



Website Access & the ADA: What Business Owners Need to Know

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What does a business owner do when a form letter (or email) arrives demanding that the website for the business be made "ADA compliant" and further requiring payment of alleged damages as well as legal, fees, costs and expenses to an alleged aggrieved party?

The federal and state law in this area is evolving but this short newsletter is designed to provide some guidance and information. Let's cover some important background first, then we will turn to the simple versus more complicated cases.

[Background on the ADA](#)

Known as the [Americans with Disabilities Act](#) and commonly referred to as the "ADA," Congress passed and President George H.W. Bush, Sr. signed this dramatic nationwide federal law in 1990. The ADA legislation is federal statutory law prohibiting owners of most businesses from discriminating against disabled persons, most often by failing to make their businesses reasonably accessible to those individuals (think, for instance, lacking large enough doors or elevators for disabled persons to access comparable facilities such as toilets and public accommodations on different floors, prohibiting service animals from your premises, or placing napkins or other necessary supplies on a high counter out of reach of a person in a wheelchair).¹

¹ For the purposes of this newsletter, we're going to skip over the ADA's requirements that employers provide reasonable accommodations for disabled employees, as well as the law's other provisions, and focus on the customer-facing aspects of the Act.

Failure to comply with the ADA can result in draconian consequences. A private individual suing purely under the ADA can often only obtain a Court Order forcing the business to make its premises accessible, and *importantly* can also obtain an order forcing the business to pay for his or her attorneys. Monetary damages are not a remedy under the ADA; however, private litigants can often obtain hefty monetary damages by simultaneously suing under a parallel state law. In California, the [Unruh Civil Rights Act](#) expressly makes any violation of the ADA a violation of the Unruh Act as well, and under the Unruh Act, each discrete act of discrimination entitles a Plaintiff to at least \$4,000. Using this math, if a disabled Plaintiff visits an inaccessible business ten times, they could be entitled to an award of \$40,000 or more, plus attorneys' fees, with the Defendant further being concurrently forced to pay to make their business ADA compliant. Many ADA lawsuits often drive small businesses into bankruptcy!

[How Does the ADA Work \(or Not\)?](#)

Until relatively recently, the ADA only applied to brick and mortar locations open to the public. This is because of the way federal courts interpreted the term “public accommodations,” which is the phrase the text of the ADA uses to describe the breadth of its own authority. Recently, however, Federal Courts have expanded their interpretation of “public accommodations” to encompass published websites as well; the ADA mandate is that websites be equally accessible to blind persons. Essentially, when trying to access a website, a blind person must be able to use software that reads text on that website out loud to them as they navigate it, so as to allow them easy access to the website's services. Whether or not a website meets this threshold is typically determined according to the [Web Content Accessibility Guidelines](#), or WCAG, which are technical standards that Courts rely on to determine accessibility.

For purposes of the ADA, the breadth of website accessibility requirements under the ADA depends on your geographical location; most of the U.S. falls into one of two camps:²

1. All websites must be equally accessible to blind persons; or
2. Only websites connected to brick and mortar locations offering goods and services must be equally accessible to blind persons.

In federal courts, California falls into the second camp. In [Robles v. Dominos Pizza, LLC](#), a federal court held that the Dominos Pizza website must be made accessible to blind persons because it was connected to a brick and mortar establishment and operated as a proxy to allow persons to access the goods and services of that establishment. On the other hand, in [Young v. Facebook, Inc.](#), a California federal court found that the same requirements do not apply to Facebook because it has no “nexus” to a “public” physical (retail) location even though it has “private” offices in Silicon Valley and a number of other locations in California.

Many small business owners might be tempted, at this point, to breathe a sigh of relief. If your website is purely promotional and/or offers only online services (and no goods and no services at retail), you might dodge the ADA buzzsaw risks. However remember the potential

²There is a third camp, encompassing Delaware, New Jersey, and Pennsylvania that holds that ADA requirements don't apply to websites at all.

effect of California state law. While California Federal Courts, for now, have drawn the “physical (retail) location” distinction, the state courts are much less clear under the California Unruh Act, which is the law under which California ADA litigants typically seek and obtain monetary damages.

Will California state courts and federal courts applying California state law converge in their thinking on a consistent interpretation? Businesses will likely have to assume they likely will and in ways that add further risks for their businesses. Why? The answer is that the trend is for more and more reliance on the Internet and the California Supreme Court recently said as much. In [White v. Square, Inc.](#), the California Supreme Court examined an analogous if not similar claim of discrimination under the Unruh Act involving a bankruptcy attorney who wanted to use Square’s on-line payment services but was surprised to find that its Terms of Use specifically prohibited bankruptcy lawyers from using the website’s services. In that case, the California Supreme Court ruled that Square did not need to have a nexus to a physical location to be subject fully to the Unruh Act. If a litigant opened a website with the intention of using its services but was denied the right to do so, that was enough for damages under the Unruh Act.

In comparison, the Court in [Thurston v. Midvale Corp.](#) rejected the contention by a blind plaintiff that she was discriminated against by a website of a restaurant at which she was trying to make a reservation. The Court held the Unruh Act did allow the claim to go forward, bringing it in line with the second camp’s line of thinking on the ADA. the Court specifically refused to answer whether it would have ruled the same way if the defendant was not a physical restaurant but rather only operated online services, leaving that question for another day.

Ultimately, therefore, the rights of an online Defendant facing an ADA-related Unruh Act suit in California are still an evolving question, but the general assumption post-[White](#) must be that the Unruh Act will apply and that litigation under the Unruh Act will generate added risks and especially when coupled with an ADA claim seeking injunctive relief and attorney’s fees.

[What Do I Do if Your Business is Threatened with an ADA Lawsuit?](#)

No two cases are the same, but there are three basic steps you should take if you receive a letter or email threatening to bring an ADA claim.

1. Review the Specific Details in The Demand

Often Plaintiffs’ attorneys will attempt to procure an early settlement without even having to go to court by using blustery language, assertions of impending class actions, and threats of millions in liability, while simultaneously being decidedly vague on the details of their claim. Don’t panic and read their letter with a pragmatic mind. Do they make specific allegations? Do they attach exhibits that evidence the supposed wrongdoing? Do they even have a client, or are they seemingly bringing the case all by themselves? In lieu of any of these details, they’re unlikely to get far in front of a judge.

2. Verify The Detailed Facts and Claims

If the demand letter does assert supposed wrongdoing with specificity, the next step is to check for yourself whether those claims have any basis in truth. Check the [Web Content Accessibility Guidelines](#) and verify that your website is in compliance with them. Often, it's not a bad idea to download a text-to-voice plugin, place a screen in front of your computer, and try and walk a mile in the potential Plaintiff's shoes by navigating your website using text-to-voice software alone. Essentially, check to see if there is any bite to the demand letter's claims before factoring possible Unruh Act damages into your next month's budget.

3. Talk to Competent Counsel Including Litigation Defense Counsel

Even if your website is fully compliance with the ADA and the Unruh Act, it's inadvisable to respond to a demand letter without first seeking legal advice. Attorneys are shrewd at finding ways to use your words against you, and often law-abiding and good-intentioned business owners find themselves in a muddle because of an unfortunate turn-of-phrase or an inadvertent admission. Of course, consult with a lawyer before taking the next steps. Computerlaw Group LLP's attorneys are skilled and experienced in both defending, mediating, and negotiating resolution of ADA and Unruh Act lawsuits in all their individual and class action varieties, and we can help you with this necessary third step. If you are interested in more information, visit our published materials at www.computerlaw.com or call our line at (650) 327-9800 to schedule a no charge initial thirty (30) minute consultation.

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