



## **Who needs to worry about accessibility?**

You've been served with an accessibility lawsuit. You haven't yet been served yet but you're concerned about getting sued. You're a business owner who thinks the disabled are valuable customers and want get them in the door. You're not alone out there. Every property and business owner who accommodates the public is required by the Americans with Disabilities Act (ADA) to make their premises accessible for the disabled.

Running a business is time consuming and complicated enough without dealing with disability access. But this is not a problem that is just going to go away. At some point you might be forced to do something about it, with more hassles and expense. So why not let us take this off your very crowded plate.

## **How can we help make your accessibility problems go away?**

There are different approaches depending on the severity of your problem. If you have already been served with a lawsuit, don't worry, we will help you get through this. That starts with an initial consultation where we explain everything in a way that you can understand. We'll provide a step by step action plan and discuss some of the alternatives that you will have. Then we can recommend the services that we provide that will help you in fighting your lawsuit.

For those of you who are being proactive, bravo! Many business owners believe that their building is "grandfathered" or they're a tenant and therefore don't need to be compliant. We will begin our discussion by talking about your objectives and then the pros and cons of making your business accessible. We can then talk about strategies for cost effective barrier removal and when and how to implement your plan. Our objective is to give you all the tools needed to make sound business decisions on accessibility.

## **What will it cost?**

The initial consultation is on us. Give us a call and we can explain some of the ins and outs of accessibility access. We know that it is a confusing subject and we will do our best to answer your questions. After we hear about the details of your accessibility challenge, we can then suggest a custom package that is tailored to your needs and budget. We have a wide range of services that we can draw from to make it just right for you.

We can then put a time and cost estimate together for you. This doesn't cost you anything either. We are anxious to solve your problem, so the proposal will arrive by email within a day or two of our initial consultation. Then let's talk again. This is a collaborative effort and good communication is essential to our approach in solving your problem. So what are you waiting for? We look forward to becoming your go-to accessibility expert.

## **Why is accessibility good for business?**

Approximately 20% of the US population has a disability? That's a staggering figure that is only going to grow as our population grows older. In these tough economic times, why would any business want to exclude potential customers? These disabled customers have great purchasing power as the affluent baby boomer generation approaches retirement age. The disabled community also spreads the word on disabled friendly businesses.

## **How to I manage the cost of becoming compliant?**

Our job as your disability access consultant is not only to make you aware of the non-compliant items but also to advise you on cost effective ways to correct the problem. GCW Real Estate Services uses our extensive construction background to recommend the most economical solution to each non-accessible feature.

Another consideration in any cost analysis is the determination of what is readily achievable barrier removal. Readily achievable means easily accomplishable and able to be carried out without much difficulty or expense. Businesses can use a number of factors, primarily financial, to determine their ability to make the necessary changes. All the changes also don't have to be done immediately and could be spread out over time.

There are also Federal incentives for barrier removal. These include the Disabled Tax Credit (Title 26, IRS, Section 44) and the Architectural and Transportation Barrier Removal Tax Deduction (Title 26, IRS, Section 190)

## **Why should I use a Certified Access Specialist?**

A Certified Access Specialist is uniquely qualified to advise you on disability access issues. We have the experience and have passed a rigorous exam on both federal and state standards.

## **When should I get a survey and report?**

It is always best to be proactive. If you own a business that serves the public, contact ADA Compliance Professionals now to advise you on the best course of action to take. The most economical solution is to get a inspection and report *before* getting sued. After a summons has been served, the business owner loses the special benefits of SB 1608 and will incur legal costs to defend a lawsuit, not to mention the cost of losing or settling a suit.

## **How much is a survey and report?**

Survey costs are based on the size, complexity, location and scope of the project. Please contact GCW Real Estate Services to discuss your needs and to request a proposal.

## **Do I need a report for a recently completed or remodeled site or building that has been inspected?**

Although a building may have passed a local building inspection, the inspectors are only enforcing the local adopted laws which may not include all the ADA laws leaving the business owner vulnerable to a costly lawsuit for being in violation of Federal ADA laws. Another issue is that building inspectors have so many different things to inspect and only so much time each day to make those inspections that violations may be missed.

## **Who is responsible for getting and paying for a survey and report?**

The ADA places the legal obligation to remove barriers or provide auxiliary aids and services on both the landlord and the tenant. The landlord and the tenant may decide by lease who will actually make the changes and provide the aids and services, but both remain legally responsible.

## **Am I required to make all the changes recommended in the report?**

The purpose of the ADA was never to cause a financial hardship on businesses who are voluntarily removing architectural barriers. These barriers can be removed over a period of time as finances permit. Also, some barriers will not have to be removed because of cost or if it is technically or structurally infeasible to do so.

## **What is readily achievable?**

Readily Achievable means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include nature and cost of the action, overall financial resources and the effect on expenses and resources, legitimate safety requirements, impact on the operation of a site, and, if applicable, overall financial resources, size, and type of operation of any parent corporation or entity. Under Title III, public accommodations must remove barriers in existing facilities if it is readily achievable to do so.

## **What are examples of readily achievable?**

The Department's regulation contains a list of 21 examples of modifications that may be readily achievable. These include installing ramps, making curb cuts in sidewalks and at entrances, repositioning telephones, adding raised markings on elevator control buttons, installing visual alarms, widening doors, installing offset hinges to widen doorways, insulating lavatory pipes under sinks, repositioning a paper towel dispenser, installing a full-length mirror, rearranging toilet partitions to increase maneuvering space or installing an accessible toilet stall. The list is not exhaustive and is only intended to be illustrative.

## **Why do I need to comply with ADA?**

In 1990 when the Americans with Disabilities Act (ADA) was enacted and became law, it made equal access a constitutional right. ADA prohibits discrimination on the basis of disability in employment, State and local government, public accommodations, commercial facilities, transportation, and telecommunications. It has been many years since the ADA became law, and courts look dimly on public entities which have not met the law's basic requirements. The ADA is a federal mandate that carries heavy fines and penalties for noncompliance, not to mention the potential for expensive lawsuits. When it comes to the ADA, businesses cannot afford to be out of compliance.

## **Are older buildings exempt from current accessibility standards?**

A common misunderstanding with the ADA laws is that older buildings are "grandfathered in" and therefore don't have to meet current standards. There is no grandfather clause in the ADA and federal accessibility laws apply to all buildings regardless of age.

## **Can anyone sue for non-compliant accessibility?**

In order for a person to be eligible to receive damages in a construction-related accessibility claim that person either had to personally encounter a violation on a particular occasion or personally was kept from accessing a business on a particular occasion.

## **Can I be fined for not updating my building or business?**

Yes. Private individuals may bring lawsuits in which they can obtain court orders to stop discrimination and file for damages. Individuals may also file complaints with the Attorney General, who is authorized to bring lawsuits in cases of general public importance or where a pattern or practice of discrimination is alleged. In these cases, the Attorney General may seek monetary damages and civil penalties. Civil penalties may not exceed \$50,000 for a first violation or \$100,000 for any subsequent violation.

## **Why do I need to worry about both the State and the Federal accessibility regulations?**

The State adopts and mandates compliance with State Building Codes which incorporate the accessibility requirements. Unfortunately, State accessibility codes are not always the same or more stringent than the ADA federal regulations.

In new construction, local jurisdictions only enforce State accessibility codes, as they are not vested with the authority to enforce federal ADA regulations, however federal laws mandate you comply with ADA. The responsibility for compliance lies ultimately with the owner and the architect overseeing the project.

## **Are there any tax incentives afforded to individuals and/or companies making ADA improvements?**

Yes. Two tax incentives are available to businesses to help cover the cost of making access improvements. The first is a tax credit that can be used for architectural adaptations, equipment acquisitions and services such as sign language interpreters. The second is a tax deduction that can be used for architectural or transportation adaptations.

(NOTE: A tax credit is subtracted from your tax liability after you calculate your taxes, while a tax deduction is subtracted from your total income before taxes, to establish your taxable income.)

Refer to IRS [Publication 535](#) and [Publication 334](#) for further information on tax incentives, or [Form 8826](#) to claim your tax credit.