Website Accessibility Lawsuits Under Title III of the ADA – Are you Exposed?

Labor & Employment Law Update

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The Americans with Disabilities Act (ADA) not only provides employment protections and accommodation rights to qualified individuals with disabilities in the workplace, it also requires reasonable accommodations in "places of public accommodation." Places of public accommodation include businesses that are open to the public and fall within one of 12 categories listed in the ADA, such as restaurants, movie theaters, schools, day care facilities, recreation facilities, and doctors' offices. The ADA's mandate extends to newly constructed or altered places of public accommodation including privately owned, nonresidential commercial facilities such as factories, warehouses, and office buildings.

Traditionally, Title III has meant that businesses with brick and mortar locations had to remove physical barriers to provide equal access and opportunities to individuals with disabilities (i.e. installing wheelchair ramps or elevators, accessible restrooms, and handicap parking spaces). However, courts and the U.S. Department of Justice (DOJ) over the past few years have interpreted Title III to also require accessible public websites.

Even though the DOJ has not issued guidelines or standards for web accessibility for private businesses, it has been seeking to enforce Title III against private businesses. Moreover, over the past few years, more and more private litigants have been sending demand letters and filing lawsuits against businesses. Indeed, several have become "professional litigants" in this area, much like we have seen with the Fair Credit Reporting Act (FCRA). The number of cases filed alleging violations of Title III has more than doubled over the past few years.

While relief under Title III of the ADA is limited to injunctive relief (i.e. business is ordered to shut down website or make it accessible), successful litigants can recover their attorneys' fees and costs. Additionally, some state laws provide for additional monetary damages. For example, in California the damages are up to three times the amount of actual damages, but not less than $4,000, plus attorneys' fees and costs. It is noteworthy that California has taken some steps to address "high-frequency litigants" and exempted certain businesses from the full minimum $4,000 statutory damages. However, the potential exposure and liability for a Title III website accessibility claim is real.

What do businesses need to know and do?

First and foremost, check whether your websites are accessible. Though the DOJ has not issued formal regulations, it has recognized Version 2.0 of the Web Content Accessibility Guidelines (WCAG 2.0) published by the World Wide Web Consortium (W3C) as an appropriate standard. Next, promptly remediate any deficiencies identified in your websites. Note that sometimes it is more cost effective to create a new website than to make an old website accessible. Third, be on the lookout for further guidance. The DOJ has indicated its intent to issue a proposed rule regarding website accommodation. Finally, consult with qualified counsel on ways to limit exposure to potential accessibility lawsuits and how to respond to a demand letter or lawsuit alleging a violation of Title III.