ADA Accommodations: Title III Website Accessibility and Other Trends

Charlotte Area SHRM Legal Conference
March 9, 2020
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Presentation Outline

I. Application of Title III of the ADA

II. How Courts Analyze Compliance

III. Recent Court Decisions

IV. DOJ Compliance Standards

V. Responsibility of Human Resource Professionals

VI. HOT TOPIC: The ADA and Coronavirus-Related Issues
APPLICATION OF
TITLE III
OF THE ADA
Picture This...

- Bobby is visually impaired
- Bobby normally does his shopping at the local Corner Grocery store
- The Corner Grocery store maintains a website for its customers to purchase items in their online cart online for in-store pickup
- The items have clickable images, but do not have a read-aloud function
- Because of his disability, Bobby is unable to engage the website features the same as a non-visually impaired customer

Does this present a problem for Corner Grocery?
Purpose of Title III of the ADA

- Prohibits discrimination on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of places of public accommodation
Public Accommodation Defined

- Privately owned facility whose operations:
  - Affect Commerce
  - Fall within one of following categories:

<table>
<thead>
<tr>
<th>Place of Lodging</th>
<th>Public Transport Terminal</th>
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<tr>
<td>Food/Drink Establishment</td>
<td>Place of Public Display</td>
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<tr>
<td>Place of Public Gathering</td>
<td>Place of Recreation/Exercise</td>
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<tr>
<td>Sales or Rental Establishment</td>
<td>Place of Education</td>
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<tr>
<td>Service Establishment</td>
<td>Social Service Center</td>
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Scope of Title III Coverage

- Does Public Accommodation Include:
  - Websites
  - Mobile Applications
  - Web-Based Technologies
Who Has the Answers?

- Title III does NOT provide any regulatory guidance for web-based and mobile applications
- DOJ provides limited guidance but does not provide steps to compliance
- Courts are split in their decisions on whether or not ADA regulations are inclusive of digital platforms
COURTS’ APPROACH
ADA Statutory Language

- Prohibits discrimination on the basis of disability... in places of public accommodation
HOW COURTS ANALYZE THE ADA

When faced with website accessibility issues, courts consider the following:

1. Whether the company’s website is subject to the ADA as a public accommodation;

2. Whether a disabled person was denied the full enjoyment of the company’s goods, services, facilities, privileges, advantages, or accommodations because of his/her disability; and

3. Whether the website modifications are reasonable and readily achievable.
1. IS WEBSITE SUBJECT TO THE ADA?

Can a website really be a place of public accommodation? Circuit Courts are Split on this Issue

<table>
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<th>Some say No, unless...</th>
<th>Others say Yes...so long as...</th>
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<tr>
<td>- Goods and services provided by a public accommodation have a sufficient nexus to a physical place</td>
<td>- Website is <strong>heavily integrated</strong> with physical store locations and operates as a gateway to the physical store</td>
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To state a claim that a website is a public accommodation under this theory, a Plaintiff must show that:

1) Defendant’s website provides access to a benefit of its physical stores, and

2) Plaintiff was denied access to that benefit when he could not access Defendant’s website
HEAVILY INTEGRATED THEORY

• Are the services offered online the same as those offered in the stores?
• Are the website functions operating as a service of the physical stores?
• Is the website operating as a gateway to the physical stores?
• Examples of heavily integrated websites:
  ➢ Online pharmacy
  ➢ Online order and checkout
  ➢ Digital coupons
  ➢ Online consultations
  ➢ Online store locator
  ➢ Online sales information
2. WAS DISABLED PERSON DENIED?

• ADA requires public accommodations to furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities.
3. ARE MODIFICATIONS achievable?

- Have other website modifications been made in the past?
- Does the website have any accessibility features currently in place?
- Are our third party partner sites compliant?
- Through which browser is our site accessible and is the browser compliant?
- Are necessary modifications within Company budget?
RECENT COURT DECISIONS
GIL V. WINN-DIXIE STORES (2017)

- Plaintiff was visually impaired patron of the store
- Winn-Dixie’s website had online coupon features similar to that in the store
- The feature was not compatible with screen reader software used by Plaintiff
- Plaintiff was unable to enjoy the full and equal enjoyment of the coupon feature that it offered to its non-visually impaired customers
- Winn-Dixie was required to modify its website features to comply with WCAG 2.0 guidelines
ROBLES V. DOMINO’S PIZZA (2019)

- Plaintiff was visually impaired user of Domino’s mobile app
- Plaintiff was unable to order pizza because his software could not read certain designs on the app and website
- Court concluded that ADA applied to the app because it connects customers to the goods and services of the physical restaurant
- Plaintiff was able to proceed with lawsuit
THURSTON V. MIDVALE CORP. (2019)

- Plaintiff was visually impaired
- Alleged restaurant website was inaccessible with her screen reader software
- Limited her ability to read the menu or make reservations at any time
- Restaurant provided a telephone number and email address on its website to access auxiliary aids as an alternative means for effective communication
- This was not effective because by requiring the Plaintiff to call the restaurant number, she was limited to when she could make a reservation, whereas sighted customers with access to online reservations could book 24-hours a day.
- Defendant was mandated to comply with WCAG 2.0
So, what are companies like yours left to do??
DOJ COMPLIANCE STANDARDS
DOJ’S CURRENT STANCE

• Websites must furnish appropriate aids to ensure “effective communication” with disabled persons
• Have not offered any specific technical requirements for websites
• Companies have flexibility to make websites accessible by any means they see fit
• DOJ uses Web Content Accessibility Guidelines (WCAG) 2.0 as a voluntary standard for compliance
Four principles of accessible design:

1) Perceivable
2) Operable
3) Understandable
4) Robust
HOW CAN COMPANIES CONFORM?

• Provide text alternatives for all non-text content
• Create content that may be presented in multiple ways without losing information
• Distinguishing visual components
• Allow users to operate website through keyboard interface
• Provide web pages with titles that describe the topic or purpose of the page
• Make compatible with assistive technology
• Provide captions for all live audit content

• Provide audit description for all prerecorded video content
• Use text to convey information instead of images where possible
• Provide ability to resize text up to 200% without losing content or functionality
• Provide users with correctional suggestions for known input errors
• Providing multiple ways to locate webpages
• Ensure web navigation and menus which appear on multiple pages occur in the same order
RESPONSIBILITY OF HUMAN RESOURCES PROFESSIONALS
Your Company utilizes a third party vendor for hiring and recruiting purposes. Candidates for jobs listed on this third party vendor’s ADA compliant website are re-routed to your company website to complete their application. A visually impaired candidate initiates an application on the third party vendor site with no problems. When they begin to navigate your company site, they realize they are unable to access the fillable features because they are not compatible with their screen reader software.

Why should you care?
BUSINESS UNIT ENGAGEMENT

• Managing human capital within your organization spans beyond just hiring and firing decisions.

• You may be responsible for compliance of vendors that interact with people and services within your business.

• You may be responsible for making sure that inward facing web capabilities accessed by employees are compliant.

• You may be responsible for making sure that IT is aware of website functionalities for external users looking to engage with the Company.
VENDOR MANAGEMENT

- Ensure any vendor sites linked to your Company’s job search pages are ADA compliant
- Work with vendor management to review third party contracts and ensure ADA web accessibility requirements are included
INFORMATION TECHNOLOGY

• Ensure applications and information on Company’s job search pages allow users to effectively communicate with your organization

• Discuss minimum standards with IT personnel and incorporate them throughout digital platforms

• Ensure any digital internal reporting features allow all employees to effectively communicate with organization
EMPLOYEE BENEFITS

• Look for discriminatory practices of your benefits administrators

• Review your benefits plans and ensure all employees have the same opportunities to buy into policies
CUSTOMER SERVICE

• HR is often the first line of defense when faced with a demand letter
• Ensure outward facing customer platforms are meeting minimum WCAG 2.0 standards
• Poll customers on their website user experience
• Discuss customer complaints with Customer Service to identify what may trigger compliance issues.
SUMMARY

• Depending on where you are in the world, your website may be considered a public accommodation, triggering Title III of the ADA

• There are no rigid compliance requirements, but you should strive to at least meet WCAG 2.0 AA standards

• Think creatively about ways to collaborate with business units to ensure you are doing your part within your organization

MISSION= COMPLIANCE
THE ADA AND COVID-19 RELATED ISSUES
MANAGING A WORKFORCE DURING A GLOBAL HEALTH CRISIS

• PTO/Leave Policies
• FMLA
• ADA
• Wage and Hour
Contact Us with Questions

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