

Publications

Labor and Employment: Proposed Rule Would Make Websites 'Public Accommodations' under the ADA

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Since 1990, Title III of the Americans with Disabilities Act (ADA) has required places of public accommodation to meet certain standards for accessibility by persons with disabilities. The traditional definition of “places of public accommodation” – stores, schools, offices, etc. – has largely remained unchanged since the ADA’s enactment. In April 2016, however, a long-awaited change could see an entirely new frontier fall under the scope of the ADA: websites.

In July of 2010, the U.S. Dept. of Justice (DOJ) published an advance notice of proposed rulemaking seeking comment on the possibility of regulating websites as places of public accommodation under the ADA. Noting that, “[i]ncreasingly, private entities are providing goods and services to the public through websites that operate as places of public accommodation,” the DOJ took the position that it was only logical to bring websites under the same regulation as physical, brick-and-mortar stores. After a long delay, the DOJ is signaling that it expects a final version of the regulations by April 2016.

While increased regulation brings with it new costs and more hoops through which to jump, employers can take solace from the fact that these regulations may bring clarity to an area of the law that has historically been murky. There have been several recent lawsuits over website accessibility, and these suits gained significant traction despite lacking statutory or regulatory support. In April of 2015, for example, edX Inc. (a provider of online classes) reached a settlement with the DOJ over the alleged inaccessibility of its website. The agreement required edX to make its website fully accessible within 18 months. Before these proposed regulations, employers such as edX had nowhere to turn for guidance on prospectively avoiding or retroactively defending litigation. The DOJ’s notice provides a place to look at least.

The DOJ proposes adopting compliance standards developed by the World Wide Web Consortium called the Web Accessibility Guidelines. These guidelines are aimed at making websites more accessible to individuals with disabilities, including blindness and low vision; deafness and hearing loss; learning limitations; movement limitations;

and speech disabilities. Most of the guidelines center on the use of “alternative text”—hidden code in the script of a website—to facilitate access through “assistive technologies”—devices which can read the alternative text for a user and translate it into the needed medium, be it tactile, audio, visual, etc. Other guidelines include removing time limits, limiting automatically playing media and ensuring all website functions can be controlled through a keyboard. Many guidelines are highly technical.

The issue of website accessibility will continue to heat up through the possible release of the final rules in April and beyond. To prepare for the new regulations, or with questions about them, contact your Vorys attorney.