

## Ninth Circuit Rejects Plaintiffs' Claims in Trio of ADA Disability Access Cases

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In a [big win for Starbucks and all other restaurateurs](#), retailers, and places of public accommodation, the U.S. Court of Appeals for the Ninth Circuit held in three related cases ([Johnson v. Starbuck Corp.](#), [Lindsay v. Starbucks Corp.](#), and [Kong v. Starbucks Corp.](#)) that accessible sales and service counters are not required to provide a minimum of 36 inches of *usable* counter space for disabled patrons, provided that the counter is no more than 36 inches high. The ruling should thwart the increasingly popular claim of many lawsuits and demand letters that businesses violated the Americans with Disabilities Act (ADA) by failing to keep clear the lowered portions of sales and service counters.

### Background

The 2010 Standards for Accessible Design require that for sales and service counters, places of public accommodation must provide “[a] portion of the counter surface that is 36 inches (915 mm) long minimum and 36 inches (915 mm) high maximum above the finish floor.” However, the 2010 Standards contain an exception that provides that where the counter surface is less than 36 inches long, the entire counter surface must be 36 inches high maximum above the floor.

While Starbucks provided 36-inch long counters, plaintiffs alleged that merchandise, decorations, or other materials obstructed some of the counter space. Starbucks argued that the 2010 Standards do not require it to provide 36 inches of *clear* counter space. The Ninth Circuit agreed, finding that the 2010 Standards expressly contemplate counters that are built with less than 36 inches of clear counter space (implying that a minimum of 36 inches of counter space is not required). The court likewise rejected plaintiffs’ argument that the maintenance requirement in 28 C.F.R. § 36.211 applies to counters that already meet the 2010 Standards.

### Takeaway

It is now clear that the ADA does not require public accommodations to provide or proactively maintain a 36-inch section of clear counter space. This is a significant win for retailers that often use portions of their sales counters to display merchandise for those last minute, impulse purchases.

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