

Addressing equal access issues helps your business increase sales and avoid being targeted by “professional” ADA litigants.

Are you at risk?

How to protect yourself from ADA lawsuits

By David Goldman

The Americans with Disabilities Act (ADA) was enacted by the U.S. Congress in 1990 with the stated goal of remedying discrimination against individuals with disabilities. Among other things, the ADA requires removal of structural barriers in businesses open to the public “where such removal is readily achievable.” Where removal of a barrier is not readily achievable, businesses must provide access “through alternative methods if such methods are readily achievable.” Aggrieved individuals may bring a private action to enforce the ADA and, if successful, obtain injunctive relief and an award of attorney’s fees.

Similarly, California has adopted the Unruh Civil Rights Act, which provides that any violation of the ADA shall constitute a violation of state law. Unlike the ADA, California law awards money damages “for each and every offense . . . up to a maximum of three times the amount of actual damage but in no case less than \$4,000, and any attorney’s fees that may be determined by the court.” Not surprisingly, ADA access lawsuits have proliferated, particularly in California because a financial incentive exists to pursue this type of litigation.

Some disabled individuals and their attorneys have become notorious as a result of questionable tactics that seem to be geared more toward extorting money from business owners than pursuing more altruistic goals of providing necessary access for disabled individuals to places of public accommodation. While the business community has justifiably complained about these strong-arm tactics, the right to pursue business owners

for failing to comply with ADA equal access requirements has been repeatedly upheld by the courts.

What business owners should do

New buildings must, of course, comply with the current accessibility requirements of the law. However, existing buildings are not “grandfathered in” if they have not undertaken remodeling of their premises, as many business owners believe (or hope). Businesses that provide goods or services to the public must still make their services and facilities fully accessible whenever it is readily achievable to do so.

Even when removal of architectural barriers is not readily achievable, “alternative” methods to gain access usually must be provided. For example, if a ramp cannot be installed at the front of a store to allow wheelchair access because of insufficient space, an accessible buzzer may be required to enable disabled customers to alert a business so that it can unfold a portable ramp. In other words, even though a business may find it infeasible to make its business fully accessible by removing all architectural barriers, there are a great many things that businesses can comfortably do to make their businesses more accessible.

The first thing businesses should do is to perform an accessibility audit. It may be as easy as asking a disabled friend or colleague to visit your business to see if full access is possible. Better yet, ask an architect experienced in equal-access requirements or other qualified ADA consultant to do a “walk through” of your business and quickly identify areas that may not comply with ADA regulations. This can often be done without

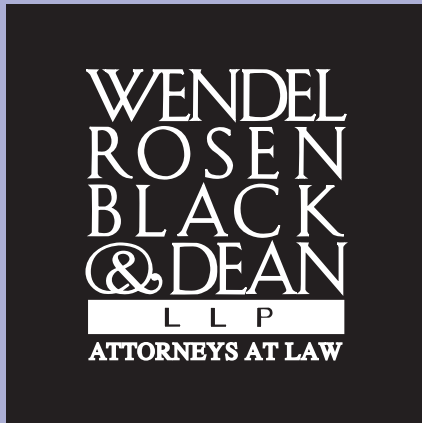
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substantial cost. While business owners often feel overwhelmed by the potential cost of making modifications to their business premises, the “put your head in the sand” approach does not work. Simply stated, public accommodations should do what they can to make their businesses more accessible. Many access improvements can be done quickly and economically. Even if full compliance is not achieved, improving disabled access can help reduce potential exposure to costly ADA litigation.

Why is this true? Because, although it has been 15 years since the enactment of the ADA, a great many public accommodations are not in compliance with legal accessibility requirements. The “professional” ADA litigant has plenty of businesses to choose from when deciding who to sue for ADA access compliance. More often than not they choose the “low hanging fruit,” that is, businesses where no effort has been

made to comply with the ADA. Businesses can minimize their exposure to these types of lawsuits by doing simple, cost-effective things like posting ADA-approved signs on their businesses and alerting disabled individuals that access is available or alternative means exist. Designating certain parking stalls for disabled person parking only, painting disabled parking striping in parking lots, and posting the disabled parking signs will discourage ADA litigation, and at minimal cost.

When the United States Congress enacted the ADA, it determined that there were more than 40 million disabled people in the United States. Business owners should recognize the fact that making their businesses more accessible to the buying potential of the vast number of disabled individuals can generate loyal customers and a substantial economic benefit. ^{FT}



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