

Insurance Buyers' News



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Compliance

September 2022

Volume 33 • Number 5

Is Your Website Discriminatory?

Does your website violate the Americans with Disabilities Act (ADA) because it is not maintained in a manner accessible to blind or visually impaired people?

As most employers know, Title I of the ADA, which applies to all employers, public and private, that employ 15 or more individuals, prohibits discrimination against 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.

Current State of Law

The ADA says that places of public accommodation, such as grocery stores and other retailers, engage in unlawful discrimination if they fail to “take



such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services.” 42 U.S.C. § 12182(b)(2)(A)(iii). The Department of Justice, which enforces ADA laws, specifically identifies these types of entities:

This Just In...

Global commercial insurance prices rose by 9% in the second quarter of 2022, though the pace slowed, according to a report from Marsh LLC.

Cyber insurance pricing continued to rise substantially, although the pace of increase slowed in the quarter, to 79% in the U.S. compared with 110% in the prior quarter. A slower pace of increase in financial and professional lines contributed to a moderation of pricing.

Although property insurance pricing rates increased just 6% in the second quarter, continuing a decline in the pace of increases seen for the last several quarters, “rate increases may accelerate in future quarters, driven by challenging conditions in the reinsurance market and reduced capacity,” Marsh said.

The specific concerns are about

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- ✱ Businesses that sell goods online (see our sidebar on this one though)
- ✱ 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.

Department of Justice regulations require that a public accommodation “furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities.” 28 C.F.R. § 36.303(c) (1). Therefore, the ADA mandates that places of public accommodation provide auxiliary aids and services to make visual materials available to individuals who are blind.

Penalties

If the Department of Justice brings an ADA Title III case on behalf of the public interest, they may seek civil penalties of up to \$50,000 for the first violation and up to \$100,000 each for subsequent violations.

Civil Lawsuits

According to Michael Lazlow of Lazlo Law, over 2,300 ADA website accessibility lawsuits were filed in federal courts in 2019 (based on CNS search), which is about the same as in 2018. In 2017, the number of ADA website accessibility lawsuits filed was under 1,000.

“There is no reason to think that the number of ADA website lawsuits will decrease.” Says Lazlow. “To date, the large majority of ADA website accessibility lawsuits have been filed in

New York, Florida, Illinois and California, and as plaintiffs and plaintiff’s lawyers bring ADA website accessibility lawsuits in new jurisdictions (like Colorado) we expect the numbers will increase dramatically. We assume Federal Courts with open bar admissions for out of state lawyers will see the quickest increase in ADA website accessibility lawsuit filings due to convenience for national plaintiff’s attorneys.”

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

This Just In

inflation, supply chains and labor shortages, as well as loss experience in cases where adjusted loss amounts were well above reported values.

Casualty insurance pricing increased 6%, but excess liability pricing increased 16%, compared with 10% in the first quarter, as insurers watched how loss trends are affected by the impact of courts reopening after being closed during earlier stages of the pandemic.

“At a time of global business uncertainty, driven by the ongoing war in Ukraine, supply chain disruption and rising inflation, trading conditions remain tough for many clients. We are also seeing the impact of rising inflation on insured values and exposure growth, which has the potential to impact pricing and insurer appetite,” according to Marsh.

make pages readable. For example, designers 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.

Basically, you should have no problem being in compliance with Title III if you work with your IT Department or website team to adopt industry standards such as <https://tinyurl.com/2u7anp4h> ■

What Future Risks Worry Insurance Companies?

Here are the top five future risks troubling the reinsurance companies of the world, according to Swiss Re — reinsurers are the ones that back up the primary insurance companies who actually put their names on the policies (the retail insurers).



* Legal tech — is AI rendering justice?.

Over the past decades, AI in law has advanced from academic research to impactful practical application. A 2020 OECD report lists numerous examples of AI that can be applied in the law profession, including supporting judges in courts to reduce backlogs in cases, increasing legal access to more citizens, and reducing uncertainty around the application of financial regulations.

One of the biggest direct impacts to insurers could stem from lawyers using legal tech systems to zero in on those lawsuits/cases with the most chance of success. This could conflict with the legal purpose of providing justice for all, and also lead to a significant rise in claims loads.

* Thawing permafrost — accelerating climate, infrastructure and health hazards.

Permafrost has been thawing at an increased speed over the past decades in both high latitudes and the mountainous regions across the world. This poses environmental, property and health risks, and may translate into property and liability claims, and also higher costs in life and health.

Permafrost is the ground (rock, soil and ice) that remains at or below 0°C (32°F) for two or more years, typically lying below the layer of ground that freezes and thaws annually. Such conditions apply — or once applied — to a quarter of the northern hemisphere, with most of the planet's permafrost found in northern Russia, Canada, Alaska,

Iceland and Scandinavia. Permafrost is also found in mountainous regions at high elevations.

Climate change effects are expected to accelerate the thawing of large expanses of permafrost in numerous regions. This scenario presents many challenges, including ultimately for insurers.

* Quantum computing — a threat before an opportunity.

With the rapid development of quantum computing (QC) capacity, reinsurers face new threats to data security, which could affect property, specialty and casualty lines as well as operations and assets and financial markets.

* Challenges in construction — raw material shortages and price increases.

Inflationary pressures and raw material scarcity could affect quality and durability of buildings, posing risks to property, specialty and casualty lines.

* Eroding trust — new worries for public health.

Swiss Re said life and health reinsurers could be affected by growing mistrust in public health officials and medical professionals, which “fosters harmful behavior and increases the risk of higher morbidity and mortality, particularly in future health crises.” ■

How to Submit a Claim

We hope it never happens, but when you suffer a loss, you'll have to file a claim to receive payment from your insurer. Here's how the process works, and how to handle it to your best advantage.

Step One: Notify Authorities

Your first priority is always to prevent further injury and to protect life and health. If someone is injured, call for an ambulance if needed or perform first aid. If your loss involved theft, robbery or an auto accident, notify the police—your insurer will want a copy of the police report. If a fire occurs, ask your local fire department to inspect it, even if you put it out yourself, to prevent smoldering embers from reigniting later.

Step Two: Document What Happened

Whenever a loss occurs, the insurer will require information to determine what exactly happened and if your insurance covers it. As soon as possible after an accident or loss, make a written report. If you were involved or witnessed the incident, write down what you saw. If you were not present, find out if there were any witnesses and, as soon as possible, interview them. Make sure your report includes pertinent details, such as date, time of day, location, conditions that could have contributed to the accident or loss, involved persons and witnesses and contact information for them. If you don't have time to make a written report immediately, you can use video to document the incident.

Photos also help document what happened. If the incident involved an injury, take photos of the surrounding area, including any conditions (wet floors, loose carpeting, missing safety equipment) that could have contributed to it. In the case of property damage, photos can help establish the value of any damaged property.

Step Three: Prevent Further Damage

If a repairable condition contributed to an accident, such as a broken stair tread or burned-out light, fix it as soon as possible to prevent future accidents. Likewise, your business property policy probably contains a provision that requires you to prevent further property damage when a loss occurs—such as boarding up broken windows. However, don't make any permanent repairs until your adjuster says it's okay. He or she might need to see the location in its near-original condition to properly evaluate your claim.

Step Four: Report the Loss to the Insurance Company

The insured has duties under the insurance policy. Most liability policies include a reporting provision, which requires insureds to report a possible loss (property damage or injury to a third party) as soon as practically possible. Even if you think the loss won't be covered, report it to your insurer. You can call your agent or broker during business hours, or if the loss occurs after regular business hours, contact your insurer on its 24-hour telephone number or website. Have your policy number and your report ready when you call. If you speak with someone other than your insurance agent or broker, note the name of the representative you spoke with, the time you reported the claim and the claim number assigned to the case.

Step Five: Be Prepared to Work with a Variety of People

If you experienced a substantial property loss, the insurer might assign an adjuster to your case. An adjuster might be an employee of the insurer or an independent contractor.

Adjusters plan and schedule the work required to process a claim. They might, for example, handle the claim filed after an automobile accident or after a storm damages insured property. Adjusters will take a look at your coverage: Was your policy in force when the claim occurred? Do any exclusions or limitations apply? What are your policy limits and deductibles?

The adjuster will also investigate your claim by interviewing the claimant and witnesses, consulting police and hospital records and inspecting property damage to determine the extent of the liability or property damage. Adjusters may consult with other professionals, such as accountants, architects, construction workers, engineers, lawyers, and physicians, who

can offer a more expert evaluation of a claim. The information gathered—including photographs and statements, either written, audio, or on video tape—is set down in a report that is then used to evaluate the associated claim.

When the adjuster's report concludes a policyholder's claim is legitimate, the claim is turned over to the claims adjuster, who negotiates with the insured, or injured party in a liability case, to settle the claim. When claims are contested, adjusters will work with attorneys and expert witnesses to defend the insurer's position.

Step Six: Be Satisfied Before Accepting a Claims Check

If your claims adjuster offers a settlement, be satisfied with the amount before signing a full release of all claims. If you're not satisfied with the amount of the settlement, be sure the claim remains open—if you sign a release of all claims, you will not be able to collect additional payments later.

Step Seven: Use Your Agent as a Resource

If you have questions or concerns at any point of the claims process, don't hesitate to call your agent or broker. He or she will be able to provide you with claim forms and help guide you through the claims process. For more information, please call us. ■



Standalone Website Not a Public Accommodation

If you read our story “Is Your Website Discriminatory?” you know that the website accessibility provisions in Title III of the ADA apply specifically to places of public accommodation. 42 U.S.C. § 12182(b)(2)(A)(iii).

There is an issue, however, with how the phrase *public accommodation* is defined.

Last month a California state appeals court held that an online retailer of cleaning products without a physical location cannot be held liable for maintaining a website that was inaccessible to a blind plaintiff (*Alejandro Martinez v. Cot’n Wash Inc.*).

Basically, the court dismissed the case because the retailer did not have a physical location. Therefore, its website did not constitute “a place of public accommodation.” According to the language of Title III of the ADA, the Act does not apply to “retail websites without any connection to a physical space.” The court granted that although Congress seemed to recognize it was an oversight to limit the law’s applicability this way, it nevertheless for twenty years has “chosen not to amend [the Act].”

The presiding judge, Frances Rothschild



even rejected the claim by the Department of Justice, contained in its *amicus* briefs, that it “has unofficially endorsed a view that all retail websites constitute ‘place[s] of public accommodation’ for purposes of the ADA,” thus imposing upon them a duty not to discriminate based on disabilities.

“Regardless of what the DOJ has said in *amicus* briefs,” said Judge Rothschild, “it has opted not to issue any regulations or formal guidance to this effect, even after repeated requests from

Congress that the DOJ do so,” remarking that “weighs against, not in favor, of” affixing liability.

The Last Word: While standalone websites may be off the hook (in California at least). It’s really in everyone’s best interest for your website to follow non-discriminatory website practices. It’s the standard of a well-made website, your search engine rankings will benefit and why would you want to limit your ability to market to more people by not doing so? ■

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