

How to Make Your Law Firm Accessible to People with Disabilities

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Your law firm, with twenty employees and an annual budget of five million dollars, specializes in commercial real estate matters. You learn two things at your first meeting with opposing counsel in your new litigation matter. First, opposing counsel uses a wheelchair. Second, the women's restroom, used by all of the tenants and their guests on the 14th floor of your 30-floor office building, is not accessible to people who use wheelchairs. There is not enough room to maneuver the wheelchair within the stall, and there is no way for a wheelchair user to exit the restroom because the inward swing of the door would be blocked. After finding similarly-configured and inaccessible restrooms on several contiguous floors, you finally find an accessible restroom on the 20th floor, which opposing counsel uses for the next three days of deposition.

On the last day, she thanks you for your hospitality, and tells you, semi-jokingly, "I guess I won't have to look too hard for my next lawsuit when this one is over!!" You immediately walk into your associate's office and ask her, "Can we be liable for not having an accessible restroom on our floor? We don't even own the restroom or the building!!"

You receive a call from a building owner who has entered into a purchase and sale agreement without legal counsel, and who has decided that he wishes to terminate the agreement because he is having mental health issues and "just can't deal with" the transaction right now. Although the legal matter the potential client is calling about is well within your area of expertise, you are reluctant to get involved based on your fear that the caller's mental health issues will be too difficult to manage. If you call back and reject the case, do you run the risk of a suit for discrimination on the basis of a disability?

I. THE ADA AND ITS CALIFORNIA EQUIVALENTS APPLY TO YOUR LAW FIRM

Yes, your law firm may be liable in both settings. Just like any other business providing services to the public, a law firm is subject to state and federal laws prohibiting discrimination against people with disabilities, including the federal Americans with Disabilities Act (ADA),¹ and California's Unruh Civil Rights Act (Unruh Act)² and Disabled Persons Act (DPA).³ These laws would most likely require your firm to remove the barriers to restroom access identified in the first example above. The duty to make your law firm accessible is not excused by virtue of the fact that the firm rents its office space. These laws could also prevent you from refusing to serve the client in the second example based on the fear that his mental issues might be too difficult to handle.

Title III of the ADA was designed to eliminate disability-based discrimination in ordinary consumer activity by requiring that places of public accommodation provide equal access to the physical environment, and to the goods and services offered there.

No individual shall be discriminated against 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 by any person who owns, leases (or leases to), or operates a place of public accommodation.⁴

Prohibited forms of discrimination, as applied to legal services, include a refusal to provide services because of a client's disability.⁵ California law likewise requires accessibility for people with disabilities, adding its own remedies and penalties applicable to private businesses such as law firms. The Unruh Act bars discrimination against people with disabilities in any "business establishment," which certainly includes law firms.⁶ The DPA guarantees people with disabilities "free and equal access, as other members of the general public" to any "places to which the general public is invited," which would include most law firms' lobbies, restrooms, conference rooms, and meeting spaces, including lawyers' offices if the public regularly goes there.⁷ Any practicing lawyer should assume that the operation of his or her law firm is covered by both the ADA and California law, and should ensure that the firm complies with all applicable disability laws. These disability laws could affect law firm business in a number of ways:

- Decisions to accept or reject work because of the mental or physical disability of a potential client;
- The provision, at the law firm's expense, of auxiliary aids and services to its clients and even adversaries, neutral visitors, and third party witnesses;
- The making of reasonable modifications to the policies and practices of the law firm; and,
- The physical accessibility of at least certain portions of your office and the building in which it is located.

This article is designed to help practicing lawyers understand some of the basic requirements of these disability laws so that they can assure legal compliance in the operation of their business. Examples involving the factual setting presented above, a 20-employee law firm with a \$5 million annual budget engaged in commercial real estate practice, are used to illustrate these requirements. Although disability rights laws also apply to a law firm's employment relationships, employment issues warrant their own discussion and will not be addressed in this article.

II. RELATIONSHIP BETWEEN THE ADA AND CALIFORNIA LAW, INCLUDING BOTH THE UNRUH ACT AND THE DISABLED PERSONS ACT

The ADA does not preempt local or state laws that either equal or exceed the ADA's protections for people with disabilities.⁸ In California, both the Unruh Act and the DPA incorporate the ADA, making any violation of the ADA also a violation of those statutes.⁹

Although California law incorporates the ADA into its civil rights enforcement scheme, it is more protective than the ADA in a number of ways, and provides additional financial penalties for entities found to be out of compliance.

The California Fair Employment and Housing Act (FEHA)¹⁰ makes it perfectly clear that state law is, and always has been, independent from federal law in this area:

The Legislature finds and declares as follows: (a) The law of this state in the area of disabilities provides protections independent from those in the federal Americans with Disabilities Act of 1990 (Public Law 101-336). Although the federal act provides a floor of protection, this state's law has always, even prior to the passage of the federal act, afforded additional protections.¹¹

California law provides more protection by virtue of its broader definition of disability.¹² Because "disability" is broadly defined in the FEHA, more people will be entitled to trigger the accessibility obligations vis-à-vis your law firm. It is also likely that a greater duty to provide access will also be required in California, for example, with respect to service animals.¹³ In another example of this state's greater protection, California's architectural access standards predate the ADA by many years, covering buildings that predate the ADA.¹⁴ As the California Supreme Court recently explained, the Unruh Act "must be construed liberally in order to carry out its purpose" to "create and preserve a nondiscriminatory environment in California business establishments . . . [the Act] serves as a preventive measure, without which it is recognized that businesses might fall into discriminatory practices."¹⁵ Law firms should proceed with caution and not assume that minimal compliance with the ADA will satisfy the duty under California law. This would be especially true for larger, multistate firms: a general ADA compliance plan would not necessarily be sufficient for operations within this state.

While the remedies available to a private party enforcing the ADA are limited to injunctive relief and attorney's fees,¹⁶ California law provides for a trebling of actual damages or a minimum statutory penalty. Unruh remedies include actual damages plus an amount that is up to three times the actual damages but not less than \$4,000, plus attorney's fees. For violations of the DPA, the same remedies are available but the statutory damages are capped at \$1,000.¹⁷ The California Department of Fair Employment and Housing enforces both the Unruh Act and the DPA, investigating complaints, providing dispute resolution, and prosecuting cases on behalf of people with disabilities free of charge.¹⁸

III. STATE AND FEDERAL LAW PROHIBIT DISCRIMINATION BASED ON DISABILITY IN THE PROVISION OF LEGAL SERVICES

The ADA, the Unruh Act, and the DPA prohibit discrimination in places of public accommodation, such as your law firm, "on the basis of disability."¹⁹ Law firms must provide equal access to all persons entering the place of business, including potential clients, opposing counsel, and guests. In addition to requiring physical access, places of public accommodation must make reasonable modifications to their rules and procedures,²⁰ and provide auxiliary aids and services when necessary to make the business accessible to those with disabilities.²¹ No reasonable modification or auxiliary aids and services are required if they would impose an undue burden or

fundamentally alter the nature of the law firm's business.²² Failure to comply can result in a law firm's liability for injunctive relief and damages.²³

A. Auxiliary Aids and Services

You receive a call, via the California Relay Service,²⁴ from a potential client who needs assistance in a commercial real estate matter. It is unclear from this initial call whether this is a matter of quick advice or a complicated deal. The caller tells you that she is deaf and wants to come in for an appointment to explain the potential case. She asks you to provide her with an American Sign Language (ASL) interpreter. You have never hired an ASL interpreter, do not know if you will accept the case, and do not want to pay for what you think will be an expensive service. You wonder why the caller would even ask you to do so and why she cannot hire her own interpreter.

* * *

Businesses and places of public accommodation are legally required to employ, when necessary, auxiliary aids or services, to prevent an individual who has a disability from being excluded, denied services, segregated, or otherwise treated differently from others, and "when necessary to ensure effective communication with individuals with hearing, vision, or speech impairments" unless, as with all accommodations, doing so would pose an undue burden or fundamentally alter the business operation.²⁵ Whether the law firm has a duty to hire an interpreter depends on the length and complexity of the legal issues involved.²⁶

In the example above, assume the matter is complex and it would likely be difficult for the potential client to explain the issue through means such as writing notes back and forth. In addition, some people who are deaf from birth, or before they learn written or spoken language, use a manual language such as ASL as their primary language and might not feel comfortable communicating complex issues using other methods. The law firm in the example above has ample resources, with an annual budget of five million dollars, so the cost of an interpreter (probably in the neighborhood of a few hundred dollars) would not likely pose an undue burden. Likewise, requiring it to do so would not fundamentally alter the nature of its services. Given those facts, the attorney would be obligated to provide an ASL interpreter for the potential client. The same analysis applies when considering other auxiliary aids and services, such as providing text on CDs or in Braille for blind people or people with vision impairments.

B. Reasonable Modification of Policies and Practices

You have a scheduled appointment at 9:15 a.m. with a new client, who informed you ahead of time that he is extremely allergic to artificial scents such as perfume. When you walk in the door at 9:00 a.m., you immediately smell the familiar scent of your receptionist's cologne, even though you have told all employees in your office to refrain from wearing scents to accommodate your new client. You do not want to send your receptionist home because you are short on support staff and the telephones are ringing off the hook. You wonder what you should do.

* * *

Law firms, as providers of services available to the public and as places of public accommodation, are required to reasonably modify policies, practices, and procedures where necessary to allow access to people with disabilities.²⁷ Modifications can include:

- Removing access barriers, for instance by installing ramps, changing the buttons in the elevator, or creating accessible parking spaces;
- Changing policies, practices, and procedures; and
- Allowing service and support animals in your office.

Reasonable modifications need not be elaborate. An informal discussion between the business owner and the person with a disability will often lead to the best solution to address the situation. In the example above, the best solution may be to reschedule the meeting so that it can take place at your office in an appropriate, private conference room. Other alternatives may be to find an alternate location for the meeting or to put your telephones on voicemail while your receptionist leaves to wash off his cologne. Dialogue and flexibility are the keys to making any reasonable modification work.

Your newest client shows up for his first meeting at your office accompanied by a German Shepherd. The client is not obviously blind and the dog does not have any special leash, tag, or markings that might identify it as a service dog. Your receptionist phones you and asks whether the dog is permitted into your office (the office policy is that no pets are allowed). What do you say?

The duty to make reasonable modifications includes permitting service animals in places of public accommodation. According to the ADA, “a public accommodation shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability.”²⁸ The ADA defines “service animal” as a dog or, in some situations, a miniature horse that has been “individually trained to do work or perform tasks for the benefit of an individual disability;” California law is not limited to any particular animals.²⁹ The safest course in the above example may be to assume that the dog is a service animal, in spite of any obvious disability on the part of your client. It would be permissible to make two limited inquiries to determine whether your client’s German Shepherd is truly a service animal. “A public accommodation may ask [1] if the animal is required because of a disability and [2] what work or task the animal has been trained to perform,” although no tangible proof needs to be produced.³⁰

Assume, then, that your client explains he has epilepsy and that the dog assists him in the event of a seizure. In that case, the client and his service dog would be entitled to enter your law office and access all areas where clients are generally allowed.³¹ But the legal protection for service animals is not unlimited; such animals must be housebroken and on a leash or otherwise under the control of their owner (if the use of a leash is impossible because of the disability).³² The owner or lessor of a public accommodation is not required to care for or supervise the animal in any way.³³

C. Architectural and Communication Barriers

A client of yours who is blind accidentally bumps into a protruding sign of one of the lobby-area businesses as she enters the building. Do the ADA’s accessible design and construction requirements apply to individuals other than people who use wheelchairs?

Yes. The ADA requires buildings to be “accessible.” A failure to remove the protruding sign, if “readily achievable,” would violate state and federal disability law.³⁴ Typically, when people think about disability access, they think of physical accessibility, such as ramps and adequate maneuvering areas for people who use wheelchairs. But disability rights laws reach well beyond such physical barriers to require, for example, visual emergency alarms for people who are deaf or hard of hearing, and clear paths of travel for people who are blind or have visual impairments.³⁵ Among the many things these laws do, probably the easiest to understand is their role as a building code, much like the electrical or plumbing code, to ensure access to those places covered by the law. Those building code standards are contained in the ADA Accessibility Guidelines (ADAAG), a set of standards first adopted by the U.S. Department of Justice in 1992 and significantly revised in September 2010.³⁶

Although the ADA’s physical accessibility requirements made a big splash when they were passed into law in 1990, Californians have enjoyed the benefits of an accessibility building code since 1970, in Title 24 of the California Code of Regulations and its predecessors.³⁷ Municipal building departments began paying more careful attention to disability compliance after the ADA, but their failure to do so earlier (by, for example, issuing building permits and certificates of occupancy to inaccessible projects) does not excuse the obligation to comply with California accessibility laws dating back to the early 1970s.

Like nearly all other building codes, ADAAG and Title 24 require any new construction or substantial alterations to existing facilities to comply with the revised building standards. Older buildings are subject to a different analysis. Such buildings need not comply with current building standards, with two exceptions. First, as described in more detail in Part III.D. below, when undertaking a substantial alteration of a portion of a facility, the altered area must comply with existing accessibility standards and the public accommodation must also create an accessible “path of travel”³⁸ between the altered area and the front entrance of the facility (where feasible).³⁹ Second, even in the absence of any alteration, barriers to access must be removed where it is “readily achievable” to do so. And, if it is readily achievable to remove the barriers, then the current design standards must be followed when making these modifications. For example, if the front door has a step, and it is readily achievable to address that barrier by installing a ramp, the ADAAG or Title 24 standards will dictate what kind of slope the ramp needs to have, and whether it needs a railing.

A witness in your litigation matter calls to tell you that he uses a wheelchair and wants to make sure that your office is accessible to wheelchair users when he arrives for his deposition the following week. You retain a code consultant who says that your office is substantially compliant except for the height of various amenities in the men’s restroom, including the mirror, towel dispenser, and toilet paper dispenser. Do you have to fix these problems before next week’s deposition?

Even if your facility was not subject to an accessibility building code, whether because of lax oversight or pre-1970 construction, you may still have to undertake barrier removal where it is “readily achievable” to do so.⁴⁰ “Readily achievable” barrier removal means that removal that can be accomplished without much difficulty or

expense. The Department of Justice provides examples of what is readily achievable in its regulations implementing Title III of the ADA; they include installing a full-length mirror in the bathroom and making the paper towels accessible.⁴¹

In making a decision as to whether the barrier removal is “readily achievable,” a court reviewing the decision in any subsequent litigation would consider the financial resources of the provider of the accommodation, and the cost of making the necessary structural changes. Thus, a large corporation with deep pockets may be expected to undertake a more expensive barrier removal project than might a “mom and pop” grocery store. Even so, the examples provided by the Department of Justice do not suggest expensive or complicated barrier removal projects.⁴² Moreover, the statute’s reference to barrier removal that is “without much difficulty or expense” suggests that financial considerations are not all that is appropriately considered; administrative or practical difficulties are also part of the equation.⁴³ Financial considerations may be irrelevant if removing the barriers is simply too difficult or impossible to undertake.

The Department of Justice regulations prioritize the kinds of barrier removal that are most important, emphasizing the accessibility of front entrances, paths of travel, and restrooms.⁴⁴ And if a public accommodation can show that barrier removal is not readily achievable, then it must make its goods and services available through alternative methods, such as moving a deposition to an alternative, accessible location, or finding an accessible restroom on a different floor of the building.⁴⁵ Thus, undue difficulty or expense does not end the law firm’s obligation to remove barriers to access. Law firms should note that “readily achievable” is an evolving standard. Barrier removal that wasn’t “readily achievable” in 1994 may well be so now. Firms that have been in the same location since 1990 should review current resources and review what steps they have taken in the last 20 years, since the enactment of the ADA, to remove access barriers. In the example above, adjusting the height of the mirror, towel dispenser, and toilet paper dispenser in the bathroom would not cost very much, so you should make these changes as soon as possible. If these changes cannot be made in time, or prove too difficult or expensive, you should move the deposition to another, fully accessible location.

* * *

Your law firm has a website showcasing the accomplishments of your partners and associates, including links to press releases and publications authored by the attorneys, staff photographs, and a video from the founding member describing the history of the firm. At a real estate networking event, you meet a wealthy developer who has failing eyesight due to his advanced age. He mentions to you that he visited your law firm’s website but chose not to retain you because he could not read the information posted there using his screen magnification program. What can you do to prevent future clients from being deterred?

* * *

There are an increasing number of disability advocates who argue that goods and services offered over the internet must be made equally available to people with disabilities.⁴⁶ Although virtual spaces are not yet defined as places of public accommodation, if a website acts as a barrier to the goods and services of a law firm, then it must be reasonably modified.⁴⁷ Where goods are offered for sale through a law firm website, such as books or forms, accessibility is a must.

In the example above, the virtual barriers could be avoided by providing the same information in another format – in Braille or by verbal translation, for example. But as the example demonstrates, it

may be better to build accessible features into your law firm’s public face (its website) to project the message that your services are accessible to all. In 2006, the American Bar Association passed a resolution urging all lawyers to make their websites accessible:

RESOLVED, That the American Bar Association urges that websites provided by lawyers, judges, law students, and other individuals or entities associated with the legal profession, including law firms, the courts, other legal employers, law schools and legal publishers, be created and maintained in an accessible manner which is compatible with reasonable technologies (known as assistive technology) that permit individuals with visual, hearing, manual, and other disabilities to gain meaningful access to those websites.⁴⁸

Law firm management would be well advised to retain an information technology consultant who is knowledgeable about digital accessibility. A group called the World Wide Web Consortium has published voluntary guidelines on web content accessibility.⁴⁹ Last year the U.S. Department of Justice, Civil Rights Division, issued an Advance Notice of Proposed Rulemaking, notifying stakeholders that it is considering revising Title III of the ADA “to establish requirements for making the goods, services, facilities, privileges, accommodations, or advantages offered via the Internet, specifically sites on the World Wide Web (Web), accessible to individuals with disabilities.”⁵⁰ Your web designers should be incorporating built-in accessibility features to facilitate the use of screen magnification software, for people with limited vision, or screen-reading programs, for the blind. Posted videos should be captioned for the hearing impaired. Documents posted in Adobe Portable Document Format (PDF) may be difficult to access with some screen-reading software, and the best practice is to make both PDF and HTML formats available to the user.

D. Alterations to Existing Facilities

It has been 10 years since your law firm has done any decorating. The interior is looking run down and your associates are complaining about the outdated “look.” Since profits were up last year, your firm votes to undertake a major remodel of the reception area. The design firm that you hire proposes reconfiguring your lobby, building new, glass-walled conference rooms, upgrading the bathrooms, and installing a deep-piled carpet to give your reception area a homey, welcoming feel. Are your remodeling plans consistent with disability rights laws?

Your law firm’s remodeling project must, to the maximum extent feasible, incorporate design features that are “readily accessible to and usable by individuals with disabilities,” including wheelchair users.⁵¹ A deep-pile carpet would make the lobby inaccessible to a wheelchair user, and a substitute that is more suitable for wheelchair travel will have to be found. Conference room doors should be wide enough for a wheelchair and have accessible door hardware. At least one of the bathrooms (available to each gender, or both) should be fully wheelchair accessible.

While it is easy to understand and implement a requirement that brand new construction must comply with current building standards, it is considerably more difficult to apply new building standards to “substantial alterations.” Moreover, there is more at stake in many alterations because the cost of altering a facility to comply

with accessibility standards is often higher than the cost of building a new structure to comply.

First, not all alterations trigger the obligation to comply. Strictly cosmetic changes, such as carpeting, flooring, paint, or wall coverings, do not trigger the obligation. Second, to qualify as an "alteration," the altered area must contain a "primary function,"⁵² defined as a major activity for which the facility is intended.⁵³ For example, alterations to a law firm's waiting area or conference room would qualify, whereas an alteration to its server room or a coat closet might not. If the alteration affects a primary function of the law office, then the ADA requires a clear "path of travel," meaning "maximum feasible access" between the altered area and the front entrance, and also requires that the restrooms, water fountains, and telephones servicing the altered area be made accessible.⁵⁴ Alterations are not required if the law firm can demonstrate that the benefit of the alteration would be disproportionate to the overall cost.

E. Between Landlord and Tenant, Who Is Responsible for Accessibility Violations?

The parking structure adjacent to your office building has the requisite number of accessible parking spaces, properly located on each floor in the most proximate spots to the elevator, but lacks the requisite number of the larger van accessible parking spaces (one for each eight accessible parking spaces) required by federal and California law. A prospective client with a disability who drives his own van comes to visit you and finds that he cannot park and use the van's lift in any of the building's smaller accessible parking spaces. Can you as a tenant be liable for the lack of physical access in your building even though you do not have the right or ability to alter the parking lot?

* * *

Check your lease with the parking lot operator, but yes, your firm may be liable even though the parking lot is not under your legal control. The duty to avoid disability-based discrimination applies to "any person who owns, leases (or leases to), or operates a place of public accommodation."⁵⁵ Where a law firm leases space from the building owner, the firm must negotiate, preferably when entering the lease, who is liable for accessibility violations.⁵⁶ Both parties remain liable to any person who is unlawfully denied access to the law firm, and the terms of the lease are effective only as to allocate liability between the landlord and tenant.⁵⁷

An initial version of the pertinent regulation provided that the landlord would be generally responsible for "making readily achievable changes and providing auxiliary aids and services in common areas, and for modifying policies, practices, or procedures applicable to all tenants," and that the tenant would generally be responsible for "readily achievable changes, provision of auxiliary aids, and modification of policies within its own place of public accommodation."⁵⁸ This specific allocation of responsibility was removed from the final rule, and replaced with the instruction that it "may be used if appropriate in a particular situation."⁵⁹

In the example above, your law firm would remain liable for any parking access violation that is readily achievable, even if its lease with the owner provided for a right of indemnification. If it is contractually prohibited from making the changes, your law firm may make alternative parking arrangements available elsewhere, put in some traffic cones to reserve extra space for that client, or ask the landlord to restripe.

IV. CONCLUSION

There are millions of people with disabilities in California, some of whom are likely to be your clients. State and federal law require that you serve them as you would clients without disabilities. Providing your services to clients with disabilities simply makes good business sense.



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ENDNOTES

- 1 42 U.S.C. §§ 12101 *et seq.*
- 2 CAL. CIV. CODE §§ 51 *et seq.*
- 3 *Id.* §§ 54 *et seq.*
- 4 42 U.S.C. § 12182(a).
- 5 *Id.* § 12981(a).
- 6 "All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." CAL. CIV. CODE § 51(b). The courts have construed a "business establishment" covered by the Unruh Act very broadly, covering, *inter alia*, medical offices, real estate broker's offices, shopping centers, stores, and any other facility open to the general public. *See, e.g., Munson v. Del Taco, Inc.*, 46 Cal. 4th 661, 669 (2009).
- 7 The DPA provides that: "Individuals with disabilities or medical conditions have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics, and physicians' offices, public facilities,

- and other public places.” CAL. CIV. CODE § 54(a). Private spaces, such as a file room or copy area, would not be covered by these laws, although such space may need to be altered to accommodate law firm employees.
- 8 42 U.S.C. § 12201(b).
- 9 CAL. CIV. CODE §§ 51(f) (Unruh), 54(c), 54.1(d), 54.2(b) (DPA).
- 10 CAL. CIV. CODE §§ 12900 *et seq.* The Unruh Act and the DPA are incorporated into the FEHA at CAL. CIV. CODE §§ 12948 and 12955(d).
- 11 *Id.* § 12926.1(a).
- 12 Under the Unruh Act and the DPA, “disability” is defined as a mental or physical condition, impairment, or disorder that limits a major life activity. *Id.* § 12926(i), (k); CAL. CIV. CODE §§ 51(e)(1), 54(b)(1). Compare this with the ADA, which defines disability as “with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual.” 28 C.F.R. § 36.104; *see also* CAL. GOV’T CODE § 12926(b).
- 13 When the Legislature incorporated the ADA into the Unruh Act in 1992, it stated: “It is the intent of the Legislature in enacting this act to strengthen California law in areas where it is weaker than the Americans with Disabilities Act of 1990 (Public Law 101-336) and to retain California law when it provides more protection for individuals with disabilities than the Americans with Disabilities Act of 1990.” 1992 Cal. Stat. 4282, ch. 913, § 1.
- 14 CAL. CODE REGS., tit. 24, also known as the California Building Standards Code, *available at*: http://www.bsc.ca.gov/title_24/default.htm.
- 15 *Munson v. Del Taco, Inc.*, 46 Cal. 4th 661, 666 (2009) (citing *Angelucci v. Century Supper Club*, 41 Cal. 4th 160, 167 (2007)).
- 16 42 U.S.C. § 12188(a). A full discussion of relief is beyond the scope of this article. While damages under the ADA are limited to situations where the Department of Justice brings suit, *id.* § 12188, a law firm may be liable for money damages as a result of an ADA violation under state law because the Unruh Act incorporates the ADA by reference.
- 17 CAL. CIV. CODE § 54.3(a).
- 18 A complaint may be initiated online at www.dfeh.ca.gov, or by calling 1-800-884-1684, TTY 1-800-700-2320.
- 19 42 U.S.C. § 12181(a); CAL. CIV. CODE §§ 51 (Unruh), 54.2 (DPA).
- 20 42 U.S.C. § 12182(b)(2)(A)(ii) (reasonable modification).
- 21 *Id.* § 12182(b)(2)(A)(iii) (auxiliary aids and services).
- 22 *See supra* notes 7 and 8.
- 23 *See supra* Part II. SB 1608, enacted in 2008 and codified at CAL. BUS. & PROF. CODE §§ 5600 *et seq.*, provides protections to businesses that obtain certification from the California Commission on Disability Access. *See* California Commission on Disability Access, www.cdda.ca.gov (last visited Aug. 8, 2011).
- 24 The California Relay Service is a public program mandated by the California State Legislature and administered by the California Public Utilities Commission (CPUC), which allows people who are deaf, hard of hearing, or have difficulty using a telephone to communicate by telephone using a third party facilitator. *See* CAL. PUB. UTIL. CODE §§ 2881 *et seq.* For more information, see Deaf & Disabled Telecommunication Program, www.ddtp.cpuc.ca.gov (last visited Aug. 8, 2011).
- 25 42 U.S.C. § 12182(b)(2)(A)(iii).
- 26 ADA Title III Technical Assistance Manual Covering Public Accommodations and Commercial Facilities, Part III-4.3100.
- 27 This is so unless the modification creates an undue burden or fundamentally alters the nature of the services. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 28 28 C.F.R. § 36.302(c)(1) (interpreting the ADA, 42 U.S.C. § 12186(b)). Access to service animals is also protected under California Law. *See* CAL. CIV. CODE §§ 51 (Unruh), 54.2 (DPA). Although the Disabled Persons Act contains precise definitions for “guide dog,” “signal dog,” and “service dog,” service animals that do not fall squarely into these categories should also be protected.
- 29 28 C.F.R. § 36.104 (dogs); *id.* § 36.302(9) (miniature horses). The ADA limits access to public accommodations to “service” animals and offers a narrower definition of “service animal” at 28 C.F.R. § 36.104:
- “Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the handler’s disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal’s presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.”
- Id.* § 36.104.
- While it is clear that so-called “companion” animals are not afforded the same protections as “service” animals under the ADA, their status under California law is less certain. Housing providers are generally required to make reasonable accommodations for qualified residents to live with their companion animals, and the Unruh and Disabled Persons Acts may also protect companion animals in places of public accommodation, given that these statutes are intended to provide broader protection than the ADA. *See Auburn Woods I Homeowners Ass’n v. Fair Employment and Hous. Comm’n*, 121 Cal. App. 4th 1578, 1595-96 (2004) (residents entitled to therapy dog as reasonable accommodation); CAL. CIV. CODE §§ 51 (Unruh), 54.2 (Disabled Persons Act); CAL. GOV’T CODE § 12926.1(a) (California law is independent of the ADA and has always

- afforded additional protections).
- 30 28 C.F.R. § 36.302(c)(6). “A public accommodation shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal.” The regulation goes on to explain that such inquiries are not warranted where it is “readily apparent that an animal is trained to do work or perform tasks for an individual with a disability.” *Id.*
- 31 *Id.* § 36.302(c)(7).
- 32 *See id.* § 36.302(c)(2)-(4).
- 33 28 C.F.R. § 36.302(c)(5).
- 34 “Discrimination” under the ADA includes “a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities . . . where such removal is readily achievable.” 42 U.S.C. § 12182(b)(2)(A)(iv). “Readily achievable” is defined in the regulations as “easily accomplishable and able to be carried out without much difficulty or expense.” 28 C.F.R. § 36.304.
- 35 42 U.S.C. § 12182(b)(2)(A)(iv). For a list of examples of “readily achievable” barrier removal, see 28 C.F.R. § 36.304(b).
- 36 *See* 28 C.F.R. part 36, subpart D. The 2010 ADA Standards for Accessible Design, and Guidance on the 2010 ADA Standards for Accessible Design is available at http://www.ada.gov/2010ADASTandards_index.htm.
- 37 *See supra* note 14.
- 38 The “path of travel” requirement encompasses not only creation of an accessible path of travel, but also the creation of accessible restrooms, drinking fountains, and payphones servicing the altered area.
- 39 There is a “disproportionality” exception to this rule that will excuse the creation of an accessible path of travel where the cost of creating the accessible path of travel is greater than 20% of the cost of the alteration.
- 40 28 C.F.R. § 36.304(a).
- 41 *Id.* § 36.304(b). The regulation provides the following examples of steps that will eliminate barriers:
- (1) Installing ramps;
 - (2) Making curb cuts in sidewalks and entrances;
 - (3) Repositioning shelves;
 - (4) Rearranging tables, chairs, vending machines, display racks, and other furniture;
 - (5) Repositioning telephones;
 - (6) Adding raised markings on elevator control buttons;
 - (7) Installing flashing alarm lights;
 - (8) Widening doors;
 - (9) Installing offset hinges to widen doorways;
 - (10) Eliminating a turnstile or providing an alternative accessible path;
 - (11) Installing accessible door hardware;
 - (12) Installing grab bars in toilet stalls;
 - (13) Rearranging toilet partitions to increase maneuvering space;
 - (14) Insulating lavatory pipes under sinks to prevent burns;
 - (15) Installing a raised toilet seat;
 - (16) Installing a full-length bathroom mirror;
 - (17) Repositioning the paper towel dispenser in a bathroom;
 - (18) Creating designated accessible parking spaces;
 - (19) Installing an accessible paper cup dispenser at an existing inaccessible water fountain;
 - (20) Removing high pile, low density carpeting; or
- (21) Installing vehicle hand controls.
- 42 *Id.*
- 43 42 U.S.C. § 12181(9) (definition of “readily achievable”); 28 C.F.R. § 36.304(a).
- 44 28 C.F.R. § 36.304(c).
- 45 *Id.* § 36.305(a)-(b).
- 46 42 U.S.C. § 12182(a). Website inaccessibility could be analyzed as a failure to provide reasonable modification, a failure to provide auxiliary aids and services, or as a structural communication barrier. 42 U.S.C. § 12182(b)(2)(A)(ii), (iii), or (iv), respectively.
- 47 *See Nat’l Fed’n of the Blind v. Target Corp.*, 452 F. Supp. 2d 946, 953-56 (9th Cir. 2006).
- 48 ABA Res. 108 (2007); ABA Resolution and Report on Website Accessibility, 31 MENTAL & PHYSICAL DISABILITY L. REP. 504 (2007). The ABA website also offers links to useful resources on website accessibility for lawyers. *See* American Bar Ass’n, FYI: Web Accessibility | Legal Technology Resource Center, http://www.americanbar.org/groups/departments_offices/legal_technology_resources/resources/charts_fyis/webaccessibility.html (last visited Aug. 8, 2011).
- 49 *See* World Wide Web Consortium (W3C), Web Content Accessibility Guidelines 1.0, <http://www.w3.org/TR/WCAG10/> (last visited Aug. 8, 2011).
- 50 25 Fed. Reg. No. 142 (July 26, 2010).
- 51 28 C.F.R. § 36.402(a)(1).
- 52 42 U.S.C. § 12183(a)(2).
- 53 28 C.F.R. § 36.402(b).
- 54 *Id.* § 36.403(a)(1). “An alteration that affects or could affect the usability of or access to an area of a facility that contains a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the cost and scope of such alterations is disproportionate to the cost of the overall alteration.”
- 55 42 U.S.C. § 12182(a).
- 56 As the ADA regulations explain: “Both the landlord who owns the building that houses a place of public accommodation and the tenant who owns or operates the place of public accommodation are public accommodations subject to the requirements of this part. As between the parties, allocation of responsibility for complying with the obligations of this part may be determined by lease or other contract.” 28 C.F.R. § 36.201(b).
- 57 Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 56 Fed. Reg. 35544, 35556 (1991).
- 58 “The suggested allocation of responsibilities contained in the proposed rule may be used if appropriate in a particular situation. Thus, the landlord would generally be held responsible for making readily achievable changes and providing auxiliary aids and services in common areas and for modifying policies, practices, or procedures applicable to all tenants, and the tenant would generally be responsible for readily achievable changes, provision of auxiliary aids, and modification of policies within its own place of public accommodation.” *Id.*
- 59 *Id.*