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Related Practices

Litigation

Is your website ADA compliant?

Title III of the Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability in places of public accommodation. Businesses and corporations, both large and small, are affected by the ADA. While Title III of the ADA is best known for its applicability to barriers such as lack of wheelchair access, acceptance of service animals, effective communication for hard-of-hearing individuals and accommodations for the vision impaired, its focus in the digital age has turned to websites.

The Department of Justice (DOJ), which enforces the ADA, has made it clear that it interprets the ADA as applicable to websites. In 2010, the DOJ issued an Advanced Notice of Proposed Rulemaking stating it would amend the language of the ADA regulations to specifically ensure accessibility to websites for individuals with disabilities. The DOJ's proposed amendments to the ADA regulations are expected in 2018, but enforcement actions are ongoing. Title III claims are on the rise, and in 2015, the DOJ received 6,391 accessibility complaints—a 40% increase over the prior year. Moreover, website compliance litigation filed by plaintiffs' firms and advocacy groups have similarly seen a significant rise over the past year, and especially in the past several months. As such, prudent businesses should ensure compliance now.

In 2015 and 2016, certain plaintiff law firms sent letters to scores of companies, universities and other entities on behalf of disabled individuals throughout the United States who use the Internet to facilitate their access to goods and services. The letters typically identify certain alleged ADA violations based upon "access barriers" on the recipients' websites. The letters further claim that unless the recipient company modifies its website to meet the standards in the World Wide Web Consortium's (W3C) Web Content Accessibility Guidelines (WCAG 2.0 AA), the company will continue to violate Title III. The WCAG 2.0 AA Guidelines have been endorsed by the DOJ. In addition, the United States Access Board has promulgated accessibility standards that apply to electronic and information technology procured by the federal government (Section 508 Standards). Together, according to

the letters, the Guidelines and Section 508 Standards are recognized as setting the baseline requirements for website accessibility and have been used by the DOJ as a benchmark in settling website accessibility matters.

The letters from plaintiffs' counsel typically seek settlement negotiations on an expedited basis and stipulated injunctive relief and payment of attorneys' fees and costs. The remedial measures requested in the letters may include the following:

- Designate one or more individuals to manage web accessibility testing, repairing, implementing, maintaining and reporting for a Section 508 and WCAG 2.0 compliant website within a reasonable time period.
- Create, adopt and maintain a web accessibility policy consistent with prevailing standards.
- Initiate a needs assessment and subsequent training for web and content development personnel on Section 508 and WCAG 2.0 accessibility programming, functionality and design.
- Contractually require that services procured and performed by third-party developers and other relevant service providers conform to prevailing Section 508 and WCAG 2.0 compliant accessibility standards and the company's web accessibility policy.
- Conduct monthly independent third-party automated and disabled end-user testing of website.
- Implement other related policy, technology and programming, monitoring and training measures as they are identified and needed.

In addition to the letters from plaintiffs' counsel, numerous lawsuits have been filed seeking to force companies to modify their websites to comply with the WCAG 2.0 AA Guidelines.

Numerous Michael Best clients have received letters from plaintiffs' counsel similar to those discussed above. Our ADA Website Compliance Team works directly with clients to analyze their websites, identify challenges and develop strategies to overcome all hurdles, including avoiding litigation. We offer solutions based upon our specific experience in this area and in coordination with our clients' business objectives.

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