

AVOID ADA LAWSUITS FOR THE HOLIDAYS BY ENSURING STORES ARE ACCESSIBLE

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In order to help retailers improve access to all customers and reduce potential liability, this is the first in a three-part series offering tips for compliance with the Americans With Disabilities Act (ADA). This week we offer tips to improve access to brick-and-mortar stores and their facilities.

Title III of the ADA prohibits discrimination against individuals “on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of any place of public accommodation,” which includes retail stores.

Allegations concerning the accessibility of parking spaces, entrances and aisles, checkout and sales counters, and restrooms continue to attract the most ADA lawsuits. Detailed federal regulations covering all of these areas appear in the [2010 Standards for Accessible Design](#) (ADA Standards), and state building codes may provide additional requirements. ADA requirements may differ depending on the construction date of your stores, and alterations and remodeling may trigger an obligation to comply with more recent ADA regulations.

Entrances and Aisles: There should be an accessible route of travel extending from the street or parking lot through the store. Aisles should generally be 36 inches wide. Merchandise and displays, even temporary displays, should not restrict this accessible route. Although “[i]solated or temporary interruptions in service or access due to maintenance or repairs” are permissible under [federal regulations](#), obstacles should not remain in the accessible route. A good practice is to have store employees walk through the aisles with a yardstick at least daily, and preferably throughout the day, to ensure that aisles remain clear.

Parking Spaces: Parking lots should include an appropriate number of accessible parking spaces on level ground that are appropriately marked and adjacent to the accessible route of travel. Although generally both the property owner and tenant can be held liable under the ADA, the Ninth Circuit held in [Kohler v. Bed Bath & Beyond of California, LLC](#), that the ADA does not impose liability on tenants for ADA violations that occur in areas exclusively under a landlord’s control under the lease. Therefore, retailers of leased premises can often successfully tender ADA claims concerning parking lots to the property owners.

Checkout and Sales Counters: There should be an appropriate number of accessible checkout counters that meet height and other specifications in the 2010 Standards. These should be marked with the international symbol of accessibility, and remain open during store hours. While the 2010 Standards do not expressly address point-of-sale (POS) devices in retail stores, we recommend that such devices comply with the requirements for ATMs in the 2010 Standards. California requires that all check-out locations with flat-screen POS devices have a permanently attached tactile keypad so that blind or visually impaired people can independently enter a debit personal identification number. The Department of Justice (DOJ) has taken the position that retailers should either use a POS device with a tactile keypad, or screen reader software running on a tablet or mobile device to conduct a debit card transaction with headphones.

Restrooms: There should be an accessible route to the restrooms, which should be marked with appropriate signage. Within the restroom, there should be adequate clearance for someone in a wheelchair to maneuver and use all of the facilities. Toilets should have grab bars at locations and heights specified in the 2010 Standards. Sinks, mirrors, coat hooks, shelves and all dispensers should be at accessible heights as specified in the 2010 Standards. Pipes below the sink should be covered with insulated wrapping. Faucets and flush controls should not require tight grasping, pinching, or twisting of the wrist to operate, and should not require more than 5 pounds of pressure to operate. Consider having restroom upgrades performed by contractors experienced with ADA requirements to ensure that they meet accessibility requirements.

Reduce Potential Liability: Courts may issue injunctive orders to comply with accessibility requirements, and prevailing plaintiffs can recover reasonable attorneys' fees and costs. [California's Unruh Act](#) provides minimum statutory penalties of \$4,000, and each visit can constitute a separate violation. In California, inspection by a Certified Access Specialist (CASP) can identify potential violations, and CASP certification that the premises are ADA compliant can reduce statutory penalties to \$1,000 per violation.

For additional questions and information concerning ADA compliance, including CASP inspection and certification, please contact the author or any member of our [Retail Team](#).

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