



# VOSAP SPRING 2021 EXECUTIVE SUMMARY

## Researching the cost of non-compliance to the Americans with Disabilities Act (ADA)

### Background

#### *Project Scope*

- Voice of Specially Abled People (VOSAP) is a global advocacy organization in the disability sector. To strengthen the advocacy, it also conducts detailed research of available data and analyzes this data to present findings to policymakers and decision makers to serve the disability sector
- In Spring 2021, VOSAP focused on collecting and analyzing data regarding lawsuits on three different areas of ADA compliance: employment, physical accessibility, and digital accessibility

#### *Key Terminologies*

- **Americans with Disabilities Act (ADA)** is a civil rights law that prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public (ada.gov).
- **Section 508** was amended by the Workforce Investment Act of 1998, which requires federal agencies to develop, procure, maintain and use information and communications technology (ICT) that is accessible to people with disabilities (epa.gov).
- The **2008 Amendment** emphasizes that the definition of disability should be construed in favor of broad coverage of individuals to the maximum extent permitted by the terms of the ADA and generally shall not require extensive analysis (eoc.gov).
- The **Unruh Civil Rights Act** provides protection from discrimination by all business establishments in California, including housing and public accommodations. The term "business establishments" may include governmental and public entities as well (dfeh.ca.gov).

#### *Data Sources and Collection Method*

- Due to the lack of a comprehensive data set, all data are hand-collected by our team and were manually reviewed for further analysis. The following sources were used for collecting data for each area of ADA:
  - › **Employment Discrimination**
    - U.S. Equal Employment Opportunity Commission NewsRoom
    - USCourts.gov
  - › **Physical Accessibility**
    - Disability Rights Advocates
    - Google Scholar
    - Texas Department of Licensing and Regulation (TDLR) website
    - CaseText
    - USCourts.gov
    - Interviews with Marin Center for Independent Living
    - Disability Rights Advocates
    - United Spinal Association
- Timing of increase coincides with ADA Amendments Act of 2008, which strength ened protections provided by the ADA.



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## › Digital Accessibility

- UsableNet
  - Github
  - National Federation of the Blind
  - USCourts.gov
- In total, we created a dataset with ADA cases documenting data for 600+ lawsuits (between 100 and 250 for each area) related to disability in the past 10 years, primarily in the states California and Texas.
  - We analyzed selected ADA cases from 2010-2020 with a limited sample size of the cases we collected.

## Summary of Findings

### **General Trends**

- A simple dataset we found from USCourts.gov shows the number of civil cases filed at the US District Courts level on 2 different categories per year: ADA other, and ADA employment.
- From 2010-2020, we saw the maximum total number of ADA cases in 2019: 14,400 cases.
- ADA employment cases stay relatively stable year to year, but starting in 2013, we see a dramatic increase in the number of ADA cases that fall outside of the employment category. This can include physical accessibility or digital accessibility.
  - From 2013-2020, we saw the total number of ADA cases rise by roughly 177% (from 5,100 to 14,146, respectively).
- According to the same uscourts.gov data, ADA cases are making up a greater proportion of the civil cases filed. In 2018 and 2019, we see that it makes a record number of 5% of cases (compared to the historical 1-2%). Most of these cases come from California, Florida, and New York.

### **Employment Discrimination**

- According to the EEOC, the percentage of claims for disability discrimination, in comparison to other forms of employment discrimination, has increased every year since 2008 (source, source)
  - 32.2% in FY 2018
  - 33.4% in FY 2019
  - 36.1% in FY 2020
- Timing of increase coincides with ADA Amendments Act of 2008, which strengthened protections provided by the ADA.
- The employment gap between people with disabilities and people without disabilities has not improved for the last 30 years, since the ADA enactment.



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- The ADA and Unruh Act (CA) allows a successful plaintiff to recover attorney's fees as well. The plaintiff may win a small settlement, but the attorney fees could make the financial damage severe for the defendant.
- Employment data contains only settlements. Just because a plaintiff sues under the ADA, this does not mean their claim will be limited to one United States statute.
- Outlier data point of \$240 million EEOC v. Hill County Farms, Inc. (Iowa, USA): Employers had no experience with hiring and accomodating in accordance with disabilities and discrimination law.
- Big Corporation Cases to Highlight
  - › **EEOC v. Hill County Farms, Inc.**
    - 2013: \$240M settlement IA, USA
  - › **EEOC v. Verizon Communications:**
    - 2011: \$20M settlement MD, USA
  - › **EEOC v. McDonald's Co:**
    - 2016: \$56,500 settlement MO, USA
    - 2016: \$103,000 settlement AR, USA
  - › **EEOC v. Wal-Mart:**
    - 2015: \$150,000 settlement TX, USA
    - 2016: \$75,000 settlement IL, USA
    - 2019: \$100,000 settlement DC, USA
  - › **EEOC v. Target:**
    - 2011: \$160,000 settlement CA, USA
    - 2018: \$88,000 settlement CA, USA
  - › **EEOC v. Pepsi Bottling Group:**
    - 2011: \$120,000 settlement CA, USA
  - › **EEOC v. United Airlines:**
    - 2015: \$1M settlement IL, USA
  - › **EEOC v. American Airlines and Envoy Air:**
    - 2017: \$9.8M settlement AZ, USA
  - › **EEOC v. Starbucks:**
    - 2011: \$75,000 settlement TX, USA

## ***Physical Accessibility***

- Lawsuits are related to inaccessibility of sidewalks or parking spaces, and architectural barriers for people with disabilities in public places.
- Increasing number of lawsuits against cities and counties for inaccessible roads and sidewalks were observed.
- KEY CASE: Lashbrook vs. City of San Jose (source)
  - › San Jose resident Artie Lashbrook sued the city after being thrown from his wheelchair at least three times while using city sidewalks to access public transportation.



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- › The case was settled in September 2020 and San Jose is required to make about \$145 million in total curb repairs and construction through 2038.
  - San Jose is currently required to fix nearly 2,000 curb ramps per year between now and 2030, and 800 ramps per year after that, until 2038.
  - San Jose has spent about \$13 million so far on curb repair.
- › The settlement will upgrade approximately 28,000 curb ramps, representing more than 90% of the city's existing ramps.
- Other noteworthy cases:
  - › Carter v. City of Los Angeles
  - › 2014: \$3.5M + \$4M per year for additional remediation of curbs
  - › Frame v. City of Arlington (2008)
  - › City of Dallas v. Maurya Lynn Patrick (2009)
  - › Don't Dismissabilities, Inc. v. The City of Dallas (2015)
  - › The City of San Antonio v. Elena Herrera (2017)
- Serial ADA lawsuit filer Scott Johnson has filed over 3,800 ADA lawsuits in Sacramento and the greater Northern California alone.
- Samuel Love is another advocate for ADA compliance driving the change on the ground. He is also another serial ADA lawsuit filer.
- The average total cost of lawsuits, measured by the total amount of damages, attorney fees, and costs paid to the plaintiff by the defendant, is higher in California than Texas.
- Non-compliance to the EAB law in Texas: average of 49 Administrative Orders per year, each with an average of \$1,265 in penalty.

## **Digital Accessibility**

- A large majority of the lawsuits are related to incompatibility of website/app/video to screen reader software
- Saw a 23% increase in 2020: record of 3550 cases.
- Over 20% of lawsuits in 2020 were filed against a company that had already been sued at least once in the past two years.
- Industry analysis of 2020: 77% cases were in the retail industry
- The states with the most digital accessibility lawsuits are California, Texas, New York, and Florida.
- Most lawsuits were in the public sector and education sector (2011 - 2015).
- We contacted lawyers for interviews to get a better understanding of what type of data is out there for this sector.
- Interview results: most cases are often settled before reaching trial because settlement asking is not too high.
- Digital accessibility is a relatively new area of accessibility; many early lawsuits did not require settlement amounts.



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- Highlighted cases
  - › **Shields v. Walt Disney Parks and Resorts Inc.**
    - 2011: \$161,500 settlement Florida
  - › **National Federation of the Blind v. Law School Admissions Council**
    - 2011: \$320,000 settlement California
  - › **National Federation of the Blind v. H&R Block**
    - 2014: \$45,000 settlement Massachusetts
  - › **Martinez v. San Diego County Credit Union**
    - 2020: \$75,000 settlement California

## ***Future Directions***

- This project will be partly continued during the VOSAP Summer Research Internship 2021.
- The goal is to finalize a comprehensive dataset in order to analyze lawsuit trends and settlements for ADA non-compliance.
- We also want to create data models to forecast the projected cost of non-compliance with ADA over the next 10+ years.
- This information can be presented to promote compliance with the ADA.

## ABOUT THE AUTHORS

Priscila Amorim was the project manager for this project, and Fernanda Ramos, Jinny Chung, Jianing Yu, Shruti Pai, and Sophie Manoukian were the undergraduate researchers from UC Berkeley. Priscila is pursuing a Master's in Data Science at Northwestern University with a concentration in Data Engineering. Her goal is to utilize data science as a driving tool in social justice across every sector, including the disability, environmental, and racial justice sectors. Fernanda, Jinny, Jianing, Shruti, and Sophie are all undergraduate students studying data science and have outlined their passion for disability justice through their great efforts in this project.

## ACKNOWLEDGEMENTS

VOSAP acknowledges tremendous contribution by Priscilla Amorim, who led the entire project as Research Manager. We thank Pranav Desai, founder of VOSAP, for his expertise in the disability sector and invaluable insights for our work

## WHY THIS MATTERS TO VOSAP

VOSAP's mission of Data driven Advocacy has been strengthened by collaboration with the Data Sciences Department of UC Berkeley. While Covid19 Vaccination drive is going on VOSAP wanted to find data on Vaccinization against Rubella Virus. Reason being, even after 50 years of vaccine invention to protect against Rubella Virus. 110 thousand children were born with disabilities as per GAVI report. Because of the Rubella virus infecting the pregnant woman, the sufferings and cost associated with maintaining the life of specially abled children is enormous. This research project provides inputs on the investments and associated returns for various countries which students of UC Berkeley collected and analyzed data available for UNICEF and WHO. VOSAP intends to present its findings to help ministers, policy makers and ambassadors to the UN of selected countries.

## ABOUT VOICE OF SPECIALLY ABLED PEOPLE INC

Voice of Specially Abled People (VOSAP) is a global advocacy organization built on the principles of Empowerment of Specially Abled People. In Special Consultative Status with UN ECOSOC, VOSAP is working to create an Inclusive and Accessible world by accelerating implementation of UN Sustainable Development Goals (SDGs) and goals of UN CRPD (Convention on the Rights of Persons with Disabilities) treaty. In addition to enabling individuals with assistive devices, surgical interventions, scholarships etc, VOSAP has created innovative digital transformation tools to promote inclusion of Person with disabilities such as (a) Virtual Art Gallery on Disability to educate masses on disability and promote inclusion, (b) create crowdsource demand for accessibility of public places and create mass movement of virtually connected ≈ 10,000+ volunteers/changemakers using VOSAP App.