

Digital Accessibility: Building a Web-Based Environment Available to All

By Donovan Bonner

The digital world grants us access to a variety of information at the mere click of a button. With the expansion of the internet and advancement of technology, information is not always easily accessible to individuals with disabilities. Just as disabled persons have a right to access buildings and other spaces, they also have a right to equally accessible services on the internet.

Many people with disabilities use “assistive technology” to allow them to access the internet using mechanisms that can read the text for a user and translate it into the necessary medium, control all the website’s functions through a keyboard, and navigate and find content in other ways. When websites are ineffectively designed, it limits the accessibility and use for disabled persons. On the contrary, when accessible features are built into web pages, websites are more convenient and available to everyone, including disabled persons.

The Department of Justice (“DOJ”), in conjunction with the Department of Education (“DOE”) and the Office of Civil Rights (“OCR”), administers the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 (Rehabilitation Act), which prevents places of public accommodation, colleges, and universities from discriminating on the basis of disability. Both agencies have expanded their perspectives and adopted standards for the accessibility of websites and other technology for persons with disabilities. Employers must comply with these standards to make their web-based activities accessible to all.

Americans with Disabilities Act

Titles II and III of the ADA prevent discrimination in “services, programs, and activities” and “goods, services, facilities, privileges, advantages, and accommodations,” respectively. Title II governs public colleges and universities, while Title III governs public places of accommodation. The traditional definition of “places of public accommodation” includes restaurants, stores, schools, hotels, offices, parks, etc. However, in 2010, the DOJ expanded the traditional definition of places of public accommodation because private entities began providing goods and services to the public through websites that operated as places of public accommodation. The DOJ regulations express that individuals with disabilities must be able to access webpages, obtain the same information, engage in the same interactions, and enjoy the same services “with substantially equivalent ease of use.”

The Rehabilitation Act of 1973

The Rehabilitation Act regulates both public and private colleges and universities receiving Federal financial assistance.

Section 504 of the Rehabilitation Act provides that “[n]o qualified person with a disability . . . shall, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” OCR enforces Section 504 in programs and activities that receive Federal financial assistance.



Section 508 of the Rehabilitation Act expressly requires Federal agencies to make their electronic and information technologies (“EIT”) accessible to people with disabilities. Section 508 further provides that agencies must give disabled employees and members of the public access to information that is comparable to the access available to others. Although Section 508 does not directly apply to colleges or universities, the DOJ has stated that Section 508 provides guidance for accessibility standards.

Compliance Guidance and Standards

Under the ADA and the Rehabilitation Act, public entities and private entities that are places of public accommodations engage in discrimination if a person with a disability does not have immediate access to information. Individuals cannot be deprived of participation, given unequal benefits, or given separate benefits that are not as effective as the benefits afforded to others.

Although the DOJ has not issued its final rules, employers should be aware that there has been a significant increase in lawsuits involving digital accessibility. Employers and educational institutions should begin taking preventative steps to make their websites accessible for all people. Many issues can be directly addressed through new programming or a shift in website design. The OCR and DOJ have pointed towards Web Accessibility Initiative of the World Wide Web Consortium’s Web Content Accessibility Guidelines (WCAG) 2.0 AA, and Section 508 of the Information and Communication Technology (ICT) Final Standards and Guidelines as technical guidance for web-based information. These guidelines are intended to make websites more accessible to individuals with disabilities. However, the OCR has also explicitly stated that “[a]dherence to the WCAG standards today may not be enough tomorrow.”

The DOJ has hinted that final regulation will be issued within the year, but until then, public entities and private entities can adhere to web design best practices: audit websites for accessibility, meet the current WCAG standards, and implement an accessibility policy and accompanying procedures. In addition, educational institutions must ensure their instructional materials, online courses, services, and activities are equally accessible to individuals with disabilities.

These developments present new compliance challenges and potential legal liability for private and public entities. Taking these precautionary measures early will not only help entities remain compliant with the law, but will also eliminate barriers and difficulties for individuals with disabilities.

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