

Businesses Hit With New Wave of ADA Lawsuits

Recently a man with hearing impairments began suing various businesses in the Los Angeles area for violating California's disability access laws. On April 29, 2013, Alexander Johnson filed six lawsuits against six different companies. In one of the lawsuits against Bed Bath & Beyond, Johnson alleged that the company failed to provide full and equal access to its business when it did not provide captioning or a transcript to videos promoting products in its stores, thus violating the Americans with Disabilities Act (ADA) and California state law.

Johnson's case is illustrative of the ease with which businesses can be exposed to litigation by "professional plaintiffs" seeking to make money through disability access lawsuits. Johnson's lawsuit against Bed Bath & Beyond is also unusual in that it is not based on a construction related violation of state and federal disability access laws. As such, Johnson is able to avoid the new stringent requirements imposed by Senate Bill 1186. For example, Johnson's complaint against Bed Bath & Beyond alleges five violations of the Unruh Civil Rights Act (Cal. Civ. Code §§51 et seq.), but does not detail which ones. The Unruh Civil Rights Act mandates full and equal access for all persons with disabilities to all business establishments of every kind. Had Johnson's lawsuit been based on construction related violations, his complaint would likely be subject to a demurrer.

How can businesses decrease the likelihood that they will be sued? Being proactive about fixing easily identifiable violations that can be fixed for minimal cost can substantially lessen the chance that a business will be the target of these "professional plaintiffs." Many businesses can be exposed to litigation for simple accessibility violations that can be remedied without much difficulty such as posting the correct sign on accessible parking or having single lever faucet handles in bathrooms rather than handles that require twisting. An accessibility inspection done by a Certified Access Specialist (CAsp) can further uncover violations that are not apparent but should be fixed in order to avoid litigation later on.

Besides fixing existing barriers to access, businesses may also want to review their insurance policies to determine if they are covered in the event that they are sued for failing to provide access to their goods or services to persons with disabilities. In California, businesses only have to show the existence of a potential for coverage for insurance companies to become obligated to cover defense costs. Additionally, tenants may want to speak with their landlords to see if they can modify existing leases to add indemnity provisions in the event they are sued. Because disability access laws do not allow tenants to escape liability completely via contract, it may be a good idea to shift or allocate the costs of defending a lawsuit before a complaint is actually filed.

Businesses may also be able to fend off repeat lawsuits by retaining experienced counsel at the outset of litigation. Plaintiffs' attorneys may want to try and end a lawsuit more quickly or think twice before suing if they know the other side is represented by a skilled attorney who

has the requisite knowledge and experience to aggressively defend a disability access lawsuit.

If you have any questions or comments, I would be delighted to hear from you.

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