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# **Americans with Disabilities Act (ADA): Minimize the lawsuit risks to your business**

Presented by:

Martin Kappenman, Seaton, Peters & Revnew, P.A.

Cal Brink, Marshall Area Chamber of Commerce

Ben Gerber, Minnesota Chamber of Commerce

## AMERICANS WITH DISABILITIES ACT

- The Americans with Disabilities Act (ADA) was enacted in 1990. 42 U.S.C. § 12101, *et seq.*
- The ADA has five titles (sections), which prohibit discrimination against people with disabilities in the areas of:
  - Employment
  - Transportation
  - Communication
  - Access to services, goods, and public accommodation
- This presentation relates only to Title III – Public Accommodation

## Title III – Public Accommodation

- Title III guarantees that individuals with disabilities are offered full and equal enjoyment of the “goods, services, facilities, privileges, advantages, or accommodations” offered by a place of public accommodation.
- *Disability* means a physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of such an impairment; or being regarded as having such an impairment.
- *Public Accommodation* means any private place of business or nonprofit group that is open to the public for the sale or lease of goods and services.

## Public Accommodation - Examples

**The ADA provides the following examples as places of public accommodation:**

- (1) Place of lodging, (with some exceptions);
- (2) A restaurant, bar, or other establishment serving food or drink;
- (3) A motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;
- (4) An auditorium, convention center, lecture hall, or other place of public gathering;
- (5) A bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;
- (6) A Laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;
- (7) A terminal, depot, or other station used for specified public transportation;
- (8) A museum, library, gallery, or other place of public display or collection;
- (9) A park, zoo, amusement park, or other place of recreation;
- (10) A nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;
- (11) A day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and
- (12) A gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

## Title III – What is required?

- Places of public accommodation are required to make reasonable modifications to their policies, practices, and procedures in order to make their goods and services available to people with disabilities. Modifications are implemented in three ways:
  - 1) **Modifying programs or practices** – Unless modification would “fundamentally alter” the goods, services, or operations
  - 2) **Making available auxiliary aids and services** – Such as interpreters, assistive listening headsets, t.v. captioning, large print materials, etc...
  - 3) **Removing architectural barriers in buildings** – Existing facilities vs. new construction

## Removing Barriers – Existing Facilities

- Physical barriers to entering and using existing facilities must be removed when “readily achievable,” which means “easily accomplishable and able to be carried out without much difficulty or expense.”
- Examples of barrier removal include: installing ramps, making curb cuts at sidewalks and entrances, rearranging furniture, widening doorways, and installing grab bars in toilet stalls, etc...
- When readily achievable, barrier removal measures must comply with the requirements of the ADA Accessibility Guidelines
- If barrier removal is not readily achievable, alternative steps must be taken to make goods and services accessible.
- Examples of alternative measures include: providing goods and services at the door, sidewalk, or curb; providing home delivery; retrieving merchandise from inaccessible shelves; relocating activities to accessible locations; etc...

## Removing Barriers – New Construction and Alterations

- All newly constructed places of public accommodation must be accessible to people with disabilities to the extent it is not structurally impracticable
- New construction requirement applies to any facility occupied after January 26, 1993, for which the last application for a building permit is certified as complete after January 26, 1992.
- Alterations after January 26, 1992, to existing places of public accommodation, must be accessible to the maximum extent feasible
- New construction and alterations must be in compliance with the ADA Accessibility Guidelines

## Minnesota Human Right Act (MHRA)

- Minn. Stat. § 363A.11 states that “[it] is an unfair discriminatory practice:
  - (1) To deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation because of ... disability...; or
  - (2) For a place of public accommodation not to make reasonable accommodation to the known physical, sensory, or mental disability of a disabled person.”
- Minn. Stat. §§ 363A.11, Subd. 2 provides generally that it is unlawful discrimination to deny individuals with disabilities an opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations that are equal to the opportunities afforded to other individuals

## Remedies Under the ADA & MHRA

- Private lawsuits under a combination of the ADA and MHRA allow for the following damages:
  - Temporary injunction
  - Permanent injunction
  - Restraining order
  - Orders to remove barriers, provide auxiliary aids, or make other modifications to become ADA compliant
  - Civil penalties
  - Attorneys' fees
  - Litigation expenses and costs
- Private lawsuits under the ADA and MHRA do NOT allow for monetary damages

## So What About the Money? – Civil Damages For Bias Offenses

- Minn. Stat. § 611A.79 provides that person who is damaged by a bias offense has a civil cause of action against the person who committed the offense. The plaintiff is entitled to recover the greater of:
  - (1) \$500; or
  - (2) actual general and special damages, including damages for emotional distress.
- A plaintiff also may obtain punitive damages or an injunction or other appropriate relief.
- "Bias offense" means conduct that would constitute a crime and was committed because of the victim's or another's actual or perceived...disability...
- Also -- Minn. Stat. § 363A.30 provides that any person who commits an unfair discriminatory act under Minn. Stat. § 363A.11 is guilty of a misdemeanor.

## “Drive-by Lawsuits”

- Since late 2013, over 50 public accommodation lawsuits in the Federal District Court of Minnesota and over 30 public accommodation lawsuits in Minnesota State Court have been filed
- Many more suits may have been served but not yet filed
- Lawsuits brought primarily on behalf of the Disability Support Alliance
- All complaints in Hennepin County have been assigned to Judge Porter, who has written that “[t]he serial nature of these cases brought by one plaintiff against a number of defendant businesses raises the specter of litigation abuse, and Mr. Hansmeier’s history reinforces this concern.”
- The Minnesota Attorney General’s Office has forwarded ethics complaints to the Lawyers Professional Responsibility Board.
- Disability Support Alliance members report average claim settlement is \$8,000

## Preemptive Action

- Owners and operators of places of public accommodation, are urged to conduct audits of their property's compliance with Title III before falling victim to a lawsuit
- Attorneys and architects familiar with the law can assist with the discovery and correction of violations before they become a problem
- Attention to compliance issues is particularly important any time a business undertakes structural improvements, or additions, or ownership changes because the construction or transfer of control may trigger new obligations for accessibility that did not previously exist.

## Insurance

- Contact your insurance carrier to determine whether you have coverage for these claims.
- Beware, deductibles and injunctive relief can undermine the benefit of insurance in some of these cases.

## Prepare Managers

- Your onsite managers need to be aware of these lawsuits and have a plan of action.
- Train front line employees on to alert management of customers with complaints or concerns regarding accommodations.
- Be prepared to make the quick and easy changes. For example, moving tables and chairs around when these Plaintiffs show up and raise concerns.
- Retain records of the interactions. Preserve your security camera footage.

## Avoid Angry Reactions

- As frustrating as these lawsuits and claims are for business owner, a calm response is best.
- Don't make threats, don't swear, don't kick complainants off the property.
- Keep in mind the Judge will find elements of your case sympathetic, don't undermine that chance by being obnoxious in response.

## How to Respond to Claims and Lawsuits

- If presented with a claim or lawsuit, owners and operators of places of public accommodation are urged to contact legal counsel immediately.
- Time sensitive deadlines may exist, particularly after service of a Summons and Complaint.

## Marshall Area Chamber of Commerce

- The Americans with Disabilities Act of 1990 (ADA) is a law that was enacted by the [U.S. Congress](#) to establish a clear and comprehensive prohibition of discrimination on the basis of disability. It states that the ADA requires public accommodations to provide goods and services to people with disabilities on an equal basis with the rest of the general public. The goal is to afford every individual the opportunity to benefit from our country's businesses and services, and to afford our businesses and services the opportunity to benefit from the patronage of all Americans. ADA was [signed into law](#) on July 26, 1990, by President [George H. W. Bush](#), and later amended with changes effective January 1, 2009.

## Marshall Area Chamber of Commerce

- On January 26, 1992 the Readily Achievable Barrier Removal Plan was put into place. The ADA requires that small businesses remove architectural barriers in existing facilities when it is “readily achievable” to do so. Readily achievable means ‘easily accomplishable without much difficulty or expense’. This requirement is based on the size and resources of a business. Therefore, businesses with more resources are expected to remove more barriers than businesses with fewer resources.

## Marshall Area Chamber of Commerce

- Marshall Area Chamber of Commerce brought representatives from the City of Marshall, Southwest Center for Independent Living (SWICL), and Minnesota State Council on Disability (MSCOD) to discuss ways we could raise our members' awareness of disability issues. Together, we condensed the version of accessibility and building codes with the hopes that people would not feel as overwhelmed as they looked through the document. We set priorities for barrier removal as Parking, Entrance, Shop-ability, and Check-out.

## Marshall Area Chamber of Commerce

### **PARKING**

- Provide adequate number of parking spaces
- Make sure spaces are properly marked and spaced

## Marshall Area Chamber of Commerce

### ENTRANCE

- Provide access to the business from public sidewalks, parking areas, and public transportation
- Make sure entry to store is easily accessible

## Marshall Area Chamber of Commerce

### SHOP-ABILITY

- Provide access to goods by making sure walkways are wide enough and clear
- Make sure that all goods are accessible with reasonable accommodations if necessary
- Provide access to public restrooms and other amenities offered to the public, such as drinking fountains
- Customer awareness

## Marshall Area Chamber of Commerce

### CHECK-OUT

- Provide efficient means of check-out, such as using a clipboard if counter is too high or providing a lower counter

## Marshall Area Chamber of Commerce

- Each business that requested our assistance received help with the ADA audit, Plan document, and Reimbursement document. We also provided each business with links to the more extensive listing of accessibility and building codes because we realize each business is unique and may need a more in depth explanation of certain areas.

## Marshall Area Chamber of Commerce

**AUDIT**

- Using this document, we worked with each business to identify areas of concern. We also provided each business with links to the more extensive listing of accessibility and building codes because we realize each business is unique and may need a more in-depth explanation of certain areas.

## Marshall Area Chamber of Commerce

### PLAN DOCUMENT

- We helped the business complete this Readily Achievable Barrier Removal plan based on their areas of concern and resources available. Common ADA compliance issues in businesses have been the number of parking spaces, handicapped parking spaces, bathroom spacing issues, up to date grab bars in bathrooms, aisle width & checkout counter height. After the plan was completed, we presented the business with a window decal and table tents.

## Marshall Area Chamber of Commerce



**CURRENT ADA: READILY ACHIEVABLE BARRIER REMOVAL PLAN IN PLACE**

ESTABLISHED 2015

• PLAN ADJUSTMENTS CONSIDERED UPON REQUEST •

## Marshall Area Chamber of Commerce



**For our customers with disabilities, please let us know if we can further assist you in any way.**

## Marshall Area Chamber of Commerce

### REIMBURSEMENT DOCUMENT

- We worked with the City of Marshall and our Economic Development Authority (EDA) board to secure matching funds for improvements businesses make. The business completes the grant form, and submits that along with receipts. The program provides a 50/50 match and grant up to a maximum of \$2000.

## Marshall Area Chamber of Commerce

### **CITIES AFFECTED BY ADA LAWSUITS**

- Since January 2015 there have been 70+ lawsuits across the state starting in Marshall but expanding to Mankato, Rochester, Shakopee, Jasper, Watertown, Minneapolis, St. Paul, Columbia Heights, St. Louis Park & Bloomington.

## What the Minnesota Chamber is doing

- Building a statewide coalition to fight this issue.
- Engaged the U.S. Chamber of Commerce and the Institute for Legal Reform
- Reached out to Minnesota's congressional delegation to brief their staff on this issue.

## Working on Potential Legislation

- Require notice (including specific language) and a statutory timeframe to remedy the alleged violation before a lawsuit can be filed.
- Reduce ability to obtain financial damage awards.
- Provide relief for businesses that obtain a voluntary compliance audit.

## What Can You Do?

- Speak with your state legislator about the issue
- Become familiar with the ADA small business compliance manual available at <http://www.ada.gov/smbusgd.pdf>
- If you believe an attorney filed a meritless or harassing claim you can file a complaint with the Minnesota Lawyers Professional Responsibility Board at <http://lprb.mncourts.gov/Pages/Default.aspx>

QUESTIONS?

**Thank you!**

**MARTIN D. KAPPENMAN**

Shareholder, Seaton, Peters & Revnew PA  
952.921.4603 | [mkappenman@seatonlaw.com](mailto:mkappenman@seatonlaw.com)

**CAL BRINK**

Executive Director, Marshall Area Chamber of Commerce  
507.532.4484 | [calb@marshall-mn.org](mailto:calb@marshall-mn.org)

**BEN GERBER**

Manager, Energy & Labor/Management Policy, MN Chamber  
651.292.4663 | [bgerber@mnchamber.com](mailto:bgerber@mnchamber.com)

This Webinar is intended to be educational and not a substitute for legal advice tailored to the facts of your particular situation.

## Upcoming MN Chamber Events

### **CHAMBER 101....AND ½!**

August 11 | 3:00 – 4:00 p.m.  
St. Paul Saint's CHS Field

### **WOMEN IN BUSINESS**

August 11 | 4:00 – 6:00 p.m.  
St. Paul Saint's CHS Field

### **LEADERSHIP PAC FUNdraiser**

September 10 | 4:00 – 6:00 p.m.  
Surly Brewing Co.

### **CYBER SECURITY WORKSHOP**

September 16 | 8:30 a.m. – Noon  
Hyatt Place Minneapolis

### **MANUFACTURERS' SUMMIT**

October 2, 2015 | 11:00 a.m. – 1:00 p.m.  
TBA

### **2015 BUSINESS CONFERENCE & ANNUAL MEETING**

October 22 | 7:30 a.m. – 1:30 p.m.  
Minneapolis Marriott Northwest

[www.mnchamber.com](http://www.mnchamber.com)