



Hotels Being Bombarded with ADA Access Lawsuits

How to Prepare Your Property

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Even though the Americans with Disabilities Act ("ADA") has been in effect for over ten years, hotel owners and operators are increasingly being named in ADA Title III (access to public accommodation) lawsuits. In New York City alone, groups called "Accessibility for All" and "ADA Access Today" have filed forty-three Title III ADA lawsuits against New York City hotels in the last several months. Under the current law, there is an incentive for plaintiffs' lawyers to file ADA access lawsuits: hotels may be required to pay a disabled person's attorney's fees even if the hotel agrees to correct any problems right away. Hotel owners and operators should review their ADA compliance before a lawsuit is filed.

Title III applies to all "public accommodations." A public accommodation includes any person or entity that owns, leases (or leases to), or operates a place of public accommodation. A public accommodation includes inns, motels, hotels, and restaurants. The purpose of Title III is to facilitate the removal of barriers created both intentionally and unintentionally that make it impossible for persons with disabilities to move freely within society. Title III requires that private entities that own, operate, or lease places of public accommodation may not discriminate on the basis of disability in providing goods and services and must remove all structural and architectural barriers to accessibility by persons with a disability if such removal is "readily achievable." Additionally, public accommodations and entities which operate commercial facilities must make newly constructed buildings or altered existing facilities "readily accessible" to persons with a disability, unless such accessibility is "structurally impracticable."

Generally, complete compliance with the law will depend on several factors; whether your facility is "new" construction (post-1992), whether you have undertaken a major renovation since 1992, or whether your building is registered as "historic." The complete checklist of ADA requirements for lodging facilities is found at the Department of Justice Public Access Division's Web site at <http://www.usdoj.gov/crt/ada/hsurvey.htm>.

We strongly recommend that every hotel have an ADA checklist and conduct ADA accessibility training for its staff. Even if a hotel facility does not meet the technical requirements of the ADA, many lawsuits can be avoided if hotel staff receive proper accessibility training. For example, a front desk clerk should not be surprised when a legally blind guest checks in with a guide dog, even though the hotel may have a "no pets" policy.

Additionally, all employees should be aware of alternative, accessible paths of travel within the hotel, even if the main travel route within the hotel is technically compliant. Hotels should have an ADA compliance program with specific goals and timetables to remove those architectural

barriers whose removal is "readily achievable." In Title III enforcement actions, the Department of Justice will consider a hotel's good faith compliance efforts in assessing any penalty.

A hotel faced with litigation over Title III access should first conduct its own independent analysis of whether its facility is ADA compliant. Even if it is not, such compliance may not be "readily achievable" or the plaintiff may not be "aggrieved" under the Act. For example, a federal district court judge in Florida recently dismissed a private Title III ADA lawsuit against a hotel because it determined that the hotel was not subjecting the plaintiff to discrimination because he did not convey an honest desire to return to the hotel as a guest. The judge also noted that the hotel, which was just purchased, had hired an architect to renovate the hotel to bring it up to ADA standards. Therefore, the judge concluded that plaintiff's suit was solely an attempt to extract attorneys' fees.

Nixon Peabody's ADA team has experience defending both private actions and actions brought by the Department of Justice to enforce Title III of the ADA. In fact, Nixon Peabody attorneys represented the first hotel sued for ADA violations when the law came into effect and have been counseling and defending hotels on ADA compliance ever since. In addition to defending ADA lawsuits, our ADA team conducts employee training, conducts ADA compliance audits, and formulates ADA compliance programs for hotels. The recent increase in ADA Title III lawsuits should make ADA training, audits, and compliance programs a top priority for hotels and other places of public accommodation.

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