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DOJ Issues Rulemaking Notice on Mandatory Website Accessibility for the Disabled

Related Topic Area(s): Antitrust and Trade Regulation, Employment Law, Miscellaneous

The United States Department of Justice (DOJ) recently reiterated its intent to enforce website accessibility standards under the Americans with Disabilities Act (ADA). The DOJ is focusing on ensuring that covered entities provide ready access for the disabled to their websites. In short, the ADA accessibility rules cover any entities (governmental or private) that open their doors to the public, including nonprofit organizations, places of lodging, retailers, restaurants, medical facilities, banks, local governments, and schools, among others. Any nonprofit with a public website is directly affected by these accessibility rules. The DOJ has consistently maintained the position that websites operated by covered entities are “public accommodations,” and recent court decisions have supported this view. The courts have reasoned that websites serve as extensions of, and invitations to, the physical structures that serve as more traditional public accommodations.

The DOJ has issued an Advance Notice of Proposed Rulemaking (ANPRM) for public accommodation websites and has promised increased enforcement and heightened scrutiny of public and private websites. Through the public comment process, the DOJ seeks input on such matters as barriers to website accessibility, coverage limitations of the ADA, cost of compliance on small organizations and the need for increased DOJ enforcement. While the DOJ will solicit comments over the next several months before it issues final regulations, now is the time for entities covered by the upcoming rules to address any accessibility issues on their websites.

Nonprofit organizations should review their website content and design for accessibility by individuals with disabilities, including visual, motor and cognitive impairments. For example, web designers should be employed to provide text descriptions for visual content that is compatible with assistive technology (braille and screen readers) used by the blind. Web design should be consistent and easy to navigate, and all video and audio should be captioned and should minimize the use of color cues. Online recruitment and hiring capabilities should conform to all ADA standards as well.

In addition, website content should include a full description of how your organization provides full access to the disabled at its physical locations. Architectural and engineering compliance should be fully explained and all online purchasing opportunities should be available to persons with disabilities. Any barriers to, or limitations upon, accessibility should be fully disclosed. For example, a travel industry association should consider counseling its members to provide informative descriptions of access limitations for all facilities it recommends to the public. Similarly, retail industry associations should describe best practices to its member stores that regularly host the public.

Failure to comply with the new regulations may leave a covered entity exposed to damages and other compliance measures initiated by the DOJ, as well as lawsuits by individuals under the ADA. Venable attorneys will be monitoring DOJ’s rulemaking, as well as legal developments in the legislative and judicial arenas.

AUTHORS

George W. Johnston
James Edward Fagan, III
Jeffrey S. Tenenbaum

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