

An Accessible, Barrier-Free California



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# 2018 Annual Report to the Legislature

January 31, 2019

**DGS** CALIFORNIA DEPARTMENT OF  
**GENERAL SERVICES**

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## Summary Highlights

This California Commission on Disability Access (Commission) Annual Report to the California State Legislature is submitted in compliance with Government Code Sections 14985.7 (a) and 14985.8 (d). This year's report highlights include the following activities aligned with the Commission's legislative mandates.

***Preventing or minimizing problems of compliance*** through ongoing education and outreach to promote and facilitate disability access compliance, as directed in Government Code 14985.6, the Commission, with support from external partners, conducted two public outreach events: a second Listening Forum on the topic of the Department of Motor Vehicles Disabled Parking Placard Program and the first of three restaurant industry-focused outreach events in the Central Valley region. The second Listening Forum event also featured a Legislative Coffee Chat session with Assembly Member Jim Frazier, Assembly Member Tom Lackey, and a representative from the office of Senator Richard Pan to discuss disabled parking program issues from a policy perspective.

***Recommending programs to enable persons with disabilities to obtain full and equal access to public facilities*** as directed in Government Code 14985.5, the Commission provided information and referrals to over 250 public inquiries with various levels of complexity. The Commission also implemented an internal process improvement to maintain a log of public inquiries received and recommended referrals provided.

***Establishing an electronic document management system (EDMS)*** for construction-related accessibility legal documents collected by the Commission is phase one of a two-phase goal begun in 2018. The Commission implemented an EDMS solution with support from the Office of State Publishing. As a result, the Commission has over 16,000 case files received between 2012-2017 stored in a secure, confidential electronic system. Implementing an EDMS solution to support the Commission's review of accessibility-related litigation documents makes the process more efficient, environmentally friendly, and promotes better data collection, retrieval and analysis. Completing phase one is critical to the Commission's mission to identify accessibility issues and provide guidance to specific industries and impacted areas of the state.

***Utilizing legal research tools*** to better understand alleged complaints and data in 2018 improved the ability to more efficiently and effectively track, analyze and report on prelitigation letters, complaints and case outcomes. Utilizing these tools also helped to uncover key policy issues with regard to the types of case files and alleged complaints submitted to the Commission.

## Introduction

### History

In 2008, the California State Legislature concluded that in many instances, persons with disabilities continued to be denied full and equal access to public facilities even though that right was provided under state and federal law. The Legislature further concluded that businesses in California have the responsibility to provide full and equal access to public facilities as required in laws and regulations, but that compliance may be impeded, in some instances, by conflicting state and federal regulations, resulting in unnecessary litigation.

Senate Bill (SB) 1608 (Corbett, Chapter 549, Statutes of 2008) established the California Commission on Disability Access (Commission) under Government Code (GC) Sections 8299 – 8299.11 with a vision toward developing recommendations to the Legislature that would enable persons with disabilities to exercise their right to full and equal access to public facilities and that would facilitate business compliance with applicable laws, building standards and regulations to avoid unnecessary litigation.

In September 2012, SB 1186 (Steinberg, Chapter 383, Statutes of 2012) revised and recast the Commission's duties by making it a priority to develop and disseminate educational materials and information to promote and facilitate disability access compliance. SB 1186 also established annual reporting of prelitigation letters and complaints to the Legislature by the Commission.

In October 2015, Assembly Bill (AB) 1521 (Committee on Judiciary, Chapter 755, Statutes of 2015) was signed into law as an urgency measure and required the Commission to additionally collect, study and report on case outcomes.

In September 2016, SB 1406 (Mendoza, Chapter 892, Statutes of 2016) was enacted, adding review and reporting on prelitigation letters and complaints served on educational entities to the Commission's existing obligation to review those served on public facilities. Also, AB 54 (Olsen, Chapter 872, Statutes of 2016) was enacted, giving the Commission the authority to establish a standard report format for receiving complaints and prelitigation letters.

On July 1, 2017, the Commission became part of the Department of General Services (DGS), resulting in the Commission's initial governing statutes, GC Sections 8299 – 8299.11, being replaced by GC Sections 14985 – 14985.11 (added by Statutes 2017, Chapter 19, Section 15).

The Commission currently has five authorized personnel and is comprised of 17 members: 11 public members and six ex-officio, non-voting, members comprised of the State Architect, the Attorney General, and four members of the California Legislature. The Commission's total operating budget is \$744,000.

## **Mission**

The mission of the Commission is to promote disability access in California through dialogue and collaboration with stakeholders, such as the disability and business communities, and all levels of government. In order to achieve this mission, the Commission is authorized to act as an information resource; to research and prepare advisory reports of findings to the Legislature on issues related to disability access, compliance inspections and continuing education; to increase coordination between stakeholders; to make recommendations to promote compliance with federal and state laws and regulations; and to provide uniform information about programmatic and architectural disability access requirements to the stakeholders.

## **Vision**

The Commission, together with key partners, adopted a vision statement to reflect the ideal future state when the agency's mission is accomplished:

*An Accessible, Barrier-Free California  
= Inclusive and Equal Opportunities and Participation for All Californians!*

## **Reporting Requirements**

This report outlines the Commission's ongoing efforts to implement Government Code Sections 14985.5 and 14985.6. In general, these sections obligate the Commission to provide information to businesses on compliance with disability access requirements; recommend programs to enable persons with disabilities to obtain full and equal access to public facilities; provide information to the Legislature on access issues and compliance; and develop and disseminate educational materials and information to promote and facilitate disability access compliance.

This report also provides tabulated data including:

- the various types of ADA construction-related physical access violations alleged in prelitigation letters and complaints
- the number of complaints alleged for each type of violation
- a list, by type, of the 10 most frequent types of accessibility violations alleged
- the numbers of alleged violations for each listed type of violation
- the number of complaints received that were filed in state or federal court
- filing frequencies and location frequencies
- the ZIP codes of complaints received
- the percentage of attorney, plaintiff, and defendant filings
- the resolution reached on complaints submitted

## Accomplishments and Path Forward

### Accomplishments

During 2018, under the leadership of the executive director and the executive committee, the Commission continued to work toward achieving its stated mission and strategic goals. Additionally, the Commission achieved one of three DGS strategic goals and is on track to complete the remaining two goals in 2019. Appendices K and L further outline the Commission's five-year and one-year strategic goals. Highlights of 2018 strategic goal accomplishments include:

### Commission Operations

In January 2018 and March 2018, respectively, the Commission hired an Operations Manager and a Marketing & Outreach Analyst. Hiring both staff members filled critical roles within the Commission's operations that were previously held by retired annuitants. With the hiring of these 2.0 positions, the Commission was fully staffed at the 5.0 level and reduced the number of temporary staff supporting the Commission. In April 2018, the Commission moved to a facility with other California Government Operations Agency departments. This move, facilitated by DGS' Real Estate Services Division, supported the Commission's growing operations to provide adequate space for its 5.0 authorized positions and onsite facilities for the Commission's public meetings. The Commission also partnered with the Department of Rehabilitation's Workability Program to bring volunteer support for data collection efforts.



*Commission staff providing support at Legislative Coffee Chat*

Lastly, the Commission maintained its membership through reappointments and welcoming new commissioners. Commissioners Guy Leemhuis and Chris Downey were reappointed in 2018. The Commission also welcomed two new public members representing business: Scott Lillibrige and Karla Prieto, as well as a



new legislative member, Assembly Member Jim Frazier. Appendix I further details the Commission's roster.



*Commission Vice Chair Doug Wiele and Commissioner Michael Paravagna facilitating small group discussions*



*Commissioner Karla Prieto facilitating small group discussion in Fresno*

## **Completed Electronic Document Management System**

Another highlight of 2018 was completing the Electronic Document Management System (EDMS) project for construction-related accessibility legal documents collected by the Commission. As phase one of a two-phase goal, the Commission implemented an EDMS solution with support from the Office of State Publishing (OSP). The Commission transferred over 16,000 paper files received between 2012-2017 to OSP for scanning, indexing, and incorporation into an electronic system. This system is secure, confidential and only accessible by Commission staff given the nature of the legal information contained in each file. Implementing an EDMS solution to support the Commission's review of accessibility-related litigation documents makes the monthly data collection processes more efficient and environmentally friendly, and promotes better data collection and analysis.

This solution also improves the retrieval of past data to respond to data requests from local jurisdictions and Public Records Act requests. As a result, the Commission is able to be data-informed and respond to requests from local jurisdictions and the public in a timely and responsive manner. Completing phase one is critical to the Commission's mission to identify accessibility issues and provide guidance to specific industries and impacted areas of the state.

## **Developed Toolkit for the Restaurant Industry**

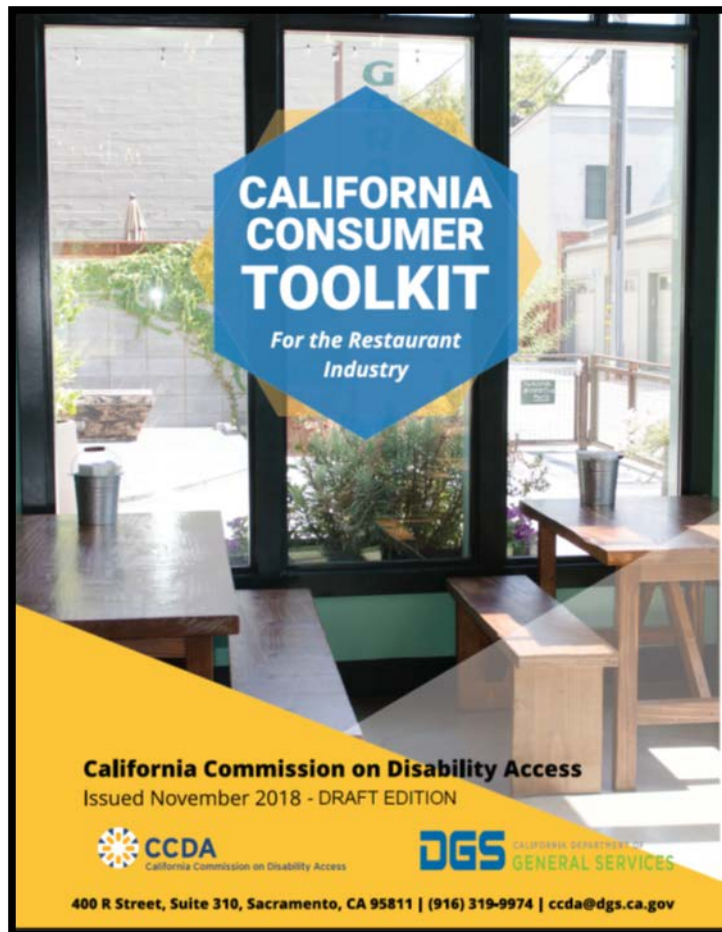
In support of the Commission's legislative mandate to prioritize the developments and dissemination of educational materials and information as directed in Government Code Section 14985.6, the Commission's Checklist Committee worked with staff to develop a disability access toolkit for the restaurant industry. The toolkit features federal and state disability access law information, solutions for businesses, tips for making operations accessible to guests with disabilities, and financial resources to support physical access improvements. Volunteers of the committee lent their professional and technical expertise over a four-month period to develop content for each section of the toolkit. The Commission also received support from stakeholders in Fresno to develop the "Voices of the Customers" section. The Division of the State Architect provided technical review of the toolkit, and the Commission received support from the DGS Office of Public Affairs to participate in a photo shoot for toolkit visuals.

The [first draft toolkit](#) debuted at the Central Valley Community Gathering event in November 2018, where it received positive reactions and feedback. Commission staff will utilize feedback gathered from the two remaining restaurant industry-focused events in 2019 to develop and make available a final toolkit and summary highlight video of all three restaurant industry events on the Commission's website in fall 2019.





*Commission restaurant industry toolkits*



*Front cover of restaurant industry toolkit*



*Volunteer models, Commission staff and Commissioner Scott Lillibridge participating in toolkit photo shoot*

### **Held Educational Outreach Events**

In support of the Commission's legislative mandate to prevent or minimize problems of compliance through ongoing education and outreach, the Commission held two public events in 2018. In March, the Commission conducted its second Listening Forum on the topic of the Department of Motor Vehicles (DMV) Disabled Parking Placard Program. The Listening Forum featured a panel representing the DMV, City of Sacramento Parking Services, and the California Foundation for Independent Living Centers. The panel was followed by small group discussions on topics associated with California's disability parking programs. More than 50 individuals participated in the small group conversations including public officials, disability advocates, industry groups, labor groups, Sacramento County and state of California staff, and representatives from higher education and transportation agencies. This Listening Forum also featured a Legislative Coffee Chat session with Assembly Member Jim Frazier, Assembly Member Tom Lackey, and a representative from the office of Senator Richard Pan to discuss disabled parking program issues from a policy perspective.



*Commissioner Betty Wilson facilitating small group discussions*



*Commissioner Celia McGuinness presenting summary of small group discussions during Legislative Coffee Chat session*



In November 2018, the Commission held the first of three restaurant industry-focused outreach events in the Central Valley region. The Central Valley Community gathering event, in partnership with the city of Fresno, featured the introduction of the Commission's disability access toolkit for the restaurant industry, as well as a networking lunch sponsored by the California Restaurant Association. More than 20 external stakeholders supported the Commission in marketing this event, which was attended by more than 80 in-person participants from Fresno, and was accessed remotely via internet live stream. Assembly Member Devon Mathis provided opening remarks, and a representative from the office of Assembly Member Dr. Joaquin Arambula was also in attendance. Representatives from the Division of the State Architect attended and supported the Commission's Central Valley Community Gathering event and its industry-focused educational outreach.



*Participants at Central Valley Community Gathering reviewing toolkit at roundtables*

The Commission will complete its next two regional restaurant industry outreach events in March (Northern California) and June (Southern California) 2019.

## **Launched Americans with Disabilities Act Business Mentorship Program**

The Central Valley Community Gathering event also featured a launch of the Americans with Disabilities Act (ADA) mentoring program for small business in collaboration with the Accessible Fresno initiative. This program provides financial support to small businesses seeking Certified Access Specialist (CAsp) services, and connects the business owner(s) with mentors to assist them in implementing their CAsp report, increasing and maintaining disability access compliance, and improving their operations to increase accessibility. Representatives from the offices of then-Senator Tom Berryhill and Assembly Member Jim Patterson provided certificates of recognition for the business mentee awardee: Ovidio Italian Restaurant.

## **Held Meeting with Statewide ADA Coordinators**

In support of the Commission's five-year strategic goal number six: "Explore the development of a state-level ADA access office," the Commission held a meeting with statewide ADA coordinators sponsored by the Sierra Health Foundation in September. Thirty-two participants attended in person or via teleconference. The Commission's Legislative Committee Chair Michael Paravagna facilitated discussions about current statewide ADA coordination efforts and the requirement for state agencies to develop and maintain transition plans. This meeting with ADA Coordinators laid foundational work to support the Commission's research project in 2019.



*Commission holding ADA Coordinators meeting at Sierra Health Foundation*

## External Outreach Efforts and Partnerships

Executive Director Angela Jemmott expanded the Commission's statewide presence by presenting at the Women's Conference in Anaheim, the California Building Officials training in San Ramon, the Certified Access Specialist Institute's conference in Anaheim, Senator Richard Roth's ADA workshop in Riverside, the Inland Empire Disabilities Collaborative meeting in San Bernardino, the State Bar Retreat in San Francisco and the ADA Compliance Workshop in Discovery Bay hosted by Assembly Member Jim Frazier's office. Commissioner Paravagna attended the Pacific ADA Conference on behalf of the Commission in Oakland.

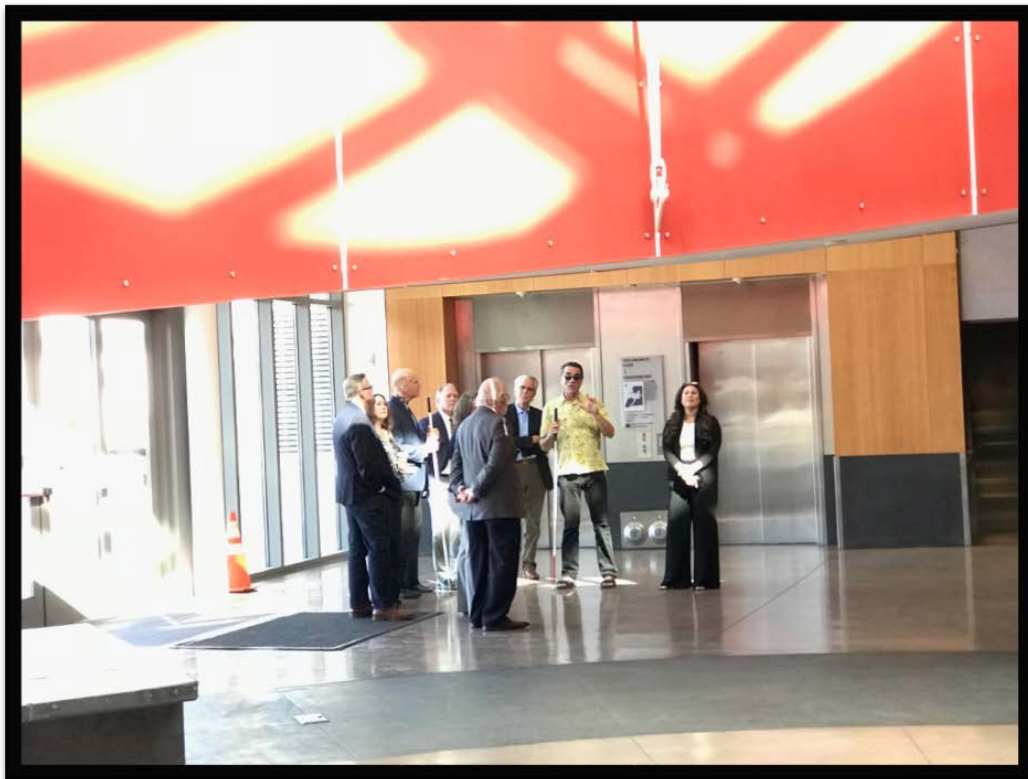


*Executive Director Angela Jemmott with panel members  
at State Bar Retreat*





*Commission Executive Director Angela Jemmott participating on panel with representatives from the Governor's Office of Business and Economic Development, California Pollution Control Authority, and DGS Division of the State Architect*



*Commissioners learning about universal design features of Ed Roberts Campus in Berkeley*

## Commission's Statewide Impact

All of the Commission's accomplishments in 2018 culminated in a tremendous statewide impact: eight presentations given, two Listening Forums held, 18 publicly accessible meetings held in accordance with the Bagley-Keene Open Meeting Act, 12 cities visited and more than 30 partners and sponsors supporting external outreach efforts. For the public, the Commission's accomplishments resulted in distributing 90 toolkits at the first restaurant industry outreach event, providing information and referrals in response to 254 public inquires and sending email communications to 248 subscribers, along with our continuous website presence, which received an upgrade during DGS' website redesign project in 2018. The toolkit will be widely distributed in its final production on the Commission's and partnering supporters' websites. Figure 1 on visualizes the Commission's 2018 statewide impact.

Commission staff also implemented an internal tracking system to log the type (i.e., phone or email), number, and category of public inquiries received. Based on the information collected, the top three incoming public inquiry category types were: 1) building code requirements, 2) disability access law questions [non-construction related] and 3) discrimination based on disability.



Figure 1: 2018 Commission Statewide Impact (in addition to our website presence)

The Commission looks forward to continued statewide service to the business and disability communities, as well as all levels of government in 2019. The Commission is seeking ways to measure business compliance with state and federal disability access laws and usage of educational tools. Potential metrics may include determining the impact of education from the Top 10 Alleged Violations through the website posting, coupled with our educational outreach events. The Commission will also partner with a research university to develop and conduct a survey of state government operations and the effectiveness of ADA coordinators with regard to disability access. Finally, the Commission is developing regional partnerships with local governments and building jurisdictions to strengthen the impact of access laws and local ordinances.

The next section outlines some specific activities related to the Commission's path forward.

## **Path Forward**

### **Technology: Developing Electronic Database and Web Portal**

The Commission developed the electronic data collection project to make its review of prelitigation letters and complaints for construction-related accessibility claims more efficient and environmentally friendly, and to promote better data analysis. In 2018, the Commission completed phase one of the project by implementing an electronic transfer and storage process for previously reviewed files. In 2019, the Commission will enter the second phase of this effort through the creation of a secure database and a web-based form that will allow the legal community to submit claims electronically to the Commission. The database will improve efficiency, but will require one to two years' transitional time of manual processing by Commission staff. Once this project is completed, the electronic database will serve as the secure, single source for all case and prelitigation data collected.

### **Ongoing Maintenance of Electronic Document Management System (EDMS)**

The Commission will partner with OSP to maintain the EDMS in 2019. Ongoing maintenance includes preparing to transfer more than 4,000 complaints and prelitigation letters received in 2018 and more than 6,000 case resolution reports received between 2015-2018. Maintaining the EDMS will help ensure electronic records of case files received between 2012-2018 are ready for incorporation into the electronic database and web portal.

## Statewide ADA Coordination Research Project

To further its mission of promoting access for all Californians, the Commission will partner with a research university to develop and conduct a survey of state government operations and the effectiveness of ADA coordinators with regard to disability access. In 2019, the Commission will organize study participants at different agencies in state government and publish a roster of statewide ADA coordinators. The Commission and the partner university will have a scope of work/research proposal prepared by the end of the year. The two-year research project will commence in 2019.

## Expanding ADA Business Mentorship Program

The Commission is seeking ways to maintain business compliance with state and federal disability access laws, use of educational tools, and/or an increased use of the Certified Access Specialist (CASp) Program and financial provisions. The Commission will continue to develop regional partnerships with local governments and building jurisdictions to strengthen the impact of the access laws and local ordinances through mentoring selected small businesses and assisting them in achieving and maintaining their disability access compliance goals. The Commission will also continue to develop the ADA business mentorship program following the “Accessible City” initiatives model and other local-private partnerships with the California Restaurant Association and Small Business Development Centers.

## Complaints and Prelitigation Letter Data Collection

### Data Overview

In 2018, the Commission received significantly more complaints filed in state and federal court and significantly fewer prelitigation demand letters – representing a 97 percent decrease compared to 2017.

**Table 1: Complaints and Prelitigation Letters Received by Year (2014-2018)**

Year	Complaints (state & federal)	Prelitigation Letters	Total
2018	4,221	50	4,271
2017	2,365	1,461	3,826
2016	2,559	781	3,340
2015	2,323	623	2,946
2014	2,944	234	3,178
<b>Total</b>	<b>14,412</b>	<b>3,149</b>	<b>17,561</b>

## Court Filing Trends

Of the 4,221 federal and state complaints received in 2018, federal complaints accounted for 81 percent of the total, compared with 2017 when federal complaints accounted for only 73 percent of the 2,365 complaints received.

Between 2014 and 2018, the Commission has experienced a steady increase in the total number of federal and state filings received. During 2018, the Commission found that as case filings increased, considerably fewer demand letters were sent. There was also a large drop in state cases filed versus federal cases filed: More than four times more federal cases were filed than state cases.

The Commission speculates that one reason for the significant drop in demand letters is the impact of California Civil Code Section 55.3. This law prohibits an individual person or an attorney on behalf of an individual from making a prelitigation request or demand for money for allegations of violations of construction-related accessibility standards. It also requires an attorney who provides a demand letter to include the attorney’s State Bar license number and to send a copy of the letter to the State Bar and to this Commission. From 2015-2017, the Commission saw increases in the reported number of prelitigation letters, suggesting compliance with California Civil Code § 55.3.

However, the sudden drop in 2018 prelitigation letters (50 received in 2018 versus 1,461 in 2017) combined with the increase in complaints filed suggests that attorneys, after providing the required written advisory pursuant to Civil Code § 55.3, are moving straight to litigation rather than serving prelitigation letters. This may be an unintended consequence of § 55.3.

Table 2 outlines the number of federal and state filings received by the Commission in 2017 and 2018, including the corresponding percentages of the total.

**Table 2: 2018 and 2017 Filings Received by Commission (federal vs. state)**

Type of Filing Received	2018 Total	2018 Percent	2017 Total	2017 Percent
Federal	3,433	81%	1,722	73%
State	788	19%	643	27%
<b>Total</b>	<b>4,221</b>	<b>100%</b>	<b>2,365</b>	<b>100%</b>

## Analysis of Federal and State Court Processes

Supported by research tools as well as guidance from the commissioners on the Research Committee, Commission staff conducted further analysis into the court filing trends for 2018 and concluded that there may be factors which make filing in federal court more attractive than filing in state court. The California U.S. district courts have alternative dispute resolution methods available to parties, such as mediation and early neutral evaluation, which reduce costs for all parties and may result in an earlier resolution.

Furthermore, based on information collected by the Commission from the case resolution reports received in 2018, staff discovered the complaints filed in the California federal district courts generally had a faster settlement rate between parties compared to the complaints filed within the state courts. On average, federal complaints were settled within two to six months, whereas state complaints were settled within 12 to 24 months. Appendix H further details information received by the Commission from case resolution reports.

## Alleged Construction-Related Physical Access Violations

A total of 11,197 construction-related physical access violations<sup>1</sup> were alleged in the 4,271 complaints and prelitigation letters received by the Commission in 2018.<sup>2</sup> This is a 6 percent increase in comparison to the 10,608 alleged violations received in 2017. Table 3 outlines the total number of alleged construction-related physical access violations received by the Commission from 2014-2018.

**Table 3: Total Number of Alleged Construction-related Violations Received (2014-2018)**

Year	Number of Alleged Construction-related Physical Violations
2018	11,197
2017	10,608
2016	11,468
2015	9,643
2014	10,407
<b>Total</b>	<b>53,323</b>

<sup>1</sup> CCDA categorizes the alleged violations using an internal list of violation key codes developed based on the ADA Technical Assistance Manual.

<sup>2</sup> A single complaint or prelitigation letter may allege more than one violation; therefore, the total number of alleged violations received by the Commission is greater than the total number of complaints received. See Appendix B for more details.



## Top Alleged Construction-Related Physical Access Violations by Category

The Commission further organizes alleged construction-related physical access violations into the following six categories:

1. Parking violations
2. Accessible route and entry violations
3. Access within public facility violations
4. General violations
5. Bathroom violations
6. Violations within a Title II educational entity

The most frequently alleged construction-related physical access violations comprised 7,897 (or 71 percent) of the total 11,197 alleged violations received by the Commission in 2018.<sup>3</sup> Table 4 outlines these alleged violations by category, percentage and count.

**Table 4: Top Alleged Violation Categories**

<b>Alleged Violation Category</b>	<b>Percentage of the Total Violations</b>	<b>Violation Counts</b>
Parking	35%	3,890
Accessible Route and Entry	20%	2,292
Access Within Public Facility	8%	862
General Violations	5%	527
Bathroom	3%	326
<b>Total</b>	<b>71%</b>	<b>7,897</b>

Alleged parking and access route and entry violations have been in the top 10 list since 2014. Examples of parking violations include: noncompliant signage in the parking lot, nonexistent van-accessible parking, and insufficient number of disabled parking spaces. Examples of accessible route and entry violations include inaccessible routes (e.g., ramp with excessive slope, walkway with cracked surfaces, etc.) and entry doors. The Commission is also required to post a list of the top 10 alleged violations on its website at least twice a year per Government Code Section 14985.8.

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<sup>3</sup> See Appendix E for a list of the top 10 violations reported to the Commission.

## Place(s) of Public Accommodation

Based on the case files received by the Commission in 2019, the top three places of public accommodation where alleged violations occurred were: sales or rental establishments, establishments serving food or drink, and service establishments as outlined in Table 5 below. Notably, the Commission received copies of case files against casinos and websites for alleged inaccessibility. As website accessibility claims are not within the current scope of the Commission, policy decisions are needed to determine how this data should be collected and reported in the future. Appendix C further outlines the case files received by place of public accommodation from 2015-2018.

**Table 5: Alleged Violation Occurrence by Place of Public Accommodation**

<b>Place of Public Accommodation Category</b>	<b>Percentage of Alleged Violations Received</b>
Sales or rental establishments (e.g., apartment leasing office, grocery store, shopping center)	31%
Establishments serving food or drink (e.g., restaurant, bar, food truck)	28%
Service establishments (e.g., pharmacy, bank, gas station)	24%
Place of lodging (e.g., inn, hotel, motel)	15%
Other (e.g., casino, website)	2%
<b>Total:</b>	<b>100%</b>

Further, the Commission found some trends the defendants litigated against based on the case files received in 2018. The top three types of defendants with alleged violations were: a franchise coffee shop, a gas station and a franchise sandwich shop. Table 6 outlines the ranking of the top defendants litigated against. These defendants are consistent with the top three places of public accommodation where alleged violations occurred.

Although these filings only account for 148 out of the 4,271 (3 percent) case files received, the Commission wanted to demonstrate the impact of alleged violations for businesses. The Commission will benefit from this information in the future when developing an education and outreach strategy informed by data to reach these targeted industries.

**Table 6: Top 10 Most Frequent Defendants with Alleged Violations**

<b>Rank</b>	<b>General Description of Business and Place of Public Accommodation Category</b>	<b>Number of Filings Received</b>
1	Franchise coffee shop (establishment serving food or drink)	43
2	Gas station (service establishment)	16
3	Franchise sandwich shop (establishment serving food or drink)	16
4	Gas station (service establishment)	14
5	Gas station (service establishment)	14
6	Franchise fast food chain (establishment serving food or drink)	10
7	Franchise convenience store chain (sales or rental establishments)	9
8	Franchise hotel & resort chain (place of lodging)	9
9	Franchise drug store chain (service establishment)	9
10	Franchise hotel chain (place of lodging)	8
<b>Total</b>		<b>148</b>

**Place(s) of Public Accommodation ZIP Codes**

In 2018, the number of complaints received by the Commission remained concentrated in urban areas. Santa Clara county had the highest number of reported filings, followed by Los Angeles county. The top eight ZIP codes from which complaints were received are outlined in Table 7 with their corresponding jurisdiction.<sup>4</sup>

**Table 7: Top Eight ZIP Codes of Complaints Received (2018)**

<b>Ranking</b>	<b>ZIP Code</b>	<b>Corresponding Jurisdiction</b>
1	95008	Campbell, Santa Clara County
2	95112	San Jose, Santa Clara County

<sup>4</sup> The Commission chose the top eight ZIP codes by using a data point determination of 30 or more cases received per ZIP code.

Ranking	ZIP Code	Corresponding Jurisdiction
3	90028	Los Angeles, Los Angeles County
4	95051	Santa Clara, Santa Clara County
5	95111	San Jose, Santa Clara County
6	90013	Los Angeles, Los Angeles County
7	91790	West Covina, Los Angeles County
8	92627	Costa Mesa, Orange County

### High Frequency Litigants

Of the 788 state complaints received by the Commission in 2018, 302 (38 percent) were from self-identified high-frequency litigants (HFLs), which are defined by Government Code Section 425.55 as plaintiffs who have filed 10 or more complaints alleging a construction-related accessibility violation within a 12-month period.<sup>5</sup> In 2017, 98 of the 643 state complaints (15 percent) were from self-identified HFLs. Table 8 outlines the comparison of state complaints received from self-identified HFLs. There is not currently an HFL definition or reporting requirement for federal courts.

**Table 8: Number of Self-Identified HFL Complaints Received (2017 vs. 2018)**

Year	Number of Self-Identified High Frequency Complaints Received	Percentage of Total
2017	98	15%
2018	302	38%

### Volume of State and Federal Complaints Received from Law Firms

Of the 4,221 state and federal complaints received by the Commission in 2018, 3,323 (79 percent) were filed by five law firms. Notably, 49 percent of all the state and federal complaints to the Commission were filed by one law firm. As a result, the Commission’s data has the potential to be heavily skewed based on the filings of one law firm. We anticipate that the automation of our data collection system will allow increased time for our analyst to further explore the information gleaned from the data collected. This will help the Commission to address many of the unanswered questions asked by stakeholders.

<sup>5</sup> The definition of “high-frequency litigant” only applies to complaints filed in state courts.

**Table 9: Volume Intake of State and Federal Filings by Top Five Law Firms**

<b>Ranking of Filings Received by Top Five Law Firms</b>	
1	49%
2	10%
3	9%
4	6%
5	5%
<b>Total:</b>	<b>79%</b>

### **Educational Entities**

Effective January 1, 2017, the Commission is required to collect, review, and report on prelitigation letters, complaints, and case outcomes pertaining to Title II ADA educational entities (SB 1406, Mendoza, Chapter 892, Statutes of 2016). In 2018, the Commission received a total of four complaints alleging violations against such educational entities: two complaints involving California State Universities and two complaints involving local unified school districts. The four complaints received are double the amount received by the Commission in 2017.

The Commission is unable to determine at this time whether underreporting is also a concern with regard to Title II educational entities.

### **Case Outcomes**

#### **Background**

In October 2015, AB 1521 (Committee on Judiciary, Chapter 755, Statutes of 2015) was enacted as an urgency measure requiring the Commission to collect, study and report on construction-related physical access case outcomes. Attorneys use the Case Resolution Report (CRR) created by the Commission to report on outcomes of complaints filed in federal and state courts.

## Data Overview – Case Resolution Reports

In 2018, the Commission received 1,889 CRRs. Of those processed,<sup>6</sup> 72 percent were received within five business days as required by law. Table 10 outlines the number of CRRs received by type of court filing between 2015-2018.

**Table 10: Case Resolution Reports Received by Type of Court Filing (2015-2018)**

<b>2015– 2018 Case Resolutions Received by Type of Filing</b>				
<b>Type</b>	<b>2018</b>	<b>2017</b>	<b>2016</b>	<b>2015*</b>
Federal	1,403	1,380	1,391	285
State	413	468	483	111
Not stated**	16	22	184	142
Not processed	57	N/A	N/A	N/A
<b>TOTAL</b>	<b>1,889</b>	<b>1,870</b>	<b>2,058</b>	<b>538</b>

\*Data includes October-December 2015 only.

\*\*Reporting law firm did not select an answer.

The manner of case resolution can be settlement, judgment or dismissal. Settlements were reached in 83 percent of the CRRs received in 2018.

**Table 11: Percentage of Case Outcomes by Type (2018)**

<b>Type of Resolution</b>	<b>Percentage</b>
Settlement	83%
Dismissal	9%
Judgment	8%

The CRR requests attorneys to provide additional information such as whether the plaintiff received damages, a monetary settlement or other favorable result; and

<sup>6</sup> In 2018, the Commission received 57 CRRs that could not be analyzed due to incomplete or insufficient information provided by the law firm. In order for staff to manually process these CRRs, additional time would have been needed to utilize legal research tools to find complete or sufficient information, plus the standard processing time. Overall, this would mean that 19 additional hours of processing time would be devoted to only 3 percent of the total CRRs received.



whether a site inspection was requested and held. See Appendix D for a summary of the responses received.

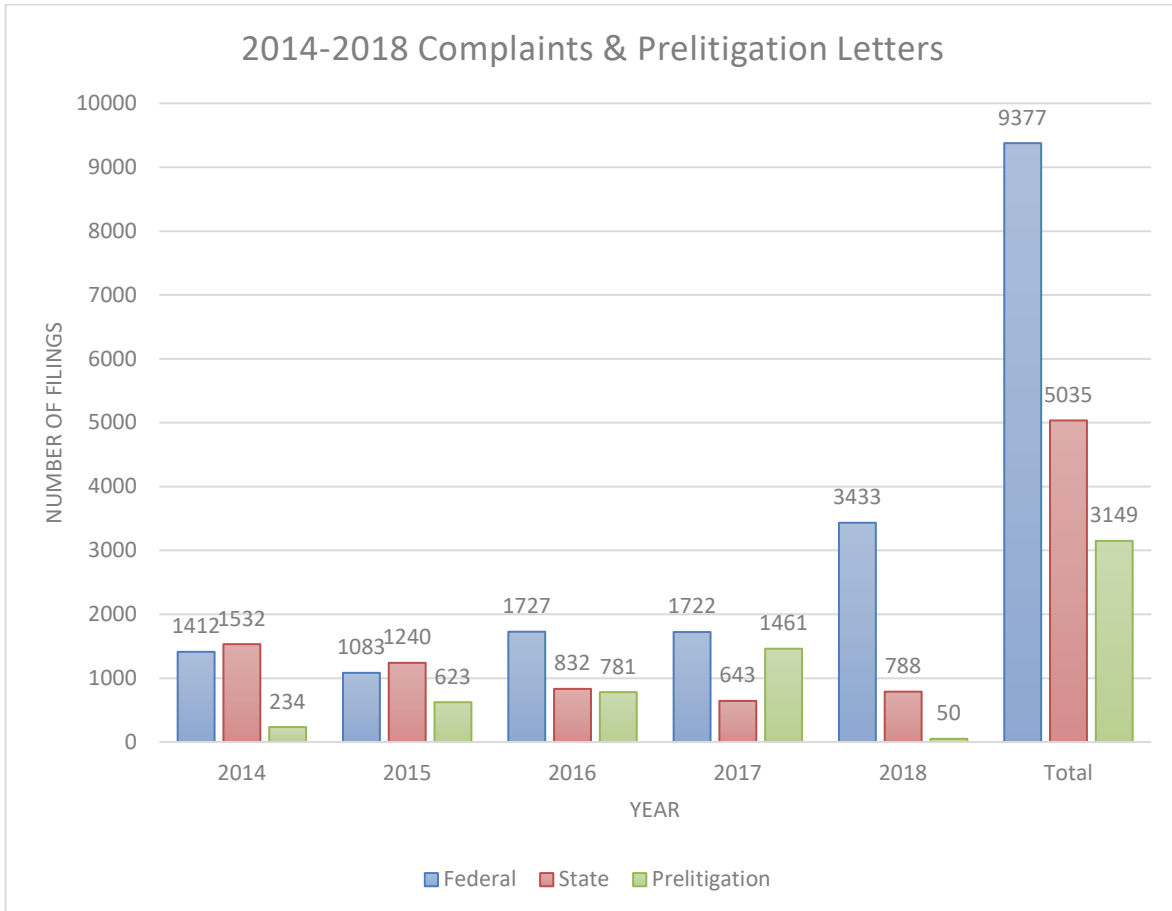
## **Conclusion**

During 2018, Commission staff made a tremendous effort to improve the manual review, analysis and reporting of data collected – including case outcomes – to ensure accuracy of the data reported. Commission staff also developed an internal audit system to improve review, analysis and accuracy in reporting. The Commission can now act in a data-informed manner in the future when developing an educational and outreach strategy to reach targeted industries, and when conducting outreach to the legal community to facilitate more reliable completion of case resolution forms. The Commission’s 2018 data efforts also uncovered key policy issues with regard to a significant drop in demand letters received, the potential of data skewed by the practices of a few law firms, and limitations to understanding and reporting the true universe of state and federal construction-related filings.

With the completion of the database project and ongoing maintenance of the Commission EDMS in 2019, the Commission will strengthen its mission to identify accessibility issues and provide guidance to specific industries and impacted areas of the state.

## Appendix A: 2014 – 2018 Case Files Received by Commission

Since 2015, the Commission has experienced a steady decrease in the number of state complaints and prelitigation letters received, compared to significant increases in the number of federal complaints received.



## Appendix B: 2018 Top 10 Alleged Violations

Of the 11,197 alleged violations reported in 2018, the top 10 most frequently alleged violations comprised 71 percent, or 7,897 of the alleged violations. The chart below describes the top 10 alleged violations.

Rank #	Violation Description	Total Number of Violations	Percent of Total
1.	<b>Parking:</b> Parking spaces. Existing parking spaces are not compliant; fading/blue paint or excessive slope.	1,403	13%
2.	<b>Accessible Route and Entry:</b> Ramps. Curb ramps or entrance ramps are not compliant or nonexistent.	1,140	10%
3.	<b>Parking:</b> Number of spaces. Parking lot does not contain minimum number of accessible parking spaces.	1,005	9%
4.	<b>Parking:</b> Loading zones/van access aisles are not compliant or nonexistent.	872	8%
5.	<b>Access Within Public Facility:</b> Access height. Heights of surfaces such as counters, bars or tables are not compliant.	862	8%
6.	<b>Accessible Route and Entry:</b> Routes to and from parking lot or public right of way are not accessible. May include: uneven surfaces or lack of detectable warnings.	683	6%
7.	<b>Parking:</b> Parking signage. Signage in parking lot is not compliant (e.g., parking spaces need to be designated as reserved by a sign showing the symbol of accessibility).	610	5%
8.	<b>General Violations:</b> Accessible features are not maintained.	527	5%
9.	<b>Accessible Route and Entry:</b> Door hardware. Thresholds, handles, pulls, latches, locks, or other operating devices are not accessible. Kick plates.	469	4%
10.	<b>Bathroom:</b> Main entry doors are not accessible or not on accessible route (e.g., thresholds, handles, pulls, latches, locks, clearance, etc. are not compliant).	326	3%
<b>Total:</b>		7,897	71%

## Appendix C: Complaints and Prelitigation Letters Received by Place of Public Accommodation (2016-2018)

The chart below outlines the complaints and prelitigation letters received by place of public accommodation.

Public Categories	2018 Total <sup>7</sup>	2018 %	2017 Total	2017 %	2016 Total	2016 %
1) Place of Lodging	661	15.4%	250	6.5%	135	4.0%
2) Establishments Serving Food or Drink	1,189	27.5%	727	19.0%	888	26.6%
3) Place of Exhibition or Entertainment	19	0.4%	12	0.3%	13	0.4%
4) Place of Public Gathering	4	0.1%	1	0.0%	3	0.1%
5) Sales or Rental Establishments	1,334	30.8%	1,453	38.0%	1,355	40.6%
6) Service Establishments	1,030	23.9%	1,343	35.1%	853	25.5%
7) Public Transportation Terminals, Depots, or Stations	28	0.7%	2	0.1%	26	0.8%
8) Place of Public Display or Collection	3	0.1%	2	0.1%	3	0.1%
9) Place of Recreation	12	0.3%	2	0.1%	22	0.7%
10) Places of Education (Non-Title III)	3	0.1%	2	0.1%	4	0.1%
11) Social Service Center Establishments	3	0.1%	1	0.0%	6	0.2%
12) Places of Exercise or Recreation	26	0.6%	31	0.8%	32	1.0%
13) Places of Education (Title II)	4	0.1%	N/A		N/A	
14) Other	4	0.1%	N/A		N/A	
<b>Total:</b>	<b>4,320</b>	<b>100%</b>	<b>3,826</b>	<b>100%</b>	<b>3,340</b>	<b>100%</b>

<sup>7</sup> Federal and state complaints received by the Commission often allege violations against multiple types of places of public accommodation within a single complaint. As a result, the totals of categories for 2018 exceed the total number of files received.

## Appendix D: Case Resolution Report Questions and Responses (2015 – 2018)

2015 Case Resolution Report Questions <sup>8</sup>				
Question	Yes	Percent Yes	No	Percent No
Defendant requested an early evaluation conference	0	0%	516	100%
Defendant requested a site inspection	0	0%	520	100%
Plaintiff received injunctive relief <sup>9</sup>	N/A	N/A	N/A	N/A
Another favorable result achieved <sup>10</sup>	N/A	N/A	N/A	N/A
Plaintiff received damages or a monetary settlement	143	30%	330	70%

2016 Case Resolution Report Questions				
Question	Yes	Percent Yes	No	Percent No
Defendant requested an early evaluation conference	42	2%	1,997	98%
Defendant requested a site inspection	33	2%	2,011	98%
Plaintiff received injunctive relief	1,222	73%	447	27%
Another favorable result achieved	766	47%	869	53%
Plaintiff received damages or a monetary settlement	734	58%	522	42%

2017 Case Resolution Report Questions				
Questions	Yes	Percent Yes	No	Percent No
Defendant requested an early evaluation conference	39	2%	1799	98%
Defendant requested a site inspection	45	2%	1791	98%
Plaintiff received injunctive relief	1370	75%	460	25%
Another favorable result was achieved	952	52%	874	48%
Plaintiff received damages or monetary settlement	744	93%	57	7%

<sup>8</sup> Data only includes October-December CRRs received.

<sup>9</sup> Question was not asked in 2015.

<sup>10</sup> Question was not asked in 2015.

<b>2018 Case Resolution Report Questions<sup>11</sup></b>				
<b>Questions</b>	<b>Yes</b>	<b>Percent Yes</b>	<b>No</b>	<b>Percent No</b>
Defendant requested an early evaluation conference	34	2%	1798	98%
Defendant requested a site inspection	68	4%	1764	96%
Plaintiff received injunctive relief	1275	70%	554	30%
Another favorable result was achieved	908	50%	910	50%
Plaintiff received damages or monetary settlement	798	95%	46	5%

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<sup>11</sup> As discovered in 2018, law firms do not reliably answer every question on the CRR form, which causes inconsistencies between the total number of answers for each question.



## APPENDIX E: Commissioner Roster<sup>12</sup>

Name	Represents	Original Appointment	Current Appointment	Appointed By
Guy Leemhuis (Chair)	Public/Disability	5/8/2013	1/24/2018 - 1/1/2021	Senate
Douglas Wiele (Vice Chair)	Public/Business Properties Association	9/19/2013	1/9/2017- 1/1/2020	Governor
Christopher Downey	Public/Disability	9/19/2013	1/8/2018 - 1/1/2021	Governor
Brian Holloway	Public/General Business	2/16/2017	2/16/2017 - 1/1/2020	Senate
M. Scott Lillibridge	Public/General Business	1/8/2018	1/8/2018 - 1/1/2021	Governor
Celia McGuinness	Public/Disability	2/6/2015	1/1/2016 - 1/1/2019	Governor
R. Michael Paravagna	Public/Disability	9/19/2013	1/1/2017 - 1/1/2020	Governor
Tiffany A. Potter	Public/Disability	7/19/2017	1/1/2017 - 1/1/2020	Assembly
Karla Prieto	Public/General Business	6/14/2018	6/14/18 – 1/1/2021	Assembly
Betty Wilson	Public/Disability	5/26/2009	1/1/2016 - 1/1/2019	Governor
Jim Frazier	Assembly/Ex-Officio	2/14/2018	N/A	N/A
Tom Lackey	Assembly/Ex-Officio	2/29/2015	N/A	N/A
Melissa Hurtado	Senate/Ex-Officio	3/13/2019	N/A	N/A
Jeff Stone	Senate/Ex-Officio	3/13/2019	N/A	N/A
Anthony Seferian	Attorney General Office/Ex-Officio	5/26/2009	N/A	N/A
Ida Clair	Division of the State Architect/Ex-Officio	1/8/2019	N/A	N/A

<sup>12</sup> The Commission is required by law to annually elect from its membership a Chairperson who must, as required by Government Code Section 14985.2 (b), be a representative from the disability community and a Vice Chairperson who also must be elected from the membership as a representative of the business community. The Commission has a vacant public member as a representative of general business appointed by the Governor.

## APPENDIX F: Commission Subcommittees

Guy Leemhuis – Commission Chair

Douglas Wiele – Commission Vice Chair

<b>Committee Name</b>	<b>Committee Chair</b>	<b>Committee Vice Chair</b>
<b>Executive</b>	Guy Leemhuis	Douglas Wiele
<b>Legislative</b>	R. Michael Paravagna	N/A
<b>Research</b>	Vacant	Celia McGuinness
<b>Education &amp; Outreach</b>	Betty Wilson (Co-Chair)	Christopher Downey (Co-Chair)
<b>Checklist</b>	Brian Holloway	Scott Lillibridge

## APPENDIX G: Summary of Five-Year Strategic Goals

Goal	Purpose
1. Advocate for access curricula for all school programs	To raise awareness of and increase training around accessibility design and construction
2. Increase disability access awareness	To raise awareness of access issues and the tools available to assist businesses, nonprofits, schools, and the community to support changes to the built environment
3. Create training programs for targeted constituencies	To address the lack of opportunity for businesses, nonprofits, schools, and professionals in the planning, design, property, construction and other sectors to learn about and to engage with resources around access issues and find support to make accommodation modifications
4. Create and identify revenue streams to fund access needs (subject to increased Commission funding)	To identify and secure a revenue stream to support efforts to mitigate accommodation costs and incentivize access compliance
5. Create financial and other incentives for access compliance	To support and encourage access compliance through new and creative incentive programs
6. Explore the development of a state-level Americans with Disabilities Act (ADA) Access Office	To address the disparate levels of resources and information at various state offices by providing a single point of contact
7. Advocate to hold authorities with jurisdiction accountable for the built environment (both public and private) to avoid passive noncompliance for architectural and program access	To seek out ways to educate and support public and private entities on their responsibilities for access compliance
8. Maintain data on status of access compliance	To provide relevant information and data on the status of access compliance throughout California
9. Expand methods of identification, obligation, and enforcement of barrier removal in the built environment	To facilitate awareness of current and potential gaps and inconsistencies in policy at the state and local levels

More information on the full Five-Year Strategic Plan can be found at:  
<https://www.dgs.ca.gov/CCDA/Resources>.

## Appendix H: Summary of One-Year Strategic Goals

Goal	Purpose
Goal 1: Phase 1 of the Electronic Data Collection Project: Implement an Electronic Document Management Services (EDMS) solution for all past and future documents.	AB 54 (Olsen), chaptered in September 2016, addresses the Commission's continuous concerns about the efficacy of data collection operations and the current diagnostics process of the data. The first step toward addressing this effort is the creation of the EDMS, which will serve as the back-end overlay process in the elimination of the inconsistent manual paper submittals.
Goal 2: Phase 2 of the Electronic Data Collection Project: Create a database for data collection.	The solution will provide a web-based electronic form for the legal community to submit claims directly to the Commission. To capture this data, the Commission requires a secure database to serve as a single source for all case and prelitigation data.
Goal 3: Conduct Regional Listening Forums in 2018.	Preventing or minimizing problems of compliance through ongoing education and outreach to the small business community, as directed in Government Code Section 14985.5 (b)(1).

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This report is available for download on the California  
Commission on Disability Access website:

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