LITIGATION
INFORMATION MEMO
APRIL 27, 2022

Website Accessibility Requirements Under Title III: The Current Landscape in New York

When the Americans with Disabilities Act (ADA) was passed in 1990, Congress could not have foreseen how entrenched the internet would become in every aspect of daily life. Over the past few years, there has been a tremendous rise in litigation focusing on whether Title III requires businesses to make their online presence ADA accessible. Title III of the ADA prohibits discrimination on the basis of disability by "places of public accommodation," and requires "places of public accommodation" to be "designed, constructed, and altered in compliance with the accessibility standards" established by the ADA. At the center of this issue is whether a website can be considered a "place of public accommodation." Although the Second Circuit Court of Appeals has not addressed this issue directly, and federal district courts within New York have come to different conclusions, general trends have emerged to guide businesses on their potential liability for having an online presence that is not accessible to individuals with disabilities.

Title III defines a "place of public accommodation" as "a facility operated by a private entity whose operations affect commerce" and fall within one of 12 categories that broadly encompass different types of businesses ranging from hospitals to restaurants to golf courses. Liability generally hinges on whether a website can be considered a place or whether the use of the word place implies a physical location as opposed to a website.

One way in which a business may find itself subject to liability under the ADA is if its business clearly falls into one of the 12 very broad categories enumerated by Title III in its definition of "place of public accommodation." In *Pallozzi v. Allstate Life Ins. Co.*, a Second Circuit case from 1999, the Court rejected the argument that "insurance *office*" meant that Title III only applied to accessibility within physical office space, which opened the door for many website-based lawsuits to follow. *Pallozzi* also established a blueprint whereby litigants began to argue that a website can be considered a place of accommodation if the website's business falls into one of the 12 types of public accommodations. However, this argument has not been consistently successful within the district courts of the Second Circuit, with courts reaching differing results in their analyses of what appear to be similar cases.

What has become clear, however, is that where a business has a "nexus" to a physical location, that connection will be closely examined as part of a court's analysis of ADA liability. A business is most at risk for liability under Title III when it not only falls into one of the 12 types of public accommodations, but also where its website is closely connected to a brick-and-mortar location. For example, a clothing vendor that sells its clothes exclusively online without any physical locations would be less likely to be subject to liability under the ADA for its website, whereas a bakery with a brick-and-mortar store that also sold pre-packaged goods online would be more likely to be held liable for an ADA violation involving its website.

As it stands now in the Second Circuit, a facility that does not fall into one of the 12 types of public accommodations and has only an online presence would be least likely to be subject to Title III's reaches.

A facility that only has an online presence but is one of the enumerated business types has the least certainty in terms of the outcome of litigation but could be subject to liability under Title III. A facility that is both included the list of 12 types of public accommodations and which operates both physical locations as well as a website would be most likely to be subject to liability.

In 2019, the Supreme Court was given the opportunity to decide the issue. In *Domino's Pizza LLC v. Robles,* a blind individual who was unable to successfully order a customized pizza through Domino's online platform sued Domino's alleging that under Title III, Domino's was required to ensure accessibility on its website and app. The Ninth Circuit agreed and found that the Title III's mandate that places of public accommodations (such as Domino's) were required to be accessible applied to Domino's website and app "even though customers predominantly access them away from the physical restaurant." Domino's filed a petition seeking review by the Supreme Court, which was denied. Uncertainty on how Title III applies to websites is likely to continue to pervade the courts and contribute to the rise in litigation.

If you have any questions, please contact Ryan Lefkowitz, any attorney in Bond's Litigation practice or the attorney at the firm with whom you are regularly in contact.

BOND SCHOENECK & KING ATTORNEYS