



MEMORANDUM

DATE: October 17, 2008

TO: Tad R. McDowell, Director, UNLV Parking Services

CC: Michael L. Sauer, Associate Vice President for Administration
Gerry J. Bomotti, Senior Vice President of Finance & Business
Richard C. Linstrom, Vice President and General Counsel 

FROM: Susan Carrasco, Assistant General Counsel 

RE: Handicap Parking on Campus

QUESTION PRESENTED

UNLV's handicapped parking rule states:

As of Aug. 25, 2008, all individuals with a state-issued handicap parking placard must also purchase a campus handicap parking permit and display both in their vehicle. . . . [T]he cost [of these permits] depends on the driver's status (faculty, staff, or student). Handicapped visitors will be required to purchase the proper amount of time at meters placed next to the accessible space. Faculty, staff, and students displaying both a state-issued handicap placard and a university handicap permit are not required to place money in the meters.¹

Does this rule comply with the Americans with Disabilities Act?

BRIEF ANSWER

UNLV's handicapped parking rule requiring disabled individuals to purchase a campus handicap parking permit complies with the requirements of the Americans with

¹ University of Nevada, Las Vegas, Parking & Transportation Services | Types of Permits, <http://parking.unlv.edu/permittypes.html> (last visited Oct. 13, 2008).

Disabilities Act (ADA). The fee imposed on disabled individuals for parking in disabled spaces on campus parking lots is not a surcharge that would be prohibited by the ADA because both disabled and nondisabled individuals are charged the same price for parking on campus parking lots.

DISCUSSION

Title II of the ADA states:

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.²

The purpose of the ADA is “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.”³ In implementing the ADA, the Department of Justice promulgated 28 C.F.R. § 35.130(f), which prohibits a public entity from imposing a “surcharge” on “required” measures.⁴ Therefore, the inquiry into whether a fee violates Title II of the ADA consists of two parts:⁵

- (1) whether the measure for assessing the fee is “required to provide that individual or group with the nondiscriminatory treatment required by the Act;”⁶ and
- (2) whether the fee for the required measure is a surcharge.⁷

² 42 U.S.C. § 12132 (1990).

³ 42 U.S.C. § 12101(b)(1) (1990).

⁴ 28 C.F.R. § 35.130(f) (1991) states:

A public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.

⁵ Dare, 191 F.3d at 1171.

⁶ Id. (citing 28 C.F.R. § 35.130(f) (1991)).

⁷ Id.

A measure is required under the first part of the test if it is necessary to provide disabled persons with nondiscriminatory treatment.⁸ In the context of parking privileges, disabled persons must be able to enjoy the same parking privileges as a nondisabled person in order to gain equal access to public buildings.⁹ In interpreting the ADA to determine whether access to a private parking lot next to a government building is a required measure, the Eleventh Circuit has stated: “[N]othing in the Act, its purpose, or the regulations can reasonably be read to give disabled parkers access to areas that would not be available to them if they were not disabled. The purpose of the Act is to place those with disabilities on an equal footing, not to give them an unfair advantage.”¹⁰

In considering whether a fee for the measure is a surcharge under the second part of the test, the court considers whether both disabled and nondisabled people are subjected to the same fee. “If nondisabled people pay the same fee for an equivalent service, the charge to disabled people would not constitute a surcharge on a ‘required’ measure.”¹¹ As an example, the Ninth Circuit stated that “a state can charge a fee for disabled license plates so long as it charges the same fee for nondisabled license plates.”¹² A court in Ohio gave a different example to illustrate this: “[A] college cannot

⁸ Id.

⁹ Thompson v. Colorado, 29 F.Supp.2d 1226, 1231 (D.Colo. 1998).

¹⁰ Kornblau v. Dade County, 86 F.3d 193, 194 (11th Cir. 1996) (citing In re Rubenstein, 637 A.2d 1131 (Del. 1994)).

¹¹ Dare, 191 F.3d at 1171.

¹² Id.

place a surcharge on either an individual student with a disability . . . or on groups of students with disabilities . . . It may, however, adjust its tuition or fees for all students.”¹³

In applying these interpretations, UNLV is not required to give disabled persons free access to parking areas where nondisabled individuals must pay to park. In denying disabled persons the privilege of parking in these designated lots for failure to obtain a permit or to pay the meter: UNLV is not discriminating against them on the basis of their disability. A nondisabled person, who does not purchase a campus permit or pay the meter, would also not be authorized to park in such designated parking lots. Therefore, allowing disabled persons unlimited access to restricted parking is not a required measure under the ADA.

What the ADA does require, however, is that a certain number of disabled parking spaces be provided in parking facilities.¹⁴ Therefore, any fee imposed for access to these spaces must not be a surcharge under the second part of the test. As long as both disabled and nondisabled persons of equivalent status are charged the same price to park in campus parking lots, the fee imposed on the disabled person would not constitute a surcharge prohibited by the ADA. Under UNLV’s parking rules, the price of parking permits vary according to the driver’s status as faculty, staff, or student. Individuals under each of these statuses pay the same price whether they purchase a campus handicap parking permit or a general parking permit. The price for metered parking is the same for every metered parking space on campus. Because the price for parking is the same for both disabled and nondisabled persons, the fee a disabled person must pay to park on

¹³ Thrope v. State of Ohio, 19 F.Supp.2d 816, 824 (S.D.Ohio 1998).

¹⁴ Kornblau, 86 F.3d at 194 (citing 28 C.F.R. Part 36, Appendix A, § 4.6.2 (2002)).

campus is not a surcharge. Therefore, UNLV's handicapped parking rule complies with ADA requirements.

Additionally, Nevada recognizes that a disabled person can be charged a fee for parking a vehicle. Under NRS 484.407(1),¹⁵ a person driving a vehicle displaying a handicapped plate, placard, or sticker may park up to four hours in a time restricted parking zone without penalty, subject to the exception in subsection (3), which states that “[t]his section does not authorize the parking of a motor vehicle in any privately or municipally owned facility for parking off the highway without paying the required fee for the time during which the vehicle is so parked.”¹⁶ Therefore, NRS 484.407 authorizes UNLV to charge disabled persons for parking their vehicles on campus.

Furthermore, UNLV is not the only university requiring disabled individuals to purchase a parking permit for parking on the campus. Of the 32 universities located throughout Arizona,¹⁷ California,¹⁸ and Nevada,¹⁹ only one university does not require a

¹⁵ NRS 484.407(1) (2005) states:

Except as otherwise provided in subsection 3, an owner or operator of a motor vehicle displaying a special parking placard, a special parking sticker, a temporary parking placard, a temporary parking sticker or a special plate or plates issued pursuant to NRS 482.384, or a special plate or plates for a veteran with a disability issued pursuant to NRS 482.377, may park the motor vehicle for not more than 4 hours at any one time in a parking zone restricted as to the length of time parking is permitted, without penalty, removal or impoundment of the vehicle if the parking is otherwise consistent with public safety and is done by a person with a permanent disability, disability of moderate duration or temporary disability, a veteran with a disability or a person transporting any such person.

¹⁶ NRS 484.407(3) (2005).

¹⁷ These universities include Arizona State University and the University of Arizona.

¹⁸ These universities include 10 University of California campuses located in Berkeley, Davis, Irvine, Los Angeles, Merced, Riverside, San Diego, San Francisco, Santa Barbara, and Santa Cruz, and 18 California State University campuses located in Bakersfield, Chico, Dominguez Hills, East Bay, Fresno, Fullerton, Long Beach, Los Angeles, Monterey Bay, Northridge, Pomona, Sacramento, San Bernardino, San Diego, San Francisco, San Jose, San Luis Obispo, and San Marcos.

¹⁹ These universities include the University of Nevada, Las Vegas, and the University of Nevada, Reno.

disabled student to also purchase a campus parking permit.²⁰ Therefore, requiring disabled individuals to purchase a parking permit to park on campus parking lots is a common practice among universities such as UNLV.

CONCLUSION

Under the two-part test articulated by the Ninth Circuit for determining whether a fee violates the ADA, UNLV's handicapped parking rule requiring disabled individuals to purchase a campus handicap parking permit does not violate ADA regulations. The ADA does not require paid parking to be given to disabled individuals free of charge. The fee that UNLV does impose on disabled individuals is not a prohibited surcharge because disabled individuals are charged the same price to park as nondisabled individuals. Furthermore, Nevada statute and 31 other universities require disabled individuals to pay for parking in areas where nondisabled individuals would have to pay for parking.

²⁰ The university not requiring disabled persons to purchase a campus parking permit to park on campus lots is the University of California, San Diego.