



How to Comply with Disability Access Laws and Avoid Lawsuits

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ACC AMERICA
Association of Corporate Counsel
Sacramento Chapter

Federal and State Disability Access Laws

■ Americans with Disabilities Act of 1990

- » Injunctive Relief
- » Attorney's Fees and Costs

■ California Civil Code § 54 — Disabled Persons Act

- » Damages (\$1,000)
- » Attorney's Fees and Costs

■ California Civil Code § 51 — Unruh Civil Rights Act

- » Damages (\$4,000)
- » Attorney's Fees and Costs
- » *Munson v. Del Taco, Inc.* (May 6, 2009)

■ Senate Bill 1608 Reforms

Accessibility Standards

■ New Construction – Strict Adherence to Standards

■ Existing Facilities – Barrier Removal

- » Must remove all architectural barriers where “readily achievable” to do so.
- » “Readily achievable” means “easily accomplished and able to be carried out without much difficulty or expense.”
- » Must achieve usability that balances user needs, the constraints of existing conditions, and the resources available for remedial work.

■ Existing Facilities With Alterations

Common Misperceptions

- “My property is grandfathered.”
- “I haven’t made any renovations so I don’t have to make ADA modifications.”
- “If it costs too much, I don’t have to do it.”
- “If I get sued, my insurance company will cover it.”
- “I never got a notice so I can’t get sued.”
- “It’s my landlord’s responsibility.”

Some Legislative Relief

■ Senate Bill 1608

- » Building Inspectors
 - Required local agencies to employ at least one CAsp-certified inspector by July 1, 2010; “sufficient number” of CAsp-certified inspector by July 1, 2014.
- » Architects
 - Requires five hours of coursework on disability access laws every two years license renewal
- » California Commission on Disability Access
 - Began May 1, 2009; Underfunded
- » Consistency With Federal ADA Accessibility Guidelines

Some Legislative Relief

■ Senate Bill 1608

» Property Owners and Tenants

- Applies to properties that have been certified compliant by a Certified Access Specialist (CAsp)
- Expedites process for litigating alleged violations of accessibility standards for businesses
- Allows “qualified defendant” to apply for a 90-day stay and an early evaluation conference
- Written notice to owners of each accessibility issue in a complaint or demand for money damages
- Election not to hire a CAsp inadmissible to prove lack of intent to comply with law

Some Legislative Relief

■ Senate Bill 1608

» Property Owners and Tenants

- Statutory damages available only if violations denied plaintiff full and equal access (i.e., personally encountered or deterred from access)
- “Denial of full and equal access” = plaintiff experienced “difficulty, discomfort or embarrassment because of the violation”
- Eliminates damages calculation on a “per violation” basis
 - » Exception: Multi-Service facilities (e.g., hotel guest rooms, spa, restaurant, and golf course)

» Concerns

- CASp Report Includes Assessment of “Readily Achievable” Barrier Removal
 - » Legal Issue; Requires Review of Financial Records
- CASp Report Provided to Plaintiff and Filed Under Seal
 - » Did you follow the recommendations in the report?
- Application in federal court?

Tax Incentives

■ Tax credit for small businesses for barrier removal

- » 30 or fewer employees or total revenues of \$1 million or less – Disabled Access Credit (IRC § 44)
- » Up to \$5,000 (half of eligible expenses up to \$10,250)

■ Tax deduction for businesses of all sizes for barrier removal

- » \$15,000 per year (IRC § 190)

■ Tax incentives in combination

Know the Opposition

- **Lynn Hubbard (Chico)**
- **Jason Singleton (Eureka)**
- **Scott Johnson (Carmichael)**
- **Paul Rein (Oakland)**
- **George Louie (West Sacramento)**
- **Tanya Levinson Moore (San Jose)**

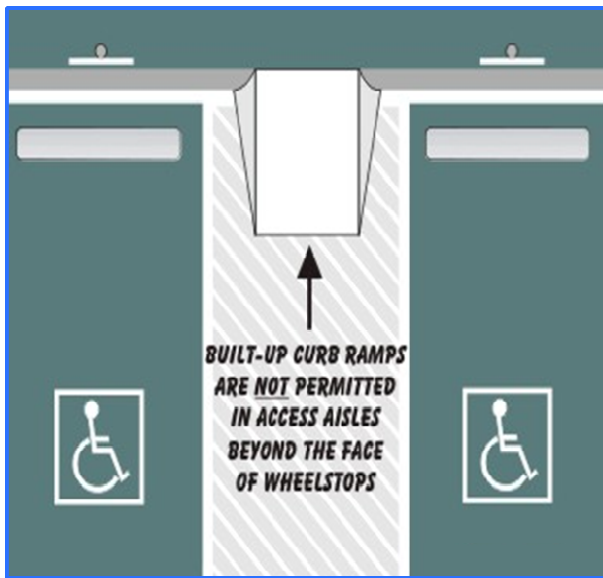
Common Examples of Non-Compliance

■ **Most frequently seen items out of compliance:**



Common Examples of Non-Compliance

■ Ramp encroaching into access aisles



Common Examples of Non-Compliance

- **Accessible aisles adjacent to standard parking spaces not properly configured and not meeting ADA requirements**



Common Examples of Non-Compliance

■ Warning signs are wrong or incomplete



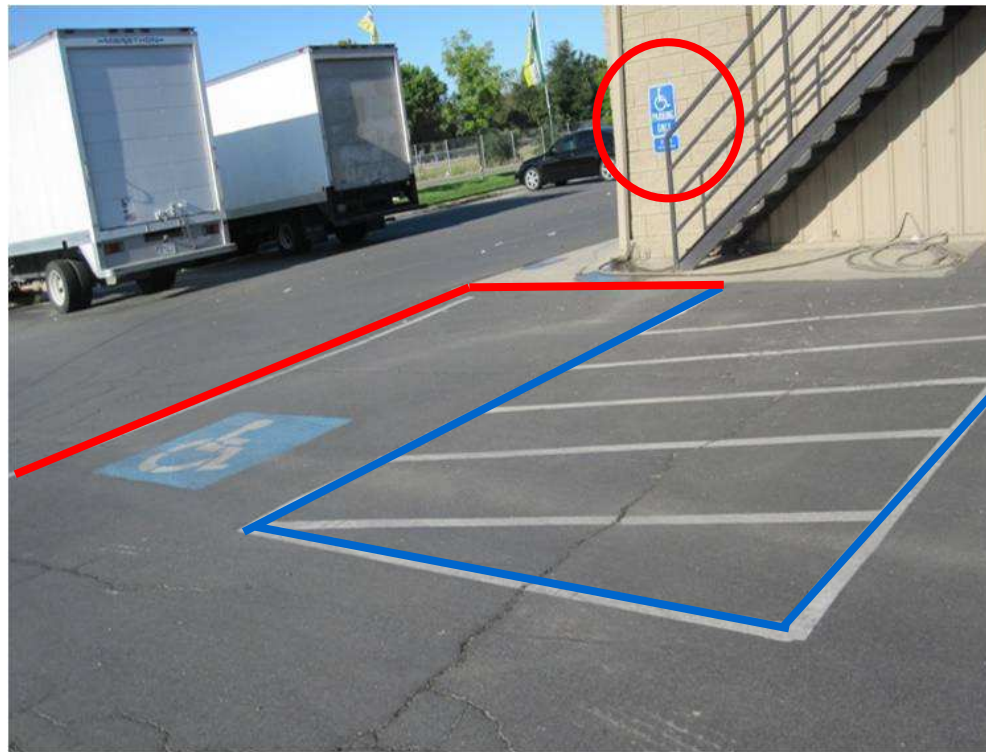
Common Examples of Non-Compliance

■ Missing “No Parking” language in access aisle



Common Examples of Non-Compliance

- **Incorrect length of stripes – Should be 18 feet**
- **Missing minimum fine sign – Minimum Fine \$250.00**



Common Examples of Non-Compliance

■ Mats incorrectly anchored



Common Examples of Non-Compliance

- **1127B.3 Signs** – At every primary public entrance and at every major junction where the accessible route of travel diverges from the regular circulation path along or leading to an accessible route of travel, entrance or facility, there shall be a sign displaying the International Symbol of Accessibility.



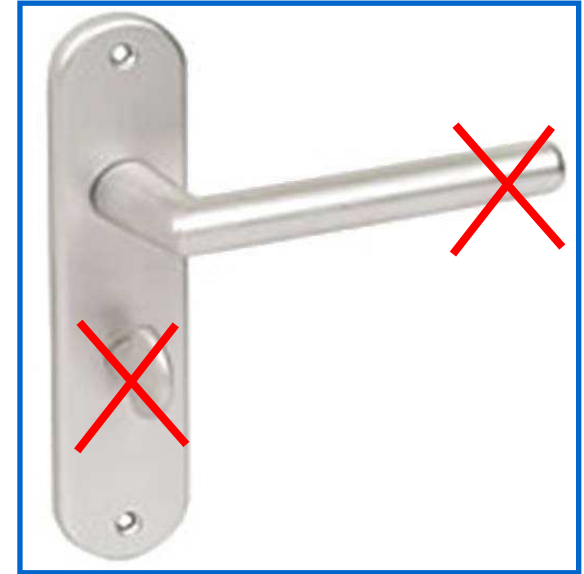
Common Examples of Non-Compliance

- **1133B.2.4.1 Thresholds** – The floor or landing shall not be more than ½ inch (12.7/mm) lower than the threshold of the door way. Change in level between ¼ inch (6.35 mm) and ½ inch (12.7 mm) shall be beveled with a slope no greater than one unit vertical in 2 units horizontal (50-percent slope). Change in level greater than ½ inch (12.7 mm) shall be accomplished by means of a ramp. See Section 1133B.5.1.



Common Examples of Non-Compliance

■ Incorrect Door Handles



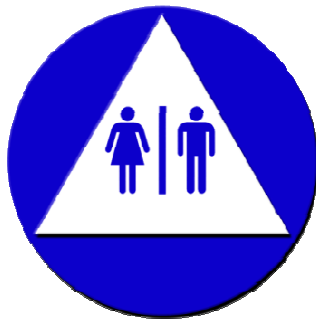
Common Examples of Non-Compliance

- **115B.6 Identification Symbols – Doorways leading to sanitary facilities shall be identified by a geometric symbol in compliance with this section. Geometric symbols shall be centered horizontally on the door at a height of 60 inches (1524 mm) above the finish floor or ground surface measured to the center of the symbol. Edges of signs shall be rounded, chamfered or eased. Corners of signs shall have a minimum radius of 1/8 inch (3.2 mm).**



Common Examples of Non-Compliance

- There is no international symbol of accessibility provided on the door of the toilet facilities



Common Examples of Non-Compliance

- **115B.8.3 Towel, sanitary napkins, waste receptacles, dispensers and controls – Where towel, sanitary napkins, waste receptacles, dispensers, other equipment and controls are provided, at least one of each type shall be located on an accessible route, with all operable parts, including coin slots, within 40 inches (1016 mm) from the finished floor and shall comply with section 11117B.6, Controls and Operating Mechanisms.**



Common Examples of Non-Compliance

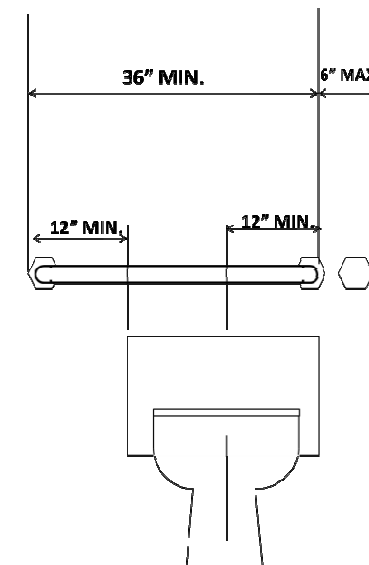
- Pipes beneath the sink are not wrapped



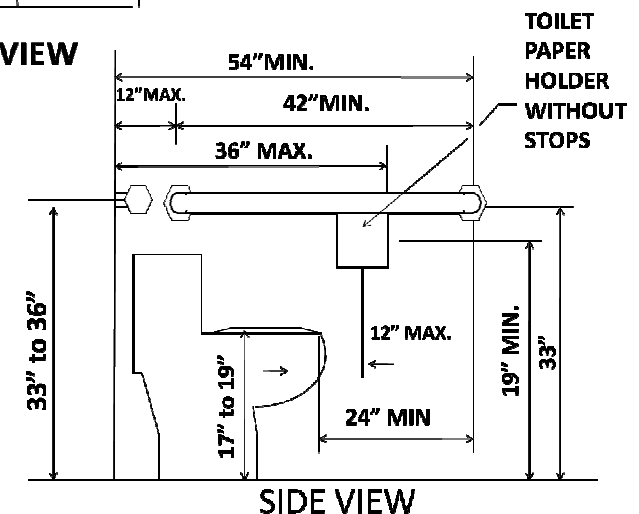
Common Examples of Non-Compliance

■ 1115B.8.4 Toilet Tissue

Dispensers – Toilet tissue dispensers shall be located on the wall within 12 inches (305 mm) of the front edge of the toilet seat, mounted below the grab bar, at a minimum height of 19 inches (485 mm) and 36 inches (914 mm) maximum to the far edge from the rear wall. Dispensers that control delivery or that do not permit continuous paper flow shall not be used.



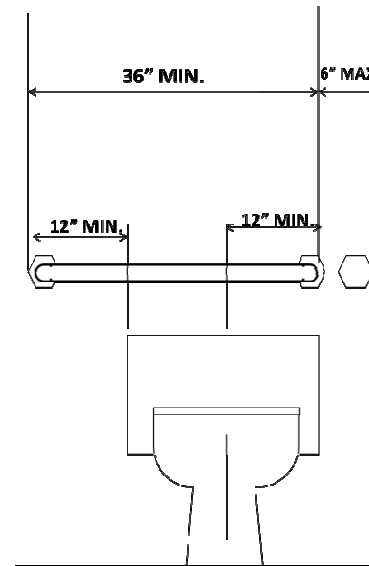
FRONT VIEW



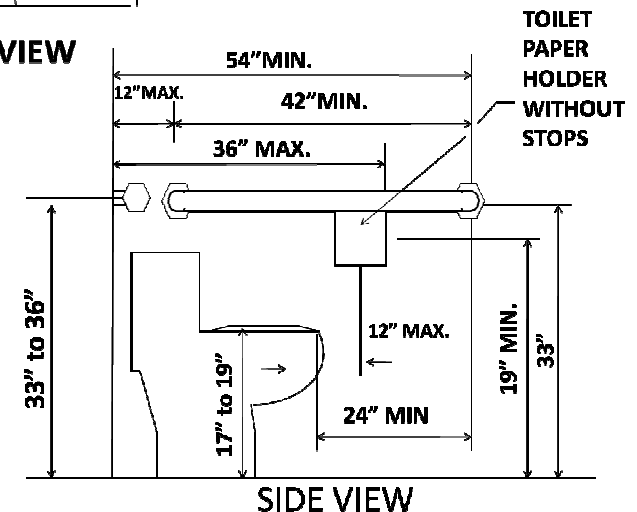
SIDE VIEW

Common Examples of Non-Compliance

- 1115B.4.1.3.1 Side Wall – The side grab bar shall be 42 inches (1067 mm) long minimum, located 12 inches from the rear wall and extend 54 inches (1372 mm) minimum from the rear wall with the front end positioned 24 inches (610 mm) minimum in front of the water closet. The side grab bar shall be securely attached and centered 33 inches (838 mm) above and parallel to the floor.**



FRONT VIEW



SIDE VIEW

Expected Developments

■ Telephone Issues

- » Telephone Typewriters (TTY) / Telecommunication Devices for the Deaf (TDD)

■ Website Issues

- » National Federation of the Blind vs. Target
- » Website connected to a “bricks-and-mortar” store
- » Reader software for the visually impaired

Expected Developments

■ Service Animals

- » Effective March 15, 2011, under the ADA, “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.”
- » Does not include emotional support animals

Questions?

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