides for both civil damages for those who have been victims of discrimination under the Act. But it also provides penalties against those found in violation of the Act especially as these relate to adjustment (or access) orders.

### **2. Section 9: Prohibition of Discrimination Against Disabled Persons in Employment**

Discrimination against disabled persons is prohibited in any area including:

- advertisement for employment
- recruitment and other hiring methods for employment
- classification, creation of positions or their abolition
- the determination or allocation of wages, salaries, pensions, accommodation, leave, or other such benefits
- the choice of persons for jobs or positions, training, advancement, apprenticeships, transfer, promotion, or retrenchment
- the provision of facilities related to or connected with employment
- any other matters of employment

**a) Exemptions**

An employer has not discriminated against a disabled person in terms of section 9 if:

- The act or omission alleged to constitute the discrimination was not wholly or mainly attributable to the disability of the disabled person.
- The disability in question was a relevant consideration in relation to the particular requirements of the employment concerned.
- Special facilities or modifications whether physical or administrative or otherwise are required at the workplace to accommodate the disabled person which the employer cannot reasonably be expected to provide.

**3. Enforcement, Offenses, and Penalties**

Any person who:

- fails to comply with an adjustment order (access orders) served under the terms of section seven of the Act
- wilfully denies to a disabled person on the ground of his/her disability alone:
  - admission to any premises to which members of the public are ordinarily admitted
  - the provision of any service or amenity ordinarily provided to members of the public, for any reason other than one motivated by a genuine concern for the safety of the disabled person concerned
- discriminates against a disabled person in relation to the matters specified above as part of section nine

shall be guilty of an offence and liable to a fine not exceeding \$4,000 Zimbabwean dollars or to imprisonment for a period which does not exceed one year or both to such a fine and/or imprisonment.

**a) Defenses**

It is not a violation of the Disabled Persons Act if the act or omission alleged to constitute the discrimination was not wholly or mainly attributable to the disability of the disabled person. It is a defense to discrimination of the disabled, if the disability in question was a relevant consideration in relation to the particular requirements of the employment concerned. It is also a defense to discrimination of disabled

persons if special facilities or modifications whether physical, administrative, or otherwise are required at the workplace to accommodate the disabled person which the employer cannot reasonably be expected to provide.

#### **4. Section 11: Rule-Making Powers-Regulations**

Subject to the provisions of this Act and any other pertinent law in Zimbabwe, the Minister of Public Service, Labor and Social Welfare or any other designated minister following consultations with the National Disability Board can promulgate regulations that provide *inter-alia* the following:

- coordination of services provided in Zimbabwe for the welfare or rehabilitation of disabled persons
- registration of:
  - disabled persons
  - institutions, associations and organizations including those controlled and managed by the State and local authorities that provide services for the rehabilitation of disabled persons
  - places at which services for the rehabilitation of disabled persons are provided.
- effect to be given to Zimbabwe's obligations under any international convention, treaty, or agreement concerning disabled persons
- any other matter which in terms of this Act is required or permitted to be prescribed

##### **a) Exemptions**

However, the Minister is precluded from promulgating regulations on registration of:

- state hospitals, nursing homes, or clinics any other such institution or facility registered under the Medical, Dental and Allied Professions Act, 1971 as amended<sup>10</sup> and the Psychological Practices Act, 1972 as amended<sup>11</sup> except with the consent of the responsible minister of health
- state schools or education or training institutions registered under the Education Act, 1987 as amended<sup>12</sup> and the Manpower Planning and Development Act, 1994 as amended,<sup>13</sup> unless the minister responsible for the administration of the institution consents

#### **5. Administering Authority**

The National Disability Board run by a Director for Disabled Persons Affairs constitutes the administering authority of the Act. The Board and the Director are established and constituted under sections 3 and 4 of the Act. The National Disability Board has two broad mandates:

- to issue adjustment orders (or access adjustments and re-adjustments orders under the ADA) under section seven to comply with the provisions of the Act

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<sup>10</sup> 5 Stat. L. of Zimbabwe, Ch. 27:08, 179-202 (1996).

<sup>11</sup> *Id.*, Ch. 27:11, 225-237.

<sup>12</sup> 4 Stat. L. of Zimbabwe, Ch.25:04, 617-630 (1996).

<sup>13</sup> *Id.* Ch. 28:02, 323-340.

to formulate and develop measures and policies that may relate to a number of subjects relevant to the disabled, including:

- measures and policies to achieve equal opportunities for disabled persons in employment, education, sports, recreation, and cultural activities with full access to community and social services
- measures and policies to enable disabled persons to lead independent lives
- measures and policies to give effect to international treaties and agreements on the disabled
- measures and policies to prevent discrimination against the disabled as a result of their disabilities
- measures and policies to institute schemes and projects geared for the employment of disabled persons who cannot secure employment elsewhere
- measures and policies to encourage and secure rehabilitation and social employment centers, institutions, and other services for the welfare and rehabilitation of the disabled
- measures and policies to coordinate services provided in Zimbabwe for the welfare and rehabilitation of disabled persons
- measures and policies to register disabled persons as well as institutions, organizations, and communities, both public and private that cater to the needs of the disabled
- measures and policies to provide as far as possible orthopaedic appliances and other equipment to disabled persons, etc.

The Board provides reports to the responsible Minister.

#### **6. Section 7: Adjustment Orders by the Board**

Adjustment orders apply to premises to which members of the public are ordinarily admitted, whether on payment of a fee or otherwise and services or amenities ordinarily provided to members of the public which includes premises owned or services and/or amenities provided by statutory corporations or local authorities.

Therefore, where the Board considers that any premises, services, or amenities as described above are inaccessible to disabled persons by reason of any structural, physical, administrative, or other impediment to such access, the Board, subject to the provisions of this section, issue and serve an adjustment order to the owner of the premises or provider of the service or amenity concerned. The Order will contain a full description of the premises or service and/or amenity concerned and also the grounds upon which the Board considers the premises, service, or amenity inaccessible to disabled persons.

The order may require the following:

- that the owner or provider undertake at his/her own expense any action mandated by the order to ensure reasonable access by the disabled to the premises or amenities
- stipulate the maximum period to accomplish the adjustments and also the time frame to implement the action required by the order
- call upon the person involved to make representations to the Board within 30 days from the date of service of the notice (The Board could discontinue the Order following such representations.)
- any person who has been served with an adjustment order may within 30 days appeal to an

Administrative Court against such an order based on the following grounds

- the person concerned cannot reasonably be expected to bear the whole or any part of the expense required to implement the adjustment order
- the period stipulated for the implementation of the adjustment order is unreasonable
- the nature of the action required to be taken as required by the adjustment order is in the circumstances unreasonable
- that adequate access to the premises, service, or amenity could be secured without recourse to the action required by the adjustment order or on any other ground

**a) Remedies**

Once the Administrative Court has heard the appeal, it can either confirm, vary, or set aside the adjustment order appealed against and make such order as to costs of the appeal as the court deems fit.

The Board is preempted from serving an adjustment order on any state hospitals, nursing homes, or clinics regulated under the Medical, Dental and Allied Professions Act and the Psychological Practices without the consent of the responsible Minister. The Board also cannot serve an adjustment order on any state school, educational or state training institutions under the Education Act and the Manpower Planning and Development Act without the consent of the responsible minister.

**III. Comparative Table Between the ADA and the Zimbabwean Disabled Persons Act**

*See attached table.*

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