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Municipal Liability Under the ADA for Website Inaccessibility.

Executive Summary: Many business owners have faced litigation under the Americans with Disabilities Act (ADA) by disabled individuals who claim the businesses' websites are inaccessible. Now, many plaintiffs are turning their attention to municipalities and their websites.

Websites and the Americans with Disabilities Act: The ADA was enacted decades ago, before companies or municipalities even had websites. Yet courts across the country repeatedly have held that the law applies to internet accessibility, resulting in an increasing trend in ADA litigation over websites. Serial plaintiffs visit a multitude of websites and then pick a niche. Some sue art galleries without screen readers that enable the visually impaired to navigate the site, or hotels whose websites do not list their accessible accommodations. Lately, though, these plaintiffs and their attorneys have begun targeting cities, towns, and counties, alleging that their websites are inaccessible, most often for the visually or hearing impaired. Although the ADA offers a plaintiff only injunctive relief, the real damages come in the form of excessive attorneys' fees, which usually make it more prudent to simply settle a case as soon as possible. Yet in New York and California, two of the states with the largest volume of ADA lawsuits, local laws also offer plaintiffs monetary damages.

Implications for Municipalities: As a result, New York, California, and Florida lead the country in volume of website litigation. The trend is spreading to other states. Title II of the ADA prohibits a "public entity" from discriminating against "a qualified individual with a disability," on account of the individual's disability. The ADA regulations state that "a public entity shall take the appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others." Further, "a public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity." 28 C.F.R. § 35.160(a). Such auxiliary aids and services may include, but are by no means limited to, qualified interpreters on-site or through video remote interpreting services; real-time closed captioning; and closed caption decoders. 28 C.F.R. § 35.104. The specific type of auxiliary aid needed will vary on a case-by-case basis, as people with various disabilities will need different accommodations.

Among the issues raised by recent lawsuits are a plaintiff's inability to attend or otherwise participate in a town board or city council meeting due to that person's disability, and the need to watch the meeting on the town's website. Without closed captioning, for example, a hearing impaired person would not be able to participate in the meeting. Although there is no explicit requirement to livestream or simulcast a municipality's council meetings, a municipality does have a duty to provide auxiliary aids to disabled persons attempting to take part in the meetings.

In Minnesota, a disability advocate who suffers from autism has brought multiple website lawsuits against towns and counties in that state. He alleges that, as a result of his condition, he has muscular problems that impede his use of a mouse to navigate a website. Serial plaintiffs in Florida have filed dozens (if not more) of lawsuits alleging website inaccessibility, including against

municipalities. One plaintiff frequently claims that videos on municipalities' websites are inaccessible to people such as himself who are hearing impaired. Still other serial plaintiffs have begun virtually crossing state lines. For example, one Florida serial plaintiff has sued Nassau County, New York over the alleged inaccessibility of its website.

Bottom Line: In sum, although there is no blanket requirement that every city needs to livestream and provide real time captioning for their meetings, or to provide any specific auxiliary aides to use its website, the proliferation of municipal website lawsuits presents a real risk of liability. Municipalities are advised to work with their IT departments or otherwise to take proactive steps to ensure that their websites are accessible to those with visual, hearing, and muscular impairments.

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