

Publications

Labor and Employment Alert: Department of Justice Continues to Focus on Website Access and Disability Accommodations

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This week, the Department of Justice (DOJ) sent a letter to Congress reaffirming its stance that Title III of the Americans with Disabilities Act (ADA) applies to websites. The DOJ also signaled that, despite its reaffirmation, it does not intend to issue specific regulations explaining what websites need to do in order to actually comply with the ADA at this time.

Title III of the ADA requires “places of public accommodation” (in other words, businesses open to the public) to meet certain architectural guidelines designed to ensure that disabled patrons can access the business. These regulations are very specific, covering everything from the width of store aisles to the height of checkout counters and the spacing of seating to the amount of pressure needed to open a store’s door. Title III empowers private individuals to sue businesses to enforce these standards and recover their attorney’s fees. This enforcement mechanism has led to a proliferation of law firms that routinely file hundreds of disability-access lawsuits with the goal of settling for their fees.

As we’ve discussed ([here](#) and [here](#)), these lawsuits have moved from physical accessibility to the digital realm. Over the last decade, the Obama-era DOJ and courts — notably in *Gil v. Winn-Dixie Stores, Inc.*, for example — have taken the position that Title III’s accessibility requirements apply to websites that are accessible to the public and that bear some nexus to a physical location (e.g., selling goods or services, providing directions to a physical store, listing a restaurant’s menu, etc.). In the absence of regulations interpreting Title III’s accessibility mandates, businesses were directed to a set of Web Content Accessibility Guidelines (WCAG) developed by the World Wide Web Consortium, a non-profit organization dedicated to website accessibility. The Obama DOJ had previously proposed to adopt the WCAG as regulation, but the Trump DOJ shelved that proposal. This led to speculation as to whether the DOJ was reconsidering its position on the applicability of Title III to websites.

However, the DOJ's letter to Congress indicates the agency has not changed its position under the new administration. But the DOJ remains unwilling to adopt formal regulations that would introduce clarity into this hotly-litigated space. To make matters worse, the DOJ's letter is unlikely to stem the growing tide of website accessibility litigation. To the contrary, website-accessibility litigation will likely increase.

Given this, it is crucial that businesses proactively address the accessibility of their public-facing websites using the WCAG's new 2.1 Standards. Many companies can help find and address existing accessibility issues as well as develop a plan to monitor ongoing compliance. Contact your Vorys lawyer if you have questions about best practices for ensuring website accessibility.