

Accessibility Guidelines & Watchdog Plaintiffs: The Current Culture of ADA Disability Litigation

by Margaret Holm & Lisa Panique

The current culture of Disability Rights Litigation is quite troubling, and in some cases, can be described as a "get rich scheme."

As this article illustrates, although the ADA has a venerable purpose, its formula is ripe for opportunistic attorneys and plaintiffs.

History of the Americans with Disabilities Act

On July 26, 1990, the Americans with Disabilities Act (ADA) was enacted by the first President Bush to prohibit discriminatory conduct toward disabled Americans and to promote greater access to public accommodations. The ADA established rights for disabled Americans to institute civil causes of action for any discriminatory conduct based on violation of the ADA. The ADA also provided for an "Access Board" which, in 1991, completed the Americans with Disabilities Act Accessibility Guidelines (ADAAG). The ADAAG set the standard for construction and alteration of places of public accommodation and commercial facilities, including hospitals, surgery centers, office buildings, retail establishments and restaurants.

The Right to a Civil Cause of Action

Since a violation of the ADAAG is considered a violation of the ADA, a disabled individual could file a civil lawsuit based on any violation of ADAAG building standards. The ADA

provides for monetary damages if a violation is shown. Additionally, the ADA provides that if an entity violates any of the accessibility guidelines, the entity must become compliant through new construction or alterations. Attorneys fees and costs could also be recoverable. In addition to the ADA private cause of action, state laws can also provide for civil causes of action, as well.

The most important element of both the ADA and state law civil remedies is that the disabled plaintiff alleging discrimination does not have to prove any damage as a result of the discriminatory conduct. In essence, these laws impose a "strict liability" standard, in that if a violation of the ADA or state law is proven, a disabled plaintiff is guaranteed monetary damages.

An Illustrative Example

In a recent disability discrimination case defended by Bonne Bridges, a hospital allegedly failed to comply with ADAAG guidelines concerning handicapped parking spaces. The hospital had constructed a new wing, and in order to increase disability access, new handicapped parking spaces were constructed. The city approved the plans, and everything appeared to Code. Except, the plans did not comply with several aspects of the ADAAG.

According to the ADAAG, each handicapped parking space must be measured at the required length and width. Some of our client's parking spaces measured 106 inches wide, when compliance required 107 inches. The length of some parking spaces were 210 inches, when compliance required 216 inches. These were considered violations of the ADAAG and allowed for recovery under the ADA. This example illustrates that even a hospital, which, by its very nature is designed to serve disabled individuals, can be in violation of the ADAAG and liable for disability discrimination

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Real World Impact

The removal of the damages element from these civil causes of action has created a new culture of specialized law firms and "career" plaintiffs who police public accommodations for violations of the ADA and state building codes. In early 2005, Federal District Court Judge Edward Rafeedie of Los Angeles found a "clear pattern of abuse" by a law firm, the Frankovich Group, and plaintiff, Jarek Molski. Judge Rafeedie had reviewed 156 Complaints filed in 2004 on Molski's

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behalf, and found that the complaints were virtually identical. Newspaper reports estimated that Molski received approximately \$1.2 million dollars from these lawsuits. In light of this and other aspects of their "scheme," Judge Rafeedie made the rare decision to classify Jarek Molski and the Frankovich Group as "vexatious litigants," thereby requiring them to receive judicial approval before filing any subsequent lawsuits.

Advice

While this example may appear extreme to some, it is significant to illustrate how attorneys can use the ADA to turn a profit. Even though the Molski decision was intended to deter similar behavior by

these specialized law firms, it is likely it has influenced law firms to become more sophisticated in how they pursue these types of cases. Insurance companies must be aware of this trend, since most public and private accommodations are covered by the ADA, and therefore could be subject to liability for non-compliance with the ADAAG.

The reach of the ADAAG is quite expansive, and due to its minute details, it will be quite a task to insure compliance. One way to manage ADAAG compliance (before becoming a defendant in a lawsuit) is to contract with an ADAAG compliance expert, to perform a survey to see if any violations of the ADAAG exist. ■

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