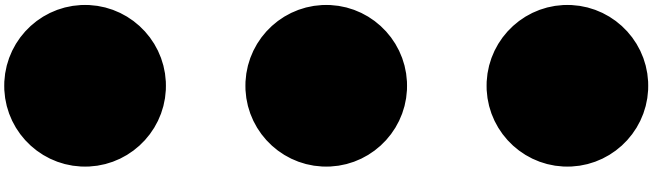
Written by **Steve Byas** on July 26, 2020

Americans With Disability Act — 30th Anniversary

Domino's Pizza was among the businesses successfully sued under the American with Disabilities Act (ADA), signed into law 30 years ago on July 26th, 1990, by President George Herbert Walker Bush. The plaintiff was a blind person who argued that he was denied "full and equal enjoyment" of its pizza menu, found on its website and app. This was despite Domino's offering *13* other ways that the plaintiff could have placed an order for a pizza.



Lawsuits of this sort are a reason that the National Federation of Independent Business (NFIB), an organization that lobbies on behalf of small businesses, called ADA "a disaster for small business." In states that have passed laws to allow private individuals to win monetary awards — as opposed to simply forcing a business to comply with ADA's regulations — there has been an explosion of what is often called "professional plaintiffs." One of these plaintiffs filed so many lawsuits in California, that he was forbidden by the courts from filing any more lawsuits, unless he gets prior permission from the court.

What is the ADA? It prohibits discrimination against individuals because of their "disability," and requires employers to provide "reasonable" accommodations to employees with disabilities. Accessibility requirements, such as ramps and elevators for buildings, are also part of ADA.

While many Americans think of people in wheelchairs and similar handicaps, disabilities under ADA include not only physical medical conditions, but also mental disorders — and the condition need not be severe before it qualifies as a disability under the law. It can include deafness, blindness, intellectual disability, the missing of limbs, cerebral palsy, epilepsy, multiple sclerosis, muscular dystrophy, depression, bipolar disorder, post-traumatic stress disorder, schizophrenia, and even obsessive-compulsive disorder. Any business with 15 or more employees is covered by the law.

It is prohibited, under the law, to fire or refuse to hire someone based on their disability if a reasonable accommodation can be made — such as providing the person with different schedules and special equipment. However, the employer is not required to provide an accommodation if it would lead to an undue hardship, such as great expense. The disabled person must be able to perform the essential functions of the job. For example, a business would not have to hire a blind person to drive a bus or a truck.

The law ran into a temporary roadblock when a person sued the University of Alabama, a state-supported institution. This led to the case *Board of Trustees of the University of Alabama v. Garrett*, in which the U.S. Supreme Court ruled that part of Title I of the law unconstitutionally violated the 11th Amendment to the Constitution, which reads, "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state." In other words, if a person who is not a citizen of the state of Alabama, he must sue that state in that state's courts, instead of taking the case to federal court. State employees also could not sue their employer in federal court for violating ADA rules.

Unfortunately, as is so often the case, the Constitution was circumvented — state employees can still take their cases to either the Department of Justice or the Equal Employment Opportunity Commission, who can then sue on their behalf.

Many have said that ADA has been the "Attorney's Dreams Answered." Mark Pulliam, a lawyer, had called ADA as perhaps "the most widely-abused law in our history.... Nationwide, a cottage industry has developed among a bottom-feeding element of the plaintiffs' bar that specializes in bring a high volume of cookie-cutter lawsuits against small businesses for technical violations of the ADA, and extorting quick settlements of several thousand dollars each." What happens is that many businesses look at the projected legal fees involved in defending these cases — and decide that putting up a legal defense is just not worth it. They decide it is cheaper to give the plaintiffs (and their lawyers) some money, just to make them "go away."

One New York hospital employee sued for $10 million in 2018 after she was fired for twice falling asleep at her job as an ambulance dispatcher. Her lawyer argued that it was not necessary for her to be awake "100 percent of the time." The employee's sleep apnea was considered a disability for which the hospital should have made some "reasonable accommodation."

Not only business enterprises face lawsuits — it is estimated that a fourth of students at top colleges are now classified as disabled, mostly for mental health issues such as anxiety. While one might understand allowing a blind person to have guide dog in a restaurant that otherwise would not allow dogs, airlines have even been forced to allow "emotional support animals" onto planes. Because of this, animals from kangaroos to pigs and monkeys, as well as dogs and cats, get to fly on planes, as well.

When George H. W. Bush accepted the Republican Party's presidential nomination in 1988, he vowed to create a "kinder, gentler America." Nancy Reagan, the wife of President Ronald Reagan, took that as a personal insult to her husband (she was well known for protecting him in any way she could). She asked those around her, "Kinder and gentler than what?"

Clearly, ADA was an example of the "kinder, gentler America" envisioned by George H.W. Bush. Many small businesses, colleges, and other entities — faced with the expenses of ADA, and threatened with lawsuits — might have another way of describing ADA. While most Americans are generous in helping out truly disabled people, it is clear that, along with any positives that have resulted from its passage, there are a multitude of problems it has created, as well. One is that such laws were seen by the Founders as something that should be decided at the state level, not at the federal level.

Photo: Drazen_ / E+ / Getty Images Plus

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