



# Americans With Disabilities Law Alert

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## Point-of-Sale ADA Claims Pointing Upward

Last week, a federal class action lawsuit was filed against Wal-Mart<sup>1</sup> by disability rights advocate Center for Independent Living, as well as two disabled individuals, on the ground that Wal-Mart has violated the Americans with Disabilities Act (“ADA”) and California law by failing to provide point-of-sale (“POS”) machines which are accessible to customers using wheelchairs and motorized scooters. Specifically, the plaintiffs allege that the POS machines are too tall, or angled in such a manner, that disabled customers cannot use them, if at all, without physical difficulty or without asking a cashier for assistance.

This proposed class action is an example of a growing trend among disability rights advocates to scrutinize the height and angle of POS terminals at restaurants and retail establishments to uncover ADA violations. While the new case against Wal-Mart is being prosecuted as a large federal class action, we have seen a growing number of POS machine ADA claims filed by individual plaintiffs in state court against restaurant operators and retailers, who may not always realize that their POS machines are out of compliance.

Like all ADA access claims in California, a single violation with respect to the height and angle of a POS machine, if proven, entitles the plaintiff to a minimum of \$4,000 in damages, plus his or her attorney’s fees. Much to the dismay of many business owners, where a plaintiff encounters a POS machine violation on multiple visits to the same business, the plaintiff will most likely seek to multiply the \$4,000 minimum by the total number of visits, which can result in five-figure settlement demands after a lawsuit is filed.

While height and angle violations are easy for plaintiffs to identify, however, they are just as easy for business owners to fix. Under the California Building Code, the height of the POS machine dictates the permissible angle at which the screen may be tipped away from the viewer:

1. **Vertically mounted screen devices.** If mounted vertically or tipped no more than 30 degrees away from the viewer, the center line of screens and other screen devices shall be located a maximum of 52 inches (1321 mm) above grade.
2. **Angle-mounted screen devices.** If mounted at an angle between 30 degrees and 60 degrees tipped away from the viewer, the center line of screens and other screen devices shall be located a maximum of 44 inches (1118 mm) above grade.
3. **Horizontally mounted screen devices.** If mounted at an angle between 60 degrees and 90 degrees tipped away from the viewer, the center of screens and other screen devices shall be located a maximum of 34 inches (864 mm) above grade.

<sup>1</sup> Center for Independent Living, Inc., et al. v. Wal-Mart Stores, Inc., United States District Court, Northern District of California, Case No. CV-12-3885, July 25, 2012

*Title 24, California Building Code, §1117B.7.5.*

The best way to provide equal access to your disabled customers, and minimize the risk of ADA claims, is to stay proactive and survey your business. With more and more ADA plaintiffs litigating POS machine claims, now is the time to measure the height and angle of any POS machines in use at your business. If your POS machines are not already in compliance, adjusting their height and angle to comply with the California Building Code is most likely a simple and inexpensive fix, the benefit of which far outweighs the potential cost of a lawsuit and/or settlement.

Burnham Brown recommends that you conduct regular ADA compliance audits and remain alert for accessibility issues that impact disabled customers.

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