DISTRICT COURT RULES THAT LONGER BENCHES IN ACCESSIBLE DRESSING ROOMS ARE ADA-COMPLIANT
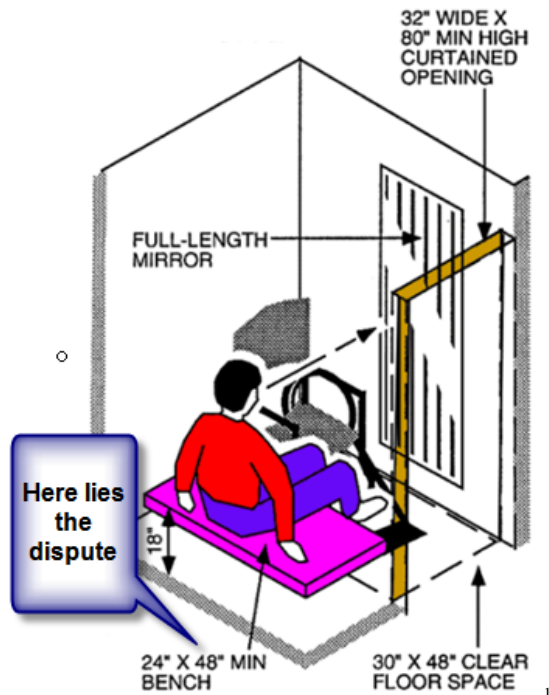
by Martin H. Orlick, 06/03/10

In the last month, the United States District Court for the Southern District of California found that a 60" long fitting room bench in a wheelchair-accessible dressing room is an "equivalent facilitation" in compliance with the Americans with Disabilities Act (ADA) of 1990 and its guidelines.

In recent months, there has been a deluge of ADA lawsuits filed against many of the nation's leading apparel retailers by a lone California plaintiff's attorney. The alleged violations involve inaccessible fitting rooms, focusing on the length of the fitting room bench. This attorney stubbornly refuses to budge from his position that a 24" x 48" bench is a maximum, not a minimum requirement.

The current Americans with Disabilities Act Accessibility Guidelines (ADAAG) requires that all accessible fitting rooms must have a 24" by 48" bench attached along the cubicle's long wall. Each room must also have 60" of clear floor space in front of the bench--enough for a person in a wheelchair to transfer themselves to the bench from a parallel position.

To accommodate these guidelines, most accessible fitting rooms are built to be at least 5 feet deep and 7 feet wide to provide the required floor space and a 24" deep bench. In this case, as with many retailers, the bench extended from wall-to-wall and was 60" long. The retailers argued that ADAAG permits a minimum 48" long bench and that a 60" long bench is an "equivalent facilitation."

The plaintiff's counsel, however, interpreted ADA guidelines to establish an absolute maximum length of 48" and argued that a 60" bench is non-compliant because some disabled customers prefer to make a diagonal transfer onto the bench, and a longer bench can supposedly prevent that.

The District Court agreed with the retailers, noting that business owners should not be "punished" for exceeding the ADA's accessibility guidelines. In reaching its decision, the Court considered, in part, the 2004 proposed ADAAG, which, when and if adopted, will expressly provide for a minimum 42" long bench, as illustrative of the appropriate standard. The plaintiff appealed the ruling.

This may be a modest victory for business owners, but its nation-wide implications for apparel retailers, health clubs, hospitals, school gyms, swimming pools, bridal salons, and

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[1] Diagram taken from http://www.dbtacnorthwest.org/, Disability Business Technical Assistance Center. This diagram shows the bench at "24" x 48" minimum." There lies the problem. ADAAG 4.35.4 does not specify, "minimum."

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doctor's offices are quite significant. This hyper technical argument has cost retailers hundreds

of thousands of dollars in litigation fees and settlements. The ruling may curtail expensive litigation over this issue and affect the way accessible fitting rooms are configured.

Retailers, store designers and architects should review the 2004 proposed guidelines, or consult an ADA attorney or an access specialist to interpret the proposed changes.

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