

**Table of Contents**

PCA Progress: Anderson v. Franklin Institute..... 1

Is Your Parking Lot ADA Compliant? A Parking Primer..... 2

Helpful Tips from the Disability Style Guide ..... 3

Website Accessibility Lawsuits Increase, Circuit Split Deepens ..... 4

WACDA Quarterly Case Update: ..... 5

**PCA Progress: Anderson v. Franklin Institute**

The Americans with Disabilities Act (ADA) bars disability discrimination. In recent years, the Court has examined whether an entity may charge more for a person with a disability to bring their necessary personal care assistant (PCA) or caregiver, even though the PCA or caregiver is present for the sole purpose of assisting a person with a disability and not to enjoy the benefits or services provided by the entity.

This issue was addressed in the 2016 case *Anderson v. Franklin Institute*. According to the [memorandum opinion](#), plaintiff Michael

Anderson is a person with a disability and requires a PCA to help him perform essential activities of daily living such as eating, dressing, moving around, and shifting his body position while using a wheelchair. Due to the nature of his disability, Anderson cannot visit The Franklin Institute (FI), a science museum in Philadelphia without his PCA.

However, FI had implemented a policy to require people with disabilities to pay a surcharge to bring their required PCA or caregiver, either with a separate admission ticket for the museum, special exhibits, or IMAX theatre, or through purchasing a more expensive membership plan with FI that allows a second complimentary admission ticket for the museum as a “guest.”

This policy applied despite the fact that the PCA was only present to provide necessary support for Anderson and not to enjoy the exhibits, film, or other services or benefits offered by FI.

Through this lawsuit, Anderson sought injunctive relief from FI, including a modification of FI’s policies to allow his PCA to accompany him at the museum, free of charge. The issue in *Anderson* is whether this modification is “reasonable” under the ADA, and whether FI must implement it.

In the memorandum opinion, Judge McHugh held that, under the ADA, FI must allow

Anderson, and others with disabilities, to bring their necessary PCA into FI without charges. Judge McHugh agreed with Anderson’s argument that admitting PCAs, free of charge, would not “fundamentally alter” the nature of the benefits or services offered by FI, nor would it cause any “undue burden” on FI. Thus, FI must allow Anderson, and other guests with disabilities who require a PCA, to be admitted into FI and their benefits or services, without having to pay for their admission.

FI argued that its policy was not discriminatory, because it applied to patrons without disabilities as well. Judge McHugh disagreed, stating that facially neutral policies may still discriminate against people with disabilities and are thus inconsistent with the goals of the ADA. FI also argued that even if their policy denied Anderson entry into FI, this denial was not on the basis of disability. Judge McHugh dismissed this argument as “callous[,]” opining that free admission for PCAs would “literally cost[] [FI] nothing” besides the chance to profit from admitting another person who may not have visited FI otherwise.

Here at WACDA, we are actively working against PCA surcharges in our community. For more information regarding PCA policies at various venues throughout Washington, please visit the “PCA Admissions” page on our website, at <http://www.wacda.com/general-8>.

## Is Your Parking Lot ADA Compliant? A Parking Primer

Over the years, WACDA has had numerous parking facility cases where the defendant failed to meet accessibility standards under the ADA. Our clients have spotted accessible parking barriers and have worked with us to ensure that parking facilities meet accessible parking requirements under the ADA.

Besides violating the ADA, operators of inaccessible parking facilities risk other negative consequences. These include deterring potential patrons and losing opportunities for business because a potential customer cannot park their vehicle safely, and perpetuating ableism.

Considering this ongoing issue, WACDA has compiled a list of general requirements to make a parking facility accessible, based on the 2010 ADA Standards for Accessible Design. Parking facilities must have a certain number of designated accessible parking spaces based on the total number of parking spaces at that facility. The table below from the [ADA Compliance Brief on Restriping Parking Spaces](#) details how many accessible parking spaces are required, as well as the number of van-accessible parking spaces required:

Total Number of Parking Spaces Provided in Parking Facility	(Column A) Minimum Number of Accessible Parking Spaces (car and van)	Minimum Number of Van-Accessible Parking Spaces (1 of six accessible spaces)
1 to 25	1	1
26 to 50	2	1
51 to 75	3	1
76 to 100	4	1
101 to 150	5	1
151 to 200	6	1
201 to 300	7	2
301 to 400	8	2
401 to 500	9	2
500 to 1000	2% of total parking provided in each lot or structure	1/6 of Column A (one out of every 6 accessible spaces)
1001 and over	20 plus 1 for each 100 over 1000	1/6 of Column A (one out of every 6 accessible spaces)

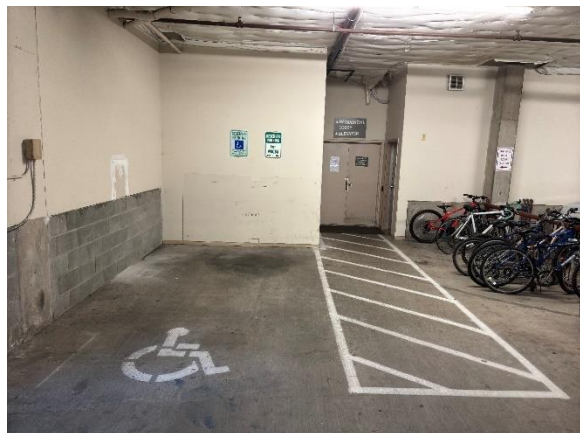
Additionally, a minimum number of designated accessible parking spaces must be “van accessible,” which require more width than a standard accessible parking space. At least one of the accessible parking spaces must be van accessible for every six or fraction of six total accessible spaces. For example, if parking lot A has 6 total accessible spaces, at least one of those spaces must be van accessible. But, if parking lot B has 7 total accessible spaces, at least two of

those spaces must be van accessible. If parking lot C is required to have only one designated accessible space, that space must also be van accessible.

Standard accessible parking spaces must be at least 96 inches wide and have an access aisle, at least 60 inches wide, directly adjacent to the designated accessible space. Two accessible parking spaces next to each other may share the same access aisle.

Designated van accessible parking spaces may have either:

- A space that is 132 inches wide with an adjacent access aisle of 60 inches, or
- A space that is 96 inches wide with an adjacent access aisle of 96 inches



An accessible parking space must be located on a surface that does not exceed a two percent grade (equivalent to a slope of 1:48) in all directions. Additionally, covered parking facilities such as parking garages must have a minimum vertical clearance of 98 inches over each van accessible space.

Each accessible parking space (standard and van) must have a sign that is posted at least 60 inches high, measured from the ground to the bottom of the sign. Each accessible parking sign must depict the International Symbol of Accessibility. Each

sign depicting a van-accessible space must also be labeled as “Van Accessible.”

Through compliance with these parking lot regulations, businesses can ensure that they remain accessible and inclusive for the entire community me.

## Helpful Tips from the Disability Style Guide

Language constantly evolves, and it is important to stay up to date with best practices. The National Center of Disability and Journalism publishes and updates a style guide that discusses best practices for discussing disabilities and different communities with disabilities. We include a list of the guide’s advice below to help our readers speak with respect and care.

**1. Use People-First Language, before Identity-First Language.** Many communities prefer People First Language, as opposed to Identity First Language. This looks like saying “a person with a disability,” rather than a “disabled person.” However, there are plenty of exceptions to this rule. For example, members of the Deaf or Autistic communities often prefer to be referred to in an Identity First manner.

**2. Avoid outdated and offensive terms.** The guide lists a number of terms that are considered outdated and offensive, such as “retarded,” “cripple,” and “handicapped.” The guide recommends using more respectful and accurate terms, such as “person with a disability,” or asking individuals for their preferences.

**3. Use accurate terminology.** It is important to be specific and accurate when discussing someone’s disability. For example, use the term “deaf” when someone cannot hear at all, and “hard of hearing” when they have partial hearing loss.

**4. Do not define people solely by their disability:** Disability is just one aspect of a

person's identity. The guide encourages focusing on the person's abilities and accomplishments rather than their perceived limitations.

**5. Ask people how they want to be described.**

The guide emphasizes the importance of asking individuals how they prefer to be described. Many people with disabilities have strong preferences about language, and it's important to respect those preferences. When in doubt, ask someone how they prefer to be referred to.

**6. Be mindful of word connotations:** Even seemingly innocent words can carry negative connotations. For instance, the guide recommends against using terms like “deformed” or “defect” because they imply deficiency or inferiority. Instead, it suggests focusing on the specific nature of the disability.

**7. Acknowledge the diversity of the disability community:** The guide emphasizes that the disability community is not monolithic. People with disabilities have different experiences, preferences, and perspectives. It is important to avoid generalizations and to recognize that what might be true for one person with a disability may not be true for another. The key is to be mindful of individual differences and preferences.

## **Website Accessibility Lawsuits Increase, Circuit Split Deepens**

In the modern digital age, many aspects of daily life rely on the internet. After the COVID-19 pandemic, a significant number of people began to use websites for their daily commerce and business needs. This trend, combined with limited legislation concerning accessibility compliance measures, means that website accessibility lawsuits are on the rise. However, federal circuit courts have issued conflicting rulings and have left the business community uncertain of their legal obligations.

The ADA was signed into law in 1990. The act does not cover any web accessibility barriers because the internet was in its infancy at the time. The DOJ has issued guidelines indicating best practices for web accessibility. However, litigants and the courts currently enforce and interpret the ADA for many issues, especially regarding its application to the internet.



Since 2017, lawsuits related to web-accessibility have surged exponentially. They increased from around 800 a year in 2017 to nearly 4,000 suits already filed this year. This trend is the result of two separate federal court rulings in 2017 that gave legal standing to plaintiffs who pursued litigation against web-only businesses. Notably, 77% of the suits filed in 2023 were concentrated in New York. This rise in litigation has created an outcry from the business community, which is eager to understand the necessary compliance expectations.

Different federal circuits have conflicting rulings on this issue. The Third, Sixth, and Ninth circuits have ruled that a “physical nexus” between an online service and the physical accommodation is required. This means that there must be a “brick and mortar” location in addition to a website. The First, Fifth, and Seventh circuits have ruled that websites alone are considered “places of public accommodation.” The remaining circuits have no definitive rulings. Lower courts in the Second Circuit have issued contradictory decisions, while the Eleventh reversed a ruling qualifying a grocery store’s website as a “public

accommodation.” The Fifth and DC Circuits have not ruled on these issues.

The “circuit split” creates confusion and uncertainty for businesses and consumers alike. There is a clear issue with web accessibility requirements becoming a matter of geography, rather than a legal consensus. This split, combined with the high rate of lawsuits demonstrates a clear need for legislative or executive action. Legislation modernizing the ADA or clear directives from the Department of Justice regarding the interpretation of the 1990 legislation could go a long way toward clarifying these issues. This action would reduce the interpretative burden on the courts and lead to clear guidelines for industry.

## **WACDA Quarterly Case Update:**

It has been yet another successful quarter at WACDA! Please see below for of the highlights:

*Picciano v. Clark County:* Preparing to go to trial in the Ninth Circuit next October.

*University District Diamond Parking:* In our demand letters, we alleged to have found violations in seven parking lots across the University District, all owned by Diamond Parking. We have reached settlement agreements for almost all of the lots.

*7-11 Northgate:* Our complaint alleged ADA parking lot violations in a 7-11 in Northgate. We successfully settled this matter in September.

*Republic Parking:* In our complaint, we alleged to have found violations in parking facilities from Everett to Tacoma. After years of work, we have successfully settled the matter.

*UW Parking Consent Decree:* Successfully ensured compliance with the consent decree, as we have since 2018.

*Local Market:* In our demand letters, we found numerous ADA violations across a multi-parcel parking lot for a Bellevue strip mall. We have successfully reached a settlement agreement with the managers for each parcel.

*Flooring America:* Recently resolved a matter from 2020! The original complaint alleged substantial ADA parking accessibility violations at a store in Seattle.

*Ashwood Commons North, LLC:* Our complaint alleged numerous ADA violations in a parking facility owned by Ashwood Commons. We successfully settled this matter in August.

*RH Investment Holdings:* Our demand letter alleged ADA violations in the parking lot of a Woodinville winery. It was successfully settled in September.

*Jeffs Auto Repair:* Our demand letter alleged ADA violations in a University District auto shop parking lot. It was successfully settled in August.

*Bellevue Pagliacci:* Our demand letter alleged ADA violations in the parking lot of a Bellevue Pagliacci. We successfully settled this matter in June.

To keep up to date with WACDA outside of the quarterly newsletter, please follow our social media accounts:



@wacda\_law



@WACDA.Law



@washingtoncivildisabilitya3048