



A customer who is blind has sued Five Guys Enterprises in the Southern District of California, claiming that he could not access the Freestyle Coca-Cola soda machine in a Five Guys restaurant.

The parties each filed a motion for summary judgment on the issue of whether Five Guys violated the Americans with Disability Act (ADA), California's Unruh Act and California's Disabled Person Act (DPA) when its employees did not offer to help the customer use the soda machine. Generally, the ADA, and California's Unruh Act and the DPA require that public accommodations (like a restaurant) ensure that no individual is discriminated against on the basis of a disability. Public accommodations are required to furnish appropriate auxiliary aids and services to ensure effective communication with individuals with disabilities. Here, the plaintiff claimed that this meant Five Guys employees should have offered to help him operate the soda

machine. The court agreed with the plaintiff, observing that the employees at Five Guys noticed that the plaintiff was blind, handed him a cup to obtain a soda from the Freestyle machine, and did not offer to assist him. Instead, the plaintiff's companion helped him use the Freestyle machine. The court held that it did not matter that the plaintiff *could have* asked for help; instead, the restaurant staff had an *obligation to offer* help to the plaintiff. The court held that Five Guys therefore discriminated against the plaintiff in violation of the ADA and California's Unruh Act and DPA. **Takeaway:** To avoid claims under the ADA and related state laws, companies should examine their policies and training regarding offering appropriate auxiliary aids and assistance to customers who are disabled.

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