

Local retailers see increase in ADA suits

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Congress enacted the Americans with Disabilities Act in 1990 to prohibit discrimination against individuals with disabilities. Title III of the ADA applies to commercial facilities and places of public accommodation. The statute guarantees full enjoyment of and access to facilities for disabled individuals.

Over the past few years, ADA Title III litigation against business owners has been growing steadily across the country. Recent trends show a significant increase in these lawsuits in Virginia. Business owners should be aware of the ADA's requirements as well as of the legal procedures plaintiffs' attorneys use to enforce those requirements.

Title III's requirements apply to nearly every commercial business open to the public, including restaurants, bars, grocery stores, gas stations, malls, hotels, stadiums, movie theaters, banks, convention centers and professional offices.

Title III requires accessible parking spaces, wheelchair-accessible bathroom stalls, level sidewalks, accessible sinks, drinking fountains, appropriate signage and other accommodations.

The ADA Accessibility Guidelines contain nearly 600 pages of regulations and describe the exacting standards required for places of public accommodation to meet ADA requirements. The ADAAG sets forth the maximum slope allowed for access routes, the number of disabled parking spaces required for a facility, and even the maximum thickness of a carpet's piling.

Because the regulations are so specific, there is virtually no room for judicial interpretation - either a facility is in compliance, or it is not. Moreover, because of the expansive nature of the ADAAG, technical violations arise even at seemingly compliant facilities.

For example, the disabled parking spaces at a shopping center may be two inches too narrow, the slope of a store's curb ramps may be three degrees too steep, or handrails at a grocery store may be six inches too low. Any of these examples presents a situation where a facility that appears compliant is technically violating the ADA.

Recent court dockets reveal a significant increase in ADA litigation throughout Virginia. ADA plaintiffs frequently visit retailers in search of ADA noncompliance. Often, these plaintiffs visit multiple businesses in a particular geographic area and file separate lawsuits against each business. Although plaintiffs cannot personally recover monetary damages for filing ADA claims, plaintiffs' attorneys may recover injunctive relief, attorneys' fees and expenses. This creates an incentive for the plaintiffs' lawyers to continue filing ADA claims against retailers.

Unlike other areas of discrimination law, there are no administrative prerequisites to filing a lawsuit under Title III of the ADA. Whereas an employee who alleges disability discrimination in employment must first file a charge with the Equal Employment Opportunity Commission before he or she can file a lawsuit, Title III plaintiffs have no such requirement. Frequently, the first time that a business owner receives notice of a violation is when he or she is served with a lawsuit.

Settlement is typically the only way to resolve these ADA claims because lawsuits are typically not filed unless there are violations of the ADA. It makes little financial sense for business owners to take an ADA lawsuit all the way to trial if technical violations exist.

By locating and fixing ADA violations and negotiating a reasonable settlement of attorneys' fees, business owners usually can save significant amounts of money and avoid future lawsuits over the same violations.

The requirements of the ADA and ADAAG are complex, and the procedural requirements and deadlines in the federal court are considerable. Business owners who are sued under the ADA should consult a lawyer who is experienced in defending Title III claims. More importantly, all business owners should engage knowledgeable ADA consultants to inspect their premises to comply with the ADA regulations before a lawsuit is filed.

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