

Are Businesses Liable for Unintentional Violations  
of the Americans With Disabilities Act?

California's *Civil Code* Section 52 allows private parties to seek damages for violations of the Americans with Disabilities Act ("ADA") via the California Unruh Civil Rights Act (a.k.a. *Cal. Civ. Code* § 51), which provides for automatic minimum penalties of \$4,000 whenever the statute is triggered. This was made possible in 1992, when the Legislature added subdivision (f) to § 51, which provides that a violation of the ADA is also a violation of the Unruh Act. But what happens when the violations are unintentional? Will businesses still be liable for automatic minimum damages? The issue of whether an individual can sue a businessperson for unintentional violations of *Civ. Code* § 52 was addressed by the California Court of Appeal in *Gunther v. Lin* (Cal.App.4th Dist. 2006) 144 Cal.App.4th 223, and discussed in this article.

In *Gunther*, the wheelchair-bound plaintiff entered the restroom in a Jack-in-the-Box restaurant owned by defendant John Lin, just before completion of remodeling. The toilet was accessible and otherwise in compliance with the ADA Architectural Guidelines ("ADAAG"), however, Mr. Gunther found two other (2) violations: (1) a lack of insulation underneath the sink; and (2) a mirror that was too high. Gunther brought suit under *Civ. Code* § 52, seeking at least \$8,000 in automatic penalties for both alleged violations.

In that case, there was no question as to whether the alleged violations were unintentional. Lin claimed that Gunther had entered the restroom "before [their] handyman had finished his work" of wrapping insulation around the pipe under the sink. Further, normally the restroom did not have a mirror because it had been subject to vandalism; an employee simply hung one by mistake. Based on lack of evidence of intent to discriminate, Lin brought a motion for summary judgment based on California case law which holds that § 52 violations require proof of intent to discriminate before the damage provisions are triggered.<sup>1</sup> While the plaintiff conceded no discriminatory intent, he argued that § 51(f) superseded that law and, therefore, unintentional violations also trigger the damages provision. The trial court rejected Gunther's argument and granted summary judgment, resulting in a dismissal followed by an appeal.

The Court of Appeal addressed the issues raised by Gunther and held that to interpret *Civ. Code* § 51(f) to provide for automatic penalties for even the most technical violations of the ADAAG's would render § 54.3 redundant, which provides disabled persons with an alternative means of enforcing ADA violations, and automatic minimum penalties for unintentional conduct. It further held that since § 54.3 forces a plaintiff to choose between it and § 52, the two statutory schemes "perfectly dovetail with each other." A plaintiff can go for the relatively larger recovery under § 52 but will have the higher burden of establishing intentional discrimination, or, alternatively, may elect to proceed under § 54.3 and have a much lower burden (i.e., simple technical violation without any showing of intent) but a lesser recovery.

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<sup>1</sup> *Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142 – judicially construed the triggering language of section 52 of the *Civil Code*

In reaching its decision, the appellate court rejected two prior federal decisions, to the degree they implied that § 52 does not require discriminatory intent.

In conclusion, Gunther could have sued Lin based on Lin's unintentional ADA violations and may have recovered the smaller statutory minimum penalty under *Civ. Code* § 54.3. Instead, he elected to try to obtain the larger, statutory minimum penalty under Section 52. Unfortunately for Gunther, however, that remedy is reserved for intentional violations. California law does not allow plaintiffs to proceed under both statutes, and Gunther failed to present any evidence that the defendant had intentionally discriminated against him as required by § 52. The bottom line: California businesses may still be liable for each unintentional violation of the ADAAG under *Civ. Code* § 54.3, for actual damages and any amount as may be determined by a jury, or the court sitting without a jury, up to a maximum of three times the amount of actual damages but in no case less than one thousand dollars (\$1,000).