



State of California
Office of the Attorney General

ROB BONTA
ATTORNEY GENERAL

June 14, 2022

To: All District Attorneys, City Attorneys, and County Counsel in California

RE: Enforcement of State Disability Access Laws in Business Establishments and Public Accommodations

Dear Colleague:

Californians with disabilities have historically experienced widespread discrimination in business establishments and public accommodations. They have often been excluded from everyday activities, such as shopping at stores or going to restaurants.¹ Equal access to business establishments and places of public accommodation is necessary to ensure that people with disabilities can lead independent lives and fully participate in all aspects of society.

Unfortunately, discrimination against individuals with disabilities in business establishments and places of public accommodation is still prevalent in California. The Office of the Attorney General continues to receive complaints that Californians with disabilities are being denied basic rights at business establishments and public accommodations throughout the state, including the right to physical access and service animals. Recently, our office has also received complaints regarding outdoor dining programs established in response to the COVID pandemic, as some businesses participating in these programs have created physical barriers for people with disabilities accessing public sidewalks.

As the Attorney General of the State of California, I have a strong interest in ensuring compliance with the state's disability access laws and regulations so that persons with disabilities have equal access to the services and facilities of places that are open to the public. I encourage you to join us in our effort to ensure that business establishments and public accommodations within your jurisdiction comply with disability access laws.

State and federal disability access laws mandate equal access for people with disabilities and prohibit discrimination against them in business establishments and public accommodations.

¹ U.S. Dept. of J. (U.S. DOJ) Civ. Rights Div., *ADA Update: A Primer for Small Business* (Mar. 16, 2011) <<https://www.ada.gov/regs2010/smallbusiness/smallbusprimer2010.htm>> (as of May 20, 2022).

Under California's Unruh Civil Rights Act, people with disabilities are entitled to full and equal accommodations, facilities, privileges, advantages, or services "in all business establishments of every kind whatsoever." (Civ. Code, § 51, subd. (b).) The California Disabled Persons Act also provides that people with disabilities have a right to the full and free use of sidewalks, public buildings, medical facilities, and other public places. (Civ. Code, § 54, subd. (a); see also Civ. Code, § 54.1.)²

Similarly, Title III of the Americans with Disabilities Act (ADA) and its implementing regulations make it unlawful for private entities to discriminate against people with disabilities in public accommodations, such as hotels, restaurants, grocery stores, places of education, and homeless shelters.³ (42 U.S.C. § 12182; 28 C.F.R. § 36.104.) People with disabilities are entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation. (28 C.F.R. § 36.201.) To ensure access for people with disabilities, public accommodations must remove architectural barriers in existing facilities, including communication barriers, where removal is readily achievable.⁴ (28 C.F.R. § 36.304.) They must also provide appropriate auxiliary aids and services to ensure effective communication with people with disabilities and make reasonable modifications in their policies, practices, or procedures to make goods, services, facilities, privileges, advantages, or accommodations available to individuals with disabilities. (28 C.F.R. §§ 36.302, 36.303.) A

² The California Department of Fair Employment and Housing (DFEH) provides information on California's Unruh Civil Rights Act and the right of individuals with disabilities to equal access. (See DFEH, *Discrimination Laws Regarding People with Disabilities* <<https://www.dfeh.ca.gov/peoplewithdisabilities/#otherResourcesBody>> [as of May 20, 2022]; *Public Access Discrimination and Civil Rights, Fact Sheet* (Dec. 2020) <https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2017/12/DFEH_UnruhFactSheet.pdf> [as of May 20, 2022].)

³ The U.S. DOJ Civil Rights Division provides resources regarding Title III of the ADA, including guidance on physical access, service animals, and effective communication. (See U.S. DOJ, *Title III: Resources for Business and People with Disabilities* <https://www.ada.gov/ta_titleiii.html> [as of May 20, 2022].)

⁴ Information regarding removal of a "readily achievable barrier" and inspections of buildings for compliance with applicable federal accessibility standards is available from the Department of General Services (DGS). (See DGS, *CASp Property Inspection, Business Owners Frequently Asked Questions* <<https://www.dgs.ca.gov/DSA/Resources/Page-Content/Resources-List-Folder/Certified-Access-Specialist-Property-Inspection>> [as of May 20, 2022]). Further information and guidance on federal accessibility standards is available at the website of the U.S. DOJ and the U.S. Access Board, in addition to regulations from the U.S. Department of Housing and Urban Development (HUD). (See U.S. DOJ, *ADA Standards for Accessible Design* <https://www.ada.gov/2010ADASTandards_index.htm> [as of May 20, 2022]; U.S. Access Board, *Uniform Federal Accessibility Standards (UFAS)* (1984) <<https://www.access-board.gov/aba/ufas.html>> [as of May 20, 2022]; HUD, *Fair Housing Accessibility Guidelines*, 58 Fed. Reg. 9472 (Mar. 6, 1991).) For further information regarding accessibility requirements for people with disabilities, please also see "Accessible Design Standards for People with Disabilities," Attorney General Rob Bonta, letter to all city and county building officials in California, June 14, 2022.

violation of the ADA also constitutes a violation of both the California Unruh Civil Rights Act and the California Disabled Persons Act. (Civ. Code, §§ 51, subd. (f); 54, subd. (c).)⁵

There are several ways in which city attorneys, county counsels, and district attorneys can help ensure Californians with disabilities have equal access to business establishments and public accommodations in their jurisdictions. For example, city attorneys and county counsels can educate private entities who own businesses and other places of public accommodation in their jurisdictions about their obligations under state law and provide guidance and technical assistance to help them correct disability rights violations.⁶ Where voluntary compliance is not forthcoming, city attorneys and district attorneys can also compel compliance with state disability access laws through litigation under the Unruh Act and/or the Disabled Persons Act. (See Civ. Code, §§ 52, subd. (c); 55.1.)

Your office plays a critical role in ensuring equal access for Californians with disabilities in business establishments and public accommodations throughout the State, and supporting their full participation in all aspects of society. Thank you for your time and anticipated effort in helping us achieve this goal.

⁵ Other state and federal laws may also apply to a business that receives state and/or federal funds. (See Gov. Code, § 11135, subd. (a); Cal. Code Regs., tit. 2, § 11150 [prohibiting discrimination against people with disabilities under any program or activity that is conducted, operated, or administered by the State or by any state agency, is funded directly by the State, or receives any financial assistance from the State]; 29 U.S.C. § 794 [Section 504 of the Rehabilitation Act] [prohibiting discrimination against people with disabilities under any program or activity receiving federal financial assistance].)

⁶ City attorneys and county counsel may wish to refer small businesses to their local building departments or building inspectors for technical assistance on state building code compliance. (See, e.g., City of San Jose, Planning, Building and Code Enforcement, *Disabled Access Requirements: What Building and Business Owners Should Know and Do* (Mar. 17, 2020) <<https://www.sanjoseca.gov/home/showpublisheddocument/25953>> [as of May 20, 2022].) Additionally, business owners may be referred to the California Capital Access Program Americans with Disabilities Act (CalCAP/ADA) Financing Program, which assists small businesses with financing the costs to alter or retrofit existing small business facilities to comply with the ADA's requirements. (See Cal. St. Treasurer, *Americans with Disabilities Act Financing Program* <<https://www.treasurer.ca.gov/cpcfca/calcap/ada/summary.asp>> [as of May 20, 2022].) DGS's Access Compliance Advisory Reference Manual also provides guidance on how to comply with state accessibility requirements. (See DGS, Div. of the St. Architect, *Access Compliance Reference Materials, 2019 California Access Compliance Advisory Reference Manual* (Mar. 23, 2021) <<https://www.dgs.ca.gov/DSA/Resources/Page-Content/Resources-List-Folder/Access-Compliance-Reference-Materials>> [as of May 20, 2022].)

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If you have any questions or comments, please feel free to contact Michael L. Newman, the Senior Assistant Attorney General for the Civil Rights Enforcement Section, which includes the Department of Justice's Disability Rights Bureau. Mr. Newman may be reached at Michael.Newman@doj.ca.gov.

Sincerely,

A handwritten signature in blue ink that reads "Rob Bonta". The signature is written in a cursive, flowing style.

ROB BONTA
Attorney General