

ADA ACCESSIBILITY AND YOUR WEBSITE

BERKELEY BUSINESS WORKSHOP

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JMBM

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INTRODUCTION

JMBM ADA Team

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Accessibility Litigation Cases

- Serial Plaintiffs
- Handled thousands of cases over the years
- Industry leaders in ADA Accessibility Litigation

IMPORTANCE OF ACCESSIBILITY



- Why is accessibility important?
- There are currently over **58 million** people with disabilities in the United States.
- The ADA helps persons with disabilities take a **more active and independent role** in society.

ADA BASICS

- The ADA became law in 1990.
- Separated into 4 Titles:
 - For our purposes, **Title III is the most relevant.**
 - Pertains to **Public Accommodations.**
- **Public Accommodations** are defined as any business, including nonprofits, that serve the public.
 - For example: restaurants, hotels/motels, shops, movie theaters, private schools (including housing), doctors' office and private hospitals, day care centers, gyms, privately operated transit, commercial facilities (i.e. office buildings, warehouses, factories).
- This is why your business can get sued!



ACCESSIBILITY LITIGATION

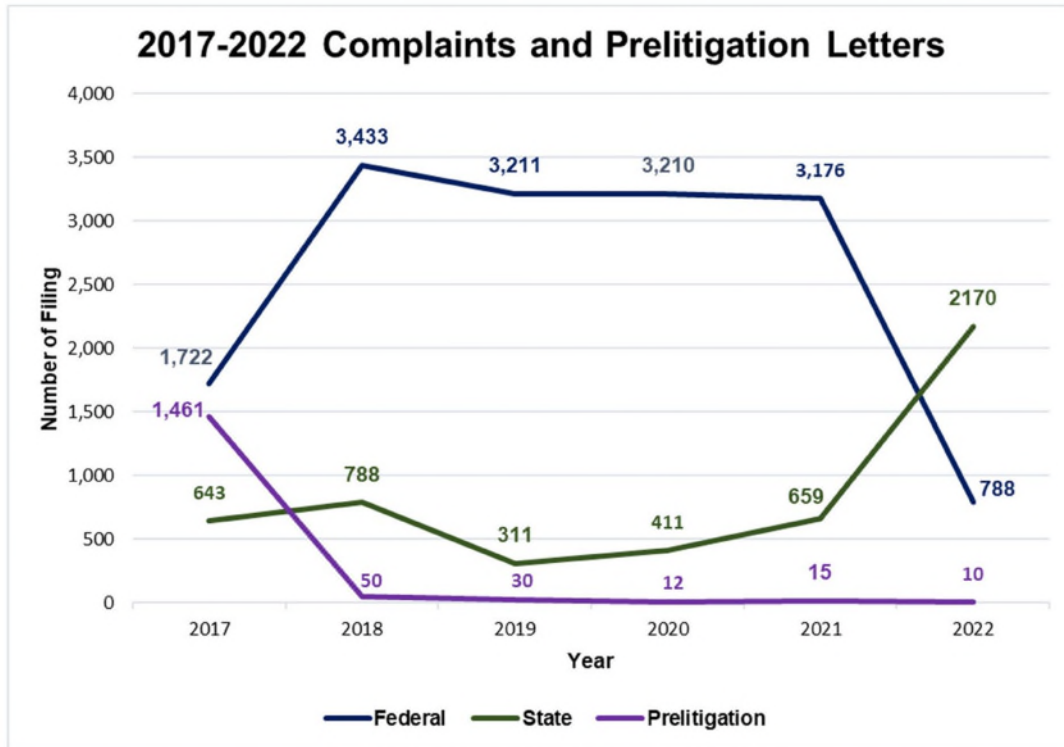
- There are roughly 10,000 ADA lawsuits filed in US Federal Courts per year.
- ADA Litigation Hotspots:
 - California
 - New York
 - Florida
 - Pennsylvania
 - New Jersey
 - Texas



SERIAL ADA PLAINTIFFS

- Serial plaintiffs plagued the Bay Area for years.
- The O.G. Big Three Plaintiffs:
 - Brian Whitaker, Orlando Garcia, Scott Johnson.
- Traditionally filed in Federal Court because the ADA is federal law.
- But concurrently claim California Unruh Act.
 - ADA claims only award injunctive relief (i.e. Defendants need to fix issues), but not money!
 - CA Unruh Act awards \$4,000 per occurrence of accessibility issues in damages.
- Good news: Federal Judges hate these cases!
 - Complaint against Potter Handy, Big Three's lawyers.
- Now Plaintiff's filing in California.

SERIAL ADA PLAINTIFF'S CONT'D



- There has been a steady rise in California accessibility cases.
 - Lawsuit against Potter Handy and other lawyers
 - Standing issues
- More importance on CASp inspections
 - CASp inspections and certification provides valuable protections.
 - Limits Damages to \$1,000 per occurrence.
 - Provides mandatory 90 day stay.
 - Early Evaluation Conference (EEC)

Type of Filing	Year of 2017	Year of 2018	Year of 2019	Year of 2020	Year of 2021	Year of 2022
Federal	1,722	3,433	3,211	3,210	3,176	788
State	643	788	311	411	659	2,170
Prelitigation	1,461	50	30	12	15	10



WHO IS COVERED BY THE ADA

- ADA imposes “joint and several” liability on owners, lessors, lessees, and operators of business accommodations.
- Landlords are typically responsible for exterior & structural conditions.
- Tenants are typically responsible for the interior conditions and operational policies.

WHO IS COVERED CONT'D

- Does the ADA apply to buildings built before the ADA?
 - **YES!** Ongoing responsibility to remove barriers to access where it is **readily achievable** to do so.
- Readily Achievable means “easily accomplishable and able to do so without much difficulty or expense.”
 - Case by case judgment: factors include size of the business, finances, proposed solution, cost of repairs, etc.
 - Exceptions for structurally impractical or technically infeasible situations.

ADA URBAN LEGENDS

- My building was constructed before the ADA, so I'm grandfathered in, right?
 - **NO!**
- I hired a licensed architect and general contractor to design and build my building, so I can rely on them to get it right, can I not?
 - **NO!**
- The building department approved by plans and said my building was code compliant when it issued the Certificate of Occupancy, so it is compliant, right?
 - **NO!**

URBAN LEGENDS CONT'D

- I'm just a business operator, so I'm not responsible for ADA violations.
 - **NO!**
- I own the building, but it is separately managed, so I'm not responsible for ADA violations.
 - **NO!**
- I can refuse service to anyone including persons with disabilities.
 - **NO!**



PHYSICAL BARRIERS



PHYSICAL BARRIERS

- Traditional ADA/accessibility cases pertain to physical barriers.
 - It is what the ADA was traditionally designed to protect.
- Physical barriers: physical elements of a facility that impede access by people with disabilities.
 - Most obvious are stairs and curbs, but also include doorknobs, aisleways, entrance landings, sales counters, bar counter tops, restaurant tables, and even minute issues like paper towel dispenser locations and mirror heights.
 - Each of these issues can be \$4,000 in damages in California.
- Many of these issues are easy to fix.
 - Ex. Lowering sales counters, purchasing accessible tables, etc.



PHYSICAL BARRIERS CONT'D

PHYSICAL BARRIERS OVERVIEW

Steps:

- Entranceways to restaurants and shops must have an accessible path (i.e. ramp);
- Ramps must also have a 1:12 ratio, meaning for every 1 inch of height, there must be 12 inches of ramp length;
- Entranceways must also have level landings, meaning there are no bumps from door thresholds;

Sales Counter:

- Most common physical barrier seen;
- Sales counters must be 34 inches maximum;

Accessible Tables:

- At least 5% of tables must be accessible (meaning 1/20);
- If there are less than 20 tables, then at least 1 must be accessible;
- Accessible tables should be 28 inches to 34 inches in height;

Aisleways:

- Aisleways must be 36 inches in width;
- Placing removable objects within aisleways is considered a violation.

PHYSICAL BARRIER OVERVIEW

Be


Be Proactive! Better to spend \$1,000 on a CASp inspection and get started on fixing the property, then to get hit with a lawsuit.

Hire

Hire a CASp periodically!

DO NOT
WAIT

If you're already hit with a lawsuit, DO NOT WAIT!

A close-up photograph of a person's hand reaching towards a large, three-dimensional '@' symbol made of cardboard. The symbol is positioned on a wooden desk. The background is softly blurred, showing a computer monitor and other office items. The overall lighting is warm and natural.

WEBSITE ACCESSIBILITY

WEBSITE LAWSUITS

- Website lawsuits have become more and more common.
- Plaintiff's can file suit from their couch against businesses all over the United States.
- In California, a business that operates ONLY a website cannot be subject to website accessibility lawsuits.
 - In CA, businesses need both physical business and website. (Martinez v. Cot'n Wash, Inc.)
- However, even businesses that do not operate much business via website can be hit with website lawsuits.



WEBSITE ACCESSIBILITY

- There are currently no official guidelines from the DOJ on website accessibility.
- However, the ADA still applies.
 - DOJ stated that even without official guidelines or rules, the ADA applies to website accessibility.
- Most recently, the DOJ issued a Notice of Proposed Rulemaking that would make Web Content Accessibility Guidelines (WCAG) the standard for compliance.
- California has also issued a similar legislation – AB1757 – adopting the WCAG





WCAG 2.0

- WCAG has always been the unofficial standards to test website accessibility.
- WCAG covers a wide range of recommendations for making Web content more accessible.
- WCAG 2.0 can be found here:
<https://www.w3.org/TR/WCAG20/>

The following apply to the entire page:

WAVE powered by WebAIM
web accessibility evaluation tool

Address: <https://www.kimchigardenbayarea.com/>

Styles: OFF ON

Details

Summary Details Reference Order Structure Contrast

- 10 Errors**
 - 2 X Linked image missing alternative text
 - 4 X Missing form label
 - 4 X Empty link
- 24 Contrast Errors**
 - 24 X Very low contrast
- 8 Alerts**
 - 4 X Orphaned form label
 - 3 X Skipped heading level
 - 1 X Redundant link

At Your Service

h2 What we can do for you

h4 Catering

Looking to elevate your private event with Korean cuisine? Inquire about our togo catering option

[LEARN MORE](#)

h4 Group Event

Reserve your event with us that can accommodate up to 50 people

[LEARN MORE](#)

h4 Diverse Menu

Come in and dine with us and enjoy diverse Korean food to satiate your cravings

[LEARN MORE](#)



WEBSITE ACCESSIBILITY EXAMPLE



WCAG 2.0

- Common issues with websites:
 - Screen reader non-compatibility;
 - Color-contrast issues;
 - Missing alternative text for images;
 - Inappropriate navigation links;
 - Lack of keyboard accessibility

WEBSITE TERMS AND CONDITIONS



California-based websites include specific terms and conditions that state California law governs the usage of the website.



However, not all terms and conditions create a binding agreement between owner and user.



As we all know, terms and conditions are often hidden below a website

These types of Browsewrap agreements are most likely not binding.

BROWSEWRAP AGREEMENT



No user action required to affirm consent.



These agreements require much more to ensure binding agreement.



Terms and conditions require constructive notice (Long v. Provide Commerce, Inc.)

CLICK-WRAP AGREEMENTS

- User interaction required.
- Typically, and most often, deemed valid and binding.
- User has direct interaction to accept a terms and conditions.
- Cannot use website or purchase items on website without physically acknowledging and clicking agreement acceptance.

WEBSITE ACCESSIBILITY OVERVIEW

Easiest way to prevent lawsuits, much like physical barriers, is to be proactive.

Hire a website accessibility designer who can analyze website and fix issues.

Use websites like <https://wave.webaim.org/> to test your website.

Be proactive!



QUESTIONS?

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