

Risk Insights

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Drive-by ADA Litigation

The Americans with Disabilities Act (ADA) is a federal law that prohibits discrimination against individuals with disabilities and ensures these individuals receive equal opportunities within the scope of their employment, participation in government programs and the purchase of goods or services. In particular, Title III of the ADA requires businesses to be sure that their establishments are devoid of any architectural or communication barriers that could restrict individuals with disabilities from receiving equal access to public accommodations.

While the ADA is a valuable piece of legislation that was developed to eliminate various roadblocks for individuals with disabilities, recent litigation trends have shown that this law—namely, Title III—is being leveraged by plaintiffs and lawyers alike to launch what are known as “drive-by” lawsuits. This form of litigation refers to a plaintiff or lawyer driving past an establishment in an effort to identify ADA compliance failures. If noncompliant accommodations are found, the plaintiff or lawyer will promptly sue the business.

Because Title III doesn’t require plaintiffs or lawyers to be customers at establishments before suing them and permits the winning party of ADA lawsuits to recover any attorney fees, drive-by litigation has become a rising issue for businesses across the country. Review this guidance to learn about the latest drive-by ADA litigation trends, how these lawsuits impact businesses and methods for preventing such litigation.

Top Drive-by ADA Litigation Trends

Drive-by ADA lawsuits can occur without plaintiffs or lawyers issuing any prior notice to the affected businesses. What’s more, plaintiffs or lawyers may never even step foot in the impacted establishments before litigation begins. Instead, they will generally look for noncompliant accommodations that can easily be spotted from the outside of businesses’ properties (e.g., parking lot or building entrance issues).

Recent research provides that plaintiffs and lawyers are filing drive-by ADA lawsuits at an increasingly rapid pace—sometimes suing a single establishment for multiple ADA failures at a time or suing several businesses in a community for the same failure.

In fact, there are certain plaintiffs and lawyers who are solely responsible for hundreds of drive-by ADA lawsuits. Research suggests that some plaintiffs and lawyers aren’t necessarily engaging in this litigation to advocate for individuals with disabilities, but rather for their own financial gain.

While drive-by ADA lawsuits can occur at any business throughout the country, this litigation has become especially prevalent within the states of California, Florida and New York. Further, small- and medium-sized businesses have been targeted by these lawsuits more frequently than large businesses.

In terms of top litigation trends, here are the most common causes of action associated with drive-by ADA lawsuits:

- **Parking lot pitfalls**—These lawsuits can result from inadequate handicapped-accessible parking spaces. For example, a business may not offer enough handicapped-accessible parking spaces, utilize incorrect dimensions for such spaces or place these spaces in an inappropriate location—such as an area that is too far from the establishment entrance.
- **Route accessibility issues**—Such lawsuits can stem from inaccessible routes to a business’s entrance. These routes may be considered inaccessible due to improper slopes or the presence of obstructions.

- **Ramp concerns**—These lawsuits can result from inadequate wheelchair ramps. For instance, a business may provide wheelchair ramps that are unstable, poorly constructed or made with incorrect dimensions. These concerns can make it more difficult for individuals with disabilities to fully operate their wheelchairs on the ramps, as well as increase the risk of wheelchairs falling or tipping over on the ramps.
- **Door difficulties**—Such lawsuits can stem from doors that are either too challenging for individuals with disabilities to open, or those that close too fast. In particular, doors that require tight grasping of the hands or twisting of the wrists are typically considered noncompliant with ADA standards.
- **Signage problems**—These lawsuits can result from poor or missing signage for accessible building features. Specifically, signage should be provided for handicapped-accessible parking spaces, entrance routes, ramps and doors.

Apart from these trends, it's important to note that ADA lawsuits can also arise from a business failing to accommodate individuals with disabilities via their website (e.g., not using adequate font sizes or colors, alternative image text or descriptive links). Such lawsuits are considered "surf-by" litigation. Similar to drive-by ADA lawsuits, surf-by litigation can happen to affected businesses quickly and without warning—sometimes from plaintiffs or lawyers with questionable motives.

Impact on Businesses

Both drive-by and surf-by ADA litigation can lead to numerous financial consequences for affected establishments. First, impacted businesses may have to pay settlements to the plaintiffs involved, as well as any associated attorney fees.

In addition, businesses will need to remedy the ADA compliance failure(s) that led to the litigation. As with any property renovation or organizational change, making these adjustments (e.g., updating a wheelchair ramp, adding clearer signage or developing a new website layout) can come with significant costs.

Lastly, businesses involved in drive-by or surf-by ADA lawsuits could encounter serious reputational damages. Even after fixing the issues that led to litigation, businesses may still have to deal with the fallout from disappointed customers, stakeholders or shareholders.

Preventing Litigation Concerns

Despite the repercussions of drive-by and surf-by ADA lawsuits, there are measures that businesses can take to prevent such litigation. Essentially, the best thing that businesses can do is maintain complete ADA compliance—thus ensuring individuals with disabilities have equal access to all public accommodations. In doing so, plaintiffs and lawyers won't have any issues to base their lawsuits on.

As such, businesses should routinely audit their establishments for potential ADA compliance concerns (particularly as they relate to Title III) and make adjustments as needed. In the realm of online accessibility, businesses should also review their websites to make sure they meet all requirements under the Web Content Accessibility Guidelines (WCAG). Keep in mind that it's best for businesses to consult legal counsel when assessing ADA and WCAG compliance.

For more risk management guidance, contact us today.