



ADA Live! EPISODE 18: WHEN ATTORNEYS COME KNOCKING - HOW ACCESSIBLE IS YOUR BUSINESS?

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Presenters: Graham Sisson, ADA Coordinator for the State of Alabama, and Dan Kessler, Executive Director of Disability Rights and Resources in Birmingham, Alabama

Host: Rebecca Williams, Southeast ADA Center

VOICE OVER ANNOUNCER: Blog Talk Radio. (Music) Welcome to WADA ADA Live! Talk Radio, brought to you by Southeast ADA Center, your leader for information, training and guidance on the Americans with Disabilities Act. And here's your host.

REBECCA WILLIAMS: Good afternoon and welcome to WADA ADA Live!. On behalf of the Southeast ADA Center, the Burton Blatt Institute at Syracuse University and the ADA National Network, welcome to the 18th episode of WADA Live.

My name is Rebecca Williams. I am the Information Specialist for the Southeast ADA Center.

Our guests today are Graham Sisson, ADA Coordinator for the State of Alabama, and Dan Kessler, Executive Director of Disability Rights and Resources in Birmingham, Alabama.

Our topic today is: When Attorneys Come Knocking -- How Accessible Is Your Business?

ADA Live listening audience, you can submit your questions about our topic at any time on ADALive.org.

Graham and Dan, welcome to our show. It's good to have you here.

Graham, I want to start with you.

I have been reading about something called “drive by lawsuits,” where someone files a lawsuit against a business and demands a settlement from the business owner to avoid going to court. Have you heard about this and is there something business owners can do to avoid being sued?

Sure, I am very familiar with this. A “drive by” is basically where an individual with a disability doesn't actually access the services of a business but drives by the business and notices there's been a violation such as a lack of accessible parking or signage and then sues the individual business in court without any contact with the business prior to the lawsuit being filed.

There's no guarantee a business won't be sued, but businesses have an obligation to make their goods and services accessible to people with disabilities.

And of course the information we are providing today is not binding legal advice.

And businesses should do a walk-through of their business premises to identify barriers and a plan for removing them.

REBECCA WILLIAMS: Great, thanks for that clarification. As you know, Graham, I provide technical assistance on the ADA for callers from the Southeast region. So I thought maybe what I would do is just run by some of the questions I have received regarding lawsuits and we can get your take on them then.

Here's my first question: Are business owners supposed to get a warning before being sued for not being accessible?

GRAHAM SISSON: The ADA does not require a prior warning or notice before a business can be sued in federal court for ADA violations.

REBECCA WILLIAMS: Okay, thanks. How can a person determine if their business is accessible?

GRAHAM SISSON: It depends on the type of facility, whether it's an existing building or new construction or a significant renovation.

There are different building standards that apply to each of those types of facilities. The ADA generally has two building standards that may apply: the

ADA Accessibility Guidelines which were promulgated in 1991 or the 2010 Accessible Design Standards that became mandatory on March 15, 2012. Free copies of these standards can be found on the Access Board website at www.access-board.gov. These standards set out the required dimensions for building components or features such as accessible parking spaces, counters and restrooms. There are other requirements under Title III of the Americans with Disabilities Act, and we will talk about these later in the show.

REBECCA WILLIAMS: Great, thanks for that information.

If I understand right, then, just to recap real quick -- a business owner would need to know what year their facility was built in order to see which standards they need to follow. Correct?

GRAHAM SISSON: That's correct.

REBECCA WILLIAMS: Okay. Where do you suggest the business owner begin to see if their business is accessible? How do they go about doing that?

GRAHAM SISSON: Generally, the businesses should first see if their parking meets ADA standards. Such as having the required number of accessible parking spaces with the proper dimensions. Then the business owner should check the path of travel from the parking to the building entrance and then the entrance itself and then the path of the travel from the entrance to the services being offered by the business, including restrooms and water fountains.

REBECCA WILLIAMS: We could start with the parking, and then can I get into the facility, and once I am in the facility can I get around in there.

GRAHAM SISSON: That's correct.

REBECCA WILLIAMS: Great. I also get questions about things like, if I am renovating one particular area of a business, such as a check-in desk area or expanding their dining room does it mean they have to do anything for ADA accessibility when doing those kind of alterations?

GRAHAM SISSON: Yes, those are alterations that would affect usability, more than just cosmetic changes such as repainting the walls.

When these areas are being altered -- and there are also what are called primary function areas of a business -- and when they are being altered or renovated since March 15, 2012, they must be brought up the 2010 ADA Standards.

REBECCA WILLIAMS: Can you explain a little bit, I have heard the term or people used the term, “readily achievable barrier removal.” So does this apply even when a building is not being renovated?

GRAHAM SISSON: Yes, basically, readily achievable barrier removal applies to existing buildings and an existing building generally under the ADA is built before January 26, 1992 – existing under the 1991 Standards. existing under the 2010 ADA standards was built before March 15th 2012.

These readily achievable only applies to barrier removal in existing buildings. Generally it means easily accomplishable and without much difficulty or expense. Of course, it's on a case-by-case or individualized basis.

It would depend on the size of the business and resources, whether or not removing a particular barrier would be readily achievable.

Examples of readily achievable barrier removal is re-stripping parking spaces to make them wide enough to be accessible parking spaces and putting in a small ramp, but not moving a wall or installing an elevator. Those would not be examples of readily achievable barrier removal.

When renovations are made that affect usability, not just -- as I mentioned before -- cosmetic changes – such renovations must be made according to the 2010 Standards because we are past March 15, 2012.

When renovations touch a primary function area, some of the things we mentioned before like the check-in desk area or the dining room, all elements within that area should be made accessible to the extent that such changes do not exceed more than 20% of the total cost of renovation. This is what is known as the 20% disproportionality rule.

REBECCA WILLIAMS: There's two types of times when barriers can be removed. It's when a business owner – it is readily achievable to do it and also they need to look at when renovations are being made, whether or not there's barriers in the area being renovated.

GRAHAM SISSON: Yeah.

REBECCA WILLIAMS: Great. ADA Live listening audience, if you have a question for Graham or Dan later, you can submit at any time in our online forum at adalive.org. Now a word from our sponsors.

ANNOUNCER: The Alabama Governor's Office on Disability's mission is to facilitate the inclusion of Alabamians with disabilities in education, employment, housing, transportation, health care and leisure. The Office on Disability maintains a Toll Free ADA Hotline at 1-800-205-9985 (voice) and 1-888-574-2257 (TTY). Calls are confidential. The Office on Disability also offers free ADA training and surveys of buildings and facilities for ADA compliance. All information and services provided are non-binding and do not create an attorney-client relationship.

REBECCA WILLIAMS: Welcome back to ADA Live!. Graham, here's a classic question I get a lot: I thought my business was grandfathered. It was built before the ADA was signed in 1990.

GRAHAM SISSON: Of course, the answer is no. There's no such thing as being grandfathered under the ADA. All business owners have the responsibility to remove architectural barriers when readily achievable to do so, or something similar. Another way to state that is all facilities are covered but a different standard may apply, though. There may be differences in which access standards apply when the business was built.

REBECCA WILLIAMS: Thanks, Graham, for that clarification. If the business owner eliminates all physical access barriers can they still be sued under the ADA?

GRAHAM SISSON: Of course, the attorney in me says "yes." The reason I say that – there may be other issues that are non-physical in nature such as policy issues a business may incur. Just because your business doesn't have any physical barriers there could other types of barriers to remove, such as communication barriers.

REBECCA WILLIAMS: Business owners need to think about more than just physical access, but also look at how they provide their services to their customers.

GRAHAM SISSON: Absolutely. Exactly.

REBECCA WILLIAMS: Great, thanks for that.

I'd like to turn to Dan Kessler, [with] Disability Rights and Resources in Birmingham, Alabama. Dan, thanks for joining us today.

We have been focusing on discrimination due to a business being physically inaccessible to people with disabilities. Will you talk about other ways customers can be discriminated against?

DAN KESSLER: Sure. It's great to be on the program today, Becky. I want to thank you for inviting me.

Yes, the ADA is more than just physical access. I think there's a misconception in some places where some businesses may think it's limited just to physical access, but the ADA Title III goes beyond just physical access to include issues like effective communication.

Also, Title III of the ADA requires that businesses allow service animals onto their premises and public areas. And Title III of the ADA also may require a business to modify their policies to be sure they are not discriminatory.

And Title III of the ADA also requires that any sort of eligibility criteria that might somehow discriminate or have the effect of discriminating against people with disabilities, that those be eliminated.

And the ADA also prohibits any sort of what you might call disability surcharges.

REBECCA WILLIAMS: Wow, that's a lot for business owners to think about. Thanks for expanding on those responsibilities, Dan.

Can you give us some examples some of these other requirements -- say, let's start with effective communication. What does that actually mean?

DAN KESSLER: Sure, Becky. Simply put, effective communication means that whatever is written or spoken must be as clear and understandable to people with disabilities as it is for people who do not have disabilities.

This is important, because there's some people with disabilities that have disabilities, have disabilities that affect how they communicate.

So people who have disabilities that affect hearing, seeing, speaking, reading or writing, or understanding may use different ways to communicate than people who do not. So there are ways, though, that you can provide equal access to communications for people with disabilities.

And these different ways are provided through what are called auxiliary aids and services. That's sort of a mouth full, but you may wonder what is an auxiliary aid and service.

Those are devices or services that enable effective communication. And those might include things like qualified interpreters. I use the word “qualified,” because the ADA does refer to “qualified interpreters.”

Note-takers or somebody to provide material in written format.

It could be a screen-reader for somebody to be able to access a computer.

It could also be what are called CART services. That's C-A-R-T services Or Computer Aided Realtime Transcription [now known as Communication Access Realtime Translation].

It could also include -- another example of auxiliary aids and services could include telephone handset amplifiers and also assistive listening systems. These are just a few examples and there are many, many more, but I think this gives you an idea of some of the different kinds of things we are referring to when we talk about auxiliary aids and services.

REBECCA WILLIAMS: Thanks a lot, Dan. I didn't realize so much was involved there in effective communication.

You mentioned service animals. Can you just hit on that a little bit about how that comes into play with businesses?

DAN KESSLER: Sure. Now, service animals --there has been some guidance that has come out over the last couple of years around service animals. But, service animals are dogs that are individually trained to do work or perform a task for people with disabilities.

So that's key, that the service animal is a dog that's individually trained to do work or perform a task. Some examples of such work or tasks might include guiding somebody who is blind.

It could include a dog or service animal that alerts a person who might be deaf.

Some service animals would pull somebody who is using a wheelchair.

Other service animals would alert and protect a person who's having a seizure.

There are even other service animals, again, that are individually trained, to calm a person with PTSD during an anxiety attack.

Keep in mind that service animals are working animals and are not pets and should be treated as such.

Now under the ADA businesses that serve the public generally must allow the service animal to accompany people with disabilities in all areas of the facility where the public is normally allowed to go.

If it's in a hotel, that has a bar attached to it, then the service animal should be allowed to accompany the individual with a disability to the bar.

When it's not obvious what service an animal provides, the staff may ask two questions, and they are very narrow questions that the business owner can ask.

Number 1: is the dog a service animal required because of a disability? Related to a disability?

And Number 2: What work or task has the dog been trained to perform? Those are the limitations in terms of the questions that a business owner or manager might ask.

You can't as a business owner ask whether or not, for example, to ask for certification or some sort of documentation that indicates that a dog has been trained as a service animal. That's not something that you can require.

You cannot require that an individual provide you with any kind of medical documentation about their disability. That's not something that would be permitted under the ADA.

Now I did say that service animals are dogs that are individually trained.

There are also miniature horses that in some cases may also be trained do work or perform tasks for people with disabilities.

But quite frankly, Becky, I have not seen too many of those, and I think business owners and the general public are much more familiar with dogs as service animals.

So the one exception, I guess, would be to service dogs would be miniature horses, again, that are individually trained to do work or perform tasks.

REBECCA WILLIAMS: Thanks for that quick synopsis of service animals.

I know I get a lot of calls about service animals. As you said, I have never seen a miniature horse, but that is in the regs, like you said.

I want listeners to know – service animals - we did two programs before, so if people out there want to get more information on service animals they can listen to the archived shows number 5 and number 14. Both dealt with service animals more in depth.

Now, Dan, sometimes a business owner will want to know if they can charge a person for making their facility more accessible or charge somebody for an interpreter. Is this permitted?

DAN KESSLER: That's a great question. That's a great question. And you're right that does come up from time to time. We see that occasionally.

A business owner may not charge an individual for the cost of a disability-related business expense.

So, Becky, an example that you gave, it would be a violation of the ADA to charge a deaf person for a sign language interpreter. The business is responsible for paying for interpreting services.

So that would be one of those examples where a business cannot, I guess, what you might say, charge some sort of disability-related expense. So that would be prohibited. A business owner is required to provide the accommodation.

REBECCA WILLIAMS: Great. Good to know.

ADA Live listening audience, you can submit your questions about our topic at any time on adalive.org and now a word from our sponsors.

ANNOUNCER: Disability Rights and Resources mission is to empower people with disability to fully participate in the community. We encourage people with disabilities to support one another in reaching their own independent living goals. We also promote equal access and disability rights through advocacy and public awareness activities. Disability Rights and Resources serve Jefferson, Walker, Shelby, Saint Clair and Blount counties. For more information, visit their website at www.DRRAdvocates.org.

REBECCA WILLIAMS: Welcome back to ADA Live!.

Sometimes a business might have a general policy, say, like, you have to show a state driver's license if you're going to write a check, and I know that might unintentionally discriminate against people who cannot drive due to a disability.

Sometimes you tell the business owner – oh, this is discriminatory and this is why. And they say I didn't realize that and we will change our policy. But there's really an awful lot within the ADA for business owners to learn about. Where would you suggest business owners turn to get help in understanding their responsibilities to customers with disabilities?

DAN KESSLER: You're right, Becky, things can get complicated fast. But, the good news is that there's a lot of help out there. There's a lot of resources available for the business owner and operator. I think one of the resources that a business owner might want to look at are the Centers for Independent Living [CIL]. I think they are a great source of information on the ADA, and Centers for Independent Living are nonprofit entities or agencies that serve people with disabilities and have a wide range of knowledge on the ADA.

And so you can find -- and there are CILs in all states, and you can find a CIL nearest you by visiting the National Council on Independent Living website. Their web address is www.NCIL.org. So, I think the Centers for Independent Living are a great resource of information on the ADA.

There are also ten regional ADA Centers throughout the United States. You can reach them by calling 1-800-949-4232.

We are here at Disability Rights and Resources, we are the state affiliate for the Southeast ADA Center, and that is the State Affiliate for the State of Alabama.

Also, if you happen to be in Alabama, you can call the Governor's Office on Disability – another great resource - and their phone number is 334-293-7189.

REBECCA WILLIAMS: Great resources for businesses. Thanks, Dan.

Now I know that you previously gave us information about general responsibilities for businesses. Now I want to turn back to facility access and whether or not a business is physically accessible to folks with mobility impairments.

One thing business owners need to look at is what we call the 2010 ADA Standards for Accessible Design. How would a business owner go about determining whether or not they meet those standards for accessible design?

DAN KESSLER: Well, I would refer the business owner to the 2010 Standards for Accessible Design and you can find those 2010 Standards for Accessible

Design by going online, go to www.ADA.gov and there's a tremendous amount detail on those standards that you can find.

Another great tool is the ADA Checklist for Existing Facilities, and you can find that checklist by going to www.ADAchecklist.org.

I would also, as I mentioned before, the Centers for Independent Living and that is you may want to consider working with your local Center for Independent Living.

Many CILs -- and that's a term that's a shorthand abbreviation for Centers for Independent Living, CIL -- many CILs conduct accessibility surveys and they can point you in the right direction for the resources you might need to make your facility and services accessible for people with disabilities.

And also, I think it's a good idea to ask your customers with disabilities about their experiences with your place of business. I think you will find most people are willing to provide you with feedback and if you seek out that feedback, I think, most people will be more than willing to provide that help you improve your business.

I think the key is to really be proactive. That is, to think of this as a process, as a way to bring in customers. Not just something you have to comply with, but it's a way of bringing in a new customer base.

And how do you go about making -- and then you want to think about how you want make those customers happy so they will return?

Again, I think the key here is take action before you end up in court. Try to be proactive about it. Try to take action and work with people in your community who know about the ADA and know about what it takes to make a facility and program and service accessible.

I think you should start with people in your community. You can find some really great resources to help you along the way to help your business become more accessible.

REBECCA WILLIAMS: I think you made excellent point, Dan, when you mentioned, ask customers with disabilities what they find accessible and where they may have difficulty, because that's who this is impacting. So, that was a great suggestion there, and I want to again endorse Centers for Independent Living. They can be a great resource for businesses. In business, Dan, everything comes down to the dollar in the long run.

Is there any sort of financial assistance for business owners when looking at doing structural changes to make their facility accessible to their customers with disabilities?

DAN KESSLER: Yes. And I think that's the good news, Becky there are tax incentives available to small businesses to help cover the cost of making improvements. One is a tax credit and the other is a tax deduction.

The tax credit can be used for architectural adaptations, for example, to construct a ramp, acquiring equipment, and also services such as a sign language interpreter.

So if you're a business and you have a customer come in who needs a sign language interpreter and you pay for that a sign language interpreter, there's a very generous tax credit that you can use to recoup some of your costs.

There's also a second incentive and that's a tax deduction that can be used for architectural or transportation adaptations. And keep in mind that you can take these deductions and credits annually, and you may be able to use both credits and deductions.

So I think that's something that a small business owner -- as you said, things do sometimes boil down to the dollars that are available.

And so as you are going about making some of these modifications to your structures or making -- providing accommodations know that there are some tax incentives out there.

So, if you -- and a really easy way to find the information, Becky, is go online and Google "tax deductions and the ADA." And you will find a lot of information that comes up.

And since we're now in, I guess, in the tax season, right in the middle of the tax season right now, if a business owner is looking at taking advantage of some of these tax incentives, they may also want to look at the form 8826 [which] gives you instructions on how to take advantage of a disabled tax credit.

I would encourage you to speak to your accountant or your tax preparer to provide more information about these incentives.

REBECCA WILLIAMS: That is definitely good news for businesses. Thanks, Dan.

As you mentioned earlier about Centers for Independent Living and about having businesses reach out to Centers – would you tell us a little bit about what your Center, Disability Rights and Resources, has done in your local community to help businesses?

DAN KESSLER: Sure, be glad to. We provided ADA information to small businesses, actually businesses of all sizes, for that matter. We have provided training. We have provided technical assistance for businesses in the Birmingham area. We have also conducted accessibility surveys at those businesses, and we have made suggestions based upon our findings.

Of course, we like to go out and do the surveys. We like to get the business owners involved in the process as much as we can. We have assisted businesses of all sizes, big and small.

So that's just what we're doing here in the Birmingham area, and you can find similar, as I mentioned before, Centers for Independent Living in all parts of the country that are doing a lot of different kinds of work with businesses to help them make their facilities to come into compliance with the ADA and make their - to expand their customer base.

REBECCA WILLIAMS: It certainly sounds like your center for independent living is a great resource for your community in Birmingham.

Graham and Dan, we want to thank you for being here with us today to talk about how business owners can check to see if their facility is accessible and if their employees can provide good customer service to customers with disabilities.

We'd like to see if either of you have one key point you want to leave with our listeners this afternoon? Graham?

GRAHAM SISSON: Sure, and I would say to businesses, please don't take a wait-and-see approach. Many businesses are thinking, perhaps, I have never seen a person with a disability around here or I've never had any complaints, therefore I must be in compliance.

And, again, I would find some individual with a disability in the community and invite them to come to your business to see if they have any issues with your place of business. So that you can know ahead of time, and you can try to make efforts to remove those barriers.

And one other thing I like to mention to businesses [that] we didn't talk about today is many businesses will get a Certificate of Occupancy from the local building code authority and many businesses think that having the Certificate of Occupancy means they meet ADA standards.

Most local entities do not measure for ADA accessibility. Most of the local building codes do not cover that. And in rare cases where they are covered the building code has been certified by the Department of Justice as meeting ADA Standards, and there's not too many in the country that have done that. Of course, people with disabilities are customers and think of this as a win-win situation that you win by getting another customer and the person with disability wins also by getting access to your business.

REBECCA WILLIAMS: That was an excellent point, Graham, about the Certificate of Occupancy. I get calls on that and many times, you're right. Business owners do think if they get that certificate that means they are compliant, so I am glad you brought that up. Dan, what would you like to add?

DAN KESSLER: I'd like to add that I want the business owners to know they are not alone.

There's quite a bit of help that's available for them to make services and facilities accessible to people with disabilities and there's a tremendous amount of information and resources and checklists and manuals available online.

Be sure to reach out to people with disabilities in your community and organizations such as Centers for Independent Living, and finally I would like to make sure that business owners talk to their managers and their staff so that they have the training and expertise that they will need to make their businesses accessible to ensure full and equal access for all, and in the meantime expand their customer base.

REBECCA WILLIAMS: Good point, Dan. I think with adding about making sure managers and staff understand how to provide good customer services to their customers with disabilities.

Sometimes we just focus on is the building accessible, and you can have an accessible building, but if the staff aren't welcoming to the customers with disabilities that accessible building isn't going to keep bringing people back in. You have to have staff that know how to treat all customers the same.

At this time I would like to thank our guest speakers, Graham Sisson, the Executive Director for the Alabama Governor's Office on Disability and Dan Kessler, Executive Director of Disability Rights and Resources in Birmingham, Alabama, and thank you also to the ADA Live! listening audience.

We invite folks to celebrate the 25th anniversary of the ADA. This is a big year for us. July 26th, 2015, is the 25th anniversary of the Americans with Disabilities Act and we invite everyone to be a part of the nationwide ADA 25 celebration.

Please go to online and sign the ADA pledge. Now, this pledge is not a money pledge. It's just a pledge saying I support the ADA. We are glad it's here and we believe in access for everybody.

We invite you to explore the ADA Anniversary Toolkit. It's packed full of ideas and information. Please learn, connect and share the ADA anniversary at www.ADAanniversary.org.

The Southeast ADA Center is grateful for your support and participation in this series of ADA Live! broadcasts. Join us next month on the first Wednesday, which will be April 1st. No fooling, we will be there! See you next month on www.ADALive.

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