

DOJ Further Delays Release of Highly Anticipated Proposed Website Accessibility Regulations for Public Accommodations

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For those who have been eagerly anticipating the release of the ***U.S. Department of Justice's*** proposed website accessibility regulations for public accommodations under ***Title III of the ADA*** (the "Public Accommodation Website Regulations"), the wait just got even longer. The recently released Spring 2015 Unified Agenda of Federal Regulatory and Deregulatory Actions reveals that DOJ's Public Accommodation Website Regulations are now not expected until April 2016. This delay moves back the release date nearly a year from what most had previously anticipated; this summer in advance of July's 25th Anniversary of the ADA. While there was no public statement explaining the release, most insiders believe it has to do with the difficulty of appropriately quantifying the costs and benefits of complying with any promulgated regulations – a necessary step by DOJ for such a rulemaking.

Unfortunately for businesses across virtually all industries – including retail, hospitality & lodging, sports & entertainment, financial services, healthcare, and academia – places of public accommodation remain left to confront the issue of website accessibility without definitive standards adopted by the regulators. This development is particularly frustrating because despite this delay, regulators at the federal and state level, advocacy groups, and private plaintiffs continue to aggressively pursue claims alleging that inaccessible websites violate Title III of the ADA and equivalent state accessibility laws. Indeed, recent settlement agreements with DOJ have seen an increased focus on website accessibility (as well as the addition of mobile applications) and at the state level regulators are increasingly pursuing self-initiated compliance actions focused on allegations of inaccessible technology (including websites).

Despite the lack of formal regulations, companies seeking to assess the accessibility of their websites do have guidelines to look to that have obtained near-universal support. Regulatory efforts to date (e.g., this past winter's Notice of Proposed Rulemaking to revise and update Section 508 of the Rehabilitation Act), recent settlements with DOJ and state regulators, and testimony during various stages of recent rulemaking efforts all point to the World Wide Web Consortium's Web Content Accessibility Guidelines 2.0 (at the Level A and AA) as the appropriate measure of an accessible website. Indeed, this sentiment was expressly echoed by DOJ during a presentation last month at the National ADA Symposium in Atlanta, Georgia.

For companies looking to explore this issue, assess their risk of exposure, and take steps to minimize their susceptibility to investigations or litigations there are clear steps to take. First, websites should be audited – preferably under the protection of privilege – for compliance with WCAG 2.0 Level A and AA using both a user-based and programming-based dual approach. Automated tools, in and of themselves, are insufficient. Second, website accessibility policies – and practice and procedures to assist in their implementation – should be drafted and adopted to help manage the issue in the present and on a going forward basis. Third, the necessary parties should be trained on these policies, practices, and procedures. Finally, accessibility needs to become an integrated part of each company's infrastructure and decision-making processes. While these concepts may seem novel in the context of accessibility, most companies have already confronted analogous issues in the context of data privacy and security issues over the past decade.

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