



February 7, 2022

*Via email only to mbaker@softlights.org*

Mr. Mark Baker, President  
Soft Lights Foundation  
9450 SW Gemini Dr, PMB 44671  
Beaverton, OR 97008

Re: Use of LED lighting

Dear Mr. Baker:

My name is Martin Ebel and I am a member Albertsons Companies' corporate legal team. One of my areas of expertise is the Americans with Disabilities Act, including its Title III requirements for places of public accommodation. I am writing in response to your January 6, 2022, letter, which was recently forwarded to me for response.

Let me start by thanking you for bringing this topic to our attention. At Albertsons Companies, including Safeway and our other banners, we are committed operating and maintaining operations that comply with Title III of the ADA. To the extent that we can, we will provide barrier-free environments for people to shop in and make such accommodations as we are able.

We understand your concerns and your commitment to places of business without LED lighting devices. We thank you for providing the very helpful documentation in your letter to highlight to possible problems with LED lighting devices. We are unsure about your mention of litigation, as we do not believe that LED lighting devices are prohibited by the ADA. A discussion of our understanding of the law and our responsibilities follows.

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. You indicate in the last paragraph of your letter that LED lighting devices "do not comply with regulations" without providing a citation to such regulation. If we are incorrect about the existence of regulation on this subject, we would welcome you bringing such regulation to our attention.

Notwithstanding the absences of regulation, Title III of the ADA requires an entity providing a public accommodation to undertake only such barrier removal that is "readily achievable."

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. First, there would be an intense effort required to acquire and install different lighting for those stores where we currently use LED lighting devices. This effort would be expensive because replacement lighting—of any type—is expensive. This expense includes both the materials and the labor to undertake the replacement process (which would need to be done at a significant height above the floor and in areas not immediately above open floor space). And since the size of our grocery stores encompasses tens of thousands of square feet, the lighting requirements are large.

Second, the expense to operate other types of lighting, such as fluorescent or high-pressure sodium is more than the expense to operate LED lighting devices. While the combined expense and difficulty of either the acquisition or the operation of alternative lighting types would alone trip the exemption provided for a change that is not “readily achievable,” when taken together, there is no question but that this process is not required by the ADA’s standard.

But this is not the end of the analysis. 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. Your selections will be made, your selections bagged, and delivered to your car or home, without any need to ever enter the store. Curbside pick-up and delivery services are already in place across our operations and certainly comply with the alternative standard where architectural access is not readily achievable.

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. Such devices would seem to be analogous to other sorts of prescription eyewear and be classified for ADA purposes as personal devices. Of course, the ADA does not require a place of public accommodation to provide personal devices, but we are intrigued by the possibility of such a solution to the problem you have identified.

You have asked that we not transition to LED lighting devices in our Ashland, Oregon store and that we remove and replace all currently installed LED lighting devices with lighting of a different type. You have indicated that LED lighting devices will prevent you from being able to access the store. We believe this not to be so—you may continue to shop at your local Safeway by using the web or application-based ordering systems and have us either deliver groceries or provide you with curbside pickup. You do not need to enter the store.

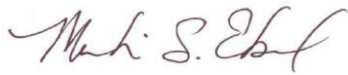
Letter to Mark Baker

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Thank you again for bringing your concerns to our attention. We are confident that there are alternatives to abandoning the use of LED lighting devices. We hope you have found the information in this letter to be helpful. Please let me know if you have additional questions or concerns.

Very truly yours,



Martin S. Ebel  
Senior Counsel, EEO and  
Acting Division Counsel