

Class Action Liability Risks for Violations of ADA and New York Human Rights Laws

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In January 2018, the federal government conformed its website accessibility requirements to the Web Content Accessibility Guidelines (WCAG), an international set of standards intended to make web content more accessible to users with perceptual or physical challenges. The WCAG addresses low vision, color perception, cognition, manual dexterity, screen reading technology, and other issues related to user abilities. The Department of Justice (DOJ) promised to do the same in the private sector by mid-year, but that initiative has been deferred.

As a consequence, there has been a surge of class action lawsuits alleging Americans with Disabilities Act (ADA) violations based on access to website information that the Courts have been addressing individually. The first federal court decision that a website violated the ADA was in early 2017. The decision was followed by 800 federal lawsuits that year alone, alleging ADA as well as state law civil rights violations. (New York led the way with more cases than any other state). Until a clear standard is set by Congress or the appropriate regulatory agency, web site ADA lawsuits will continue to increase.

The ADA prohibits discrimination on the basis of a disability “in places of public accommodations”. As such, any business is potentially an ADA class action target. Class actions require only one named plaintiff (who brings suit individually and on behalf of those “similarly situated”), and one defendant (potentially, you). Whether you are a large or small business, brick and mortar, or web-based only, defending an ADA/Human Rights Law class action promises to be costly in two ways. Not only is there the risk of a potential damage award, the ADA is a “fee shifting statute.” As a result, a defendant must pay its own legal costs to defend the action and may be required to pay those of a successful plaintiff as well. These costs alone may run into the tens or hundreds of thousands of dollars.

Now, with the website accessibility lawsuit floodgate open, it imperative for businesses, including veterinary practices with an online presence, to ensure ADA compliance. The easiest and most economical approach is a website compliance audit and action-item checklist conducted by legal counsel experienced in ADA website accessibility issues. For instance, does your website include:

- Visual Alternatives (pre-recorded text for audio, descriptors for images)



- Sound alternatives (text descriptors for audio)
- Color Contrasting (that meet the minimum ratios)
- Key board navigation (i.e. function and/or tab key, not mouse-only options)
- Adjustable font size (without content or acuity loss)
- Semantic HTML (descriptive headings that identify the content that follows)

Many of these features are easy (and inexpensive) to implement once you (and your website consultant) know what is required. Mandelbaum Salsburg's Privacy and Cybersecurity Practice attorneys are available to help.