

ADA LAWSUITS - PROTECTING THE RIGHTS OF DISABLED AMERICANS OR FLOODING THE COURTROOMS WITH FRIVOLOUS LAWSUITS AGAINST SMALL BUSINESS?

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The Americans with Disabilities Act (ADA) was enacted in 1990 to prevent discrimination against individuals with disabilities and to provide them with equal access to facilities and buildings open to the public. Today, this law is used by some attorneys to file countless lawsuits against C-Stores, gas stations and other small businesses.

According to a recent Atlanta Journal-Constitution article, one Atlanta law firm filed over 550 ADA lawsuits, 86% of them brought in just the last two years. In Florida, a Miami lawyer who filed more than 650 lawsuits across the state was recently sanctioned by a federal judge.

ADA lawsuits are typically filed against the property owners alleging that retail businesses located on their property discriminate by having “architectural barriers” which prevent disabled persons from full and equal access to the business.

No matter the state in which an ADA suit is filed, it tends to follow a same pattern: a handful of serial plaintiffs go around visiting stores, many times visiting multiple stores on the same day, with the sole intention of identifying targets for ADA lawsuits.

If a business is sued for an alleged ADA violation, there are two choices for the business owners -- hire a lawyer and settle quickly to minimize cost and expenses or fight a federal lawsuit and become entangled in long and expensive litigation. The fact of the matter is that an ADA violation is relatively easy to prove by plaintiff and hard to defend against. The plaintiffs’ attorneys who file these suits know this. They fight because the ADA allows successful plaintiffs’ lawyers to recover attorneys’ fees from the defendant. The recovery of attorney's fees alone is a strong motivator for some lawyers and makes ADA litigations a lucrative proposition.

The best way to avoid becoming the target of one of these suits is to ensure that your business is in compliance with the ADA guidelines. The Americans with Disabilities Act Accessibility Guidelines (ADAAG) for buildings and facilities spell out the requirements for locations related to disabled parking spaces, counter height, slope requirements for wheelchair-accessible ramps, and handrails in public restrooms. There are also safe harbor provisions and other defenses that may be available to mitigate liability. If you become a target of an ADA lawsuit, consult an attorney who has experience in handling ADA suits.

In addition, there are private inspectors who can be hired to conduct ADA-compliance inspections of your building or facility. It is a good business practice for C-Store operators and property owners to collaborate and take the necessary steps to make the building compliant as opposed to ignoring the ADA requirements until the property owner and/or business owner become defendants in a federal lawsuit. If you wait until you get sued to bring your location into compliance, you’ll find yourself paying not just for the necessary renovations and alterations, but also for your attorney’s fees and the plaintiff’s attorney’s fees. As the adage goes, an ounce of prevention is worth a pound of cure.

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