



What you need to know about Disabled Access Requirements

Reduce your risk of being sued



Making your business accessible is not a one time endeavor, it is an ongoing responsibility. Various state and federal disability access laws apply to small businesses in California. Non-compliance can result in significant expense from defending and settling "drive-by" lawsuits.

Laws that Govern Access Requirements

Small business owners have two basic obligations under disability access laws: 1) remove existing architectural barriers to the premises; and 2) comply with building code requirements when doing any construction work.

Federal Law – Title III of the Americans with Disabilities Act (ADA) is a 1990 federal civil rights law that prohibits the exclusion of people with disabilities from everyday activities. The ADA regulations require that you make access improvements to your business premises, ensuring that entrances, aisles, bathrooms, service counters, and other features are accessible to and useable by people with disabilities. You need to remove barriers only if removal is "readily achievable," which means easily accomplishable and able to be carried out without much difficulty or expense.

California State Building Code – Compliance with Title 24 (the California Building Code) and its disability access requirements is triggered when premises are renovated or newly constructed. All construction work must comply with the disability access requirements of Title 24. In addition, when renovating your premises you must make the building's main entrance, the primary route to the renovated area, and any bathrooms, drinking fountains, signs or public telephones serving the renovated area accessible. But if the cost of your construction project is under the "valuation threshold" -- a dollar amount that is set annually and is currently \$139,934.96 -- your obligation to do such additional access work is capped at 20% of your construction costs.

California Civil Rights Laws – In addition to Title 24, California has civil rights laws -- the Unruh Civil Rights Act and the California Disabled Persons Act -- that protect the right of individuals with disabilities to the full use and enjoyment of all business establishments. Both laws provide that any violation of the ADA is a violation of state law. Plaintiffs often file lawsuits in state court under the Unruh or Disabled Persons Act, rather than under the ADA, because state laws allow plaintiffs to recoup three times their actual damages, and in the event that no actual damages are sustained, plaintiffs may recover statutory damages.

Senate Bill 1608 – This recent law -- the Construction-Related Accessibility Standards Compliance Act -- helps protect you from lawsuits if you hire a specially trained expert -- a Certified Access Specialist (CAsp) -- and follow the CAsp's recommendations.

IMPORTANT REMINDERS FOR SMALL BUSINESSES

- Even if you are not engaged in construction or renovation, you are subject to federal and state disability rights laws. Compliance with building code requirements does not relieve you of the obligation to comply with civil rights laws, and vice versa.
- Department of Building Inspection (DBI) only reviews the California disability access code requirements triggered by the renovation work. When DBI signs off on a building permit or certificate of occupancy, DBI does not conduct a general review of the premises to identify disability access code violations.
- The primary responsibility for compliance with building codes lies with your architect and contractor. Even if DBI approves the building permit or certificate of occupancy, it may miss a relevant disability access code violation. If so, you, not the City, will be responsible for the access violation.



How to Reduce Your Risk of Being Sued

1. **Hire a Certified Access Specialist (CASP).** A CASp will survey your premises to identify barriers to access. If you are sued, the CASp inspection report makes you eligible to request a 90-day stay of the lawsuit and an Early Evaluation Conference. Without a report, you cannot benefit from this valuable opportunity.
2. **Review the report provided by your CASp.** The report either certifies that you have complied with state and federal disability access laws, or explains the steps necessary to achieve full compliance. The report will also provide a recommended timeline for removal of all "readily achievable" barriers to access.
3. **Remove barriers over time, according to the CASp report's timeline, and as you can afford to do so.**
4. **Use tax credits and deductions to help reduce (or eliminate) the costs of barrier removal.**

If you do receive a verbal or written complaint, follow up immediately. Delay tends to lead to litigation.

Therefore:

- DO NOT ignore the letter or other complaint sent to you by a person with disability. Letters may be precursors to a lawsuit or complaint filed with DBI.
- DO respond to the letter or other complaint. You may respond by simply letting the complainant know that you take his or her concerns seriously and will consult with a professional, such as CASp inspector and/or legal counsel.
- DO consult with a CASp inspector if you have not done so already.
- Do immediately call an experienced attorney if you are sued.

How Do I Pay for Access Improvements?

Tax Benefits: Tax incentives are available to help absorb costs. You may be able to take as much as \$5,000 in tax credits and \$15,000 in deductions per year over several years for making accessibility improvements.

Loans: Opportunity Fund – One of San Francisco's "micro-lenders" has created a program to offer loans from \$1000 to \$50,000 to assist you with the cost of a CASp inspection and report, access improvements, and legal assistance.

Disability access is a smart investment because your business will be less vulnerable to "drive-by" lawsuits, and you will gain a growing clientele of seniors, families with baby strollers, and persons with disabilities. The average cost to remove a barrier to access is \$4,000. The average cost to settle a lawsuit, including the expense of paying your attorney, is \$30,000.

Need Additional Help? Please Contact:

- **Small Business Assistance Center**
City Hall, Suite 110
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Monday to Thursday, 8:00 AM to 5:00 PM, Friday by appointment only
www.sfgov.org/sbac, sbac@sfgov.org, 415-554-6134
Services available in Spanish, Cantonese and Mandarin.
- **Department of Justice**
 - ADA Business Connection <http://www.ada.gov/business.htm>
 - ADA Guide for Small Businesses <http://www.ada.gov/publicat.htm#Anchor-ADA-35326>
 - DOJ toll-free ADA information line: 1-800-514-0301

This document is intended as informal technical guidance. It does not replace the professional advice that an architect knowledgeable about disability access requirements can provide. It is NOT legal advice. If you have been sued, or face significant legal issues, you should seek the advice of an attorney who is an expert on disability access laws.