

Website Accessibility Under the ADA

Within the past few years, courts in New York and across the country have experienced a sharp influx in cases concerning alleged violations of Title III of the Americans with Disability Act, which prohibits disability-based discrimination in public accommodations. Plaintiffs who file these cases claim that a company's website is not accessible to an individual with disabilities, particularly those individuals who are blind or visually impaired.

Starting in 2009, various courts held that the ADA applies to the websites of places considered to be "public accommodations" under that law. As such, the websites had to be made accessible to individuals with disabilities. Following these initial rulings, plaintiffs began filing lawsuits, alleging that the companies, via their corresponding websites, violated the ADA because they were not accessible to individuals with disabilities. These lawsuits typically seek injunctive relief- a court order that requires the entities making their websites accessible- as well as the attorneys' fees that are allowed under the law. The most-commonly targeted businesses for these lawsuits are hotels, and retail businesses, especially those with a physical location accompanied by a website from which products can be bought. However, food services, financial services, real estate, higher education, and the entertainment industry have also been subject to these lawsuits.

The Second Circuit, the highest federal court for New York cases, has not ruled on this issue. However, this has not prevented the Eastern and Southern District of New York courts from denying motions to dismiss website accessibility complaints under the ADA. Recently, these cases have also made their way into the Western and Northern Districts of New York as well, with dozens of cases filed in the past six months. In these New York-based courts, Plaintiffs often add disability discrimination claims under the New York State or New York City Human Rights Laws.

Unfortunately, there has been a lack of clarity from the courts, legislative bodies, or the Department of Justice ("DOJ") - the primary enforcer of the ADA- on what standards websites must meet to be compliant with the ADA. The dearth of guidance, coupled with the prevalence of the lawsuits, has become so acute that on June 20, 2018, more than one hundred members of Congress sent the DOJ a letter requesting that the agency provide guidance for bringing websites into compliance. The DOJ responded to the letter in December of 2018, but did not provide useful guidelines nor take steps to stem the tide of litigation.

Without clear direction, companies are left to determine how best to make their websites compliant. Often, this involves bringing their websites into compliance with guidance articulated by the World Wide Web Consortium in the Web Content Accessibility Guidelines, or WCAG 2.0. In 2017, a judge for the Southern District of Florida federal court ruled in the first trial on ADA website compliance, found that compliance with the WCAG 2.0 guidelines satisfies the ADA. However, this ruling has not necessarily been adopted by other courts. Moreover, compliance with WCAG 2.0 can be time-consuming and expensive. It is worth noting, however, that the Florida judge did not consider the \$250,000 cost to bring the website into compliance to be an undue burden on the company, given the business's overall investment of over \$7 million in the website.

In the absence of clear direction, companies are in a difficult position. For companies that are considering the development of new websites, it may be advisable to consult with a website designer familiar with WCAG 2.0 guidelines. Companies with existing websites should consider obtaining quotes from vendors on how to bring their websites into compliance, and then perform a cost-benefit analysis of that option. Companies that have already been sued or have received a demand letter from an attorney regarding ADA-website compliance should contact their attorneys immediately, as timely action is required.

Bond will continue to monitor developments in this area, including a pending Supreme Court case on this issue, and will provide updates as they become available. Anyone with questions regarding this topic is encouraged to contact [Daniel J. Pautz](#), or [Theresa E. Rusnak](#), or the Bond attorney with whom you are regularly in contact.



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