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ADA Website Accessibility Lawsuits on the Rise: Companies Should Review Their Potential Exposure

With the recent spike in website accessibility lawsuits, companies should review their websites for compliance with the Americans with Disabilities Act (“ADA”) in order to avoid litigation and should consider taking steps to remediate their websites to ensure people with disabilities have equal access to consumer-facing content.

During the last year, there has been a substantial rise in lawsuits filed against many consumer-facing websites alleging violations of Title III of the ADA.¹ Plaintiffs in these cases allege that these websites are discriminatory because they are not accessible to people with vision, hearing, or other disabilities. Most of these lawsuits have been filed in federal court (primarily in New York, Florida, and California), and many are styled as class actions. The relief sought is primarily injunctive, prohibiting any additional alleged discriminatory activity, and requiring website remediation to allow people with various disabilities to access the content therein, in addition to awards of attorneys’ fees and costs (there are no monetary damages available in Title III cases). There are also state and local statutory claims being asserted in certain jurisdictions, such as New York, claiming that certain websites violate local human rights laws that guarantee equal access for people with disabilities, and

California, where several plaintiffs also allege that a website violates the State’s Unruh Civil Rights Act.

One significant contributing factor to this upsurge in litigation is a 2017 ruling by a Florida federal court judge in what is believed to be the first of these cases to go to trial.² In that case, the judge held, after conducting a non-jury trial, that supermarket chain Winn-Dixie discriminated against the plaintiff (a blind man who sued more than 70 companies) because:

“The factual findings demonstrate that Winn-Dixie’s website is inaccessible to visually impaired individuals who must use screen reader software... Therefore, Winn-Dixie has violated the ADA because the inaccessibility of its website has denied Gil the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations that Winn-Dixie offers to its sighted customers.”³

Since then, in 2017 alone, at least 814 federal lawsuits (including class actions), many of which were brought by the same plaintiff and/or plaintiff law firms, were filed against companies operating allegedly inaccessible websites. The number of lawsuits filed will continue to dramatically increase this year, in part because in 2017, the United States Department of Justice, which had previously announced it would be issuing website accessibility guidelines and regulations, put that project on its “inactive” list. This, in turn, leaves many businesses, litigants, and judges unsure of how to proceed with respect to this issue.

At this juncture, it is important that companies of all sizes take steps to review their websites to assess whether they comply with the ADA and/or local human rights laws. While there are no official laws or regulations issued by a governmental agency, there are certain widely-accepted industry standards (for example, the Web Content Accessibility Guidelines issued by the World Wide Web Consortium) that do provide some guidance on how to make websites accessible to the visually impaired and other disabled individuals.

With respect to who is covered by the law, any company with over 15 employees is subject to the ADA and its requirements. Even if your company has less than 15 employees, it still could be vulnerable to being sued under one or more of the state or local human or civil rights statutes referenced above.

Blank Rome’s ADA Website Compliance Team has not only defended, defeated, and/or resolved many of these cases, but is also tracking how these lawsuits are being decided or resolved throughout the country and can report that, in the last several months, some of the primary industries being targeted are:

- retail businesses (including many clothing retailers and chains)
- financial institutions, particularly banks
- life insurance companies
- energy companies that have consumer facing components, such as gas stations
- gyms and spas
- universities

Among the most common types of claims asserted in these lawsuits are that the website’s links and content is not compatible with or cannot be read by assistive software or screen-reading devices (like JAWS readers) used by visually impaired individuals. This accessibility issue could, for example, result in a website visitor not being able to search for or view a map showing the location of a nearby store, bank branch or cash machine, gym, or gas station. It also could prevent an individual from accessing and reading a website’s privacy policy, and from opting out of how the website operator states it will use the visitor’s personal information. Another common claim is that access barriers to websites keep disabled people from learning about the full array of services (such as auto, health, home, dental, and life insurance policies) that other people can learn about and access. Hearing impaired plaintiffs have alleged videos on businesses’ websites are not close-captioned so they cannot be fully understood. Yet another complaint is that a blind person cannot make a doctor’s appointment using an interface on the physician’s website, whereas people with sight are able to do so. All these allegations have a common theme, namely, that people with disabilities wish to access more content and features of websites but cannot do so.

In addition, while there has not yet been much litigation targeting them, many businesses have one or more mobile apps and if these, too, are not accessible to disabled individuals, the business owner may be at risk and have exposure there as well.

There is, however, some good news. First, reducing a company’s potential legal exposure can be relatively easy and straightforward. An outside vendor can be hired or internal IT people can be employed to code or re-code various portions of the website so that it is, for example, accessible to those using JAWS or other screen reading devices or software. Companies may also be able to purchase or license software that provides website compliance as an alternative to re-coding. A company can possibly reduce or share legal exposure by asking for indemnification, representations and warranties, and other contract terms from third parties who may provide services on the site. Taking steps to evaluate and assess

what accessibility issues exist on a business' website is an important first step that should be taken as soon as practicable for any companies concerned about their legal exposure.

The other good news is that ensuring websites are accessible to people with disabilities will help improve a business' goodwill with its customers, and in turn, increase customers' loyalty to and appreciation of the business and, hopefully, its revenues. The U.S. Census Bureau reports based on the most recent census information that approximately 8.1 million people in this country are visually impaired, including two million who are blind.⁴ Approximately 7.6 million people have hearing difficulties, with 5.6 million using hearing aids, including 1.1 million whose difficulty was severe.⁵ In terms of economic power, one research report indicates that, worldwide, people with disabilities ("PWD"), along with their family, friends, and caregivers who have emotional connections to PWD, represent a huge segment of the market, with 2.42 billion consumers and employees with over \$6.9 trillion dollars in disposable income annually.⁶

The profits to be gained by making all portions of a website available to disabled individuals can easily offset, if not significantly outweigh, the costs associated with bringing the website into compliance.

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1. 42 U.S.C. § 12101 *et. seq.*
 2. *Gil v. Winn-Dixie Stores*, 257 F. Supp. 3d 1340 (S.D. Fl. 2017).
 3. *Id.* at 1349.
 4. www.census.gov/newsroom/releases/archives/miscellaneous/cb12-134.html
 5. *Id.*
 6. *See, e.g., 2016 Annual Report: The Global Economics of Disability, The Rod Group.*

For additional information related to your company's website, remediation procedures, or options, please contact:

Charles S. Marion
Member, Blank Rome's ADA Website Compliance Team
cmarion@blankrome.com | 215.569.5384