PROTECT YOUR BUSINESS FROM POTENTIAL ADA LAWSUITS

Compliance is a recommended investment as not only will your business be less vulnerable to drive-by lawsuits, but you gain a growing market of seniors, families with baby strollers, and persons with disabilities. Cost will depend on the type of alterations, and on what is affordable at the present and future. If you do not have a person that has been tested and certified by the state as an expert in disability access laws to identify “readily achievable” barriers for removal. A CASp should help your business identify “readily achievable” barriers for removal.

Two Sets of Access Laws

There are two different bodies of law in California that regulate disability access: a state building code, and a federal civil rights law. The state building code requirements for access are located in the California Code of Regulations, Title 24, Part 2, and are commonly referred to as Title 24. The Americans with Disabilities Act of 1990 (ADA) is a sweeping federal civil rights law which prohibits discrimination against persons with disabilities. Specifically, Title III of the ADA requires public accommodations to provide goods and services to people with disabilities on an equal basis with the rest of the general public. The United States Department of Justice (DOJ) enforces the ADA. Being compliant to the regulations of one law does not relieve your responsibilities to be compliant with the other set of laws.

Non Compliance

If the building is not compliant with California Title 24, the citizen complaint is routed to the Department of Building Inspection (DBI). DBI will send staff to visit the site and perform an inspection, and if necessary, the inspector will initiate actions to require the owner to correct the problem. If the citizen’s complaint is ADA driven, the plaintiff can take the business to civil court for remedy. The federal ADA does not have an “inspection” mechanism, and private lawsuits can be filed directly in federal courts by those who believe their civil rights have been violated.

Who is Required to Remove Barriers?

Barriers are defined by the ADA as obstacles to accessibility. Such obstacles make it difficult — sometimes impossible — for people with disabilities to do the things most of us take for granted — things like going shopping, working, dining in a restaurant or taking public transit. The reality today is that more ADA lawsuits are targeting small stores and minority-owned businesses because they are likely to settle rather than incur the costs and risks of litigation. The average cost to comply with a plaintiff’s requested barrier removal is less than $4,000, according to amicus curiae brief filed in the Ninth Circuit of Appeal. "Readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. Determining if barrier removal is readily achievable is, by necessity, a case-by-case judgement. "Readily achievable" is based on factors including review of standards for accessible design when you alter, renovate or expand a facility. It is NOT legal advice and does not replace the professional advice or guidance that an architect, CASp or attorney knowledgeable in ADA requirements can provide.

BUSINESS RESOURCES

Office of Small Business
City Hall, room 103
1 Carlton B. Goodlett Place
San Francisco, CA 94102
415-554-6134, www.sfgov.org/osb

Certified Access Specialists
www.ada.gov/osb

San Francisco Bar Association
1245 Howard Street
San Francisco, CA 94103

Asian Neighborhood Design
1158 Howard Street
San Francisco, CA 94103
415-957-0423, www.anhd.org

Supportive Housing
San Francisco, CA 94103
415-554-6084, www.sfgov.org/dbi

DBI staff persons are available to review state access requirements. Visit 1660 Mission Street, 4th floor to request a review of your business plans.

Department of Building Inspection - Technical Services Unit
DBI staff persons are available to review state access requirements. Visit 1660 Mission Street, 4th floor to request a review of your business plans.

This document is intended as informal technical guidance. It is NOT legal advice and does not replace the professional advice or guidance that an architect, CASp or attorney knowledgeable in ADA requirements can provide.
The accessible restroom has the required fixtures, dimensions and clearances.

D. Compliant Restroom

C. Compliant Counters

36" wide and remain unobstructed.

All aisles to public zones, including seating, restrooms, and food pick-up are at least 36" wide.

B. Path of Travel Clearance

All aisles to public zones must be at least 36" wide and remain unobstructed.

C. Door Clearance

The pull side of doors must have a clearance specified by local codes.

D. Door Hardware

All doors must be operable without action of pinching or grasping.

A. Multiple Steps at Entrance

The entrance must be accessible for occupants in wheelchairs, with sloping and clearance requirements specified by local codes.

B. Step in Dining/Customer Space

All aisles to public zones must be at least 36" wide.

C. Undersized Path of Travel

All aisles to public zones must be at least 36" wide.

D. No Accessible Seating

A portion specified by local codes of the counter must be between 28" - 34" above the floor.

A. Service Counter Height and Visibility

A portion specified by local codes of the counter must be between 28" - 34" above the floor.

B. Path of Travel Clearance

All aisles to public zones must be at least 36" wide and remain unobstructed.

C. Door Clearance

The pull side of doors must have a clearance specified by local codes.

D. Door Hardware

All doors must be operable without action of pinching or grasping.

A. Compliant Entry

The entrance is accessible by stairs and a compliant ramp.

B. Path of Travel Clearance

All aisles to public zones, including seating, restrooms, and food pick-up are at least 36" wide and remain unobstructed.

C. Compliant Counters

Service counter is too high for customers in wheelchair.

D. Ramp Exceeds Maximum Slope Allowed

The ramp exceeds the maximum allowable slope.

COMMON MISCONCEPTIONS

I am exempt from compliance or “grandfathered”

The answer is “No.” A place of public accommodation must remove barriers when it is “readily achievable” to do so. Although the facility may be “grandfathered” according to the local building code, the federal ADA does not have a provision to “grandfather” a facility. While a local building authority may not require any modifications to bring a building “up to code” until a renovation or major alteration is done, the federal ADA requires that a place of public accommodation remove barriers that are readily achievable even when no alterations or renovations are planned. As a business you have an on-going obligation to bring your business into compliance.

I am exempt since my building has historic designation

Neither State nor Federal laws exempt historical buildings from compliance, but there are specific guidelines. In San Francisco, any building over 50 years old is considered as a potentially significant historical resource. Accessibility improvements to the entrance or exterior of these buildings may require additional review by Historic Preservation staff and may lengthen the permitting process. Another common misconception is that City staff will deny your application if the building is considered historic. This is extremely rare, though during the review process you will be required to find alternatives that respect historic designs and materials while also providing disabled access. Historically sensitive accessibility improvements may add cost to your project but are generally worth the investment over the long run.

Setting the lawsuit will relieve me of my responsibilities

Business owners need to know that the ADA is now a part of our society and that there is no limit to the number of times a business can be sued regarding accessible barriers. The best solution is to make the “readily achievable” physical changes and to understand that compliance is ongoing. If a business is sued over a physical barrier(s) to accessibility, they can still be sued for that same barrier in the future if it still exists.

Tenant vs. Landlord (Owner)

The federal ADA law states that any private entity who owns, leases, leases to, or operates a place of public accommodation shares in the obligation to remove barriers. Tenants and property owners also share in the obligation, so often times a negotiation must take place to determine who pays what costs, or percentage of costs for access compliance and/or litigation defense. Effective January 1, 2013, San Francisco law requires property owners of a commercial space of 7,500 square feet or less to provide a “Disabled Access Obligation Notice” before entering into or amending a lease.

Effective July 1, 2013, State law requires a commercial property owner to state on a lease or rental agreement whether the property has undergone inspection by a certified access specialist (CASp). These two laws were passed to help ensure businesses are informed of their on-going obligation and aid in the prevention of lawsuits. There are also tax benefits that are available to each party in some cases to help pay for barrier removal.

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