

## Chapter 9 Sample Legislation and Notable Court Cases

This chapter provides sample legislation for qualifying individuals for the use of disability placards and plates, the benefits available to recipients, and the penalties for misuse. The chapter also contains court cases that inform or shape program details.

### Sample Legislation

Jurisdictions legally are required to extend reciprocity nationally and internationally to any holder of a disability placard or plate issued by another jurisdiction that displays the international symbol of access.

Following is a compilation of existing state statutes that may serve as examples for jurisdictions interested in crafting new or amending existing legislation.

### Definitions

(1) A “person with a disability” is any of the following:

- (a) Any person who has lost, or has lost the use of, one or more lower extremities or both hands, or who has significant limitation in the use of lower extremities, or who has a diagnosed disease or disorder which substantially impairs or interferes with mobility, or who is so severely disabled as to be unable to move without the aid of an assistant device.
- (b) Any person who is blind to the extent that the person’s central visual acuity does not exceed 20/200 in the better eye, with corrective lenses, as measured by the Snellen test, or visual acuity that is greater than 20/200, but with a limitation in the field of vision such

that the widest diameter of the visual field subtends an angle not greater than 20 degrees.

- (c) Any person who suffers from lung disease to the extent of any of the following:
- (d) The person’s forced (respiratory) expiratory volume for one second when measured by spirometry is less than one liter.
- (e) The person’s arterial oxygen tension (pO<sub>2</sub>) is less than 60 mm/Hg on room air while the person is at rest.
- (f) Any person who is impaired by cardiovascular disease to the extent that the person’s functional limitations are classified in severity as class III or class IV based upon standards accepted by the American Heart Association.
- (g) A “disabled veteran” is any person who, as a result of injury or disease suffered while on active service with the armed forces of the United States, suffers any of the following:
  - (h) Has a disability rated at 100 percent by the Department of Veterans Affairs or the military service from which the veteran was discharged, due to a diagnosed disease or disorder which substantially impairs or interferes with mobility.
  - (i) Is so severely disabled as to be unable to move without an assistant device.
  - (j) Has lost, or has lost use of, one or more limbs.
  - (k) Has suffered permanent blindness.

### ***General Language Authorizing Disability Placards/Plates***

- (2) The department shall, upon application, issue a disability placard or license plates to the following:
  - (a) A person with disability.
  - (b) A disabled veteran.
  - (c) An organization or agency that provides for transportation of disabled persons or disabled veterans if the motor vehicle displaying the disability placard or plates is used solely for transporting those persons.
  - (d) Disability placards and plates must display the International Symbol of Access adopted pursuant to Section 3 of Public Law 100-641, commonly known as a “wheelchair symbol.”

### ***General Language on Qualification***

- (1) Prior to issuing disability placards or license plates to a person, the department shall require a certificate signed by a physician, nurse practitioner, certified nurse midwife, or physician assistant, substantiating the disability. The department may waive the requirement if the disability is readily observable.
- (2) The disability of a person who has lost, or has lost the use of, one or more lower extremities may be certified by a chiropractor.
- (3) Blindness shall be certified by a physician who specializes in diseases of the eye or an optometrist.
- (4) A disorder of the foot may be certified by a podiatrist.
- (5) The qualified person who signs a disability certificate shall retain information sufficient to substantiate that certificate and, upon request of the department, shall make that information available for inspection by the appropriate regulatory board.

- (6) For a disabled veteran, the department shall also accept a certificate from the United States Department of Veterans Affairs that certifies that the applicant is a disabled veteran as described in Section 295.7.

### ***Enforcement Issues***

- (1) A person issued a disability placard or plates shall, upon request, present to a peace officer, or person authorized to enforce parking laws, a certification issued by the department that substantiates eligibility to possess the plate or plates. The certification shall contain the name of the person issued the disability placards or plates, and the name, address, and telephone number of the medical professional who certified the eligibility of the person.
- (2) Disability placards or plates shall, upon the death of the person, be returned within 60 days.
- (3) When a motor vehicle displaying disability plates issued to an organization is sold or transferred, the plates shall be immediately returned to the department.
- (4) It is unlawful to park or leave standing any vehicle in a stall or space designated for persons with disability unless the vehicle displays either disability placards or plates.
- (5) It is unlawful for any person to obstruct, block, or otherwise bar access to parking stalls or spaces designated for persons with disability.
- (6) It is unlawful for any person to park or leave standing any vehicle in any area of the pavement adjacent to a parking stall or space designated for persons with disability that is marked for the loading and unloading of vehicles parked in the stall or space.
- (7) Parking rules regarding spaces designated for persons with disability apply to all privately owned or publicly owned off street parking facilities.

## Penalties for Misuse

Penalties for misuse of a disability parking placard vary widely and are controlled by both jurisdictional and local authorities. As a result, standard language is not as valuable as general guidelines for approaching penalties.

- (1) Penalties should be significant enough to create deterrence. The most obvious approach is a financial penalty. In some communities, fines can be \$2,500 or even higher.
- (2) Penalties should be available in both civil and criminal forums. The most common example of a civil penalty is the towing and storage of an offender's vehicle. The most common example of a criminal penalty is a fine or community service.
- (3) Penalties should also address placard holders who allow abuse. There are cases in which persons with disability lend placards to family and friends or obtain substitutes so that they can sell placards on online sale sites. In addition to significant penalties, these individuals are often required to be recertified by a qualified licensed healthcare practitioner for any future disability placards or license plates.

## Benefits of Disability Parking Products

Jurisdictions generally offer a wide variety of options when it comes to the privileges associated with disability placards and plates. The language here attempts to place this information into three categories:

- (1) Universally accepted privileges such as time extension/exemption and blue zone access.
  - (a) A person with a disability may park in a designated stall or space.
  - (b) A person with disability displaying disability placard or plates is allowed to park for

unlimited periods in any parking zone that is restricted as to the length of time parking is permitted as indicated by a sign or curb markings.

### **Or:**

A person with a disability displaying disability placards/plates is allowed to park for one additional hour in any parking zone that is restricted as to the length of time parking is permitted as indicated by a sign or curb markings.

- (c) Subdivision (b) does not apply to a zone where stopping, parking, or standing is prohibited for all vehicles, or a zone reserved for special types of vehicles.
  - (d) A person with disability is allowed to park a motor vehicle displaying disability placards or plates issued by a foreign jurisdiction with the same parking privileges authorized for any motor vehicle displaying disability placards or plates issued by this jurisdiction.
- (2) Free parking at on street meters for all vehicles displaying disability license plates or placards.
    - (a) A person with disability may park in any metered parking space without being required to pay parking meter fees.
    - (b) This section does not apply to metered parking in an off street parking facility.
  - (3) Free parking for a select category of persons with disability who have mobility issues, commonly referred to as a 'two-tiered' system.
    - (a) A person with disability displaying a non-meter exempt disability placard or plates may park in a space designated for disabled persons.
    - (b) A person with disability displaying a disability placard or plates may park under the following rules:

- (i) In any metered parking space without being required to pay parking meter fees.
  - (ii) For unlimited periods in any parking zone that is restricted as to the length of time parking is permitted as indicated by a sign or curb markings, except where stopping, parking, or standing is prohibited for all vehicles, or a zone reserved for special types of vehicles.
- (c) To be eligible for free metered parking, a person with a disability must be unable to do at least one of the following:
- (i) Manage, manipulate or insert coins, or obtain tickets or tokens in parking meters or ticket machines in parking lots or parking structures, due to the lack of fine motor control of BOTH hands;
  - (ii) Reach above his/her head to a height of 42 inches from the ground, due to a lack of finger, hand or upper-extremity strength or mobility;
  - (iii) Approach a parking meter due to a wheelchair or other device for mobility; or
  - (iv) Walk more than 20 feet due to an orthopedic, neurological, cardiovascular or lung condition in which the degree of debilitation is so severe that it almost completely impedes the ability to walk.
- (d) Prior to issuing a meter-exempt disability placard to a person, the department shall require a certificate signed by a physician, nurse practitioner, or physician assistant, substantiating the person meets at least one of the criteria identified in section (a).

## Reciprocity

All jurisdictions are obligated under the Uniform System to extend reciprocity nationally and internationally to any disability placard or license plate issued by another jurisdiction. Despite this rule, constituents and local authorities are often confused about reciprocity, so it is a good practice to include complying language in state or provincial statutes addressing disability parking. Conforming language can be as simple as stating:

The benefits and access privileges afforded in this chapter shall be extended to vehicles displaying removable windshield placards, temporary removable windshield placards, and special license plates that have been issued by issuing authorities of other states and countries.

## Notable Court Cases

What follows is a listing of significant court cases related to disability parking. Although the cases may not serve as precedents in your jurisdiction, the stories, arguments, and decisions are worth noting because they have shaped statutes where they occurred.

***Thompson v. State of Colorado*, 258 F.3d 1241, 10th Cir. (2001)**

Phoebe Thompson filed a class action lawsuit against the State of Colorado arguing that its \$2.25 fee for a disability placard violated Title II of the ADA. Colorado prevailed in defending its placard fee by arguing that it was immune from a federal lawsuit on the matter under the 11th Amendment to the US Constitution.

The court found that “Title II’s accommodation requirement appears to be an attempt to prescribe a new federal standard for the treatment of the disabled rather than an attempt to combat unconstitutional discrimination.” As a result, federal authority (and therefore the requirements of Title II) did not extend

to the matter of the nominal fee for a disability placard.

*COMMONWEALTH of Pennsylvania, Appellee, v. Dale A. LUNDBERG, Appellant. (2001)*

Dale Lundberg was fined for parking in a disability space and appealed, arguing that the space was not properly posted in accordance with Department of Transportation regulations. The signage did not state the penalty amount and indicate that vehicles in violation could be towed. A court rejected his claim that proper posting in accordance with departmental regulations was an element of the crime.

Lundberg appealed, and the appellate court set aside the conviction because Pennsylvania law clearly required that signage display the penalty amount and a warning that a vehicle could be towed for violating the parking restriction.

This case is worth noting because even though the parking space was clearly marked as reserved only for disabled persons, the letter of the law was a necessary element of enforcement.

*Andrew HEDGEPEETH, Celia Burson, David McCleary, and Gaynell Metts, on behalf of themselves and all others similarly situated, Plaintiffs-Appellants, v. State of TENNESSEE Department of Public Safety (2000)*

Andrew Hedgepath sued Tennessee for a fee system charging \$20.50 for vehicle registration and a disability placard valid for two years. In this case, the Sixth Circuit ruled that fees associated with the registration of a vehicle and issuance of a disability placards constitute a tax for purposes of the Tax Injunction Act and that Plaintiffs had a “plain, speedy, and efficient remedy” to contest the matter at the state level. Alternatively, the district court held for purposes of appellate review that the complaint should also be dismissed on grounds of Eleventh Amendment immunity and the statute of limitations.

*William Robert Dare Gary Petillo v. State of California (4th Cir. 1999)*

William Dare applied for a disability placard in 1996 and was charged the requisite \$6 fee. He sued the State of California, claiming that charging a fee constitutes a violation of ADA Title II and its promulgating regulations. Dare alleged that the fee constitutes an impermissible surcharge upon measures necessary to ensure the nondiscriminatory treatment of individuals and groups required by the ADA. Dare cited 28 C.F.R. Section 35.130(f), a regulation promulgated by the Department of Justice to enforce the ADA, which states that:

- [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 with the nondiscriminatory treatment required by the Act or this part.

The suit was granted class action status and reached the Ninth Circuit Court of Appeal, which ruled that the fee constitutes a surcharge against disabled people that is discriminatory. California settled the matter by making a number of statutory adjustments, including elimination of a fee for permanent disability placards and automatic renewal of placards without requiring an application for renewal.

*COMMONWEALTH of Pennsylvania v. Robert W. GEIGLEY (1995)*

Robert Geigley was convicted of parking his automobile on the street in front of his house in excess of the allotted time limit. According to a local ordinance in Gettysburg, PA, vehicles lacking a residential permit are limited to parking for two hours, and Geigley’s vehicle displayed no residential permit, although he did display a disability parking placard. Pennsylvania law allowed an additional one-

hour “grace period” for vehicles displaying a disability parking placard, but Geigley was parked for more than three hours.

Geigley appealed, arguing his disability should make him immune from local parking limitations and that a separate statute authorizing the city to install a disability parking space should be enforced. The Pennsylvania Supreme Court responded that the

statute was clear in granting only one hour of grace period and that a statute allowing the city to install a space could not be interpreted as requiring installation of a disability space.

This case is worth noting because the court determined that government can limit the privileges associated with disability parking products and that requests for a blue space can be denied.