Is your business complying with disabled-access laws?

Steve Schraibman, a Certified Access Specialist, checks on building compliance with disabled access laws at the office of Bon Suisse in Poway. Failure to comply can lead to costly lawsuits. Here, he inspects the women's bathroom, accompanied by company co-owner Elena Kassner. (John Gastaldo)

Threat of lawsuits, concern for customers drive efforts to upgrade facilities

Exerpt from 2011 Article in Union Tribune, By Tanya Mannes
April 18, 2011 3 PM PT

State-certified inspections

• A 2008 state law, SB 1608, was intended to increase compliance with laws providing equal public access to businesses for people with disabilities while reducing unwarranted litigation. It empowers state Certified Access Specialists (CASp) to inspect buildings at the request of an owner or tenant. The CASp then provides a notice that gives the business owner certain legal protections in the event of a lawsuit.

• The state published its first list of CASps in October 2008. To find a specialist, visit **dgs.ca.gov/dsa/Programs/programCert/casp.aspx**

Top violations in disabled-access lawsuits

1. Signs missing, wrong or incomplete. Example: A sign says that anyone parking illegally in accessible parking spots will be towed, but fails to name the towing company or provide a phone number.
2. Site barriers. Examples: A walkway has obstructions such as cracks or fire hydrants, making it difficult for a wheelchair to pass through. A parking lot lacks a defined path from the disabled parking to a sidewalk.
3. Parking stalls or aisles. Examples: A parking stall isn't striped properly or an aisle is too narrow.
4. Curb ramps. Example: There is a curb ramp going up from the accessible parking spot to the sidewalk, but no ramp allowing a person in a wheelchair to get from the sidewalk to the store entryway.
5. Pedestrian ramps and handrails. Example: There's a ramp, but no handrail, leading into the store entryway.
6. Stairs and handrails. Example: A stairway has a handrail, but it's too high or low for a person in a wheelchair.
7. Doors. Examples: A door is too narrow, or it slams shut in fewer than three seconds, making it difficult for someone with a cane to maneuver through it.
8. Restrooms. Examples: The restroom is too small and there is a lack of turning space. Towel dispensers are mounted too high.
9. Dressing rooms in clothing stores. Examples: There is insufficient floor space or a bench is too small or light.
10. Retail store aisles. Example: A stacked merchandise display blocks the path of travel. (Paul Joelson, architect)

Elena Kassner, who co-owns an ice cream-distribution business, recently decided to move its headquarters to a newer office park, in large part to offer better access for employees and clients with disabilities.

"In the old building, the handicap elevator would work some days, and sometimes would not work," Kassner said. "Every day people would be parking in the handicap spaces."

The new Bon Suisse corporate office building in Poway is a major upgrade. It has disabled parking spots with fresh blue striping. There's a spacious bathroom with grab bars around the toilet. The hallways — and even the walkway into the commercial freezer — are wide enough for a wheelchair.

Kassner is among an increasing number of business owners paying attention to accessibility. The efforts are driven mainly by the threat of lawsuits but also reflect customer demand. Many people have disabilities, from veterans of the Iraq and Afghan wars to aging baby boomers with bad knees or poor vision. They all expect businesses to provide them with the same services as other customers, and the law is on their side.

Federal laws on disabled access have been around since the early 1990s, but the new focus stems from high-profile lawsuits against companies such as Burger King and Del Taco as well as others targeting "mom and pop" restaurants and strip malls. Plaintiffs usually cite the federal Americans with Disabilities Act and similar state laws in seeking changes and/or damages.

Kassner isn't facing litigation. She is taking proactive steps to ensure her business complies with the law. The reason is also partly personal: She has difficulty walking because of a chronic pain condition known as reflex sympathetic dystrophy. "Being handicapped, it's very difficult," Kassner said. "It's very expensive to comply with the law, but we are doing it to make sure people can get around."

She has hired a state-approved inspector, Steven Schraibman, architect and president of ARCOR-Inc. in San Diego, to "audit" her workplace under a new state process intended to help businesses comply with the rules and avoid burdensome lawsuits.

Common violations at businesses include narrow doors, tiny bathrooms, a lack of ramps in entryways and improperly placed grab bars in bathrooms.

While many lawsuits are based on genuine concerns about accessibility, some are "drive-by" suits filed by people who haven't been customers (some claim that they attempted to access the business without success) and are seeking a monetary settlement. "I've seen people use Google Street View to go out and assess a site," said Paul Joelson, Architect.

One of the best-known plaintiffs in San Diego is attorney Theodore Pinnock, who has targeted hundreds of businesses to force compliance with disability laws and has received many settlement payments.

"It is cheaper to fix a ramp and stripe a parking lot for $5,000," Joelson said, "than to pay your attorney, pay the other attorney and maybe settle a case for $20,000."

Federal law states that buildings constructed before July 1992 must remove barriers to the extent "readily achievable" and that newer buildings must be fully compliant with accessibility laws.

But the state's Unruh Civil Rights Act doesn't allow for "grandfathering," said attorney Kurt Campbell of Klinedinst, San Diego, who has represented many business defendants in such cases.

That means businesses must provide "full and equal accommodations," even when "financially impracticable," he said.

"Particularly in California, property owners ignoring ADA compliance issues are playing with fire and may eventually get burned," Campbell said. "The question is: 'How badly?'

In the worst-case scenario, a lack of accessible facilities could result in an injury or death — and, likely, a lawsuit. In one case, a business was sued by the surviving daughters of a woman who

fell down a stairwell that lacked handrails. The woman fractured her hip and underwent emergency surgery, then died of complications.

In other instances, plaintiffs have sued after being hit by cars in parking lots because the businesses didn't provide a safe path from the disabled parking spaces to the business.

Spotting problems

Experts caution that ADA violations can be hard to spot for the untrained, although do-it-yourself types are welcome to try.

"You will find barriers in any property," Schraibman said. "For some buildings it's almost impossible to be 100 percent compliant, for example, because of sloping sites. But you can reduce the risk, make it more accessible and lower the incidence of claims."

Even a new facility may not meet all the standards, which include requirements that a door take longer than 3 seconds to close and rules about the proper height of a paper towel dispenser. Each violation of those rules could result in a $1,000 penalty, plus attorney's fees.

The U.S. Department of Justice's most recent guidelines for small businesses were published in March. Titled "ADA Update: A Primer for Small Business," the 16-page illustrated guide can be viewed at **www.ada.gov/regs2010/smallbusiness/smallbusprimer2010.htm.**

Voluntary inspections

A 2008 state law empowered certain qualified professionals to become "Certified Access Specialists," or CASp, who, for a fee, will inspect a business, suggest upgrades and provide an inspection report and certificate that is displayed like a business license. That shows a business owner's "good faith" effort, and can temporarily halt a lawsuit for 90 days.

The law "gives business owners rights that they have not had up to now — but only if they initiate the process of becoming certified," Schraibman said.

In a typical inspection, Schraibman carries a clipboard with an extensive checklist as he makes the rounds of a property. He uses specialized equipment, such as a pressure gauge to check doors, and a level to measure the slope of the disabled parking spaces. Even minor violations — such as faded parking space lines — have resulted in lawsuits, so he notes them all. In his experience, the biggest key to avoiding litigation is having proper signs, which comes up in almost all lawsuits.

A business owner who can't afford to make certain upgrades needs to be prepared to argue in court that it would be a hardship and present information on the business's resources.

"Most of the violations are very simple to remove," Schraibman said. "We're always looking for the simplest and easiest way to solve a problem."