

How to Handle ADA Complaints

Have you received a complaint about a potential ADA violation? A speedy response is crucial – ignoring the complaint might set you up for a lawsuit. Cover all of your bases and make sure you’re enlisting the right help with these tips for a compassionate, thorough response.

RIGHT AWAY

- Understand the nature of the complaint.** There’s a difference between a complaint and a lawsuit, explains Dan Chancey, BOMA Fellow and Senior Vice President, Asset Management, for Cushman & Wakefield/Commercial Advisors. “A complaint is when someone says ‘Hey, that ramp’s wrong.’ When that person leaves, call an architect and measure that ramp right away to make sure nobody slipped up while it was being installed,” Chancey says. Not all accessibility issues start with a simple verbal complaint, however, so you might not know something is wrong until you’re being sued.
- Take the complaint seriously.** If it’s a demand letter, read it. If it’s a visitor bringing something to your attention in person, listen. “Don’t fail to respond,” notes the National Federation of Independent Business.
- Offer to assist the visitor with gaining access.** “Do everything you can to satisfy that visitor. If they need help getting into the building, get them some help,” suggests Chancey. “I don’t know that a ramp is wrong because I haven’t measured it or had an architect look at it against the latest code yet, but I’ll be happy to roll you up the ramp myself.”
- Don’t offer to settle immediately.** It can be tempting to agree with the complainant in the hopes that they’ll decide not to sue, but that’s often counterproductive. The claim might not include all of the areas that are out of compliance, so if you only fix what the claim covers you may still be vulnerable to further complaints. Instead, investigate the complaint and see if you need to make changes or upgrades.

AFTER YOUR INITIAL RESPONSE

- Investigate independently** after you’ve read the written complaint or the person lodging a verbal complaint has left the premises. Find the ADA requirements that you’re accused of violating and examine the conditions that led to the complaint.
- Take pictures** from multiple angles of the conditions named in the claim. If there were alternatives available to the person with the claim, such as an alternate accessible entrance, document that, too.
- Reach out to a professional** who can help. Good help is expensive, but defending yourself against an ADA claim is not a place to cut corners. Have an architect who’s familiar with ADA do any needed measurements to determine if the complaint is valid.
- If you are served with a lawsuit,** call a lawyer who can handle an ADA suit and provide him or her with any photos or measurements you took. The National Federation of Independent Business recommends starting with your insurance carrier or landlord (if you rent) to see if they provide defense counsel.
- Fix the problem.** ADA has no cure period, so the longer you wait to fix the issue, the more vulnerable you are to another complaint or lawsuit. Bring in an architect who’s well-versed in ADA and accessible design and/or an ADA consultant who can find everything else that’s non-compliant.

IN THE FUTURE

- Include architecture services in your operational budget** for future accessibility questions, Chancey recommends. “If I have a question about whether a ramp qualifies, they’ll come out and measure it. That’s a cost I’m willing to pay because it’s an operational expense,” Chancey explains. “You also need an architect if you’re doing a capital improvement, but having money in the budget means you can call and say ‘Can you readjust this plan for me? I see there’s an error here.’ You’re better off paying the money now than paying a settlement later.”
- Be picky with hiring professionals.** Too many facilities managers ask about an architect’s cost per square foot rather than how engaged they are with ADA and accessible design, Chancey explains. “That’s the kind of architect you need to have for this issue. It’s not about how many awards they won for having a flashy building,” Chancey adds.
- Post a “No Photography” sign** prohibiting photography without management’s written approval, suggests the National Federation of Independent Business. This deters drive-by lawsuits.
- Look into incentives** to lower the cost of complying with the law. The cost of alterations may entitle you to a tax credit in addition to the usual deductions for business expenses. Your state may also offer additional tax incentives for making your business ADA compliant.