Alert

January 17, 2023

COZEN O'CONNOR

Four Things You Need To Know About Website Accessibility Claims in California

If your business fails to ensure that its website is accessible to the visually impaired, you risk facing a barrage of expensive lawsuits. In recent years, there has been a significant proliferation of surf-by lawsuits.

These lawsuits are all the same. A visually-impaired individual in California attempts to access a business's website, finds alleged barriers to access which they claim violates the Americans with Disabilities Act and the California Unruh Act, and then files a lawsuit in California state court seeking monetary damages, attorneys' fees, costs and expenses, and injunctive relief. The plaintiff likely will be completely unknown to your company and have never reached out to your company prior to filing the lawsuit to give you an opportunity to fix whatever alleged barrier the plaintiff found. This can be an incredibly frustrating experience for many businesses.

This is what you need to know before or after this happens to your business:

1. **The best defense is a good offense.**

   Unfortunately, there are few, if any, good defenses to a website accessibility claim in California. Like other claims based on the ADA, they are very technical in nature, and even what would seem like a minor issue can expose your business to liability. As a result, the best defense in one of these cases is to make sure your website is accessible and compliant with the Web Content Accessibility Guidelines version 2.0 (WCAG 2.0) or higher.

   Ensuring that your website is accessible is the right thing to do. It is also good for business because it will allow more consumers access to your site and (hopefully) prevent a lawsuit or at least make a lawsuit more unpalatable. There are many services that will help to ensure your website is compliant with WCAG 2.1 (the latest version), including by running software in the background of your website that can detect if someone has accessed your website with a screen reader or other software for people with disabilities and automatically adjust the user interface to work in compatibility with that person's screen reader or other software.

   If you know your website is not accessible and you have gotten a complaint, negotiating a reasonable settlement may, unfortunately, be your only option.

2. **The plaintiff does not need to have suffered any actual damages.**

   The Unruh Act offers plaintiffs in these lawsuits statutory damages of $4,000 per violation, plus attorneys' fees. That means that if a plaintiff can prove your website has any accessibility problem, such as not being compatible with a standard screen reader, you are automatically on the hook for at least $4,000 *and* attorneys' fees.

   California courts have typically found that a website accessibility violation occurs per visit to the website by a plaintiff rather than the number of different accessibility barriers encountered by the plaintiff. As a result, plaintiffs' attorneys have begun finding more plaintiffs to visit the non-compliant website to enhance the amount of automatic damages. Instead of one plaintiff and monetary damages of $4,000, a case will be filed by two, three, or more plaintiffs with the intent that each plaintiff will be entitled to their own $4,000, plus attorneys' fees.

3. **It may not matter that your business has no physical locations in California.**

   Under the ADA, at least in the Ninth Circuit (covering California), there must be a sufficient "nexus" between your website and your business's physical location(s). For example, if a

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restaurant's website allows reservations to be made online, there is a sufficient nexus between the website and the physical location. A California Court of Appeal recently followed this same requirement for the Unruh Act. However, nothing requires the physical location to be in California or anywhere near the plaintiff.

4. **Do not fall for the threatened class action.**

   At least one firm has been filing these claims as a class action to make it appears as if there is exposure to substantial damages. You should ignore the class action claims, and if it is practical to settle, settle only on an individual basis with the named plaintiff. Although there is no case law on whether these claims are appropriate for treatment as a class action, it seems dubious. No one knows who the class members are, and there is likely no means to find out.

If your business receives a demand letter of complaint related to website accessibility or you have any questions, we are happy to assist.