

## Business Litigation



APRIL 16, 2020 • NO. 1

## As COVID-19 Forces More to Work and Shop Online, It Is Imperative That Businesses Make Their Websites and Apps Accessible

---

*With the coronavirus shutting down most physical business locations, more of us than ever are working, shopping, and engaging in other activities online. However, the pandemic has not stopped plaintiff's lawyers from filing lawsuits accusing businesses' websites and apps of violating the Americans with Disabilities Act, because they are not accessible to disabled individuals. These trends make it imperative for businesses to focus on improving the accessibility of their websites and apps.*

---

In March 2020, our entire world changed very quickly, as various state governments ordered their citizens to stay at home and non-essential businesses to cease operations and close their facilities, to help prevent the spread of the coronavirus. As a result, more people than ever are going online to work, attend college, shop, take exercise classes, and engage in a plethora of other activities.

Businesses obviously have many important issues to address. But with normal business operations significantly reduced if not shut down entirely, those businesses that have not done so already should use this forced down time to check and, if necessary, take steps to improve, the accessibility of their websites and mobile apps for individuals with disabilities. Doing so serves a number of important purposes.

First, it is good customer and client relations. All businesses have an interest in having as many customers and potential customers as possible be able to access the information on their websites and mobile apps and purchase the goods or services described therein.

Second, it will reduce if not eliminate the risk of being sued by a disabled individual who encounters problems while trying to access information or make a transaction on a website or app. Over the past five years, there has been a substantial increase in the number of lawsuits accusing businesses' websites and apps of violating the Americans with Disabilities Act ("ADA") as well as certain state or local statutes, such as California's Unruh Civil Rights Act. While many courts are currently closed or have postponed their jury trials, hearings, and

conferences due to the coronavirus pandemic, they are still allowing electronic filing of complaints and other documents, and there has only been a slight decrease in the number of these cases being filed over the last several weeks.

Many businesses have not had the time or resources to focus on this issue. By waiting, however, they leave themselves exposed to claims and lawsuits, and to incurring attorney's fees and other costs associated with defending or resolving such cases. Indeed, any business with a consumer-facing website or app—even one that is primarily informational rather than one on which someone can purchase goods or services—is subject to these claims, and businesses of all sizes in a wide array of industries have been sued in these cases, including banks, restaurant operators, insurance companies, clothing, skin care and other retailers, and hotels (several recent lawsuits also accuse hotels' websites of violating the ADA because they do not contain information regarding whether the hotels have ADA-compliant guest rooms, what particular accommodations and features exist in each room, and whether there is a clear, handicap-accessible path, for example, from the entrance to the registration desk, and from the registration desk to the guest rooms).

The vast majority of these lawsuits are brought by visually-impaired plaintiffs who use screen reading devices and software to navigate through websites and access the content on them. The screen readers, as their name suggests, read the content aloud to the visitor, however many websites and apps are not compatible with them. For example, there may be images on the website that do not have alt text behind them, therefore when the screen reader tries to read them, it only says "image" or some gibberish. Other problems are encountered if there is insufficient color contrast, there are flashing images, which can cause seizures in certain individuals, there are timers which cannot be deactivated, or the website cannot be navigated using only the keyboard. In another, smaller set of cases, hearing-impaired individuals complain that videos are not close captioned and/or do not have a transcript or text equivalent with them.

A complicating factor for businesses that are trying to do the right thing and improve their websites' and apps' accessibility is that there are no government standards or guidance as to what a business must do to make a website or app accessible and ADA-compliant. However, an industry group, the Worldwide Web Consortium, has developed Web Content Accessibility Guidelines ("WCAG") that have become the de facto standard for compliance purposes. These guidelines contain numerous suggestions and criteria for how to make websites and apps perceivable, operable, understandable, and robust for all individuals, regardless of any disabilities they may have.

The best way for a business to insulate itself against any ADA or other claims is to bring their websites into compliance with the WCAG. Some businesses' internal IT staff can conduct this remediation work, whereas other businesses will hire an outside accessibility consultant to first audit the website or app and then recommend what steps need to be taken to bring the site or app into compliance. Since websites are continuously changing, with new content added on a regular basis, it is also important for businesses that have brought their websites and apps into compliance with the WCAG to monitor the sites and apps on a periodic basis to ensure that they remain complaint.

Some courts have hinted that it may be sufficient for a business to have a "hotline" visitors to its site or app can call if they encounter accessibility issues. However, those courts have further suggested that this would only be a suitable solution if the hotline were staffed 24 hours a day, seven days a week (otherwise, if the visitor has to wait for a call back during normal business hours, he or she is being treated differently than non-disabled visitors, who can access the information immediately), and of course the individuals at the receiving end of such calls would need to be trained in how to help callers access the information they were trying to get.

Finally, many websites contain links to other sites that are owned or operated by third parties. Businesses should post notices or otherwise make clear that the visitor is leaving its site and going to a site the business

does not own, operate, or have any control over. And if the business enlists third parties to provide content to be posted on the business's website, it should require in its contracts with such third parties a requirement that the content be compliant with the WCAG.

This may sound like a lot of work, and could involve some costs, but in the long run taking steps to make a website or app accessible to individuals with disabilities should help in both increasing the number of visits to the sites and the amount of business conducted there, and in reducing the risk of the business being sued for violation of the ADA and similar state and local statutes.

**For additional information, please contact:**

**Charles S. Marion, Philadelphia Office**  
**Partner, Business Litigation**  
**215.569.5384 | [cmarion@blankrome.com](mailto:cmarion@blankrome.com)**