



recreation accessibility consultants, llc

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Trends in ADA Litigation

We have seen some remarkable progress in efforts to comply with the ADA swimming pool requirements. From public parks and recreation sites to hotels to fitness centers, we continue to see pool lifts that are affixed to the deck during operating hours. So we were dismayed to read about what appears to be an effort by an Indiana resident to use the ADA in a way that draws immediate criticism.

What did he do?

"...one person has filed 22 pool-specific suits. So far, (he)...has named Indianapolis-area operations...citing a lack of pool lift or other means of access." Yes, we have omitted his name and the names of the hotels he has sued.

Does he have a right to file these lawsuits? Yes. Should these hotels have already complied? Well that is something no one can know. Remember that hotels have a different retrofit test than parks and recreation agencies. Installing a lift might not be readily achievable. Or it might be technically infeasible. From a distance it is impossible to know the answer.

Litigation has a role. We believe a better approach is communication. That appears not to have happened here.

On the other hand, look at this headline:

Jury Awards \$240 Million for ADA Violations

These 32 men, all with intellectual impairments, worked at an Iowa turkey processing plant. For 20 years they were subjected at work to slurs (you know, that word), illegal rates of pay, lived in substandard conditions, and intentional mistreatment, including physical harassment.

The federal Equal Employment Opportunity Commission (EEOC) sued, and in court, an Iowa jury gave each of the men

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ABOUT US

Recreation Accessibility Consultants, LLC has the skill to aid park districts, park and recreation agencies, forest preserve and conservation districts, and special recreation agencies in their endeavors to provide recreation to people.

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\$2,000,000 in punitive damages and \$5,500,000 in compensatory damages.

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"The verdict sends an important message that the conduct that occurred here is intolerable in this nation, and hopefully will help restore dignity and acknowledge the humanity of the workers who were mistreated for so many years" said Jacqueline Berrien, Chair of the EEOC.

Again, we don't know all the facts, but **that** looks like a good use of a court.

Go Cincinnati Reds!

Speaking of intellectual impairments, in a Cincinnati Reds game, player Todd Frazier belted a home run. Not so unusual. But Teddy Kremer, the occasional Reds bat boy, a 37 year old with Down Syndrome, asked Frazier before he stepped to the plate to hit a home run for him. Look [here](#) for the great celebration!

Joliet Park District Retains RAC for Aquatics Audits

The Joliet Park District (IL) retained RAC for access audits of its two aquatics facilities. "We want to make sure our high volume, high visibility sites get a thorough look," said Dominic Egizio, Executive Director. "We have audited our other sites and look forward to adding RAC's work to our own," Egizio added.

One Passed... More to Come?

Rich Thesing, Founder of Mobility Golf and the Secretary of the Committee that developed an American National Standards Institute (ANSI) standard for accessible golf cars, reports that the first accessible golf car company has indeed passed the test. SoloRider, manufactured by Regal Research and Manufacturing, is one of the most popular accessible golf cars on the market. It is also arguably the most preferred, with features attractive to the widest range of golfers with disabilities.

This standard-setting effort took two years, but was preceded by a lot of hard work by golfers with disabilities, some of the golf industry associations (especially the National Golf Course Owners Association), and public and private golf course operators. This standard addresses safety factors such as distance to brake, tipping, visibility, and other issues.

Kentucky League of Cities Article

Our article was a success in the Iowa League of Cities magazine, so the Kentucky League of Cities asked to have the same question-and-answer piece about ADA compliance reprinted. Interested in information for your state association? We like to write, so contact john.mcgovern@rac-llc.com if you want interpretive information backed by our experience.

Peoria Community Services Department Retains RAC for System-Wide Access Audit

The Peoria (AZ) Community Services Department retained RAC for a system wide audit of Department sites and facilities, including parks, libraries, and recreation facilities. “We have planned for some time to evaluate our existing sites, and one of our neighboring communities had a great experience with RAC,” said Brenda Rehnke, Recreation Manager.

RAC teams will start in Peoria in late June.

Rumor Control...

One of our client parks and recreation agencies asked about claims by a playground surface vendor that Engineered Wood Fiber (EWF) would soon be classified as a noncompliant playground surface. We are **not** the US Department of Justice (that’s the only agency that could issue such a ban), but we’ll note that we think it is unlikely that such a ban is being contemplated.

The US Access Board, in developing the playground surface guidelines in the 1990’s, considered many, many factors. The Access Board recognized that sometimes, some agencies are going to use EWF.

It might be because **they always have**.

It might be due to their **climate** other surfaces are unsuitable.

It might be because generally EWF is **less expensive to buy and install** than unitary surfaces.

It might be because they **believe** loose fill is a safer surface.

These could all be good reasons, so the Access Board went with the flow and allowed agencies to use surfaces such as EWF that pass the neutral ASTM F1951 test...but imposed a maintenance requirement. Per 1008.2.6.1 of the 2010 Standards, such surfaces must be “...inspected and maintained regularly and frequently.”

No regular inspections and frequent maintenance? We know from our experience that playground surfaces that are not maintained will fail to retain the access characteristics. That's a likely loss if a complaint is filed.

Shelley Says

Senior Project Manager Shelley Zuniga writes about having the right tools this month. By the way, as she does so, our teams are out field testing new drop-down menus in our checklists on tablets. Tools always change...it is important for you and us to keep current.

THE RIGHT TOOLS FOR THE JOB

When conducting an accessibility audit, it's important to use the correct tools. It is also important to use these tools properly. After multiple trial runs of various combinations, our staff has figured out the best set for a team to adequately perform an audit.

Whether it is an android, iPad, tablet, laptop, computer, or pen and paper, it is imperative to have a method of recording data. This will ensure you have figured out what is wrong (and what is right) about every element in a site.

For specific measurements, use a standard **measuring tape** and a **2' digital level**, found at local hardware and home improvement stores. The level is used to measure slope, and is preferred over a 4' level, as it helps catch variances a longer level may not. A 2' level is also what enforcement agencies use when they come knocking on your door, so in our opinion, it is the one to use.

It is important to make sure the mode of measurement on the level are consistently on "percent". An inconsistent measurement, in degrees for example, results in a false OK read. That in turn could mean your agency tears out a exterior accessible route or parking lot once the error is caught by an enforcement agency or other staff.

A **door pressure gauge** is also used to measure the pounds of force (lbf) required to open a door. During an access audit, every door at a site is evaluated. We also recommend using a **digital camera** to record deficits. Our staff takes a close-up photo of the deficit, as well as a reference shot.

Finally and most importantly, a copy of the **2010 Standards (275 pages) and the access requirements in your own state** is a must. Even better, convert these to a checklist for

ease of use...this helps avoid walking around a site carrying tools and hundreds of pages of Standards. We use up to 28 checklists at a site!

These tools, along with a sharp pair of eyes and an open mind, will ensure an accessible site for all to enjoy!

Disclaimer

Nothing in this newsletter is legal advice. It is instead a relaying of decisions and information about the application of the Americans with Disabilities Act to public parks and recreation. Readers interested in legal advice should seek an attorney licensed in your state that knows the ADA and can apply it to parks and recreation.



THE W-T FAMILY OF COMPANIES

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