

How To Avoid Drive-By ADA Lawsuits

By MARGARET PAGET

The volume of “drive-by” lawsuits against shopping centers and other retail and hospitality enterprises under Title III of the Americans With Disabilities Act (ADA) is alarming many in the industry. In addition to the cost of making necessary alterations to a property, business owners may also be ordered to pay the plaintiff’s attorney fees (in addition to their own). For this reason, ADA claims alleging even the most minor violation can be costly.

The best approach? Take steps to minimize the likelihood that you will be targeted before you are sued.

Learn from Experience

Drive-by ADA lawsuits are boilerplate and suggest that the plaintiff has done little more than drive by the establishment before bringing suit. We can learn much from these complaints. By addressing the most frequently claimed ADA violations before being sued, one may altogether avoid becoming a target. Before undertaking any barrier removal, consult the newly-effective 2010 ADA Standards for Accessible Design (2010 Standards) any applicable state regulations and ensure that you understand the scope and extent of your obligations under the ADA.

Make Parking Lots And Paths of Travel Accessible

Claims of insufficient handicapped-accessible parking top the list of ADA complaints, despite the fact that it is often simple and inexpensive for an owner to



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provide adequate handicapped parking. To deter a drive-by lawsuit, focus on the following:

- Ensure the parking area has a sufficient number of properly designated handicapped parking spots, including van accessible spots.
- Ensure that handicapped parking spots are marked with adequate signage.
- Ensure that there are accessible routes of travel from the parking area to the facility.

Provide Accessible Public Restrooms

- Like parking, publicly available restrooms are frequently the subject of ADA complaints.
- Speaking from the perspective of one who defends ADA suits, it is better to have one fully-accessible bathroom than

multiple bathrooms that are only partially accessible.

Pools and Recreational Facilities

- The 2010 Standards impose new accessibility requirements on recreational facilities, including gyms, fitness centers, pools and spas.
- For pools and spas, the compliance deadline has been extended to Jan. 31, 2013. For compliance assistance, visit: http://www.ada.gov/qa_existing-pools_titleIII.htm

Keep Records

- If one is sued, having complete and thorough records will help in defending against the claims.
- Keep detailed records of any repairs, alterations or renovations performed at the property (dating back as far as possible).
- For projects involving the removal of barriers to comply with the ADA, maintain records (including receipts and the like), documenting the cost and scope of the work.
- Keep records of any visitor complaints pertaining to accessibility.

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