

RJO Update: Retail Industry Trade Regulation

October 2012

California Offers Protection and San Francisco Adds New Responsibilities Under Disabled Access Laws

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In the last month, both the State of California and the City and County of San Francisco enacted legislation significantly affecting disabled access law rights and responsibilities in their respective jurisdictions. On September 19, 2012, Governor Brown signed new legislation: SB1186. The statute, which is effective immediately, affords small business owners some protection against abusive “drive-by” lawsuits under the federal and state disabled access laws – the federal Americans with Disabilities Act (ADA) and the California Unruh Act and Disabled Persons Act. San Francisco has also enacted a new law, Ordinance 187-12, which is effective October 11, 2012, and imposes on commercial landlords additional responsibilities to their tenants with regard to disabled access.

How Does the New State Law Help Businesses Facing Disabled Access Claims?

Some notable changes affecting construction-related accessibility claims set forth in the new law, which seek to mitigate the predatory practices against small businesses in this arena, are as follows:

- Attorneys are barred from demanding cash payments from business owners under the threat of filing a disabled access lawsuit;
- Damages are reduced under state law for disabled access violations if the owner corrects the violations within a certain time period; and
- If the claimant visited the site multiple times and is claiming violations on each visit, the law requires the court to consider the reasonableness of the claimant’s conduct in light of the claimant’s obligation to mitigate damages.

The law further regulates complaints involving construction-related accessibility claims by imposing additional requirements on attorneys filing such claims:

- An attorney must include his or her State Bar license number in a demand letter and submit copies of the demand letter to the California Commission on Disability Access and, until January 1, 2016, to the State Bar;
- Any complaint alleging a construction-related accessibility claim must be submitted to the California Commission on Disability Access; and

- Any complaint alleging a construction-related accessibility claim must be verified by the plaintiff, and any complaint filed without verification would be subject to a motion to strike.

Who Else Is Affected by the New State Law?

Commercial property owners must also pay attention to the new state law. A commercial property owner must state on a lease form or rental agreement executed on or after July 1, 2013, whether the property being leased or rented has undergone inspection by a Certified Access Specialist (CAsp).

What Changes Were Made for San Francisco Businesses Under the San Francisco Ordinance?

San Francisco Ordinance 187-12 requires commercial landlords, prior to entering or amending leases with small business tenants, to either bring their buildings into compliance with disabled access law requirements or advise their tenants that their premises may not currently meet all applicable construction-related accessibility standards. Commercial landlords must also notify small business tenants that they may be legally and financially liable for failing to comply with those laws and include in any new or amended leases a provision addressing the respective disability access obligations of the parties. The ordinance further requires the Small Business Commission of the City & County of San Francisco, by January 1, 2013, to develop and distribute an access information notice in multiple languages regarding local, state, and federal disability access laws that may apply to businesses in San Francisco.

Conclusion

The new laws in California and San Francisco may provide additional weapons for business owners confronted with predatory disabled access lawsuits, while promoting the expedient correction of violations and maintenance of accessibility. They provide some relief to California businesses that have far too often been the target of lawyers abusing federal and state access laws for their own gain. At the same time, the laws incentivize businesses to be proactive about taking steps to ensure compliance with construction-related accessibility standards.

How We Can Help Your Company

RJO has assisted many clients to determine and comply with their obligations under federal and California disabled access laws and to defend against claims for violations of those laws. If you have disabled access law questions or issues, Aaron P. Silberman (asilberman@rjo.com), Dennis C. Huie (dhuie@rjo.com) and Christine S. Liyanto (cliyanto@rjo.com) can assist. RJO also has lawyers with expertise in other areas of retail trade regulation and disability discrimination law. Check them out on our website at www.rjo.com.