Insurance Buyers' News

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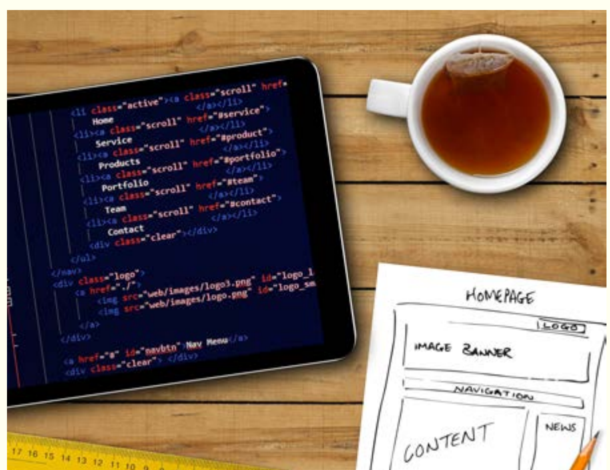
Is Your Website Discriminatory?

Poorly designed websites can create unnecessary barriers for people with disabilities, just as poorly designed buildings prevent some people from entering. And that could constitute discrimination and a violation of the Americans with Disabilities Act (ADA) and its amendments.

Most employers should know Title I of the ADA, which applies to all employers, public and private, that employ 15 or more individuals. Title I prohibits these employers from discriminating against qualified individuals with disabilities in all aspects of employment.

You might be less familiar with Title III. This section prohibits discrimination on the basis of disability in the activities of places of public accommodations, or businesses that are generally open to the public. Some attorneys and advocates for the disabled have argued—successfully—that websites are "public accommodations" that should be made accessible to individuals with disabilities.



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This Just In

The Federal Trade Commission (FTC) sued Wyndham Hotels in June 2012, after hackers stole credit card and personal information of more than 619,000 Wyndham customers in three data breaches in 2008 and 2009. The breaches resulted in more than $10.6 million in fraudulent charges.

The FTC sued Wyndham, alleging that Wyndham's computer systems unnecessarily exposed customer data to theft risk. Wyndham accused the FTC of overreaching, but the circuit judge ruled the case could go forward.

What does this mean for any organization that collects and/

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Current State of Law

Title III of the ADA falls under the purview of the U.S. Department of Justice, which offers technical assistance on the ADA Standards for Accessible Design and other ADA provisions applying to businesses, non-profit service agencies, and state and local government programs. It also provides information on how to file ADA complaints.

In 2014, Justice announced its intent to revise the regulation implementing Title III. The proposed regulation will "address the obligations of public accommodations to make the websites they use to provide their goods and services to the public accessible to and usable by individuals with disabilities under the legal framework established by the ADA." The Justice department specifically cited these types of organizations:

- Businesses that sell goods online
- Schools at all levels that offer programs, instruction and degree programs online
- Social networks and online meeting places
- Businesses that provide entertainment (games and music) and information (news and videos) online.

Although Justice originally said it would develop its regulations by March of 2015, it has not announced regulations as of the time this newsletter went to press. However, that does not mean you shouldn't pay attention to website accessibility issues.

Penalties

In an early case on website accessibility, in 2010 tax preparer H&R Block agreed to pay $25,000 in civil penalties, plus $5,000 to the complainant. Since then, major organizations, including Harvard and MIT, have faced claims for website accessibility.

In 2014, the maximum civil penalty for a first violation under Title III increased from $55,000 to $75,000; for a subsequent violation the new maximum is $150,000. The new maximums apply only to violations occurring on or after April 28, 2014.

Risk Management

When evaluating your organization's websites, look for the following problem areas:

1. **Problem:** Images without text equivalents. Blind people, those with low vision, and people with other disabilities that affect reading abilities often use screen readers and refreshable Braille displays, which cannot interpret images.
   Solution: Add a text equivalent to every image (alt tag).
2. **Problem:** Documents not posted in an accessible format. Some formats, such as PDFs, do not have text equivalents.
   Solution: Post a text equivalent.
3. **Problem:** Specifying colors and font sizes. Web designers often specify certain colors or fonts for aesthetic reasons. However, some people might not be able to see certain colors, and others with low vision might need to change a font to make it more readable.
   Solution: Users need to be able to manipulate color and font settings in their web browsers and operating systems in order to make pages readable. For example, design-

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This Just In

or uses consumers' personal and financial information?

The judge noted a 1914 law gives the FTC broad authority to protect consumers from unfair and deceptive trade practices. To date, Congress hasn't adopted any broad legislation to require organizations to protect consumers' credit card and other personal and financial information. This ruling allows the FTC to begin to step in and take that policing role. Look for similar cases to appear on court dockets in the future.

A combination of software and hardware fixes and security procedures can help protect your company's data from breach. For those incidents that can't be prevented, cyber risk insurance can protect you from liability costs. For information, please contact us.

ers can specify font sizes in relative terms (small, medium, large), rather than in point sizes.

4 **Problem:** Websites increasingly make use of video. However, video might not be accessible to those with vision problems or hearing problems.

Solution: Provide an audio transcript for video for the vision-impaired, and subtitles for hearing-impaired. Or provide a text transcript that's translatable by accessibility programs.

A whole profession of evaluating and designing websites for accessibility has emerged. Take a look at your website. Might it need changes? Run it through an accessibility tester to find out. Find a list of online testers at www.w3.org/WAI/ER/tools. You could also hire an expert to evaluate your website and make the changes to make it more accessible. Or you can do nothing, and wait to be sued. Don't worry, there's an army of lawyers waiting to file Title III accessibility lawsuits against businesses.

For more information on protecting your organization from discrimination claims, please contact us.

Risk Management for Small Business

Every organization's business plan should include a section on risk management. If your business plan doesn't address your risks, take a look at the following areas to start.

Equipment: Equipment that needs to be repaired may interrupt your business; insurance or service plans may minimize your costs. For example, if your business is dependent on a high-speed printer or copier, a service plan may be a good way to control the risk of the copier breaking down. Parts for a copier can be expensive and take time to replace. To be prepared, copier vendors will plan for parts and service based on the copiers they have sold to you, and the number of copies you make (service plans for copiers usually require an annual count of copies made). Higher usage may mean more maintenance.

Vendors: Your vendors have risks, too. Relying on only one vendor may be risky for your business. Do not be afraid to investigate the risks your vendor may face. Some of this risk information is provided by business credit reporting agencies or by insurance companies. You may be able to avoid vendor-related problems by:

- Having more than one supplier for essential products.
- Shopping for vendors with the best price and service.
- Maintaining relationships with multiple vendors by buying from each of them.

A multiple-vendor strategy may make vendors push for more of your business, resulting in lower prices. In any event, if one vendor is unable to deliver, you will have backup.

Business Continuity: Your operations manuals should include a business continuity plan. The plan should provide steps to take for short- and long-term situations. For example, if your business is unable to operate in its present location, is it possible to use another? If so, your plan should list the steps to take, by job position, for re-establishing operations at the backup site. Train staff on your continuity plans and alternative strategies. Have trial runs or periodic testing of your manual systems.

Back up your computer systems and keep copies in a secured offsite location. Keeping additional computer capability at another location can mean being down for a few hours, instead of days. Software or operating systems providers may be able to assist in disaster recovery plans. Review or discuss these plans with your vendors.

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In your continuity plan, include the following:

- Staff members' duties
- Staff members' work locations
- Contact names, such as email addresses and phone numbers
- Vendor, utility, and emergency phone numbers
- Employee notification "phone tree" (for example, an owner calls managers and managers call their departments)

Information Technology Systems: Information technology (IT) systems pose special risks. The following tips can help prevent IT-related risks:

- **Safeguard login information such as user names and passwords.** Personal login information should not be shared with anyone outside the business, or any other employee. Require employees to sign a statement agreeing that they won't share passwords.
- **Protect systems with firewalls.** Use software to scan for viruses or other irregularities.
- **Institute levels of access** within your organization by job duty. Someone who ships out inventory or accepts returns, for example, should have different access than those in accounting where credit is issued. Manager override authority should be reviewed periodically by using system-generated reports. Monitoring reports for out-of-the-ordinary transactions gives an added layer of security.
- **Generate system reports,** which might include reports on system access, attempted security breaches, and patterns of usage. Audits of these reports, as well as reviews of changes made by system administrators, should be conducted regularly.
- **Sample transactions or use trial transactions** to uncover changes in processing or fraudulent transactions.
- **Conduct scheduled and surprise audits** of IT systems.

Employees: Employees and employment costs are often an organization's biggest expense. You can minimize employment-related risks by:

- Minimizing turnover by ensuring your pay, benefit and retirement packages are competitive.
- Provide training to minimize safety risks.
- Auditing workers' compensation claims, accident records and "near misses" to identify problem areas.
- Auditing human resource policies and procedures to ensure your organization complies with EEOC regulations, the Americans with Disabilities Act (ADA) and amendments and other non-discrimination laws. Keep in mind that states often have more stringent anti-discrimination laws or more protected classes than federal law. You'll also want to ensure your workplace is free of sexual harassment and other harassment. Your employee manuals should outline the organization's policies and disciplinary procedures.

A written business plan should not only include a list of possible risks, but also include controls and plans to manage risks. Remember—keep your business plan current by readdressing changes in costs and by assessing new risks. For more information on developing a comprehensive risk management plan and insurance to cover those risks, please contact us.

Avoiding Winter Storm Damage

As you read this article, winter probably seems far away. But winter storms—including hurricanes, windstorms, snow and ice—are coming soon. Is your business prepared?

When it comes to causes of loss, winter storms rank third in terms of the dollar value of damage they cause, second only to hurricanes and tornadoes. According to *Forbes*, a "simple" snowstorm can cost well over a billion dollars. The billion dollar losses come from lost productivity and lost sales.

Are You Prepared?

Snow, ice, sleet: Organizations operating in areas that have freezing temperatures have specific insurance needs. The basic "named perils" property policy covers your buildings and contents from damage or loss caused by specific perils, or causes of loss, named in the policy. These include fire, lightning, explosion, windstorm or hail, smoke, and more. However, these policies do not include coverage for falling objects; weight of snow, ice or sleet; water damage or collapse.

The most common types of property damage that severe winter weather causes are roof damage or collapse due to snow, ice or sleet, and water damage from burst pipes or "ice dams." Ice dams occur when water fails to flow properly through gutters, allowing it

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to seep into a building, damaging ceilings and walls. The resulting water damage would not be covered by a basic "named perils" policy, nor would any of these other types of damage.

To remedy that property insurance gap, businesses can buy one of these types of property policies:

- a broad form property policy, which covers the basic named perils, and adds coverage for falling objects; weight of snow, ice or sleet; water damage (from certain causes) or collapse (from certain causes).
- an "all-risks" policy. This type of policy covers your business from property damage or loss due to all causes, unless specifically excluded by the policy. Typical exclusions include nuclear hazard, war and military action, earth movement, flood, wear and tear, and more.
- a business owner's policy (BOP). The standard BOP offers a package of coverages the typical small to mid-sized business needs. These include property coverage, business income coverage, general liability coverage, and coverage for autos you borrow or rent for business purposes.

High hurricane-risk areas: In certain high-risk coastal areas of Southern states (including Alabama, Florida, Louisiana, Mississippi, North Carolina, South Carolina and Texas), the standard business property policy excludes windstorm coverage. In these areas, business owners might have to obtain their windstorm coverage from a state-sponsored insurance pool, while a private insurer writes the rest of their property coverage. We can help you determine the amount of coverage you need.

Preventive Measures

Although you might have the right coverage for freezes, snow, ice or windstorm damage, that does not eliminate the obligation to maintain your property. Before winter starts, take the opportunity to evaluate your roofs. Large, flat roofs, those with heavy insulation and those in shady areas have highest risk of dangerous snow and ice build-up, as do roofs of varying levels, which can create drifts. Skylights and vents can also cause structural weaknesses and leaks. Poorly insulated areas of roofs can also cause problems by allowing heat to escape, causing snow to melt and refreeze.

Snow causes the most problems when it accumulates over time. The actual weight of the snow doesn't depend on its depth, but rather the amount of water that it contains. Water content varies because of the difference in snow crystal structure. In general, snow that falls at warmer temperatures will be denser; snow also packs down over time and becomes denser. Zurich Re, a reinsurance company, estimated that one foot of dry snow weighs about three pounds per square foot, while wet snow can weigh as much as 21 pounds per square foot. If snow accumulations occur in your area, plan now on how you will safely remove them.

Likewise, in high-wind areas, roofs, windows and doors can allow wind to enter and are your building's most vulnerable areas. Checking structures on a regular basis to ensure they are in proper repair and meet current codes can help you prevent major damage.

You will also want to ensure your business has enough business income coverage to weather a loss in income due to damage from snow, ice, windstorm or other covered cause. For more information on preparing your business for winter's challenges, please contact us.

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Understanding Your Terrorism Coverage

When you renewed your commercial property or business package policy, your insurer might have included a notice regarding terrorism insurance coverage. What's this all about?

Your policy might contain two types of terrorism endorsements, or policy additions that provide extra coverage. One would exclude coverage for terrorism-related losses if the federal Terrorism Risk Insurance Program (TRIP) expired as scheduled on December 31, 2014. The other might cap coverage for losses on terrorism-related losses if the federal program were renewed.

As it happens, Congress renewed the program on January 12, 2015, making renewal retroactive to December 31, 2014. This means the first endorsement would not apply.

Why is terrorism insurance so complicated? A catastrophic terrorism incident in a major city could cause many deaths, injuries and billions of dollars worth of property damage. High potential losses concentrated in a small geographical area make insuring terrorism a high-risk prospect. An insurer that doesn't underwrite wisely could end up insolvent, which makes them reluctant to offer terrorism coverage. Businesses in high-risk areas such as major cities, in or near landmark buildings, etc., often had problems obtaining coverage before TRIP. Since lenders usually require terrorism coverage, many businesses were unable to buy the properties they needed to build or expand.

For that reason, a public-private partnership has evolved to make coverage more affordable. By enacting the Terrorism Risk Insurance Program Act of 2002, or TRIP, Congress caused the creation of a system of shared public and private compensation for certain acts of terror. In exchange, it requires insurers to offer terrorism coverage with commercial property policies. For TRIP to pay a claim, it must result from a terrorism incident certified by the Department of State.

Since the program was supposed to be temporary, Congress has had to extend the program several times. The last extension occurred on January 12, 2015, with the Terrorism Risk Insurance Program Reauthorization Act of 2015, or TRIPRA 2015. This law amends the expiration date of TRIP to December 31, 2020.

If you have any questions on terrorism coverage, or other coverages in your business policies, please contact us.

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