

EMPLOYMENT SERVICES ALERT

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An ADA Trap for the Unwary – Noncompliant Websites

Businesses must brace themselves for a tidal wave of accessibility-related lawsuits focused on websites that do not comply with the Americans with Disabilities Act (ADA). While most companies with 15 or more employees that are open to the public know they must provide wheelchair ramps, specific door knobs, and wheelchair accessible bathroom stalls, few realize that their websites must accommodate visually and hearing impaired Internet surfers. In its simplest form, a website meets this accommodation requirement when it can be used by persons with various sight, hearing, and/or other disabilities.

Title III of the ADA requires businesses to make accessibility accommodations that enable disabled people to access the same services as those who are not disabled. This includes electronic media and web sites. Government contractors (and government agencies) have similarly strict compliance requirements. They must follow web accessibility guidelines under Section 508 of the Workforce Rehabilitation Act of 1973, which has different requirements than the ADA.

The U.S. Department of Health and Human Services has published a Web-based Internet and Internet Information and Applications Checklist (the “508 Checklist”) intended to help companies navigate these complex compliance requirements. While the list is long and technical, some examples include:

- Every image, video file, audio file, plug-in, etc. should have an alt tag
- Complex graphics should be accompanied by detailed text descriptions
- When images are also used as a link, the alt tag must describe the graphic and the link destination
- Make sure the page does not contain repeatedly flashing or “strobing” images

Proactive businesses should conduct their own trial run for compliance with many of the most popular screen readers available, i.e. VoiceOver for Apple, JAWS for Microsoft, Navigator that comes with Windows, and Access Firefox and Fire Vox for Firefox. Checking sites for visibility with Windows Magnifier is also prudent.

While the 508 Checklist is still a good resource, a new and more robust set of guidelines has been developed by a private industry group called the Web Content Accessibility Guidelines (WCAG) 2.0. However, the Department of Transportation adopted WCAG 2.0 Level AA as its legal standard. The Department of Justice signaled in 2010 that it would likely adopt these guidelines as the standard for public accommodation websites, but has not yet issued a proposed rule. Despite all the different standards, WCAG 2.0 AA is the accessibility standard cited in virtually all settlements involving website accessibility. The WCAG 2.0 is an ISO International Standard (ISO/IEC 40500:2012). Many countries are now adopting these guidelines as their standards for accessibility and the U.S. is looking to do the same to harmonize with the rest of the world.

One of the troubling aspects of these new lawsuits is how easily plaintiffs can find websites that violate the ADA and/or Section 508. Traditional ADA claims arise from a plaintiff physically having to go to a place of business and noticing the violation. Recently, “drive by” claims have emerged where plaintiffs do not have to exit their car, but just see a violation of the ADA in order to qualify as a claimant and receive a monetary settlement after suing, or threatening to sue, a company. Now, claimants can simply sit at home, surf the web, and find hundreds of companies to sue each day. This increased ease of finding violations, along with plaintiff lawyers willing to send demand letters seeking settlement dollars for non-compliance with the ADA, could create a monsoon of “surf-by” lawsuits. Given this possibility, more and more businesses are taking steps right now to make their websites accessible—before a claim can be made.

Roetzel remains ready and able to assist you with all of your ADA compliance issues. For additional information, please contact any of the listed attorneys.

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