

GOVERNOR APPROVES GROUND-BREAKING LEGISLATION THAT COULD CHANGE THE LANDSCAPE OF DISABILITY ACCESS LAWSUITS IN CALIFORNIA

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After years of defeated legislation involving disability access laws in California, Governor Schwarzenegger signed a very important piece of legislation on October 8, 2008 that will become effective January 1, 2009. Senate Bill 1608 is a lengthy and comprehensive piece of legislation that adds several provisions to existing laws regarding construction-related disability access issues. It is a balanced piece of legislation protecting the disabled public and businesses alike. While it encourages property owners and operators to take proactive steps to ensure their properties comply with applicable access requirements, it also clarifies and amends disability access laws to reduce the unwarranted "drive-by" lawsuits that have plagued California for years.

Below is a summary of some of the many key provisions of the new law:

- ❖ A new state Disability Commission shall be formed that will be responsible for evaluating and providing recommendations on disability access issues impacting the disabled public and California businesses;
- ❖ A system of state-certified access specialists will be implemented and businesses will be able to have their property inspected and certified for compliance.
- ❖ Qualified defendants (those who have had their properties certified or have a certification pending) will have the opportunity to take advantage of a new court procedure if they are sued for construction-based (or access barrier) disability access violations. Such procedure includes the right to request a 90-day stay of the action so that the court can evaluate the report and certification issued to the defendant by a certified access specialist, and to request an early evaluation conference with the court to resolve the lawsuit before protracted and expensive litigation ensues.
- ❖ Whenever a plaintiff's attorney sends a demand for money or serves a complaint on a property owner or operator regarding construction-based access violations, he/she must include a notice detailing the legal rights and obligations of the property owner or operator. The notice must be in the form of a state approved Judicial Council form, which will be available by mid-2009.
- ❖ Plaintiffs in construction-related disability access lawsuits will only be allowed to recover damages for the violations of disability access requirements that they personally encountered or that deterred them from access on a particular occasion. With respect to

deterrence, a plaintiff must, among other requirements, have had actual knowledge of the violation or violations in order to be deterred, based on the circumstances of the individual's experience.

- ❖ Statutory damages available under the Unruh Act or the Disabled Persons Act can only be assessed on a "per occasion" basis, rather than on the number of violations of construction-related accessibility standards identified at the place of public accommodation. In other words, not every violation of a construction-related disability access standard constitutes a separate offense entitling a plaintiff to a separate award of statutory damages, even if the plaintiff personally encountered more than one violation.
- ❖ Finally, the law clarifies that a court may consider reasonable written settlement offers made and rejected in determining the amount of reasonable attorneys' fees to be awarded at the end of a case. This provision is no doubt intended to reduce protracted litigation by the parties of construction-related disability access cases.

If you have any questions about SB 1608 or other California or federal disability laws, please feel free to contact Lizbeth West, Charles Post, or Anthony Daye at Weintraub Genshlea Chediak.