

Legal Report

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Americans with Disabilities Act Enforcement

Jeffrey Freedman Attorneys, PLLC announces that the law firm will engage in an endeavor to encourage enforcement of the Americans with Disabilities Act (ADA).

July 26, 2012 marked the 22nd anniversary of the signing of the ADA.

The primary purpose of the Americans with Disabilities Act is to guarantee that individuals with disabilities have protection from discrimination in employment, public places, transportation, as well as telecommunications. The ADA and other related federal regulations set forth requirements that businesses and government must comply with.

“Notwithstanding specific regulations we often see disabled individuals face discrimination

assisting clients with disabilities, he was recently appointed to serve on the New York State Bar Association’s Committee on Disability and the Town of Amherst’s Disability Committee.

Since 1980, Jeffrey Freedman Attorneys has helped over 15,000 clients win a variety of disability related cases.

Jeffrey Freedman Attorneys, PLLC has a mutuality of interest with many agencies that advocate on behalf of clients who have disabilities. “We want to break

down barriers, stop discrimination and improve the lives of the clients we serve.”

Individuals interested in participating in this ADA Enforcement program can contact Jeffrey Freedman at 716-855-0850 ext. 220 or jeffrey@jeffreyfreedman.com.

For more information on the ADA go to jeffreyfreedman.com



on a daily basis. “If properly enforced and followed, ADA laws can help eliminate barriers and help stop discrimination,” according to Jeffrey Freedman.

Mr. Freedman previously served as a Chairman of the Erie County Bar Association’s Committee for the Disabled. Because of his dedication and commitment to

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Administrative Offices:

424 Main Street, Suite 622, Buffalo, NY 14202
3445 Winton Place, Suite 104, Henrietta, NY 14623
1-800-343-8537 • info@jeffreyfreedman.com

Questions & Answers

About the Americans with Disabilities Act

What is the Americans with Disabilities Act (ADA)?

Congress passed the law in 1990 with the intent to “provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” The ADA protects the rights of people living with disabilities in areas such as employment, transportation, and access to public buildings and accommodations.

What makes the ADA important?

Beyond the 54 million, or one in every five, people in America already living with a disability; the ADA is important to nearly every person in the United States. Whether someone is wounded in combat, an accident, or continuing to age, the chances of developing a disability, or a family member developing a disability, are overwhelmingly high. With such odds, we should all find comfort in knowing that there are laws in place that aim to help us enjoy the same goods, services, and opportunities that are enjoyed by those without a disability.

How Does the ADA Protect People with Disabilities?

The ADA extends the right to fair and equal enjoyment of goods, services, and opportunities to people with disabilities. The law requires places of public accommodation to remove certain barriers that inhibit access by people living with disabilities.

Soon after President Bush signed the ADA into law on July 26, 1990, the ADA required many places open to the public, to be free of architectural barriers. If a building was built prior to when the ADA became effective, the public accommodation was required to remove all barriers, where such removal was “readily achievable.”

The “readily achievable” standard is designed to prevent the imposition of an undue burden. The standard takes into consideration a public accommodation’s size, financial resources, and nature and cost of the necessary accessibility improvements on a case-by-case basis.

This applies to the public accommodation’s physical structure, bathrooms, parking lots, walkways, policies, and practices

What are barriers?

A barrier is any practice or physical structure that inhibits access by a person with a disability.

The types of barriers that exist are limitless. A barrier could be something as simple as a front step that is too high, or a door that is difficult to open. Barriers may also include a parking lot which doesn’t have enough accessible parking spaces, or spaces which are not clearly marked; a checkout counter or bathroom sink that is too high; a store aisle that is too narrow, or one which may be wide enough, but has a display stacked in such a way that a wheel chair could not fit through. Other barriers may exist that are not physical, but are instead related to communication, such as a website that cannot be read by someone with a visual impairment; or a lack of large print menus in a restaurant.

What should a person do if they have faced difficulty accessing a public accommodation or believe they have been discriminated against because of a disability?

There are generally two options if you have been discriminated against.

- Seek representation from an attorney with expertise in ADA discrimination

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Have you suffered discrimination because of a disability?



The ADA prohibits disability discrimination. Let us help protect your rights. No fee unless we get a settlement for you.

Call Today for a
FREE Consultation
1-800-343-8537

**Jeffrey
Freedman**
Attorneys, PLLC
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Disabilities Act Falls Short of Equality

Saturday, June 28th 2012 • By Jeffrey Freedman
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Imagine living in a world where it's a struggle to get into the grocery store because of a raised curb.

You want to work, but you can't because the only way to get to a job is on public transportation, and that's not accessible to you because you use a wheelchair. That was the world that existed prior to 1990.

Only after the Americans with Disabilities Act (ADA) was signed into law on July 26 of that year did those barriers slowly begin to come down.

We've come a long way since the ADA. James Weisman, senior vice president and general counsel to the United Spinal Association in New York City, helped draft the act 22 years ago. Weisman says, "Improvements in architecture and the built environment have been amazing. But there is still a lot to be done."

The primary goal of the ADA was to facilitate employment by providing access to public accommodations for those challenged by a disability. Yet the unemployment rate today for workers with disabilities remains substantially higher than that of the general population.



Jeffrey Freedman

The issues behind this are both old and new. Stigmas against persons with visual or cognitive im-



pairments, or those who use wheelchairs, continue to steer employers away from these workers.

Many of today's jobs require employees to use the Internet, which is a "public accommodation." Although the ADA requires websites to be accessible to everyone, including the blind and hearing-impaired (a fact most businesses are unaware of), Internet access is virtually out of reach to many people with disabilities.

The ADA was drafted as a reasonable law. It didn't ask businesses to spend exorbitant amounts to remove barriers. It gave public transportation systems years to incorporate accessible vehicles into their fleets, and much progress has been made.

Yet, if you look around Buffalo, you see that even after 22 years

many older buildings remain inaccessible. Frequently this is due to ignorance of the regulations, and when building owners become educated about the ADA they are often willing to comply.

Another critical aspect is the huge cost involved in excluding this segment of our society from the opportunity to work, support themselves and contribute to the economy.

Those who can't work must depend on Medicaid, disability benefits and other social programs.

Better implementation of the ADA and the expansion of its reach would save our society untold dollars in benefits and put people who want to work into the workforce. But more than that, it would fulfill one of the basic promises this nation was founded on: Equality for all.

ADA Case Highlights

Some examples of successful Americans with Disabilities Act cases include the following:

- Several fast-food restaurants were forced to pay compensation to a disability support group. The restaurants lacked van-accessible parking spaces, had improper accessible parking signage, check-out counters that were too high, doors that were difficult to push open, and its bathroom towel dispensers, coat hooks, and hand dryers were mounted too high.
- A theater was forced to make changes to its practices and facilities because it was found to be inaccessible to people with disabilities. The theater was required to add seats for people who use wheel chairs and their companions, lower urinals, raise counters and sinks, add unisex bathrooms, add accessible tables and seating at food venues, add van accessible parking spaces, and provide adequate signage for accessible parking.
- A woman with a hearing disability was awarded a settlement when she was discriminated against by a corporate medical practice with which she was treating. The practice failed



to provide the woman with a sign language interpreter when she had requested the assistance.

- A fitness center was forced to change its policies and provide financial compensation to a woman living with a developmental disability when it refused to allow a non-member assistant to accompany the woman during her visits. When the assistant informed the fitness center that such a policy was in violation of

the ADA, the center retaliated by revoking the woman's membership. The fitness center was required to financially compensate the woman with a disability, as well as her assistant.

- A buffet-style restaurant was required to modify its policy and practices regarding animals in the restaurant. Beyond changing its policies, the restaurant was required to provide financial compensation

Questions & Answers About the Americans with Disabilities Act (Cont'd.)

There are several benefits to consulting with an attorney. The attorney can evaluate your claim and immediately inform you of your rights. If your claim qualifies under the ADA, your attorney can not only help you obtain financial compensation, but also bring an end to the discrimination and help you gain access.

Most ADA cases are handled on a contingency basis, meaning that the attorney does not collect a fee unless he or she wins your case. If the attorney is able to win your case, the ADA requires the defendant to pay attorney's fees.

- **File a complaint with the US Department of Justice, Civil Rights Division - Disability Rights Section**

Another option is that a complaint may be filed with the DOJ. When the DOJ receives a complaint regarding ADA discrimination, it may launch an investigation, and then refer the complaint to the US Attorney's office.

Unfortunately, the DOJ does not investigate every complaint that it receives. The DOJ is most likely to open an investigation if it has seen a pattern or has received multiple complaints against a specific public accommodation.

Topics in ADA Title III Legislation

Accessibility in Restaurants

Under the ADA, a number of cases have been brought against fast food restaurants for failing to provide accessible communication to its customers with disabilities.

Restaurants must make their menus accessible to those customers who are blind or visually impaired. The plaintiff in *Camarillo v. Carrols Corporation* can read large print at a very close distance. The defendant's fast food restaurants however, did not provide large print menus. When the plaintiff asked the restaurant's employees to read the menu to her, she was required to wait until other customers behind her in line had been served, and was read only part of the menu. The court determined that the plaintiff had been denied accessibility in violation of the ADA.



The United States Department of Justice recently reached a settlement agreement with Friendly Ice Cream Corporation requiring the corporation to modify or put new policies in place which will make its restaurants more accessible to people with disabilities. These new policies include reading menus to customers living with a visual impairment, or providing a menu in audio format.

Restaurants must make their services accessible to customers with disabilities. Reasonable ac-

commodations, which would bring a restaurant into compliance with the ADA, might include signage di-



recting deaf or hard of hearing customers to drive-through windows, providing large print menus, audio format menus, as well as training employees to read full menus to any patrons in need.

Is a website a place of public accommodation?

The ADA was enacted in 1990, at a time when the internet did not yet exist. So while the statute gives a laundry list of places which are a public accommodation (see below), websites are not on that list. However, the statute also anticipated that the Act should grow and change with technology.

This issue has been taken up in several courts across the country with varying results. The foremost case on this issue was the case of *National Federation of the Blind vs. Target Corp.*, from the Northern District of California. That court found that “yes” a website is a place of public accommodation, because to limit the discrimination to be only those services provided in a brick and mortar place of public accommodation would go against

the “plain language of the statute”. Several other cases and courts have followed suit, essentially confirming that it isn't whether or not goods or services are provided “in” or “on” a place of public accommodation, but “by” a place of public accommodation, which of course would include a website. This issue is also currently under review for purposes of drafting an amendment to the statute to include websites.

In practice, it is to a business's benefit to be sure a website is accessible to those living with a disability. One would want a website to be accessible to any potential customer anyway, and potential customers include those living with a disability. Typically the work to make a website accessible to those with visual or hearing impairments, is not difficult or terribly expensive. And since a barrier to accessibility could be challenged as a violation of the ADA, such changes to a company's website would certainly be in the company's best interest.

Service Animals

The ADA authorizes the use of service animals for the benefit of people with disabilities. A “service animal” is any guide dog, signal dog or miniature pony which is trained to perform tasks for the benefit of an individual with a disability. Such tasks might include guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.