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Here's how to protect yourself from frivolous ADA lawsuits

Posted July 26, 2016 by [Gianna Tracey](#)

There is a wave of frivolous Americans with Disabilities Act (ADA) lawsuits hitting Arizona, but now it's not just in the hospitality industry.

"All types of businesses are affected, from big box stores to small mom-and-pop businesses," says Lindsay Leavitt, a litigator who practices commercial litigation, personal injury, administrative law and labor and employment law for [Jennings Strouss](#).

This rash of ADA-related lawsuits started showing up in Arizona in the summer of 2015, Leavitt says.

According to the [Arizona Department of Transportation](#) (ADOT), the "ADA prohibits a public entity from discriminating against qualified persons with disabilities in access to facilities and services that the public entity provides."

In 2015, Theresa Brooke, a woman restrained to her wheelchair, called different hotels around the Valley to see if they had a pool lift at their facility. If they said "no," she went and filed a lawsuit against the facility. She filed more than 100 lawsuits.

According to Leavitt, most of these cases are not going court. But in the ones that do, the hotels are arguing that they shouldn't be sued because Brooke never intended to actually visit the hotel.

Even though this sounds like a reasonable defense, the courts sided with Brooke because it is required that any building built after March 2015 have accommodations for the disabled.

Brooke is known as a serial plaintiff, according to Leavitt, because of her multiple cases on ADA regulations on the same topic and against the same industry.

Based on the case *Molski v. Evergreen Dynasty Corp* in 2007, it was established that, "For the ADA to yield its promise of equal access for the disabled, it may indeed be necessary and desirable for committed individuals to bring serial litigation advancing the time when public accommodations will be compliant with the ADA."

But, in order to file these ADA lawsuits, an individual must be regarded as disabled, Leavitt says.

After Brooke, Leavitt has seen a swell of lawsuits hit businesses around the Phoenix area. There is a man that Leavitt says is going around and suing businesses that do not have the proper signage or proper number of spaces allowed for handicapped parking.

According to the Americans with Disability Act Accessibility Guidelines, which was adopted by the Department of Justice to monitor places of public accommodation and commercial facilities, new structures must comply with 2010 ADA standards.

But, if the building is already in compliance with the 1991 ADA standards and the business is not doing any renovations, it is not required to be up-to-date with the 2010 guidelines.

"About 300 'parking lot' ADA lawsuits have been filed this year," Leavitt says. "I estimate that as many as 10,000 to 15,000 (ADA-related) lawsuits could be filed in Arizona."

Right now, these lawsuits are on the rise and the first step a business owner should take is to seek assistance from an experienced ADA compliance attorney, Leavitt says, issuing a stern warning to businesses.

Leavitt says that when business owners come into contact with a serial plaintiff or just needs to be in compliance with the ADA, they should find an ADA attorney because they are knowledgeable and familiar with the new requirements and trends on regulation.

Leavitt says he helps educate businesses on how to protect themselves and become aware of ADA regulations. He writes articles and blogs in industry publications and also takes time to do presentations for local business groups.



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What can businesses do to protect themselves from frivolous ADA lawsuits? Legal experts offer their opinions.

Anoop Bhatheja, shareholder, Sanders & Parks: "Business owners can have a qualified design professional with expertise in ADA regulations conduct a site visit and audit their premises. An audit can reveal potential violations of the ADA. Many violations are not costly to correct and can enhance the accessibility of the premises to disabled patrons."

Marc Lamber, chair of the Personal Injury Practice, Fennemore Craig, P.C.: "As a business owner, the worst thing you can do is to bury your head in the sand and wait until there's a problem. Be proactive and consult with an attorney experienced in ADA compliance issues for an evaluation of your premises. According to the Department of Justice, more than 50 million Americans – 18 percent of our population – have disabilities, and each is a potential customer."

Craig O'Loughlin, chair of the Labor and Employment Group, Quarles & Brady: "Generally speaking, businesses should have their parking and accessibility audited by a qualified ADA surveyor. More specifically, for this particular wave of lawsuits, businesses should make sure they have disabled parking that identifies the spaces with signage that is at least 60 inches above the ground and includes a specific placard identifying any space that is van accessible."

Wendi Sorensen, partner, Burch & Cracchiolo: "Be proactive. Retain a professional ADA evaluator to determine whether your business is ADA compliant. Don't think that because your building is older, it is "grandfathered" and may remain noncompliant. Older businesses generally must make changes that are "readily achievable" based on the ability of the business to afford such changes. Additionally, buildings undergoing remodeling may be required to fully comply with the ADA, and this compliance extends to all portions of the property including walkways and parking areas."

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