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Digital Accessibility Under Title III of the ADA: Recent Developments and Risk Mitigation Best Practices

Companies of all sizes, and especially e-commerce companies, have been hit by waves of demand letters and lawsuits over the past decade alleging that websites and (increasingly) mobile applications are inaccessible to individuals with disabilities. Most of these cases tend to result in early settlements and few go to trial because businesses tend to have limited affirmative defenses and the cost of litigating typically far outweighs the cost of settlement.

While digital accessibility litigation continues to proliferate, the U.S. Department of Justice (DOJ) has not yet promulgated a clear technical accessibility standard through regulations or regulatory guidance under Title III of the Americans with Disabilities Act (ADA), which applies to public accommodations (i.e., businesses that offer goods and services to the public). As a result, many businesses seek to comply with the Web Content Accessibility Guidelines (WCAG), which are an international standard that has been referenced in some of the DOJ's consent decrees, as well as court orders. While companies could apply any technical accessibility standard that meets the "effective communication" requirement of Title III of the ADA, they have expressed a desire for certainty in knowing that the standard they use will meet the DOJ's expectations, should they need to defend it in litigation. Certainty concerning a technical accessibility standard can only be achieved through the DOJ amending its Title III regulations or issuing regulatory guidance.

This article explains the current regulatory environment, the state of digital accessibility litigation, and potential legislative solutions to the challenges they pose, as well as steps that businesses can take to mitigate the risk of lawsuits.

Read the full article on *ABA Business Law Today*.

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