

UNITED SPINAL_{NOW}

Number of ADA Lawsuits Has Increased

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Advocacy by people with disabilities is a phenomenon that's over forty years old. Plaintiffs with disabilities use the courts to stop discrimination and ensure that construction is accessible but, of late, there has been a perceived increase in the number of Americans with Disabilities Act (ADA) lawsuits.

For over a decade, there have been efforts to limit the ability to file ADA barrier removal lawsuits. Damages are not available under the ADA to successful litigants for barrier removal. The only thing available is a court order to remove the barrier and, perhaps, an award of attorney's fees.

Many state laws, however, including New York's, allow damages for failure to remove barriers if that failure is deemed a discriminatory practice by the court. Therefore, a successful ADA barrier removal claim coupled with a successful state discrimination claim can result in a damages award for failure to remove barriers. Those who seek to weaken the ADA via amendment will be unable to change state law non-discrimination provisions which permit damage awards.

According to the Administrative Office of the United States Courts (AO) the overall number of civil rights cases brought in Federal District Courts (the courts where federal lawsuits begin) has gone down but the number of cases brought under the ADA has increased by 300 percent in recent years. Most of these cases were filed in California, Florida and New York.

In 2005, the AO began publishing statistics on ADA cases filed in district courts. They are a sub-category of civil rights cases on the civil rights docket. The AO divides ADA cases into "employment discrimination" claims and "all other" claims. Most of the other claims involved public accommodation issues.

In 2017, district courts civil rights filings numbered almost 40,000 cases. That's about 14 1/2 percent of all cases in federal court. ADA cases, however, were about 27 percent of all the civil rights cases (10,773 cases). Between 2005 and 2017 the number of civil rights cases decreased in federal courts by about 12 percent, however, the number of ADA cases increased by 400 percent. Of those, about 15 percent were employment discrimination cases – the rest mostly public accommodation discrimination cases, especially claims raising limited access at businesses such as restaurants, theaters, schools and office buildings.

It is predictable that as baby boomers age and want to remain active they will confront inaccessible facilities that are no longer usable by them because of their decreased mobility. Baby boomers came of age at a time when the civil rights movements of blacks and women matured and when social activism (primarily against race and sex discrimination and the war in Vietnam) was on the nightly news. They will look to government and the courts to solve their problems, i.e., the rate of barrier removal lawsuits is unlikely to subside.

It is possible that after Election Day those who seek to weaken the barrier removal provisions of the ADA will have lost seats in Congress and the ADA Education and Reform Act, which has currently passed the House and is pending in the Senate, will be less of a problem. However, weakening the ADA has been on the horizon of many Congressional representatives, including 12 house Democrats, who were among those that voted for it this year. Justin Dart, the godfather of the effort to pass the ADA, used to say, "vote like your life depends on it". Definitely access to the built environment and the well being of the ADA depend on it.