

ADA Obligations: We're Not Just Talking Employee Accommodations Anymore

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By now, most employers are familiar with their obligations under the Americans with Disabilities Act of 1990 (ADA) to not discriminate against, and possibly provide accommodations for, qualified individuals with disabilities. However, these same employers may not be aware of the newest frontier of plaintiffs' lawsuits — claims that company websites do not comply with the ADA.

Title III of the ADA prohibits discrimination on the basis of disability in the activities of places of public accommodations. Places of public accommodations include businesses that are generally open to the public, such as restaurants, movie theaters, schools, day care facilities, recreation facilities, hospitals, and doctors' offices. Title III of the ADA also requires newly constructed or altered places of public accommodation, as well as commercial facilities (privately owned, nonresidential facilities, including factories, warehouses or office buildings whose operations affect commerce), to comply with ADA standards.

At the time of the ADA's passage, the internet was not a consideration in the ADA's provisions or implementation. However, given the internet's now prevalent use for consumer applications, the ADA's requirements now extend to include company websites. The growing consensus of the courts and the United States Department of Justice (DOJ), the agency responsible for enforcing Title III of the ADA, is that websites are places of public accommodation that must comply with the ADA. State laws may also impose similar compliance obligations on companies. The DOJ is reviewing websites for compliance. In actions brought by the DOJ, monetary damages and civil penalties may be awarded. Civil penalties may not exceed \$50,000 for a first violation or \$100,000 for any subsequent violation.

Private parties may also file suit to obtain court orders to compel companies to bring their websites into compliance with the ADA's public accommodation provisions. No monetary damages are available in such suits under federal law; however, reasonable attorneys' fees may be awarded — making these attractive potential class actions for plaintiffs' attorneys. State laws may also provide for monetary damages.

The DOJ has not yet established binding regulations governing website ADA compliance, and is not

expected to do so until 2018. However, it appears to be a near certainty that the DOJ will adopt the current [“Web Content Accessibility Guidelines \(WCAG-2.0\) Level AA”](#) (WCAG) as the relevant regulations. The WCAG explain how to make web content more accessible to people with disabilities. Web content generally refers to the information in a web page or web application, including natural information such as text, images, and sounds and code or markup that defines structure, presentation, etc.

Until the adoption of binding regulations, the plaintiffs’ bar and the DOJ seem to be treating WCAG as the *de facto* standards for ADA compliance. Therefore, compliance with WCAG is highly recommended. Evaluating reasonable accommodation issues for applicants and employees is complicated enough. To keep pace with companies’ ever-growing list of compliance obligations, companies are strongly encouraged to seek counsel to determine whether their websites comply with the ADA and any applicable state laws.

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