



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

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ATTORNEY GENERAL

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FILE NO. 12-003

**CIVIL RIGHTS:**

Authority of State Agency to  
Designate Accessible Parking  
Spaces for Employee Use Only

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Dear Mr. Claps and Ms. Saddler:

I have the Interagency Committee on Employees with Disabilities' (ICED) letter inquiring whether a State agency that provides the minimum number of accessible parking spaces required under the Illinois Accessibility Code (IAC) (71 Ill. Adm. Code Part 400 (2012), last amended at 21 Ill. Reg. 14502, effective October 24, 1997) may designate some or all of those

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spaces for use by employees with disabilities only. For the reasons discussed below, it is my opinion that a State agency which provides the minimum number of required accessible parking spaces may not designate any of those required accessible parking spaces for use only by employees. Such agency must ensure that those spaces are available for use by any vehicle with the plates or signs that allow parking in accessible spaces. If assigning parking spaces to employees with disabilities as a reasonable accommodation would reduce the number of generally-available accessible parking spaces below the minimum number required by law, an agency must provide additional accessible spaces to meet the minimum requirements.

#### **BACKGROUND**

State employees with disabilities have expressed concerns to ICED regarding the availability of accessible parking. Some State agencies that provide off-street parking for employees provide only the minimum number of accessible parking spaces required by the IAC. Because these spaces are available on a first-come, first-served basis for visitors as well as employees, employees with disabilities may be forced to arrive at work earlier than employees who are not disabled to obtain one of the limited number of accessible parking spaces. Employees with disabilities also may be reticent to leave work for meetings or appointments during the day due to concerns about the availability of an accessible parking space when they return. In response to these concerns, ICED asks whether it is permissible for State agencies which provide only the minimum number of accessible parking spaces required by law to designate some or all of those spaces for use only by agency employees with disabilities.

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## ANALYSIS

There are no Illinois judicial decisions or prior opinions of this office addressing the issue raised by your inquiry. Therefore, to respond to your request, it is appropriate to examine the relevant Illinois statutes and administrative rules, as well as the Americans with Disabilities Act of 1990 (the ADA) (42 U.S.C. §§12101-12213 (2006 & Supp. V 2011)), the Americans with Disabilities Act Accessibility Standards for Accessible Design (the ADA Standards) (28 C.F.R. pt. 35 (2012)), the Equal Employment Opportunity Commission's (EEOC) rules and interpretive guidance (29 C.F.R. pt. 1630 (2012)), and reported decisions from other jurisdictions. Responding to your inquiry requires a review of two separate issues. First, whether a State agency may be required to assign an accessible parking space to an employee with a disability as a reasonable accommodation. And, second, if so, whether the agency may assign to the employee one of the accessible parking spaces that it is required to provide by the IAC.

### **Reasonable Accommodations for State Employees with Disabilities**

Under Title I of the ADA, State and local governments, as well as businesses with 15 or more employees, may not discriminate "against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." 42 U.S.C. §§12111(2), (5), 12112(a) (2006 & Supp. V 2011). The ADA defines a "qualified individual" as "an individual who, with or without reasonable accommodation, can

perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C §12111(8) (2006 & Supp. V 2011). A "reasonable accommodation" may include, but is not limited to, "making existing facilities used by employees readily accessible to and usable by individuals with disabilities[.]" 42 U.S.C. §12111(9)(A) (2006 & Supp. V 2011).<sup>1</sup>

The ADA does not expressly provide that assigned parking constitutes a "reasonable accommodation" under that Act. Title I of the ADA and the EEOC rules and published guidance, however, all indicate that, in appropriate circumstances, the provision of assigned parking to an employee with a disability may be considered a reasonable accommodation if it permits the person with a disability to access his or her workplace, and off-street parking is a benefit of employment enjoyed by other employees. *See* 42 U.S.C. §12111(9)(A) (2006 & Supp. V 2011); 29 C.F.R. §1630.2(o)(1)(iii) (2012); *see also* 28 C.F.R.

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<sup>1</sup>Making a work facility readily accessible and usable to an employee with a disability does not, however, require an employer to make accommodations that would constitute an undue hardship to the employer. Section 12111(10) of the ADA (42 U.S.C. §12111(10) (2006 & Supp. V 2011)) defines "undue hardship" as "an action requiring significant difficulty or expense, when considered in light of" the following factors:

- (i) the nature and cost of the accommodation needed under this chapter;
- (ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;
- (iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and
- (iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

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§§35.104, 35.130(a), (g), 35.150, 35.151(c) (2012); United States Department of Justice, 2010 ADA Standards for Accessible Design, §§208.1, 208.2, *available at* [http://www.ada.gov/regs2010/2010ADAStandards/2010ADAStandards\\_prt.pdf](http://www.ada.gov/regs2010/2010ADAStandards/2010ADAStandards_prt.pdf).

Whether to provide an assigned parking space to an employee with a disability as a reasonable accommodation must be determined on a case-by-case basis. EEOC rules implementing the ADA elaborate on the types of accommodations that may be considered to be reasonable, including but not limited to "[m]odifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities." 29 C.F.R.

§1630.2(o)(1)(iii) (2012). The rule further states:

To determine the appropriate reasonable accommodation it may be necessary for the covered entity to initiate an informal, interactive process with the individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations. 29 C.F.R. §1630.2(o)(3) (2012).

EEOC guidance regarding reasonable accommodations includes an example specifically relating to assigned parking spaces:

A corporation provides parking for its employees. Parking spaces are unassigned. An attorney has severe emphysema and asks for a parking space next to the door. His disability requires constant use of a portable oxygen tank which, in turn, restricts him from walking even relatively short distances. The attorney is seeking an accommodation to use the employer-provided benefit. Therefore, the employer should reserve a parking space next to the

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door for use by the attorney as a reasonable accommodation, if there is no undue hardship, in order to provide him equal access to the parking benefit. U.S. Equal Employment Opportunity Commission, Reasonable Accommodations for Attorneys with Disabilities, M, ex. 21 (last modified February 2, 2011), *available at* <http://www.eeoc.gov/facts/accommodations-attorneys.html>.

Although neither the Illinois courts, nor the Seventh Circuit Court of Appeals have addressed the issue of providing parking spaces as a reasonable accommodation for an employee with a disability, the First and Second Circuit Courts of Appeals have interpreted the ADA as requiring employers to consider special parking arrangements for an employee with a disability as a potential reasonable accommodation, based on the employee's individual needs. *See Marcano-Rivera v. Pueblo International, Inc.*, 232 F.3d 245, 257 (1<sup>st</sup> Cir. 2000) (court rejected defendant's argument that requiring disabled plaintiff to park in the same lot as other employees, rather than allowing her to use accessible parking spaces in front of facility, was not discriminatory); *Lyons v. Legal Aid Society*, 68 F.3d 1512, 1515-17 (2d Cir. 1995) (disabled plaintiff's assertion that she could not fulfill responsibilities as a staff attorney without being able to park her car adjacent to her office stated a claim on which relief could be granted under the ADA).

As this discussion demonstrates, it may be necessary for a State agency to provide an assigned parking space to an employee with a disability as a reasonable accommodation. The issue then becomes whether, in complying with the ADA by assigning a parking space to an employee with a disability, a State agency may use one of its required number of accessible spaces under the IAC.

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**Required Accessible Parking Spaces**

The IAC sets forth the accessible parking requirements for an agency based on the overall amount of parking provided. Subsection 400.310(c)(1) of the IAC (71 Ill. Adm. Code §400.310(c)(1) (2012), last amended at 21 Ill. Reg. 14502, effective October 24, 1997) provides:

If any parking is provided for employees or visitors, or both, the minimum number of accessible parking spaces to be provided for environmentally limited persons is as follows:

TOTAL OFF-STREET PARKING SPACES PROVIDED	REQUIRED MINIMUM NUMBER OF ACCESSIBLE SPACES
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501-1000	2% of total number
Over 1000	20 plus 1 for each 100 over 1000

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The Illinois Vehicle Code (625 ILCS 5/1-100 *et seq.* (West 2010)) contains provisions regarding which vehicles may park in accessible parking places. Section 11-1301.1 of the Illinois Vehicle Code (the Vehicle Code) (625 ILCS 5/11-1301.1 (West 2010)) provides, in pertinent part:

*Any motor vehicle bearing registration plates or a special decal or device \* \* \* as evidence that the vehicle is operated by or for a person with disabilities or disabled veteran may park, in addition to any other lawful place, in any parking place specifically reserved for such vehicles by the posting of an official sign[.]* (Emphasis added.)

Section 11-1301.3 of the Vehicle Code (625 ILCS 5/11-1301.3 (West 2010)) similarly provides:

Any motor vehicle properly displaying a disability license plate or a parking decal or device containing the International symbol of access issued to persons with disabilities by any local authority, state, district, territory or foreign country shall be recognized by State and local authorities as a valid license plate or device and receive the same parking privileges as residents of this State.

Read together, the language of subsection 400.310(c)(1) of the IAC and sections 11-1301.1 and 11-1301.3 of the Vehicle Code is unambiguous. These provisions establish that an agency must designate a specific number of spaces for accessible parking and that *any* motor vehicle with license plates or other signage identifying it as being operated by, or for, a person with a disability, may be parked in *any* accessible parking place. This clear and unambiguous language must be given effect as written. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). In my opinion, these provisions prohibit a State agency from assigning one of its required designated accessible parking spaces solely for one person's use, including a State employee with a disability.



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Similarly, complying with the ADA by assigning a parking space to an employee with a disability does not relieve a State agency of its obligations under the IAC and the ADA Standards to provide a minimum number of accessible first-come, first-served parking spaces for other individuals with disabilities (whether those individuals are visitors or employees). *See generally* 28 C.F.R. §§35.104, 35.130(a), (g), 35.150, 35.151(c) (2012); United States Department of Justice, 2010 ADA Standards for Accessible Design, §§208.1, 208.2, *available at* [http://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards\\_prt.pdf](http://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards_prt.pdf). A State agency cannot include the individually-assigned employee spaces in determining whether it has provided the minimum number of accessible parking spaces required by IAC. Accordingly, a State agency must designate a sufficient number of accessible parking spaces in addition to those assigned to employees with disabilities in order to meet the minimum accessible parking requirements established by law.

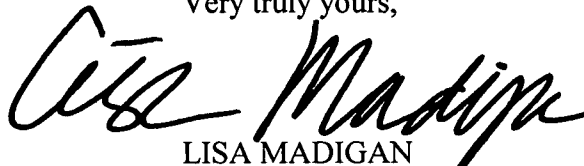
### CONCLUSION

Under the Americans with Disabilities Act of 1990, a State agency may need to provide an assigned parking space to an employee with a disability as a reasonable accommodation to ensure that the employee may access the workplace and enjoy the parking benefits provided to employees without disabilities. Ultimately, whether an assigned parking space would be a reasonable accommodation requires a case-by-case analysis. But if an agency assigns a parking space to an employee with a disability as a reasonable accommodation, it cannot also count that space to meet the requirements of the Illinois Accessibility Code. The Illinois Accessibility Code mandates that agencies provide a specific number of accessible

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parking spaces, and the Illinois Vehicle Code, in turn, provides that those spaces must be available to any individual with an accessible parking permit. Based on these provisions, it is my opinion that the required accessible parking spaces may not be designated for employee-only use. Rather, if assigning parking spaces to employees with disabilities causes a State agency's number of accessible parking spaces to fall below the minimum required by the Illinois Accessibility Code, then the agency must designate additional, properly marked accessible parking spaces for general use by individuals with disabilities.

Very truly yours,



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