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ADA self-evaluations reduce your liability, boost your ego

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Most owners and operators of hotels, restaurants, golf courses, and other public accommodations are well aware of their obligation under Title III of the Americans with Disabilities Act to make their businesses accessible to disabled individuals.

What many businesses may not know is that the ADA provides a guidepost to reducing liability for lawsuits that is fairly simple to implement. This tool is called a self-evaluation and barrier removal plan, and while not required by the ADA, smart business owners will inspect their properties to learn where the problems exist, and to develop a plan to correct those problems, where economically feasible.

Congress enacted Title III of ADA in 1990 as an effort to provide disabled customers of a private business the ability to access and enjoy the facility in a similar manner to other non-disabled patrons. This statute requires owners and operators of “public accommodations,” such as hotels, restaurants, golf courses, museums, and retail establishments, just to name a few, to consider the needs of the disabled community when building or renovating facilities. It also requires that public accommodations:

I Modify policies, practices, or procedures to enable disabled patrons to enjoy the use of the facility, goods and services;

I Remove architectural and communication barriers that are structural in nature in existing facilities, when removal is “readily achievable”;

I Provide auxiliary aids and services (like sign language interpreters, or audiotapes) to ensure that disabled individuals are not excluded from services, segregated or treated differently than other individuals;

I Make goods, services, and facilities available through alternative methods when removal of barriers is not readily achievable; and,

I Design and construct new facilities and alterations in existing facilities to make the facility readily accessible and usable by disabled patrons.

This list may sound daunting, but there are many small, inexpensive changes that you can make that will make your facility more easily accessible to disabled patrons, and that will reduce your exposure to lawsuits. The starting point is to prepare a good self-evaluation plan that will evaluate architectural and communications barriers that exist within the facility. A facility may even engage one or more disabled individuals to assist in identifying barriers.

The first step in the evaluation is to walk around the facility and identify the barriers that exist. The second step is to identify the solutions available that will eliminate or minimize the barriers, and to determine whether the removal of architectural barriers is “readily achievable,” and the third step is to develop a plan for removing the barriers that prioritize improvements according to your financial abilities and according to the seriousness of the impediment, an implementation plan.

Removing a barrier is “readily achievable” if it is easy to accomplish and will not involve much difficulty or expense. The ADA provides a list of barriers that will normally be readily achievable. Examples include:

I Making curb cuts in sidewalks and entrances,

I Repositioning shelves, tables, chairs, vending machines, display racks, and other furniture,

I Repositioning telephones,

I Adding raised markings on elevator control buttons,

I Installing flashing alarm lights,

I Widening doors,

I Eliminating turnstiles, or providing an alternative accessible path,

I Installing grab bars in toilet stalls,

I Rearranging toilet partitions to increase maneuvering space,

I Insulating lavatory pipes under sinks to prevent burns,

I Installing a raised toilet seat,

I Installing a full-length bathroom mirror,

I Repositioning the paper towel dispenser in a bathroom,

I Creating designated accessible parking spaces,

I Removing high pile, low density carpeting, and

I Installing vehicle hand controls.

The U.S. Department of Justice suggests the public accommodation prepare an implementation plan to set out steps that it will take to remove the barriers, and contemplates that a facility may have to remove barriers in phases. The Justice Department suggests that the public accommodation consider the following priorities to fund barrier removal:

1. Measures to provide access to public accommodation from public sidewalks, parking or public transportation, such as installing an entrance ramp and widening entrances.

2. Measures to assist the disabled inside the facility to access the goods and services, including:

I Adjusting the layout of display racks,

I Rearranging tables,

I Providing brailled and raised character signage,

I Widening doors,

I Providing visual alarms, or

I Installing ramps.

3. Measures to provide access to restroom facilities if provided for customer use, including:

- I Removing obstructing furniture,**
- I Removing obstructing vending machines,**
- I Widening doors,**
- I Installing ramps where steps are in place,**
- I Providing accessible signage,**
- I Widening toilet stalls, and**
- I Installing grab bars.**

4. Any other measures to provide access to goods, services, facilities, privileges, advantages or accommodations of a place of public accommodation. A well prepared self-evaluation and implementation plan and effective follow through will go a long way to show that you have made a good faith effort to comply with the ADA, and will be an important factor in your favor in any proceeding to adjudicate a complaint against you. It will reduce your liability to lawsuits and will demonstrate that your company is a good corporate citizen. This is one step that you can do that really is a win-win for your business.

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