

## New Law Should Limit Disability-Access Litigation in California

More disability-access lawsuits are filed in California than in any other state. In part, this increased quantity results from state law (the Unruh Act and the California Disabled Person's Act) supplementing the federal Americans with Disabilities Act (ADA) to allow persons with disabilities to collect damages if they encounter a barrier that causes them to suffer "difficulty, discomfort or embarrassment." On May 11, 2016, in an effort to curb ADA litigation that does not measurably improve access for Californians with disabilities, Governor Jerry Brown signed SB 269. The new law, effective immediately, provides a short grace period for small businesses to resolve certain construction-related barrier claims. In addition, it declares that certain barriers – without a greater showing by the claimant – do not cause persons with disabilities to suffer "difficulty, discomfort or embarrassment." Now, high-volume ADA plaintiffs will have a harder time seeking damages and attorneys' fees for technical violations like faded paint on parking lot stripes or the color of disabled parking spot signs.

The new law provides small businesses with 15 days following a complaint under the ADA to correct alleged violations. If corrected, small businesses would not be subject to statutory penalties and attorneys' fees. "Small business" is defined to include those businesses that employ 25 or fewer employees on average over the past three years and have average annual gross receipts of less than \$3.5 million over the previous three years.

Further, the new law provides businesses with 120 days from the receipt of a Certified Access Specialist (CASp) report to resolve any violations identified, without being subject to statutory penalties or litigation costs. Businesses may find a list of State-licensed CASps on the Division of State Architect's website. [https://www.apps2.dgs.ca.gov/DSA/casp/casp\\_certified\\_list.aspx](https://www.apps2.dgs.ca.gov/DSA/casp/casp_certified_list.aspx). Before hiring a CASp, however, businesses should consult with experienced ADA-defense counsel as (1) CASps have different skillsets and experience and (2) because of these differences, the business may want to hire the CASp through counsel so as to maintain privilege. A non-privileged report prepared by an inexperienced CASp can create unnecessary hardships that may be difficult to overcome.

Moreover, the new law also impacts city and county permitting by

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requiring local agencies to provide businesses with materials relating to the requirements of the ADA or similar materials developed by the California Commission on Disability Access. It also requires local agencies to expedite review of projects for which the applicant provides a copy of a disability-access certificate.

In sum, the new law may help curb the volume of ADA litigation in California that is geared toward technical violations, rather than improved access.

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