Title III of the Americans with Disabilities Act (the “ADA”), 42 U.S.C. §§ 12181, et seq., prohibits discrimination against individuals “on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.” Among other things, ADA Title III requires places of public accommodation and other commercial facilities—restaurants, movie theaters, hotels, and other businesses—to be designed, constructed, and altered in a manner that permits broad accessibility to persons with disabilities, and provides individuals with a private right of action for discrimination in violation of its regulations. Remedies for discrimination in violation of ADA Title III include injunctive relief compelling compliance with ADA accessibility standards, as well as reasonable attorney’s fees awarded to a successful plaintiff.

While ADA Title III lawsuits have traditionally focused on discrimination claims arising out of alleged physical barriers to accessibility for “brick-and-mortar” businesses (for example, lack of handicapped-accessible parking spaces, entryways that are too narrow for wheelchair users, or signage that does not include tactile or braille characters for visually-impaired persons), in recent years, websites serving those businesses have become a frequent target for accessibility claims and the enterprising plaintiffs’ attorneys that pursue them. As a result, any business that operates a consumer-facing website or mobile app may be a target for this type of claim.

ADA Title III website accessibility claims are typically brought by individuals with visual or hearing impairments or other disabilities who allege they are unable to use a business’s website due to its incompatibility with standard screen reader software, lack of captions for audio content, lack of keyboard navigation functionality to allow mobility-challenged users to interact with website elements without the use of a mouse, or other accessibility barriers unique to their disabilities that might interfere with their ability to navigate or utilize one or more features of a business’s website or mobile app.

In 2017, approximately 800 such lawsuits were filed in federal district courts. By 2018, more than 2,300 such cases were filed. And in 2021, over 4,000 lawsuits were filed against businesses alleging ADA Title III violations related to website accessibility. The number of these claims is expected to continue to increase.

So how does a business make its website accessible in compliance with the ADA?

The U.S. Department of Justice (the “DOJ”) is charged with promulgating rules to provide clear requirements for compliance with the ADA. For brick-and-mortar “places of public accommodations” and “commercial facilities” governed by Title III of the ADA, the DOJ has done that by publishing detailed design standards for new construction and alterations, specifying such things as the minimum number of handicapped-accessible parking spaces in a parking lot serving a business, the maximum height of service counters, and the minimum width of entryways.

However, notwithstanding that the DOJ has confirmed its view that commercial websites are subject to ADA Title III, the DOJ has not issued regulations for making websites accessible in accordance with the ADA.

Although it has so far declined to provide specific technical standards for website accessibility, the DOJ’s March 18, 2022, “Guidance on Web Accessibility and the ADA,” endorsed the international standard known as the Web Content Accessibility
Guidelines (WCAG), published by the World Wide Web Consortium, as one accessibility resource, describing the WCAG as “helpful guidance concerning how to ensure accessibility of website features.” The WCAG is a set of recommendations for making websites more accessible, primarily for people with disabilities. The current version of the standard, WCAG 2.1, was published in June 2018 and consists of twelve guidelines organized under four principles—websites must be perceivable, operable, understandable, and robust—measured by 78 testable success criteria. A revised version of these standards, WCAG 2.2, is currently in draft form and planned to be published later this year. In light of the lack of definitive standards promulgated by the DOJ, many federal courts have also recently endorsed the WCAG requirements when assessing whether a commercial website is “accessible” under ADA Title III.

ADA compliance issues remain a frequent target of enterprising plaintiffs’ attorneys. Businesses and employers, large and small, should continue to ensure that their websites and mobile apps are compliant with ADA accessibility standards by conferring with legal counsel experienced in advising on ADA website accessibility issues.

Tags: Advertising, Advertising Law, Americans with Disabilities Act, lawsuit