

**Restaurant Sued:  
Restroom Mirror 2" Too High**

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A restaurant in Southern California is being sued due to ADA noncompliance. The mirror in one of its restrooms was installed two inches too high. Here is a little history of the restaurant and the circumstances.

Although the story doesn't indicate the restaurant name, a little research indicates that the restaurant is a historic McDonald's restaurant that is now owned by a franchisee named Ron Piazza. This McDonald's was built in 1953, was the third McDonald's ever to have been built, and is now listed in the National Register of Historic Places.<sup>1</sup> Ron Piazza purchased the restaurant in 1997 and completely remodeled it. At that time, everything was in ADA compliance.

The mirror in the men's restroom had been destroyed by vandals, so the employees of the restaurant installed a new mirror. Since the new mirror was two inches shorter than the original mirror, it ended up being two inches too high to satisfy disabilities regulations and standards. When Ron Piazza was notified of the mistake he immediately lowered the mirror to be in compliance. However, it was too late and his restaurant had a lawsuit filed against it.

The plaintiffs visited the restaurant a total of 27 times in a period of 3 months. They claimed that the height of the restaurant's mirror inflicted damage on them each time they visited the restaurant. The multiple visits allowed them to sue the restaurant for damages per visit. They also kept their receipts for each visit to use as evidence. "The multiple visits allow the plaintiffs and their lawyer to sue for damages per visit. Had I not lowered the mirror, they probably would have continued to come and log more visits," Piazza said. "It's very clear to me that they were instructed by someone who really knew the law on how many times to visit, [and] what to look for."<sup>2</sup>

As mentioned above, the lawsuit that has been filed is due to ADA noncompliance. The American Disabilities Act contains provisions which prevent intentional discrimination against disabled individuals and provides for compensatory awards for such discrimination. It also provides architectural standards which include assurances for restroom and facilities accessibility.<sup>3</sup> One of these standards is the height of the mirror in the restaurant. The mirror was placed two inches higher than the standards allow and it was "readily achievable" to take action to remedy the situation. Therefore, by law, the restaurant was not in compliance with the ADA.

The issue for business owners arises with the penalties assessed for noncompliance. Because it was so easy for businesses to inadvertently violate the ADA, the federal statute only permits an award of money damages for intentional discrimination. A private individual cannot recover damages if the discriminatory conduct was unintentional. In those instances, he or she only could receive attorneys fees in suing to force the business to comply with the law and obtain are the attorney fees incurred.<sup>4</sup>

Using the law, as stated above, it seems that the lawsuit is without grounds as the placement of the mirror two inches too high was clearly not intentional. It was also fixed immediately when the issue became known. As seen in the textbook, the purpose of a private lawsuit is to get the company to come into ADA compliance, which is what the McDonald's restaurant did.

However, each state has its own set of rules that may add to the ADA or work in conjunction with it. California has several issues that make it easy to file an ADA noncompliance lawsuit. The first thing to look at is a piece of California legislation called the Unruh Civil Rights Act which was enacted in

1905 and broadened in 1959. This act specifically outlaws discrimination based on race, sex, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation.<sup>5</sup> In 1992 California passed legislation that made an ADA violation also a violation of the Unruh law. The intent was to bring California law into conformity with the provisions set forth in the ADA. It was intended to strengthen California law where it was weaker than the ADA and retain California law in areas where the ADA did not provide protection.<sup>6</sup> Therefore, under California law, when someone suffers an intentional violation of the Unruh Act, he or she will be entitled to recover up to a maximum of three times the amount of actual damages for each particular offense, with an automatic minimum award of \$4,000.<sup>7</sup>

The trouble though, began in 2004, when the Federal Ninth Circuit interpreted a violation of the ADA to be a per se violation of the Unruh Act, reasoning that a showing of intentional discrimination was not required in order to award damages under the Unruh Act. Therefore, it allowed plaintiffs to apply the Unruh automatic penalties to unintentional, technical violations of the ADA and ADAAGs. Worse, feds overlooked another California statute, the Disabled Persons Act, already on the books which already provided for less burdensome minimum penalties for unintentional violations of the ADA.<sup>8</sup>

Therefore, under California law as it has been interpreted, the defendant can be held liable even though his actions were unintentional. He can also be sued for a minimum of \$4,000 per instance, which in this case is 27 separate instances. So the minimum Ron Piazza may be liable for is \$108,000 plus attorney fees of the plaintiffs.

Many jurisdictions require that a “fix it” letter be sent first to give the company a chance to comply and avoid litigation. However, California does not require that and most claims come from California attorneys with little or no advance notice. Because California has higher standards than most states, it makes it harder for businesses to ascertain what exactly must be done and comply with the standards.<sup>9</sup>

A first look at this case seems to indicate that this lawsuit is frivolous and would easily be thrown out of court. However, when combined with California laws and interpretations of those laws, the lawsuit seems to be viable and legal. However, what does seem like a misuse of the laws in this case is the 27 counts of the violation by 3 individuals. One would think that a “reasonable person” would stop going to the restaurant if they were suffering damage each time they went to the restaurant and used the restroom. The owners name and phone number was on the receipt, so a reasonable person should have known to contact the owner after the first instance or not go back. This is something I believe needs to be considered by the judge in this case.

This case indicates that there are many things involved with being ADA compliant and these standards and laws can change from state to state. Therefore, a company really needs to have an expert come in and inspect the premises for noncompliance before even opening a restaurant. Also, when any changes are to be made (no matter how small), the company needs to consult the regulations and standards that those changes may affect. If the owner or company is not actively looking for non-compliance issues, rest assured someone else surely is. And that can be much more costly.

## Endnotes:

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<sup>1</sup> Amy Garber, “Historic McDonald’s location celebrates 50 years”, September 22, 2003, [http://findarticles.com/p/articles/mi\\_m3190/is\\_38\\_37/ai\\_108279097/](http://findarticles.com/p/articles/mi_m3190/is_38_37/ai_108279097/)

<sup>2</sup> “Lawsuit over bathroom mirror 2 inches too high”, <http://facesoflawsuitabuse.org/2009/03/lawsuit-over-bathroom-mirror-2-inches-too-high/>

<sup>3</sup> Al Mohajerian, “An ADA Ruling in California and How it Affects Businesses”, December 7, 2007, <http://www.hospitalitynet.org/news/4029641.search?query=ada+noncompliance+california>

<sup>4</sup> Ibid.

<sup>5</sup> Wikipedia, “Unruh Civil Rights Act”, [http://en.wikipedia.org/wiki/Unruh\\_Civil\\_Rights\\_Act](http://en.wikipedia.org/wiki/Unruh_Civil_Rights_Act)

<sup>6</sup> Al Mohajerian, “An ADA Ruling in California and How it Affects Businesses”, December 7, 2007, <http://www.hospitalitynet.org/news/4029641.search?query=ada+noncompliance+california>

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> FAQ 6.05: California’s Higher Accessibility Standards, Pages 10-11, [http://www.accessissues.com/images/6.05\\_FAQ-\\_090818\\_Californias\\_Higher\\_Accessibility\\_Standards\\_v7.pdf](http://www.accessissues.com/images/6.05_FAQ-_090818_Californias_Higher_Accessibility_Standards_v7.pdf)