

## A New Wave of Website Accessibility Litigation

Article By:

Alan S. Kaplinsky

John L. Culhane, Jr.

Olabisi Ladeji Okubadejo

---

Businesses, including various employers and financial service providers, continue to face potential litigation over the accessibility of their websites to individuals with disabilities. The increase in website accessibility litigation under the Americans with Disabilities Act (ADA) comes in light of the Department of Justice's (DOJ) indefinite delay in promulgating regulations on website compliance standards and various court rulings, which effectively have encouraged businesses to reevaluate their accessibility policies.

Visually impaired individuals have been increasingly challenging the online application systems of numerous employers under applicable state employment statutes. These statutes—unlike the ADA—have the potential to provide plaintiffs relief in the form of monetary damages. Specifically, plaintiffs are alleging that various companies' online job application pages are not designed to be fully accessible to visually impaired individuals, who often require the use of assistive technology—such as screen-reader software.

In addition, banks and financial service providers continue to be the target for ADA lawsuits resulting in companies reevaluating their policies given the possibility of litigation and associated costs. Plaintiffs continue to allege that certain website services are insufficiently accessible or incompatible with various assistive technologies in violation of the ADA—which, they argue, applies to virtual locations.

Currently, federal courts across the country are split on whether websites are, per se, covered entities subject to ADA accessibility requirements. This area of litigation continues to evolve with the notable *Winn-Dixie* case now pending on appeal in the U.S. Court of Appeals for the 11th Circuit. In that case, the court held that a grocery store was required to modify its website to comply with the ADA and the Web Content Accessibility Guidelines (WCAG) because the store's website was "heavily integrated" with the store's physical location. Many businesses now strive to make their websites conform to the WCAG 2.0 Levels A and AA. In June 2018, WCAG 2.0 was updated to include additional accessibility criteria, though the new WCAG 2.1 standards have not yet been required for ADA compliance.

As some courts trend toward resolving accessibility cases in favor of requiring websites to be accessible (possibly in response to the DOJ's inaction), employers and financial institutions are advised to review their websites and put in place a compliance program to address any accessibility issues.

Copyright © by Ballard Spahr LLP

---

National Law Review, Volume VIII, Number 239

Source URL: <https://natlawreview.com/article/new-wave-website-accessibility-litigation>