



Disability Law Alert

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Settlements And Damages In Disability Access Cases Likely To Increase

In California, disabled persons can sue under two different statutes to allege disability access claims, namely, the Unruh Civil Rights Act (Civ. Code § 51) and Disabled Persons Act (Civ. Code § 54.1). Previously, California courts held that plaintiffs had to prove intentional discrimination to bring a claim under the Unruh Act whereas the Disabled Persons Act had no “intent” requirement. Although statutory damages are higher under the Unruh Act, disabled persons more often filed suits under the Disabled Persons Act to avoid having to prove intentional discrimination. Now, a recent change in California law will likely result in disabled persons suing under the Unruh Act, leading to higher damages and settlements in disability access cases.

In a recent case, Munson v. Del Taco, Inc., the California Supreme Court determined that a plaintiff who establishes a violation of the Americans with Disabilities Act (ADA) does not have to prove intentional discrimination in order to obtain damages under California’s Unruh Act. Plaintiffs in California may now recover up to three times the amount of actual damage, but in no case less than four thousand dollars (\$ 4,000), in addition to attorney fees. The minimum statutory damages in disability access cases will increase from \$1,000 to \$4,000, as disabled persons bring lawsuits under the Unruh Act.

The plaintiff in the lawsuit, Kenneth Munson, had a disability that required him to use a wheelchair. Munson sued a Del Taco restaurant in San Bernardino, California, claiming he encountered architectural barriers that denied him access to the parking area and restrooms. The restroom doorway was allegedly too narrow to allow wheelchair passage. Munson filed suit against Del Taco in federal court alleging violations of the ADA and the Unruh Act.

The ADA prohibits, among other things, the failure to remove architectural barriers in existing facilities where such removal is readily achievable. The ADA was designed to eliminate all discriminatory effects of architectural, transportation, and communication barriers, and the failure to make modifications to existing facilities without the necessity to prove discriminatory intent. The California Legislature added a provision to California’s disability access laws specifying that a violation of the ADA also constitutes a violation of the Unruh Act. The California Supreme Court found the Legislature’s intent was to provide disabled Californians with the maximum statutory remedies provided by the Unruh Act without proof of intentional discrimination.

It is important to remain in compliance with disability access laws to avoid these lawsuits. Businesses must generally remove existing architectural barriers that are easily accomplishable and able to be carried out without much difficulty or expense. In determining whether removal is “readily achievable”, courts will consider the nature and cost of the action, the overall financial resources of the business and impact on expenses, resources and operation of the facility.

To ensure compliance with California law:

- All businesses should inspect and audit facilities for ADA compliance;
- Inspections should include common areas shared with other commercial tenants (e.g. parking areas, dining areas, waiting areas, restrooms, etc.);
- Businesses should keep records of ADA improvements made by the facility and associated costs;
- Easily removable barriers, for example, restroom mirrors, soap dispensers, bathroom stall handle bars, signage, etc., should be removed and/or fixed promptly; and
- For costly and more difficult renovations, businesses should keep records of any estimates/bids for construction and any money set aside for more costly alterations.

Businesses with questions about disability access laws and compliance should consult with an attorney. Mr. Shalauta specializes in employment litigation and counseling for businesses, including, disability access issues. Mr. Shalauta can be reached at (510) 835-6716 and ashalauta@burnhambrown.com.