The California Supreme Court has held that a plaintiff seeking damages under the state Unruh Civil Rights Act for a violation of the public accommodation provisions of the federal Americans with Disabilities Act need not prove that the discrimination was intentional. *Munson v. Del Taco, Inc.*, No. S162818 (Cal. June 11, 2009). The state Supreme Court decision resulted from a question certified from the U.S. Court of Appeals for the Ninth Circuit.

The Unruh Act provides protection from discrimination by all business establishments in California, including housing and public accommodations, because of age, ancestry, color, disability, national origin, race, religion, sex and sexual orientation.

Plaintiff Kenneth Munson was a disabled individual who used a wheelchair. When he visited a San Bernadino restaurant owned and operated by Del Taco, he allegedly encountered architectural barriers preventing his access to the parking area and restrooms. Munson sued Del Taco, alleging the company violated the ADA and the Unruh Act and requesting injunctive relief, damages and attorneys' fees. The parties moved for summary judgment, and the federal district court granted Munson’s motion. The parties stipulated to statutory damages of $12,000, and the district court entered judgment against Del Taco. The defendant appealed, arguing that the Unruh Act required a showing of intent. The Court of Appeals then certified to the California Supreme Court the following question: “Must a plaintiff who seeks damages under California Civil Code § 52, claiming the denial of full and equal treatment on the basis of disability in violation of the Unruh Act, prove intentional discrimination?”

To answer the question, the Supreme Court first examined the Unruh Act's original language and the case law interpreting it. Section 51 of the Act provides, in relevant part, that all persons are equal and have the right to full and equal accommodations. Section 52 of the Act provides for private actions to recover treble damages and attorneys' fees for Unruh Act violations. The Court had held in *Harris v. Capital Growth Investors XIV*, 52 Cal. 3d 1142 (Cal. 2001), that proof of intentional discrimination was necessary to establish a violation of the Act. In 2002, the state Legislature amended the Act to include ADA violations as violations of the Unruh Act. Under the ADA, proof of intentional discrimination is not required to establish a violation of the public accommodation provisions. Accordingly, in *Munson*, the Court concluded that no such proof was required to establish an Unruh Act claim based on the public accommodation provisions of the ADA.

The Court then addressed whether Munson could pursue a private right of action for damages for public accommodation violations of the ADA. The ADA permits a disabled individual denied access to public accommodations to recover damages in a government enforcement action, but not through a private action. However, Section 52 of the Unruh Act permits a damages action for violations of Section 51. Because Section 51 includes ADA violations, the Court concluded that the most “natural reading” of the two sections was that the Unruh Act allowed plaintiffs to pursue a private right of action for damages for public accommodation violations of the ADA. Accordingly, the Court answered the certified question in the negative: proof of intentional discrimination was not necessary to establish a violation of the Unruh Act based on the public accommodation provisions of the ADA.

This ruling likely will lead to an increase in public accommodation litigation in California because
plaintiffs will be able to seek damages and attorneys' fees without proving that they were the victims of intentional discrimination. Plaintiffs' attorneys also may have increased leverage in seeking settlements because of the potential damages and fees, regardless of the merits of the underlying claims.

Mark Askanas, a partner and the Litigation Manager of Jackson Lewis' San Francisco office, noted: “This decision comes on the heels of the Tobacco Cases where the California Supreme Court gave a big boost to unfair business practices class actions by eliminating the requirement that absent class members must affirmatively demonstrate injury caused by an unfair practice in order to proceed as a class action. Now, with Munson, employers can expect even more class action litigation for years to come absent the unlikely event the California Legislature provides a legislative solution requiring intentional discrimination for Unruh Act claims.”

Jackson Lewis will continue to monitor developments in this area. If you have questions regarding this decision or class action litigation in California, contact a Jackson Lewis attorney.
The National Operations Center serves as the firm's central administration hub and houses the firm's Facilities, Finance, Human Resources and Technology departments.