

Arizona parking lot cases: legal shakedown or legitimate advocacy?

by Jodi R. Bohr
Gallagher and Kennedy, P.A.

Since the start of 2016, Advocates for Individuals with Disabilities (AID) or affiliated individuals have initiated more than 2,000 lawsuits against Arizona businesses—many of them small businesses—alleging violations of Title III of the Americans with Disabilities Act (ADA) and its parallel state law, the Arizonans with Disabilities Act (AzDA). Title III of the ADA requires places of public accommodation (i.e., businesses that are generally open to the public) to provide goods and services on an equal basis to people with disabilities, including properly designated accessible parking spots. The Arizona Attorney General's Office recently intervened on behalf of businesses with the intention of having the lawsuits dismissed, but businesses shouldn't let their guard down on ADA compliance issues.

Don't be caught in a 'gotcha' moment

What do the parking lot cases look like? AID files lawsuits against certain property owners or tenants alleging that the properties don't comply with the ADA or the AzDA. The lawsuits typically allege that the signs marking accessible spots aren't the requisite height (60 inches) and that the property has failed to label van-accessible spaces with the words "van accessible" as required for those spaces.

What's a company to do when faced with one of these cases? First, seek counsel on the necessary and appropriate response to the lawsuit. Second, determine whether the accessible parking spaces comply with the ADA Standards for Accessible Design. If not, determine whether a "safe harbor" applies until you materially alter the accessible parking area for some other purpose. If no safe harbor applies, correct or remedy the supposed

structural violations. The safe harbor depends upon when the facility was built or last altered. Keep in mind that there are more options for responding to an ADA parking lot case than what we can suggest in the space available in this column.

What should your employees do if they're confronted with a public accommodation issue? Employees should be trained on how to communicate effectively with the disabled community to limit or avoid nonstructural public accommodation issues on a day-to-day basis. Effective training will also include the "how to" on accepting complaints about a structural public accommodation issue. Employees shouldn't become defensive when they're confronted with a complaint. Rather, they should thank the individual for bringing his concerns to the company's attention and assure the individual that the company will look into the concern that has been raised (and correct it if necessary).

Properly handling the initial complaint is a big step toward avoiding potential future liability. Employees should be instructed to bring any and all concerns to a designated representative who is responsible for promptly investigating and correcting any issues of noncompliance. The company should be prepared with a general plan of action to address issues as they are raised.

Be proactive and vigilant

How can companies be proactive? Serial lawsuits over ADA compliance issues have become commonplace in recent years. Last year, the topic was hotel pools and spas without ADA-accessible built-in lifts. This year, the litigation relates to compliance with the requirements for accessible parking spaces. I won't venture to predict the trolling litigation tactics that will come next, but

companies need to be aware of all ADA compliance issues.

So what can you do to be prepared? Be vigilant about the ADA public accommodation requirements. Know that the ADA places responsibility for compliance on both landlords and tenants. If your company leases the building or space in which you do business, you should work with the landlord to ensure that the place of public accommodation complies with the ADA or address through the terms of the lease who will be responsible for actually making the changes necessary for compliance. Before purchasing space, ensure that it's compliant with the ADA's public accommodation requirements (of which there are many).

[Jodi R. Bohr](#) is an attorney with [Gallagher & Kennedy, P.A.](#) and a contributor to [Arizona Employment Law Letter](#). She practices employment and labor law, with an emphasis on litigation, class actions, and HR matters, and is a frequent speaker on a wide range of employment law topics. She may be reached at jodi.bohr@gknet.com or 602-530-8035.