

Does Your Website Comply with The Americans with Disabilities Act?

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Disability Discrimination Lawsuits For the Visually-Impaired Concerning Business Websites are on the Rise

By this time, most businesses are familiar with the Americans with Disabilities Act (ADA), which makes it illegal for an employer to discriminate against employees on the basis of a disability. Less is known about Title III of the ADA which addresses public accommodation discrimination. This section of the ADA requires business owners to provide accommodations to disabled individuals so they too can have access to public places. The scenario that comes to mind is the requirement that a business owner remove access barriers at its facility, such as installing ramps and providing parking spaces, to ensure that disabled individuals are able to access the goods or services offered by the business places.

However, discrimination claims under Title III have taken on a new form -- thousands of class action lawsuits have been filed on behalf of the visually impaired against schools, banks, insurance companies and other businesses on the grounds that their websites are inaccessible to the blind and the visually impaired. Several federal courts, notably the Second Circuit (New York) and Third Circuit (New Jersey and Pennsylvania) have found that places of accommodation are not limited to the brick and mortar storefronts and that a website is also a place of accommodation, subject to the requirements of the ADA. See *Andrews v. Blick Art Materials, LLC*, 268 F. Supp. 3d 381 (E.D.N.Y. 2017); *Gniewkowski v. Lettuce Entertain You Enters.*, 251 F. Supp. 3d 908 (W.D. Pa. 2017). The bases of these claims are, for example, that the visually impaired cannot navigate a business's website due to lack of alternative text for graphical images, the presence of linked images missing alternative text, and empty links containing no text. Unfortunately, in contrast to physical locations, there exists no standard set of guidelines to determine a website's adherence to the ADA. Although the United States Department of Justice ("DOJ") began the rulemaking process regarding this very issue in 2010, just a few months ago in December 2017, the DOJ withdrew its proposed rulemaking. See *Nondiscrimination on the Basis of Disability; Notice of Withdrawal of Four Previously Announced Rulemaking Actions*, 82 Fed. Reg. 60932 (Dec. 26, 2017). It is therefore unlikely that the DOJ will promulgate any rules in the near future.

Although monetary damages awards are not available under federal law for public accommodation discrimination claims (an award of compensatory damages is available under New York State and New York City law for successful litigants), the Court can award injunctive relief and direct the business owner to make the website accessible to these litigants. However, an award of counsel fees and expenses are available to successful litigants with respect to federal, state and city claims. As a result, these types of cases have proven to be a field day for class action attorneys. In 2017 alone, over 3,000 suits were filed against a variety of businesses and educational entities. In fact, in the first three months of this year, the same law firm with the

same named plaintiff brought separate lawsuits against twenty-nine banks for public accommodation discrimination based on the contents of their websites.

Given the recent rise in website accessibility lawsuits, it is imperative that business owners protect themselves by immediately taking stock of the current state of their websites, undertaking the remediation of any accessibility issues that may exist, and reviewing and/or updating their policies and procedures in connection with the management of their online presence. Although the DOJ has not established a standardized set of guidelines to which all website must adhere, the DOJ, in its initial rulemaking actions, signaled the adoption of the Web Content Accessibility Guidelines, version 2.0 (the “WCAG 2.0”). It is therefore recommended that websites adhere to the WCAG 2.0, specifically at “Level AA.” Since these lawsuits can result in significant liability for a business owner, we recommend that these affirmative remedial measures be taken as soon as possible.

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For a review of your company’s current practices concerning its website, assistance with ensuring your company’s website is compliant under the discrimination laws, or if you have any questions about your company’s anti-discrimination policies and procedures in general, please contact [Jennine DiSomma](#).

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