

Make Your Business Accessible to Disabled Individuals



When was the last time you measured the slope of the curb ramp leading from your parking lot to your facility? Do you have the International Symbol of Accessibility on your storefront and bathroom door? Does it include Braille? Have you recently measured the access aisles of your parking spaces?

If you have not checked your facility for compliance with the Americans with Disabilities Act (ADA) accessibility guidelines, essentially a Congressional-imposed building code, a “professional” plaintiff may do it for you. Accessibility lawsuits are rapidly growing:

- In 2016, 6,601 ADA Title III lawsuits were filed in federal court — 1,812 more than in 2015 — a 37% increase.
- There were more than 250 lawsuits filed in 2016 about allegedly inaccessible websites and/or mobile apps. This does not include the hundreds, if not thousands, of demand letters plaintiffs sent to businesses asserting accessibility claims.

You should protect your business now, as an ounce of prevention will decrease and may even eliminate the risk that your business will be the next bull's eye.

ADA accessibility guidelines

Congress enacted the ADA in 1990. Title III of the ADA sets standards for access to public accommodations and commercial facilities for people with disabilities. It prohibits discrimination based on disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

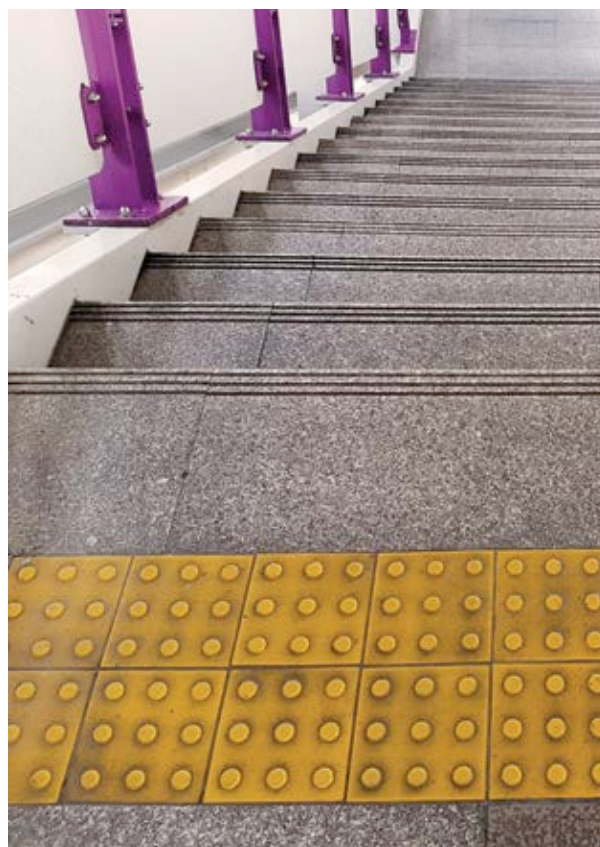
Title III of the ADA covers public accommodations (i.e., private entities that own, operate, lease, or lease to places of public accommodation), commercial facilities (including office buildings, factories, and warehouses, whose operations affect commerce), and private entities that offer certain examinations and courses related to educational and occupational certification. Places of public accommodation include millions of private establishments, including:

- Restaurants
- Hotels
- Theaters
- Retail stores
- Hospitals/doctors' offices
- Private schools/daycare centers.

Entities controlled by religious organizations, including places of worship, are not covered. In addition, private clubs are not covered, except to the extent that the facilities of the private club are made available to customers or patrons of a place of public accommodation.

Building accessibility standards

Title III contains two separate standards regulating building accessibility. The first pertains to facilities existing before January 26, 1993, and requires removal of architectural barriers where removal is “readily achievable” and able to be carried out without much difficulty or expense. Examples of barrier removal measures include installing ramps, making curb cuts at sidewalks and entrances, rearranging tables, chairs, vending machines, display racks, and other furniture, widening doorways, installing grab bars in toilet stalls, and adding raised letters or braille to elevator control buttons.



The second pertains to facilities constructed or altered after January 26, 1993, and requires that facilities be readily accessible and comply with the accessibility guidelines. For example, at least 50% of all public entrances must be accessible by those with disabilities. In addition, there must be accessible entrances to enclosed parking, pedestrian tunnels, and elevated walkways. And an accessible route must connect accessible public transportation stops, parking spaces, passenger loading zones, and public streets or sidewalks to all accessible features and spaces within a building.

Grandfathering

Many businesses are under the mistaken impression that if they owned or leased their building since before January 26, 1993, and have not made substantial physical changes to their premises, they are “grandfathered” under Title III (i.e., they have no obligation to make their business ADA accessible). However, the language of the ADA applies to “existing” public businesses and requires that they remove structural barriers “where such removal is readily achievable.” Even when not readily achievable, the business must provide access “through alternative methods if such methods are readily achievable.”

Website accessibility

When the ADA was enacted in 1990, the internet as we know it today did not exist. Americans now use the internet in their daily personal, professional, civic, and business lives. Businesses and educational institutions frequently provide goods and services to the public through websites. Similarly, many state and local governments use websites to provide the public access to their programs, services, and activities. While the ADA does not expressly apply to websites, the U.S.



government has interpreted it to do so and has suggested the following steps:

1. Establish a policy that your web pages will be accessible and create a process for implementation.
2. Ensure that all new and modified web pages and content are accessible.
3. Develop a plan for making your existing web content accessible.
4. Ensure that in-house staff and contractors responsible for web page and content development are properly trained.
5. Provide a way for visitors to request accessible information or services by posting a telephone number or email address on your home page.
6. Periodically enlist disability groups to test your pages for ease of use.

What can a plaintiff recover?

Under the ADA, a plaintiff alleging a business has failed to make the physical changes necessary to comply with the ADA can seek only injunctive relief, which is an order from a court instructing a business to do something. Plaintiffs typically request an injunction against the business to make it accessible to persons with disabilities. A few plaintiffs have also requested a temporary injunction or restraining order to shut the doors of a business pending ADA compliance. Normally,

this type of request is simply included for shock value.

In addition to injunctive (nonmonetary) relief, the ADA allows an award of attorney's fees to successful plaintiffs. Attorney's fees, costs, expert fees, and litigation expenses can quickly amount to tens of thousands of dollars.

Prevention

Often, the first time a landlord or business owner learns it is not ADA-compliant is when it is served with the lawsuit. Business owners agree that if they were notified of noncompliant conditions before a lawsuit, they would cure the defects as soon as possible. That, however, could deprive the attorneys and plaintiffs of fees, which often seems to be the actual goal of accessibility lawsuits.

To protect your organization, it's best to be proactive and take the opportunity to hire a code consultation firm or architect specializing in ADA accessibility to visit your facility and conduct a review. Many fixes can be low or no cost, sometimes as easy as moving a few tables or adjusting the height of a sign. These fixes will make your facility more accessible to disabled individuals, deter professional plaintiffs, and save potentially tens of thousands of dollars in liability and defense costs.

In addition, a critical and often overlooked component of ensuring success is comprehensive and ongoing staff training.

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You may have established good policies, but if front line staff are not aware of them, or do not know how to implement them, problems can arise. Businesses of all sizes should educate staff about the ADA's requirements. Staff needs to understand the requirements on modifying policies and practices, communicating with and assisting customers, and accepting calls placed through the relay system. Many local disability organizations, including Centers for Independent Living, conduct ADA training in their communities. The Department of Justice or the ADA National Network can provide local contact information for these organizations.

Not sure where to start?

ADP® is committed to assisting businesses with employment-related Department of Labor and Equal Employment Opportunity Commission compliance requirements. We'll help you determine how regulations impact your business, and the actions you're required to take.