

INSIGHTS

Does Your Bank's Website Violate The ADA?

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There has been a recent surge in claims brought by people with visual and hearing impairments alleging that company websites violate the accessibility standards of the Americans with Disabilities Act (ADA). Until now, these claims have typically been made against companies outside of the banking industry. We recently learned, however, that at least one community bank in Texas has received a demand letter from a consumer-protection law firm alleging that the bank's website does not comply with accessibility standards that are currently under consideration by the Department of Justice (DOJ). In light of the present uncertainty as to the future website accessibility standards under the ADA, we expect more community banks will receive similar claims or threats of claims.

Banks are considered places of "public accommodations" under the ADA. As such, most bank websites must comply with the ADA, which includes being accessible to people with visual and hearing impairments. Unfortunately, there are currently no regulations or standards explaining precisely what a website must provide to avoid violating the ADA. The DOJ, which enforces the ADA, announced that it does not expect to publish regulations concerning the accessibility of businesses' websites until 2018.

Nevertheless, recent actions by the DOJ strongly suggest that the DOJ considers a website accessible under the ADA if it complies with Level AA of the Web Content Accessibility Guidelines ("WCAG") 2.0. These guidelines, which were developed by the World Wide Web Consortium, cover a wide range of recommendations for making websites more accessible to those with disabilities. Although they are voluntary standards, the DOJ, in several negotiated settlements with non-banking industry companies, required these companies to modify their websites to meet these standards. Also, in its Supplemental Advanced Notice of Proposed Rulemaking to governmental entities, the DOJ recently stated that it believes that WCAG 2.0 Level AA is "the most appropriate standard." The DOJ's insistence on compliance with WCAG 2.0 Level AA in the resolution of claims brought against non-governmental entities suggests that the DOJ will likely require the same accessibility standards for other private entities.

Despite the DOJ's apparent preference for the standards set forth in WCAG 2.0 Level AA, a court could still determine that a bank's website complies with the ADA, even if it does not meet these standards. However, until the DOJ publishes regulations on the issue in 2018, it is difficult to predict what minimum level of accessibility a court will require a bank's website to provide to comply with the ADA. Even without clarity, or perhaps because of this uncertainty, plaintiffs' attorneys are starting to focus their attention on the banking industry. As a result, banks should reach out to their third-party service providers and/or companies specializing in website compliance now to determine whether their websites provide accessibility to people

with visual and hearing impairments.