

Trend of Class Action Lawsuits Alleging Company Websites Discriminate Against Disabled Individuals Expected to Continue in 2019

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Practice Area: Labor and Employment

Business owners beware: 2019 promises an increased number of Federal class action lawsuits alleging that company websites and point-of-sale terminals ("POS") violate Title III of the Americans with Disabilities Act ("ADA"). A business owner can end up paying substantial monetary damages and attorneys' fees, in addition to the expense of redesigning and modifying their business platform to accommodate the plaintiffs.

Title III of the ADA requires businesses to remove obstacles that interfere with the ability of disabled persons to access their products or services. These class action lawsuits target businesses that have not provided accessible websites and POS terminals. The claims typically have been brought by groups of visually impaired consumers alleging that the business failed to allow for internet access which accommodates their disability.

If it is determined that a business' website or POS terminal violates Title III of the ADA, the business could be required to redesign its website to ensure it no longer violates the ADA.

The prevailing party, while not entitled to a monetary recovery, would be entitled to attorneys' fees. Nonetheless, the lack of money damages has not deterred individuals from aggressively filing claims against businesses requesting an economic recovery. These claims often settle prior to trial because businesses are often willing to pay a nominal amount to the aggrieved parties, as a cost of doing business, to resolve the dispute rather than getting tied up in costly litigation and negative media attention.

Because it is fairly easy for individuals to initiate lawsuits for violations of Title III, we encourage businesses to take a few basic steps to reduce their exposure to these types of claims. First, businesses should review their website and determine whether it complies with the ADA, state laws, and local ordinances. One of the most common accepted industry standards for websites is the World Wide Web Consortium's ("W3C") Web Content Accessibility Guidelines ("WCAG"). The WCAG has been widely accepted as providing for full and equal access in accordance with federal law. In fact, a long list of countries, state and local governments, and businesses have adopted the WCAG standards to ensure websites are more accessible to people with disabilities. To ensure compliance with WCAG standards, businesses should work with their IT department or an external consulting firm. Ensuring compliance with the WCAG standards, while not necessarily the ultimate defense, will limit exposure to class action lawsuits alleging violations of Title III of the ADA.

ADA issues also arise when applicants apply through company websites. To minimize liability, according to the EEOC, employers should:

1. Ensure that job announcements posted on job boards and social/professional networking sites are in formats that are accessible to jobseekers with disabilities.
2. Indicate on job announcements that qualified individuals with disabilities are encouraged to apply and that reasonable accommodations will be provided.
3. Ensure online application systems, including online pre-employment tests, are accessible to candidates with disabilities. Visit the Partnership on Employment and Accessible Technology interactive web portal at <https://www.peatworks.org/> for employer tips on ensuring accessible online job application systems.
4. Confirm that interview locations are physically accessible. Visit www.ADA.gov for information on building accessibility.
5. Inform all applicants ahead of time what the interview process may include and provide them with the opportunity to request a reasonable accommodation, if needed.
6. Be prepared to provide reasonable accommodations for applications, interviews, preemployment tests, and other aspects of the hiring process when needed, including assigning staff to arrange and approve requested accommodations in a timely fashion. For information on web content accessibility, please see the WCAG standards and www.Section508.gov for accessibility guidelines under Section 508 of the Rehabilitation Act.

See Recruiting, Hiring, Retaining, and Promoting PEOPLE WITH DISABILITIES, a Product of the Curb Cuts to the Middle Class Initiative (February 13, 2015). Guidance can be accessed [here](#).

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