

Technology and the ADA: Website Accessibility – Part 2

Driven by the pandemic, many brick-and-mortar businesses have rapidly undergone a digital transformation with new online service offerings, mobile applications, and expanded websites. And, while companies comply with the Americans with Disabilities Act's ("ADA") physical access regulations, many may be overlooking ADA requirements that affect their daily business online.

As website and app traffic has increased during the pandemic, accessibility lawsuits against businesses under the ADA have skyrocketed. ADA demand letters to companies whose websites and apps fail to cater to persons with disabilities accessing the businesses' goods, services, and offerings online have grown exponentially.

While these lawsuits have caused headlines with U.S. Supreme Court decisions against large companies such as Domino's Pizza and Uber Technologies, most actions are usually aimed at unsuspecting smaller and medium-sized businesses. This makes it more critical than ever to take a proactive approach to address accessibility issues.

In this second part of the series, we explain which businesses are required to have accessible websites and apps under the ADA and how to ensure your website and apps are accessible.

Part 3 of this series will examine what enforcement looks like, what steps can reduce exposure, and what to do if a demand letter is received or a lawsuit is filed. Part 3 will also discuss some of the most prominent lawsuits and decisions on the ever-widening application of the ADA to websites and apps.

In this client alert, Part 2 of the series, we will offer an overview of which companies are vulnerable to ADA lawsuits and the guidelines used to address web accessibility obstacles. At a glance:

- **Certain commercial businesses that are generally open to the public have a legal duty to make their websites and apps accessible to individuals with disabilities – just as they would ensure their brick and mortar stores are physically accessible.**

- **These businesses must provide individuals with disabilities an equal opportunity to engage in and benefit from the goods and services of the business by ensuring their website and applications are accessible.**
- **While the federal government has not issued regulations specifically addressing website accessibility, courts across the country have held that (a) the Americans with Disabilities Act applies to certain websites and apps and (b) such websites and apps must adhere to specific international industry standards to ensure accessibility.**

1. Is My Website At Risk For An ADA Accessibility Lawsuit?

Just like certain business owners must maintain a physical environment that is accessible by all, the ADA requires that certain websites and apps also be accessible.

Title III of the ADA prohibits discrimination based on disability in the activities of ***places of public accommodations***, i.e., commercial businesses that are generally open to the public and fall under at least one of the 12 categories listed below.

While Title III of the ADA does not deal explicitly with websites, the courts and Departments of Justice (DOJ) have reaffirmed that business owners have legal obligations to make their websites accessible to individuals with disabilities.

1. Lodgings (e.g., inns, hotels, motels) (except owner-occupied less than six rooms);
2. Food or drink (e.g., restaurants and bars);
3. Entertainment (e.g., movie picture houses, theaters, concert halls, stadiums);
4. Public gathering (e.g., auditoriums, convention centers, lecture halls);
5. Sales or rental (e.g., bakeries, grocery stores, hardware, shopping centers);
6. Service establishments (e.g., banks, shops, travel agencies, accountants or lawyers' offices, insurance offices, health care providers, hospitals);

7. Public transportation terminals, depots, or stations (excluding air transportation);
8. Places of public display or collection (e.g., museums, libraries, galleries);
1. Recreation (e.g., parks, zoos, amusement parks);
2. Education (e.g., nursery schools, elementary, secondary, undergraduate, postgraduate private schools);
3. Social service center establishments (daycare centers, senior citizen centers, homeless shelters, food banks); and
4. Places of exercise or recreation (gymnasiums, health spas, bowling alleys, golf courses).

Certain entities are exempt from Title III, including (i) religious entities and entities controlled by a religious organization, such as a place of worship, and daycares; and (ii) private clubs that offer exclusive membership, high fees and, require a detailed application process.

2. What Does Accessible Mean?

Website accessibility means making web content and mobile applications accessible so that people with disabilities can use them. This means providing an equal opportunity to access, participate and benefit from a business' website or application, including for those with disabilities/impairments related to vision, hearing, speech, mobility.

Accessibility includes information and technology that helps navigate, interpret, understand, and interact with the website or application, such as text, images, sounds, and code or markup that defines structure, presentation, etc. so a person with a disability can use the site or app.

It is important to note that ADA requires that the goods, services, privileges, or activities provided by places of public accommodation be equally but **NOT** identically accessible online to people with disabilities, meaning websites have to

provide an equal opportunity to participate in goods/services but do not have to guarantee an identical result or level of achievement for persons with disabilities. However, discrimination definitions set by the ADA include the “failure to make reasonable modifications.” See Part 1 of the series for more information on the non-discrimination principles of the ADA. [ADD LINK HERE]

3. What Guidelines Need To Be Followed?

While there are no federal regulations specifically addressing the accessibility of websites and apps, the ADA, enacted in the '90s before the internet was a staple of our daily lives and business operations, has now expanded to cover accommodations associated with websites, apps, and other online content. In the absence of specific federal standards, Courts and regulators require businesses to follow the internationally adopted industry standards known as Web Content Accessibility Guidelines 2.0 and 2.1 (WCAG 2.0 and WCAG 2.1). These guidelines are designed to make websites and applications accessible to people with disabilities. Details about WCAG 2.0 and 2.1 features can be found at the World Wide Web Consortium (W3C) site, which develops the international web standards.

4. Why Should I Care?

California is second in the nation in website accessibility lawsuit filings, and the number of cases filed is up dramatically year upon year. Taking proactive steps such as auditing communication and service obstacles in policies, employee trainings, and online platforms can guide the effective implementation of Web Content Accessibility Guidelines (WCAG) and accessibility aids.

Further, courts have ruled over and over again that apps and websites of businesses covered by Title III of the ADA must be accessible, and have granted attorneys fees and damages in the hundreds of thousands of dollars to successful plaintiffs. State and federal Departments of Justice are also enforcing website accessibility requirements against businesses.

In Part 3 of this series, we will discuss some of the most successful website and app accessibility lawsuits against businesses, and how the ADA's ability to govern all aspects of websites and apps is increasing every year/few months.

If you have already received an ADA website demand letter or lawsuit or have any questions about ADA obligations and how they affect your company's website,

please contact FBT Gibbons business attorney [Monisha Coelho](mailto:mcoelho@fbtgibbons.com) at mcoelho@fbtgibbons.com or 213.629.7042.

[Monisha Coelho](#) represents clients – from startups to multinational corporations – in business and real estate disputes before state and federal courts. Monisha also advises companies on ADA compliance. She has litigated ADA discrimination cases, including class actions, before federal courts, state courts, and administrative tribunals. She has provided trainings on disability discrimination issues to lawyers, judges, social workers, and law students. She is licensed to practice law in India and represents clients in a wide range of cross-border US-India business and technology legal matters.

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