legal briefs

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ADA Litigation Reform
and the Effect on Small Businesses

The California legislature recently approved SB 1186, which heralded a new day in ADA litigation in California. The legislation seeks to rein in "serial plaintiffs" by placing obstacles in their paths – both to settlement money and to the courthouse.

In the past, a small, particular group of plaintiffs and their attorneys would visit a business and, after viewing the premises for any potential ADA violation, file a claim against the owner. This was so common that the phrase "drive-by ADA" became part of our legal vocabulary. Such plaintiffs send demand letters to the owners and occupants of the premises, demanding money to avoid lawsuits for the denied access. The demands are often no more than the minimum statutory damages for each claim, making it cheaper to pay the claim, rather than defend it in court.

SB 1186 enacts numerous controls on the process of filing ADA lawsuits in California, including the following:

"Stacking," -- the practice of visiting the same premises multiple times a day in order to increase the alleged number of violations the plaintiff can claim has been curtailed. The statute treats multiple violations in a single day as one violation. Courts are also now allowed to determine whether the plaintiffs' conduct in visiting the premises is "reasonable." This gives life to the argument that, having once visited the premises for the purpose of assessing ADA compliance in anticipation of litigation, the plaintiffs should not re-visit before the claim is noticed and there has been an opportunity to resolve it.

The minimum statutory damages are reduced from $4,000 per claim to $2,000 or $1,000, the amount depends on (among other things) whether the claimed deficiency is corrected in 30 days or 60 days from the notice of the condition, and whether the recipient of such notice is a small business owner.

A written notice must be provided with each demand letter and complaint. This new requirement obligates a claimant to state facts about the claim that are sufficient to give a reasonable owner enough information to identify the actual basis for the claim.

Complaints pled with respect to construction-related accessibility claims must be verified – meaning the plaintiff must affirm the claims under penalty of perjury.

The demand letter and notice may not contain a request or demand for money or make a settlement offer to the business owner that involves paying money to the plaintiff. Attorneys issuing such letters may be subject to State Bar disciplinary action.

The law provides assistance to lessees/tenants, as well. Owners of commercial real estate must disclose, in their lease agreements executed on or after July 1, 2013, whether the leased/rented property has been inspected by a certified specialist. If it has, then the lessee and owner may be able to take advantage of additional statutory advantages if the condition complained of was set forth in the specialist's report and corrected before the ADA plaintiff's visit to the premises.

This bill represents significant steps in substantially reducing the number of specious ADA-based accessibility claims in California. More is needed, but this legislation is an encouraging development in the eyes of the California ADA defense bar.

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