

ServSafe® Allergens Federal Laws

Updated: 5/5/2021

Americans with Disabilities Act:

“No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.” 42 U.S.C. § 12182¹

Under the Americans with Disabilities Act and Rehabilitation Act (RA) amendment of 2008, “disability” is redefined to mean:

- A physical or mental impairment that substantially limits one or more major life activities of such individual
- Major Life Activities, as relevant:
 - Eating and breathing
 - Includes major bodily functions, such as those of the immune, digestive, bowel, and respiratory systems

Food allergies are considered such an impairment covered by the ADA. The ADA suggests the following accommodations for restaurants:

“A restaurant may have to take some reasonable steps to accommodate individuals with disabilities where it does not result in a fundamental alteration of that restaurant's operations.

By way of example only, this may include:

- 1) Answering questions from diners about menu item ingredients, where the ingredients are known, or
- 2) Omitting or substituting certain ingredients upon request if the restaurant normally does this for other customers.

A fundamental alteration is a modification that is so significant that it alters the essential nature of the good or services that a business offers. For example, a restaurant is not required to alter its menu or provide different foods to meet particular dietary needs.

Reaching Out to Customers with Disabilities Guidance:

A customer with a food allergy may ask a restaurant if it is possible to omit a sauce or ingredient from a dish he or she wishes to order. When it is easy to do, the request should be honored.”²

Several ways to obtain ADA compliance

- The ADA gives people with disabilities the right to file lawsuits in Federal court and obtain Federal court orders to stop ADA violations. If you are sued by an individual and you lose the case, you may have to pay the winning party's attorney's fees. The ADA does not permit monetary damages to be assessed against you in lawsuits brought by individuals. (Some state and local antidiscrimination laws allow compensatory damages to be assessed against you, but not the ADA.)
- People with disabilities can also file complaints with the Justice Department, which can investigate and attempt to resolve the complaint.
- The Justice Department is also authorized to file lawsuits in Federal court in cases of “general public importance” or where a “pattern or practice” of discrimination is alleged. If you are sued by the Justice Department and you lose the case, you will not have to pay the Department's attorneys' fees, but you may have to pay monetary damages for compensatory relief (but not punitive relief) and civil penalties. Civil penalties may run as high as \$55,000 for a first violation or \$110,000 for a subsequent violation.

State laws

Some states have laws similar to the ADA, but they are enforced in the state's court system or by local civil rights commissions. For information about antidiscrimination laws in your state, contact your State Attorney General's office.

¹ <https://www.govinfo.gov/content/pkg/USCODE-2009-title42/pdf/USCODE-2009-title42-chap126-subchapIII-sec12182.pdf>

² <https://www.ada.gov/reachingout/lesson11.htm>

What to do if you are sued

- Some business and trade associations give advice on where to find legal assistance or practical help in solving the access problems that led to the lawsuit.

But, by far, the best way to prevent an ADA lawsuit is to learn about the ADA, continually educate staff about their responsibilities, and take ongoing actions to comply.

- The best way to prevent an ADA lawsuit is to learn about the law, continually educate staff about their responsibilities, and take ongoing actions to comply.”³

For more information:

www.ada.gov

ADA Information Line: 800-514-0301 (voice) 800-514-0383 (TTY)

Food Allergen Labeling and Consumer Protection Act of 2004 (Public Law 108-282)

Enacted in 2004, The (Public Law 108-282) requires the labeling of foods that contain certain food allergens.

“Under FALCPA, a "major food allergen" is an ingredient that is one of the following five foods or from one of the following three food groups or is an ingredient that contains protein derived from one of the following:

- milk
- egg
- fish
- Crustacean shellfish
- tree nuts
- wheat
- peanuts
- soybeans”⁴

All packaged foods regulated under the Federal Food, Drug, and Cosmetic Act (FFD&C Act) that are labeled on must comply with FALCPA's food allergen and gluten labeling requirements, which include:

- Using a “Contains” statement to clearly identify all of the major food allergens that either are in the food or are contained in ingredients of the food.
- The name listed as "common or usual name" should specify the specific allergen, as in the case with tree nuts or Crustacean shellfish that may have many different species
- Demonstration of knowledge by the person in charge (PIC) of a food establishment of the foods identified as major food allergens and the symptoms that a major food allergen could cause in a sensitive individual.
- Common characteristics of a food allergic response
- Defines "gluten-free" as meaning that the food either is inherently gluten free; or does not contain an ingredient that is gluten-containing, or derived from gluten-containing grain (processed or unprocessed)
- Restaurants making gluten-free claims should be consistent with the FDA's definition⁵

Food Allergy Safety, Treatment, Education and Research (FASTER) Act

A bill to improve the health and safety of Americans living with food allergies and related disorders, including potentially life-threatening anaphylaxis, food protein-induced enterocolitis syndrome, and eosinophilic gastrointestinal diseases, and for other purposes.

On April 23, 2021, President Biden signed into law the Food Allergy Safety, Treatment, Education and Research (FASTER) Act, making sesame the ninth allergen that must be declared in specific allergen labeling.⁶

³ <https://www.ada.gov/reachingout/lesson91.htm>

⁴ <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-questions-and-answers-regarding-food-allergens-edition-4>

⁵ <https://www.fda.gov/food/guidance-documents-regulatory-information-topic-food-and-dietary-supplements/food-allergensgluten-free-guidance-documents-regulatory-information>

<https://www.fda.gov/food/food-labeling-nutrition/questions-and-answers-gluten-free-food-labeling-final-rule>

⁶ <https://www.congress.gov/117/bills/hr1202/BILLS-117hr1202ih.pdf>

This law also requires that the Secretary of Health and Human Services collect data on the prevalence of food allergies and the severity of allergic reactions for specific food or food ingredients and prepare a report to the Senate Committee on Health, Education, Labor, and Pensions, and the House Committee on Energy and Commerce on the development of effective food allergy diagnostics, the prevention of food allergies, and the scientific criteria for defining a food or food ingredient as a major food allergen.