

FAQ for Businesses about ADA Title III Lawsuits:

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Currently, DIG does not represent business owners in lawsuits, but we always appreciate the opportunity to speak to business owners about how to be more accessible and inclusive for their customers with disabilities. But when they are sued, these are my most common questions:

1. Why me. Why did I get sued?

There are two kinds of suits – a suit by an advocate whose mission is to make the world accessible or a person who this is his first suit or one of a few. For the person who does not have a mission, the reason is that the person was treated so horribly by the public accommodation that he or she is horribly angry and wants to ensure that the same treatment never happens to anyone else. The professional advocate notes several barriers to access, primarily starting at inaccessible parking and entrances. In a recent Eleventh Circuit Court of Appeals decision where it upheld an advocate's rights to uphold his rights as an advocate to uphold the law, the dissent in the Court of Appeals stated:

The Plaintiff is a serial litigator. The misfortune of his disability does not make him less so. Plaintiff has been a party to 170 cases in the Southern District of Florida and 101 in the Middle District. His travels up, down, and across the byways of South Florida, doggedly in search of a grievance to call his own, are worthy of a Carl Hiassen plot. Seeking injunctions, costs in every variety, and monetary grist for the mills of his attorneys' offices (the wheels of which surely grind exceeding expensive), this plaintiff is doubtless a force with which many a small business will reckon.

In as much as the dissent meant this in a derogatory way, most advocates would view this description (with the exception of calling a disability a "misfortune") as a badge of honor. This is a person that should have no personal stake in obtaining equality and community integration for the entire community of persons with disabilities.

2. This professional plaintiff has filed hundreds of cases. He has never been to my business. This is EXTORTION! The attorney is a bottom-feeder hack! I want to sue them back for fees!!

OK. Let it all out and tell it to your psychologist. This is an almost 25 year old law, and you should not need a personal invitation to integrate the disability population into your business. Ring, ring - this is your wake-up call. Get it done. The only way that you are going to prevail is if the plaintiff does not have a disability (Yes, it has happened before), or if the plaintiff did not know his attorney filed the suit (again, yes this has happened before). Even if he has not been to your business, he would need to prove that (1) he has knowledge of the barriers, and (2) he has an intention to go to your business in the future.

3. Oh man, the attorney's fees are adding up. They gave me a settlement, should I just sign it and pay their fees and move on? Better yet, should I just agree to pay them and do nothing at all?

NO NO! Please don't do that. The best thing to do is to hire a lawyer, and if the case involves any construction work, a trusted architect or contractor. More likely than not, if you sign a settlement without any advice, you will be required to do modifications that are not required by the law, which will cost much more than your immediate fees. If you negotiate without doing modifications, you will still be open to another suit. Your goal in resolving a case under the ADA is to become compliant with the law, and not only to settle the lawsuit. It may be more expensive on the front-end, but it is cheaper in the long run.

4. Can I get sued again?

You cannot be sued again if your business meets the architectural guidelines of the ADA. However, if your business was constructed or altered prior to 1993, then you need only to make modifications that are readily achievable, which is defined as easily accomplishable without undue expense. This may be less than the architectural guidelines, but the extent of the modification will be up for debate. So, there is always a chance.

5. How do I avoid being sued?

That's the wrong question. The right question is - How can I be more inclusive and welcoming for my customers with disabilities? Persons with disabilities includes approximately 20% of the population, and are a major part of our economy and your business. Most persons who are currently able-bodied have friends, co-workers, and family members with disabilities. YOU probably have a person in your family that has a disability and need an accommodation. As such, the number one issue is always an attitude change. If you have a good attitude and treat persons with disabilities as valued customers and cater to their needs, you may not get sued. Ensure that your aisles and fixtures are placed where people in wheelchairs could reach them, teach employees to ask ALL customers if they want assistance. Read and review the [business briefs](#) published by the Department of Justice.

Second, in Florida, and in most states, the current building code includes an [accessibility code](#) that uses the ADA as its floor. Call in your friendly neighborhood contractor and tell them that you want to be in compliance with the accessibility code. If you are doing some renovations, make sure that the renovations comply with the ADA or local accessibility code. If not, make a schedule of modifications to be done, starting with the parking and access into the facility, along with the low cost modifications, and then to the more expensive modifications. For businesses with less than 30 employees or less than one million in gross receipts, the IRS permits a [disability access tax credit](#) which allows a maximum of \$ 5,000 of tax credits per year for expenditures related to ADA compliance.