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OFFICE OF THE GENERAL COUNSEL

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**FAQ REGARDING WEBSITE COMPLIANCE WITH THE  
AMERICANS WITH DISABILITIES ACT (ADA)**

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<p>This memorandum is not intended to provide specific advice about individual legal, business, or other questions. It was prepared solely as a guide, and is not a recommendation that a particular course of action be followed. If specific legal or other expert advice is required or desired, the services of an appropriate, competent professional, such as an attorney, should be sought.</p>
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Title III of the Americans with Disabilities Act of 1990 (ADA) requires any private entity that owns, leases or operates a “place of public accommodation” to provide accessibility for disabled individuals. Although the ADA does not expressly address the internet, which barely existed at the time of its enactment, most courts have recognized that its protections apply to websites. In 2018 alone, plaintiffs filed more than a thousand ADA website accessibility lawsuits against a variety of businesses.

**FAQ**

**1. Do ADA website accessibility requirements apply to insurance agencies?**

Title III applies to twelve different categories of “places of public accommodation,” which is defined to include “insurance offices” among other service establishments. While plaintiffs have generally targeted major retailers, restaurants, and hotel groups as defendants, insurance offices are also included within the ADA’s statutory categories of public places. Indeed, there has been at least one federal class action suit for alleged website accessibility deficiencies filed against an Ohio-based insurance carrier.

**2. Does the ADA apply even if my business does not sell anything on its website?**

Federal courts, including in the Third, Sixth, and Ninth Circuits, have found that website accessibility may still be required if there is a sufficient “nexus” or connection with physical offices that do make sales. Additionally, Title I of the ADA prohibits discrimination in the job application process such that online job listings and applications may also create potential exposure. In the 2021 case of *Gil v. Winn-Dixie*, the Eleventh Circuit overturned a trial court and held that a retailer could not have violated the ADA because its website was not a place of public accommodation and did not pose an intangible barrier to access the goods and services of the physical store. Based on the weight of legal precedent in other jurisdictions and the ability of plaintiffs’ firms to forum shop, however, it remains prudent to err on the side of ensuring one’s website is accessible to disabled individuals.

**3. How do companies ensure their websites are ADA compliant?**

There are no federal guidelines or clear guidance on how to ensure compliance and accessibility. The World Wide Web Consortium’s (W3C) Web Content Accessibility Guidelines (WCAG) 2.0, however, is recognized as a generally accepted industry standard. Agencies may wish to seek a compliance audit with a reputable vendor to determine how their websites measure up against the WCAG 2.0 and ways to address any issues.

- Lack of formal regulations does **not** excuse non-compliance with existing laws.

- Look to W3C's [Web Content Accessibility Guidelines \(WCAG\) 2.0](#) for guidance for websites, mobile and digital.
- In general, although W3C has issued WCAG 2.1, courts generally look to 2.0 as the standard as of the date of this FAQ.
- More WCAG background can be found [HERE](#).

Most businesses look to outside vendors to ensure their websites are accessible. One of the first steps is undertaking an ADA compliance audit to identify any issue in the website's layout and code. Some common accessibility issues that are addressed include:

- Fonts, styles and backgrounds that make it difficult for certain users to read content due to size or insufficient contrast.
- Missing alternative text or "alt tags" that allow automated screen readers to describe visual elements on a website.
- Inadequate labeling of inputs on fillable forms and fields, such as on a checkout page.

For additional insight, please also see IA Magazine article, "[Is Your Agency at Risk for a Website Accessibility Lawsuit?](#)" (Dec. 12, 2017).

*Please note that providing a comprehensive checklist of items goes far beyond this memorandum. [Addressing the issues identified above does not ensure a website is fully ADA compliant.](#)*

Additionally, a telephone operating service could also provide another route to compliance. The Department of Justice has stated that covered government entities may comply with the ADA's requirement for access by providing an accessible alternative, such as a staffed telephone line, for individuals to access the information, goods, and services of their Web site." See [75 Fed. Reg. 43460-01](#) (July 26, 2010). While such services could provide a defense to liability, courts may still examine the record to determine if the service was an adequate alternative and if contact information was supplied in an accessible format on the website.

## **5. Is my website compliant if I hired a vendor to develop it?**

Not necessarily. Many website developers now attempt to address accessibility and may provide solutions, but this is still an emerging issue. Also, agencies may not necessarily be protected by indemnification or warranty provisions, to the extent they exist in their vendor contracts.

## **6. Other Considerations – Vendors, Liability Coverage and State Laws**

There are also several important caveats with respect to relying on vendors for ADA compliance generally. First, to the extent possible, agencies should seek indemnification protections from their vendors for third-party accessibility claims. A trend is developing in the law, however, that may render such indemnification clauses unenforceable based on a view that ADA compliance obligations are nondelegable. Second, agencies should consider whether they have insurance coverage for accessibility discrimination claims. While some Employment Practices Liability Insurance (EPLI) policies may cover ADA lawsuits, coverage remains a fact-specific inquiry and could implicate exclusions, e.g., for claims based on discrimination. Some commentators have also suggested exploring coverage under media liability or cyber insurance policies.

It is also important for agencies to consider not only liability exposure under the ADA, but also any state-specific laws or regulations that may be implicated, such as the California Disabled Persons Act and Unruh Act. To date, the vast majority of suits have been filed in New York, California, Florida and Pennsylvania. Given the exponential increase in filings over the past few years, businesses operating in any jurisdiction should review their website's accessibility sooner than later.

## **7. How important is it to make my website accessible?**

The number of ADA website accessibility lawsuits is likely to continue to increase in the future. Additionally, one in seven individuals in the U.S. has a disability, including more than 7.3 million people who are blind or have a visual impairment. Thus, not only does addressing website accessibility help limit legal exposure, it could also help agencies ensure they are serving more customers.

## **8. What to do if you receive a demand letter?**

As a general matter, it is better not to respond or engage with a plaintiffs' firm directly upon receipt of a demand letter, but rather members should consult with their own attorney. Members can reach out to their state associations for a referral to an attorney who has experience in this area and may have represented other members on similar matters. Second, it may be helpful to investigate any alleged violations and determine how best to ensure any consumer-facing websites are accessible and compliant with WCAG standards.

Any questions regarding this memorandum should be directed to [Scott Kneeland](#), [Eric Lipton](#), [Chris Cline](#) or [Ginny Winkworth](#).