

Americans With Disabilities Act (ADA) Compliance Alert

ADA compliance and discrimination lawsuits target businesses and a number in Redlands have already been stung.

Business owners and landlords must take immediate action to protect themselves and their businesses. A recent threat of suit against local Chamber members came to our attention alerting us of the questionable but legal practices of attorneys imposing lawsuits, settlement costs, attorney fees, construction costs, and loss of business on businesses that find themselves out of compliance with ADA requirements.

The following excerpts are from the Morena News, by Michael Sisk, Vice President, Morena Business Association,

A tsunami of litigation has engulfed businesses of every stripe. Over fifteen thousand businesses in California have been hit with ADA or discrimination lawsuits one or more times since 1992. 33 plaintiff attorneys have filed almost all of the cases. Many of these lawyers have been accused of exploiting the ADA legislation for their own financial gain under the banner of "helping the disabled". Disabled persons, however, venerate these lawyers as crusaders who are motivating business owners and landlords to comply with a law that was passed 17 years ago. The disabled say that they are unable to do business with many companies, and that businesses are losing an entire segment of customers, the disabled, because of access problems.

On July 26, 1990, Congress passed the [Americans With Disabilities Act \(ADA\)](#). The new ADA law eclipsed the Civil Rights Commission Act Amendments of 1978 (P.L. 95-444) which had expanded the jurisdiction of the Civil Rights Commission to include protection against discrimination on the basis of handicap. The new ADA legislation included a detailed list of specific access and signage requirements, and it provided a 2-year grace period for larger businesses to comply with access provisions for the disabled. All other businesses, government agencies, and office buildings were required to begin modifications to make their buildings and businesses compliant immediately.

When thinking about adapting your building to comply with the ADA requirements it is suggested that you put yourself in the position of someone who is disabled who cannot get to your business. There is no place to park their van or car, they can't get from the parking lot to your door, they can't get inside your office, and they can't get your attention from outside. Once inside, other obstacles make it difficult for them to be there. These are issues that disabled people have to deal with everyday. You can understand how they would be motivated to take action to correct a frustrating situation. So, according to the experts, what are some of the things you can be sued for?

- You don't have a ramp into your business.
- The ramp you do have has a slope greater than 5 degrees and no railing.

- The hand railings on your ramps or staircase are not continuous.
- The landing at the top of the ramp is not big enough for a person in a wheel chair or walker to navigate and open the door.
- Your doors (exterior and interior) don't have a metal kick plate, or the kick plate isn't large enough.
- Your doors require more than 5 pounds of pressure to open.
- One of your thresholds is more than 1/4-inch high (1/2-inch if beveled).
- You don't have a Disabled Access sign on the outside of your business.
- You don't have a Disabled Parking sign outside your business.
- You don't have a No Parking in Disabled Spaces Without a Permit sign.
- The sign must explain how to find their car when it is towed. The name, address, and phone number of the towing company must be shown in 1-inch high letters.
- It must state the appropriate code for towing - CVC 22511.8(d).
- Some attorneys insist that the sign be printed in black and white, not blue and white.
- Disabled Parking Sign Your sign uses the word "Handicapped" instead of "Disabled".
- Your only visitor parking space is not a "Van Accessible" space that is 9-foot x 18-foot with a slope of no more than 2% in any direction and an 8-foot x 18-foot access aisle alongside to accommodate vans with a wheelchair lift.
- You don't have a separate Van Accessible sign for your Van Accessible parking space.
- Van Accessible Sign The access aisles next to your disabled parking space are lined in blue, but they don't have NO PARKING painted in large white letters in the access aisle.
- The disability logo painted in your parking space is not 36-inches x 36-inches, or it doesn't have a white stripe around it so it can be seen at night.
- The handicapped logo is not near the end of the space, where it can be seen when a car is parked over it.
- You don't have a demarcated (blue-striped) path of travel guiding disabled persons to the correct entrance.
- You re-paved your parking lot, and didn't get the re-striping done quickly enough.
- Your ramp into the building intrudes into the disabled parking space or access aisle.
- There is no smooth pathway from the parking area to the entrance of the building.
- Your welcome mat is too thick.
- Your welcome mat doesn't have beveled edges.
- Your welcome mat is too soft.
- Your door handles are round, not levers or push buttons.
- You don't have any way for disabled persons who are outside to contact you inside.
- You don't have an Employee Policy Manual that states that your business welcomes disabled customers and that your employees will make every effort to assist disabled persons into your business.

- Absent a policy manual, you haven't asked each employee to sign a document stating that they will assist the disabled in every way.
- The pathway to your handicapped entrance has something setting in it.
- Some aisles in your business are less than 36-inches wide.
- The UPS man set a package down in the aisle while he was getting a signature or retrieving a package. That blockage is cause for a lawsuit.
- Your business is a laundry mat. Your customers leave laundry baskets in the aisles, blocking the aisles.
- Your carpet isn't dense enough for a wheel chair or a person on crutches to transit easily and safely.
- Your counters are too high.
- Your shelves are too high, and no one offered to help the disabled person by retrieving an item.
- Your drinking fountain is too high.
- The cups for your drinking fountain are too high.
- Your pay phone or any phone they might use is too high.
- Your drinking fountain protrudes out. A blind person could run into it.
- Your bathroom doesn't have a ISA sign on the door, and an ISA sign with the proper Braille on the wall by the door at the correct height.
- Your toilet paper dispenser is in the navigation area, and it protrudes more than 4-inches.
- The toilet flush handle is on the wrong side of the toilet.
- The center line of the toilet is more or less than 18-inches from the wall. It has to be exactly 18-inches on center.
- Your mirror, paper towel dispenser, soap dispenser, hot air blower, light switch, and toilet seat cover dispenser are more than 40-inches above the floor. Your coat hook is more than 48-inches high.
- Your toilet is too low.
- There are no grab bars above the toilet, or the grab bars are not long enough, high enough, or sturdy enough, or the screws holding them in are not covered, so users might cut their hands.
- There are items on the wall above the grab bars.
- There isn't 60-inches of clearance in your bathroom for a wheel chair to navigate.
- The bathroom sink is too high.
- There isn't sufficient leg room under the sink.
- The faucets require more than 5 pounds of pressure to turn on.
- The hot water pipe under your sink is not insulated to prevent burns to the legs of a person with no feeling in their legs sitting at the sink.
- Your bathroom door, stall doors, faucets, and other equipment are operated by twisting, pinching, or grasping.
- Your web site can't be read by the JAWS for Windows program for the visually impaired, because you don't have meta-tags or text (visible or invisible) describing photos, images, and graphic text.
- The products that you make or sell are not easy to open or to operate by the disabled.

You just filed for a permit to make disability improvements. Someone is watching those permit applications and sues you while you are making the improvements. You are sued in State Court. Someone is watching case filings and sues you in Federal Court. You were sued and settled. You are now a target of copy cat attorneys or even the same attorney.

Believe it or not, this is a short list. Some of these items apply to everybody, and some do not. Suffice it to say, there are numerous causes for litigation. Businesses are being accused of discrimination, ADA access violations, and hate crimes. Most cases are filed in Federal Court.

Access requirements differ from business to business, based on many factors, so it is important to look at the requirements that pertain to your type of business, your type of office building, and your parking situation. The California Disability Access Guide (CalDAG Manual) by Michael Gibbens is an excellent resource. He has provided detailed explanations and drawings to help businesses and landlords meet both State and Federal access requirements. It is very important that you read and learn what parking, signs, lines, and access features are required for your exterior and interior situations, so you can begin to be prepared.

It costs \$300 to file a suit against you, and the plaintiff is guaranteed to get that \$300 back, even if you are right. You or your insurance company will pay it.

Most of the time you will never see a disabled person before you are sued. Able-bodied people are hired to visit your business and take pictures with eye glass cameras, tie tack cameras, and wrist watch cameras. They walk around, act as if they are customers, and take hundreds of pictures without your knowledge. There are also "drive by" lawsuits. The plaintiffs don't even bother to come into your business. They drive by, see that you have no signs, and they file a suit naming hundreds of compliance issues that you will either have to prove don't exist or correct. If you choose to litigate, your business WILL be surveyed by the plaintiff to find non-compliant items.

The attorney who sues you will tell you that you can settle rather than go to court. He will tell you that the sooner you settle, the less he will charge for the settlement. You will have to correct all the access issues. The settlements range from a rare \$300 (the cost of filing) to \$3,000 to \$15,000 to \$45,000 and more. How big is your business? How prosperous is your business? How prosperous are you? What kind of car do you drive? The more successful you look, the bigger a target you are. Add your attorney fees of \$4,000 or more, and we're talking big sums of money.

Do You Think This Doesn't Apply To You?

Do you think your landlord will take care of the problem? Is it written in your lease that he will? Probably not. The bad guys sue everybody in the food chain - your business and your landlord, and everybody pays. Smart landlords are now writing new leases that indemnify the landlord for access litigation that is related to the way tenants operate their businesses. They specify that tenant improvements must be ADA access compliant. Aisles must be kept free and clear. You must welcome and accommodate the disabled, just as you do able-bodied customers and employees. And so on. The leases explicitly state that if you are sued for access violations in your business, you will be responsible, and your landlord will be held harmless. In other words, you will pay the landlord's costs if he is named in the suit.

Your franchiser built your retail location, so you assume that he must have done everything right. The fact is that nobody gets it right. Nobody even agrees on what is right. You can be sued even if you are right. The franchisee, not the franchiser, always pays in the end.

You are in a new building. You assume that the contractor who built your building must have done everything right. For many contractors, ADA access issues have not been on their radar until recently. The City of San Diego Building Department is now much more alert to access issues in new construction, but many new buildings have access problems. Some of the ADA regulations are not real clear, and sometimes it is difficult to determine which requirements apply to your situation. Lots of new cement is being removed to retrofit access improvements.

Is your business incorporated, or is it a limited liability company? If not, your personal assets are exposed to these plaintiffs. Does your building or business have a lot of equity in it? If yes, you are a big target.

So what should you do?

Step one. Educate yourself. Download and read [The ADA Top 40](#) by David Warren Peters. Mr. Peters suggests 40 things you can do to reduce your exposure to lawsuits by spending approximately \$1,000 and a weekend of effort. The City of San Diego Development Service Department has also published an booklet for those just getting started with modifications. It's called the [Accessibility Guide for Small Business](#), and it provides an illustrated overview of access issues.

Step two. Purchase the latest CalDAG Manual for \$56. This manual unifies Federal and State regulations and provides specifications and drawings for signs, fixtures, pathways, doorways, parking, and more. You and your contractor will rely heavily on the information in this book.

Step three. Make a plan in writing. Using what you have learned, walk around your building and your business and list all the areas that need attention. Start outside and

work your way inside. Look at signs, parking, pathways, entryways, bathrooms, and access to products, services, and conveniences that able-bodied customers and employees use. Can a disabled person use them, too?

Step four. Contact your insurance agent and ask for advice on protecting your business and personal assets. Find out if you are insured against ADA compliance and discrimination lawsuits.

Step five. Talk to your attorney or CPA about incorporating your business. Ask your CPA or Financial Advisor how to protect the equity in your building using 2nd Trust Deeds or other methods.

Step six. Post the proper signs as soon as you can. Having no signs means that you are a prime target. A Disabled Access sign implies the entrance or parking space is accessible, so make sure it is before you put the sign up.

Step seven. Do all the easy things you can right away: widen and clear your aisles, lower fixtures, remove obstacles, type up a sign for your entry doors informing the disabled about entry, access, and doing business with you.
Sign Offering Help and Assistance to the Disabled

Step eight. Seek professional guidance.

Step nine. Make a budget. Decide and budget which items you are going to correct in which order. The ADA specifies that 20% of all new construction money must be spent on access-related items. Consider opening up a bank account called "Access". Deposit an initial sum of money into your Access account to use in making your improvements, and continue to deposit a certain amount each month, using the money for all access-related expenditures. This will look good if you are ever hit by one of these lawsuits.

Step ten. Stripe your disabled parking space according to the dimensions and specifications in the CalDAG Manual.

Step eleven. Hire someone to do the railings, cement work, bathroom corrections, etc. This work may require a city building permit. An ADA-experienced consultant can advise you on this.

Step twelve. Keep a record of everything you do. Take before and after photographs.

Step thirteen. Do the most affordable things first. Seek advice and alternatives before spending large sums of money. For example, if your building only has two floors, and there is no cafe, medical office, or retail business on the second floor, you don't need an elevator or a lift. You should have a plan for meeting disabled customers and clients in a convenient location.