

## ADA Basics for Business

In the past year there have been a number of lawsuits brought against small business owners throughout the Valley in regard to the American Disabilities Act. We want you to be aware of the allegations they are bringing against business owners. We also want to give you practical advice on how you can avoid and defend yourself against these types of lawsuits.

### ADA CASES

- ✓ There are several lawyers and 3-4 law firms from across the state that have sued small companies alleging noncompliance issues regarding ADA. These companies have already canvassed larger counties throughout the state and are now focusing on medium sized counties such as Stanislaus.
- ✓ Attorneys from these firms allege noncompliance issues at small to medium sized businesses.
- ✓ Plaintiffs are not required to attempt to access a business if parking or entry is inaccessible.

### EXAMPLES OF VARIOUS SUITS:

- **Practices Include:**
  - ✓ Demand Letters, referencing “injury” or “injuries”, which ask for a monetary value to “settle” the case
  - ✓ Lawsuits
  - ✓ Most of the noncompliance issues they are finding deal with lack of proper access ramps, parking lot compliance, signage, improper bathroom fixtures, and door handles etc.
- **Top 10 Demand Letters & Claims according to California Commission on Disability Access (CCDA), January - March 2014:**
  - ❖ Parking: Loading zones/van access aisles are not compliant or non-existent
  - ❖ Parking: Signage in parking lot is not compliant, e.g. parking spaces need to be designated as reserved by a sign showing the symbol of accessibility
  - ❖ Parking: Existing parking spaces are not compliant
  - ❖ Parking: Number of spaces
  - ❖ Accessible Route and Entry: Routes to and from parking lot or public right of way are not accessible
  - ❖ Access within Public Facility: Access Height: heights of surfaces such as counters, bars, or tables are not compliant

- ❖ Ramps: Curb Ramps or entrance ramps are not compliant or non-existing
- ❖ Accessible Route and Entry: General, Entry doors are not accessible or missing signs/symbol of accessibility
- ❖ Access within Public Facility: Access aisles within building are not accessible
- ❖ Toilet rooms/Bathrooms: Entry doors are not accessible or not on an accessible route

## **MEASURES COMPANIES CAN TAKE TO AVOID LAWSUITS AND COME INTO ADA COMPLIANCE**

- ✓ It is important for firms to understand that if presented with noncompliance issues, they have 30 days to become compliant. They should not cave into pressure to settle upfront for noncompliance.
  - In September 2012, Gov. Jerry Brown signed SB1186 into law. The bill was designed to reduce predatory lawsuits and increase the likelihood of business compliance with ADA requirements. Demands for money by threatening lawsuits are prohibited. Attorneys must now send a written advisory of each violation to business/property owners, with copies of each letter to the California State Bar. Businesses with less than 25 employees without a CASp inspection are allowed 30 days to fix violations before being liable for court damages. (January 7, 2013 Mountain Democrat, <http://www.mtdemocrat.com/news/top-10-no-5-ada-lawsuits-attack-local-businesses/>)

### **✓ IF YOU RECEIVE A DEMAND LETTER OR ARE SERVED,**

- Do not ignore the notice
- If you determine the cited violation exists, meaning you are not in compliance, remember you have 30 days to rectify the issue if notice was filed through state court.
- **Resources:**
  - ❖ A great state organization resource which helps businesses to become aware of potential lawsuits and how they can avoid them is Citizens Against Lawsuit Abuse. Their website link is <http://www.sickoflawsuits.org/california/home>. Tom Scott from the CALA is an expert on ADA lawsuits. He can be reached at (916) 989-9665.

### **✓ THE BEST APPROACH IS TO BE PROACTIVE (AKA: THE BEST DEFENSE IS A GOOD OFFENSE...)**

- **Get compliant.** A business can and should hire a Certified Access Specialist who can come in and inspect the business for noncompliance. The specialist will issue a sticker to the business owner that can be prominently displayed which should help deter lawsuits. There are two types of stickers – one that shows that the business has been inspected and that the business owner is working toward full compliance and another sticker to show that the business is in full compliance.

- ❖ If the CASp inspection uncovers areas for correction, develop a plan for improvement.
  - The biggest red flag is parking. Dependent on the nature of the correction items, focusing first on the exterior could make your business less susceptible to a “drive-by” demand letter or lawsuit. This does not mean to suggest you should only address access in your parking areas.
  - Make immediate repairs such as replacing door knobs, signs, and faucets, wrapping pipes under sinks to prevent burns, lowering dispensers, checking your aisle widths, etc.
  - Other suggestions include posting assistance signs, employee handbook with implemented policies and procedures to make employees aware of the needs of the disabled, video surveillance cameras, etc.
- Another great local resource to protect against these lawsuits is the Disability Resource Agency for Independent Living. Their website is <http://www.drail.org/> George Sharp from DRAIL can be reached at (209) 579-4547.

**EDUCATE ON THE USE OF CERTIFIED ACCESS SPECIALIST CERTIFICATION.** Following points concerning the certificates issued by the CASp [from the California Department of General Services, Division of the State Architect website (<http://www.dgs.ca.gov/dsa/Programs/programCert/casp/consumerfaq.aspx>) Frequently Asked Questions (FAQ's)]:

### **WHAT IS A DISABILITY ACCESS INSPECTION CERTIFICATE?**

The Disability Access Inspection Certificate (Certificate) is a record of inspection, and not a certificate of compliance. A CASp does not certify that a facility meets compliance with issuance of a Certificate. A Certificate is required to be issued to you with a CASp Inspection Report regardless of the determination stipulated in the Report. The Certificate is numbered and contains the State of California seal. This number is recorded by the CASp in a record book maintained for that purpose and identifies that the certificate is issued in conjunction with a specific CASp Inspection Report. While you are advised to keep confidential the CASp Inspection Report, the Certificate is offered to you as proof that you are a holder of a CASp Inspection Report issued according to the requirements of CRASCA. You are not required to post the certificate at the facility that was inspected, and you may share it with anyone requesting proof that you have had an inspection. CASp Inspection Reports, however, should remain confidential and should only be disclosed after seeking the advice of an attorney.

## **I HAVE A CASP INSPECTION REPORT AND CERTIFICATE. WHAT SHOULD I DO NOW?**

If your CASp Inspection Report has a determination of "meets applicable standards," the CASp has determined your facility meets applicable construction-related accessibility standards. Keep the Report in your records and maintain the accessible features of your facility. If your CASp Inspection Report has a determination of "inspected by a CASp" you should strive to adhere to your schedule for improvements to come into compliance with applicable construction-related standards. Keep the Report in your records. You do not need to obtain a final inspection of the improvements from a CASp in order to obtain "qualified defendant" status, but to do so may offer you peace of mind that the improvements have been inspected for compliance. Most important, as a public accommodation you are required to maintain the accessible features of your facility. Other than improvements to correct the violations stipulated in your report, if you alter or modify those areas of the facility that were inspected, you will need to once again seek the services of a CASp to obtain a new CASp Inspection Report and Disability Access Inspection Certificate.

### **Primer for small businesses:**

<http://www.ada.gov/regs2010/smallbusiness/smallbusprimer2010.htm>



**WE WANT TO MAKE THIS EASY FOR YOU! SO PLEASE CONTACT US OR OUR PARTNERS FOR MORE INFORMATION:**

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