

FREQUENTLY ASKED QUESTIONS
ADA in State Court

Q1. Can someone with a disability file a claim for discrimination against a public accommodation in small claims court?

A. Yes, a person with a disability can file a discrimination claim in small claims court against a business for violating the state laws described in Part I. A natural person can sue for up to \$10,000 in monetary damages. Injunctive relief is not available in small claims court except when expressly authorized by statute.

Q2. May someone with a disability sue in state court for violations of the ADA?

A. Yes, but only under the provisions in state law that encompass the Americans with Disabilities Act. The ADA is a federal law. In state court, you can sue only for violations of state laws, such as Civil Code sections 51, 54.1, and 54.2. But these state laws incorporate the ADA, and thus a violation of the ADA can be pled as a state claim. [See CC §§51(f), 54.1(d), 54.2(b)]

Q3. If a plaintiff incorporates an ADA claim into a state claim, does the plaintiff have to prove intentional discrimination?

A. In enacting CC §51(f), the Legislature intended to provide disabled Californians injured by violations of the ADA with the remedies provided by CC §52. A plaintiff who establishes a violation of the ADA, therefore, need not prove intentional discrimination in order to obtain damages under section 52. [*Munson v Del Taco* (2009) 46 C4th 661,678] *Munson* overrules *Gunther v Lin* (2006) 144 CA4th 223, and *Coronado v Cobblestone Village Community Rentals* (2008) 163 CA4th 831, to the extent they hold to the contrary.

Q4. Does the ADA permit an individual with a disability to sue a business when that individual believes that discrimination is about to occur, or must the individual wait for the discrimination to occur?

A. The ADA public accommodations provisions permit an individual to allege discrimination based on a reasonable belief that discrimination is about to occur. This provision, for example, allows a person who uses a wheelchair to challenge the planned construction of a new place of public accommodation, such as a shopping mall, that would not be accessible to individuals who use wheelchairs. The resolution of such challenges prior to the construction of an inaccessible facility would enable any necessary remedial measures to be incorporated in the building at the planning stage, when such changes would be relatively inexpensive. If a construction-related accessibility claim is involved, the plaintiff must show that the violation denied him or her full and equal access to the place of public accommodation on a particular occasion. See Questions 25 et seq.

Q5. Does the ADA cover private apartments and private homes?

A. The ADA does not cover strictly residential private apartments and homes. If, however, a place of public accommodation, such as a doctor's office or day care center, is located in a private residence, those portions of the residence used for that purpose are subject to the ADA's requirements.

Q6. What does the ADA require in new construction?

A. The ADA requires that all new construction of places of public accommodation, as well as of "commercial facilities" such as office buildings, be accessible. Elevators are generally not required in facilities under three stories or with fewer than 3,000 square feet per floor, unless the building is a shopping center or mall; the professional office of a health care provider; a terminal, depot, or other public transit station; or an airport passenger terminal.

Q7. Does the ADA allow public accommodations to take safety factors into consideration in providing services to individuals with disabilities?

A. The ADA expressly provides that a public accommodation may exclude an individual, if that individual poses a direct threat to the health or safety of others that cannot be mitigated by appropriate modifications in the public accommodation's policies or procedures, or by the provision of auxiliary aids. A public accommodation will be permitted to establish objective safety criteria for the operation of its business; however, any safety standard must be based on objective requirements rather than stereotypes or generalizations about the ability of persons with disabilities to participate in an activity.

Q8. Are there any limits on the kinds of modifications in policies, practices, and procedures required by the ADA?

A. Yes. The ADA does not require modifications that would fundamentally alter the nature of the services provided by the public accommodation. For example, it would not be discriminatory for a physician specialist who treats only burn patients to refer an individual who is deaf to another physician for treatment of a broken limb or respiratory ailment. To require a physician to accept patients outside of his or her specialty would fundamentally alter the nature of the medical practice.

Q9. What kinds of auxiliary aids and services are required by the ADA to ensure effective communication with individuals with hearing or vision losses?

A. Appropriate auxiliary aids and services may include services and devices such as qualified interpreters, assistive listening devices, note takers, and written materials for individuals with hearing losses; and qualified readers, taped texts, and Braille or large-print materials for individuals with vision losses.

Q10. Who decides what type of auxiliary aid should be provided?

A. Public accommodations should consult with individuals with disabilities wherever possible to determine what type of auxiliary aid is needed to ensure effective communication. In many cases, more than one type of auxiliary aid or service may make effective communication possible. While consultation is strongly encouraged, the ultimate decision as to what measures to take to ensure effective communication rests in the hands of the public accommodation, provided that the method chosen results in effective communication.

Q11. Are there any limitations on the ADA's barrier removal requirements for existing facilities?

A. Yes. Barrier removal need be accomplished only when it is "readily achievable" to do so.

Q12. What does the term "readily achievable" mean?

A. It means "easily accomplishable and able to be carried out without much difficulty or expense."

Q13. What are examples of the types of modifications that would be readily achievable in most cases?

A. Examples include the simple ramping of a few steps, the installation of grab bars where only routine reinforcement of the wall is required, the lowering of telephones, and similar modest adjustments.

Q14. Will businesses need to rearrange furniture and display racks?

A. Possibly. For example, restaurants may need to rearrange tables and department stores may need to adjust their layout of racks and shelves in order to permit access to wheelchair users.

Q15. When barrier removal is not readily achievable, what kinds of alternative steps are required by the ADA?

A. Alternatives may include such measures as in-store assistance for removing articles from inaccessible shelves, home delivery of groceries, or coming to the door to receive or return goods or services.

Q16. Must alternative steps be taken without regard to cost?

A. No, only readily achievable alternative steps must be undertaken.

Q17. How is "readily achievable" determined in a multisite business?

A. In determining whether an action to make a public accommodation accessible would be "readily achievable," the overall size of the parent corporation or entity is only one factor to be considered. The ADA also permits consideration of the financial resources of the particular facility or facilities involved and the administrative or fiscal relationship of the facility or facilities to the parent entity.

Q18. Who has responsibility for ADA compliance in leased places of public accommodation, the landlord or the tenant?

A. 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.

Q19. What if a private entity operates, or leases space to, many different types of facilities, of which only relatively few are places of public accommodation? Is the whole private entity still a public accommodation?

A. The entire private entity is, legally speaking, a public accommodation, but it only has ADA Title III obligations with respect to the operations of the places of public accommodation.

Q20. Must every feature of a new facility be accessible?

A. No, only a specified number of elements such as parking spaces and drinking fountains must be made accessible in order for a facility to be "readily accessible." Certain nonoccupiable spaces such as elevator pits, elevator penthouses, and piping or equipment catwalks need not be accessible.

Q21. What are the ADA requirements for altering facilities?

A. All alterations that could affect the usability of a facility must be made in an accessible manner to the maximum extent feasible. For example, if during renovations a doorway is being relocated, the new doorway must be wide enough to meet the new construction standard for accessibility. When alterations are made to a primary function area, such as the lobby of a bank or the dining area of a cafeteria, an accessible path of travel to the altered area must also be provided. The bathrooms, telephones, and drinking fountains serving that area must also be made accessible. These additional accessibility alterations are only required to the extent that the added accessibility costs do not exceed 20 percent of the cost of the original alteration. Elevators are generally not required in facilities under three stories or with fewer than 3,000 square feet per floor, unless the building is a shopping center or mall; the professional office of a health care provider; a terminal, depot, or other public transit station; or an airport passenger terminal.

Q22. Does a public accommodation have an obligation to search for accessible space?

A. A public accommodation is not required to lease space that is accessible. However, upon leasing, the barrier removal requirements for existing facilities apply. In addition, any alterations to the space must meet the accessibility requirements for alterations.

Q23. Are portable ramps permitted?

A. Yes, but only when the installation of a permanent ramp is not readily achievable. In order to promote safety, a portable ramp should have railings and a firm, stable, nonslip surface. It should also be properly secured.

Q24. How can a public accommodation decide what needs to be done?

A. One available method is to hire a certified access specialist, or CASp, to inspect the business's buildings to ensure compliance with disability access standards. The CASp provides an inspection report detailing areas of compliance and those areas that need corrections to meet construction-related accessibility standards. A CASp who completes an inspection must also provide a notice of rights to the property owner. With a CASp report in hand, a public accommodation can seek a stay and early evaluation conference in a construction-related accessibility case. See Questions 25 et seq. Another approach is to conduct a "self-evaluation" of the facility to identify existing barriers. Public accommodations are urged to establish procedures for an ongoing assessment of their compliance with the ADA's barrier removal requirements. This process should include consultation with individuals with disabilities or organizations representing them. A serious effort at self-assessment and consultation can diminish the threat of litigation and save resources by identifying the most efficient means of providing required access.

Q25. What is the effect of a CASp report in a construction-related accessibility case?

A. A defendant in a construction-related accessibility case who previously obtained a CASp report on the property in question may apply for a 90-day stay and an early evaluation conference. A construction-related accessibility claim is any civil claim regarding a public accommodation based in whole or part on an alleged violation of any construction-related accessibility standard. This process is authorized by SB 1608 of 2008, which for the most part became operative in October 2009, and SB 1186 of 2012, which became effective September 19, 2012.

Q26. When is a defendant in a construction-related accessibility case “qualified” to apply for a 90-day stay and early evaluation conference?

A. A defendant in such a case is “qualified” if the defendant’s place of public accommodation received the status of “meets applicable standards” or “inspected by a CASp” before the defendant was served with the summons and complaint. A “meets applicable standards” site meets all applicable construction-related accessibility standards, while an “inspected by a CASp” site means the site was inspected but is pending a determination by the CASp that the site meets applicable construction-related accessibility standards.

Note that SB 1186 created three new categories of defendants who are eligible to request a stay and early conference [CC §55.54(b)(2)]:

- A defendant whose new construction or improvement was approved pursuant to the local building permit and inspection process, and who declares that there have been no modifications or alterations completed or commenced since that approval that impacted compliance with accessibility standards, and that all violations were corrected or will be soon after service of the complaint.
- A defendant whose new construction or improvement was approved by a local public building department inspector who is a CASp, and the defendant declares that there have been no modifications or alterations completed or commenced since that approval that impacted compliance with accessibility standards, and that all violations were corrected, or will be soon after service of the complaint.
- A defendant who is a small business and declares that all violations were corrected, or will be soon after service of the complaint.

Q27. If an attorney files an action that includes a construction-related accessibility claim, what papers must he or she serve on the defendant along with the summons and complaint?

A. The attorney must also serve (1) an advisory notice of right to request a stay and early evaluation conference if the site was inspected by a CASp and (2) a blank application for a stay and early evaluation conference.

Q28. What must the court do when a qualified defendant files an application for a stay and early evaluation conference?

A. The court must immediately (1) grant a 90-day stay with respect to the construction-related accessibility claim, (2) schedule a mandatory early evaluation conference no earlier than 50 days from when the request was filed but no later than 70 days from issuance of the order, (3) direct the parties or other person with authority to negotiate and settle to appear at the conference, (4) direct the defendant to file and serve a copy of the CASp report 15 days before the conference, (5) direct the defendant to file and serve evidence of correction of any violation within a specified period, (6) direct the parties that the CASp inspection report may only be disclosed to specified persons, and (7) direct the plaintiff to file and serve at least 15 days before the conference a statement regarding conditions on the premises that are the basis of the claim, damages claimed, attorney fees and costs, and any settlement demand.

Q29. Who may conduct the early evaluation conference?

A. Early evaluation conferences must be conducted by a superior court judge or commissioner, or by a court-employed attorney acting as a “court early evaluation conference officer.” A commissioner or court-employed attorney must have been trained regarding disability access requirements imposed by the ADA, state laws governing access, and related federal and state regulations.

Q30. Does a commercial property owner or lessor have a duty to state in a lease form or rental agreement whether the property has undergone a CASp inspection?

A. Yes, but only starting on July 1, 2013. On or after that date, a commercial property owner or lessor must state in every lease form or rental agreement whether the property being leased or rented has undergone a CASp inspection. If so, the owner or lessor must state whether the property has been determined to meet all applicable construction-related accessibility standards pursuant to CC §55.53. [CC §1938] This way, small businesses will know what they're getting into and should avoid getting strong-armed into paying accessibility claims.

Q31. Does the ADA require businesses to allow service animals on their premises?

A. The ADA does require businesses to allow people with disabilities to bring their service animals onto business premises in whatever areas customers are generally allowed.

Q32. What is a service animal?

A. The ADA defines a service animal as *any* guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. If they meet this definition, animals are considered service animals under the ADA regardless of whether they have been licensed or certified by a state or local government.

Service animals perform some of the functions and tasks that the individual with a disability cannot perform for him or herself. "Seeing eye dogs" are one type of service animal, used by some individuals who are blind. This is the type of service animal with which most people are familiar. But there are service animals that assist persons with other kinds of disabilities in their day-to-day activities. Some examples include:

- Alerting persons with a hearing loss to sounds.
- Pulling wheelchairs or carrying and picking up things for persons with mobility impairments.
- Assisting persons with mobility impairments with balance.

Pursuant to federal regulations, species of animals other than dogs, whether wild or domestic, trained or untrained, are *not* service animals, except for trained miniature horses. The work or tasks performed by a service animal must be directly related to the individual's disability.

A service animal is not a pet.

Q33. How can I tell if an animal is really a service animal and not just a pet?

A. Some, but not all, service animals wear special collars and harnesses. Some, but not all, are licensed or certified and have identification papers. If you are not certain that an animal is a service animal, you may ask the person who has the animal if it is a service animal required because of a disability. However, an individual who is going to a restaurant or theater is not likely to be carrying documentation of his or her medical condition or disability. Therefore, such documentation generally may not be required as a condition for providing service to an individual accompanied by a service animal. Although a number of states have programs to certify service animals, you may not insist on proof of state certification before permitting the service animal to accompany the person with a disability.

Q34. What must I do when an individual with a service animal comes to my business?

A. The service animal must be permitted to accompany the individual with a disability to all areas of the facility where customers are normally allowed to go. An individual with a service animal may not be segregated from other customers.

Q35. I have always had a clearly posted "no pets" policy at my establishment. Do I still have to allow service animals in?

A. Yes. A service animal is *not* a pet. The ADA requires you to modify your "no pets" policy to allow the use of a service animal by a person with a disability. This does not mean you must abandon your "no pets" policy altogether but simply that you must make an exception to your general rule for service animals.

Q36. Can I charge a maintenance or cleaning fee for customers who bring service animals into my business?

A. No. Neither a deposit nor a surcharge may be imposed on an individual with a disability as a condition to allowing a service animal to accompany the individual with a disability, even if deposits are routinely required for pets. However, a public accommodation may charge its customers with disabilities if a service animal causes damage so long as it is the regular practice of the entity to charge non-disabled customers for the same types of damages. For example, a hotel can charge a guest with a disability for the cost of repairing or cleaning furniture damaged by a service animal if it is the hotel's policy to charge when non-disabled guests cause such damage.

Q37. Am I responsible for the animal while the person with a disability is in my business?

A. No. The care or supervision of a service animal is solely the responsibility of his or her owner. You are not required to provide care or food or a special location for the animal.

Q38. What if a service animal barks or growls at other people, or otherwise acts out of control?

A. You may exclude any animal, including a service animal, from your facility when that animal's behavior poses a direct threat to the health or safety of others. For example, any service animal that displays vicious behavior towards other guests or customers may be excluded. You may not make assumptions, however, about how a particular animal is likely to behave based on your past experience with other animals. Each situation must be considered individually. Although a public accommodation may exclude any service animal that is out of control, it should give the individual with a disability who uses the service animal the option of continuing to enjoy its goods and services without having the service animal on the premises.

Q39. Can I exclude an animal that doesn't really seem dangerous but is disruptive to my business?

A. There may be a few circumstances when a public accommodation is not required to accommodate a service animal--that is, when doing so would result in a fundamental alteration to the nature of the business. Generally, this is not likely to occur in restaurants, hotels, retail stores, theaters, concert halls, and sports facilities. But when it does, for example, when a dog barks during a movie, the animal can be excluded.