Did You Think that the ADA Went Away – Well… It Didn't

Joan Stein

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1. Update your knowledge and understanding of the ADA
2. Understand what mistakes are made in facilities by employees
3. Learn how you can keep ahead of the ADA Complaints
4.Learn how to develop Best Practices
5. How to stay “under the radar”

What are the latest changes or issues in ADA compliance?

There have been NO updates since the 2010 ADA Standards for Accessible Design

The Department of Justice is now *codifying regulations for:*

Website compliance

Hospital furniture and equipment

UPDATE ---
THIS HAS ALL BEEN PUT ON HOLD

The New Reality

The Department of Justice under the new administration has **completely** changed their focus away from ADA cases.

That DOES NOT MEAN THE CASES ARE GOING AWAY…

In fact, cases filed privately in Federal Courts have been increasing

What Went Away Under the 2010 ADA Standards

- 1991 ADAAG's allowed for clipboards and pull-out shelves at checkout counters
- 2010 ADA Standards no longer allow – MUST be built with accessible counter heights
  - Bars
  - Checkout
  - Hotel front desk
- Lowered section of bar is not for servers
- Lower section of front desk is not for marketing materials

What's New In Our Environment Since the ADA Was Updated in 2010

- Large motorized wheelchairs
- Segways
- EV Stations

Distinctions between State and the ADA regulations?

Building Code:
every three years

ADA: 1991
2010

check your local jurisdiction

Why Can't I Go By Building Code?

Only if the State or Local Code provides for a greater degree of accessibility – it can supersede the ADA regulations

Code Officials only become involved with renovations and new construction

Building Code has NO readily-achievable barrier removal requirements

Lack of regulations
equals
Lack of enforcement

NO

The Justice Department has not formalized the website regulations however most of the lawsuits are about websites

The three critical elements of ADA Compliance

1. Design it right
2. Construct it right
3. **Maintain it right**

Have You Done an ADA Evaluation??

It's not too late?

If you insist on doing it yourself, use this checklist:

ADA Checklist for Existing Facilities

https://www.adachecklist.org (pdf)

https://www.adachecklist.org/checklist.html (word)

Importance of Maintaining Accessibility

Everyone must be educated about the importance of maintaining the accessible elements that were designed and constructed in your facility

This is MOST critical in restrooms!!

Let’s Talk About This

Once an area or space has been designed and constructed to be ADA compliant, unknowing employees see an “empty space”

and think…

OH GOOD, I can put something there!!

WRONG

Who is doing what
Contractors











Who Is Doing What - Design Professionals







Who Is Doing What - Employees

Employees are notorious
for not realizing
that an
empty space may be intentional

Examples

- 



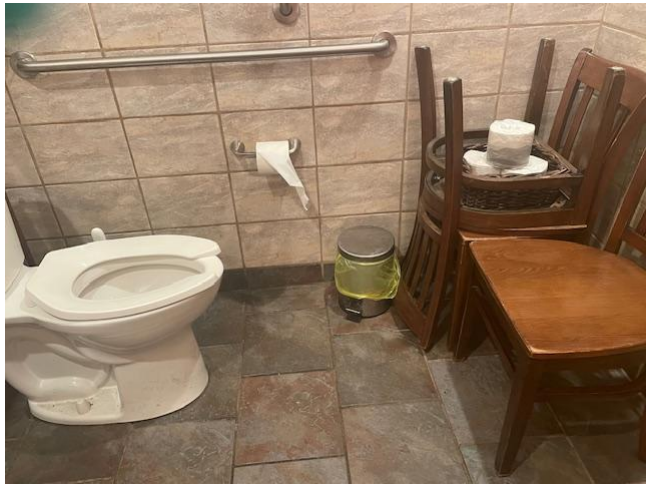







NOTICE









And My Personal Favorite



Educating employees – particularly maintenance and housekeeping

Just because there is an empty space,

does NOT mean that it’s up for grabs!!

People who use wheelchairs and walkers need clear floor space

Where You Need Floor Space

Under sinks

around toilets
at doorways
in front of paper towel dispensers

Where You Are Most Vulnerable

- Before anyone comes into your facility
- The moment someone visits your website

Website Accessibility

https://www.w3.org

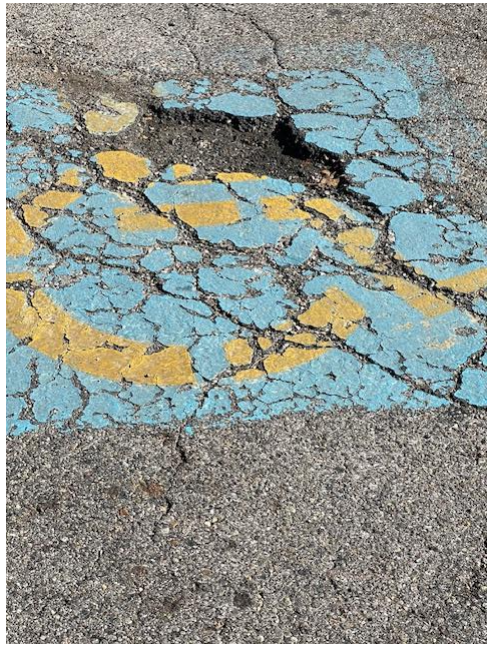
WATCH OUT FOR

CLASS ACTION LAWSUITES

Exterior Elements

1. From the public sidewalk or transit stop to your property
2. From the designated accessible parking space(s) and access aisles
3. Curb ramps that connect parking to sidewalk(s)
4. Accessible route(s)
5. Entrance(s)

Pay Attention to Exterior Elements





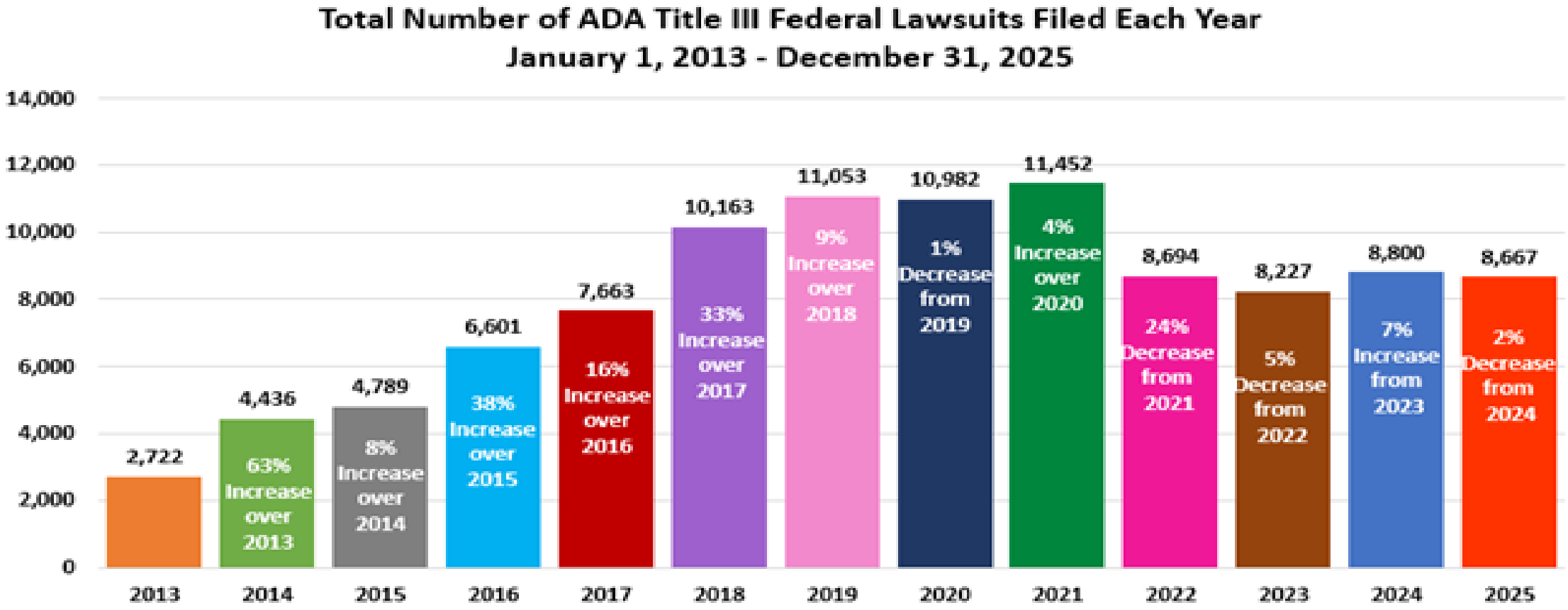






Total Number of ADA Lawsuits

source Seyfarth Shaw



Lawsuits

Between 2013-2021, California, New York, and Florida had the most ADA lawsuits filed. In 2021, nearly 6,000 lawsuits were filed in California, and the serial plaintiffs who sued Lola's Chicken Shack were responsible for filing more than 1,000 lawsuits since 2020. In 2020, over 85% of all website accessibility lawsuits occurred in these three states.

Source: Seyfarth Shaw

An Ounce of Prevention

1. Check your site (exterior)
   a. Look for cracks, changes in level – make that part of your regular maintenance schedule
2. Travel through your facility
   a. Maintain clear aisles (minimum 36” wide)
   b. Double check height of merchandise displays (maximum 48” aff)
3. Check restrooms
   a. Force on door openers
   b. Movable items blocking maneuvering clearance (trash cans at door)
   c. Items blocking clear floor space under lavatories

Don’t Ruin a Good Thing

- You can design and construct an ADA compliant facility – BUT employees can ruin it in a moment!

EDUCATE – EDUCATE – EDUCATE

Build the information into existing training and supervision

Why ADA Compliance Is Important

1. It’s the LAW
2. There are penalties for violations
3. It’s the smart thing to do
4. It’s the right thing to do

Potential Help for You

- Check with your insurance carrier:
  - ADA compliance is part of an active Risk Management Program – many facets are safety-related
  - The costs for remediation of barriers and/or litigation costs can potentially be covered in your insurance package

Check Your Lease

Who has responsibility for common areas:

- parking lot
- sidewalk(s)
- curb ramps/ramps
- common use rest rooms

Check Your Contracts

Your contracts with vendors, design professionals and contractors

Each has responsibility for ADA compliance

The Business Case

- According to the latest data from the Centers for Disease Control and Prevention, 61 million in the United States live with a disability.
- The total disposable adults incomes (post-tax) for working-age individuals with disabilities is **nearly $500 billion**.
- All in all, disabled working-age Americans earn an estimated annual income of **$490 billion** and have an estimated annual discretionary income of more than $20 billion – not to mention the spending power of the friends, family, and professional network of those with disabilities.

Spending Money Defending

- The ADA is 34 years old
- Existing buildings have had a long time to perform “readily-achievable barrier removal”
- Renovations and new construction have been required to comply as they are performed
- Private lawsuits will result in the following financial penalties:
  - Payment of fees to Plaintiff’s lawyers
  - Mitigation of identified barriers
- Department of Justice litigation will result in the following financial penalties:
- $75,000 for first barrier, $155,000 for each subsequent barrier identified
- Legal fees
- Potential punitive and compensatory fines to Plaintiff

Do You Want to Go There?

How would you rather spend your money??

Thank you!!

Joan W. Stein, President

Stein Consulting, LLC

412-736-7161

Jwstein0731@gmail.com

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ADA compliance is smart business.