



February 7, 2022

**BY EMAIL**

Martin Ebel, Senior Counsel  
Albertsons Companies  
martin.ebel@albertsons.com

**Re: LED Discrimination**

Dear Martin Ebel,

I am receipt of your correspondence dated February 7, 2022. I will be addressing the assertions made in your letter.

- 1) You wrote, *"First, we are aware of no regulation by any federal government agency that forbids or restricts the use of LED lighting devices in any retail operation such as a grocery store. While regulation may not (under certain circumstances that are not present here) be the end of the discussion about compliance with the ADA, we believe that in reference to LED lighting devices, the absence of regulation is controlling."* –

Here, you have misunderstood the nature of the Americans with Disabilities Act. The ADA does not state that there must be certain regulations in place that Albertsons would be violating for Albertsons to be guilty of discrimination. On the contrary, the ADA prohibits discrimination in its entirety, regardless of whether guidelines or regulations exist. Because of the bullet-shaped, non-uniform spatial shape of LED visible radiation which interferes with the proper functioning of the human nervous system, LEDs are discriminatory. We agree that there are no government regulations for LEDs, although this certainly should change.

To correctly state the situation would be to say, "LEDs have not been approved by the government and there are currently no safety regulations. Therefore, any use of LEDs by Albertsons has a high probability of being discriminatory and therefore no liability protection is afforded Albertsons when they choose to use an unapproved, dangerous product."

- 2) You wrote, *"According to the ADA Title III Technical Assistance Manual, readily achievable means that a business such as Albertsons Companies, must remove those barriers if doing so is "easily accomplished and able to be carried out without much difficulty or expense." III-4.4200. It is plain to see that such barrier removal in Albertsons Companies grocery stores is not readily achievable."*

Because I wrote to you about the Safeway store in Ashland and notified Albertsons that the Ashland store currently has fluorescent overhead lighting, I have therefore notified Albertsons prior to any conversion to LED overhead lighting. Because you responded on behalf of all the Albertsons stores, this means that Albertsons understands that there is no undue expense in not converting to LED overhead lighting for all remaining Albertsons stores that currently do not use LED overhead lighting, including the Ashland store. An attempt by Albertsons to claim “undue burden” after having previously been notified about the discriminatory nature of LEDs is not valid.

- 3) You wrote, *“The ADA also provides for alternative methods of providing access to the public accommodation’s program or services if, as is the case here, the architectural access is not readily achievable. This can take different forms and for a grocery business, we suggest that at-home delivery or curbside pick-up of groceries are solutions that provide for all customers’ needs. Albertsons Companies has an app and a web presence for each of its banners (including Safeway), which allow a customer to shop all our products without entering the store. “*

For the Ashland store, and any other store that has not yet been switched to LED, if Albertsons proceeds to switch to LED anyways, with full knowledge that LEDs are discriminatory, the alternative methods are not acceptable. The ADA does not permit a company to knowingly discriminate, and then offer some reduced quality service in its place.

- 4) You wrote, *“And finally, we understand that there are special types of eyeglasses that people who are adversely affected by LED lighting devices may wear to greatly reduce or eliminate the effects they suffer due to this type of lighting system.”*

This statement is categorically and fundamentally untrue and leads me to believe that Albertsons has failed to understand how LED lighting works and how it impacts the human eye and nervous system. Given that LED lighting has never been approved by the government and given Albertsons lack of knowledge of how LEDs work and how they impact human eyes and human physical and mental health, I conclude that Albertsons has negligently proceeded with the installation of dangerous LED devices throughout its stores and that these dangerous LED devices illegally discriminate.

As part of my reply, I offer the following additional evidence.

- 5) The Soft Lights Foundation has submitted information to the United States Access Board, which is the agency mandated by Congress with the task of developing guidelines that protect people with disabilities from discrimination from architectural barriers. This includes LED lighting. The US Access Board admits that they have not yet developed

guidelines to protect people with disabilities from flat surface light sources such as LED, but the US Access Board has opened a file on the case.

To protect itself from liability lawsuits, Safeway must engage with the US Access Board and request to know whether LED lights can be discriminatory. Contact Dr. Sachin Pavithran, Executive Director, US Access Board - pavithran@access-board.gov

6) I request a formal position statement from Albertsons on whether LED light beams are safe for the following groups:

- a) People with blue eyes
- b) Children and babies
- c) People with epilepsy
- d) People with migraines
- e) People with autism
- f) People with PTSD
- g) People with Bipolar Disorder
- h) People with lupus

I am enclosing a list of other photosensitive conditions and I am asking that Albertsons affirmatively state whether LED light beams are safe for people with these conditions.

7) My friend John Moody suffers from migraines. He cannot be exposed to LED light beams without suffering a debilitating migraine that can leave him incapacitated for as long as three weeks. My friends MarieAnn Cherry and Heidi O'Leary suffer from photosensitive epilepsy and will suffer a seizure from exposure to LED light for even a fraction of a second. Ms. Cherry cannot use any device that includes an LED display, and therefore the concept of ordering online is impossible. I personally have autism and exposure to LED lights causes me to have panic attacks and anxiety. Your suggestion that I do not enter the store because Albertsons has knowingly installed toxic, hazardous, and discriminatory LED devices is unacceptable. You may receive additional letters from my friends related to this situation.


Our conditions are representative of millions of other Americans with similar conditions.

8) It doesn't appear as though you explained why Albertsons chose to install LED devices that are not approved by any government agency. The typical reason why companies choose to switch to LEDs is based on the false premise that LEDs save energy. LEDs do not save energy because LEDs do not emit uniform light. LEDs do not provide the same service (uniform illumination) as fluorescent lights because LED light is a non-uniform bullet-shaped beam.

It appears, then, that Albertsons is only switching to LEDs so that their electric bill will be smaller than before. This switch was done at the expense of the health and safety of Albertsons employees and customers and the switch also created conditions of

discrimination. Since the switch to LED is solely for the purpose of increasing the profit margin of Albertsons and since the government has not approved the LED product that Albertsons switched to, Albertsons is liable for all injury and discrimination caused by the installation and operation of LED lighting devices.

Sincerely,

A handwritten signature in black ink that reads "Mark Baker". The signature is written in a cursive style with a large, stylized "M" and "B".

Mark Baker

President

Soft Lights Foundation

[mbaker@softlights.org](mailto:mbaker@softlights.org)