

## LAS VEGAS SUN

### Activists wield Disabilities Act in fight for smoke-free casinos

By [Liz Benston](#) ([contact](#))

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The latest skirmish in the battle to ban smoking in Nevada casinos is emerging around a little-discussed area of law more commonly associated with wheelchair ramps and handicap-accessible restrooms.

Alongside requirements that public buildings and workplaces be accessible to people with visible handicaps, the 20-year-old Americans with Disabilities Act offers similar protection for people with breathing problems such as asthma and a list of medical conditions exacerbated by secondhand smoke, such as hypertension.

In the years before smoking bans became widespread, some courts sided with plaintiffs who sought smoke-free restaurants and workplaces because of breathing problems. Many cases were settled, with defendants going smoke-free in the wake of lawsuits or state and local laws banning smoking.

Such cases have not gone far in Nevada, where smoking is permitted by law in most gambling areas. Activists blame a lack of public awareness about ADA protections, which were strengthened last month by amendments legal experts say will cover millions more disabled Americans. The new rules specify that medical conditions that rarely flare up and are controlled by medication are covered if they otherwise hamper a person's ability to breathe and move.

"Because there's no safe level of secondhand smoke, a business can't reasonably accommodate a disabled person with a breathing problem" unless it prohibits smoking, said Karen Blumenfeld, an attorney and executive director of the New Jersey-based [Global Advisors on Smokefree Policy](#).

Anti-smoking activists gathering in Las Vegas next month for a strategy conference on making casinos smoke-free say they will assist casino workers and customers in filing ADA complaints over secondhand smoke.

But some legal experts say Blumenfeld is wrong to think the ADA requires smoking bans.

Rather, federal law allows venues to ban smoking on their own as it "does not preclude the prohibition of, or the imposition of restrictions on, smoking."

Such bans have been subject to legal wrangling over the circumstances of an individual's disability within the specific venue in question.

Federal law doesn't require employers to change their business models, only that they make a reasonable effort to accommodate the disabled, said Brian Pedrow, a disabilities attorney with Ballard Spahr in Philadelphia. For casinos that have long catered to smokers, a smoking ban would likely be considered unreasonable, although moving a worker to a nonsmoking area would probably fit the "reasonable accommodation" requirement under federal law, said Pedrow, who has handled cases on behalf of individuals as well as employers but hasn't represented casinos. That might be a challenge for unionized casinos as seniority rules prevent workers from leapfrogging others for preferred jobs, he said.

If no comparable job is available and an employee is no longer able to work because of a breathing problem, employers are entitled to terminate the employee, he said.

Still, tens of millions of Americans are entitled to some assistance they might not have received before the government lowered the disability standard, Pedrow said, adding that more than 70 million Americans over age 20 have hypertension.

Advocates worry that disabled workers who depend on health insurance won't want to rock the boat by seeking help. Nor will they jump to pursue lawsuits against employers who resist making changes or bury employees in paperwork, they say. Moving employees around is a poor remedy because smoke circulates through nonsmoking zones in buildings where smoking is permitted.

The economic hardship defense commonly cited by employers doesn't hold up against growing evidence that businesses have survived and even flourished after statewide smoking bans, Blumenfeld said.

Advocates also have harsh words for regulators, claiming federal authorities have abdicated their duty under the ADA to protect the health of American workers and the public.

The health benefits of smoking bans and an abundance of evidence on the harms of secondhand smoke make smoking bans the obvious — and only — option for venues like casinos, Blumenfeld said.

Although the law doesn't impose smoking bans, it requires that venues offer equal access to all people, regardless of disability, added Stephanie Steinberg, who runs [Smoke-Free Gaming](#).

Historically, authorities and advocates focused on disabilities that were easier to identify and accommodate, such as adding ramps for those who use wheelchairs, she said.

Next month's gathering of anti-smoking activists comes during a meeting of the ADA National Network, a federally funded agency that educates employers and the public about the ADA. The group is hosting training sessions at its annual conference at Paris Las Vegas.

"It's unconscionable that a federally sponsored ADA symposium is being held at a place that permits smoking," Blumenfeld said. "They should walk the walk."

<http://www.vegasinc.com/news/2011/apr/18/activists-wield-ada-fight-smoke-free-casinos/>