

# ADA compliance

## How to meet accessibility requirements and avoid lawsuits

INTERVIEWED BY ROGER VOZAR

Meeting Americans with Disabilities Act requirements when your business opened is no guarantee you're protected from future lawsuits and resulting penalties under California's Unruh Civil Rights Act.

The Unruh Act allows plaintiffs to collect penalties when they file complaints against businesses with accessibility violations.

"There are lawyers whose sole practice is dedicated to bringing these ADA lawsuits on behalf of disabled persons," says Laura Palazzolo, an attorney at Berliner Cohen. "The statutory penalty was \$4,000 per violation. But Senate Bill 1186 reduced that penalty to \$1,000 per offense if a business has been proactive in trying to keep its premises accessible."

The problem is that building code changes can bring businesses out of compliance with ADA requirements over time.

"Clients are often confused by these lawsuits, since the premises passed occupancy inspections decades ago and they have made no changes. Well, the statutory landscape and building codes change over time," Palazzolo says.

*Smart Business* spoke with Palazzolo about what has changed due to SB 1186 and what businesses can do to protect themselves from lawsuits and related penalties.

### Does it matter if you own the building or lease space?

The ADA plaintiff will name both the landlord and tenant as defendants. But the language in many leases pushes responsibility for compliance with ADA requirements on the tenant. SB 1186 included a provision that all leases executed on or after July 1, 2013, must state whether the property was inspected by a certified access specialist (CASp). The intent was to

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force landlords and tenants to talk about whether a property is in compliance and, if not, who will fix the violations before the lease is signed, so tenants know what they are getting into.

Under SB 1186, there also is some relief for properties that have CASp inspections. If you are sued, and can show that you have had an inspection and meet certain requirements, the statutory penalties can be reduced significantly.

Inspections can cost as little as \$1,500, depending on the size of the business, which could pay for itself in the penalties avoided. If you get sued you're going to have to bring the property into compliance anyway, so it's better to save the hassle and attorney fees of getting involved in a lawsuit.

### What kinds of items are commonly cited as violations?

The parking lot is the first thing the plaintiff will go after. Parking lots may not be properly striped, or the slope is a little too steep, or the ramp to the sidewalk may need a different color paint or require a handrail. Other common triggers include glass doors without kick plates on the bottom, insufficient space to maneuver in a bathroom stall, or tables with a pedestal base rather than four legs.

Sometimes no changes are technically required because of various 'safe harbor'

provisions relating to the age of the facility. But it is usually cheaper to budget for small accessibility updates before you get sued than it is to pay a lawyer to argue that the updates aren't required.

### Are restaurants particularly vulnerable to lawsuits?

Restaurants are frequently targeted because they're often small, mom and pop operations without the resources or knowledge to understand their obligations. The vast majority of handicapped people who frequent these establishments are able to access the services offered, so the owners are completely unaware that anything is wrong. But it's the technical compliance that gets businesses into trouble. If one of these 'serial plaintiffs' is looking for an ADA violation, they are easy to find.

The solution is simply education. Many problems can be easily avoided just by having regular inspections and putting together a plan and budget each year to keep the property as accessible as possible for all potential patrons. It's not that business owners want to create barriers to access, they just aren't paying attention. SB 1186 was intended to provide some incentive for business and property owners to be more proactive, and to discourage serial ADA plaintiffs by reducing the penalties. Only time will tell if it works as intended. ●