

FOCUS ON THE AMERICANS WITH DISABILITIES ACT

Litigation Expands as DOJ Delays Website Accessibility Rules

Companies across the United States are seeing an increase in Americans with Disabilities (ADA) lawsuits based on website accessibility. Plaintiffs claim access barriers on company websites make navigating and completing transactions impossible for individuals with disabilities.

Title III of the Americans with Disabilities Act provides, “No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation” A company’s brick and mortar locations have long been considered places of public accommodation, but a company’s website presents a more difficult question. The ADA is silent on whether websites are places of public accommodation; federal courts across the nation are split. *See, e.g., Nat’l Fed’n of the Blind v. Target Corp.*, 452 F. Supp. 2d 946 (N.D. Cal. 2006); *Nat’l Fed’n of the Blind v. Scribd Inc.*, 97 F. Supp. 3d 565 (D. Vt. 2015); *Earll v. eBay, Inc.*, 599 F. App’x 695 (9th Cir. 2015). The U.S. Department of Justice (DOJ), on the other hand, takes the position that all websites must be accessible to individuals with disabilities. *See, e.g., Consent Decree at ¶ 3, Nat’l Fed’n of the Blind v. HRB Digital, LLC*, No. 1:13-cv-10799-GAO (D. Mass. Mar. 3, 2014).

Without any legally binding standard for website accessibility, companies and website operators have been clamoring for DOJ to issue proposed regulations. In late 2015, however, DOJ delayed its release of proposed website accessibility regulations until 2018.

Plaintiffs’ attorneys are taking advantage of this legal uncertainty. Companies nationwide are receiving settlement demand letters, some threatening class action litigation. Dozens of new lawsuits have been filed in federal courts in the past two years related to website accessibility. The lawsuits often allege the websites fail to use resizable text and cannot operate with screen reader programs, two technologies designed to help those with visual impairments.

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NATIONAL EMPLOYMENT PERSPECTIVE

FEBRUARY 22, 2016

Companies should prioritize reviewing their web presence for ADA accessibility. While legal standards remain undefined, influential private standards exist that may help companies avoid litigation. DOJ, for example, favors the Web Content Accessibility Guidelines ([WCAG](#)) 2.0 level AA in its enforcement activity. Implementing such guidelines may not completely protect a company from litigation, but it can keep the company from becoming an easy target and fulfill a company's business interest in continuing to welcome all.

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