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New California Bill Would Create Website Accessibility Obligations for Businesses Nationwide

By [Jordan B. Schwartz](#)

As our blog readers are aware, website accessibility claims have been on the rise for the past decade, with no end in sight. To make matters worse, there is a new bill making its way through the California assembly that will exacerbate these types of claims. And, although the bill is state-specific, it would have consequences throughout the country. Indeed, if passed, this bill would immediately create liability for businesses  *everywhere*, so long as those businesses' websites have California-based visitors. In other words, virtually every business with a representative reading this blog would be affected.

By way of background, the U.S. Department of Justice has emphasized that businesses should make websites accessible to the disabled and has emphasized that businesses should do so by relying on a set of accessibility guidelines called the Web Content Accessibility Guidelines ("WCAG"). Last year, the DOJ issued what it termed "helpful guidance" on website accessibility, stating that businesses have "flexibility in how they comply with the ADA's general requirements of nondiscrimination and effective communication."

In contrast, this proposed new CA law takes a much stricter and more rigid approach. Specifically, [Assembly Bill 1757 Accessibility: internet websites \(AB 1757\)](#) would make the latest accepted version of WCAG (WCAG 2.1 Level AA) the required standard for websites and mobile apps of any business establishment covered by the California Unruh Civil Rights Act (California's equivalent to the ADA). In so doing, the bill not only would establish non-negotiable technical requirements for website accessibility in contrast to the DOJ's position, but would also allow both individuals with disabilities and businesses to bring lawsuits against website developers who have developed websites and mobile apps that they believe are noncompliant with WCAG 2.1.

Notably, AB 1757 permits plaintiffs with disabilities to recover statutory damages when a website "fails to provide equally effective communication or facilitate full and equal enjoyment of the entity's goods and services to all members of the public." At this point, it is unclear whether a California court would find that a business's substantial compliance with WCAG 2.1 would allow a plaintiff to recover damages. However, as with other claims under the ADA and the Unruh Act, injunctive relief and attorneys' fees would likely be recoverable.

The passage of this bill would undoubtedly lead to a huge surge in litigation in California. Importantly, there is **no grace period** built into the proposed bill, which is perhaps the most difficult part for businesses. As a result,

businesses doing business in California would be expected to be compliant with this new bill as soon as it becomes law, which would likely be this fall/winter. Specifically, in terms of the timeline, the CA Legislature is in recess until August 14, 2023; it then has until September 14, 2023 to pass bills, and the Governor has until October 14, 2023 to sign or veto those bills.

At the end of the day, it is important for all businesses to have a plan for website compliance, as Title III of the ADA, as well as the Unruh Act, applies to all places of public accommodation, and most courts have found that websites and mobile apps qualify as places of public accommodation. The potential passage of AB 1757, however, makes it essential to have compliance plan, and to have one immediately. Otherwise, businesses could be on the hook for significant damages, as well as attorneys' fees and substantial remediation costs.

As mentioned above, if the bill then becomes law, it would immediately affect businesses *everywhere*, so long as their websites have California-based visitors. Given that the vast majority of businesses will have at least some California based visitors on its website, almost all businesses are fair game under this new bill. To avoid this significant legal exposure, it is best to be proactive. We can work with you to come up with ways to identify problematic issues on your website and assist you in complying with the strict requirements set forth in this AB 1757 before its too late.