


JUNE 15, 2017 | DISCRIMINATION, HARASSMENT & RETALIATION

## Federal Court in Florida Rules that a Grocery Store Must Make its Website Accessible

Our retail and hospitality clients often ask whether the Americans with Disabilities Act (“ADA”) requires their websites to be accessible for individuals with disabilities. Unfortunately, [as we have previously explained](#), there are numerous reasons why there is no clear answer to this question: 

- While Title III of the ADA prohibits discrimination against individuals on the basis of disability with regard to their participation and equal enjoyment in places of public accommodation, the statute does not explicitly define whether a place of public accommodation must be a physical place or facility;
- These types of issues historically have arisen in brick-and-mortar buildings such as lack of accessible parking stalls, insufficient ramps, and inaccessible bathrooms;
- No regulations on the issue of website accessibility currently exist, and the Department of Justice (“DOJ”) has pushed back the date on which it is supposed to issue such regulations until 2018 at the earliest;
- The DOJ has emphasized that businesses should make websites accessible to disabled individuals by relying on a set of private industry standards developed by the World Wide Web Consortium known as the Web Content Accessibility Guidelines (“WCAG”);
- Very few cases have reached a resolution on the merits.

As a result, the state of the law regarding the applicability of the ADA to company websites has been in flux the last several years. However, we now are starting to see some guidance from the courts, although there have been contrasting decisions that have not exactly clarified matters.

For example, in March 2017, a federal judge from the Central District of California [dismissed a lawsuit](#) filed by a blind individual who alleged that he could not order pizza from the Domino’s website because it could not be accessed from his screen reader software. Although the plaintiff claimed that Domino’s had discriminated against him in violation of Title III of the ADA, the court found that the absence of clear regulation on what it means for a website to be “accessible” violated Domino’s’ due process rights. Notably, the court referred to the DOJ’s stated intention to regulate this area of the law, and the resulting unfairness to employers of the ambiguous legal obligations rendered by its repeated failure to do so.

On June 13, 2017, however, a federal judge in Florida ruled [against an employer](#) based on similar allegations and required that employer to make its website accessible to blind individuals. In that case, a blind individual alleged that Winn-Dixie, a supermarket chain with nearly 500 stores in the Southeast, violated the ADA based on its

website's shortcomings. Specifically, the plaintiff claimed that he could not access store coupons or fill prescriptions on the store's website because it did not comport with screen-reader technology that reads the texts of websites out loud.

After a groundbreaking trial on this issue, U.S. District Judge Robert Scola agreed with the plaintiff and found that Winn-Dixie violated the ADA because its website denied him "the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations that Winn-Dixie offers to its sighted customers."

Judge Scola further concluded that the website is regulated by Title III of the ADA because it is closely integrated with the physical locations and is a "gateway" to the stores. As a result, he ordered Winn-Dixie to pay the plaintiff's attorneys' fees and to agree on a plan to upgrade the website.

According to Winn-Dixie's Vice President of Corporate and Consumer Affairs, the Company plans appeal this ruling, based in part on its belief that the current website standards and/or regulations are unclear. Nevertheless, this ruling currently constitutes the law (at least in Florida) and certainly could serve as ammunition for more lawsuits by disabled individuals (both in Florida and elsewhere) claiming website inaccessibility.

Therefore, any retailer, hospitality company or other place of public accommodation that has not already done so should, at the very least, immediately begin testing their websites' accessibility and, then should consider implementing any changes that are necessary to improve accessibility. Companies should make every effort to involve legal counsel in conducting such website accessibility tests, in order to preserve attorney-client privilege.

Companies should also consider creating and/or adopting a website accessibility policy that is consistent with the requirements set forth in the WCAG, and ensuring training and compliance with those requirements.

The law in this area is continually changing. Yet, this decision out of Florida, coupled with the the DOJ's future issuance of regulations regarding website accessibility, should put companies on notice of the potential for exposure.