

LABOR AND EMPLOYMENT PRACTICE CASE BULLETIN
Margo Garthright-Dietrich and Bonnie Bonham v. Atlanta Landmarks, Inc.

Title III of the American with Disabilities Act (“ADA”) prohibits discrimination against persons with disabilities by private entities in places of public accommodation. For many facilities in existence prior to the enactment of the ADA in January 1993, certain architectural barriers to access must be removed where such removal is “readily achievable.” The burden is on the plaintiff to demonstrate that the removal of such a barrier is “readily achievable,” and the burden then shifts to the defendant to show that barrier removal is not, in fact, “readily achievable.”

Although the term “readily achievable” is defined by the ADA, there has not been much interpretation of the term, until recently. Now, in Garthright-Dietrich v. Atlanta Landmarks, Inc., Case No. 05-14229 (11th Cir. June 23, 2006) the U. S. Eleventh Circuit Court of Appeals has provided guidance to property owners on the issue of what type of barrier removal is “readily achievable.” The Court in Garthright-Dietrich held that although plaintiffs proved that there were accessibility barriers, they failed to present sufficient evidence to demonstrate that removal of those barriers was “readily achievable.” This is the first case within our federal circuit to make such a ruling. It is also one of only a few such decisions on this point.

As a result of this case, ADA plaintiffs will be held to a higher standard of proof and will be required to provide specific details about the modifications they propose to rectify any alleged defects. Thus, plaintiffs will now have to present evidence of specific designs to remove alleged barriers, the cost of such proposed remedy, and the effect of such remedies on the finances and operations of the facility. Plaintiffs will no longer be permitted to propose non-specific proposals

without any detailed cost analysis. Perhaps the only down side of this decision for property owners is that the parties may be forced to engage in extensive discovery, including financial information, in order to enable plaintiffs to meet their burden.

In short, this decision requires ADA plaintiffs to do more work and holds them to a high burden of demonstrating that barrier removal is truly “readily achievable.” In time, we will see how this case affects Title III litigation but, at first blush, this case seems consistent with federal courts’ recent tendency to be less tolerant of ADA plaintiffs.

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