The Anatomy of an ADA Lawsuit

The Americans with Disabilities Act was enacted with the purpose of eliminating discrimination against persons with disabilities. However, the ADA is sometimes used by a few disabled individuals and organizations who file numerous lawsuits to obtain quick settlements from smaller businesses. These individuals have the set up for an ADA lawsuit down to a science.

For example, a man in a wheelchair comes into a restaurant with a family member. He will ask for some assistance to get to a table. At some point, he will go to the restroom and try to use the facilities. After they get out of the restroom, he will ask for the manager and complain about the facilities. He will then leave. Several months later, a lawsuit is filed which alleges violations of the ADA and California law.

Each of these actions is designed to strengthen their claim. The ADA plaintiff wants to prove they were actually at the business so they will keep the receipt. They use the rest room because most ADA violations are found in the restrooms. Any verbal complaints are voiced because they want to claim the business ignored their concerns. The family member is there to corroborate the plaintiff’s actions. The lawsuit is filed months later in hopes to allow memories to fade.

In fact, some ADA plaintiff’s may visit several type businesses the same day with the intention of filing multiple ADA lawsuits. One ADA plaintiff went to several different gas stations to purchase gum and use the restrooms. Another ADA plaintiff used the restroom in different restaurants and claimed they caused the same injury to his hands. To combat these strategies, businesses need to understand is how ADA plaintiffs use the law to sue.

Federal Law

The ADA makes it illegal for businesses to discriminate against disabled individuals. To prove a violation of the ADA, a plaintiff must prove three facts. First, he must have a disability. Second, the business is a place of public accommodation. Third, he was denied full and equal treatment because of his disability. (Wilson v. Pier 1 Imports (US), Inc. (E.D. Cal. 2006) 439 F. Supp. 2d 1054, 1067.)

Under the ADA, a business may have discriminated against handicapped individuals because they have constructed and maintained “architectural barriers” which prevent disabled people from enjoying the business as any other person. (42 USC § 12182, subd. (b)(2)(A)(iv).)
The Department of Justice created regulations which have become known as the “Americans with Disability Act Accessibility Guidelines for Buildings and Facilities.” The Department of Justice’s Accessibility Guidelines listed the minimum requirements for ADA compliance. The Accessibility Guidelines provide such things as the number of handicapped parking spaces a business must have and the dimensions of the spaces, the slope requirements for a handicap ramp, counter height, etc. It is these standards which serve as the cornerstone of an ADA claim.

The ADA uses the Accessibility Guidelines to show a violation of the ADA. The ADA must also show the removal of the barriers can be readily achieved. A business can defend the ADA claim if it shows removal of the barriers is not readily achievable. The reality for many businesses is certain barriers can be removed for a minimal cost. ADA plaintiffs will focus on these things and know the businesses will face an uphill argument.

The Interaction of Federal Law and State Law

The fact plaintiff sues under the ADA does not mean their claim will be limited to one statute. California enacted the Unruh Act which also prohibits businesses from discriminating against individuals with disabilities. Typical lawsuits will include the ADA as well as violations of the Unruh Act.

The Unruh Act only uses the term “discrimination.” It does not require any specific details. However, the ADA plaintiff seizes upon two other provisions of the Unruh Act. First, the Unruh Act requires a place of business to be in compliance with other laws. Second, the Unruh Act states “[a] violation of the right of any individual under the Americans with Disabilities Act of 1990 … shall constitute a violation of this section.” (Civil Code § 51(f).) The plaintiff will typically allege something along the lines of “a violation of the ADA is a per se violation of the Unruh Act.”

The Unruh Act makes the ADA lawsuit more dangerous. A business which violates the Unruh Act is liable for any actual damages at minimum of $4,000. ADA plaintiffs usually argue they are entitled to $4,000 for each violation.

Impact to Businesses

Unfortunately, many ADA plaintiffs live for technical violations of the Department of Justice’s Accessibility Guidelines and don’t care if the “barrier” actually prevents them from using the facilities. The ADA and the Unruh Act allow a successful plaintiff to recover attorney’s fees against defendants. This is the real danger in an ADA case because a plaintiff may win $4,000 in damages but then receive $100,000 in attorney’s fees.

The ADA plaintiffs are familiar with the proof requirements and the recovery of attorney’s fees. They know businesses will have to pay an attorney to defend them in a difficult action. They use the fact they will ultimately require the business to pay their attorney’s fees as well. Nevertheless, the ADA plaintiff is often willing to settle their lawsuit for a smaller sum (in the $5,000 to $20,000 range) and a promise by the defendant to change the facilities.

Obviously, the best defense for any ADA lawsuit is to review the Accessibility Guidelines and make any changes before a lawsuit is filed. Businesses should conduct inspections of any area covered by these guidelines. The Accessibility Guidelines spell out the detailed
requirements, and businesses should confirm their facilities meet them to the letter. There are
also experts who will review business facilities for ADA compliance for a fee. Once the ADA
lawsuit is filed, it is often too late. Businesses need to be pro-active to avoid this tangles web.