

# One Minute Memo<sup>®</sup>



## New Last Minute DOJ Pool Lift Requirements Call For Large-Scale Changes for Multitudes of Businesses

Businesses with public pools or spas, as well as state and local governments that operate pools and spas, need to be aware that new Department of Justice (DOJ) requirements for pool lifts have been issued. Today, the House of Representatives' Judiciary Subcommittee on the Constitution will hold a hearing on the requirements ("Guidance on Access to Pools and Spas Under the ADA"), which were issued six weeks before the March 15, 2012 compliance deadline, and did not follow the notice and comment procedures required by the Administrative Procedures Act (APA).

In September 2010, DOJ issued new regulations under ADA Titles II and III requiring public accommodations and state and local governments to retrofit their existing pools and spas to include a pool lift or ramp entry. Pool lifts are the only feasible option for most existing pools. Many in the lodging industry were prepared to meet these requirements with portable pool lifts that could be brought upon request and also shared between two pools or a pool and a spa in the same location. On January 31, 2012 -- six weeks before the March compliance deadline -- DOJ announced the following new requirements: (1) Businesses using lifts must install "fixed" or "built-in" pool lifts unless they can show that they are not readily achievable to install a fixed lift; (2) Instead of being brought out upon request, pool lifts must be next to the pool or spa and ready for use at all times when the facility is open; and (3) A pool lift cannot serve more than one pool or spa even if the two are only a few feet away from one another.

*Minh N. Vu*, the Chair of Seyfarth Shaw's ADA Title III Team, is among those who testified today regarding the new requirements before the House Subcommittee. She was in attendance on behalf of the American Hotel & Lodging Association (AH&LA), which represents a wide variety of hotel owners and operators, many of which are small businesses. Ms. Vu has served as AH&LA's outside counsel on Title III of the ADA since 2006.

Ms. Vu testified that the DOJ violated the APA when it issued substantive new requirements for pool lifts without proper public notice or comment. These requirements were never mentioned by the DOJ during the rulemaking process, and they do not appear anywhere in the 2010 regulations that mandated the provision of accessible entries for pools and spas. Ms. Vu also testified about some of the serious consequences of DOJ's disregard of the rulemaking process and how they adversely impact virtually all Americans. This issue affects hundreds of thousands of businesses, every state and local government, as well as all Americans who use pools and spas at recreational and lodging facilities nationwide.

To discuss whether your business is likely to be affected, or to explore legal and best practice approaches for compliance, please contact the Seyfarth attorney with whom you work, who can put you in touch with Minh or another member of our *ADA Title III Team*.