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Is Your Website ADA Compliant?

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By now, most businesses are aware of the obligation to have all business premises compliant with the Americans with Disabilities Act, which requires that disabled persons be afforded “the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation.” Recently, the U.S. Department of Justice and private plaintiffs’ attorneys have extended this obligation to online websites.

• **Lawsuits Alleging Website ADA Violations Are On The Rise**
Claims that websites are discriminatory toward persons with impairments are not new and will become more numerous in the future as they are relatively simple to bring and the recovery potential is high.

A number of business entities including retailers, banks, hospitals, universities and other places of public accommodation that operate websites have already been sued or threatened by plaintiffs’ attorneys claiming to represent individuals with disabilities, such as sight or hearing impairment, which restrict their ability to interact with online websites. Their targets, so far, have included Aeropostale, Patagonia, Adidas, Target, Williams Sonoma, Fry’s Electronics, and Barnes & Noble.

• **How Websites Got On The DOJ And Plaintiffs’ Lawyers’ Radar**

The U.S. Department of Justice (“DOJ”) has determined that Title III of the ADA applies to websites because online commerce is now common enough that it may be discriminatory to not accommodate persons with disabilities. The thrust of website discrimination claims is that Title III of the ADA, which applies to “places of public accommodation,” may require private businesses to make their websites accessible to consumers with disabilities. Essentially, while not a physical place, the fact that a private business has a website through which the public may interact with the company requires that company to ensure even persons with disabilities have a “substantially equivalent” ability to use the website.

• **The Issue Is Not Clear Cut But The Suits Are Usually Filed In Plaintiff-Friendly Jurisdictions**

Although the obligation to make websites accessible is not clear and there have been contradictory cases in different

jurisdictions as to liability, taking reasonable appropriate steps to make websites more accessible is a preferable alternative to defending a long and expensive lawsuit. A company stuck defending the lawsuit by challenging the law’s applicability in a plaintiff-friendly jurisdiction may just be throwing away money it could have spent on fixing its website.

• **What Will Compliance With ADA Require?**

The U.S. Department of Justice has delayed giving guidance as to what compliance is required and such guidance is now not expected until 2018. However, through its lawsuits and enforcement actions the DOJ has given a strong indication of the level of accessibility it expects from companies’ websites. Additionally, some advocacy groups and non-governmental standards-setting entities have provided helpful guidance.

We strongly recommend that businesses take the necessary steps to ensure they have an accessible website to protect from complicated and costly litigation before a lawsuit is filed. Every case is different and will require varying levels of technical changes to a company’s website in order to comply with the ADA. Some changes may be basic and easy to implement and others—which are essential to the basic functionality of assistive devices—may require some tinkering that will alter its visual appearance.

While these changes may not constitute a complete defense to a lawsuit, they will possibly reduce exposure or enhance a reasonable settlement should the company face a discrimination suit.

For Further Information

If you require further information regarding this matter, you should contact Bryan Friedman (bfriedman@fsglawyers.com) or Anthony Chavez (achavez@fsglawyers.com) at Friedman Stroffe & Gerard, P.C. or an attorney regularly handling your affairs.

