

ADA ALERT: NEW REGULATIONS NOW IN EFFECT

Existing U.S. properties may need retrofitting

New construction will have to comply with new guidelines

by Martin H. Orlick

On July 23, 2010, the U.S. Attorney General signed into law revisions to the Americans with Disabilities Act Accessibility Guidelines (ADAAG), now the ADA Regulations. On September 15, 2010, the 2010 Standards were published in the Federal Register, beginning the 6 month implementation period. The 2010 Standards affect all U.S. retail stores, shopping centers, hotels, financial institutions, wineries, health clubs, and other properties such as restaurants which are a classified "public accommodations" under the American with Disabilities Act of 1990 (ADA).

Compliance with the revised "2010 ADA Standards for Accessible Design" (2010 Standards), will take effect March 15, 2011 and will be required after eighteen months for new construction, alterations, and barrier removal. The 2010 Standards are the first sweeping changes to the guidelines in nearly 20 years.

The 2010 Standards impose scoping requirements (e.g. the number of dressing rooms in a facility which must be fully accessible) and technical requirements (i.e. the specifications a business must meet to be fully accessible). The 2010 Standards also include clarifications of the 1991 Standards, address updates based on recent technological

evolutions, and tackle issues which have arisen from the U.S. Department of Justice's enforcement efforts since 1991.

Owners of existing businesses will need to review their properties, policies, practices and procedures to ensure they are in compliance with the new Standards and retrofit where necessary to meet them. Property developers will need assurances from their design and construction companies that the new regulations are being worked into their plans.

The Department of Justice is enforcing ADA compliance through audits, voluntary compliance programs and, in some cases, through lawsuits. In some states, like California, accessibility advocates and their plaintiff lawyers have brought ADA lawsuits against thousands of California businesses.

You can avoid the surprise and expense of an ADA lawsuit by auditing your premises, policies, practices and procedures early to bring your properties into compliance.

The new 2010 Standards can be downright confusing to navigate alone. Please call on us to help interpret the new Regulations and understand how they will affect your business.

ADA ALERT: NEW REGULATIONS NOW IN EFFECT

by Martin H. Orlick



Martin H. Orlick is a transactional and trial partner in the Real Estate Department of Jeffer Mangels Butler & Mitchell's San Francisco office. He is a member of the American College of Real Estate Lawyers (ACREL) and has been a member of the International Council of Shopping Centers (ICSC) for over 20 years. He has defended more than 300 ADA cases for shopping center developers, banks, retailers, restaurants, hotel owners, wineries, public entities, parking companies, and other commercial businesses. He can be reached at 415.984.9667 or morlick@jmbm.com.