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Relief for Small Businesses Targeted by ADA Lawsuits in California

After passing unanimously out of the California Senate and the Assembly, and with the unusual support of both business groups and trial lawyers, Governor Jerry Brown signed SB 269 (Roth). The bill is intended to provide some relief to small businesses sued for alleged violations of disability access laws. The law takes effect immediately.

Among other things, the bill establishes a presumption that certain “technical violations” do not cause a plaintiff to experience difficulty, discomfort, or embarrassment sufficient to entitle the plaintiff to an award of minimum statutory damages – so long as certain specified conditions are met.

First, the defendant must be a small business as defined by the Civil Code. Specifically, the business must employ 25 or fewer employees, and have average annual gross receipts of less than \$3.5 million over the previous three years. Second, the defendant must correct within 15 days of the service of the complaint or receipt of a written notice, whichever is earlier, all of the technical violations that are the basis of the claim. Third, the claim must be based on one or more of the following “technical violations”:

- > interior signs (other than directional signs or signs that identify accessible parts of the facility);
- > the lack of exterior signs, other than parking signs and directional signs;
- > the order in which parking signs are placed or the exact location or working of parking signs;
- > the color of parking signs;
- > the color of parking lot striping; faded, chipped, damaged or deteriorated paint in otherwise fully compliant parking spaces and passenger access aisles; and
- > the presence or condition of detectable warning surfaces on ramps, except where the ramp is part of a pedestrian path of travel that intersects with a vehicular lane or other hazardous area.

The bill also exempts a defendant from liability for minimum statutory damages with respect to a structure or area inspected by a certified access specialist for a period of 120 days if specified conditions are met, including the correction of the alleged violations.

The changes to California’s Construction-Related Accessibility Standards Compliance Act affords limited, but welcome, relief to small businesses. Opponents of the bill claim it covers 96 percent of the businesses in California.

For larger businesses, however, it provides no express relief. Nonetheless, larger businesses that find themselves as defendants in ADA lawsuits alleging the same or similar “technical violations” could make a compelling argument that the Legislature recognizes these “technical violations” do not cause a plaintiff to experience difficulty, discomfort, or embarrassment sufficient to entitle the plaintiff to an award of minimum statutory damages.

Regardless of any express protections for smaller businesses, or arguments that can be made about the law’s application to larger businesses, all places of public accommodation should remain vigilant in ensuring their facilities are compliant with disability access laws; it is both good business and good customer service.

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