

Website-accessibility lawsuits are increasing

Many are unaware that the Americans with Disabilities Act ("ADA") applies to websites as well as physical facilities. A review of court dockets around the country shows that plaintiffs are filing an increasing number of lawsuits against companies alleging that their websites are not "accessible" to individuals with disabilities as required by the ADA. In 2017, plaintiffs filed 814 website accessibility lawsuits in federal court alone. This trend is not only a national one. These lawsuits are being threatened in Wisconsin as well. Businesses would, therefore, be well advised to get out ahead of the potential threat.

The Americans with Disabilities Act. According to the ADA, a "disability" includes "a physical or mental impairment that substantially limits one or more major life activities." Title III of the ADA prohibits discrimination against individuals with disabilities by a "place of public accommodation." Although business owners and managers may want to consult with an attorney to determine if their business qualifies, hotels, restaurants, theaters, grocery stores, pharmacies, offices of health care providers, museums, golf courses, banks, and many other areas open to the community generally qualify as places of public accommodation. These places are required to provide "full and equal enjoyment of [their] goods, services, privileges, advantages or accommodations" to people with disabilities.



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Application to Websites. The ADA mandates that brick and mortar locations have certain ramps, counter heights, and other accommodations, so as to ensure that individuals with disabilities have access to full and equal enjoyment of the facilities and the services offered inside of them. However, many people are not aware that the "full and equal enjoyment" requirement also applies to websites maintained by places of public accommodation. An individual with a disability must be able to equally access a website or mobile application with the aid of a commonly used assistive technology.

A good example of this is that a visually impaired person must be able to navigate a website using a screen reader. Screen readers are software programs that allow users to read the text displayed on a computer screen with a speech synthesizer or braille display. Not all websites are conducive to, or compatible with, screen readers though. In fact, websites must have very specific characteristics in order to be

compatible with screen readers and other tools used by those with various disabilities.

Legal Standard for Accessibility. There is currently no definitive standard for accessibility, but the World Wide Web Consortium's Web Content Accessibility Guidelines Version 2.0 with AA (intermediate) success criteria ("WCAG 2.0 AA") has become the presumptive standard. Websites that conform with WCAG 2.0 AA are generally deemed ADA compliant.

Although not an exclusive list, in order to conform to WCAG 2.0 AA, websites must have capabilities that include:

- captions for any videos
- certain levels of color contrast and minimum font sizes
- clear labels and section headings
- audio descriptions for video content
- allowing keyboard-only navigation (i.e. navigation without a mouse)
- using icons and buttons consistently
- automatically suggesting fixes when users make input errors.

Maintaining a website that conforms to WCAG 2.0 AA requires periodic updates.

Consequences of a non-ADA compliant website. If a place of public accommodation's website does not conform to the above standards, both the United States Department of Justice and private citizens can bring suit. The Department of Justice can obtain monetary damages, attorneys' fees and costs, monetary penal-

ties, and a court order requiring an institution to bring its website into compliance. An individual may not obtain money damages, but he or she can obtain a court order requiring the institution to bring its website into compliance and recover his or her attorneys' fees and costs. The cost to a non-compliant organization can be significant.

Action steps. Given recent ADA litigation trends and so as not to be an easy target for an accessibility suit, places of public accommodation should consider:

- engaging a consultant with experience in WCAG 2.0 AA when building a new website or modifying an existing website
- posting an accessibility statement offering technical assistance for disabled customers on the website home page
- ensuring that customer complaints regarding accessibility issues are addressed promptly
- hiring a vendor with extensive knowledge of WCAG 2.0 AA to conduct a compliance audit of the organization's current website
- building WCAG 2.0 AA compliance provisions into agreements with website designers and web service providers
- scheduling periodic updates to make sure websites keep up with ever-changing standards and technological specifications.

Proactively taking the above action steps can help mitigate the risk of an ADA suit.

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