

Getting Hit by the Serial ADA Plaintiff: What Hotel Management Should Know...

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Hotels, like so many other businesses, are increasingly being hit with lawsuits claiming discrimination against disabled individuals in violation of Title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12181-12189. These lawsuits are being filed by what are called ADA testers-individuals who visit businesses intentionally looking for non-compliance with the requirements of the ADA. These individuals file dozens of lawsuits at a time and are considered somewhat serial plaintiffs.

Common complaints presented involve issues relating to architectural barriers in the business's parking lot (e.g., inadequate or no handicap parking spaces; lack of access ramps) or inside the business complex itself (e.g., lack of handicap accessible restrooms; lack of access ramps), which impede the disabled plaintiff's ability to navigate and/or access the property. With the number of these lawsuits increasing on an annual basis, businesses should be aware of key defenses to be argued, particularly those relating to the plaintiff's ability to bring the lawsuit altogether (their standing).

Now, you likely won't know that you've been visited by one of these ADA testers until you receive a copy of the lawsuit, at which point your options are to proceed in defending the lawsuit or attempting to settle early on out of court. Obviously, your counsel will assist you in determining what the best plan is for you, but it is worth knowing that the majority of these cases do result in settlement out of court due in large part to the attorney fee component attached to the claim.