

Prior to making a conscious decision to ignore your responsibility to provide access, you should check with your insurance company to determine if you are left more vulnerable if an injury on your property is caused by a civil rights violation. Many insurance policies do not cover ADA violations.

7. I do not own the building, so I am not liable for accessibility.

The ADA is directed to businesses, not just property owners. Nearly all ADA lawsuits are filed against both the operating business owner (tenant) and the property owner (landlord).

Compliance is not only the landlord's responsibility. Both the lessor and lessee are responsible and liable for the accessibility of the facility. If you lease or rent a facility, it is advisable to have an agreement with your landlord that sets forth who is responsible for providing and maintaining the facility's accessible features.

Under California law, lease and rental agreements must state whether the property was inspected by a CASp. If it has and the property is compliant with all applicable construction-related standards, the landlord must share the CASp report and inspection certificate with you. If an inspection has not yet been performed, you may hire a CASp to evaluate the property. These disclosures, arrangements and terms of agreement are to be mutually agreed upon by you and the landlord prior to the execution of the lease. and, if so, whether or not the property is compliant with all applicable construction-related standards. The landlord must share the CASp report of the facility with you prior to execution of your lease.

Unfortunately, often the first time tenants learn that their lease agreement shifts onto them all the costs of ADA violations, including lawsuits - is after they get sued. The lease may require the tenant to indemnify the landlord for all the landlord's expenses, including the landlord's legal fees and costs of remediation. This expense can be devastating to a tenant business. The best time to have a conversation with your landlord is before a problem arises.

8. A condominium (or apartment) development has to comply only with CBC Chapter 11A.

The California Fair Employment and Housing Act (FEHA) requires all "covered multi-family dwellings" designed and constructed for first occupancy after March 13, 1991 to be readily accessible to and usable by persons with disabilities. Under Chapter 11A, condominiums with four or more dwelling units and apartments with three or more dwelling units must comply with accessibility provisions of the CBC. Discrimination based on disability in housing is also prohibited by the FEHA.

The most important step is the first one; accept the legal responsibility to make your building or business compliant with access laws just as you do with health and safety laws. You may be surprised that many issues, such as adding signs, restriping parking stalls, lowering restroom mirrors,⁷ or changing door hardware, are simple to fix. Each small step you take to improve access to your building or business will reduce your exposure to lawsuits as your building becomes more and more accessible.

There are advantages to taking steps toward compliance. First, most courts look favorably upon proactive businesses that have a plan of action to fix their building, even if the plan is not yet finished. So, even if you're sued, you may lower your financial exposure to damages.

Furthermore, the Construction-Related Accessibility Standards Compliance Act (CRASCA), as amended by ~~barrier at the location~~ SB 1186 (Steinberg 2012), reduced statutory damage amount. If a business hires a CASp when the violation is corrected within 60 days, damages are reduced from \$4,000 to \$1,000. If a small business corrects the violation within 30 days, even without a CASp inspection, damages are reduced from \$4,000 to \$2,000.

Amendments under SB 269 provides small businesses (fewer than 50 employees) a grace period from the liability for statutory damages for 120 days following the date that a structure or area was inspected by a CASp, to allow the business time to remove barriers that the specialist identifies. Businesses may get 180 days to correct violations if a building permit is needed to make the corrections.

SB 269 also creates a rebuttable presumption, for the purpose of an award of minimum statutory damages (civil rights damages), that certain technical violations do not cause the plaintiff to experience difficulty, discomfort, or embarrassment. SB 269 states for purposes of the presumption that a small business has 25 or fewer employees. A small business must correct the technical violations within 15 days of the service of a summons and complaint asserting an access claim or receipt of a written notice.

The claim must be based on one or more of the following technical violations: 1) Interior signs, other than directional signs or signs that identify the location of accessible elements, facilities or features when all are not accessible; 2) The lack of exterior signs, other than parking and directional signs; 3) The color of parking signs, provided the background contrasts with the color of information; 4) The order in which the parking signs are placed or the exact location or wording of parking signs; 5) The color of parking lot striping, provided that it exists and there is sufficient contrast; 6) Faded, chipped, damaged, or deteriorated paint in otherwise fully compliant parking spaces and passenger access aisles; and 7) The presence or condition of detectable warning surfaces on ramps; except when ramp is part of a pedestrian path of travel that intersects with a vehicular lane or other hazardous area.

CCDA has a "top ten" list on its website of the most frequently complained-of access

barriers. Looking at the items on that list may be a good way to start. The best way to ensure compliance and reduce the risk of getting sued is by obtaining an inspection report of their facility by a CASp.

Finally, there are tax credits available to you to offset the cost of creating disability access such as: The California Business Portal “Go-Biz” <http://businessportal.ca.gov/>. You can check with your tax specialist for details.

12. I am doing a small tenant improvement project, but I cannot afford the required accessibility improvements. Can I claim a hardship exemption?

Under the CBC, alteration projects are subject to the following compliance provisions:

Area of alteration: The area of alteration must meet the accessibility provisions in accordance with current ADA and CBC requirements.

‘Path-of-travel improvements’: Outside of the area of alteration, accessibility requirements must also be addressed. Both the CBC and the ADA require alteration projects to improve the access required to and within the facility. These improvements, called "path-of-travel" improvements, are improvements that are not part of the area of alteration, but require improved access to the altered area from accessible parking stalls and other site arrival points, and also address improved accessibility of restrooms, signs, and drinking fountains serving the area of alteration.

The path-of-travel obligation requires that these elements be brought up to current building code requirements as part of the alteration project. A permit will not be issued unless these elements are added to the project scope.

Unreasonable hardship: The ADA limits the improvements to the path-of-travel to 20% of the total project cost.

The CBC has a similar limitation, but the limitation does not apply when the cost of the total project exceeds a specified amount, which is adjusted annually; as of January 1, 2018, the amount is \$1,298,502.44.

Even so, the CBC allows for an “unreasonable hardship exception” in certain circumstances. The building department issuing the permit must make certain specific findings in order for the exception to apply. You would need to consult with the building official to determine if this hardship exemption would be applicable to your project.

In assessing the accessibility requirements of an alteration, addition, change in use, or structural repair of a building or facility; you should consult with a competent licensed design professional to understand the scope of work and ensure you are meeting state and federal regulations with regard to accessibility. In addition, if your architect or contractor is not a CASp, you may want to hire a CASp separately to review any construction documents for compliance.