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Client Alert: ADA Claims Reach Into Cyberspace

Most companies with brick-and-mortar locations are familiar with their obligations under Title III of the Americans with Disabilities Act (ADA), which forbids “places of public accommodation” from discriminating against those with disabilities. The Department of Justice (DOJ), charged with enforcing the ADA, has promulgated highly technical rules regarding structures such as ramps, doors and parking facilities. Both the DOJ and disabled individuals can bring legal claims under the ADA.

What companies may not know is that the ADA may also apply to websites. Blind and visually disabled people often use adaptive software to “read” websites and navigate using keystrokes rather than a mouse. For this assistive technology to work correctly, particular coding must be used in creating the website.

While ADA compliance for websites is currently only explicitly required for government agencies, certain government contractors and federally-funded agencies, the DOJ has repeatedly indicated that it believes all websites are places of public accommodation. A consensus on this opinion seems to have built under numerous states’ laws as well, including California. Since 2010, the DOJ has indicated that it intends to make rules regarding website accessibility under the ADA but has repeatedly pushed back its deadline to do so. Rules are now expected in April 2016.

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In the meantime, plaintiffs have filed dozens of lawsuits against businesses in a wide range of industries—including those that have no brick-and-mortar locations—alleging discrimination under the ADA based on website accessibility. Notably, the National Federation of the Blind has filed numerous suits, including a class action against Target, which Target settled for more than \$6 million and an agreement to take certain remedial steps to improve its website experience for blind consumers.

In the absence of rules, many of the settlements approved by the DOJ have leaned heavily on the World Wide Web Consortium's Web Content Accessibility Guidelines (WCAG) for guidance on how to make websites more accessible, and the DOJ has specifically signed off on settlements where alleged ADA violators agree to comply with WCAG at the AA level. Full text of the WCAG is available at <http://www.w3.org/TR/WCAG20/>.

Businesses building or updating websites would be well-advised to consider accessibility from the outset, because litigation in this area appears to be increasing as more plaintiffs firms see opportunities. Moreover, plaintiffs generally are not required to notify allegedly noncompliant businesses (and allow them to remediate any issues) prior to filing suit