

Heading into Snowy Weather: Keep Your Sidewalks in Compliance with Title II of the ADA

Under Title II of the ADA, local governments are prohibited from discriminating against qualified individuals with a disability on the basis of disability in services, programs, and activities provided by the government. Sidewalks have repeatedly been found to be a “service, program, and activity” provided by local governments. Although the ADA requires that municipalities make the sidewalks available for people with disabilities, it is silent on whether municipalities must clear snow from the sidewalks.

The Federal Highway Administration (“FHWA”) and the Department of Justice (“DOJ”) have both indicated that governments must engage in snow removal to comply with the ADA. The FHWA has stated that a public agency must maintain its walkways in an accessible condition, with only isolated or temporary interruptions in accessibility. The DOJ in a Technical Assistance Letter (Doc #684 (4/16/1996) provides that “[t]emporary interruptions in accessibility, such as those caused by snow, generally do not constitute violations of title II....unless they persist beyond a reasonable period of time.” Similarly, case law suggests that the temporary nature of snow obstructions might remove them from ADA coverage.

The question remains whether a sizeable, unnatural pile of snow and ice might violate the ADA if it is left for an extended period of time. The FHWA references “isolated or temporary interruptions with accessibility”. The DOJ indicates that piles of ice and snow that “persist beyond a reasonable period of time” may constitute a violation of the ADA. Case law also suggests that something more than a temporary snow obstruction may not be removed from ADA coverage. Consequently, piles of snow and ice like in the below picture may very well violate Title II of the ADA.



To prevent potential ADA claims, while shoveling sidewalks or plowing streets, members should, when possible, avoid piling snow and ice on sidewalks or curb ramps for any extended period of time. During a snowstorm, if it is necessary to pile snow on sidewalks and curb ramps, steps should be taken as quickly as possible after the snowstorm to clear the snow and ice from the sidewalks and curb ramps. If municipal ordinances require property owners to shovel snow at their property, property owners should be reminded of the requirement and advised that all sidewalks should be cleared of snow and ice. If a member does not have an ordinance requiring property owners to clear snow, members should consider enacting such an ordinance to assist the member in maintaining accessible sidewalks and curb ramps for individuals with disabilities.