



*CFA provides information about our industry's vulnerable business issues. The current issue's importance sends a clear "Protect Yourself" message and is part of CFA's continuing effort to assist our members.*



March | 2019

## "PROTECT YOURSELF" FOLLOWING UP.....

### LEGAL ADVICE FOR ADA WEBSITE COMPLIANCE

In the past month, we have seen a substantial increase in claims alleging websites are inaccessible to blind users in violation of the ADA. On some days, we see 50 such actions filed per day. Beware that your company might be the next target unless you take steps to allow all users full and equal access to your website.

In the Department of Justice's September 25, 2018 letter to Congress, the ADA applies to the Websites of places of 'public accommodation'. Despite this finding, the DOJ declined to issue regulations for website compliance, leaving it up to each place of public accommodation to determine how to ensure their website will be equally accessible to people with disabilities.

It is up to the courts to determine when a business' website has complied with the ADA's requirements of nondiscrimination and effective communication.

#### **Re: WEBSITE OBLIGATIONS**

The Ninth Circuit has concluded that a website is a "public accommodation" if there is sufficient "nexus" between the service offered through the website and a brick and mortar location. In short, if your business **accepts orders, permits customer reviews or testimonials, provides answers to frequently asked questions**, allows customers to create an account, apply for anything and/or has **email or chat features**, you should take the necessary steps to ensure these aspects are accessible to those with disabilities.

There are 'Web Content Accessibility Guidelines'. A website is considered 'accessible' if it complies with the standards of the [Website Content Accessibility Guidelines \(WCAG\) 2.0, Levels A and AA.](#) Even though the WCAG is being used as criteria for consent decrees and lawsuits, the DOJ has stated that noncompliance with the WCAG does not necessarily indicate noncompliance with the ADA.

You can test your site through a website accessibility checker like:

<https://achecker.ca/checker/index.php>

Additionally, in case a disabled person has an issue on your website, have an alternative means of communication, such as an on-line chat or 24/hour telephone call center.....and add Website accessibility policies to your IT and HR policies and procedures...also appoint someone within your business to be the point person for on-going website accessibility compliance, training and auditing.

Source: Staci Riordan, Nixon Peabody | email: [sriordan@nixonpeabody.com](mailto:sriordan@nixonpeabody.com)

<https://www.staciriordan.com/2019/02/fashion-law-101-ada-website-accessibility-claims/>

