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Municipalities and Universities New Targets in ADA Website Accessibility Lawsuits.

For years, private businesses have faced demand letters and litigation over the accessibility of their websites by individuals with disabilities, with 2018 seeing a record number of website accessibility lawsuits under the Americans with Disabilities Act. Now, plaintiffs' firms are focusing on new targets, including municipalities, county governments, and universities.

People with disabilities access websites in a variety of ways, and common website problems may create barriers for these individuals. For example, a blind person may use screen-reading software, which reads the text of the website out loud to the individual. If the website has used images to convey information without using text alternatives, the screen-reading software cannot convey that information and the blind person will not be able to use the website. The "World Wide Web Consortium's Web Content Accessibility Guidelines" – otherwise known as WCAG – is the most commonly accepted voluntary set of guidelines for ensuring websites are accessible to all.

Title II of the ADA applies to public entities, including state and local governments and public universities. Public entities are required to "take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others." 28 C.F.R. §35.160(a)(1). Moreover, Section 504 of the Rehabilitation Act of 1973 also prohibits entities that receive federal funding from discriminating against individuals with disabilities. In January 2018, updated Section 508 regulations specifically adopted WCAG version 2.0 level AA as the web accessibility standard. Some states, including Oklahoma, also have state laws regarding electronic and information technology accessibility for state agencies.

Website accessibility lawsuits on the rise

Local governments across the country that been sued for inaccessible websites include Palm Beach and Orange counties in Florida; Carver County, Minnesota; and the city of Atlanta, Georgia. Both private and public universities have also been hit with lawsuits under the ADA. In the final months of 2018, 50 universities were hit with lawsuits alleging their websites were not accessible to the screen-reading software used by the same blind plaintiff, who said he came across the universities at a college fair in New York City for prospective students interested in performing and visual arts.

The issue of website accessibility is not a new one for colleges and universities, which have long faced complaints over accessibility. In fact, the U.S. Department of Education's Office for Civil Rights reported in May 2018 that it had investigated "hundreds" of complaints regarding website accessibility against educational institutions throughout the country. Harvard and M.I.T. were sued in 2015 over failing to caption online courses. In 2017, The University of California, Berkeley removed more than 20,000 audio and visual files from their website in response to a Department of Justice accessibility order. In response to the large number of complaints, the U.S. Department of Education Office of Civil Rights in May 2018 announced a new technical assistance initiative designed to offer technical assistance regarding website accessibility directly to information

technology professionals who work with schools.

An issue of accessibility, not accommodations

Many universities may think that they have solved the problem by providing a disability accommodations office. For example, an instructor may refer a student with a hearing impairment to the accommodations office, instead of captioning an online lecture. However, the issue is one of accessibility, not accommodations.

Accommodations are provided upon request, on a case-by-case basis, based on the specific needs of a student with a documented disability. Accessibility, on the other hand, is the responsibility of the creator or publisher of the online content, with no need for a specific complaint or explanation of need. Moreover, academic institutions need to remember who their audience for their website is. Many educational websites are public-facing, meaning that the university could face lawsuits from individuals with disabilities who are not students of the university.

Appeals court confirms websites must comply with ADA

Meanwhile, the first ADA website accessibility case of 2019 was a big win for individuals with disabilities. In *Robles v. Dominos Pizza, LLC*, the Ninth Circuit Court of Appeals announced that websites and mobile apps are clearly covered by the ADA, holding that the ADA applies to "the services *of* a place of public accommodation, not services *in* a place if public accommodation." Notably, the court held that potential places of public accommodations have received fair notice that their websites and apps must comply with the ADA.

Risks of noncompliance

To date, most lawsuits have been filed in California, Florida, and New York. However, if the flood of ADA website litigation continues, local governments and educational institutions in Oklahoma that are not making efforts to ensure their websites are accessible are risking a lawsuit, or at the very least, a complaint from a resident or student.

Robles v. Dominos Pizza, LLC, No. 17-55504 at 11 (9th Cir. Jan. 15, 2019)

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