



February 2018

House Votes To Amend the ADA To Provide Businesses With Notice and Cure Period

By Carolyn D. Richmond and Jason B. Jendrewski

ADA reform finally may be on the horizon. On February 15, 2018 the U.S. House of Representatives passed legislation known as the ADA Education and Reform Act (H.R. 620), that would curb the rampant abuse of Title III of the Americans with Disabilities Act (“ADA”) by serial plaintiffs and their attorneys.

If it becomes the law, it would require ADA plaintiffs to provide businesses with a pre-suit written notice of alleged violations and an opportunity to cure the violations as a prerequisite to filing a civil action in court.

Specifically, plaintiffs would be required to inform businesses of:

- the property’s address
- the specific sections of the ADA alleged to have been violated
- whether a request for assistance in removing the barrier was made
- whether the barrier to access was a permanent or temporary barrier

Businesses would be provided with 60 days to respond to any notice of alleged ADA violations and then an additional 120 days to remove any barriers to access (or make substantial progress in removing such barriers). A lawsuit could be filed only if the public accommodation at issue failed to cure the violations after receiving the requisite notice.

The legislation would also require the Disability Rights Section of the U.S. Department of Justice to develop a program for educating property owners

on effective and efficient strategies for promoting access to public accommodations for persons with disabilities. Additionally, the legislation would require the Judicial Conference of the United States to develop a model program to promote the use of alternative dispute resolution mechanisms for resolving claims of architectural barriers to access for public accommodations.

The legislation is a significant development in efforts to bring about ADA reform and to curb the rampant abuse of lawsuits filed by serial plaintiffs against businesses—large and small—throughout the country. While the vote in the U.S. House of Representatives is promising, it is unclear if the Senate also will pass the legislation and if it actually will become law. Moreover, businesses in jurisdictions with similar state and local statutes, such as New York State and New York City Human Rights Laws, likely will continue to face accessibility lawsuits in state court if those statutes are not similarly amended.

For more information about this alert or general inquiries about the Americans with Disabilities Act and accessibility matters, please contact Carolyn D. Richmond at 212.878.7983 or crichmond@foxrothschild.com, Jason B. Jendrewski at 212.878.7952 or jjendrewski@foxrothschild.com or any member of the firm’s Hospitality Practice Group.