

Technology and the ADA: Website Accessibility – Part 1

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 traffic has increased during the pandemic, web accessibility lawsuits against businesses under the ADA have skyrocketed. ADA demand letters to companies whose websites fail to cater to persons with disabilities viewing 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, 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 series, *Technology and the ADA: Website Accessibility*, we will provide an overview of what businesses are subject to such lawsuits, what enforcement looks like, what steps can reduce exposure, and what to do if a demand letter is received or a lawsuit is filed.

In this post, Part I of the series, we will discuss how and why the ADA regulates your company's website. At a glance:

- **The American Disability Act (ADA) is a civil rights law prohibiting disability discrimination.**
- **A person with a disability is an individual who has a physical or mental impairment, which limits one or more major life activities substantially.**
- **Businesses serving the public need to eliminate policies and practices that discriminate against people with disabilities, with certain exemptions.**

1. What is the Americans with Disabilities Act?

The Americans with Disabilities Act ("ADA") is a comprehensive national law to eliminate discrimination against persons with disabilities. The law has five parts (Titles). Title I of the ADA, bars discrimination of individuals with disabilities in

Employment. Title II of the ADA bars discrimination of individuals with disabilities by government entities (federal, state, local, municipal.) Title III of the ADA bars discrimination by certain business entities. Details of the businesses covered by the ADA are discussed in Part 2 of this Client Alert.

2. How Does the ADA Define a “Person with a Disability”?

Persons protected against discrimination on the basis of disability by the ADA are:

Individuals who (a) have, (b) have a record of, (c) are regarded as having – a “physical or mental impairment” that substantially limits one or more “major life activities.”

- - A **“Physical Impairment”** includes 1. Physiological disorders or conditions; 2. Cosmetic disfigurement, or 3. Anatomical loss affecting one or more body systems: orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV disease, tuberculosis, drug addiction, alcoholism.
 - A **“Mental Impairment”** includes mental or psychological disorders, mental retardation, organic brain syndrome, emotional or mental illness, specific learning disabilities.
 - **“Major Life Activities”** include caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

A person’s impairment is established regardless of whether reasonable modifications, auxiliary aids, personal services or devices, or medication are available. For example, a person with severe hearing loss is substantially limited in the major life activity of hearing, even though the loss may be improved through the use of a hearing aid.

3. What is Required of a Business Covered by the ADA?

A business or “public accommodation” must follow these ***Nondiscrimination Principles*** and ensure that persons with disabilities have:

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- Equal opportunity to participate in the goods and services offered by the business, as do people without disabilities. This does not require identical participation.
- Equal opportunity to benefit from the goods and services offered by the business, as do people without disabilities.
- Receipt of the benefits in the most integrated setting appropriate.

A business or “public accommodation” may **Not**:

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- Discriminate against an individual with a disability.
- Deny a person with a disability the full & equal enjoyment of “goods, services, facilities, privileges, advantages, or accommodations” of the business.

4. What is a “Reasonable Modification”?

A “public accommodation” must reasonably modify its policies, practices, procedures to avoid discrimination of persons with disabilities, except if the modifications fundamentally alter the nature of goods, services, facilities, privileges, or accommodations the business provides.

A reasonable modification includes ensuring effective communications and making appropriate auxiliary aids and services available where necessary. The DOJ defines “auxiliary aids and services” to include “accessible electronic and information technology” or “other effective methods of making visually delivered materials available to individuals who are blind or have low vision.” For example, an individual who is blind needs assistance in locating and removing an item from a grocery store shelf. A store employee who locates the item for the individual is providing an “auxiliary aid or service.”

However, there are exemptions to providing modifications or auxiliary aids or services. These exemptions apply when a reasonable modification “fundamentally alters the nature of the goods and services” being provided by the business or results in an “undue burden” on the business:

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- A **"Fundamental Alteration"** is a change that is so significant that it alters the essential nature of the goods, services, facilities, privileges, advantages, or accommodations offered. E.g. if a person who is deaf or hard of hearing demands that all seats in a theater be fitted with assistive listening or close captioning devices, this will result in a fundamental alteration of the venue. Especially, when the venue has sufficient assistive listening or close captioning devices for individual patrons.
- An **"Undue Burden"** is defined as "significant difficulty or expense." Several factors are considered when determining whether providing a reasonable accommodation would result in an undue burden on the business, such as:
 - the nature and cost of the reasonable accommodation;
 - the overall financial resources of the business involved; the effect on the business' expenses and resources; legitimate safety requirements necessary for safe operation and crime prevention; and any other impact on the operation of the business;
 - the geographic, administrative, and the fiscal relationship between the business and its parent entity;
 - the overall size & financial resources of the parent entity; the number, type, and location of its facilities;
 - the type of operation(s) of the parent entity.

It may be an undue burden for a small private museum on a shoestring budget to provide a sign language interpreter for a deaf individual wishing to participate in a tour. Providing a written script of the tour, however, would be an alternative that would be unlikely to result in an undue burden.

The fact that providing a particular auxiliary aid or service would result in a fundamental alteration or undue burden does not necessarily relieve a public accommodation from its obligation to ensure effective communication. The public

accommodation must still provide an alternative auxiliary aid or service that would not result in an undue burden or fundamental alteration but that would ensure effective communication to the maximum extent possible if one is available

Why Should I Care?

Courts have held that Title III of the ADA applies to websites. The Department of Justice (DOJ) has reaffirmed that business owners have legal obligations to make their websites accessible to persons with disabilities.

Take proactive steps to avoid lawsuits with the assistance of counsel to ensure your websites, online tools, and mobile apps are ADA-compliant. If you have already received an ADA website demand letter or lawsuit, or have questions about your ADA obligations and how they affect your company's website, please contact FBT Gibbons business attorney [Monisha Coelho](#) at mcoelho@fbtgibbons.com or 213.629.7042.

[Monisha Coelho](#) represents clients – 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 provides training 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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