

## Americans with Disabilities Act - What Does it Mean to Marina Operators?

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The California Supreme Court recently decided a case entitled *Munson vs. Del Taco, Inc.* The issue was whether a disabled person would be entitled to monetary damages even if there was no "intentional" discrimination by the defendant under the Americans with Disabilities Act (ADA).

Plaintiff Kenneth Munson had a physical disability that required him to use a wheelchair. Munson visited a Del Taco restaurant in San Bernardino, California and alleged that while at the restaurant, he encountered architectural barriers that denied him legally required access. Munson's primary complaint was that he could not access the restaurant's restroom, because, the doorway was too narrow to allow wheelchair passage. As a result, he used the restroom of a different business across the street. He also asserted that the Del Taco was not adequately designed for a wheelchair user because the absence of a level clearance in front of the door, required him to hold onto the door handle while dragging himself in to avoid rolling back down the ramp. (*Munson v. Del Taco, Inc.* (C.D.Cal., July 27, 2006))

After Munson filed his complaint, Del Taco, Inc. remodeled the restaurant (unaltered since its construction in 1981) to correct these and other problems, at an approximate cost of \$66,000. However, Munson was not seeking merely to have Del Taco fix its facilities so he could gain future access. More often than not, plaintiffs in these types of cases could care less about access -- rather, they are opportunists seeking to extort a quick monetary settlement from the business owner for violation of the ADA codes.

The California Supreme Court ruled, that by virtue of amendments to the Unruh Act that Munson should be entitled to statutory monetary damages, and that such damages would, in fact, be recoverable even if the violations were technical and non-intentional. The court concluded that the Unruh Act simply does not require any intentional discrimination by the business owner to enable a plaintiff to seek and recover statutory damages.

The potential impact of this case is huge to all businesses in California that are open to the public. Up to this point, it was an open question as to whether such damages (without a showing of intentional discrimination) could be recoverable, as compared with a remedy of injunctive relief. An injunctive remedy would mean that a court would order the defendant's business or public establishment to correct the violation under the ADA, but would not otherwise impose damages.

The monetary damages can accrue on a daily basis, irrespective of whether the plaintiff has actually been deprived of any benefit, service, access or other unintentional result. This means that a public restaurant

such as Del Taco, and other establishments including public docks, rental facilities, boat ramps, stores, hotels, and shopping malls can all be pursued by individual plaintiffs seeking not only damages, but injunctive relief. Such lawsuits are popular because a plaintiff who prevails is also entitled to recover attorney's fees.

What does this mean for marina operators in particular? It means you should reevaluate your place of business, access and whether you are fully compliant with the ADA. It means that your insurance, including coverage for potential violations of the ADA should be current. It also means you should certainly not be surprised, if you receive demand letters or other "threats" as to litigation due to an alleged technical defect under the ADA. This Supreme Court result can be amended or altered by action of the California Legislature, but that is unlikely to happen given the current state of the economy and the budget crisis.

Like the Del Taco case, our client, a marine repair facility, was recently "hit" by a plaintiff's claim that he could not access the restroom. The plaintiff was in a wheelchair, and was merely visiting the business. He was not there with the intention to have any repairs made. However, the ADA does not require such connections of logic to be made. But the ADA does require compliance, preparedness, and the ability of a business to quickly, and efficiently respond to claims.

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