

# Trending: Website Accessibility Lawsuits under Americans with Disabilities Act on the Rise

For years, lawsuits under Title III of the Americans with Disabilities Act concerning places of public accommodation were confined to brick-and-mortar physical barriers, such as steps, excessive slopes in parking lots, and routes that were too narrow for individuals in wheelchairs to use. Now, in the e-commerce age, lawsuits complaining that businesses websites are not accessible to vision-impaired users in violation of Title III are on the rise.

## **Title III**

Title III of the American with Disabilities Act prohibits discrimination against persons with disabilities in places of public accommodation and commercial facilities. Practically all types of businesses that serve the public are covered by Title III. These include restaurants, hotels, theaters, convention centers, doctors' offices, retail stores, museums, libraries, private schools, health spas, and day care centers. This is the case regardless of the size of the business and the age of the building the business occupies. Among the affirmative steps Title III requires of a place of public accommodation is the making of "reasonable modifications" to its business policies and procedures when necessary to serve customers with disabilities. There are few exceptions to this rule.

## **Websites**

While the ADA was enacted before the internet as we know it today existed, most courts to have addressed the issue have held that websites are covered under Title III and must be accessible to disabled users. Rules, however, let alone clear rules, on how to make websites accessible to avoid violating Title III have yet to be established. For instance, the courts are divided over whether all commercial websites are subject to the ADA or just websites associated with brick-and-mortar businesses must be ADA-compliant. Under the Obama Administration, the Department of Justice took the broader position, but it did not issue regulations providing specific guidance to businesses. Such regulations are expected in 2018 from the Trump Administration. Meanwhile, as noted in the *Los Angeles Times*, millions of businesses with websites have the worst of both worlds: mandates without directions.

## **Risks**

Few businesses understand the potential legal risks of website accessibility until they are sued. Just a few years ago, such lawsuits were uncommon. According to the federal court dockets, more than 260 website accessibility lawsuits were filed in 2016. Significantly more cases likely will be filed in 2017. The retail and hospitality industries, including restaurants, have been the main targets of website accessibility lawsuits.

## **Court Decisions**

Businesses involved in these lawsuits have raised various legal arguments in order to dismiss these cases at the earliest possible stage. These arguments have included plaintiff's lack of standing to bring the lawsuit, websites are not covered under Title III, there is no legal standard under Title III to achieve website accessibility, the case is moot because the business is already taking steps to make the website accessible, the lawsuit should be dismissed in light of current rulemaking by the Department of Justice on the issue, and

imposing liability violates the business's due process rights. With some exceptions, motions to dismiss such lawsuits based on these legal arguments have not been successful.

To the extent that businesses are considering whether to settle or litigate these cases, court decisions denying summary dismissal of lawsuits might embolden the filing of more of these cases. Indeed, the [\*New York Post\* has reported](#) on an alarming example of one plaintiff's attorney cashing in on website accessibility lawsuits.

### **Takeaway**

Businesses must understand that websites can create legal risk under the ADA. To find out where your website stands on compliance, run an accessibility scan of the webpages using a free on-line tool, such as [www.wave.webaim.org](http://www.wave.webaim.org). The report will show areas of the webpage that may not be accessible and recommend a solution.

Jackson Lewis attorneys have significant experience in defending and resolving website accessibility lawsuits, as well as providing preventive advice and counsel to businesses to reduce or eliminate legal risk under Title III involving their websites. Please contact a Jackson Lewis attorney with any questions.

### **For More Information, Contact:**

**Joseph J. Lynett**

(914) 872-8060

[Joseph.Lynett@jacksonlewis.com](mailto:Joseph.Lynett@jacksonlewis.com)

**Felice B. Ekelman**

(212) 545-4000

[EkelmanF@jacksonlewis.com](mailto:EkelmanF@jacksonlewis.com)

**Jamerson C. Allen**

(415) 394-9400

[AllenJ@jacksonlewis.com](mailto:AllenJ@jacksonlewis.com)