

# Website Accessibility

## Labor & Employment Law Update

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Website accessibility continues to be a hot topic. Hundreds of businesses throughout the country have been sued in the past few years for failing to have accessible websites. Retail businesses have been the primary target; however, financial institutions and now, the health care industry, are receiving threatening letters from high profile law firms, alleging that the businesses' websites are not "accessible" and in violation of the Americans with Disabilities Act (ADA). The law firms threaten to file suit if the businesses do not make their websites compliant with the Web Content Accessibility Guidelines Version 2.0 Levels A and AA ("WCAG 2.0 AA"), created by the World Wide Web Consortium, and demand a settlement, including payment of attorneys' fees.

The ADA does not currently have an accessibility standard that private companies must comply with regarding websites. However, the federal agency charged with ADA enforcement – the United States Department of Justice (DOJ) – has stated its position that Title II and Title III of the ADA requires public and private entities that have websites to make their websites accessible to individuals with disabilities. Although no final regulation has been issued, and none is expected until 2018 at the earliest, the DOJ has initiated a number of enforcement actions against private companies and public entities. In settling enforcement actions, the DOJ has generally required compliance with WCAG 2.0 AA. It remains to be seen if the enforcement actions will continue under President Trump's administration, however, businesses must still take heed because of the threat of lawsuits by private law firms.

There are steps businesses can take to reduce the risk of being sued or having liability, including:

- Educate yourself and IT employees regarding WCAG 2.0 AA standard
- Retain a website accessibility consultant/vendor to review your website using the WCAG 2.0 AA standards
- Redesign and/or update your website to conform with WCAG 2.0 AA
- Set up regular monitoring of your website for compliance with WCAG 2.0 AA and ensure that all new content is reviewed for accessibility before being added to the website
- Adopt an internal website accessibility policy that includes a reporting mechanism for any complaints, issues or suggestions about accessibility to your website and online banking services

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- Distribute your website accessibility policy to technical support staff and vendors
- Train employees on accessibility and current WCAG 2.0 AA standard
- Put a statement on the homepage of your website (or a link to the statement) about your commitment to website accessibility, solicit feedback, and include contact information for reporting problems
- Add alt-text, captions and other features that make your website more accessible to individuals using screen reader or other assistive technology
- Require vendors providing website, apps, online banking, advertising or other services, to make their products and services “accessible” in conformance with the ADA and WCAG 2.0 AA
- Have a written agreement with vendors, who are providing website redesign, updates or monitoring, which includes compliance with WCAG 2.0 AA accessibility standards in the scope of the work being performed and request a rep and warranty regarding accessibility
- Review indemnification provisions in vendor agreements to determine if the vendor agrees to indemnify you for claims resulting from the vendor’s negligence or failure to comply with WCAG 2.0 AA or ADA website accessibility standards

If you receive a demand letter, you should promptly report the demand letter to your insurance agent or applicable insurance companies. Employment practices liability (EPL) policies may provide coverage for website ADA claims brought by third parties. Media liability or cyber security policies may also apply, depending upon the policy coverage and exclusions. Additionally, since the demand letter is a threat of litigation, you should implement a legal hold to preserve and protect all potentially relevant documents and information. Importantly, demand letters must be taken seriously. Failing to appropriately address may result in costly litigation. That being said, it is important to understand that settling with a private litigant does not insulate the business from litigation by the DOJ or other private litigants.

Website accessibility is an evolving area of law. Businesses should be aware of the issues and understand their potential exposure to threats of litigation.