New York District Court Holds That Website Without Public-Facing, Physical Operations is Not a "Place of Public Accommodation" Under the Americans with Disabilities Act

The Court's decision means that websites without a brick-and-mortar presence do not need to be ADA compliant.

November 9, 2021

Source: Saiber Employment Law Alert

In 1990, many years before online shopping and web-based entertainment were mainstream, Congress passed the Americans with Disabilities Act ("ADA" or the "Act"), 42 U.S.C. § 12101 et seq. Under Title III of the Act, the ADA prevents places of public accommodation from discriminating against persons with disabilities. The key question posed to the Court in Winegard v. Newsday LLC, No. 19-CV-04420(EK)(RER), 2021 U.S. Dist. LEXIS 153995 (E.D.N.Y. Aug. 16, 2021), is whether a website without a public-facing, physical retail operation is a "place of public accommodation" as contemplated by Title III of the ADA. The Court held it was not.

The plaintiff in Winegard is a deaf individual who filed suit on behalf of himself and others against Newsday, a local newspaper company located in Queens, New York. Newsday distributes its newspapers throughout New York, but does not have any physical retail operations. The newspapers are also available online at its website together with other content, such as videos. The plaintiff alleged that he was unable to watch the videos on Newsday's website because they lacked closed captioning. The plaintiff alleged Newsday violated the ADA because (1) Newsday denied deaf and hard-of-hearing individuals equal participation in watching videos on its website; and (2) Newsday failed to make reasonable modifications to the videos to afford access.

The Court recognized that the plaintiff's claims "stand or fall" on whether Newsday's website is a "place of public accommodation." At the outset, the Court noted that the phrase "public accommodation" has a long history and has been used in other antidiscrimination statutes for well over a century to include only physical spaces. As further support, the Court recognized that the ADA lists fifty specific examples of places of "public accommodation" and at least forty-nine indisputably relate to physical places (the fiftieth example, a "travel service," likely also relates to a physical place according to the Court). The Court held that Congress' use of the phrase "place of public accommodation" was deliberate and expressed an intent that the Act apply only to physical locations.

Although the Internet has fundamentally changed the way businesses have operated since the passage of the ADA, the Court rejected the argument that the ADA's framers could not have anticipated such changes. The Court explained that there were several businesses operating

without a brick-and-mortar presence in 1990. One example is the Sears Roebuck catalog, which dates back to 1888. Other examples include the L.L. Bean catalog (1927), J. Crew catalog (1983), and QVC television shopping (1986). The Court reasoned that Congress could have easily included within the scope of the ADA these other businesses, but deliberately did not.

The Court distinguished the Second Circuit's decision in Pallozzi v. Allstate Life Insurance Co., 198 F.3d 28 (2d Cir. 1999) -- a case often cited to support the expansion of Title III of the ADA to websites. In Pallozzi, the panel applied Title III of the ADA to an insurance company that allegedly failed to issue a joint life insurance policy to the plaintiffs based on their disability. The Winegard Court noted that there was no dispute in Pallozzi that an "insurance office" qualifies as a "place of public accommodation" and is listed as a specific example of such under the Act. According to the Court, Pallozzi stands for the proposition that a physical place is a condition precedent to the applicability of Title III of the ADA, and once satisfied, all goods and services sold by that place of public accommodation fall within the scope of the Act.

Accordingly, the Winegard Court held that websites are subject to Title III of the ADA when they offer the same goods and services as their brick-and-mortar operations. Without a public-facing, physical operation, however, an exclusively online business venture falls outside the reach of the ADA. Although the Court recognized the public policy argument that the ADA should apply to businesses that operate exclusively online given how critical a role the Internet serves in the personal and professional lives of Americans, the Court explained that it is the responsibility of Congress to address that issue, not the courts.