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California ADA Law Alert

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Remodeling the Disability Access Claim: New Law Aids California Businesses

The California Legislature has finally responded to concerns about certain manipulative practices of the plaintiffs' ADA bar and enacted a bill ("SB 1186"), with bipartisan support, which the Governor has now signed into law. The new law, which goes into effect immediately, takes baby steps toward curtailing the more egregious practices associated with disability access claims.

The law is designed to address two specific issues. First, the Legislature noted that some plaintiffs' attorneys will send demand letters to business owners alleging access violations, but rather than asking for those violations to be corrected, they demand payment of a quick monetary settlement under threat of more costly litigation in the future. This "pay me now or pay me more" approach, in the Legislature's words, does not truly promote disability access, but erodes public confidence in access laws.

Second, the Legislature observed that disability access plaintiffs will often make repeat visits to non-compliant business establishments, encounter the same access barriers each time, and demand a monetary settlement in the amount of their minimum statutory damages (typically \$4,000) multiplied by the number of visits. This "stacking" of claims often results in five-figure settlement demands which can be used to intimidate business owners into a quick monetary settlement.

SB 1186 was enacted to curtail these practices by opportunistic plaintiffs, and to facilitate greater awareness and compliance with disability access laws by California businesses. It implements the following key changes:

- Pre-litigation demand letters regarding construction-related issues may no longer contain a demand for money, and must be written so that a reasonable person can understand the basis of the alleged violation.
- Plaintiffs may no longer "stack" their claims based on multiple visits to the same business establishment, unless they can offer a reasonable explanation for multiple visits.
- The \$4,000 minimum statutory damage award for construction-related access violations is reduced to either \$1,000 or \$2,000 for businesses who correct the violations, depending on the size of the business and the amount of time in which the violations are corrected.
- Commercial property owners must state, on lease forms or rental agreements executed after July 1, 2013, whether the leased premises have been inspected by a certified access specialist.

While these changes do not by themselves prevent plaintiffs from bringing disability access claims, they may reduce the incentive to do so and give business owners more of an opportunity to correct any access violations before facing a lawsuit.

Cathy Arias is the chair of Burnham Brown's Employment Law Department and specializes in counseling and representing employers. Ms. Arias and Burnham Brown have extensive experience and proven success in defending employers in class action lawsuits. Ms. Arias brings this experience with her when asked to perform labor and employment policy audits, especially those designed to test employers' vulnerability to class based liability. Ms. Arias can be reached at 510-835-6806 and carias@burnhambrown.com. Brendan Brownfield is an associate at Burnham Brown. He represents and counsels businesses in employment matters, including discrimination, harassment, and retaliation, as well as ADA compliance and commercial litigation. He can be reached at 510-835-6732 and bbrownfield@burnhambrown.com.