HOW MANY WAYS CAN NOT COMPLYING WITH THE ADA IN WORK ZONES HURT YOU?

What does a public entity have to comply with to meet ADA in workzones?

- ADA itself. A public entities program, services, and activities are to be accessible. Sidewalks and pedestrian travel is a public service.
- MUTCD. The needs and control of all road users, including persons with disabilities, SHALL be an essential part of highway construction and maintenance operations.

MUTCD Cont.

- When existing pedestrian facilities are disrupted or closed, the temporary facilities SHALL be detectable and include accessibility features consistent with the features in the existing facility.
- When pedestrian routes are closed, alternate routes SHALL be provided.
- Sign and signal information SHOULD be provided by audible information devices, barriers and channelizing devices that are detectable to pedestrians using a cane.
- Pedestrian crossings SHOULD be separated from the worksite by appropriate barriers that are detectable.

MUTCD cont.

- “Detectable” is defined. Having a continuous edge within 6 inches of the surface so that pedestrians who have visual disabilities can sense its presence.

PROWAG is considered Best Practice by FHWA

- Not yet adopted as a standard.
- Contains all dimensions for pedestrian access routes.
  - Four foot sidewalks.
  - Cross-slopes less than 2%.
  - No overhanging or protruding objects within a certain space.
  - Curb cuts
  - And many other requirements.

Actions that can be brought

- Independent investigation by the United States Department of Justice
- Private suit for a violation of Title II of the ADA
- Suit by the United States Department of Justice on behalf of an individual
- Private suit under the Kansas Tort Claims Act alleging physical injuries as a result of negligence in not complying with the ADA.

Independent investigations by the United States Department of Justice

- Currently no provision for monetary fines. (I bet this does not stay this way for long.)
- Federal agencies can withhold federal funding if voluntary compliance is not achieved.
- Voluntary compliance results in an agreement that: addresses each violation; specifies the corrective steps and time frame for reaching compliance; assures that the discrimination will not recur; and provides for enforcement by DOJ.

Has anyone in Kansas been subject to a Department of Justice Settlement Agreement?

- The Unified Government of Wyandotte County and Kansas City, Kansas
  - April 8, 2010
  - Among items such as changes to emergency shelters, employment, law enforcement stations and communications, **sidewalks were addressed**.

Sidewalks

- Creating a system whereby persons can give input into the accessibility of sidewalks and prioritizing requests for accessible sidewalks and curb ramps when made by disabled persons.
- Create a list of locations where curb ramps are needed and a schedule for installing.
- Any locations where streets have been constructed or altered since 1/26/1992 will have curb ramps within 10 years.

City of Hutchinson

- January 13, 2005
- Hutchinson was proactive with ADA
  - ADA Coordinator
  - 3 self-evaluations
  - ADA advisory board
  - Sponsored ADA seminars for local and regional groups
  - Regularly provided sign language interpreters and ALD at community meetings.
  - All city resource flyers were available in alternative format
  - All city projects were part of a streetscape plan, including curb cuts, parking, and art work that was accessible.
  - Two plans addressing accessible playgrounds.

Even Hutchinson had to agree to conditions

- Sidewalks
- Other facilities:
  - Golf Club House – kitchen sink in ladies meeting room kitchen was 36 inches – needs to be made 34 inches.
  - Men's locker room – toilet paper dispenser was one inch below grab bar – needs to be at least 1 ½ inches.
  - Fun Valley Sports Complex – accessible signage for men's restroom was inaccessible because mounted on the non-latch side of the doorway.

City of Dodge City

- October 2, 2001
- Population of 25,955
- Dodge City was proactive with ADA
  - 3 self-evaluation plans
  - Employment complied
  - ADA Coordinator
  - ADA grievance procedure
  - Allocated funds annually for curb ramps and gutter repair, widened doorways, altered playground equipment, other altered buildings.

Even Dodge City had to agree to conditions

- Mariah Hills Golf Course Club House
  - Toilet seat cover dispenser is 58 inches high, no operable part can be more than 54 inches high.
  - Coat hook is 58 inches above the finished floor, lower to 54 inches.
  - Elongated rim of the urinal is 18 ¼ inches above the finish floor, lowered to no more than 17 inches above the finish floor.

Dodge City continued…

- St. Mary's of the Plains Campus
  - Paper towel dispenser handle is 56 inches above the finish floor – lower to no more than 54 inches above the finished floor.

City of Independence

- April 29, 2011
- Population 9,198
- Standard provisions for sidewalks: procedure for input from the disabled, addition of curb cuts to streets constructed or altered after January 1992, curb cuts on all streets constructed thereafter.
- Changes to buildings
- **Changes to web-based services**

City of Humboldt

- April 23, 2012
- Population 1,816
- Standard provisions for sidewalks: procedure for input from the disabled, addition of curb cuts to streets constructed or altered after January 1992, curb cuts on all streets constructed thereafter.
- Changes to buildings
- Changes to web-based services

Private suit for a violation of Title II of the ADA.

- There does not have to be an injury or damage as we know it.
- A denial of access. "I am a disabled person and I can't use the sidewalks – like nondisabled persons can - because of construction."
- No punitive damages are allowed.
- Damages for actual losses, including pain and suffering are allowed.
- But….
  - Attorney fees and litigation expenses are allowed to a prevailing party.

Chafin v. Kansas State Fair Board, et al

- In 2003, numerous wheelchair users filed a lawsuit against the Kansas State Fair Board and others complaining the fair was not accessible to disabled persons.
- Seating at grandstand
- Accessible restroom facilities
- Parking
- Court held that KSFB had to complete a self-evaluation and transition plan in accordance with the law – the ADA.
- Court held that access to the Fair must be *meaningful*.

- *Meaningful access* – equality of opportunity, full participation, independent living, and self-sufficiency. No isolation or segregation of persons with disabilities.

So, if plaintiffs won the “right” to make the KSFB do what the law required…

- Attorney fees, costs and expenses of the plaintiffs.
- $147,543.69 was requested by plaintiffs
- In 2005, Plaintiff’s were awarded $75,590.61 plus interest

So what happens if the individual complains to the DOJ before bringing a lawsuit?

- Individuals who believe they have been discriminated against may file a complaint with DOJ within 180 days of the alleged discrimination.
- Guess what DOJ does with that complaint…

- DOJ forwards the complaint to the appropriate federal agency for investigation, resolution of the complaint, or issuance of letters of findings that detail the findings of fact and conclusions of law, and remedies for each violation found.
- Guess who gets complaints alleging discrimination involving highways, public transportation, and traffic management (also automobile licensing and inspection, and driver licensing.

Any guesses?

- Department of Transportation, Federal Highway Administration.
- FHWA passes on the complaint to who?
- KDOT
- Who in KDOT gets to investigate such complaints?
- ME!!!!!!!!!!

Who have I investigated?

- City of Hutchinson
- City of Atchison
- City of Lawrence
- City of Onaga
- About five others that I have investigated.

DOJ can sue on behalf of an individual

- Same remedies are available:
  - No punitive damages
  - Injunctive relief or assurance of future non-discriminatory practices.
  - Attorney fees and costs of litigation
  - Damages for actual losses, including pain and suffering are recoverable.
    - *Barnes v. Gorman*. Kansas City police tied a wheelchair user into a non-accessible vehicle. The man fell and was injured. Verdict for $1 million in actual damages and $1.2 million in punitive. Punitive damage award was struck.
    - It was Kansas City, Missouri, police.

Private Suit Under the KTCA

- KTCA (Kansas Tort Claims Act) is the law under which governmental entities are sued for negligent acts.
- Generally, a two year statute of limitations.
- Cap of $500,000 for any number of claims arising out of a single act or occurrence.
- $250,000 cap for uneconomic losses.
- Must have a physical injury and actual damages.

- September 16, 2004
- Plaintiff, a disabled individual, fell as he attempted to walk down a concrete ramp at the corner of 8th and Main in El Dorado, Kansas.
- Plaintiff sued KDOT and the City of El Dorado claiming, among other things, that the ramp violated the ADA.
- Plaintiff asked for $500,000.
- KDOT was dismissed.

CONCLUSIONS

- A number of ways to be sued (or at least get investigated) when a work zone is not ADA accessible.
- A complainant doesn’t have to show any injury.
- If a lawsuit is filed to force compliance, the governmental entity may owe compensatory damages, if any, and…
- Attorney fees and cost of litigation

I don’t want to see this if I have to investigate your sight!!!!



THE END

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